

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF NORTH CAROLINA
ROOM 204, CHARLES R. JONAS FEDERAL BUILDING
401 WEST TRADE STREET
CHARLOTTE, NORTH CAROLINA 28202

LEM
CAlee
Augustyn
A Mattos
(appropriate
action)

Frank G. Johns
Clerk

Terry T. Leitner
Chief Deputy Clerk

(704)344-6610
FAX (704)344-6703

January 3, 1995

Mr. Ralph Mecham, Director
Administrative Office of the U.S. Courts
Thurgood Marshal Judiciary Building
1 Columbus Circle
Washington, DC 20002

Dear Director Mecham:

Enclosed is an amended copy of the Civil Justice Expense and Delay Reduction Plan as approved by United States District Court, for the Western District of North Carolina, on December 16, 1994. The amendments to the Plan are restricted to Section Four, the Alternate Dispute Resolution Program Section. The substantive change is that some form of an Alternate Dispute Resolution Program is now mandatory in all civil cases filed on or after January 1, 1995.

I am pleased to transmit this amended Plan to you for your review and to be forwarded on to the Judicial Conference of the United States, in accordance with 28 §474.

Sincerely,

Frank G. Johns, sec
Frank G. Johns
Clerk of Court

FGJ/sc

cc: Duke Argetsinger, OCP-CAPS
Mr. Able Mattos
Mr. David Hopkins



Civil Justice Expense and Delay Reduction Plan

Under the Civil Justice Reform Act of 1990



**Approved by the
United States District Court for the
Western District of North Carolina**

September 23, 1993

AS AMENDED DECEMBER 16, 1994

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CASE NO. A-Misc. 1153

IN RE:

CIVIL JUSTICE REFORM
ACT OF 1990

:
:
:
:
:

CIVIL JUSTICE EXPENSE
AND DELAY REDUCTION PLAN

The District court hereby amends Section Four of the Civil Justice Expense and Delay Reduction Plan of the Western District of North Carolina.

The Clerk is directed to transmit a copy of this amended section to the Director of the Administrative Office of the United States Courts; the Judicial Council of the Fourth Circuit and each chief Judge of the United States District Courts in the Fourth Circuit pursuant to Title 28, United States Code, Section 472, et seq.

This the 16th day of December, 1994


FILED
CHARLOTTE, N.C.

DEC 21 1994

U.S. DISTRICT COURT
WESTERN DISTRICT OF N.C.




Richard L. Voorhees, Chief Judge



Graham C. Mullen, District Judge

THIS the 23rd day of September, 1993.


RICHARD L. VOORHEES, CHIEF JUDGE


ROBERT D. POTTER, DISTRICT JUDGE


GRAHAM C. MULLEN, DISTRICT JUDGE

**CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
UNDER THE CIVIL JUSTICE REFORM ACT OF 1990**

TABLE OF CONTENTS

SECTION ONE: DIFFERENTIATED CASE MANAGEMENT (DCM)	1
I. General Provisions	1
A. Purpose	1
B. Definitions	1
C. Date of Application	3
D. Conflicts with Other Rules	3
II. Tracks, Evaluation, and Assignment of Cases	3
A. Number and Types of Tracks	3
B. Evaluation	4
C. Assignment of Cases	5
SECTION TWO: EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS	6
I. Planning the Progress of the Case	6
A. Pretrial Activity: Early Assessment/ Pretrial Case Management	6
B. Setting Early and Firm Trial Dates	7
C. Settlement Conferences	8
D. Representation by Attorney with Authority to Bind At the IPC and Interim Pretrial Conferences	8

II.	Final Pretrial Conference	10
	A. Scheduling	10
	B. Individuals Attending	10
	SECTION THREE: DISCOVERY CONTROL; MOTIONS PRACTICE	10
I.	Controlling the Extent and Timing of Discovery	10
	A. Setting Discovery Deadlines	10
	B. Attorney/Party Signatures for Requests to Extend Discovery Deadlines	11
	C. Limits on Use of Discovery	11
	D. Methods of Resolving Discovery Disputes/ Certification of Efforts to Resolve Disputes	12
	E. Pre-Discovery Disclosure of Core Information/ Other Cooperative Discovery Devices	12
II.	Motions Practice	12
	A. Motions Practice in the Context of the Discovery - Case Management Process	12
	B. Form and Length of Motions	12
	C. Status Reports	13
	SECTION FOUR: ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)	13
I.	Mandatory Alternative Dispute Resolution	13
	A. Mandatory Mediated Settlement Conference	13

B.	Selection of Alternative ADR Procedure	13
C.	Cases Not Suitable for ADR	14
II.	Rules Applicable to Selected Proceeding	14
A.	Time for Proceeding	14
B.	Rules for Proceeding	14
III.	General Rules Applicable to Alternative ADR Procedures	15
A.	Nonbinding Nature	15
B.	No Delay of Other Proceedings	15
C.	Inadmissibility of ADR Proceedings	15
D.	No Record Made	15
E.	Ex Parte Communication Prohibited	15
F.	Immunity of the Neutral	16
G.	Attendance	16
H.	Use of Subpoena	16
I.	Indigent Cases	16
J.	Sanctions for Failure to Attend Alternative ADR Procedure	16
K.	Neutral’s Report of Outcome	17
IV.	Supplemental Rules for Mediated Settlement Conferences	17
A.	No Record Made	17
B.	Telephone Attendance	17
C.	Mediator’s Report of Outcome	17

V.	Judicial Settlement Conferences	17
A.	Mandatory Consideration	17
B.	Mandatory Attendance by Representatives with Full Authority to Effect Settlement	17
C.	Presiding Judicial Officer	17
	SECTION FIVE: OTHER FEATURES	18
I.	<i>Pro se</i> Prisoner and Social Security Cases	18
II.	Faxed Filings	18
III.	Telephone Conferences	18
IV.	Court Technology Committee	18
V.	Local Rules	18
VI.	Additional Court Personnel	18

APPENDIX - ADR FORMS

Stipulation for Alternative Dispute Resolution	
Certification of ADR Session/Mediator's Report	

EXHIBIT A

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

APPROVED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

THURSDAY, SEPTEMBER 23, 1993

SECTION ONE: DIFFERENTIATED CASE MANAGEMENT (DCM)

I. GENERAL PROVISIONS

A. Purpose.

In developing our plan, we have considered each of the Advisory Group recommendations. We have considered each of the litigation management, cost and delay reduction principles, guidelines, and techniques specified in 28 U.S.C. §473.

The "Differentiated Case Management" ("DCM") system adopted by the Court is intended to permit the Court to manage its civil docket in the most effective manner, to reduce costs, and to avoid unnecessary delay without compromising the independence or the authority of either the judicial system or the individual Judge. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

B. Definitions.

- 1. "Differentiated Case Management" ("DCM") is a system providing for management of cases based on case characteristics. This system operates on each case from filing through completion - that is, from the date a case enters the court system until the date of entry of judgment or the dispositive order. The system is marked by the following features: the Court reviews and screens civil case filings and appeals, and channels cases to processing**

"tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each track employs a Case Management Plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.

- 2. "Judicial Officer" is either a United States District Judge, a United States Magistrate Judge, or a United States Bankruptcy Judge.**
- 3. "Initial Attorneys Conference" ("IAC") is the first required conference in which counsel for all parties shall confer. During this conference counsel shall discuss and agree upon, if possible, the following matters: track assignments, whether the case is suitable for reference to ADR, the type and extent of discovery, the setting of a discovery cut-off date, deadline for filing motions, and the dates of anticipated hearings and trial.**
- 4. "Certificate of Initial Attorneys Conference and Proposed Case Management Plan" is a document to be signed and filed by counsel for all parties confirming that the Initial Attorneys Conference has been held and setting forth the understandings of counsel both as to the matters required to be discussed and as to any other matters germane to the handling of the case. If counsel fail to agree on a proposed case management plan, they shall state on their filed certificate the reasons for failure to reach agreement and each party shall file individually a proposed case management plan.**
- 5. "Initial Pretrial Conference" ("IPC") is the first required conference conducted by the Judicial Officer, preferably the trial judge. At this conference the track assignment, Alternative Dispute Resolution, and discovery are discussed. Discovery and motion deadlines and the dates of anticipated hearings are set.**
- 6. "Case Management Plan" ("CMP") is the plan adopted by the Judicial Officer at the Initial Pretrial Conference. The CMP shall be filed forthwith. It shall include the determination of track assignments, whether the case is suitable for reference to ADR, the type and extent of discovery, the setting of a discovery cut-off**

date, deadline for filing motions, and the dates of anticipated hearings.

7. "Court" is the United States District Judges, United States Bankruptcy Judges, the United States Magistrate Judges, and Clerk of Court personnel.
8. "Dispositive Motion" is a motion to dismiss pursuant to Civil Rule 12(b), motion for judgment on the pleadings pursuant to Civil Rule 12(c), motion for summary judgment pursuant to Civil Rule 56, or any other motion which, if granted, would result in the entry of judgment or dismissal, dispose of any claims or defenses, or terminate the litigation.
9. "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded.

C. Date of Application.

This Plan is effective October 1, 1993. It will apply to all cases filed after that date and may, in the discretion of individual Judicial Officers, apply to earlier filed cases.

D. Conflicts with Other Rules.

If any provision in this Plan conflicts with any Local Rules adopted by the United States District Court for the Western District of North Carolina, then the Rules in this Plan shall control.

II. TRACKS, EVALUATION, AND ASSIGNMENT OF CASES

A. Number and Types of Tracks.

1. "Expedited" - Cases on the Expedited Track shall be completed within six (6) months or less after filing, and shall have a discovery cut-off no later than three (3) months after filing of the CMP. Discovery guidelines for this track include: no more than fifteen (15) single-part interrogatories per party, no more than one (1) fact witness deposition per party without prior approval of the Court or mutual consent of the parties, and such other discovery, if any, as may be provided for in the CMP.

2. **"Standard" - Cases on the Standard Track shall be completed within twelve (12) months or less after filing, and shall have a discovery cut-off no later than nine (9) months after filing of the CMP. Discovery guidelines for this track include: no more than twenty (20) single-part interrogatories per party and no more than six (6) fact witness depositions per party without prior approval of the Court or mutual consent of the parties.**
3. **"Complex" - Cases on the Complex Track shall have a presumptive case completion date of no more than twenty-four (24) months after filing and discovery limitations and cut-off shall be established in the CMP.**
4. **"Administrative" - Cases on the Administrative Track shall be referred by Clerk of Court personnel directly to a Magistrate Judge for disposition or a memorandum and recommendation, and shall be completed within three (3) months of filing. A CMP is not ordinarily utilized in this track. Discovery guidelines for this track include no discovery without prior leave of Court. Such cases shall normally be determined on the pleadings or by motion.**
5. **"Mass Torts" - Cases on the Mass Torts Track shall be treated in accordance with a special CMP adopted by the Court.**

B. Evaluation.

The Court shall consider and apply the following factors in assigning cases to a particular track:

1. **Expedited.**
 - a. **Legal Issues: Few and clear**
 - b. **Required Discovery: Limited**
 - c. **Number of Real Parties in Interest: Few**
 - d. **Number of Fact Witnesses: Up to five (5)**
 - e. **Expert Witnesses: None**
 - f. **Likely Trial Days: Less than three (3)**
 - g. **Suitability for ADR: High**
 - h. **Character and Nature of Damage Claims:
Usually a fixed amount**

2. **Standard.**
 - a. **Legal Issues: More than a few, some settled**
 - b. **Required Discovery: Routine**
 - c. **Number of Real Parties in Interest: Up to five (5)**
 - d. **Number of Fact Witnesses: Up to ten (10)**
 - e. **Expert Witnesses: No more than three (3)**
 - f. **Likely Trial Days: No more than ten (10)**
 - g. **Suitability for ADR: Moderate to high**
 - h. **Character and Nature of Damage Claims: Routine**

3. **Complex.**
 - a. **Legal Issues: Numerous, complicated, and possibly unique**
 - b. **Required Discovery: Extensive**
 - c. **Number of Real Parties in Interest: More than five (5)**
 - d. **Number of Fact Witnesses: More than ten (10)**
 - e. **Expert Witnesses: More than three (3)**
 - f. **Likely Trial Days: More than ten (10)**
 - g. **Suitability for ADR: Moderate**
 - h. **Character and Nature of Damage Claims: Usually requiring expert testimony**

4. **Administrative.**

Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.

5. **Mass Torts.**

Litigants are extensive in number or include class actions. Factors to be considered for this track shall be identified in accordance with a special CMP adopted by the Court.

C. **Assignment of Cases.**

Magistrate Judges shall be assigned as trial judges for civil cases in the same manner and to the same extent as District Court Judges, provided that any party may elect, in writing, to exercise the right to trial by a District Court Judge as protected by Article III of the United States Constitution and 28 U.S.C. §636. This provision is known as an "opt

out" election, which must be exercised in writing within ten (10) days of the filing of the last required pleading.

SECTION TWO: EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS

I. PLANNING THE PROGRESS OF THE CASE.

A. Pretrial Activity: Early Assessment/Pretrial Case Management.

- 1. Initial Attorneys Conference (IAC). The IAC is to be held within fifteen (15) days of the filing of the last required responsive pleading. Within five (5) days after the IAC, counsel shall sign and file the Certificate of Initial Attorneys Conference and Proposed Case Management Plan.**
- 2. Initial Pretrial Conference (IPC). The IPC is to be held within thirty (30) days after the filing of the Certificate of Initial Attorneys Conference and Proposed Case Management Plan. The Judicial Officer to whom a civil case is assigned shall manage the pretrial activity of the case through direct involvement in the establishment, supervision, and enforcement of an order setting a plan for discovery and a schedule for disposition of each case. The Judicial Officer shall convene and conduct the IPC as contemplated by proposed Rule 16, Federal Rules of Civil Procedure, and undertake the following:**
 - a. Rule on such pending motions as are ripe for disposition, including motions filed with pleadings, and schedule for disposition other pending or anticipated motions;**
 - b. Inquire as to the possibility of settlement;**
 - c. Determine whether the case is appropriate for ADR;**
 - d. Evaluate and assign the case to an appropriate DCM track or identify the case as an exception to the DCM system;**
 - e. Inquire as to anticipated dispositive motions;**

- f. Fix parameters for discovery by setting the number of depositions and interrogatories, sequence of discovery, and discovery schedule tailored to each specific case;**
- g. Establish an appropriate schedule for designating expert witnesses, consistent with the discovery schedule, to provide sufficient time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;**
- h. Approve any consent order which may be presented by counsel for the parties relating to this subsections I.A. and B., unless the Court finds the terms of the proposed consent order to be unreasonable;**
- i. Enter a pretrial order setting a realistic trial date, and adopting the CMP, and including orders with respect to matters set forth in this subsection and covered by current pretrial orders utilized in this District; and**

B. Setting Early and Firm Trial Dates.

Consistent with the concept of individualized case management adopted by the Plan, the Judicial Officer presiding at the IPC shall set an appropriate trial date consistent with the track system set forth as follows:

- 1. "Expedited" - Cases on the Expedited Track shall be completed within six (6) months or less after filing.**
- 2. "Standard" - Cases on the Standard Track shall be completed within twelve (12) months or less after filing.**
- 3. "Complex" - Cases on the Complex Track shall have a presumptive case completion date of no more than twenty-four (24) months after filing.**
- 4. "Administrative" - Cases on the Administrative Track shall be completed within three (3) months of filing.**
- 5. "Mass Torts" - Cases on the Mass Torts Track shall be completed on a date set after consultation with attorneys of record.**

C. Settlement Conferences.

1. **Mandatory Consideration. See Section Four of the Plan, (V)(A).**
2. **Mandatory Attendance by Representatives With Full Authority to Effect Settlement. See Section Four of the Plan, (V)(B).**
3. **Mandatory Settlement Conference. See Section Four of the Plan, (I)(A).**
4. **Presiding Judicial Officer. Any Judicial Officer of the District, including the Judicial Officer to whom the case is assigned for disposition, may preside over a settlement conference convened by the Court.**

D. Representation by Attorney with Authority to Bind At the IPC and Interim Pretrial Conferences.

1. **Authority to bind on specific topics. Participating attorneys will be required to have authority to bind their clients on the following matters at the IPC and any other pretrial conferences:**
 - a. **Whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;**
 - b. **Whether all parties have been properly designated and served;**

- c. **Whether all counsel have filed appearances;**
- d. **Whether any issue exists concerning joinder of parties or claims;**
- e. **Whether any party contemplates adding further parties;**
- f. **The factual bases and legal theories for the claims and the defenses involved in the case;**
- g. **The type and extent of damages being sought;**
- h. **Whether any question exists concerning appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;**
- i. **The extent of discovery undertaken to date;**
- j. **The extent and timing of anticipated discovery, including, in appropriate cases, a proposed schedule for depositions, requests for production or admissions, interrogatories, and the identification of all documents and information which the parties will voluntarily produce;**
- k. **Identification of anticipated witnesses or persons then known to have pertinent information;**
- l. **Whether any discovery disputes are anticipated;**
- m. **The time reasonably expected to be required for completion of all discovery;**
- n. **The existence and prospect of any pretrial motions, including dispositive motions;**
- o. **Whether a trial by jury has been demanded in a timely fashion;**
- p. **Whether it would be useful to separate claims, defenses, or issues for trial or discovery;**
- q. **Whether related actions in any court are pending or contemplated;**
- r. **The estimated time required for trial;**
- s. **Whether special verdicts will be needed at trial and, if so, the issues verdict forms will have to address;**
- t. **A report on settlement prospects, including the prospect of disposition without trial through any process, the status of settlement negotiations, and the advisability of a formal mediation or settlement conference either before or at the completion of discovery;**
- u. **The advisability of court ordered mediation or early neutral evaluation proceedings, where available;**
- v. **The advisability of a court appointed expert or master to aid in administration or settlement efforts; and**
- w. **Whether the parties object to trial by a Magistrate Judge.**

2. **Additional matters by specific order.** By specific order, a Judicial Officer may also require participation in a settlement conference immediately after the IPC. The Judicial Officer may also require consideration of any other matters that appear likely to further the just, speedy, and inexpensive resolution of the case, including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.
3. **Attendance of party.** In addition to attendance by counsel, the Judicial Officer may require the attendance or availability of the parties.

II. FINAL PRETRIAL CONFERENCE

A. Scheduling.

It is not anticipated that a final pretrial conference will be necessary, and it is not mandatory. However, a final pretrial conference may be held no more than thirty (30) days before trial if ordered by the Court *ex mero motu* or upon motion of counsel.

B. Individuals Attending.

Lead trial counsel, or court approved designee for each party with authority to bind the party, shall be present.

SECTION THREE: DISCOVERY CONTROL; MOTIONS PRACTICE

I. CONTROLLING THE EXTENT AND TIMING OF DISCOVERY

A. Setting Discovery Deadlines.

1. DCM Tracks

- a. **"Expedited" - shall have a discovery cut-off no later than three (3) months after filing of the CMP.**

- b. **"Standard" - shall have a discovery cut-off no later than nine (9) months after filing of the CMP.**
 - c. **"Complex" - shall have the discovery cut-off established in the CMP.**
 - d. **"Administrative" - Discovery guidelines for this track include no discovery without prior leave of Court.**
 - e. **"Mass Torts" - Discovery in cases on the Mass Torts Track shall be treated in accordance with a special CMP adopted by the Court.**
2. **Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with the CMP. Discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown. Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent to delay furnishing the requested discovery until after the cut-off date. For example, a deposition should be allowed to be concluded if it were commenced prior to the cut-off date and adjourned because it could not reasonably be resumed until an agreed date beyond the discovery cut-off. However, the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before trial.**

B. Attorney/Party Signatures for Requests to Extend Discovery Deadlines

Attorneys may, by motion, request the Court to allow more discovery time. Signatures of parties will not be required.

C. Limits on Use of Discovery (Interrogatories, Depositions, etc.)

Discovery Guidelines shall be set in the CMP and shall conform to the guidelines for the DCM case track as set forth in SECTION ONE, II. A. and B. and SECTION THREE, I. A.

D. Methods of Resolving Discovery Disputes/Certification of Efforts to Resolve Disputes.

Every motion or other application relating to discovery must include certification by counsel that the parties have made a reasonable, good faith effort to resolve the discovery dispute to which the motion or application pertains.

E. Pre-Discovery Disclosure of Core Information/Other Cooperative Discovery Devices.

Identification of all discovery, including documents and information which the parties will voluntarily produce without the necessity of formal discovery, will be provided no later than the date of the IPC.

II. MOTIONS PRACTICE

A. Motions Practice in the Context of the Discovery - Case Management Process.

All motions, except motions *in limine* and motions to continue, shall be filed with memoranda of law no later than thirty (30) days following the date set for completion of discovery.

B. Form and Length of Motions.

1. Each party opposing a motion may serve and file a memorandum in opposition within twenty (20) calendar days after service of the motion.
2. The moving party may serve and file a reply memorandum in support of its motion within ten (10) calendar days after service of the memorandum in opposition.
3. Motions will be decided without oral argument unless a motion for oral argument is granted by the Court. The Judicial Officer may grant or deny the requested relief for failure of any party to attend the hearing.
4. Motions which,
 - a. are filed prior to the filing of the last responsive pleading and

- b. have the effect of tolling the progress of the case pending disposition of such motions (for example, Rule 12(b)(6) motions filed prior to and separately from an answer)

shall be ruled on by the Court within thirty (30) days.

- 5. Attorneys must sign all motions, including motions to continue. Signatures of the parties will not be required.

C. Status Reports.

In any civil case where a motion or bench trial has been under advisement by the Court for a period in excess of sixty (60) days, the Clerk of Court shall, in writing, advise the Judicial Officer to whom the case is assigned of the status of the motion. The Clerk of Court shall supply a copy of status reports to the parties affected.

SECTION FOUR: ALTERNATIVE DISPUTE RESOLUTION PROGRAM (Amended December 16, 1994)

I. MANDATORY ALTERNATIVE DISPUTE RESOLUTION (ADR).

A. Mandatory Mediated Settlement Conference. All parties to civil actions filed on or after January 1, 1995, in the United States District Court for the Western District of North Carolina are required to attend a Mediated Settlement Conference.

B. Selection of Alternative ADR Procedure. Recognizing that certain lawsuits may best be resolved by utilizing a technique for alternative dispute resolution other than a mediated settlement conference, the Judicial Officer may, at the request of and with the consent of the parties, order the parties, their attorneys and other persons with authority to settle the action to attend and participate in another ADR procedure in lieu of the mandatory mediated settlement conference, including without limitation, arbitration, summary jury trial, mini-trial and early neutral evaluation ("Alternative ADR Procedures").

C. Cases Not Suitable for ADR. These rules for mandatory ADR shall not apply to habeas corpus proceedings or other actions for extraordinary writs, appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals. The Judicial Officer may determine, either *sua sponte* or on application of any party, that any other case is not suitable for ADR, in which case no ADR procedure will be ordered.

II. RULES APPLICABLE TO SELECTED PROCEEDING.

A. Time for Proceeding. Within 30 days after the deadline for discovery under Section Three above, the parties shall file with the court a Stipulation for Alternative Dispute Resolution, at which time the Judicial Officer shall enter an Order for Alternative dispute Resolution. In the event a Stipulation for Alternative Dispute Resolution is not timely filed by the parties, the Order for Alternative Dispute Resolution will specify Mediated Settlement Conference as the designated ADR procedure. The selected ADR proceeding shall be completed no later than the earlier of 90 days after entry of the Order for Alternative Dispute Resolution or the appearance of the case on a trial calendar.

B. Rules for Proceeding. Upon entry of the Order for Alternative Dispute Resolution, the case shall proceed as follows:

1. If a Mediated Settlement Conference is ordered, the ADR proceeding shall be governed by and a mediator shall be selected in accordance with the *Rules Governing Mediated Settlement Conferences In Superior Court Civil Actions* promulgated from time to time by the North Carolina Supreme Court pursuant to N.C.G.S. § 7A-38 (the "Mediation Rules"), and by the supplemental rules set forth in Paragraph IV below.

a. Wherever the Mediation Rules refer to "Senior Resident Superior Court Judge" and "Administrative Office of the Court" it shall mean "Judicial Officer" and "Clerk of the United States District Court," respectively.

b. Rule 3(a) of the Mediation Rules is modified to permit the mediated settlement conference to be held in an appropriate facility anywhere in the division in which the case is pending.

c. In the event that the Mediation Rules conflict with the other rules contained in this Plan or other Local Rules adopted by the United States District Court for the Western District of North Carolina, then the rules in this Plan or in the Local Rules shall control.

2. If an Alternative ADR Procedure is ordered, the ADR proceeding

shall be governed by these Rules and by such other procedural rules submitted by the parties and approved by the Judicial Officer. The rules submitted by the parties shall include, in addition to rules regarding the actual proceeding, provisions setting a deadline for completion of the proceeding; the location for the proceeding; pre-proceeding submissions; and the method for selection and compensation of an arbitrator, evaluator or other "neutral" to preside over the proceeding ("Neutrals").

3. Nothing in this Alternative Dispute Resolution Program shall be deemed to override the Federal Arbitration Act or any other provision of the United States Code.

4. The Judicial Officer may, either *sua sponte* or on application of any party, permit exceptions or deviations from these Rules.

III. GENERAL RULES APPLICABLE TO ALTERNATIVE ADR PROCEDURES.

A. **Nonbinding Nature.** No ADR proceeding is binding unless the parties agree otherwise. ADR proceedings under these Rules shall not impair the right of the litigants to demand trial.

B. **No Delay of Other Proceedings.** The ADR proceeding shall not be cause for the delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Judicial Officer.

C. **Inadmissibility of ADR Proceedings.** ADR proceedings and information relating to or disclosed during those proceedings shall be governed by Rule 408 of the Federal Rules of Evidence. A Neutral may not be deposed or called as a witness to testify at any subsequent proceeding concerning anything said or done in an ADR proceeding. The Neutral's notes are privileged and not subject to discovery.

D. **No Record Made.** There shall be no record made of any proceedings under these Rules, unless the parties have stipulated to binding arbitration, mini-trial or summary jury trial, in which case any party may request that a record be made.

E. **Ex Parte Communication Prohibited.** There shall be no *ex parte* communication between the Neutral and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this Rule prevents the Neutral from engaging in *ex parte* communications, with consent of the parties, for the purpose of assisting settlement negotiations.

F. Immunity of the Neutral. A Neutral acting pursuant to these Rules shall have judicial immunity in the same manner and to the same extent as a judge of the U.S. District Court.

G. Attendance. If a binding Alternative ADR Procedure is selected, the parties and their counsel may determine who shall be required to attend the ADR proceeding. Unless otherwise recommended by the parties and approved by the Judicial Officer, in addition to counsel of record, the following persons shall physically attend any nonbinding Alternative ADR Procedure:

- 1. All individual parties; or an officer, director or employee having authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and to recommend settlement to the appropriate decision-making body of the agency; and**
- 2. For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.**

A party or person required to attend who resides more than 200 miles by the usual highway route may appear at the Alternative ADR Procedure, with the Judicial Officer's prior consent, through telephone communication.

H. Use of Subpoena. Any party may cause a subpoena to be issued pursuant to Rule 45 of the Federal Rules of Civil Procedure to compel attendance of a witness at the ADR proceeding.

I. Indigent Cases. No party found to be indigent by the Court for the purposes of these rules shall be required to pay a court-appointed Neutral. If a party has not previously been found to be indigent, that party may apply to the Judicial Officer or designee for a finding of indigency and to be relieved of the obligation to pay his or her share of the compensation due. Such a motion shall be heard no later than 10 days before the hearing or conference. If a party is found to be indigent, the Neutral's fee shall be reduced by the indigent's proportionate share rather than requiring the other parties to make up the difference.

J. Sanctions For Failure To Attend Alternative ADR Procedure. If a person fails to attend a duly ordered Alternative ADR Procedure without good cause, the Judicial Officer may impose upon the party or his principal any lawful sanction, including but not limited to the payment of attorneys' fees, neutral fees and expenses incurred by persons attending the procedure; contempt; or any

other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

K. **Neutral's Report of Outcome.** Within seven (7) days of the conclusion of the ADR proceeding, the Neutral shall file a report with the Court certifying the outcome of the proceeding on a form provided by the Clerk of Court.

IV. **SUPPLEMENTAL RULES FOR MEDIATED SETTLEMENT CONFERENCES.**

In addition to the Mediation Rules, the following rules shall also apply to mediated settlement conferences in the Western District:

A. **No Record Made.** There shall be no record made of any proceedings under these rules.

B. **Telephonic Attendance.** A party or person required to attend who resides more than 200 miles by the usual highway route may appear at the mediated settlement conference, with the Judicial Officer's prior consent, through telephone communication.

C. **Mediator's Report of Outcome.** The mediator's report required by the Mediation Rules shall be issued within seven (7) days of the conclusion of the Mediated Settlement Conference on a report provided by the Clerk of Court.

V. **JUDICIAL SETTLEMENT CONFERENCES.**

A. **Mandatory Consideration.** The Judicial Officer to whom a case is assigned may, at any time, order the parties to participate in a settlement conference to be convened by the Court. Any party may also file a request for a settlement conference.

B. **Mandatory Attendance by Representatives With Full Authority to Effect Settlement.** At the time of the conference, attorneys for all parties and either the party or a person with the full authority to settle all pending claims must be present. For purposes of this rule, the "person with full authority to settle" shall not be the attorney.

C. **Presiding Judicial Officer.** Any Judicial Officer of the District other than the Judicial Officer to whom the case is assigned for disposition may preside over a settlement conference convened by the Court.

SECTION FIVE: OTHER FEATURES

I. *PRO SE* PRISONER AND SOCIAL SECURITY CASES

This Plan excludes from consideration *pro se* prisoner and social security cases.

II. FAXED FILINGS

Filing by facsimile machines will be allowed as approved by the Judicial Conference of the United States.

III. TELEPHONE CONFERENCES

Initial pretrial conferences, motions hearings, and other conferences are authorized to be held by telephone in the discretion of the Judicial Officer, provided that this practice will reduce expense or delay.

IV. COURT TECHNOLOGY COMMITTEE

A Court Technology Committee will be established to serve as a standing committee of the Western District. It shall keep the Court informed regarding new available technologies which would promote efficiency and assist in reducing cost and delay in the judicial system. The Chief Judge shall appoint members to said committee to serve discretionary terms.

V. LOCAL RULES

All Local Rules of the Western District of North Carolina shall be amended to incorporate this Plan.

VI. ADDITIONAL COURT PERSONNEL

The Court will work toward the addition of two additional District judgeships and two additional Magistrate judgeships. The Court will urge the Administrative Office of the Court to allow the hiring of additional deputy clerks of court to reach and maintain a 100% staff allotment.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

PLAINTIFF

CASE NO.

VS

DEFENDANT

STIPULATION FOR ALTERNATIVE DISPUTE RESOLUTION

The parties to this action, and other persons having authority to settle this case, hereby agree to utilize the following ADR proceeding pursuant to the Civil Justice Expense and Delay Reduction Plan for the Western District of North Carolina. The parties have made the following selection:

Mediated Settlement Conference: Mediator's Name: _____
Mediator's Address: _____

Phone: (____) ____ - _____ Rate of compensation: \$ _____ per hour.

Summary Jury Trial Arbitration
 Early Neutral Evaluation Other: _____

It is hereby certified that the parties have stipulated to the above ADR program and that the parties have agreed to be responsible for the rate of compensation and other expenses associated with the program.

Plaintiff(s) Attorney(s)

Defendant(s) Attorney(s)

Name: _____
Signature: _____

Name: _____
Signature: _____

Name: _____
Signature: _____

Name: _____
Signature: _____

Name: _____
Signature: _____

Name: _____
Signature: _____

COURT APPROVAL

IT IS HEREBY ORDERED that this case is referred to the Alternative Dispute Resolution procedure as stipulated to by all the parties. Plaintiff's counsel are directed to file a notice with the court upon the conclusion of the alternative dispute resolution proceeding advising the court as to the status of the case.

This _____ day of _____, 19____.

United States District Court Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

CERTIFICATION OF ADR SESSION

PLAINTIFF(S) ,

VS

CASE NO:

DEFENDANT(S)

Instructions: This certificate shall be filed by the mediator or by the plaintiff, and served upon all parties, upon completion of the ADR process.

I hereby certify that the parties have held an Alternate Dispute Resolution session on _____, 19____.

The ADR session was:

- _____ Mediation Session
 - _____ Early Neutral Evaluation Session
 - _____ Settlement Officer
 - _____ Other (Describe type of session). _____
- _____
- _____

The following individuals, parties, corporate representatives, and or claims professionals attended and were available to participate in the session, and the appropriate individuals possessed the requisite settlement authority:

- _____ All individual parties and their counsel.
 - _____ Designated corporate representatives.
 - _____ Required claims professionals.
 - _____ Other (Describe). _____
- _____
- _____
- _____

The following individuals, parties, corporate representatives, and/or claims professionals failed to appear and/or failed to participate as ordered:

The outcome of the ADR session was:

_____ **The case has been completely settled.** Counsel will promptly notify the Court of settlement by the filing of a settlement agreement signed by the parties within ten (10) days of the filing of this report.

_____ **The case has been partially resolved.** Counsel will file a joint stipulation regarding those claims which have been resolved within ten (10) days of the filing of this report. The report shall also contain a brief summary of the issues which remain for the Court to resolve.

_____ **The parties have reached an impasse.**

I certify that the above is a true and accurate of the result of the ADR process and that all parties of record have received a copy of this report.

Name of Mediator or
Plaintiff's Counsel

Date

Signature of Mediator or
Plaintiff's Counsel