THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

RULES OF PRACTICE AND PROCEDURE

Effective January 1, 1970

UNITED STATES DISTRICT JUDGES

EDWIN M. STANLEY, *Chief Judge,* Greensboro, North Carolina
EUGENE A. GORDON, *Judge,* Winston-Salem, North Carolina
JOHNSON J. HAYES, *Senior Judge,* Wilkesboro, North Carolina

CLERK
HERMAN AMASA SMITH

REFEREE IN BANKRUPTCY
RUFUS W. REYNOLDS

PROBATION OFFICER
O. LEON GARBER, *Chief Probation Officer*

THE MICHIE COMPANY
CHARLOTTESVILLE, VA.
1969

The United States District Court for the Middle District of North Carolina

COUNTIES IN THE DISTRICT

Alamance	Davidson	Lee	Richmond	Surry
Alleghany	Davie	Montgomery	Rockingham	Watauga
Ashe	Durham	Moore	Rowan	Wilkes
Cabarrus	Forsyth	Orange	Scotland	Yadkin
Caswell	Guilford	Person	Stanly	
Chatham	Hoke	Randolph	Stokes	

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JOHNSON J HAYES, *Senior Judge*, Wilkesboro, North Carolina

CLERK

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Greensboro, North Carolina 27402
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The United States District Court for the Middle District of North Carolina

IN THE MATTER OF
RULES OF PRACTICE AND PROCEDURE
IN THIS COURT } ORDER

Pursuant to the authority of Rule 83, Federal Rules of Civil Procedure, Rule 57, Federal Rules of Criminal Procedure, Section 2a (15) of the Bankruptcy Act and General Order In Bankruptcy Number 56, for good cause appearing therefor,

IT IS ORDERED THAT:

(a) The following General Rules, Criminal Rules, Civil Rules, and Rules in Bankruptcy are hereby approved and adopted to govern applicable practice and procedure in this court.

(b) These rules shall supersede all rules or orders heretofore adopted pertaining to practice and procedure before this court.

(c) The effective date of these rules shall be December 2, 1963, and they shall apply to all pending litigation. The rules of practice and procedure presently in effect shall continue to govern all litigation in this court until the effective date of these rules.

(d) When, by legislative enactment or judicial rule or order, it is apparent that a conflict exists, these rules shall be considered automatically changed as to conform to such higher authorities.

(e) The clerk shall arrange for the printing and distribution of these rules, and any amendments made subsequent to their adoption. Since the rules are being published by The Michie Company as a part of the General Statutes of North Carolina, this will serve as distribution to the members of the bar of this court and to each of the law schools in the State of North Carolina. The clerk will arrange for distribution of other copies required by the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

(f) These rules shall be cited as Local Rule .....

EDWIN M. STANLEY
United States District Judge
Middle District of North Carolina

EUGENE A. GORDON
United States District Judge
Middle District of North Carolina

Acknowledgments

The Court hereby acknowledges deep appreciation to Welch O. Jordan, Chairman, Thornton H. Brooks, Beverly C. Moore and Richard L. Wharton, of the Greensboro Bar, James L. Newsom and Jerry L. Jarvis, of the Durham Bar, William D. Sabiston, Jr., of the Moore County Bar, Robin L. Hinson, of the Richmond County Bar, Ralph M. Stockton, Jr., and Leon L. Rice, Jr., of the Winston-Salem Bar, Kyle Hayes and William H. McElwee, of the North Wilkesboro Bar, Don A. Walser, of the Lexington Bar, and Nelson Woodson of the Rowan County Bar, all practicing attorneys, members of the bar of this court, and heretofore appointed to the Advisory Committee on Local Rules of Practice and Procedure of this court, for the extended and helpful services rendered in compiling these rules. The Court also acknowledges appreciation to Rufus W. Reynolds, Referee in Bankruptcy, and William L. Osteen, United States Attorney, both of whom acted in an advisory capacity to the Committee, and to Herman Amasa Smith, Clerk, for his helpful cooperation in acting as secretary.

Additionally, the Court acknowledges sincere appreciation to The Michie Company, Charlottesville, Virginia, for its cooperation in publishing these rules, without charge to the Government, as a part of the General Statutes of North Carolina.

EDWIN M. STANLEY
United States District Judge

EUGENE A. GORDON
United States District Judge

United States District Court for the Middle District of North Carolina

Table of Rules

[*Cite these Rules as:* Local Rule .....]

I. General Rules

I. General Rules

[*Cite these Rules as:* Local Rule .....]

Rule 1.

PHILOSOPHY OF RULES

Consistent with the provisions of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Bankruptcy Act, these rules shall at all times be construed and enforced in such manner as to avoid technical delay, permit just and prompt consideration and determination of all proceedings, and promote efficient administration.

Rule 2.

ATTORNEYS

(a) Roll of Attorneys. The bar of this court shall consist of those attorneys admitted to practice before this court.

(b) Eligibility and Admission.

(1) Any person who has been admitted to practice and is in good standing before the Supreme Court of North Carolina, and who is a resident of the State of North Carolina, is eligible for admission to the bar of this court.

(2) Eligible attorneys shall be admitted to practice in this court upon oral motion made in open court by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

> I do solemnly swear [affirm] that I have been admitted to practice before the Supreme Court of North Carolina, and that I am a member in good standing of that court; that I am a resident of the State of North Carolina; that to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney of this court uprightly and according to law, SO HELP ME GOD. [SUCH BE MY SOLEMN AFFIRMATION.]

(c) Fee. The fee for admission to the bar of this court shall be $2.00, payable to the clerk at the time of admission.

(d) Litigants Must Be Represented by Member of the Bar of This Court; Special Admissions.

(1) Every litigant in civil and criminal actions, except governmental agencies and parties appearing *pro se,* must be represented by at least one member of the bar of this court, who shall state his name, office address and telephone number on each pleading. The service of all pleadings and notices permitted by the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure shall be sufficient if served upon such attorney.

(2) Any person who is a member in good standing of the bar of the Supreme Court of the United States, or the bar of the highest court of any state in the United States, or the District of Columbia, shall be permitted to appear in a particular case in association with a member of the bar of this court.

(3) All pleadings presented to the clerk for filing, except by attorneys representing governmental agencies or parties appearing *pro se,* shall be rejected unless signed by at least one attorney who is a member of the bar of this court.

(e) Withdrawal of Appearance. No attorney who has entered an appearance in any civil or criminal action shall withdraw his appearance, or have it stricken from the record, except on order of the court.

(f) Disbarment and Discipline.

(1) Upon notice and hearing, any member of the bar of this court may, for good cause shown, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the court may deem proper. Whenever any member of the bar of this court has been disbarred from practice by either the appellate or trial division of the General Court of Justice, the North Carolina State Bar, or as otherwise provided by North Carolina General Statutes § 84-28, and such disbarment has become final, such member shall be disbarred forthwith from practice in this court, without notice or a hearing, upon the filing in this court of a certified copy of the final order of disbarment.

(2) Any attorney who before his admission to the bar of this court, or during his disbarment or suspension, exercises any of the privileges of the members of the bar of this court, or pretends to be entitled to do so, shall be guilty of contempt of court and subject to appropriate punishment therefor.

(g) Public Discussion of Litigation by Attorneys.

(1) *Release of Information by Attorneys.* It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) *Same: Pending Investigation.* With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extrajudicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(3) *Same: From Arrest.* From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

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

(ii) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(iii) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(iv) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(v) The possibility of a plea of guilty to the offense charged or a lesser offense;

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

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

(5) *Same: During Trial.* During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of

public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

(6) *Same: After Trial.* After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement, for dissemination by any means of public communication, if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

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

(h) Courtroom Decorum.

(1) Counsel shall at all times conduct and demean themselves with dignity and propriety. All statements and communications to the court shall be clearly and audibly made from a standing position behind a counsel table or lectern. Counsel shall not approach the bench, except upon the permission or request of the court.

(2) The examination of witnesses shall be conducted from behind counsel table or lectern. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

(i) Agreement Between Attorneys and Parties. All agreements between attorneys, or parties appearing *pro se,* must be reduced to writing and signed. Otherwise, they will not be considered by the court.

Rule 3.

COURT SCHEDULE AND CONDUCT OF BUSINESS

(a) Headquarters of the Court. The headquarters of the court shall be located in Greensboro, and all pleadings and papers submitted to the clerk for filing in any division shall be filed in Greensboro.

(b) Divisions of the Court; Counties Comprising the Divisions; Regular Sessions of Court. There shall be six divisions of the court. The headquarters of the counties comprising, and the regular sessions of court for each of the divisions, are as follows:

Division and Court Headquarters	*Counties Comprising Division*	*Regular Court Sessions*
Rockingham	Hoke Montgomery Moore Richmond Scotland	Second Monday in March and September
Durham	Person Lee Orange Chatham Durham	Fourth Monday in March and September
Wilkesboro	Alleghany Ashe Watauga Wilkes	Third Monday in April and October
Winston-Salem	Forsyth Stokes Surry Yadkin	First Monday in May and November
Salisbury	Cabarrus Davidson Davie Rowan Stanly	Third Monday in May and November
Greensboro	Alamance Caswell Guilford Randolph Rockingham	First Monday in June and December

(c) Court in Continuous Session. The court shall be in continuous session in all divisions of the district, and all matters, criminal and civil, not reached at regular sessions of court are deemed to be in an open status and subject to call at any time before the next regular session of court upon reasonable notice to the interested parties.

(d) Place of Holding Court. Regular sessions of court, motion days, pretrial conferences, and other court business, will be conducted in the courtroom located in the United States Post Office Building in division headquarters, unless otherwise directed. On opening day of regular sessions, court shall commence at 10:00 a.m. On all other days, court shall commence at 9:30 a.m., unless otherwise announced.

(e) Business at Regular Sessions of Court. Criminal actions will first be disposed of at regular sessions of court. In divisions other than Greensboro, civil actions will normally be tried immediately following the trial of criminal actions. Civil sessions will be scheduled in Greensboro as required to dispose of pending litigation.

(f) Motion Days.

(1) Motion days will be scheduled in all divisions of the court as required to dispatch promptly and efficiently the business of the court. Notices of motion settings will be given as provided by Local Rule 21 (e) (2) and (3).

(2) Criminal matters of an urgent nature, motions, admission of attorneys, the initial and final pre-trial of civil cases, and other appropriate matters, will be considered on motion days.

(g) Preparation of Trial Calendars. All pending criminal cases are calendared for trial at each regular criminal session of court as a matter of course. Trial calendars in civil cases will be prepared by the court, normally at the time of the final pre-trial conference.

(h) Release of Information by Courthouse Personnel. All courthouse personnel, including, among others, the United States marshal and his deputies, the Clerk of Court and his deputies, bailiffs, and court reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public records of the court. This proscription applies to the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

Rule 4.

NATURALIZATION

Petitions for naturalization will be regularly considered and acted upon, and appropriate ceremonies conducted in connection therewith, at Greensboro, on Friday after the first Monday in June and December of each year A committee composed of three prominent residents of this district will be appointed from time to time to arrange for and conduct ceremonies in connection with all regularly held naturalization proceedings. The court may, in its discretion, at other times, consider and act upon petitions for naturalization by members of the armed services, and seamen on merchant vessels registered under the laws of the United States, and members of the immediate families and dependents of such personnel, and in other exceptional cases.

Rule 5.

SURETIES

(a) Security. In both civil and criminal actions, except as otherwise provided by law, every bond, undertaking or stipulation must be secured by (1) the deposit of cash or negotiable government bonds, undertaking or stipulation, (2) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or (3) the undertaking or guaranty of sufficient solvent sureties, residents of North Carolina, who own real or personal property within the State of North Carolina worth double the amount of the bond, undertaking or stipulation over all debts and liabilities, and over all obligations assumed on other bonds, undertakings, or stipulations, and exclusive of all legal exemptions. A husband and wife may act as surety on a bond, but they shall be considered as only one surety. If a bond, undertaking or stipulation is executed by individual sureties, each surety shall execute his affidavit of justification, giving his full name, occupation, residence and business address, showing that he is qualified as an individual surety under the provisions of this rule.

(b) Prohibited Sureties. Members of the bar, administrative officers or employees of this court, the United States marshal, his deputies or assistants, shall not act as a surety in any suit, action or proceeding pending in this court.

Rule 6.

BRIEFS

(a) Service. Every brief required by these rules or an order of the court shall be served upon opposing parties or their counsel before it is presented to the clerk, and the brief shall clearly indicate the time and method of service. Briefs shall not become a part of the record in the case.

(b) Contents. All briefs filed with the court shall contain:

(1) A statement of the nature of the matter before the court.
(2) A concise statement of the facts. Each statement of fact should be supported by reference to a part of the official record in the case.
(3) A statement of the question or questions involved.
(4) The argument, which shall refer to all statutes, rules and authorities relied upon. When a case is cited as authority for a position, a brief statement of the facts in that case should be included so that it will be readily apparent to the court that the case is authority for such position.

(c) Citation of Cases. Cases cited should include parallel citations, the year of the decision, and the court deciding the case. The following are illustrations of this rule:

(1) State Court citation: Rawls v. Smith, 238 N. C. 162, 77 S. E. 2d 701 (1953).
(2) District Court citation: Smith v. Jones, 141 F. Supp. 248 (E. D. S. C. 1956).
(3) Court of Appeals citation: Smith v. Jones, 4 Cir., 237 F. 2d 597 (1956).
(4) United States Supreme Court citation: Smith v. Jones, 325 U. S. 196, 65 S. Ct. 1120, 89 L. Ed. 1554 (1954).
(5) If a petition for certiorari was filed in the United States Supreme Court, disposition of the case in the Supreme Court should always be shown with parallel citations. For example: Carson v. Warlick, 4 Cir., 238 F. 2d 724 (1956), cert. den. 353 U. S. 910, 77 S. Ct. 665, 1 L. Ed. 2d 664 (1957).

Rule 7.

JURORS

(a) Court Techniques to Insure a Fair Trial. In every case the court will endeavor to aid in the selection of an impartial jury. However, in the trial of criminal cases calculated to attract substantial public interest, in order to shield the jurors from prejudicial publicity and to insure the accused a fair trial, the court, on its own motion, or on the motion of either party, without disclosure of the identity of the movant, may, among other things, order a continuance, a change of venue, sequestration of jurors, sequestration of witnesses, expand the *voir dire* examination of prospective jurors and issue cautionary instructions.

(b) Examination of Jurors. The court shall conduct the examination of prospective jurors.

(c) Same: Scope.

(1) In conducting the examination of jurors in civil cases, the court shall interrogate the jurors in such a fashion and manner as reasonably calculated to elicit from the jurors any prior knowledge of the case, and any connection they might have with the litigants and their attorneys, either personally, professionally, socially, economically or otherwise. The jurors shall also be asked if they know of any reason why they could not sit with the other jurors, hear the evidence in the case, the arguments of counsel, and the instructions of the court, and then render to each of the parties a fair and impartial trial and verdict.

(2) In criminal cases, the line of questioning set out in subsection (b) (1) of this rule shall be followed, where appropriate, and in addition the court shall determine whether any juror is or has been a law enforcement or peace officer.

(d) Same: Questions Requested by Counsel. After the court has completed its interrogation, counsel may request additional questions to be asked the jurors. If deemed by the court to be proper, the jurors will then be interrogated with respect to the matters requested by counsel.

(e) Jury Lists.

(1) The entire list of names drawn to serve a division of the court for a particular period may be disclosed to counsel for the parties, or to any party acting *pro se,* unless the court directs otherwise. As for jurors assigned for service on particular cases or particular days, disclosure shall not be made unless the court directs otherwise. However, no juror shall be approached, either directly or through any member of his immediate family, in an effort to secure information concerning his background.

(2) When the jurors report for duty at a session of court, the clerk shall make available to counsel for the parties, or to any party acting *pro se,* a jury list which sets forth the name, general address and occupation of each juror.

(f) Instructions to Jury. In all cases tried by a jury, the points on which either party desires the jury to be instructed must be in writing and furnished to the court before jury arguments commence.

Rule 8.

JURY ARGUMENTS

In all trials, civil and criminal, the right to open and close the argument shall belong to the party who has the burden of proof, without regard to whether the defendant offers evidence. Where each of the parties has the burden of proof on one or more issues, the court, in its discretion, shall determine the order of arguments. All arguments shall be subject to such time limitations as might be imposed by the court.

Comment: See United States v. Grannis, 4 Cir., 172 F. 2d 507, 512 (1949).

Rule 9.

TRANSCRIPT OF PROCEEDINGS

Pursuant to authorization of the Judicial Conference, upon request of any party, court reporters will furnish transcripts of all proceedings at the following rates per page:

	Original	*Each Copy*
Original transcript	$1.00	$ .40
Daily copy	2.00	.50

Special arrangements must be made in advance of the trial for daily copy.

A certified copy of all transcripts must be delivered to the clerk for the records of the court without charge to the parties. Except as to transcripts to be paid for by the United States, the court reporter shall not be required to prepare transcripts without the deposit of adequate security, or to furnish such transcripts prior to the payment therefor, 28 U.S.C. § 753(f).

Rule 10.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Unless the parties file a written stipulation with the clerk within 20 days after notice of appeal is filed designating the papers which shall constitute the record on appeal, the clerk shall certify and forward to the court of appeals all the original papers in the file jacket dealing with the action or proceeding in which the appeal is taken. When notice of appeal is filed, the clerk shall notify the parties of the provisions of this rule.

Rule 11.

TRIAL PUBLICITY

(a) Photographing and Reproduction of Court Proceedings. The taking of photographs in the courtroom or its environs, or radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings, including proceedings before a United States commissioner or magistrate, whether or not court is actually in session, is prohibited. The word "environs" is defined to mean the offices and corridors on floors on which are located courtrooms or offices of the United States attorney, the United States marshal, the United States district court clerk or the United States probation officer. Proceedings, other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom, under the supervision of the court.

(b) Special Orders, Widely Publicized and Sensational Cases. In a widely publicized or sensational case, the court on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Rule 12.

ORDERS AND JUDGMENTS GRANTABLE BY CLERK

Pursuant to the provisions of Rule 77(c), Federal Rules of Civil Procedure, the clerk is authorized to grant and enter the following orders and judgments without further direction by the court, but his action may be suspended, altered or rescinded by the court for cause shown:

(1) Consent orders for the substitution of attorneys.

(2) Consent orders extending for not more than 30 days the time within which to answer or otherwise plead, answer interrogatories submitted under Rule 33, Federal Rules of Civil Procedure, or requests for admission as provided for in Rule 36, Federal Rules of Civil Procedure. Matters in bankruptcy and those matters set forth in Rule 6(b), Federal Rules of Civil Procedure, are not included in this authorization.

(3) Consent orders extending for not more than 30 days the time to file the record on appeal and to docket the appeal in the appellate court, except in criminal cases.

(4) Consent orders dismissing an action, except in bankruptcy proceedings and in causes to which Rule 23(c) and Rule 66, Federal Rules of Civil Procedure applies.

(5) Judgments of default as provided for in Rule 55(a) and 55(b) (1), Federal Rules of Civil Procedure.

(6) Orders canceling liability on bonds.

(7) Orders changing the time of opening and adjourning court in absence of the judge.

Rule 13.

PRESENTATION OF JUDGMENTS AND ORDERS

No judgment, decree, order, or other instrument shall be presented to the court for signing unless such instrument (1) has been consented to by all the

parties affected thereby, or (2) bears the signature of the party seeking same and some clear indication that all other interested parties have seen the instrument. If there is no objection to the form of the instrument, such should be clearly indicated. If there is objection, the basis of the objection should be stated on the instrument itself or in a memorandum attached thereto. All appealable judgments, decrees or orders shall be executed in duplicate and filed with the clerk of this court.

Rule 14.

REMOVAL OF PAPERS FROM THE CUSTODY OF THE CLERK

Papers on file in the office of the clerk shall be produced pursuant to a subpoena from any court directing their production, or in the discretion of the clerk, may be temporarily removed by the United States attorney, the referee in bankruptcy, or for the court. Otherwise, papers may be removed from the files only upon order of the court. Whenever papers are withdrawn, the person receiving them shall leave with the clerk a signed receipt identifying the papers taken.

Rule 15.

CUSTODY AND DISPOSITION OF MODELS, EXHIBITS AND DEPOSITIONS

(a) Custody. All models, diagrams, exhibits, depositions and other material admitted in evidence or filed in any cause shall be placed in the custody of the clerk, unless otherwise ordered by the court.

(b) Removal.

(1) All models, diagrams, exhibits, depositions or other material placed in the custody of the clerk shall be removed by the party offering such evidence, or filing such materials, except as otherwise directed by the Court, within 30 days after judgment becomes final. At the time of removal, a detailed receipt shall be given to the clerk and filed in the case jacket.

(2) If the party offering, or filing, models, diagrams, exhibits, depositions or other material fails to remove such materials as provided herein, the clerk shall write the attorney of record, or if none, the party offering the evidence, calling attention to the provisions of this rule. If after the mailing of such notice the materials have not been removed within 30 days, they may be destroyed by the clerk.

Rule 16.

COURT LIBRARY

Attorneys practicing before this court, the United States attorney or any member of his staff, and law enforcement officers of the government, may borrow books in the court library for use in the library or courtroom. Under no circumstances may books be removed from the courthouse. Persons removing books from the library pursuant to this rule shall be responsible for their immediate return.

II. Civil Rules

[*Cite these Rules as:* Local Rule .....]

Rule 17.

FORM OF PLEADINGS AND DOCUMENTS

(1) All pleadings and papers submitted for filing must designate the case number of the action and fully conform to the provisions of Rules 10 and 11, Federal Rules of Civil Procedure.

(2) Where the complaint discloses that none of the plaintiffs or defendants is a resident of the division in which the complaint is captioned for filing, the clerk shall change the caption so as to designate the filing of the complaint and the issuance of the summons in a division in which one of the plaintiffs or one of the defendants reside. The clerk shall promptly notify the plaintiff, or his counsel, of the division in which the case has thus been docketed. The same procedure shall be followed in civil cases removed from the state courts to the district court.

(3) Each paper presented to the clerk for filing shall be flat and unfolded, without manuscript cover, and firmly bound.

Rule 18.

FILING FEE AND SECURITY FOR COSTS

(a) Initiating Civil Actions. In every civil action commenced in this court, there shall be filed with the complaint:

(1) A $15.00 filing fee, and

(2) A $200.00 bond, or cash deposit of $200.00 in lieu of such bond as security for costs.

(b) Removal of Actions From State Courts. In every action removed from a state court to this court, there shall be filed with the record being removed:

(1) A $15.00 filing fee, and

(2) A $200.00 removal bond, or a cash deposit of $200.00 in lieu of such bond, as security for costs as required by 28 United States Code § 1446(d).

Rule 19.

FILING OF PAPERS AND SERVICE

(a) Filing of Papers or Pleadings. Subsequent to the institution of an action, with the exception of papers filed with the judge as provided in Rule 5(e), Federal Rules of Civil Procedure, the original of all pleadings, motions, notices of hearing and other papers shall be filed with the clerk at Greensboro, North Carolina.

(b) Service of Papers.

(1) Except in patent, trade-mark and anti-trust cases, and cases in which the United States is a party, it shall be the responsibility of counsel filing papers to serve *one* copy on each opposing party or his counsel.

(2) In patent, trade-mark and anti-trust cases, *two* copies of all papers shall be served on each opposing party or his counsel.

(3) In cases in which the United States is a party, in addition to the copies of the summons and complaint required by Rule 4(d) (4) and 4(d) (5) Federal Rules of Civil Procedure, *three* copies of each pleading or other paper shall be served on the United States attorney.

(c) Proof of Service. Proof of service may be made by written acknowledg-

ment of service by the party served, or by a certificate of counsel for the party filing the pleading or paper, or by affidavit of the person making service, but these methods of proof shall not be exclusive. The original of all papers filed shall indicate the date and method of service.

(d) Ex Parte Orders and Orders to Show Cause. Whenever the court has made an *ex parte* order, the party obtaining it shall serve, within two days thereafter, a copy thereof upon each adverse party who is affected thereby, together with a copy of the papers on which the order was based. Orders to show cause shall be served within the time specified by the order.

Rule 20.

CLAIM OF UNCONSTITUTIONALITY; THREE-JUDGE COURTS

(a) If at any time prior to the trial of an action to which neither the United States nor any of its officers, agencies, or employees is a party, any party draws in question the constitutionality of an act of Congress affecting the public interest, that party, to enable the court to comply with 28 United States Code § 2403, shall notify the court in writing, stating the title of the action, the statute in question, and the respects in which it is claimed the statute is unconstitutional.

(b) In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges, all pleadings, papers and documents filed subsequent to the designation of the court, as provided in 28 U.S.C., § 2284(1), shall be filed in triplicate, original and two copies, with the Clerk. The Clerk shall make timely distribution of these documents to the designated judges.

Rule 21.

MOTIONS IN CIVIL ACTIONS

(a) Must Be in Writing. All motions, including objections to interrogatories and requests for admissions, unless made during a hearing or trial, shall be in writing.

(b) Grounds Must Be Stated. All motions shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(c) Signing. Every motion shall be signed by at least one attorney of record who is a member of the bar of this court. The attorney shall state his office address and telephone number immediately following his signature. The signature of an attorney constitutes a certificate by him that he has read the motion; that to the best of his knowledge, information and belief, there are good grounds to support it; and that the motion is not interposed for delay.

(d) Service. The movant and respondent shall serve copies of their respective papers upon opposing counsel before they are filed with the clerk, and such papers must indicate the time and method of service.

(e) Hearings.

(1) Oral arguments on motions may be had upon written request therefor, or the court may, in its discretion, order oral arguments on any motion. A request for oral arguments shall be separately stated by the movant or respondent at the conclusion of the motion or response. If neither party requests oral arguments, the motion will be considered and decided without a hearing, unless otherwise ordered by the court. Uncontested motions will not be denied without giving the movant an opportunity to be heard.

(2) If the respondent filed a timely response, including brief, and oral arguments have been requested or ordered, the arguments shall be heard on the date

and at such place within the district as the court may designate, without regard to the division in which the case is pending.

(3) The clerk shall give at least five days' notice of the date and place of hearings on motions; provided, for good cause shown, the court may advance the date of hearing and shorten the notice period herein specified. Since it is the policy of the court to hear and dispose of motions as early as possible, the place and date of any hearing should not be specified in the motion papers.

(f) Movants Supporting Documents and Briefs.

(1) When allegations of facts not appearing of record are relied upon in support of a motion, all affidavits, depositions and other pertinent documents then available shall accompany the motion. All such documents not then available may be filed within the time prescribed by subsection (h) of this rule.

(2) All motions, other than those enumerated in subsection (i) of this rule, shall be accompanied by a brief, which shall contain a concise statement of reasons in support of the motion and citation of authorities upon which the movant relies. If the time for filing supporting documents is extended in the manner prescribed in subsection (h) of this rule, the brief of the movant need not be filed until the date specified in the extension order or stipulation.

(g) Response to Motions and Briefs. If the respondent opposes a motion, and his supporting documents are then available, he shall file his response, including brief, within twenty days after service of the motion. If supporting documents are not then available, he may file his response, including brief, within the time prescribed by subsection (h) of this rule. For good cause appearing therefor, a respondent may be required to file his response and supporting documents, including brief, within such shorter period of time as the court may specify. All responses, except with respect to those motions enumerated in subsection (i) of this rule, shall be accompanied by a brief, which shall contain a concise statement of reasons in opposition to the motion and a citation of authorities upon which the respondent relies.

(h) Extension of Time for Filing Supporting Documents and Briefs. When it is reasonably shown in the motion or response, or in a written request, that the filing of additional affidavits, depositions or other documents in support or opposition to a motion is necessary, and such documents are not then available, the clerk may enter an *ex parte* order specifying the time within which such additional documents shall be filed, or approve such stipulation in regard thereto as may have been executed by counsel for the parties. Additionally, such order or stipulation shall specify the time within which the response, and briefs of the parties, must be filed. A copy of any *ex parte* order so entered shall immediately be served upon opposing counsel. If the motion is accompanied by brief and supporting documents, if such are required, and the respondent should require additional time to file his response, including brief and supporting documents, the application for additional time shall be filed by the respondent within five days from date of service of motion.

(i) Motions Not Requiring Briefs. No brief is required by either movant or respondent, unless otherwise directed by the court, with respect to the following motions: (1) For extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed, or as extended by previous orders; (2) to continue a pre-trial conference, hearing or motion, or the trial of an action; (3) for a more definite statement; (4) to strike; (5) to make additional parties; (6) to amend pleadings; (7) to file supplemental pleadings; (8) to appoint next friend or guardian *ad litem;* (9) to intervene; (10) for substitution of parties; (11) relating to discovery, including, but not limited to, motions for the production and inspection of documents, specific objections to interrogatories, motions to com-

pel answers or further answers to interrogatories, and motions for physical or mental examination; and (12) to stay proceedings to enforce judgment. All the motions herein referred to, while not required to be accompanied by a brief, must state the grounds therefor and cite any applicable rule, statute, or other authority justifying the relief sought.

(j) Motions for Production and Inspection and Motions for Physical or Mental Examination. Motions for production and inspection of documents, and motions for the physical or mental examination of a party, must be supported by a showing of good cause.

(k) Conference of Attorneys with Respect to Motions and Objections Relating to Discovery. To curtail undue delay in the administration of justice, the court shall hereafter refuse to hear motions and objections relating to discovery and production of documents, pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, unless moving counsel shall first advise the court in writing that after personal consultation and sincere attempts to resolve differences they are unable to reach complete accord. The statement shall set forth the date of the conference, the names of the participating attorneys and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference, and in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court in the division in which the action is pending.

(l) Motions for Continuance. Motions to continue a pre-trial conference, hearing on a motion, or the trial of an action shall not be granted by the mere agreement by counsel. Any such motion, verbal or written, must be considered by the court, and no such continuance will be granted other than for good cause and upon such terms and conditions as the court may impose.

(m) Motions for an Extension of Time to Perform an Act. All motions for an extension of time to perform an act required or allowed to be done within a specified time must show prior consultation with opposing counsel, and the views of opposing counsel with respect to the extension. Such extensions will not be allowed unless the motion is made before the expiration of the period prescribed for the performance of the act, except upon a showing of excusable neglect. All stipulations with respect to extensions of time are subject to the approval of the court. Consent orders extending the time for the performance of an act may be signed by the clerk to the extent provided by Local Rule 12. Extensions for the completion of discovery will only be approved upon a showing of prior good faith and reasonable diligence. Extensions to file answers or other responsive pleadings will not be granted beyond a total of 30 days from the date the answer or other responsive pleading was originally required to be filed, except upon a showing of unusual circumstances and good cause.

(n) Failure to File and Serve Motion Papers. If briefs are required, the failure of the movant or respondent to file a brief, or the failure of a respondent to file his response, within the times specified in this rule, shall constitute a waiver to file thereafter such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a brief, when a brief is required, may, in the discretion of the court, be summarily denied. A response unaccompanied by a brief, when a brief is required, may, in the discretion of the court, be disregarded and considered and decided as an uncontested motion. If a respondent fails to file his response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and normally will be granted without notice to the parties.

(o) Sanctions. Should any party fail or refuse to meet and confer in a good faith effort to resolve or narrow the area of disagreement with respect to discovery motions, or otherwise willfully fail or refuse to comply with other provisions of this rule, the court may, in its discretion, in addition to the other sanctions

provided for by this rule, and the Federal Rules of Civil Procedure, impose counsel fees against the defaulting party.

Rule 22.

PRE-TRIAL AND DISCOVERY IN CIVIL CASES

(a) Requirement for Pre-Trial. There shall be an initial and a final pre-trial conference in every civil case, unless counsel for the parties stipulate in writing to the contrary and the court approves the stipulation. The court, in the interest of justice and good administration, upon its own motion, may dispense with the initial or final pre-trial conference. In lieu of or in addition to a formal final pre-trial conference, the court may require the parties to submit a proposed final pre-trial conference order in advance of the noticed day for the final pre-trial conference.

(b) Initial Pre-Trial Conference. The initial pre-trial conference shall be held at the earliest practicable date following the joinder of issues.

(c) Order on Initial Pre-Trial Conference. At the time of, or immediately following, the initial pre-trial conference, the court will prepare and enter an order with respect to the subject matter considered at the conference.

(d) Counsel Preparation for Initial Pre-Trial Conference. Counsel for the parties should come to the initial pre-trial conference prepared to express themselves effectively with respect to the following:

(1) The time reasonably required for the completion of discovery.
(2) Whether any third-party complaint or impleading petition is contemplated.
(3) Whether all parties defendant have been properly served with process.
(4) Whether there is any question concerning jurisdiction of the parties and of the subject matter.
(5) Whether all parties plaintiff and defendant have been correctly designated.
(6) Whether there is any question concerning misjoinder or non-joinder of the parties.
(7) Whether there is necessity for, or question concerning the validity of the appointment of, guardian *ad litem*, next friend, administrator, executor, receiver, or trustee.
(8) Whether there are pending motions.
(9) Whether a trial by jury has been demanded within the time provided by the Federal Rules of Civil Procedure.
(10) Whether a separation of issues would be feasible or desirable.
(11) If there is to be a separation of issues, whether discovery should be limited to the issue or issues first to be tried.
(12) Whether there are related actions pending or contemplated in this or any other court.
(13) The estimated trial time.

(e) Final Pre-Trial Conference. A final pre-trial conference will be held at the earliest practicable date after the completion of discovery, at which time a final pre-trial order will either be entered or formalized.

(f) Use of Discovery Procedures. Attorneys are expected to make the fullest possible use of all discovery procedures provided for by Rules 26 through 37, Federal Rules of Civil Procedure, rather than seek information or admissions at the conference of attorneys or at the final pre-trial conference.

(g) Completion of Discovery. The requirement that discovery be completed within a specified time means that adequate provision must be made for interrogatories and requests for admission to be answered, documents to be pro-

duced, and depositions to be transcribed, within the discovery period fixed in the initial pre-trial order.

(h) Extension of Time for Discovery. Upon motion, if made prior to the expiration of the time within which discovery is required to be completed, time may be extended for completion of discovery. Motions or stipulations for additional time for the completion of discovery must set forth good cause justifying the additional time. Parties are expected to conform to prescribed schedules, and motions for extension of time will only be granted in unusual cases, and upon a showing that the parties have diligently pursued discovery during the period originally specified. For good cause appearing therefor, the physical or mental examination of a party may be ordered at any time prior to trial. The deposition of material witnesses who agree to appear at the trial, but who later become unable to attend by reason of illness, or refuse to attend by reason of not being subject to subpoena, may be ordered at any time prior to trial. Except under unusual circumstances, the deposition of material witnesses not subject to subpoena should be taken during discovery.

(i) Notice. The clerk shall give at least ten days' notice of the initial pre-trial conference, and thirty days' notice of the final pre-trial conference. The thirty-day notice required for final pre-trial conference may be given prior to the expiration date of the completion of discovery, but the time fixed for the conference shall be at least twenty days after the final date for the completion of discovery.

(j) Conference of Attorneys. At least fifteen days prior to the final pre-trial conference, counsel for each of the parties who will participate in the trial shall meet and confer for the purpose of preparing a final pre-trial order. It shall be the duty of counsel for the plaintiff to arrange for the conference. In the absence of an agreement to the contrary, the conference shall be held in the office of the attorney maintaining an office in this district nearest the court in the division in which the action is pending. In advance of the conference, each of the parties shall prepare, in typewritten form, and have available at the conference, for inclusion in the final pre-trial order, the following:

(1) *Contentions of Plaintiff(s).* A brief statement of the contentions of plaintiff(s) as to the basis of recovery.

(2) *Contentions of Defendant(s).* A brief statement of how defendant(s) expects to defeat recovery, and basis for any asserted counterclaim.

(3) *Contentions of Cross-Claimant(s) and Third-Party Defendant(s).* Cross-claimant(s) and third-party defendant(s) shall follow the same procedure required of plaintiff(s) and defendant(s).

(4) *Suggested Stipulations.* Suggested stipulations covering all relevant and material facts not considered to be in genuine dispute. In most instances, it would probably conserve time for counsel to have a preliminary conference for the purpose of agreeing upon undisputed facts, thereby eliminating the necessity for each of the parties preparing suggested stipulations.

(5) *Exhibits.* A list of all exhibits that may be offered at the trial, with a brief description of each exhibit. All exhibits must be marked for identification, and, whenever possible, a copy furnished opposing counsel, unless opposing counsel already has a copy of the exhibit or stipulates a waiver of this requirement. In the event certain exhibits are of the character which prohibit and make impracticable their reproduction, notice of their intended use shall be given, and satisfactory arrangements made to afford opposing counsel an opportunity to examine such exhibits. The final pre-trial order should contain the stipulations of the parties with reference to the admissibility in evidence of all identified exhibits, and the provision made for the inspection of any exhibit not furnished opposing counsel. If the authenticity of any exhibit is not stipulated, the reason therefor

should be stated. If admissibility is not stipulated, the basis of the objection must be stated with particularity.

(i) If counsel thereafter discovers additional exhibits which were not known at the time of the conference, the same information required to be disclosed at the conference shall immediately be furnished opposing counsel. The original of any such disclosure shall be filed with the court at the time a copy is furnished opposing counsel.

(ii) Illustrative diagrams, drawings or models, even though not previously identified as exhibits, may, in the discretion of the court, be used and received in evidence.

(6) *List of Witnesses.* A list of the names and addresses of all witnesses then known who may be offered at the trial, together with a brief statement of what counsel proposes to establish by the testimony of each witness. Only each material point which counsel proposes to establish by the testimony of each witness needs to be disclosed, but the willful failure to disclose a material point may render evidence on that point inadmissible at the trial. If counsel discovers the names of additional witnesses that were not known at the time of their conference, the same information required to be disclosed at the conference shall immediately be furnished opposing counsel. The original of any such disclosure shall be filed with the court at the time a copy is furnished opposing counsel.

(i) One of the fundamental purposes of this rule is to require advance preparation sufficient to enable counsel to list the names of all witnesses likely required to establish his claim or defense, and a good faith effort should be made to carry out this purpose when listing the names of witnesses who may be offered at the trial. However, since witnesses listed by all the parties presumably have knowledge bearing upon some of the contested issues, it is permissible for counsel to call as a witness any person listed as a witness by any party to the action. While counsel has the right to call as a witness any person listed by another party, this right should be exercised only in those instances where knowledge of the necessity for calling such witness first arises during the course of the trial.

(ii) The court may, in its discretion, and in the interest of justice, permit a party to call and examine a witness not listed by any party. This exception to the rule is intended to cover only those instances where, during the course of the trial, it becomes necessary to impeach or rebut the testimony of a listed witness, or to meet unexpected developments at the trial

(iii) All listed witnesses who are subject to subpoena shall be produced at the trial, unless good cause is shown for their absence, and a good faith effort must be made to produce all witnesses who are not subject to subpoena. If at any time prior to trial, it is determined that any listed witnesses cannot be produced, immediate notice of such fact must be given opposing counsel. If the same person is listed as a witness by a plaintiff and another party, it shall be the responsibility of such plaintiff to produce the witness at the trial. If the same person is listed as a witness by a defendant and another party, other than a plaintiff, it shall be the responsibility of such defendant to produce the witness at the trial. If a party lists as a witness an adverse party, or an officer, director, or managing agent of an adverse party, not subject to subpoena, it shall be the responsibility of such adverse party to produce the witness at the trial.

(iv) The parties may enter into any reasonable stipulations concerning the specific date or hour a witness will be produced, and reasonable stipulations with respect to excusing witnesses after they have testified, or after it has been determined that a witness will not be called.

(v) If a deposition is to be used at the trial, the individual giving the deposition should be listed as a witness. If the entire deposition is not to be offered, the portions that will be offered should be indicated. If there is a dispute as to the admissibility of any deposition testimony, and the parties are unable to resolve the dispute, the court will endeavor to resolve the matter at the final pre-trial conference.

(7) *Triable Issues.* A list of the triable issues as contended by counsel for each of the parties. If any issues raised by the pleadings have been abandoned, notice shall be given of this fact. Every effort shall be made to resolve any disagreements as to the triable issues, whether to the court or the jury, to the end that the triable issues might be stipulated in the final pre-trial order.

(k) Discussion of Settlement Possibilities. At the time of the conference referred to in subsection (j), counsel for each of the parties shall enter into a frank discussion concerning settlement possibilities. In appropriate cases, clients should either be consulted in advance of the conference concerning settlement figures, or be available for consultation. If settlement appears likely, it should be accomplished as early as possible so as to eliminate the necessity of preparing the final pre-trial order. Settlement prospects will be discussed at the final pre-trial conference, and counsel should be fully prepared in this regard. The court will aid in settlement negotiations to the extent requested by the parties.

(l) Final Pre-Trial Order. At the time of, or immediately following, the conference of attorneys, it shall be the duty of counsel for the plaintiff(s) to prepare a final pre-trial order for presentation to the court at the time of the final pre-trial conference. A copy of the proposed final pre-trial order shall be furnished all opposing counsel at least five days in advance of the final pre-trial conference. The form of the order shall conform as nearly as possible, depending upon the nature of the case and the issues involved, to Form 1, Appendix of Forms. The form shall be used as a guide and check list, and all matters suggested by the form, if relevant, together with other matters, depending on the nature of the case, that will serve to clarify and simplify the contested issues, shall be referred to, and the position of the parties made clear, in the final pre-trial order. Illustrative of this requirement, particular reference is made to the obligation of counsel with respect to contract and negligence cases.

(1) In the event there are motions to be ruled upon, or other matters for consideration and determination at the final pre-trial conference, such matters, and any requirements with respect to the filing of trial briefs or requests for jury instructions, will be incorporated in a memorandum dictated by the Court at the conclusion of the final pre-trial conference. The actual or tentative trial date will also be included in the memorandum.

(2) When the final pre-trial order has been completed, counsel for all the parties shall affix their signatures with respect to stipulations, agreements and claims set forth in the order. The order, when approved by the Court and filed with the Clerk, together with any memorandum entered at the conclusion of the final pre-trial conference, will control the subsequent course of the action, unless modified by consent of the parties and the Court, or by an order of the Court, to prevent manifest injustice.

(m) Sanctions. Should counsel fail to appear at any pre-trial conference, either initial or final, or fail to comply in good faith with the provisions of this rule relating to the preparation of the final pre-trial order, or fail to comply in good faith with any of the other provisions of this rule, an *ex parte* hearing, in the discretion of the court, may be held, and judgment of dismissal or default, or other appropriate judgment, entered, or other sanctions may be invoked, including but not limited to, the imposition of attorney's fees against the defaulting attorney, or his client, or both. A willful failure to reveal exhibits and names of witnesses may render such exhibits and the testimony of such witnesses inadmissible at the trial.

Rule 23.

SEPARATION OF ISSUES IN CIVIL CASES

Pursuant to and in furtherance of Rule 42(b), Federal Rules of Civil Pro-

cedure, in order to avoid undue delay in the administration of justice in civil litigation wherein the issue of liability may fairly be adjudicated as a prerequisite to the determination of other issues, in jury and nonjury cases, the court, upon motion of any of the parties, or upon its own motion, may order a separate trial upon the issue of liability in any claim, cross-claim, counterclaim, or third-party claim. In the event liability is sustained, the court may recess for pre-trial or settlement conference, or may proceed with the trial before the same or another jury, on any or all of the remaining issues, as conditions may require and the court shall deem just and proper.

Rule 24.

MINORS AND INCOMPETENTS AS PARTIES

(a) Appearance.

(1) In any civil action where any of the plaintiffs are minors or incompetents, whether residents or nonresidents of this state, they must appear by their general or testamentary guardian, if they have one within the state.

(2) In any civil action where any of the defendants are minors or incompetents, whether residents or nonresidents of this state, they must appear by their general or testamentary guardian, if they have one within this state.

(b) Appointment of Next Friend or Guardian Ad Litem.

(1) If a minor or incompetent plaintiff has no general or testamentary guardian in this state, said party shall appear by his next friend, who may be appointed as provided for in Rule 17(c), Federal Rules of Civil Procedure. The appointment of a next friend shall be made upon proper application in writing, and after due consideration by the court.

(2) If a minor or incompetent defendant has no general or testamentary guardian in this state, and he has been served with summons as provided for in Rule 4(d) (2), Federal Rules of Civil Procedure, the court, upon motion in writing of any of the parties, or upon its own motion, will appoint a capable and trustworthy person to act as guardian *ad litem,* and shall make such other orders as it deems proper for the protection of the minor or incompetent, as provided for in Rule 17(c), Federal Rules of Civil Procedure.

(c) Supervision and Removal of Next Friend or Guardian Ad Litem. The next friend of a minor or incompetent, or the guardian *ad litem* of a minor or incompetent, is an officer of the court and shall function under the supervision and control of the court. The court may remove the next friend or the guardian *ad litem* as often as may be necessary to protect the rights of minors and incompetents.

(d) Dismissal of Actions. No action to which a minor or incompetent is a party shall be discontinued or dismissed without the approval of the court. A motion for dismissal of the action shall be in writing and shall set forth the reasons why the action should be dismissed, and the effect of the dismissal, if any, upon the rights of the minor or incompetent.

(e) Settlement of Claims of Minors or Incompetents. All settlements of claims of minors or incompetents must be approved by the court. No settlement of such claims shall be presented to the court until the issues are joined. If any party to the action has requested a jury trial, a stipulation of the parties withdrawing such request shall be filed with the court.

(f) Same: Hearings.

(1) Upon oral or written motion of the parties, the court will conduct a hearing to determine whether the settlement is fair and reasonable and for the best interests of the minor or incompetent.

(2) At the time of the hearing, the attorneys for the parties shall present, to the satisfaction of the court, the following:

(i) A statement of the facts giving rise to the cause of action set forth in the pleadings, the contentions of the parties with respect to liability, and a stipulation covering all relevant and material facts not considered to be in genuine dispute.

(ii) A statement showing the nature and extent of the injuries, the extent of the recovery from such injuries, and the prognosis. Such statement shall be supported by copies of all pertinent medical reports, including a current report of the attending physician.

(iii) Statements of the attorney and parents or guardian of the minor or incompetent as to their satisfaction with the settlement, and their opinion as to the fairness and reasonableness of such proposed statement. If at least 18 years of age, a similar statement shall be presented by any minor plaintiff.

(iv) If material, a statement showing the amount of the medical, hospital and other expenses incurred, or to be incurred, in the treatment of the injuries of the minor or incompetent.

(3) If deemed necessary, the parties should also be prepared to offer sworn testimony of witnesses and furnish documentary evidence in support of all findings made by the court.

(g) Judgments Approving Settlement.

(1) To be consented to. Before judgments approving compromise settlements of claims of minors or incompetents shall be presented to the court, the judgment shall be consented and agreed to by counsel for all parties to the action, by the next friend or guardian of the minor or incompetent and, in cases where the minor is at least 18 years of age, by the minor plaintiffs.

(2) Contents. The judgment presented should provide, *inter alia,* that the parties have agreed to a settlement of all matters in controversy between them and the amount of the settlement; that the court has investigated the matter of the proposed settlement and considered the evidence offered by the parties; that the court is of the opinion, and finds as a fact, that the proposed compromise settlement is fair and reasonable and is for the best interests of the minor or incompetent; and that the court is of the opinion, and finds as a fact, that the compromise settlement agreement should be ratified, approved and confirmed by the court.

(h) Payment of Medical Expenses From Proceeds of Judgment. The court will not order the payment of medical expenses from the proceeds of the judgment unless (1) a parent is the next friend of the minor and the parent has waived his right to the medical expenses, permitting the minor to recover all elements of damage in the action, (2) the minor has no parent or legal guardian, or (3) the minor is emancipated and liable for necessaries.

(i) Same: Reimbursement to Parent.

(1) In cases where all or any part of the medical bills have been paid by the parent, the court will not authorize that the parent be reimbursed from the proceeds of the judgment, except in extraordinary circumstances. If the parent is to be reimbursed, settlement of the parent's claim should normally be separate and apart from the settlement of the minor's claim.

(2) Except in extraordinary circumstances, the settlement of the claim of the parent for medical expenses incurred in the treatment of injuries to the minor, and the loss of services of the minor, should be separate and apart from the claim of the minor. In cases where the settlement of the claim of the parent is separate and apart from that of the minor, the judgment should recite that there has been such a settlement.

(j) Counsel Fees Subject to Approval of Court. In all actions falling within the purview of this rule, the court shall approve or fix the amount of the fee to be paid to counsel for the plaintiff and will make appropriate provision for the payment thereof from the proceeds of the judgment. Counsel for plaintiff shall be prepared to submit to the court the nature and extent of the services rendered to the incompetent or minor plaintiff, and his opinion as to the value thereof, if requested by the court.

(k) Payment of Judgment. The amount of the judgment shall be paid into the office of the clerk of this court and the clerk shall make such disbursements from the proceeds as provided by the judgment of the court. The balance of the proceeds of the judgment shall be paid to the legal guardian of the minor or incompetent, if within this state. If there is no such guardian, the balance of the proceeds shall be paid to the clerk of superior court of the county in which the minor or incompetent resides.

Rule 25.

OPENING STATEMENTS IN CIVIL ACTIONS

At the commencement of the trial of civil actions, the party upon whom rests the burden of proof shall state, without argument, his cause of action and the evidence by which he expects to sustain his claim. The adverse party shall then state, without argument, his defense and the evidence by which he expects to sustain same. If the trial is to the jury, the opening statement shall be made immediately after the jury is empaneled. If the trial is to the court, the opening statement shall be made immediately after the case is called for trial. Opening statements shall be subject to such time limitations as might be imposed by the court.

Rule 26.

RETURN OF CIVIL VERDICTS

In civil jury trials, if a party or counsel voluntarily absents himself from the courtroom prior to the return of the verdict, it shall be conclusively presumed that such party or counsel waived his presence.

Rule 27.

TAXATION OF COSTS

(a) Bond Premiums. If costs are awarded by the court, the reasonable premiums or expense paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

(b) Witnesses, Fees, Subsistence and Mileage. Executive officers and directors of corporate parties shall not be entitled to witness fees, subsistence and mileage. In addition to the fees and subsistence authorized by statute for other witnesses, they shall be allowed their actual mileage at the statutory rate to and from their place of residence, whether they reside within or without the district.

(c) Filing Bill of Costs. The prevailing party shall prepare a bill of costs as soon as possible after entry of the final judgment, on the form supplied by the clerk. The bill of costs shall contain an itemized schedule of the costs, and a statement signed by counsel for the prevailing party that the schedule is correct and the charges were actually and necessarily incurred. The original of the bill of costs shall be filed with the clerk and a copy served on counsel for the adverse party.

(d) Objections to Bill of Costs, Hearing and Review.

(1) If an adverse party makes specific objections to any item of costs filed by the prevailing party, the clerk shall set the matter for hearing.

(2) If either party is dissatisfied with the ruling of the clerk, such action may be reviewed by the court upon motion duly made in writing within five days after the action of the clerk.

III. Criminal Rules

[*Cite these Rules as:* Local Rule .....]

Rule 28.

PRE-TRIAL OF CRIMINAL CASES

In protracted criminal cases involving unusual facts and issues, or the use of numerous exhibits, the court, upon motion of either party, or upon its own motion, may suggest a pre-trial conference for the purpose of considering the stipulation of undisputed facts and exhibits, and such other matters as will promote a fair and expeditious trial.

Rule 29.

MOTIONS IN CRIMINAL CASES

Unless a different time is fixed by statute or the Federal Rules of Criminal Procedure, motions in criminal cases, and particularly motions made pursuant to Rules 12, 21 and 41(e), Federal Rules of Criminal Procedure, shall be in writing and state with particularity the grounds therefor and the relief or order sought. All such motions shall be filed with the clerk, and a copy served upon the United States attorney, at least five days prior to the date of arraignment, and accompanied by a brief citing all authorities upon which the movant relies. The court, may, however, in unusual or exceptional circumstances, and for good cause shown, allow such motions to be made at a time later than that fixed by this rule.

Comment: See Local Rule 6 with respect to briefs.

Cited in United State v. Vickers, 387 F.2d 703 (4th Cir 1967).

Rule 30.

ARRAIGNMENT

All defendants and their attorneys shall be present for arraignment at 10 o'clock a.m. on the opening day of each regular session of court in the division in which the case is pending.

Rule 31.

OPENING STATEMENTS IN CRIMINAL ACTIONS

In the trial of protracted criminal cases involving unusual or complicated facts or issues, the government and the defendant may make opening statements with reference to their theories of the case and the manner in which they expect to offer their proof. Opening statements shall be subject to such time limitations as might be imposed by the court.

Rule 32.

PLEAS IN MITIGATION OF PUNISHMENT

All pleas in mitigation of punishment in criminal cases shall be made in open

court during the trial of the case, and at a time when the United States attorney, or his assistant in charge of the prosecution, is present.

Rule 33.

MOTIONS FOR REDUCTION OF SENTENCE

All motions for reduction of sentence, pursuant to provisions of Rule 35, Federal Rules of Criminal Procedure, if not in writing, shall be made orally in open court in the presence of the United States attorney, or his assistant in charge of the prosecution of the case. If the motion is in writing, the original shall be filed with the clerk and a copy thereof served upon the United States attorney. Only substantial facts unavailable to the defendant, or not brought to the attention of the court, at the time of sentencing will be considered.

Rule 34.

POST-CONVICTION MOTIONS

Motions filed pursuant to 28 United States Code § 2255 making a collateral attack upon a sentence imposed by this court, and petitions for writs of habeas corpus filed in this court by persons in state custody, shall be in writing, signed and verified. Additionally, such motions and petitions shall be on forms supplied by the court, and, to the extent applicable, all information required by the form shall be fully and accurately given.

Rule 35.

REPRESENTATION OF INDIGENT DEFENDANTS

The plan of the court for the representation of defendants who are financially unable to obtain an adequate defense, and for the furnishing of expert and other services, pursuant to the Criminal Justice Act of 1964, provides for representation by private attorneys. For the purpose of preparing and certifying panels of attorneys from which appointments will be made, the Court has appointed a District Committee, and Division Committees in each of the six divisions of the district, composed of experienced attorneys. A member of the District Committee resides in each of the six divisions of the court, and Division Committees have a member from each county in each division. Local bar associations have also been invited to participate in the preparation and certification of panels of attorneys from which appointments will be made. Because of the length of the plan, it is not being reproduced in these rules. A copy is available, however, through the clerk. Every effort has been made to insure that all qualified members of the Bar will be given an equal opportunity to participate in the representation of defendants under the Act. The panels will be revised annually. The court may, in the exercise of its discretion, appoint attorneys to represent defendants under the Act whose names do not appear on the panels.

IV. Bankruptcy Rules

[*Cite these Rules as:* Local Rule .....]

Rule 36.

FILING FEES

(a) Original Petition. At the time of filing the petition initiating a proceeding under the Bankruptcy Act, the filing fees, except as provided in subsection (d) of this rule, shall be deposited with the clerk of court as follows:

(1) For ordinary bankruptcy of an individual or a corporation, $50.00. In partnership cases, $50.00 for each partner and $50.00 for the partnership.
(2) For an arrangement under Chapter XI, $50.00.
(3) For a real property arrangement under Chapter XII, $50.00.
(4) For corporate reorganization under Chapter X, $120.00, if no bankruptcy proceeding. Otherwise. $70.00.
(5) Railroad reorganization, under Chapter XV, $150.00.
(6) For composition of local taxing agency under Chapter IX, $100.00.
(7) For wage earner plan under Chapter XIII, $15.00.

(b) Petition to Reopen Cases. To reopen any closed bankruptcy proceeding there should be a deposit with the clerk of court of the sum of $50.00.

(c) Ancillary Proceedings. For ancillary proceedings there should be a deposit with the clerk of court of the sum of $40.00.

(d) Petitions in Pending Cases. The filing fees for petitions in pending cases are as follows:

(1) Petition to reclaim property from a bankrupt estate, $10.00.
(2) Petition to review an order of the referee, $10.00.
(3) Objections to the discharge, $10.00.
(4) Amendments to schedule of creditors after notice to creditors, $10.00.

Comment: Filing fees for petitions filed with the referee shall accompany the petitions when filed with checks payable to the clerk of court.

(e) Changes. If any of the above filing fees are changed by the Judicial Conference of the United States, they shall be considered as automatic changes in this rule to conform to the new fees adopted by the said Conference.

Rule 37.

FILING ORIGINAL PETITIONS, SCHEDULES AND STATEMENT OF AFFAIRS

(a) Number of Copies and Place to File. In bankruptcy petitions under Chapters I through VII of the Bankruptcy Act (ordinary bankruptcy), the schedule of assets and liabilities and the statement of affairs shall be filed in triplicate originals with each of the three originals duly executed by the bankrupt and filed with the clerk of the court. In involuntary bankruptcy proceedings, the bankrupt should file with the referee within five days after adjudication the schedule of assets and liabilities and statement of affairs as required in Section 7 of the Bankruptcy Act.

Comment: Among the official forms adopted by the United States Supreme Court which have become a part of the Bankruptcy Act as found in the United States Code, are Form No. 1 which constitutes the petition and schedule of assets and liabilities, and Form No. 2 which constitutes the statement of affairs. Official Form No. 5 constitutes the petition for an involuntary proceeding. These forms, except the involuntary forms, are commercially printed and distributed rather widely and may be obtained from local legal supply houses. Hutton Office Supply Company, Bellemeade Street, Greensboro, North Carolina, Telephone: Broadway 3-2790, has agreed to carry for sale such forms at all times and to mail or deliver them to lawyers immediately upon request. Proof of claim forms are also available at the same source. For larger quantities, more economical prices can be obtained by ordering direct from printer such as Tuttle Law Print, Inc., Rutland, Vermont.

(b) Full Name and Trade Names. The bankrupt's full name shall be set out in the petition. In voluntary bankruptcy proceedings, all assumed, fictitious or trade names and any other names or designations by or under which the bankrupt has been known or has conducted any business within six years next pre-

ceding the filing of the petition in bankruptcy shall be set forth in the petition. In involuntary proceedings, such facts shall be set forth in the petition to the best knowledge, information and belief of the petitioning creditors. In all cases, such facts shall be set forth in the notices to the creditors of the first meeting of creditors.

(c) Listing Creditors. The list of creditors in the schedule of assets and liabilities should be accurate and complete. The street number, city and state should be listed after each creditor with sufficient accuracy to assure mail delivery.

Comment: An inadequate or incomplete mailing address may result in the bankrupt not being discharged of that indebtedness as being insufficient notice to the creditor.

(d) Inability to Pay Filing Fee. A petition in a voluntary proceeding under Chapters I through VII or Chapter XIII of the Bankruptcy Act may be accepted for filing by the clerk of court if accompanied by a verified petition by the bankrupt stating that the petitioner is without and cannot obtain the money with which to pay the filing fee in full at the time of filing, accompanied by an affidavit of the petitioner's attorney that the attorney has not and will not accept any compensation for his services as such attorney until such filing fee is paid in full. The bankrupt's petition shall state the facts showing necessity for payment of the filing fee in installments and shall set forth the times upon which the bankrupt proposes to pay such fees. No discharge shall be granted until the filing fee is paid in full.

Comment: The limitations and provisions in respect to the installments as well as the facts that the proceeding may be dismissed on failure to pay the costs is contained in General Order No. 35.

(e) Partnerships. Where a petition in bankruptcy involves a partnership, the petition should clearly indicate whether the individual partners are included among the bankrupts with the partnership and whether the partners are to be adjudged bankrupts individually along with the partnership. There shall be separate adjudications for each individual and for the partnership. Whether the partners are adjudicated individually or not, the schedule of assets and liabilities should contain a separate list of the assets and liabilities of each partner.

Comment: The discharge of a partnership shall not discharge the individual partners thereof from the partnership debts. Therefore, it is most important to the partners that the petition and the adjudication include the partners. As to the treatment of the partnership and the partners in bankruptcy, see Section 5 of the Bankruptcy Act.

(f) Personal Property Exemptions. The $500.00 personal property exemption of the bankrupt as recognized under the laws of the State of North Carolina should be claimed by the bankrupt in the schedule of assets and liabilities. If the bankrupt does not claim the exempt property, the failure to do so will be considered a waiver of his rights to the said exemption. It will be sufficient to protect such rights to claim the $500.00 exemption without identifying the particular property to be included in the allotment.

(g) Estates by the Entirety. When one spouse is adjudicated a bankrupt, real estate held by the entirety is not an asset of the bankrupt estate. However, the schedule of assets and liabilities as filed by the bankrupt should indicate what property is held by the entirety, giving the approximate date of purchase, the present value and the location of the property. The value of said property would not be listed in the total value of the bankrupt estate.

Rule 38.

APPEARANCE OF ATTORNEYS

(a) Qualified Attorneys. Attorneys appearing before the referee, including attorneys filing proofs of claim, shall be a member of the bar of this court, as provided by Local Rule 2. Attorneys who do not maintain an office in the State of North Carolina may appear in association with members of the bar of this court. Individuals, collection agencies, corporations or associations, not a creditor, shall not be permitted to file claims. Individuals, firms and corporations which are creditors may file proofs of claim on their own behalf, without the use of an attorney.

(b) Disposition of Claims Filed by Disqualified Persons. Any claim received by the referee from an attorney, person or corporation disqualified to file claims as above indicated shall be filed and entered by the referee, provided the claim indicates the mailing address of the creditor. If no complete mailing address of the creditor appears on the claim, then the claim with a copy of this rule shall be returned to the disqualified party attempting to file the claim. If the claim is filed, a copy of this rule shall be forwarded by the referee to the sender of the claim to serve as notice that he is not qualified to file such a claim and will not be recognized as an attorney in this court.

Rule 39.

EMPLOYMENT OF ATTORNEYS

A receiver or trustee shall not employ an attorney except as provided in General Order No. 44.

Rule 40.

COMPENSATION OF ATTORNEYS

(a) Petition for Fees. An attorney for a receiver, trustee, petitioning creditors, bankrupt or debtor shall be allowed compensation only for services necessarily and actually rendered and expenses necessarily and actually incurred and paid. An attorney entitled to compensation for services shall file with the referee his petition setting forth the value and extent of the services rendered in detail indicating the amount requested and what amount, if any, has heretofore been paid to him.

(b) Division of Fees. The petition by an attorney for attorney's fee shall be accompanied by his affidavit stating whether an agreement or understanding existed between the attorney and any other person for a division of the compensation, and if so, the nature and the particulars thereof. The affidavit shall state that no division of fees will be made except as indicated therein. Such statement may be incorporated in the petition provided the petition is under oath.

Comment: If the division is with attorney's law partner, such should be indicated. However, the manner or percentage of division is not required to be disclosed. The restrictions on divisions of fees are contained in Section 62 c of the Bankruptcy Act. For a suggested form for the affidavit, see Form No. 3 in the Appendix to these rules.

(c) Fixing Fees. In fixing compensation of an attorney, the following factors shall be taken into consideration:

(1) Amount of work done.
(2) Length of time employed.
(3) Difficulties or intricacies of the bankruptcy proceeding.
(4) Results accomplished.
(5) Amount involved in connection with services rendered.
(6) Size of the estate.

(7) The skill required and experience of counsel in similar cases.
(8) Contingency or uncertainty of compensation.

(d) North Carolina Bar Association Rates. When computing compensation on the basis of time and depending on the importance of the case, the referee may consider the recommended minimum fee schedule of the North Carolina Bar Association.

Rule 41.

REFERENCE OF PETITIONS

In accordance with the provisions of 11 United States Code § 45(a), the clerk of court shall refer to the referee in bankruptcy all cases filed under Chapters I through VII, Chapter XI, and Chapter XIII of the Bankruptcy Act.

Rule 42.

PETITIONS, ORDERS AND PLEADINGS AFTER REFERENCE

(a) Filed With Referee. After a proceeding has been referred to the referee all petitions, pleadings and applications for orders within the referee's jurisdiction shall be made to the referee and filed with the referee.

(b) Verification.

(1) Required to be verified are petitions initiating the action in bankruptcy either voluntary or involuntary, statement of affairs, assets and liabilities, statement as to the division of fees as applied for by attorneys, trustee and receiver, and all reports by receiver and trustee in which there is an accounting of funds or reporting the expenses to be paid from the estate and power of attorney.

(2) Not required to be verified or under oath are all pleadings, petitions, motions and applications in the bankruptcy proceeding except as noted above.

Comment: The official caption and verification in bankruptcy proceedings is set forth in Form No. 2, Appendix to these rules.

(c) Service on Trustee. Any person filing a petition to reclaim property or for the release of any rights to property, shall serve a copy of such petition on the trustee or his attorney by mailing the same to him and attaching a statement of such service to the petition as filed with the referee.

(d) Manuscript Covers. Petitions, applications and orders filed with the referee should not have manuscript covers unless such covers are necessary to protect exhibits attached.

Rule 43.

PETITION FOR DISCHARGE OF BANKRUPT

(a) Individual or Partnership. The adjudication of an individual or a partnership operates as an application for a discharge and no further petition is necessary.

(b) Corporation. If a discharge of a corporation is desired, a petition for such discharge must be filed within six months after the adjudication.

Rule 44.

OBJECTIONS TO DISCHARGE

The objection to the discharge may contain one or more specifications of the grounds of opposition to such discharge. Each specification should be numbered and reference made to the applicable subparagraph of Section 14 c of the Bankruptcy Act. Each specification should allege the essential facts and all the ele-

ments constituting the bar to discharge and not merely allege generalities or conclusions. A specification alleged in the words of the statute alone is not sufficient except where the specification is under Section 14 c (2) of the Bankruptcy Act for failing to keep accounts and records from which the bankrupt's financial condition and business transactions might be ascertained.

Comment: For the $10.00 filing fee for objections to discharge, see Local Rule 34(d) (3) Official Form No. 44, Specifications of Objection to Discharge, is set forth as Form No. 4 in the Appendix of these rules.

Rule 45.

FEDERAL RULES OF CIVIL PROCEDURE

(a) Applicability. The Federal Rules of Civil Procedure shall, insofar as they are not inconsistent with the Bankruptcy Act and the General Orders, be followed as nearly as may be pursuant to General Order No. 37 under the Bankruptcy Act.

(b) Pre-Trial Conferences. The pre-trial conference procedure under Rule 16, Federal Rules of Civil Procedure and Local Rule 22, shall be used by the referee to its fullest advantage. Request for a pre-trial conference may be made by written motion by any party to any matter being litigated before the referee in bankruptcy.

Comment: The purpose and scope of the pre-trial conference before the referee in involved and complicated matters will be similar and as binding on the parties as a pre-trial conference under Local Rule 22.

Rule 46.

FILING CLAIMS

(a) Form. Proof of claim should be presented on a regular proof of claim form as prescribed by the Bankruptcy Act, being Official Forms Nos. 28, 29, 30, and 31. The proof of claim should have attached to it an itemized statement of the account. If the claim is based on a note or written contract, a true copy or photostatic copy should be attached. All credits should be shown by date, character and amount within the last six months. It is not required that the claim be executed under oath, except the proof of claim should be under oath when power of attorney is included.

Comment: Commercial printers usually combine the four forms into one printed form which is used in filing claims and most frequently referred to as "Proof of Claim Form in Bankruptcy". These forms can be obtained from almost any legal supply company. See also source of supply under Local Rule 37(a), comment. The Bankruptcy Act has been amended dispensing with the requirement of the claim to be under oath; however, execution of power of attorney should be under oath.

(b) Where Filed. All claims should be filed with the referee. Any proof of claim received by the clerk shall immediately be forwarded to the referee for filing where all claims shall be kept as provided by General Order No. 24.

(c) Time for Filing. Claims must be filed within six months after the first date set for the first meeting of creditors.

Comment: See Section 57 of the Bankruptcy Act in regard to filing claims. A claim must be filed in bankruptcy in order to participate in any dividend. A prior filing in a state receivership or other insolvency proceeding does not constitute a filing in the bankruptcy court.

Rule 47.

SOLICITATION OF PROXIES AND VOTING

(a) Requirements for Voting by Attorneys at Law. An attorney desir-

ing to vote more than one claim under power of attorney or proxy at any meeting of creditors may be required by the referee in his discretion to furnish information prior to such voting to include:

(1) The names and amounts of the claims he desires to vote.

(2) Whether any of the creditors' claims he desires to vote are his regular clients, and if so, their names and the approximate length of time they have been such regular clients.

(3) The name of the person from whom he received the claims of creditors who are not his regular clients and the nature of his connection with such person or association or company.

(4) Whether the claims of creditors other than his regular clients have been solicited and if so by whom.

(5) Whether the said claims will be voted in an interest other than that of general creditors.

(b) Inquiry by Referee as to Solicitation of Proxies. The referee at his own instance or at the request of any party in interest in the proceeding may make or permit inquiry to be made as to the solicitation of claims voted or to be voted. If upon such inquiry it appears that any claims, powers of attorney, or proxies have been solicited with the intent or purpose of voting them at any meeting or hearing in the interest of the bankrupt or in the interest other than that of general creditors, the referee shall allow the voting of such claims under such powers of attorney or proxies. If, in the opinion of the referee, the election of the trustee or the determination of any other matter to be submitted is likely to be unfairly affected by such disallowance, the referee may adjourn the meeting and notify the creditors who executed such powers of attorney or proxies of the adjourned date of the meeting to afford them an opportunity to attend and vote or to execute new powers of attorney or proxies.

Rule 48.
APPEALS FROM REFEREE

(a) Petition for Review. Any person aggrieved by an order of the referee may, within 10 days after the entry of such order or within such extended time as a referee upon petition filed within such 10 day period may for cause shown, file with the referee a petition for review of such order by the court, as provided by Section 39 c of the Bankruptcy Act.

(b) Service of Petition and Brief. A copy of the petition, together with a copy of the brief as hereinafter mentioned shall be served upon the adverse parties who were represented at the hearing by mailing copies of the same to the said parties, such service being indicated by a statement filed with the petition for review. The petition for review shall set forth the order complained of and the alleged errors in respect to such order.

Comment: An unofficial form for petitions for review may be found in Collier on Bankruptcy and Remington on Bankruptcy. See Unofficial Form No. 1000 at Page 3861, Vol. 5, Collier on Bankruptcy, and Unofficial Form No. 3500 at Page 810 in the volume on Forms, Remington on Bankruptcy. There are valuable comments and suggestions under each of the forms cited. There is a $10.00 filing fee for each petition for review as referred to in Local Rule 36(d) (2).

(c) Briefs. Every petition for review should be accompanied by a brief in support of the alleged errors and the person filing said brief shall serve a copy thereof on the adverse parties who were represented at the hearing. Within 10 days after the referee files with the clerk his certificate for review, the opposing party shall file with the clerk and serve upon the petitioner his answering brief. Briefs should comply with the requirement as set forth in Local Rule 6.

(d) Hearing on Petitions for Review. The referee shall furnish the clerk

of court the name and address of each attorney for the interested parties having appeared in the hearing before him simultaneously with the transferral of the certificate of the referee to the court on the petition for review. Each attorney for the interested parties shall be notified by the referee of the forwarding of the certificate of review to the clerk's office. The clerk upon receipt of the certificate and the names of the attorneys for the interested parties shall immediately make arrangements or cause to be set a hearing on the said petition for review and notify each interested party through his attorney of the date and hour of said hearing. No further notice shall be required of the hearing on the petition for review.

Rule 49.

DEPOSITORIES

(a) Place of Deposit. Receivers and trustees shall deposit all bankruptcy funds in the banks within the district as shall be designated as such depositories, and as directed from time to time, and all funds shall be disbursed by check and countersigned by the referee.

(b) Canceled Checks and Statements. Each depository as designated shall retain the canceled checks and statements and deliver the same to the referee as and when directed No canceled checks will be delivered by the bank to the trustee. However, the trustee may obtain any information about this account from the bank from time to time.

(c) Monthly Report by Bank. Each depository having funds on bankrupt cases will report to the referee and to the clerk of court by not later than the tenth of each month the name and the amount of each bankruptcy case on deposit in the respective bank as of the last day of the preceding month. The acceptance of the account by the depository is an implied agreement to abide by and be subject to these rules in regard to deposits.

Appendix of Forms

FORM 1

(See Local Rule 22)

Check List and Suggested Form of Order on Final Pre-Trial Conference

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
..... DIVISION

Plaintiff(s)
vs.
Defendant(s)
} Civil Action No. .....

ORDER ON FINAL PRE-TRIAL CONFERENCE

Pursuant to the provisions of Rule 16 of the Federal Rules of Civil Procedure, and Local Rule 22, a final pre-trial conference was held in the above-entitled cause on the ..... day of ....., 196.. ....., Esquire, appeared as counsel for the plaintiff(s); ....., Esquire, appeared as counsel for the defendant(s).

(1) It is stipulated that all parties are properly before the Court, and that the Court has jurisdiction of the parties and of the subject matter.

Note: If the facts are otherwise they should be accurately stated.

(2) It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

Note: If the facts are otherwise, they should be accurately stated.

(3) If any of the parties are appearing in a representative capacity, it should be set out whether there is any question concerning the validity of the appointment of the representatives. Letters or orders of appointment should be included as exhibits.

(4) In general, the plaintiff(s) claims (claim):

Note: Here set out a brief statement of the contentions of plaintiff(s) as to the basis of recovery.*

(5) In general, the defendant(s) claims (claim):

Note: Here set out a brief statement of how the defendant(s) expects (expect) to defeat recovery, and basis for any asserted counterclaim.*

(6) Any third-party defendant(s) or cross-claimant(s) should follow the same procedure as set out in paragraphs (4) and (5) for plaintiff(s) and defendant(s).*

(7) In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts:

(a)
(b)

Note: Here set out all facts not in genuine dispute.*

***IN CONTRACT CASES**, the parties should stipulate upon, or state their contentions with respect to, where applicable. (a) whether the contract relied on was oral or in writing; (b) the date thereof and the parties thereto; (c) the substance of the contract, if oral; (d) the terms of the contract which are relied upon. and the portions in controversy; (e) any collateral oral agreement. if claimed, and the terms thereof; (f) any specific breach of contract claimed; (g) any misrepresentation of fact claimed; (h) if modification of the contract or waiver of covenant is claimed, what modification or waiver, and how accomplished, and (i) an itemized statement of dam-

(8) The following is a list of all known exhibits the plaintiff(s) may offer at the trial:

(a)
(b)

Note: Here list the pre-trial identification and a brief description of each exhibit.

(9) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the plaintiff(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(10) It is stipulated and agreed that each of the exhibits identified by the plaintiff(s) is genuine and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits. It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(11) The following is a list of all known exhibits the defendant(s) may offer at the trial:

(a)
(b)

Note: Here list the pre-trial identification and a brief description of each exhibit.

(12) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the defendant(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(13) It is stipulated and agreed that each of the exhibits identified by the

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ages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claimed.

IN NEGLIGENCE CASES, the parties should stipulate upon, or state their contentions with respect to, where applicable (a) the owner, type and make of each vehicle involved; (b) the agency of each driver; (c) the place and time of accident, conditions of weather, and whether daylight or dark; (d) nature of terrain as to level, uphill or downhill; (e) traffic signs, signals and controls, if any, and by what authority placed; (f) any claimed obstruction of view; (g) presence of other vehicles, where significant; (h) a detailed list of acts of negligence or contributory negligence claimed; (i) specific statutes, ordinances, rules, or regulations alleged to have been violated, and upon which each of the parties will rely at the trial to establish negligence or contributory negligence; (j) a detailed list of nonpermanent personal injuries claimed, including the nature and extent therof; (k) a detailed list of permanent personal injuries claimed, including the nature and extent thereof; (l) the age of any party alleged to have been injured; (m) the life and work expectancy of any party seeking to recover for permanent injury; (n) an itemized statement of all special damages, such as medical, hospital, nursing, etc., with the amount and to whom paid; (o) if loss of earnings is claimed, the amount, manner of computation and period for which loss is claimed; (p) a detailed list of any property damages, and (q) in death cases the decedent's date of birth, marital status, employment for five years before date of death, work expectancy, reasonable probability of promotion, rate of earnings for five years before date of death, life expectancy under mortuary table, and general physical condition immediately prior to date of death.

IN THE EVENT THIS CASE DOES NOT FALL WITHIN ANY OF THE CATEGORIES ENUMERATED ABOVE, OR ANY OF THE CATEGORIES SUGGESTED BY THIS FORM, COUNSEL SHALL, NEVERTHELESS, SET FORTH THEIR POSITIONS WITH AS MUCH DETAIL AS POSSIBLE.

defendant(s) is genuine and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits. It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(14) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to exhibits as required of plaintiff(s) and defendant(s).

Note: Attention is called to the provisions of the pre-trial rule with respect to the obligation to immediately notify opposing counsel if additional exhibits are discovered after the preparation of this order.

(15) The following is a list of the names and addresses of all known witnesses the plaintiff(s) may offer at the trial, together with a brief statement of what counsel proposes to establish by the testimony of each witness:

(a)
(b)

Note: It is only necessary to state each material point counsel expects to establish by each witness.

(16) The following is a list of the names and addresses of all known witnesses the defendant(s) may offer at the trial, together with a brief statement of what counsel proposes to establish by the testimony of each witness:

(a)
(b)

Note: It is only necessary to state each material point counsel expects to establish by each witness.

(17) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to witnesses as above outlined for plaintiff(s) and defendant(s).

Note: Attention is called to the provisions of the pre-trial rule with respect to the obligation of counsel to produce witnesses, and the obligation to immediately notify opposing counsel if the names of additional witnesses are discovered after the preparation of this order.

(18) There are no pending or impending motions, and neither party desires further amendments to the pleadings, except:

Note: Here state facts regarding pending or impending motion. If any motions are contemplated, such as motion for the physical examination of a party, motion to take the deposition of a witness for use as evidence, etc., such motions should be filed in advance of the final pre-trial conference so that they may be ruled upon, and the rulings stated in the final pre-trial order. The same procedure should be followed with respect to any desired amendments to pleadings.

(19) Additional consideration has been given to a separation of the triable issues, and counsel for all parties are of the opinion that a separation of issues in this particular case would (would not) be feasible.

Note: The position of the parties concerning a separation of the issues should be stated. If there is an agreement with respect to separation of triable issues, the stipulation in regard thereto should be inserted in this final pre-trial order. For an excellent discussion of the advantages to be gained in separating the issues in certain types of cases, see O'Donnell v. Watson Bros. Transportation Company, 183 F. Supp. 577 (N.D. Ill., 1960). Also see Rule 42(b), Federal Rules of Civil Procedure.

(20) The plaintiff(s) contends (contend) that the contested issues to be tried by the Court (jury) are as follows:

(21) The defendant(s) contends (contend) that the contested issues to be tried by the Court (jury) are as follows:

(22) Any third-party defendant(s) and cross-claimant(s) contends (contend) that the contested issues to be tried by the Court (jury) are as follows:

Note: In all instances possible, the parties should agree upon the triable issues and include them in this order in the form of a stipulation, in lieu of the three preceding paragraphs.

(23) Counsel for the parties announced that all witnesses are available and the case is in all respects ready for trial. The probable length of the trial is estimated to be ..... days.

(24) Counsel for the parties represent to the court that, in advance of the preparation of this order, there was a full and frank discussion of settlement possibilities, as required by Local Rule 22(k), and that prospects for settlement appear to be (excellent) (good) (fair) (poor) (remote). Counsel for the plaintiff will immediately notify the clerk in the event of material change in settlement prospects.

Note: The attention of counsel is specifically called to the provisions of Local Rule 22(k) requiring a frank discussion concerning settlement possibilities at the time of the conference of attorneys referred to in Local Rule 22(j), and the requirement that, if necessary, clients either be consulted in advance of the conference concerning settlement figures or be available for consultation at the time of the conference. The court will make inquiry at the time of the final pre-trial conference as to whether this requirement was strictly observed.

.....
Counsel for Plaintiff(s)

.....
Counsel for Defendant(s)

Approved and Ordered Filed.

Date: .....

.....
United States District Judge

As indicated, the above form is intended as a combination check list and suggested form of final pre-trial order. There will always be variations, depending upon the nature of the case and the issues involved. The parties are expected, in good faith, to agree upon, or state their contentions with respect to, all items suggested in this form, if applicable, and other similar matters, that might tend to expedite the trial. The final pre-trial order should be typed in final form and signed in advance of the pre-trial conference.

OTHER MATTERS OCCURRING AT THE FINAL PRE-TRIAL CONFERENCE, E.G., RULINGS ON MOTIONS, REQUIREMENTS WITH RESPECT TO REQUEST FOR JURY INSTRUCTIONS AND THE SUBMISSION OF BRIEFS, A FORMULATION OF THE TRIABLE ISSUES, IF IN DISPUTE, ETC., WILL BE INCORPORATED IN A MEMORANDUM DICTATED BY THE COURT AT THE CONCLUSION OF THE CONFERENCE.

SPECIFIC ATTENTION IS CALLED TO THE PROVISIONS OF LOCAL RULE 22(j) WHICH REQUIRES COUNSEL FOR EACH OF THE PARTIES WHO WILL PARTICIPATE IN THE TRIAL TO MEET AND CONFER AT LEAST *FIFTEEN* DAYS PRIOR TO THE FINAL PRE-TRIAL CONFERENCE FOR THE PURPOSE OF PREPARING A FINAL PRE-TRIAL ORDER, AND THE PROVISIONS OF LOCAL RULE 22(l) WHICH REQUIRES A COPY OF THE PROPOSED FINAL PRE-TRIAL ORDER TO BE FURNISHED ALL OPPOSING COUNSEL AT LEAST *FIVE* DAYS IN ADVANCE OF THE FINAL PRE-TRIAL CONFERENCE. THESE TIME PROVISIONS ARE CONSIDERED TO BE EXTREMELY IMPORTANT, AND A FAILURE TO OBSERVE THEM MAY RESULT IN IMPOSITION OF APPROPRIATE SANCTIONS. THE PRE-TRIAL RULE SHOULD BE CAREFULLY EXAMINED BEFORE AN ATTEMPT IS MADE TO PREPARE THIS ORDER.

FORM 2

(See Local Rule 39)

Official Caption and Verification

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA

In Bankruptcy No. .....

In the Matter of
.....
Bankrupt } PETITION

To the Honorable ....., Referee in Bankruptcy:

(CONTENTS OF PETITION)

.....
Petitioner

.....
Attorney for Petitioner
(As to requirement of verification see Local Rule 39(b))

STATE OF .....
COUNTY OF .....

I, ..., the Petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

.....
Petitioner

Sworn to and subscribed before me this the ..... day of ....., 196...

.....
Notary Public (or other official)
My commission expires .....

FORM 3

(See Local Rule 38(b))

Division of Attorneys' Fees, Affidavit

(Caption as in Form No. 2)

....., being duly sworn deposes and says: That he is a petitioner in the above bankruptcy proceeding for compensation as .....; that no agreement has been made directly or indirectly by him, and no understanding exists between him and any other person for a division of compensation except as follows: .....; and that no division of fees prohibited in Section 62 c of the Bankruptcy Act will be made by the applicant.

.....
Applicant

(Verification)
See Form No 2

FORM 4

(See Local Rule 41)

Specification of Objections to Discharge

(Caption as in Form No. 2)

....., of ..... in the County of ....., State of ....., the trustee of the estate (or a creditor) of the above named bankrupt (or the United States attorney for said district or the attorney designated by the Attorney General of the United States), having examined into the acts and conduct of said bankrupt and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt and that the public interest so warrants, does hereby oppose the granting to said bankrupt of a discharge from his debts, and specifies the following as grounds of objection: (Here specify in separately numbered paragraphs the grounds of objection).

.....
Trustee (or creditor, etc.)

(Verification)
See Form No. 2