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

RULES OF PRACTICE AND PROCEDURE

Published January 1, 1976

Amended as of September 15, 1975

EUGENE A. GORDON

Chief Judge

Greensboro, North Carolina

HIRAM H. WARD

District Judge

Winston-Salem, North Carolina

CLERK

CARMON J. STUART

FULL-TIME MAGISTRATE

HERMAN AMASA SMITH

REFEREE IN BANKRUPTCY

RUFUS W. REYNOLDS

CHIEF PROBATION OFFICER

O. LEON GARBER

THE MICHIE COMPANY

CHARLOTTESVILLE, VA.

1976

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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Greensboro, North Carolina

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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, Rule 927 of the Rules of Bankruptcy Procedure, and Rule 10-103 of Chapter X Rules, and for good cause appearing therefor,

IT IS ORDERED THAT:

(a) The following General Rules, Civil Rules, Criminal Rules, Bankruptcy Rules and rules applicable to proceedings before the United States Magistrates, shall govern the practice and procedures in this court to which they apply.

(b) If a conflict arises between these rules and any Act of Congress, federal rule of practice or procedure, or any order or judgment of a court which is binding upon this court, the local rules of this court shall be deemed changed to conform to such Act, rule, order or judgment and no local rule shall be enforced in conflict with such higher authority.

(c) The Clerk shall arrange for the printing and distribution of the Local Rules of Practice and Procedure in this court from time to time as directed by the Chief Judge. Rules published by The Michie Company as a part of the General Statutes of North Carolina shall be deemed distributed to members of the bar of this state and to each of the law schools in North Carolina. Such distribution shall constitute notice of the existence of all such published rules.

(d) These rules may be cited as Local Rule .....

This the 15th day of September, 1975.

EUGENE A. GORDON, *Chief Judge*
United States District Court

HIRAM A. WARD, *Judge*
United States District Court

Acknowledgments

The Court hereby acknowledges deep appreciation for the extended and helpful services rendered in compiling these rules 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; Fred W. Bynum, Jr., 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, 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. The Court also acknowledges appreciation to Rufus W. Reynolds, Referee in Bankruptcy, who acted in an advisory capacity to the Committee, and to Carmon J. Stuart, 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.

EUGENE A. GORDON, *Chief Judge*
United States District Court

HIRAM H. WARD, *Judge*
United States District Court

United States District Court for the Middle District of North Carolina

Table of Rules

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I. General Rules

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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 may be admitted to practice in this court by the court or by the full-time United States magistrate upon oral motion made 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 $10.00 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) Litigants in civil and criminal actions and parties in bankruptcy proceedings, 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, mailing 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) The standards of conduct of the members of the bar of this court shall be those standards prescribed by the canons of professional ethics of the American Bar Association and the canons of ethics of the North Carolina State Bar as they are now written and as they are hereafter modified or amended.

(2) 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.

(3) 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 or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which he or the firm 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 or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is under way, 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 or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by 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 or law firm 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 or law firm 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 or law firm during this period, in the proper discharge of his or its 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 or law firm 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 which a reasonable person would expect to be disseminated by means of public communication, except that the lawyer or law firm 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

or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by 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.

(8) *Same: Civil Actions.* A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(i) Evidence regarding the occurrence or transaction involved;

(ii) The character, credibility, or criminal record of a party, witness, or prospective witness;

(iii) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such;

(iv) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule;

(v) Any other matter reasonably likely to interfere with a fair trial of the action.

(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 Setpember
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 civil matters are deemed to be in an open status and subject to call at any time upon reasonable notice to the interested parties.

(d) Place of Holding Court; Time for Opening. Regular sessions of court, motion days, pre-trial 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. 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 date in civil cases will be announced by the court, if known, 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 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 considered and acted upon, and appropriate ceremonies conducted in connection therewith, at Greensboro, North Carolina, on Fridays after the third Mondays in March, July and October, beginning at 2:00 P.M., unless otherwise ordered by the court. 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 nor be considered to be a part of the "original papers" within the meaning of those words as used in Local Rule 10.

(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 [underscore names of parties]:

(1) State Court citations:

(a) Court of Appeals:

Atkinson v. *Wilkerson,* 10 N.C. App. 643, 179 S.E.2d 872 (1971).

(b) The Supreme Court:

Link v. *Link,* 278 N.C. 181, 179 S.E.2d 697 (1971).

(2) District Court citations:

(a) Published:

First National Bank of Catawba County v. *Wachovia Bank & Trust Co.,* N.A., 325 F. Supp. 523 (M.D.N.C. 1971).

(b) Not published:

Wise v. *Richardson,* No. C-191-S-70 (M.D.N.C., Aug. 11, 1971).

(3) Circuit Court of Appeals:

(a) Published decisions:

Mullins v. *Oakley,* 437 F.2d 1217 (4th Cir. 1971).

(b) Decisions not published:

Brown v. *Hirst,* No. 71-1291 (4th Cir., June 8, 1971).

Cason v. *State of North Carolina,* mem. dec., No. 13,535 (4th Cir., July 14, 1970).

Smith v. *Jones,* Misc. No. 15,356 (4th Cir., Aug. 10, 1971).

(4) United States Supreme Court citations:

McMann v. *Richardson,* 397 U.S. 759, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970).

(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,* 238 F.2d 724 (4th Cir. 1956), *cert. denied,* 353 U.S. 910, 77 S. Ct. 665, 1 L. Ed. 2d 664 (1957).

Rule 7.

JURORS

(a) Number of Jurors in Civil Jury Cases. In all civil jury cases the jury shall consist of six (6) members.

(b) 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.

(c) Examination of Jurors. The court shall conduct the examination of prosective jurors.

(d) 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 (d) (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.

(e) 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.

(f) Jury Lists.

(1) The names of prospective jurors for any session of court or for a specific case shall not be disclosed prior to their reporting for duty except in compliance with instructions of the court. 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) 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 when court is opened for the session or case for which the jurors were summoned.

(g) 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.

See Rule 29.1
FED. R. CRIM. P.

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, 172 F.2d 507, 512 (4th Cir. 1949).

Rule 9.
TRANSCRIPT OF PROCEEDINGS

Upon request of any party, official court reporters will furnish transcripts of all proceedings at rates not exceeding transcript rates established by the Judicial Conference of the United States.

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 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 60 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 60 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, apply.

(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 other than orders disbursing funds from the clerk's registry account.

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

(8) *Ex parte* orders authorized by Local Rule 21(h).

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, within 30 days after the expiration of the time for appeal from final judgment, unless otherwise directed by the Court. 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

(a) Generally.

(1) All pleadings following the complaint 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. Each paper presented to the clerk for filing shall be flat and unfolded, without manuscript cover, and firmly bound. The pages shall be legal size and numbered at the bottom. Double spacing is preferred.

(2) Requests for temporary restraining orders or injunctive relief set forth in complaints shall be treated as any other prayers for relief. If facts and circumstances are deemed to warrant urgent, preferential consideration of a request for a temporary restraining order or injunctive relief, such request shall be set out in a motion complying with the requirements of Local Rule 21.

(3) 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.

(b) Class Actions. In any case sought to be maintained as a class action:

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

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

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

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

1. the size (or approximate size) and definition of the alleged class,
2. the basis upon which the plaintiff (or plaintiffs) claims
   (i) to be an adequate representative of the class, or
   (ii) if the class is comprised of defendants, that those named as parties are adequate representatives of the class.
3. the alleged questions of law or fact claimed to be common to the class, and

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

(3) Within 90 days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under subdivision (c)(1) of Rule 23, F.R.Civ.P., as to whether the case is to be maintained as a class action. In ruling upon such a motion, the court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion before the same judge.

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

(5) The burden shall be upon any party seeking to maintain a case as a class action to show the court that the action is properly maintainable as such. If the court determines that an action may be maintained as a class action the party obtaining that determination shall initially bear the expenses of and be responsible for giving such notice as the court may order to members of the class.

(6) In every potential and actual class action under Rule 23, F.R.Civ.P., all parties thereto and their counsel are hereby forbidden, directly or indirectly, orally or in writing, to communicate concerning such action with any potential or actual class member not a formal party to the action without the consent of and approval of the communication by order of the court. Any such proposed communication shall be presented to the court in writing with a designation of or description of all addressees and with a motion and proposed order for prior approval by the court of the proposed communication and proposed addressees. The communications forbidden by this rule, include, but are not limited to, (a) solicitation directly or indirectly of legal representation of potential and actual class members who are not formal parties to the class action; (b) solicitation of fees and expenses and agreements to pay fees and expenses, from potential and actual class members who are not formal parties to the class action; (c) solicitation by formal parties to the class action of requests by class members to opt out in class actions under subparagraph (b)(3) of Rule 23, F.R.Civ.P.; and (d) communications from counsel or a party which may tend to misrepresent the status, purposes and effects of the action, and of actual or potential court orders therein, which may create impressions tending, without cause, to reflect adversely on any party, any counsel, the court, or the administration of justice. The obligations and prohibitions of this rule are not exclusive. All other ethical, legal and equitable obligations are unaffected by this rule.

This rule does not forbid (1) communications between an attorney and his client or a prospective client, who has on the initiative of the client or a prospective client consulted with, employed or proposed to employ the attorney, or (2) communications occurring in the regular course of business or in the performance of the duties of a public office or agency (such as the Attorney General) which do not have the effect of soliciting representation by counsel, or misrepresenting the status, purposes or effect of the action and orders therein. Nor does the rule forbid communications protected by a constitutional right. However, in such instances the person making the communication shall within five days after such communication file with the court a copy of such communication, if in writing, or an accurate and substantially complete summary of the communication if oral.

Rule 18.

FILING FEE AND SECURITY FOR COSTS

(a) Initiating Civil Actions. Any party, other than the United States government or its departments and agencies, shall pay a filing fee of $15.00 upon instituting any civil action, suit or proceeding, whether by original process, removal or otherwise, except that on application for a writ of habeas corpus the filing fee shall be $5.00.

No bond nor security for costs shall be required of parties instituting civil actions, unless otherwise ordered by the court, except as required by 28 U.S.C. § 1446(d) upon filing of a petition for removal of a civil action or proceeding.

(b) Filing Notice of or Petition for Appeal. Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5.00 shall be paid to the clerk of the district court, by the appellant or petitioner. 28 U.S.C. § 1917.

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 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 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 acknowledgment 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.

(e) Files in Condemnation Actions Commenced by the United States. Where the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the clerk is authorized to establish a Master File in which the declaration of taking may be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates.

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) Form. All motions and objections to interrogatories and requests for admissions, unless made during a hearing or trial, shall be in writing.

(b) Content. All motions shall state with particularity the grounds therefor, shall cite any statute or rule of procedure relied upon, 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) Decided on Motion Papers and Briefs.

(1) Motions shall be considered and decided by the court on the pleadings, admissible evidence in the official court file, motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the court.

Special facts, considerations or reasons thought by counsel sufficient to warrant a hearing or oral argument may be brought to the court's attention by memorandum filed contemporaneously with their motion (or response).

(2) If oral argument is ordered, it shall be heard on the date and in such division within the district as the court may designate.

(3) The clerk shall give at least five days' notice of the date and place of oral argument. The court, however, for good cause may shorten the five-day notice period.

(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 Response, Supporting Documents and Briefs. When it is reasonably shown in a motion or response, or in a written request, that the filing of a response, additional affidavits, briefs, depositions or other documents in support of or in 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 response and/or additional documents shall be filed, or the clerk may approve such stipulation in regard thereto as may have been executed by counsel for the parties. A copy of any *ex parte* order so entered shall immediately be served upon opposing counsel. The opposing party (parties) shall be entitled to a corresponding extension of time. Applications by respondents for extensions of time under this rule shall be filed within five days from the date of service of the motion to which the response or supporting documents relate.

(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 compel 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 consider 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. All motions to continue a pre-trial conference, hearing on a motion, or the trial of an action shall be presented to the court for its consideration, even though counsel have agreed to such continuance. 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 of the right thereafter to file 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 the motion to which it expresses opposition 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.

A party filing interrogatories or requests for admissions shall number the same consecutively from the first such interrogatory or request filed to the last, regardless of the dates of filing or the number of sets of such interrogatories or requests filed.

(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 produced, 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 Procedure, 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 settlement.

(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) Consent Judgments Approving Settlement; Contents.

(1) Before judgments approving compromise settlements of claims of minors or incompetents are presented to the court, they shall be consented and agreed

to by counsel for the parties to the action and by the next friend or guardian of the minor or incompetent.

(2) 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 this state in which the minor or incompetent resides. If the minor or incompetent does not reside within this state, the balance shall be paid to a legal guardian approved by the court.

Rule 25.

TRIAL PROCEDURE

(a) 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 sworn. If the trial is to the court, the opening statement shall be made immediately after the case is called for trial. Opening state-

ments shall be subject to such time limitations as may be imposed by the court.

(b) Documentary Trial Exhibits. When counsel expect to examine a witness or may reasonably anticipate cross-examination concerning details of a document, they should have at trial a copy of such document for use by the trial judge in following testimony. Copies of such documents are not to be filed with the clerk.

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.

PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

The Court's Plan for the Prompt Disposition of Criminal Cases in compliance with Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. § 3161 *et seq.*), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), as approved by the Judicial Council, is a public document available through the office of the clerk of this court. The Court's Plan for the Prompt Disposition of Criminal Cases as it now exists and as it is hereafter amended and approved by the Judicial Council shall have the same force and effect as a local rule of this court.

Rule 29.

[Superseded]

Rule 30.

[Superseded]

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

(a) Generally. 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.

(b) Federal Prisoners. Upon the filing by a federal prisoner of a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255, the clerk shall cause one copy of the motion to be delivered immediately to the United States attorney. The United States shall file an answer to each claim asserted, shall admit or deny the allegations or contentions upon which the petitioner relies and shall set forth affirmatively any other reason for denying relief. The United States shall attach to its answer certified copies of the indictment, plea of petitioner, and the judgment, or such of them, and such other records, as may be material to the issues joined.

The original of the answer and attachments shall be filed with the clerk and

a copy of the answer shall be served on the petitioner or his counsel within twenty days after the service of the motion, unless a shorter time is ordered by the magistrate or court. The date and method of service on the petitioner shall be indicated on the original answer filed with the clerk.

(c) State Prisoners. Upon the filing by a state prisoner of an application for a writ of habeas corpus under the provisions of 28 U.S.C. §§ 2241, et seq., the clerk shall cause one copy of the application to be mailed immediately to the respondent. The respondent shall file answer to each claim asserted, shall admit or deny the allegations or contentions upon which the petitioner relies, and shall set forth affirmatively any other reason for denying relief. The respondent shall attach to his answer certified copies of the indictment, plea of petitioner, and the judgment, or such of them, and such other records, including the records of any post-conviction proceedings, as may be material to the issues joined.

The original of the answer and attachments shall be filed with the clerk and a copy of the answer shall be served on the petitier or his counsel within twenty days (forty days in cases brought under 28 U.S.C. § 2254) after service of the application unless a shorter time is ordered by the magistrate or the court. The date and method of service on the petitioner shall be indicated on the original answer filed with the clerk.

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, as amended, provides for representation by private attorneys.

A copy of the court's plan is available upon request of the clerk. Panels of attorneys in each division deemed competent to provide adequate representation for indigent defendants shall be maintained and revised from time to time as specified in the plan or as directed by the court so that all qualified members of the bar of this court may have equal opportunities to participate in and responsibilities for representation of defendants under the Act. 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. Generally, an attorney shall have had one year of experience in the practice of law before being considered qualified to render service under the Act.

In approving compensation for services rendered by an attorney pursuant to the Criminal Justice Act of 1964 the court will observe the Judicial Conference guidelines which provide, in part, that "(T)he hourly rates of compensation fixed by the amended Act are designated and intended to be maximum rates and should be treated as such. In fixing the rate, the judge should bear in mind the qualification of attorneys and the relative difficulties encountered in presenting the case. These changes in the hourly rates were made, . . ., to meet the changes in the price structure of the nation since the original Act was passed. They are not intended to change the basic and underlying philosophy of the Act that the bar of the nation owes a responsibility to represent persons financially unable to retain counsel and that the compensation provided is not intended to equate private counsel fees."

IV. Bankruptcy

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

Rule 36.

CHAPTER X BANKRUPTCY CASES

Upon the filing of a petition seeking relief under Chapter X of the Bankruptcy Act, the clerk shall refer the case forthwith to the referee as bankruptcy judge; thereafter all proceedings in the case shall be before the referee except as otherwise provided by Rule 10-103 of the Chapter X Rules.

Rules 37-49.

[Rescinded]

V. United States Magistrates

Rule 50.

JURISDICTION AND DUTIES OF UNITED STATES MAGISTRATES

In accordance with Rule 83, Federal Rules of Civil Procedure, and Rule 57, Federal Rules of Criminal Procedure, and, specifically, pursuant to the provisions of 28 U.S.C. § 636(b), the following additional duties are hereby specified for the full-time United States magistrate in Greensboro, North Carolina.

(a) Habeas Corpus, State Prisoners.

All petitions for writ of habeas corpus shall be transmitted to the clerk in Greensboro. [Local Rule 3(a).] The clerk shall forthwith assign the petitions in rotation to the judges in the district. If at any time one or more additional judges may be appointed and qualified, the clerk shall include the additional judge or judges in the rotation system. In the event of illness of a judge or the inability to act, the chief judge or the next active judge in point of service may modify this procedure on a temporary or permanent basis without the necessity of a formal order.

After a petition has been assigned to a judge, the clerk shall forthwith deliver it to the full-time United States magistrate in Greensboro.

The full-time magistrate is specifically authorized to enter orders permitting the filing of such petitions in forma pauperis. If the full-time magistrate deems the petition to be frivolous or otherwise inappropriate for filing, the full-time magistrate shall report, verbally or in writing as directed by the judge, and the judge shall enter his order thereon.

The full-time magistrate shall thereafter report and recommend, either orally or in writing, to the judge whether in the opinion of the full-time magistrate, it is proper to grant a plenary hearing. If the full-time magistrate is of the opinion that no plenary hearing is required, he shall submit in writing an outline of the facts and conclusions which support his position, which said facts and conclusions may be adopted, modified, or rejected, or in the discretion of the judge, used merely as a guide for independent findings and conclusions by the judge. In any event, all orders granting plenary hearings or dismissing petitions shall be entered by the judge.

In the discretion of the judge, the full-time magistrate may be requested to attend any plenary hearing for the purpose of preparing an outline of the facts and conclusions to be ultimately prepared by the judge.

(b) Civil Rights, 42 U.S.C. § 1983.

State prisoner matters seeking relief under 42 U.S.C. § 1983, including motions to appeal in forma pauperis, and related requests involving proceedings other than habeas corpus such as declaratory judgment actions, which are generally the purported equivalent of habeas corpus petitions, are to be assigned by the clerk to a judge in rotation as described above, and thereafter delivered to the full-time magistrate for further proceedings substantially in accord with the procedure prescribed for handling habeas corpus petitions, including specifically the right of the full-time magistrate to permit the filing of any petition or complaint in forma pauperis. If the petition or complaint is deemed to be frivolous, or is otherwise inappropriate for filing in forma pauperis, the magistrate may report, verbally or in writing as directed by the judge, and the judge shall enter his order thereon.

The clerk shall submit motions to appeal in forma pauperis to the full-time magistrate who shall report and recommend, either orally or in writing, to the judge whether, in the opinion of the full-time magistrate, the motion should be granted or denied.

(c) Proceedings Under 28 U.S.C. § 2255.

Federal prisoner cases, including complaints relating to treatment in jails and penitentiaries accorded to federal prisoners, shall be assigned to the trial judge or, if the trial judge is not available, to any other judge. In the discretion of the judge to which the proceedings have been assigned, such cases may be referred to the full-time magistrate for proceedings substantially as prescribed in habeas corpus matters.

(d) Record of Proceedings.

(1) The United States magistrate disposing of a case involving a petty offense, as defined in 18 U.S.C. § 1, or a minor offense, as defined in 18 U.S.C. § 3401, shall file with the clerk a record of the proceedings prepared on forms and dockets to be furnished by the Administrative Office of the United States Courts. The record of proceedings, including the court reporter's notes, transcript, tape or other recording of the proceedings, with the original papers, shall be filed with the clerk not later than 20 days following the date of final disposition.

(2) All fines collected or collateral forfeited shall be transmitted immediately to the clerk.

(3) In all other cases, as soon as a defendant is discharged or, after having been bound over, is either confined on final commitment or released on bail, the magistrate is required within 20 days thereafter to transmit to the clerk of court his entire file of the case, including, if issued or received by him, the original complaint, warrant of arrest with the officer's return thereon, temporary and final commitments with returns thereon and his completed transcript reflecting the entire record of the proceedings before the magistrate.

(e) Warrants of Arrest.

The approval of the United States attorney or one of his designated assistants shall be secured by United States magistrates prior to the issuance of warrants on complaints of local police officers or private individuals.

(f) Appeals.

Upon appeal from a judgment of a United States magistrate as provided in 18 U.S.C. § 3402 and Rule 11, Rules for United States Magistrates, the appellant shall, within 15 days, serve and file a brief. The United States attorney shall serve and file a brief within 15 days after receipt of a copy of the appellant's brief. The appellant may serve and submit a reply brief within 5 days after receipt of the appellee's brief. Not later than forty (40) days after the filing of the magistrate's certificate, the appeal shall be placed by the clerk upon the court calendar for disposition.

(g) Special Master References.

In addition to the matters heretofore mentioned, particular cases may, in the

discretion of the chief judge or judges of this court, be referred to the full-time magistrate as special master pursuant to the Federal Rules of Civil Procedure. This includes, but is not limited to, the supervision of pre-trial and discovery procedures in multidistrict litigation. If such reference is made, a special order shall be entered thereon. Where the parties are financially able to pay compensation for such services, any fee allowed by the court shall be assessed as taxable costs and paid to the Treasury of the United States or in such manner as directed by the Administrative Office of the United States Courts. No such reference shall be made unless consistent with the full-time magistrate's other duties which are accorded a higher priority.

(h) Pre-Trial and Discovery.

Upon direction by the court, actions ready for initial pre-trial or hearings on discovery motions, shall be noticed for hearing by the clerk before the full-time magistrate or one of the judges of the court. Authority is hereby given the full-time magistrate to conduct initial, interim, and/or final pre-trial conferences, to determine discovery motions, refine the issues, approve stipulations of facts, schedule dates for completion of various stages of the proceedings and generally supervise the aspects of the action relating to discovery. He may also hear and determine motions relating to security for costs; motions to extend time for pleading; motions for leave to amend pleadings or to file amended pleadings; motions for substitution of counsel or parties; motion to add parties, to intervene, or to file third-party complaints; motions to sever or to consolidate and motions to set aside default judgments.

Part-time United States magistrates shall exercise the jurisdiction and powers set forth in their respective orders of appointment.

In criminal actions, when consistent with other duties imposed upon the full-time magistrate, authority is hereby given to the magistrate to enter and determine all motions relating solely to pre-trial discovery. He may consider and determine motions relating to depositions, discovery and inspection; motions relating to subpoenas; motions for mental or other examination; motions for appointment of interpreters or expert witnesses; motions for bill of particulars; and motions for release or substitution of counsel.

Any order entered by the full-time magistrate pursuant to the powers and duties given herein may be appealed within five days to a judge of the court.

(i) Miscellaneous.

The judges may, in their discretion, request the full-time magistrate to perform such other duties as may be authorized by law and which are not inconsistent with the Constitution and laws of the United States.

Rule 51.

REFERENCE OF MINOR OFFENSE CASES TO UNITED STATES MAGISTRATES

(a) Information Filed in the District. Where a defendant, against whom an information charging a minor offense is pending in this court, is brought before a magistrate, the magistrate may proceed in the manner prescribed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(b) Transfer Under Rule 20 of the Federal Rules of Criminal Procedure. Upon the transfer, under Rule 20 of the Federal Rules of Criminal Procedure, of an information or indictment charging a minor offense, the case shall be referred immediately to a magistrate who may take the plea and impose sentence in accordance with the rules for the trial of minor offenses, if the defendant consents in writing to this procedure.

Rule 52.

FORFEITURE OF COLLATERAL SECURITY IN LIEU OF APPEARANCE

Pursuant to Rule 8, Rules of Procedure, United States magistrates, and in the interest of justice, good court administration and sound law enforcement, collateral may be posted in lieu of the appearance of the offender for certain petty offenses under federal statutes and regulations or state statutes made applicable by the Assimilative Crimes Statute (18 U.S.C. § 13), occurring within the jurisdiction of the United States magistrate, unless: (1) the offense is denominated as one for which appearance is mandatory or (2) it is the opinion of the arresting or citing officer that the offense charged was aggravated.

There shall be maintained in the office of the clerk and in the office of each United States magistrate, current lists of the petty offenses and fines applicable thereto for which forfeiture of collateral security may be posted. These lists are not included in the court's printed rules because of their length, but shall be available to the public in the clerk's office upon request.

Upon the failure of the person charged with such offense or offenses to appear before the United States magistrate for trial, except those offenses denominated "mandatory appearance," and not aggravated, as provided above, the collateral in the amount listed opposite the offense shall be forfeited to the United States. The posting of said collateral shall signify that the offender does not contest the charge nor request a hearing before the United States magistrate, and said collateral shall be administratively forfeited.

The clerk shall certify the record of any forfeitures of collateral for a traffic violation to the proper state authority.

No forfeiture of collateral will be permitted for a subsequent offense or offenses arising out of the same facts or sequence of events resulting in the original offense or offenses.

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 ....., 19.... ....., 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.*

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* **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

(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 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.

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damages 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 thereof; (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.

(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.

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