# COST AND DELAY REDUCTION PLAN

# FOR THE DISTRICT OF MAINE

# UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

**EFFECTIVE AUGUST 1, 1993**

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## I. INTRODUCTION

This plan is based directly upon the thoughtful recommendations made by the Members of the Civil Justice Reform Act Committee. They brought to their recommendations their combined experience and expertise as active trial lawyers who have practiced in this Court; as litigants whose affairs have been resolved in this Court; and as representatives of various consumers of legal services, public, private and nonprofit. They have provided insights that would not otherwise have been available and we are grateful for the time and effort they have devoted to the project.

The advisory committee members have recognized throughout the subcommittee reports and the committee report the great success that this Court has achieved in managing its docket over the past few years. That success derived initially from the strong management practices instituted by the Court, then by adoption -- well before the Civil Justice Reform Act recognized them -- of many of the techniques set forth in that statute and, most recently, by the appointment of an additional district judge for the District.

The specific techniques that were already being used in this District, either informally or formally under the Local Rules, included the following:

1. Requiring that the lawyers have a conference on any discovery dispute before filing a motion with the Court;

2. A scheduling order in each case reflecting the particular needs of that case;

3. The establishment in that scheduling order of a firm trial date that was thereafter honored by the Court;

4. The setting in the scheduling order of firm discovery deadlines and deadlines for all motion practice, deadlines which also were enforced by the Court;

5. The requirement that lawyers coming to a settlement conference or final pretrial conference come with explicit authority to settle the case and have their clients available in person or by telephone;

6. Regular conferences of the lawyers with the court in complex cases;

7. Encouragement of the lawyers at each conference to exchange information voluntarily to avoid the need for formal discovery procedures;

8. A very restrictive policy on continuances;

9. Experimentation with ADR techniques such as summary jury trial, corporate mini-trial, reverse bifurcation, and the general availability of all judicial officers for intensive settlement conferences.

As a result, it is universally realized that the District of Maine has no delay in civil litigation. We are anxious that none of the steps we take under the Plan, therefore, operate to change this situation by creating delay. That concern will undoubtedly continue to motivate the judicial officers as they resolve at conferences such issues as: whether to delay discovery pending resolution of particular motions (although this may save money in some cases, it can also create delay where the ultimate resolution is that the case will proceed in any event); whether to delay compliance with all the trial readiness requirements of the final pretrial order until after dispositive motions have been ruled upon (although this can save costs in cases that are ultimately disposed of by motion, it can also increase costs and delay settlement in cases that are not).

In any event, given the fact that there is no delay in this District, the goal of the new procedures adopted under the Plan is to reduce the cost of litigation to the parties. The Committee has concluded and we accept the conclusion that the primary source of reducible litigation costs occurs in the area of discovery. Many of the new procedures, therefore, are focused on restricting discovery and discovery motion practice. The Committee has also suggested that in some cases compliance with the final pretrial order can generate unnecessary costs. Although we view this suggestion as more problematic in light of the fact that those procedures often lead to settlement of the case or to much better trial management of the case, we have accepted the Committee's recommendations on procedures for attempting to reduce those costs in certain cases.

## II. PLAN PROVISIONS

The primary provisions of the Plan are located in a new section of the Local Rules entitled "Civil Case Management." That segment of the Local Rules is attached as Appendix A. Others are included as an addition to the Local Rules governing trial management. They are attached as Appendix B.

The following additional measures are also part of the Plan but are inappropriate for inclusion in Local Rules.

1. To the extent the budget permits, this District will schedule on a biennial basis a District-wide conference of judges and lawyers who practice in federal court. This conference will occur in the year in which the biennial Circuit-wide conference does not occur. Because this District is limited to inviting so few lawyers (30-50) to the Circuit-wide conference, this will permit a needed and greater involvement of all the other lawyers who

practice in federal court. The conference will have a heavy educational component dealing with various elements of practice in the District of Maine but will also be designed to encourage interchange among judges and lawyers and court personnel because we believe that lawyers who are educated to the nuances of federal practice in the District of Maine and who also maintain a civility in their relationships can reduce the costs of litigation and inordinate delay.

2. The Chief Judge will request the major law firms in the District to provide a list of attorneys who are willing to accept appointment in pro se cases (especially prisoner cases) even though payment of counsel is not available. When lawyers are available on both sides of a controversy, we believe that the matter can be brought to a conclusion more speedily and with less costs to all involved.

3. The Clerk's Office or a bar organization will prepare a written handout designed for the pro se litigant. It will explain the risks and dangers associated with proceeding without a lawyer. It will also state explicitly the requirements to which pro se litigants are held in the District and alert the pro se litigant to the absolute need to comply with all the Federal Rules of Civil Procedure as well as the Local Rules so that costs are not increased for the opposing party and so that delay and administrative costs within the court system are not increased.

4. The District will continue to encourage the United States Secretary of Health & Human Services to agree to the protocol that has been arrived at between the State Commissioner of Human Services and Maine's legal services organization (Pine Tree Legal Assistance, Inc.) or some reasonable modification thereof. We will also encourage other legal services organizations, such as Legal Services to the Elderly to join in the protocol, because we believe that this kind of cooperative endeavor can serve all the citizens of Maine in achieving a just resolution of these important public interest disputes at the lowest cost and with the greatest speed.

5. The judges of the District will consciously attempt to be more receptive to requests for oral argument on motions where it appears that oral argument could be of some assistance.

6. A committee has already been created within the District of Maine to begin the drafting of pattern jury instructions and judges from other Districts in the First Circuit have been enlisted to carry on the effort.

7. The Local Rules Committee will be merged into the Civil Justice Advisory Committee and a reporter appointed. The resulting committee will be

responsible for monitoring the Plan on an annual basis as required by the statute, as well as suggesting amendments to the Local Rules as appropriate.

## IV. MANNERS IN WHICH THE PLAN DIVERGES FROM THE REPORT AND CONSIDERATION OF DISSENTING VIEWS

We have rejected only one recommendation of the Report. Specifically, we will not schedule a midpoint conference in every case. Instead, conferences will be scheduled when requested by the lawyers on an individual case basis and when deemed appropriate by the judicial officer. We believe that the time requirement of a conference in every single case would impose an unnecessary burden on the judges and the lawyers, as well as increased fees to the parties, that would not be justified in terms of any significant earlier resolution of such cases or reduction in discovery costs. We say that because of the already speedy trial disposition available in the District and the minimal discovery controversy currently occurring, as well as the new measures taken in the Plan to set limits on discovery and to monitor it. This decision in effect recognizes three of the dissenting views expressed in the Report.

The final dissenting view, very ably expressed by a representative of the insurance industry, calls for more litigant involvement directly in the process, particularly at the outset of the case. This is an important suggestion and one that deserves further study. It is apparent that at least initially it is professionally threatening to lawyers and perhaps disconcerting to judicial officers to have that direct client involvement and we have honored the view of the majority of the Committee that it should not be recommended or implemented at this time, particularly in view of the many other fairly radical measures that are being implemented. We expect the advisory committee to continue to discuss and debate this proposal, however, if it should develop that the Plan as implemented is not as effective as it needs to be, and to reconsider whether early litigant involvement in conferences might lead to a greater appreciation of the costs and risks of litigation and an earlier willingness to settle.

## V. COMPLIANCE WITH THE STATUTORY MANDATE

Section 473 of the Civil Justice Reform Act requires the Court to consider for inclusion 12 principles, guidelines or techniques. The Court has considered each of those principles, guidelines or techniques separately in adopting this Plan. The following is a very abbreviated summary of what the Court has done with respect to each.

1. "Systematic differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the

judicial and other resources required and available for the preparation and disposition of the case."

We have adopted this principle fully.

2. "Early and ongoing control of the pretrial process through involvement of a judicial officer in -- (A) assessing and planning the progress of a case; (B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless . . . (C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and (D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."

We have adopted this principle fully.

3. "For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer -- (A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation; (B) identifies or formulates the principle issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure; (C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to (i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and (ii) phase discovery into two or more stages; and (D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."

We have adopted this principle fully.

4. "Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices."

We have adopted this principle fully.

5. "Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion."

We have always had this requirement and continue to have it.

6. "Authorization to refer appropriate cases to alternative dispute resolution programs that -- (A) have been designated for use in a district court; or (B) the court may make available, including mediation, minitrial and summary jury trial."

We have adopted Part (B) of this principle.

7. "A requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so."

We have considered but not adopted this technique, concluding that our other pretrial management measures are more effective and that joint preparation of a discovery-case management plan would result in unnecessary attorney fees with little to be gained.

8. "A requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters."

We have adopted this technique fully.

9. "A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request."

All requests must now be signed by an attorney. The District of Maine has never had a problem with unnecessary extensions and sees no need to require the parties to sign as well.

10. "A neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation."

We have not adopted this technique because our volume does not justify the creation of such a program. If, however, the state court system in its adoption of ADR techniques is interested in such a program, we will seek to have a mutual involvement.

11. "A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."

We have always had this requirement and continue to have it.

12. "Such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title."

We have adopted a number of other features that are reflected in the Plan.

Gene Carter
United States Chief District Judge

D. Brock Hornby
United States District Judge

Morton A. Brody
United States District Judge

David M. Cohen
United States Magistrate Judge

Eugene W. Beaulieu
United States Magistrate Judge

William S. Brownell, Esq., Clerk and
United States Magistrate Judge

Dated: June 1st, 1993

# III. CIVIL CASE MANAGEMENT

## RULE 15

## CASE MANAGEMENT TRACKS

### (a) Civil Case Tracks

Each civil case will be assigned to one of the following tracks:

1. Administrative
2. Standard
3. Complex
4. Toxic Tort
5. Prisoner Civil Rights
6. State of Maine/Pine Tree Legal Protocol

### (b) Definitions

(1) Administrative Track. Contains those cases in which discovery is prohibited entirely unless specific approval is obtained from a judicial officer. Cases on this track include cases filed under 28 U.S.C. §§ 2254, 2255 (habeas corpus cases); social security disability cases; government collections of student loans and VA benefits; government foreclosures; special education appeals; and bankruptcy appeals. Administrative track cases shall ordinarily be resolved within six (6) months after filing.

(2) Standard Track. Contains those cases in which discovery is limited to not more than 30 interrogatories per party (subparts not permitted); 30 requests for admission per party; 2 sets of requests for production per party; and 5 depositions per party. Discovery in standard track cases shall ordinarily be completed within 4 months and trial within 6 months after issue is joined. Cases on this track include vehicle collision cases involving only negligence claims; slip and fall cases; foreclosure actions other than Government foreclosures; statutory forfeiture cases; simple contract cases; declaratory judgments regarding insurance coverage; FELA cases; Jones Act cases; foreclosure of first preferred ship mortgages; and complaints for copyright violations for unauthorized musical performances.

(3) Complex Track. Contains those cases that require special attention because of the number of parties, complexity of the issues, scope of discovery, and other comparable factors. Cases that are transferred or returned to Maine by the Multi-District Litigation Panel shall be placed on the complex track. The scope of discovery, motion practice, ADR and other matters will be discussed with the parties or their lawyers.

(4) Toxic Tort Track. Contains all the asbestos-related tort actions and any others that the court decides present similar problems.

(5) Prisoner Civil Rights Track. Contains civil rights cases filed by prisoners pursuant to Title 42 U.S.C. § 1983. Discovery and motion practice in prisoner track cases shall ordinarily be completed within 4 months of the issuance of the scheduling order.

(6) State of Maine/Pine Tree Legal Protocol Track. Contains those cases in which the plaintiffs are represented by Pine Tree Legal Assistance, Inc. and the defendant is the Maine Department of Human Services represented by the Maine Attorney General's Office.

**(c) Assignment**

Each case shall be assigned to a track by the Clerk based on the initial pleading. The Court may on its own initiative, or upon good cause shown by a party, change the track assignment of any case.

## RULE 16

## SCHEDULING ORDER

**(a) Applicable Cases**

A proposed scheduling order shall issue in all cases except social security disability cases, habeas corpus petitions, bankruptcy appeals, cases on the asbestos track, and any other case or category of cases as a judicial officer may order.

**(b) Track Designation**

The proposed scheduling order shall identify the case management track to which the case is assigned.

**(c) Contents of Scheduling Order**

(1) The proposed scheduling order in administrative track cases shall limit the time (1) to join other parties and to amend the pleadings; and (2) to file and hear motions. The order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(2) The proposed scheduling order in standard track cases shall set limits on the amount of discovery and shall limit the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; (3) to disclose experts and complete discovery; and (4) to complete other pretrial preparation. The order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(3) The proposed scheduling order in prisoner civil rights track cases shall limit the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; (3) to complete discovery; and (4) to complete other pretrial preparation. This order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(4) The scheduling order in State of Maine/Pine Tree Legal Protocol track cases shall contain the items stated in the Protocol.

**(d) Issuance**

The proposed scheduling order in administrative and standard track cases shall issue immediately upon the appearance of defendant(s) but in no event more than 120 days after the filing of the complaint. The scheduling order in complex cases shall issue after an initial conference with counsel at which discovery, motion practice, ADR and other matters will be discussed. The scheduling order in prisoner civil rights track cases shall issue immediately following the preliminary conference/hearing with the magistrate judge at the prison or within 120 days after the filing of the complaint, whichever is earliest. The scheduling order in State of Maine/Pine Tree Legal Protocol track cases shall issue promptly upon the filing of the joint proposed scheduling order that is to be submitted by the parties within 10 days of service of the complaint.

**(e) Objections**

Unless a party files an objection to a proposed scheduling order within ten (10) days of its filing, the proposed order shall thereupon become the Scheduling Order of the Court as required by Fed. R. Civ. P. 16(b). A party wishing to alter any discovery limitation of a scheduling order must not only file a timely objection thereto but also request a conference with a judicial officer. In requesting a scheduling conference, a lawyer professionally represents to the Court that he or she has used his or her best efforts to reduce cost and delay and has advised the client accordingly. The conference will be scheduled promptly.

## RULE 17

## MANAGEMENT TRACK PROCEDURES

**(a) Administrative Track**

(1) Habeas Corpus Petitions. Proceedings on applications for habeas corpus under 28 U.S.C. § 2254 and proceedings on motions to vacate sentence under 28 U.S.C. § 2255 shall be referred to a magistrate judge in accordance with 28 U.S.C. § 636(b)(1)(B) and processed in accordance with the Rules Governing Section 2254 Cases, 28 U.S.C. § 2254, and the Rules Governing Section 2255 Proceedings, 28 U.S.C. § 2255 respectively.

(2) Social Security Disability Cases. These matters are referred upon filing to a magistrate judge for further proceedings in accordance with Rule 13(b) of the Local Rules.

(3) Bankruptcy Appeals. Upon the filing of a bankruptcy appeal the Clerk shall issue a notice setting forth the briefing schedule as required by Bankruptcy Rule 8009 and the appeal shall be processed in accordance with Rule 28 of the Local Rules.

(4) Other Cases. The case management of all other cases on the administrative track shall be governed by the scheduling order entered in each such case.

**(b) Standard Track**

(1) The case management of all cases on the standard track shall be governed by the scheduling order entered in each case.

(2) When a scheduling conference is requested, at the discretion of the judicial officer it may be conducted by telephone. In those instances, the Clerk will inform the lawyers or unrepresented parties of the date and time of the conference. It shall be the responsibility of the party who requested the conference to initiate the telephone conference call to chambers.

(3) Prior to the requested scheduling conference, the lawyers must meet face-to-face unless they are more than 30 miles apart and in that event by telephone and discuss the following topics: voluntary exchange of information and discovery; a discovery plan; the various alternative dispute resolution options; consenting to trial before the magistrate judge; the legal issues in the case; a plan for raising and disposing of serious and legitimate dispositive motions; settlement; and stipulations.

(4) Not less than two (2) business days before the conference, the lawyers shall file their proposed discovery and motion plan and any proposal for ADR.

(5) The agenda for the scheduling conference shall include the following topics: narrowing the case to its essential issues; sequencing and limiting discovery and motion practice; settlement; ADR options; and consent to trial before a magistrate judge.

(6) During the conference the judicial officer shall be aggressive in exploring the advisability and utility of ADR, ascertaining actual discovery needs and costs and imposing discovery limits and deadlines.

**(c) Complex Track**

(1) Promptly after issue is joined an initial scheduling conference will be held before a judicial officer. If the conference is to be conducted by telephone, the Clerk will inform the lawyers or unrepresented parties of the time and date of the conference and it shall be the responsibility of the plaintiff to initiate the telephone conference call to chambers.

(2) Prior to the conference the lawyers must meet face-to-face unless they are more than 30 miles apart and in that event by telephone and discuss the following issues: voluntary exchange of information and discovery, a discovery plan, the various kinds of alternative dispute resolution; consenting to trial by the magistrate judge; the legal issues in the case; a plan for raising and disposing of serious and legitimate dispositive motions; settlement; and stipulations.

(3) Not less than two (2) business days before the conference the lawyers shall file their proposed discovery and motion plan and any proposal for ADR.

(4) The agenda for the initial conference shall include the following topics: narrowing the case to its essential issues; sequencing and limiting discovery and motion practice; a trial date; all legal issues; settlement; ADR options; consenting to trial before a magistrate judge; and the date of the next conference.

(5) During the conference the judicial officer shall be aggressive in exploring the advisability and utility of ADR, ascertaining the actual discovery needs and costs and imposing discovery limits and deadlines.

(6) During the initial conference the judicial officer will ordinarily schedule further settlement discussions as part of the next conference and will determine whether clients or client representatives should be required to attend the next conference. The attendance of the clients (in person or by being available by telephone) will usually be required.

(7) Unless the parties otherwise agree, the settlement conference in a nonjury case will be conducted by a judicial officer other than the one who will preside at trial.

(8) Additional case management and settlement conferences will be scheduled at the discretion of the judicial officer. The judicial officer will regularly hold case management conferences (either in person or by telephone) in those cases in which there is substantial

discovery. At each such conference, the lawyers shall be prepared to discuss in a detailed manner the settlement status of the case, ongoing and projected litigation costs, ADR options, and avoidance of unnecessary motion practice.

**(d) Toxic Tort Track**

(1) Asbestos. (Not in effect so long as cases are transferred to another district by the MDP.)

> (A) A plaintiff who has only minimal symptoms of an asbestos-related disease may elect to have the case placed on the suspense docket. Those cases will remain inactive and are administratively closed by the Clerk. A case may be placed on the suspense docket at the time of filing and up until 3 weeks before trial. Any case removed from the suspense docket shall be placed at the end of any trial list and not in any event proceed to trial earlier than 9 months from the date the plaintiff elected the suspense docket.
>
> (B) All remaining asbestos cases shall be set for trial in groups of as many as 15 to 25. In each group, consecutive and separate damages trials for each plaintiff are conducted before a single jury. Thereafter, the same jury will determine the issue of liability in a consolidated trial of all the cases remaining in the group.
>
> (C) Discovery and pretrial preparation are to be completed in accordance with the standing discovery order governing asbestos cases.

(2) Other. Similar procedures may be devised for other toxic torts or mass torts if circumstances suggest the need for them.

**(e) Prisoner Civil Rights Track**

(1) All prisoner civil rights cases are referred upon filing to a magistrate judge. The case management of the cases shall be governed by a scheduling order entered by the magistrate judge.

(2) In pro se prisoner cases arising out of the Maine State Prison, the magistrate judge shall, after issue is joined, visit the prison for a conference/hearing on the record with the prisoner plaintiff and the attorney(s) for the defendant(s).[1]

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[1] This procedure was approved in Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), where the court ruled that a district court may refer a case to a magistrate to hold an evidentiary hearing "in the nature of a motion for more definite statement," id. at 181, and to "dig beneath (continued...)

**(f) State of Maine/Pine Tree Legal Protocol Track**

(1) The discovery and case management of these cases shall be governed by the scheduling order entered in each such case pursuant to the Memorandum of Agreement executed by Pine Tree Legal Assistance, Inc. and the Maine Attorney General's Office on September 29, 1992.

(2) The parties are encouraged to adopt this protocol or one like it for other similar types of cases.

## RULE 18

## DISCOVERY

**(a) Stipulations Regarding Objections**

The Court will not give any effect to a stipulation attempting to preserve for trial those objections which by Fed. R. Civ. P. 32(d)(3)(A) and (B) are waived (unless reasonable objection is made at the taking of the deposition).

**(b) Opening Depositions; Copying Restricted**

Sealed depositions received by the Clerk for use at trial or in support of or in opposition to a motion shall be opened and made part of the public record, unless otherwise ordered by the Court. No deposition on file with the Clerk shall be copied by the Clerk or any other person, except by order of the Court.

**(c) Answers and Objections to Interrogatories and to Requests for Admission**

Answers and objections to interrogatories and to requests for admissions shall set forth in full, immediately preceding the answer or objection, the interrogatory or request to which answer or objection is being made.

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[1](...continued)
the conclusional allegations; to reduce the level of abstraction upon which the plaintiffs rest; to ascertain exactly what scenario the prisoner claims occurred, as well as the legal basis for the claim," id. at 180. This device can be used to determine whether the claims should be dismissed as frivolous under 28 U.S.C. § 1915(d) or for a Rule 12(b)(6) review of specific claims. Id. at 1982. See also Green v. McKaskle, 788 F.2d 1116 (5th Cir. 1986); Adams v. Hansen, 906 F.2d 192 (5th Cir. 1990).

**(d) Filing of Discovery**

Unless otherwise ordered by the Court, notices, written questions and transcripts of depositions, interrogatories, requests pursuant to Fed. R. Civ. P. 34 and 36, and answers, objections and responses thereto shall be served upon other parties but shall not be filed with the Court. The party that has served notice of a deposition or has served discovery papers shall be responsible for preserving and for insuring the integrity of original transcripts and discovery papers for use by the Court.

**(e) Discovery Disputes**

No written discovery motion shall be filed without the prior approval of a judicial officer. A party with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party shall then seek a prompt hearing with a judicial officer by telephone or in person. If the hearing is to be conducted by telephone, the Clerk will inform counsel of the time and date of the hearing and it shall be the responsibility of the moving party to initiate the telephone conference call to chambers. The request for a hearing with a judicial officer carries with it a professional representation by the lawyer that a conference has taken place and that he or she has made a good faith effort to resolve the dispute.

The lawyers or unrepresented parties shall supply the judicial officer with the particular discovery materials (such as objectionable answers to interrogatories) that are needed to understand the dispute.

If the judicial officer decides that motion papers and supporting memoranda are needed to satisfactorily resolve the discovery dispute, such papers shall be filed in conformity with Rule 19. Such motions shall (1) quote in full each interrogatory, question at deposition, request for admission or request for production to which the motion is addressed, or otherwise identify specifically and succinctly the discovery to which objection is taken or from which a protective order is sought; and (2) the response or objection and grounds therefor, if any, as stated by the opposing party. Unless otherwise ordered by the Court, the complete transcripts or discovery papers need not be filed with the Court pursuant to subsection (e) of this rule unless the motion cannot be fairly decided without reference to the complete original.

**(f) Use of Depositions and Discovery Material by the Court**

If depositions, interrogatories, requests or answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, the complete original of the transcript or the discovery material to be used shall be filed with the Clerk seven (7) days prior to trial. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file a copy of such transcript or materials with the memorandum required by Rule 19 as well as a list of specific citations to the parts on which the party relies. Discovery

transcripts and materials thus filed with the Court shall be returned to appropriate counsel after final disposition of the case.

## RULE 19

## MOTIONS AND MEMORANDA OF LAW

### (a) Submissions of Motions and Supporting Memoranda

Every motion shall be filed in duplicate and shall incorporate a memorandum of law, including citations and supporting authorities. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion. No written discovery motions shall be filed without the prior approval of a judicial officer. See Rule 18(e).

### (b) Motions for Summary Judgment

(1) In addition to the material required to be filed by this rule, a motion for summary judgment shall incorporate a short and concise statement of material facts, supported by appropriate record citations, as to which the moving party contends there is no genuine issue to be tried.

(2) The papers opposing a motion for summary judgment shall incorporate a short and concise statement of material facts, supported by appropriate record citations, as to which the moving party contends there is no genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party, if supported by appropriate record citations, will be deemed to be admitted unless properly controverted by the statement required to be served by the opposing party.

### (c) Objections to Motions

Unless within ten (10) days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection. The 10-day period prescribed herein shall be determined in accordance with Fed. R. Civ. P. 6(a) and the Clerk shall, in every instance, add 3 days to such period for the possibility that the service of the motion may have been accomplished by mail.

Any objections shall be filed in duplicate and shall include citations and supporting authorities and affidavits and other documents setting forth or evidencing facts on which the objection is based. The deemed waiver imposed herein shall not apply to motions filed during trial.

**(d) Reply Memoranda**

Motions shall be decided on the motion and opposition papers without the submission of a reply memorandum. No reply memorandum shall be filed unless the Court so requests. Any reply memorandum permitted shall be strictly confined to reply to the specific issues identified by the Court or, in the absence of such identification, to the new matter raised in the objection of the opposing memorandum.

**(e) Form and Length**

All memoranda shall be typed, double-spaced on 8-1/2 x 11 inch paper or printed. Pages shall be numbered at the bottom of the page. Except by prior leave of Court, no memorandum of law in support of or in opposition to a nondispositive motion shall exceed 10 pages. Except by prior leave of Court, no memorandum of law in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, a motion for injunctive relief, or an appeal from the recommended decision of a magistrate judge shall exceed 20 pages. No reply memorandum shall exceed 5 pages.

**(f) Written Submissions and Oral Argument**

All motions shall be decided by the Court without oral argument unless otherwise ordered by the Court on its own motion or, in its discretion, upon request of counsel.

## RULE 20

## FINAL PRETRIAL CONFERENCE AND ORDER

**(a) Final Pretrial Conference**

A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The Clerk shall notify counsel of the time and place therefor by mailing to them a written notice or a "Final Pretrial List."

A final pretrial conference may be conducted by the trial judge or any other judicial officer.

**(b) Preparation for Final Pretrial Conference**

Not later than 5 business days prior to the final pretrial conference, each party shall file with the Court in duplicate and serve on every other party a pretrial memorandum, which normally need not exceed 5 pages in length, containing the following information: (1) a brief factual statement of the party's claim or defense, as the case may be, including an itemized statement of any damages claimed; (2) a brief statement of the party's contentions with respect to any controverted points of law, including evidentiary questions, together with supporting authority; (3) proposed stipulations concerning matters which are not in substantial dispute and to facts and documents which will avoid unnecessary proof; (4) the names and addresses of all witnesses the party intends to call at trial, other than those to be used for impeachment and rebuttal, but in the absence of stipulation, the disclosure of a witness shall not constitute a representation that the witness will be produced or called at trial; and (5) a list of the documents and things the party intends to offer as exhibits at trial.

Each party shall be prepared at the pretrial conference to discuss the issues set forth in items (1) through (5) above, to exchange or to agree to exchange medical reports, hospital records, and other documents, to make a representation concerning settlement as set forth in this rule and to discuss fully all aspects of the case.

**(c) Conduct of Final Pretrial Conference**

The Court will consider at the final pretrial conference the pleadings and papers then on file; all motions and other proceedings then pending; and any other matters referred to in this rule or in Fed. R. Civ. P. 16 which may be applicable.

Unless excused for good cause, each party shall be represented at the final pretrial conference by counsel who is to conduct the trial on behalf of such party, who shall be thoroughly familiar with this rule and with the case. Counsel shall be required to make a representation to the Court at the final pretrial conference that counsel has made a recommendation to the client in respect to settlement and that the client has acted on such recommendation. Counsel's inability to make such representations shall be grounds for imposition of sanctions.

**(d) Final Pretrial Order**

Either at or following the final pretrial conference, the Court shall make a final pretrial order, which shall recite the action taken at the conference, and such order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice. Unless otherwise ordered, any objections to the final pretrial order must be made within 10 days after receipt by counsel of a copy thereof. Any discussion at the conference relating to settlement shall not be a part of the final pretrial order. The final pretrial order deadlines shall be such that they do not come into play until after the last settlement conference has been held

and it appears that trial is unavoidable. In any case where there is a pending dispositive motion, one item on the final pretrial conference agenda shall be whether the provisions and deadlines of the final pretrial order should be stayed until the motion is resolved. The judicial officer presiding at the final pretrial conference shall tailor the order to the individual case and consider whether certain provisions of the final pretrial order should be waived. (For example, in a simple automobile negligence personal injury case it may not be necessary to list exhibits or summaries of witness testimony. In such cases trial briefs and draft jury instructions may also be unnecessary.) The number of copies of documents to be filed shall be limited. In a jury case, the original set of exhibits is ordinarily sufficient and should not be filed with the Clerk before trial. In a nonjury case, one extra set for the judge to review in advance of the trial should be adequate. Trial briefs, voir dire, jury instructions, etc. should be simply the original and one copy.

**(e) Sanctions**

If a party fails to comply with the requirements of Fed. R. Civ. P. 16 or this rule, the Court may impose such penalties and sanctions as are just, including those set forth in Fed. R. Civ. P. 16(f).

**(f) Special Circumstances**

The Court may provide for a special pretrial procedure in any case when special circumstances warrant.

**(g) Settlement**

The parties, through their lawyers, shall be prepared to fully engage in meaningful settlement discussions at the conference. If the case will be tried by the judge without a jury, a different judicial officer will conduct the settlement discussions.

A judicial officer may direct that a separate settlement conference be held with party representatives present in person.

## RULE 24

## COURTROOM PRACTICE

### (e) Trial Day

(1) The presiding judge shall establish the limits of the trial day.

(2) In a civil case, the presiding judge may, after consulting with the trial lawyers, establish the amount of time that each side will have for its case, including its cross-examination of witnesses. Such limits may be exceeded only for good cause shown, taking into account, among other things, the lawyers' efficient use of the time already allotted. The courtroom deputy clerk will maintain a continuing record of time used by a party in such a case.