

AM  
cc: DRL -  
cover memo  
only..

Clerk of Court

United States District Court  
Eastern District of North Carolina

**MEMORANDUM**

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May 17, 1991

TO: Duane Lee  
FROM: J. Rich Leonard, Clerk  
RE: Material For Advisory Group

Enclosed for your information is a memorandum I drafted for initial use of our Advisory Group. Your office has requested that we send you information of this type.

JRL/jj  
Enclosure

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
Office of the Clerk  
Post Office Box 25670  
Raleigh, North Carolina 27611

(919) 856-4370  
(FTS) 672-4370

J. RICH LEONARD, Clerk

**MEMORANDUM**

May 10, 1991

**TO:** Eastern District Advisory Group  
**FROM:** Rich Leonard  
**RE:** Initial Meeting

=====

In preparation for our initial meeting on May 17, I have prepared the enclosed memorandum outlining the current civil case management practices in this court. After discussions with David Long, it appears that this information, together with the statistical analysis of this court prepared by the Federal Judicial Center and forwarded to you earlier, will be the most appropriate starting point for our discussion.

JRL/jj  
Enclosure

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
OFFICE OF THE CLERK

RICH LEONARD  
CLERK

REPLY TO :  
( ) P. O. BOX 25670  
RALEIGH, NC 27611  
919-856-4370 (FTS 672-4370)  
( ) P. O. BOX 43  
FAYETTEVILLE, NC 28302  
919-483-9509 (FTS 670-7316)  
( ) P. O. BOX 1336  
NEW BERN, NC 28580  
919-638-8534  
( ) P. O. BOX 338  
WILMINGTON, NC 28402  
919-343-4663 (FTS 671-4663)

MEMORANDUM

TO: Eastern District Advisory Group  
FROM: J. Rich Leonard *RL*  
RE: Current Civil Case Management Practices in the  
Eastern District  
DATE: May 10, 1991

=====

One of the Advisory Group's first tasks is to assess the current litigation practices and procedures in the court. To help with this task, this memo provides basic information on the current case management practices utilized in the Eastern District. With this overview, the Advisory Group may be able to determine in what areas a more detailed analysis is necessary.

Assignment of Case to Division

The Eastern District, by Local Rule 3.02, divides itself into five divisions for administrative purposes. These divisions are Raleigh, Fayetteville, New Bern, Wilmington, and Elizabeth City. Rule 3.02 lists the counties falling into each. Cases are assigned to one of these five divisions upon filing, according to the assignment rules contained in Local Rule 3.03(a). The only exception to this rule of geographic assignment comes with cases initiated by state prisoners. All of these are assigned to special dockets in the Raleigh Division, regardless of where the prisoner happens to be housed at the time of filing.

During calendar year 1990, the following number of cases were filed in the various divisions:

Elizabeth City -	69
Fayetteville -	119
New Bern -	142
Raleigh Civil -	350
Prisoner -	427
Wilmington -	<u>132</u>
Total:	1239

### Assignment of Case to District Judge

All civil cases are randomly assigned to a district judge upon filing. This assignment is public, and is reflected in the last segment of the docket number by the judge's initial. All judges do not take cases in all divisions. However, at least two judges take cases in each division, and in Raleigh all judges share assignments. Once assigned, the case remains with the judge until termination. The court is strongly committed to this random assignment scheme; any attempt to undercut it by judge shopping is quickly rebuffed.

During 1990, cases were assigned among the judges under this formula in the following numbers:

(1705)	Judge Dupree -	203
(1706)	Judge Britt -	264
(1707)	Judge Fox -	253
(1708)	Judge Boyle -	243
(1709)	Judge Howard -	249

### Monitoring of Service of Process and Answer

Unless the complaint is accompanied by a motion for a temporary restraining order or a preliminary injunction, there is very little for the court to do in the initial stages. Service of process is the obligation of the plaintiff, and Rule 4(j) allows 120 days for this to be completed. The court closely monitors this 120-day period. If no return of service is made within 120 days of filing of the complaint, the court asks counsel to show cause why the action should not be dismissed. EXHIBIT A. If no response is forthcoming, the case is dismissed. EXHIBIT B. Similarly, the court monitors those cases in which a return of service was made but no answer was timely filed. In those instances, the plaintiff is directed to proceed in accordance with Rule 55. EXHIBIT C. Through these methods, the court insures that cases stay on track during these early stages.

### Developing the Scheduling Order

Rule 16 requires the court to enter a scheduling order in every civil case, except those exempted, within 120 days of filing of the complaint. The court complies with this provision rigorously. When the final responsive pleading is filed, the civil case manager responsible for a



particular action issues as a matter of course the Request for Discovery Stipulation. EXHIBIT D. If counsel are able to agree on the contents of a Scheduling Order and the court agrees, the provisions are incorporated in the Order on Scheduling. EXHIBIT E. If counsel do not respond, the default schedule set out in the Request is utilized. If counsel are in serious disagreement, a discovery conference before one of the magistrate judges is scheduled. In my capacity as a magistrate judge, I do the majority of the scheduling orders, including the discovery conferences in disputed cases.

### Setting of a Trial Date

Note that the Order on Scheduling assigns the case to a session of court for trial. The calendar for district judges is currently approved through the end of 1992. It assigns each judge to court throughout the district at the rate of two sessions per month, each scheduled so that it could last for up to two weeks if cases require. EXHIBIT F. By using this approved schedule, a case is routinely provided a trial date at an early point. The general rule of thumb is to place the case on the first calendar of the assigned judge in the appropriate division that occurs more than ninety days after the close of discovery. Currently, all cases in the district in which issue has been joined should have a trial setting.

### Motion Practice

Motion practice in the court is governed by Local Rule 4.00, and all judges follow its time periods. Generally, all motions except those grantable by the clerk under Local Rule 9.00 must be supported by a separate memorandum. Opposing counsel have 20 days after service in which to serve a memorandum in opposition to the motion, after which the movant has ten days to file a reply brief. The motion is then submitted to the court for decision. Whether or not to schedule oral argument on the motion is solely the prerogative of the judge deciding the motion, and is determined on a case-by-case basis after review of the papers.

It is important to note the role that magistrate judges play in civil motion practice. Federal law classifies motions as falling into two categories: dispositive and non-dispositive. Dispositive motions are those such as motions to dismiss or for summary judgment that resolve a claim or defense. Non-dispositive motions are generally procedural and discovery issues. Under federal law, magistrate judges

may rule on non-dispositive motions, with an appeal to the district judge to whom the case is assigned on a clearly erroneous standard. Dispositive motions may be referred to a magistrate judge, but only for entry of a recommended decision that is subject upon objection to de novo review by the district judge to whom the case is assigned.

In this district, non-dispositive motions are generally referred to the magistrate judges for decision without a specific referral from a district judge. Over the years, this procedure has worked extremely well, with few appeals to the district judges being filed. With regard to dispositive motions, the district judge reviews the motion, then decides whether to refer it to a magistrate judge for a recommended decision. EXHIBIT G. The magistrate judges take an even draw of civil motions without regard to the division in which they arise or the judge to whom the case is assigned.

The time for filing motions is also controlled by local rule. Local Rule 4.00 requires that all motions of any nature, except those relating to the admissibility of evidence at trial, be filed within 30 days after the conclusion of discovery. This rule was adopted several years ago to cure the problem of late-filed summary judgment motions complicating trial preparation by counsel and the court. This rule has worked well in practice now that the bar is familiar with it.

#### Final Pretrial Conference

Two to three months before the trial date set in the scheduling order, counsel are sent formal trial and pre-trial conference calendars. EXHIBIT H. The trial calendar confirms the trial date earlier set, and importantly, shows the placement of the case and thus the order in which it will be called for trial. The pre-trial conference calendar schedules the conference approximately two to three weeks before the trial date. These conferences are usually conducted by magistrate judges, although in the past year Judge Britt has begun to handle his own when he is available. The format for the conference and the final pre-trial order is detailed in Local Rule 25.00, and it is fair to say that the court demands compliance. Since it is possible under our system for the trial judge to have little familiarity with the case prior to trial, development of an adequate final pretrial order is crucial.

## Trial Setting

Under the current state of our docket, we are able to place all cases ready for trial on the calendar for the first available date, and routinely complete the calendar at that session. We have no civil trial backlog currently. It is important to note at this juncture that criminal cases may be, and usually are, calendared at these same sessions as required by the Speedy Trial Act. These cases take priority, and scheduling at a particular session often appears chaotic as the court and the parties try to determine which civil and criminal cases will actually stand for trial. Often it appears that many more cases are calendared than the court can possibly accommodate. However, the court rarely continues cases for this reason, and our experience has been that in virtually all instances, the natural attrition of criminal and civil cases will allow the court to conclude its docket. When a legitimate overload appears, the judges are very cooperative about providing backup for each other to keep the docket current. Judge Dupree, in his capacity as a senior judge, is always willing to try a case on short notice. In civil cases, the lawyers are often willing to consent to trial before a magistrate judge if the case is ready and the district judge cannot reach it immediately. The bottom line is that very few cases are continued here because the court is unable to try them at the scheduled time.

## Civil Trials Before Magistrate Judges

Federal law allows a United States Magistrate Judge to try any civil case on the docket with the consent of the parties. The court has always supported this procedure, as it increases the trial strength of the court and thus allows us to cope with our docket more efficiently. The Eastern District magistrate judges have the full confidence of the bar, and consents are frequent. During 1990, the magistrate judges were referred 22 cases for final disposition, and actually held trials in six of those cases.

## Criminal Assignment and Case Management

Although the obligation of the Advisory Group is only to study the court's civil case management plan, this cannot be evaluated without understanding our criminal docket. Criminal cases are assigned here under a rather novel plan that has served us well. Rather than having criminal cases assigned among all of the judges during the entire year, two of the four active judges are paired and take all new criminal assignments for a seven-month period. This

concentrates their criminal work into a discrete period of time, leaving them more flexibility to handle their civil dockets when their criminal load is lighter. This does not mean that judges are completely free of criminal case responsibilities for a portion of the year. With delays in arrests and legitimate continuances, some criminal cases will appear on virtually every trial calendar. However, the bulk of any judge's criminal work peaks at a predictable point, and grows discernibly lighter thereafter.

### Special Categories of Civil Cases

There are several categories of cases in which the court has developed special procedures to handle the matters expeditiously. The biggest groups are: prisoner cases, asbestos cases, social security matters, and bankruptcy appeals.

#### A. Prisoner Cases

Approximately one-third of the court's civil docket consists of cases filed by state and federal prisoners. These fall into two categories. The smallest, about 20 per cent of prisoner filings, are habeas corpus actions calling into question the validity of a conviction. The largest group is suits challenging the constitutionality of conditions of confinement. Although historically almost all of these cases were brought by state prisoners, we have seen an increase in the number of cases brought by federal inmates housed at Butner Federal Correctional Center.

The court deals with this group of cases in several different ways. First, all of the filings in the cases are done in Raleigh, and the cases are managed by experienced deputy clerks in a separate pro se unit. Second, the court is assigned two staff attorneys under the direction of the clerk to assist in analysis and opinion drafting.

We also have several unique procedures that apply. Plaintiffs in these cases who cannot pay the entire \$120 filing fee are required to pay a partial filing fee assessed after a review of deposits to the inmate's trust fund account during the preceding six months. The court worked with the Attorney General's Office and the Legislature to create a grievance procedure within the state prison system that is certifiable as adequate under federal law. With this in place, the court now requires inmates to exhaust this grievance procedure before initiating a lawsuit based on the same facts. Finally, the court has entered into an agreement with Prisoner Legal Services for the procedures to be followed in providing legal representation to inmates.

EXHIBIT I.

The bulk of these cases are resolved through rulings on summary judgment motions. However, a sizeable number are tried each year, and these are calendared at trial sessions in precisely the same fashion as any other civil case.

#### B. Asbestos Cases

The court began receiving asbestos cases in large numbers in the early 1980's. We immediately realized that they presented some unique management problems, and developed separate procedures for handling them. All of the cases are consolidated into one proceeding for discovery, and two pretrial orders in that proceeding control the cases in this court still. EXHIBITS J AND K. We dispose of these cases at the rate of 45 to 55 a year, and none currently have been pending for as long as three years. Administratively, all asbestos matters are handled by a single experienced deputy clerk.

The calendaring practices in these cases are a bit different than in the regular civil case. Because of the common identity of counsel, the similarity of issues, and settlement patterns, the court quickly realized that it is economical to calendar these cases as clusters rather than as individual matters. We currently set six clusters of these cases, with each containing six to ten cases, for trial in alternate months each year. They appear as the lead cases at a regularly scheduled session for one of the district judges. Although settlements often come late, either the morning of trial or after jury selection and opening statements, virtually all are resolved by settlement. Only two have been tried to conclusion in the last decade, and each ended in a mistrial with settlement prior to retrial.

Chief Judge Fox has been taking a careful look at our current procedures, has shared his views with counsel, and is prepared to recommend some beneficial changes. However, the Panel on Multidistrict Litigation has hearings scheduled this month on whether to consolidate all asbestos cases nationally, and we have deferred action until after that ruling.

#### C. Social Security Cases

We receive a number of cases each year in which claimants appeal their denial of social security disability benefits by the Secretary of Health and Human Services. In 1990 the total was sixteen. In these cases, the court sits in an appellate capacity, and there is no trial. We handle these cases with the briefing order enclosed. EXHIBIT L.

#### D. Bankruptcy Appeals

Another area in which the district court sits in an appellate capacity is in appeals from the bankruptcy court. As you may know, the United States Bankruptcy Court for this district, although legally an adjunct of this court, operates as a separate administrative unit with its own clerk and chief judge. It is headquartered at Wilson. Appeals from decisions of the bankruptcy judges come to this court. We manage these appeals with the briefing order enclosed. **EXHIBIT M.** We also assign all of these matters to a single deputy clerk with expertise in this area.

#### Alternative Dispute Resolution

The court currently has no formal alternative dispute resolution program. So long as we are able to stay current in our civil trial docket, we have not perceived a great need. Magistrate Judge Denson was one of the early pioneers in conducting summary jury trials with great success, and the court is willing to use this procedure at any time it appears necessary. Judges of the court are also very willing to participate in settlement discussions with counsel, particularly in cases in which they are not the trial judge. The magistrate judges have been used very successfully for this purpose.



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_ DIVISION

NO. \_\_\_\_\_

Plaintiff )  
                  ) )  
VS.                  ) )  
                  ) )  
Defendant          ) )

**NOTICE TO COUNSEL OF FAILURE  
TO MAKE SERVICE WITHIN 120 DAYS**

The docket in this action does not reflect that service has been obtained upon defendant \_\_\_\_\_ within 120 days of filing of the complaint. Rule 4(j) provides that the action shall be dismissed without prejudice as to this defendant unless you can demonstrate good cause to the court why such service was not made within the period. You are hereby notified that you must comply with this requirement within ten days of receipt of this notice. At the end of the period, the record will be forwarded to the district judge to whom the action is assigned for a determination of whether you have demonstrated good cause. Failure to respond to this notice within the time allotted will result in a dismissal of the action without prejudice.

J. RICH LEONARD, CLERK

A-1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_ DIVISION

Plaintiff                    )                    No. \_\_\_\_\_  
                                  )                    \_\_\_\_\_  
VS.                            )                    \_\_\_\_\_  
                                  )                    \_\_\_\_\_  
Defendant                    )                    \_\_\_\_\_

ORDER DISMISSING ACTION WITHOUT PREJUDICE  
FOR FAILURE TO OBTAIN SERVICE  
\_\_\_\_\_

The record in this action not indicating that plaintiff has obtained service upon defendant \_\_\_\_\_ within 120 days after filing of the complaint, and plaintiff after notice not having demonstrated good cause why such service was not made within the period, this action is dismissed without prejudice as to defendant \_\_\_\_\_.

SO ORDERED.

This \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

A-2



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

VS.

)  
)  
)  
)  
)  
)  
)

No. \_\_\_\_\_

ORDER DIRECTING PLAINTIFF  
TO PROCEED AFTER  
FAILURE TO ANSWER

The docket in this action indicates that defendant \_\_\_\_\_ has not filed responsive pleadings within the appropriate time periods. Please proceed in accordance with Rule 55 of the Federal Rules of Civil Procedure to reduce this matter to judgment. If no steps have been taken within twenty (20) days of service of this Order, the court will require you to show cause why the action should not be dismissed for failure to prosecute.

SO ORDERED. This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
J. RICH LEONARD  
United States Magistrate

B

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

NO. \_\_\_\_\_

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
VS.	)	ORDER DIRECTING PLAINTIFF
	)	TO SHOW CAUSE WHY ACTION
	)	SHOULD NOT BE DISMISSED
	)	FOR FAILURE TO PROSECUTE
	)	
Defendant	)	

On \_\_\_\_\_, plaintiff was directed to proceed to reduce this matter to judgment. The docket does not reflect that any action has been taken. Accordingly, plaintiff is directed to show cause within ten days of this date why the action should not be dismissed for failure to prosecute. In the event of no response from plaintiff within the time period, an order of dismissal will be forthcoming.

SO ORDERED.

\_\_\_\_\_  
J. RICH LEONARD  
UNITED STATES MAGISTRATE

C

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
DIVISION

NO. \_\_\_\_\_

REQUEST FOR  
DISCOVERY STIPULATION

Pursuant to Rule 16(a), F.R.Civ.P., the court must enter a scheduling order within 120 days after filing of the complaint. Please confer with opposing counsel and present to the court within 20 days a stipulation addressing the following issues:

1. The length of discovery, including a date by which all discovery will be concluded.
2. The number of interrogatories each party will serve on the others.
3. The number of depositions to be taken by each party.
4. The time for disclosure of identity of expert witnesses, and the scheduling of depositions of experts.

If counsel cannot agree, please submit your respective positions on these issues directly to the Clerk in Raleigh and the court will resolve the disputed issues. Following court approval, modifications of the scheduling order will be allowed only by motion and for good cause shown.

Failure to comply with this order will result in entry of a scheduling order limiting non-responding counsel to a discovery period of four months, 50 interrogatories, ten depositions, and disclosure of expert witnesses at least 30 days prior to the expiration of discovery.

Note that Local Rule 4.00 requires that all motions (except those relating to the admissibility of evidence at trial) must be filed within 30 days after discovery concludes. Untimely motions may be summarily denied. Also note that cases are currently being docketed for trial within 60 to 90 days after discovery terminates, with a final pre-trial conference scheduled approximately two weeks prior to trial.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

BY THE COURT

D



called for trial at that term will be distributed approximately two months beforehand. At the same time, a final pretrial conference will be scheduled approximately two weeks before the trial. Requests for modification of the scheduling order that will require a continuance of the trial will be granted only upon a strong showing of due diligence and good cause.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

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J. RICH LEONARD  
United States Magistrate Judge

F-2

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

FILED

OCT 1 1990

J. RICH LEONARD, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

ORDER ADOPTING 1991 CALENDAR

The calendar for Judges of the Eastern District of North Carolina for 1991 as promulgated by the Clerk is HEREBY APPROVED.

This 24<sup>th</sup> day of September, 1990.



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W. EARL BRITT  
CHIEF U. S. DISTRICT JUDGE

**AMENDED  
CALENDAR FOR DISTRICT COURT MAGISTRATES  
1991**

JAN 14	MCCOTTER	NEW BERN
JAN 14	DIXON	FAYETTEVILLE+
JAN 14	DENSON	RALEIGH
JAN 22	DENSON	RALEIGH*
JAN 22	MCCOTTER	NEW BERN*
JAN 28	DIXON	FAYETTEVILLE
JAN 28	DENSON	WILMINGTON
FEB 4	MCCOTTER	ELIZABETH CITY
FEB 4	DIXON	RALEIGH
FEB 11	DENSON	FAYETTEVILLE+
FEB 11	DIXON	NEW BERN
FEB 19	MCCOTTER	NEW BERN*
FEB 19	DIXON	RALEIGH*
FEB 25	MCCOTTER	WILMINGTON
MAR 11	DENSON	RALEIGH
MAR 11	MCCOTTER	NEW BERN
MAR 11	DIXON	FAYETTEVILLE+
MAR 18	DENSON	RALEIGH*
MAR 18	MCCOTTER	NEW BERN*
MAR 25	DENSON	ELIZABETH CITY
MAR 25	DIXON	WILMINGTON
APR 1	MCCOTTER	RALEIGH
APR 8	DENSON	NEW BERN
APR 8	MCCOTTER	FAYETTEVILLE+
APR 8	DIXON	RALEIGH
APR 15	DENSON	RALEIGH*
APR 15	DIXON	NEW BERN*
APR 29	DENSON	WILMINGTON
MAY 13	DENSON	RALEIGH
MAY 13	MCCOTTER	NEW BERN
MAY 13	DIXON	FAYETTEVILLE+
MAY 20	DENSON	RALEIGH*
MAY 20	MCCOTTER	NEW BERN*
MAY 28	MCCOTTER	WILMINGTON
MAY 28	DIXON	ELIZABETH CITY/MANTEO
JUNE 3	DIXON	RALEIGH
JUN 10	LEONARD/MASON	FAYETTEVILLE+
JUN 17	DENSON	RALEIGH*
JUN 17	MCCOTTER	NEW BERN*
JUN 17	DIXON	WILMINGTON
JUL 8	DENSON	RALEIGH
JUL 8	DIXON	FAYETTEVILLE+
JUL 15	MCCOTTER	NEW BERN*
JUL 15	DIXON	RALEIGH*
JUL 29	DENSON	WILMINGTON
JUL 29	MCCOTTER	ELIZABETH CITY/MANTEO
AUG 12	DENSON	FAYETTEVILLE+
AUG 12	MCCOTTER	NEW BERN

AMENDED

AUG 12	DIXON	RALEIGH
AUG 19	DENSON	RALEIGH*
AUG 19	MCCOTTER	NEW BERN*
AUG 26	DENSON	RALEIGH
AUG 26	MCCOTTER	WILMINGTON
AUG 26	DIXON	FAYETTEVILLE
SEP 9	DENSON	RALEIGH
SEP 9	MCCOTTER	NEW BERN
SEP 9	DIXON	FAYETTEVILLE+
SEP 16	DENSON	RALEIGH*
SEP 16	MCCOTTER	NEW BERN*
SEP 23	DIXON	WILMINGTON
SEP 30	DENSON	ELIZABETH CITY/MANTEO
OCT 15	DENSON	NEW BERN
OCT 15	MCCOTTER	FAYETTEVILLE+
OCT 15	DIXON	RALEIGH*
OCT 21	DENSON	RALEIGH
OCT 21	DIXON	NEW BERN*
OCT 28	DENSON	WILMINGTON
OCT 28	MCCOTTER	RALEIGH
NOV 4	BRITT	RALEIGH
NOV 12	DENSON	RALEIGH
NOV 12	MCCOTTER	NEW BERN
NOV 12	DIXON	FAYETTEVILLE+
NOV 18	DENSON	RALEIGH*
NOV 18	MCCOTTER	NEW BERN*
NOV 25	MCCOTTER	WILMINGTON
NOV 25	DIXON	ELIZABETH CITY
DEC 2	DIXON	FAYETTEVILLE
DEC 16	MASON/LEONARD	FAYETTEVILLE+
DEC 16	DENSON	RALEIGH*
DEC 16	MCCOTTER	NEW BERN*
DEC 16	DIXON	WILMINGTON

+ Misdemeanor cases arising at Fort Bragg calendared during each day of these sessions.

\* Misdemeanors calendared on Tuesday of these sessions.

F-3



1991 TERMS OF COURT

JUDGE BRITT

JAN 7	RALEIGH
JAN 22	WILMINGTON
FEB 4	RALEIGH
FEB 19	FAYETTEVILLE
MAR 4	RALEIGH
MAR 18	WILMINGTON
APR 1	RALEIGH
APR 15	FAYETTEVILLE
MAY 6	RALEIGH
MAY 20	WILMINGTON
JUN 3	RALEIGH
JUL 1	RALEIGH
JUL 15	WILMINGTON
AUG 5	RALEIGH
AUG 19	FAYETTEVILLE
SEP 3	RALEIGH
SEP 16	WILMINGTON
OCT 7	RALEIGH
OCT 21	FAYETTEVILLE
NOV 4	RALEIGH
NOV 18	WILMINGTON
DEC 2	RALEIGH

1991 TERMS OF COURT

JUDGE FOX

JAN 14	WILMINGTON
JAN 28	RALEIGH
FEB 11	WILMINGTON
FEB 25	NEW BERN
MAR 11	WILMINGTON
MAR 25	RALEIGH
APR 8	WILMINGTON
APR 22	NEW BERN
MAY 13	WILMINGTON
MAY 28	RALEIGH
JUN 10	WILMINGTON
JUL 8	WILMINGTON
JUL 22	RALEIGH
AUG 12	WILMINGTON
AUG 26	NEW BERN
SEP 9	WILMINGTON
SEP 23	RALEIGH
OCT 15	WILMINGTON
OCT 28	NEW BERN
NOV 12	RALEIGH
NOV 25	WILMINGTON
DEC 9	WILMINGTON

1991 TERMS OF COURT

JUDGE BOYLE

JAN 14	RALEIGH
JAN 28	NEW BERN
FEB 11	ELIZABETH CITY
FEB 25	RALEIGH
MAR 11	RALEIGH
MAR 25	NEW BERN
APR 8	ELIZABETH CITY
APR 22	RALEIGH
MAY 13	RALEIGH
MAY 28	NEW BERN
JUN 10	ELIZABETH CITY
JUL 8	RALEIGH
JUL 22	NEW BERN
AUG 12	ELIXABETH CITY
AUG 26	RALEIGH
SEP 9	RALEIGH
SEP 23	NEW BERN
OCT 15	ELIZABETH CITY
OCT 28	RALEIGH
NOV 12	RALEIGH
NOV 25	NEW BERN
DEC 9	ELIZABETH CITY

1991 TERMS OF COURT

JUDGE HOWARD

JAN 7	NEW BERN
JAN 22	FAYETTEVILLE
FEB 4	NEW BERN
FEB 19	RALEIGH
MAR 4	NEW BERN
MAR 18	FAYETTEVILLE
APR 1	NEW BERN
APR 15	RALEIGH
MAY 6	NEW BERN
MAY 20	FAYETTEVILLE
JUN 3	NEW BERN
JUL 1	NEW BERN
JUL 15	FAYETTEVILLE
AUG 5	NEW BERN
AUG 19	RALEIGH
SEP 3	NEW BERN
SEP 16	FAYETTEVILLE
OCT 7	NEW BERN
OCT 21	RALEIGH
NOV 4	NEW BERN
NOV 18	FAYETTEVILLE
DEC 2	NEW BERN

1991 TERMS OF COURT

JUDGE DUPREE

JAN 28	RALEIGH
FEB 25	ELIZABETH CITY
MAR 25	RALEIGH
APR 22	WILMINGTON
MAY 28	RALEIGH
JUL 22	RALEIGH
AUG 26	WILMINGTON
SEP 23	RALEIGH
OCT 28	ELIZABETH CITY
NOV 25	RALEIGH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA


FILED

APR 5 1991

ORDER ADOPTING 1992 CALENDAR

The calendar for District Judges of the Eastern District of North Carolina for 1992 as promulgated by the Clerk is HEREBY APPROVED.

This 5<sup>th</sup> day of April, 1991.

  
\_\_\_\_\_  
JAMES C. FOX  
Chief U. S. District Judge

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NORTH CAROLINA  
 CALENDAR FOR DISTRICT COURT JUDGES  
 1992

JAN 6	BRITT	RALEIGH	JUL 6	BRITT	RALEIGH
	HOWARD	NEW BERN		HOWARD	NEW BERN
JAN 13	FOX	WILMINGTON	JUL 13	FOX	WILMINGTON
	BOYLE	RALEIGH		BOYLE	RALEIGH
JAN 21	BRITT	WILMINGTON	JUL 20	BRITT	WILMINGTON
	HOWARD	FAYETTEVILLE		HOWARD	FAYETTEVILLE
JAN 27	FOX	RALEIGH	JUL 27	FOX	RALEIGH
	BOYLE	NEW BERN		BOYLE	NEW BERN
	DUPREE	RALEIGH		DUPREE	RALEIGH
FEB 3	BRITT	RALEIGH	AUG 3	BRITT	RALEIGH
	HOWARD	NEW BERN		HOWARD	NEW BERN
FEB 10	FOX	WILMINGTON	AUG 10	FOX	WILMINGTON
	BOYLE	ELIZABETH CITY		BOYLE	ELIZABETH CITY
FEB 18	BRITT	FAYETTEVILLE	AUG 17	BRITT	FAYETTEVILLE
	HOWARD	RALEIGH		HOWARD	RALEIGH
FEB 24	FOX	NEW BERN	AUG 24	FOX	NEW BERN
	BOYLE	RALEIGH		BOYLE	RALEIGH
	DUPREE	ELIZABETH CITY		DUPREE	WILMINGTON
MAR 2	BRITT	RALEIGH	SEP 8	BRITT	RALEIGH
	HOWARD	NEW BERN		HOWARD	NEW BERN
MAR 9	FOX	WILMINGTON	SEP 14	FOX	WILMINGTON
	BOYLE	RALEIGH		BOYLE	RALEIGH
MAR 16	BRITT	WILMINGTON	SEP 21	BRITT	WILMINGTON
	HOWARD	FAYETTEVILLE		HOWARD	FAYETTEVILLE
MAR 23	FOX	RALEIGH	SEP 28	FOX	RALEIGH
	BOYLE	NEW BERN		BOYLE	NEW BERN
	DUPREE	RALEIGH		DUPREE	RALEIGH
APR 6	BRITT	RALEIGH	OCT 5	BRITT	RALEIGH
	HOWARD	NEW BERN		HOWARD	NEW BERN
APR 13	FOX	WILMINGTON	OCT 13	FOX	WILMINGTON
	BOYLE	ELIZABETH CITY		BOYLE	ELIZABETH CITY
APR 20	BRITT	FAYETTEVILLE	OCT 19	BRITT	FAYETTEVILLE
	HOWARD	RALEIGH		HOWARD	RALEIGH
APR 27	FOX	NEW BERN	OCT 26	FOX	NEW BERN
	BOYLE	RALEIGH		BOYLE	RALEIGH
	DUPREE	WILMINGTON		DUPREE	ELIZABETH CITY
MAY 4	BRITT	RALEIGH	NOV 2	BRITT	RALEIGH
	HOWARD	NEW BERN		HOWARD	NEW BERN
MAY 11	FOX	WILMINGTON	NOV 9	FOX	RALEIGH
	BOYLE	RALEIGH		BOYLE	RALEIGH
MAY 18	BRITT	WILMINGTON	NOV 16	BRITT	WILMINGTON
	HOWARD	FAYETTEVILLE		HOWARD	FAYETTEVILLE
MAY 26	FOX	RALEIGH	NOV 23	FOX	WILMINGTON
	BOYLE	NEW BERN		BOYLE	NEW BERN
	DUPREE	RALEIGH		DUPREE	RALEIGH
JUN 1	BRITT	RALEIGH	DEC 7	BRITT	RALEIGH
	HOWARD	NEW BERN		HOWARD	NEW BERN
JUN 8	FOX	WILMINGTON	DEC 14	FOX	WILMINGTON
	BOYLE	ELIZABETH CITY		BOYLE	ELIZABETH CITY

**REQUEST FOR INSTRUCTIONS ON  
HANDLING OF DISPOSITIVE CIVIL MOTIONS**

DATE: \_\_\_\_\_

TO: JUDGE \_\_\_\_\_

FROM: \_\_\_\_\_, Deputy Clerk

RE: Case Number: \_\_\_\_\_

---

(Defendants-Plaintiffs) motion \_\_\_\_\_  
filed in this action assigned to your office is ready for  
decision. The briefing time has run. Please return this  
form to the Clerk's Office indicating which of the procedures  
you desire to follow:

\_\_\_\_\_

Calendar this before the  
Judge for oral argument at  
a convenient time. (Extra  
copy to Joyce in Raleigh  
if this box checked)

\_\_\_\_\_

Refer this motion to a Magistrate  
for his recommendation.

\_\_\_\_\_

The motion will be decided  
by the Judge on the record  
without oral argument.

\_\_\_\_\_  
JUDGE OR LAW CLERK

Discovery Expires: \_\_\_\_\_

Pre-trial Conference: \_\_\_\_\_

Trial: \_\_\_\_\_

Responsive memorandum filed on/  
 No memorandum filed but time ran on \_\_\_\_\_

Reply memorandum filed on/  
 No reply memo filed but time ran on \_\_\_\_\_  
 Movant advised that no reply  
memorandum to be filed.

G



Example

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

CIVIL PRE-TRIAL CALENDAR

AT FAYETTEVILLE

SPECIAL SESSION BEGINNING MONDAY, MAY 6, 1991 IN THE UNITED STATES MAGISTRATE'S COURTROOM, SECOND FLOOR, POST OFFICE AND COURTHOUSE, 301 GREEN STREET, FAYETTEVILLE, N.C.

HONORABLE WALLACE W. DIXON, UNITED STATES MAGISTRATE, PRESIDING.

NOTICE: Your attention is directed to Civ.Rule 25, Local Rules, U.S.D.C., E.D.N.C.

Requests for continuance or rescheduling should be made to the Clerk in writing and reflect the position of opposing counsel. His address is: J. Rich Leonard, Clerk, P. O. Box 25670, Raleigh, N.C. 27611

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PRE-TRIALS

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Monday, May 6, 1991

10:00 A.M.

USA for the use and benefit  
of QUALITY SOUND ENTERPRISES,  
INC.

K. Douglas Barfield  
Fayetteville, N.C.

V

NO. 90-45-CIV-3-H  
JURY  
FAYETTEVILLE DIVISION

DYNATERIA SERVICES, INC.

Benjamin N. Thompson &  
Cathryn MacDonald Little  
Dunn, N.C.

---

10:30 A.M.

ELCO TRADING, INC.

Charles A. Edwards &  
John R. Rittelmeyer  
Raleigh, N.C.

V

NO. 90-57-CIV-3-H  
NON-JURY  
FAYETTEVILLE DIVISION

SHAW FOOD SERVICES CO.  
and NORTH SOUTH MEAT  
PACKERS CO.

Odes L. Stroupe, Jr.  
Raleigh, N. C.

Richard J. Snider  
Chapel Hill, N.C.

Lisa Carol Bland

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CIVIL PRE-TRIAL CALENDAR - AT FAYETTEVILLE - MONDAY, MAY 6, 1991: Cont'd.

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COPIES DISTRIBUTED: MARCH 27, 1991

The Honorable Malcolm J. Howard  
United States District Judge  
Greenville, N.C.

Honorable Wallace W. Dixon  
United States Magistrate Judge  
Fayetteville, N. C.

Counsel of Record

Fayetteville Division Office

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

CIVIL TRIAL CALENDAR

AT FAYETTEVILLE

REGULAR SESSION BEGINNING MONDAY, MAY 20, 1991 IN THE UNITED STATES COURT-  
ROOM, THIRD FLOOR, POST OFFICE AND COURTHOUSE, 301 GREEN STREET, FAYETTEVILLE, N.C.

THE HONORABLE MALCOLM J. HOWARD, UNITED STATES DISTRICT JUDGE, PRESIDING.

NOTICE: All counsel are to appear Monday, May 20, 1991 at 10:00 A.M.  
for calendar call and jury selection.

Your attention is directed to Civ. Rule 26, Local Rules, U.S.D.C., E.D.N.C.

Requests for continuance or rescheduling should be made to the Clerk in writing  
and reflect the position of opposing counsel. His address is: J. Rich Leonard,  
Clerk, P. O. Box 25670, Raleigh, N.C. 27611.

In the event that counsel report to the Court that an action is settled but no  
settlement papers have been received prior to the date of trial, the Court will  
dismiss the action on its own motion.

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TRIALS

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USA for the use and benefit  
of QUALITY SOUND ENTERPRISES,  
INC.

K. Douglas Barfield  
Fayetteville, N.C.

V

NO. 90-45-CIV-3-H  
JURY  
FAYETTEVILLE DIVISION

DYNATERIA SERVICES, INC.

Benjamin N. Thompson &  
Cathryn MacDonald Little  
Dunn, N.C.

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CIVIL TRIAL CALENDAR - AT FAYETTEVILLE - MONDAY, MAY 20, 1991: Cont'd.

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ELCO TRADING, INC.

Charles A. Edwards &  
John R. Rittelmeyer  
Raleigh, N.C.

V

NO. 90-57-CIV-3-H  
NON-JURY  
FAYETTEVILLE DIVISION

SHAW FOOD SERVICES CO.  
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Raleigh, N.C.

---

COPIES DISTRIBUTED: MARCH 27, 1991

The Honorable Malcolm J. Howard  
United States District Judge  
Greenville, N.C.

Honorable Wallace W. Dixon  
United States Magistrate Judge  
Fayetteville, N. C.

Counsel of Record

Fayetteville Division Office

Court Reporter

Jury Clerk

EASTERN DISTRICT PRISONER  
REPRESENTATION PLAN

I. Department of Correction Employee Defendants

The Clerk of United States District Court for the Eastern District of North Carolina, North Carolina Prisoner Legal Services (NCPLS), the North Carolina Department of Correction, and the Attorney General of North Carolina hereby establish the following procedures for handling pro se lawsuits filed by North Carolina prison inmates against employees or officials of the North Carolina Department of Correction and arising from the terms and conditions of confinement in the Department of Correction.

1. When the lawsuit has survived the administrative exhaustion test, passed frivolity review, the plaintiff has been granted in forma pauperis status (if justified), and any required filing fee has been paid, the Clerk will transmit to NCPLS an "Order of Investigation" (Form A) and a copy of the Complaint.

2. Within ten days of receipt of the Order of Investigation, NCPLS will submit to the Attorney General, Correction Section, a "Request for Documents" (Form B), asking for relevant documents or medical records in the possession of the Department of Correction.

3. The Attorney General and the Department of Correction will deliver to NCPLS, within 30 days of receipt of the Request for Documents (unless NCPLS is notified of the need for more

time), copies of all requested documents. Documents covered by these provisions are Grievance Forms, Use-of-Force Reports, Incident Reports, Disciplinary Reports, and inmate medical records. In the event any of the documents requested include statements which indicate that they were made by inmates who requested that their information be kept confidential (hereafter, "confidential statements"), such statements will be forwarded to the Correction Section of the Attorney General's Office for review. If the Attorney General's Office believes that the information contained in the confidential statements is relevant and necessary to NCPLS's determination of whether to provide representation, NCPLS will be offered the opportunity to view the confidential statements at the Attorney General's offices. NCPLS will not be given a copy of the confidential statements and the attorney from NCPLS will be bound by the protective order which is made a part of this plan and which states that the existence and contents of the confidential statements will not be divulged to the potential inmate-client or any other person outside of those NCPLS staff who need to be involved in the decision-making process. If the Attorney General's Office decides that the information contained in the confidential statements is not relevant to NCPLS's decision-making process it will inform the NCPLS requesting attorney of the number of confidential statements that are being withheld. During the investigative period, all contact seeking the above documents or all other information from Department of Correction employees shall be made to the Attorney General's office.

4. Within 90 days of receipt of the Request for Investigation, NCPLS will file with the court a Response to Order of Investigation (Form C). The Response will indicate a) that NCPLS will provide representation; b) that in the opinion of the NCPLS attorney, appointment of counsel is not necessary; c) that the plaintiff does not want NCPLS to provide counsel for him; or d) that the plaintiff has not cooperated in the investigation, and therefore NCPLS cannot complete its investigation. If NCPLS declines representation or the inmate rejects NCPLS' representation, NCPLS will return to the Attorney General's office all material produced by the Department of Correction pursuant to the expedited voluntary discovery procedures of this plan and any copies made thereof.

5. During the investigation period, the Clerk will issue process to the United States Marshal for service upon defendants. The clerk will also send a copy of the complaint to the Attorney General's office. NCPLS will provide clerical help to the Clerk for this task.

6. If, during the investigation period, the Attorney General decides not to provide representation to any defendant, it will immediately notify NCPLS.

7. If the court determines, in any particular case, at any stage of the proceeding, that appointment of counsel is necessary to preserve the prisoner plaintiff's rights, or is in the interests of justice, or would assist the court or the parties, then NCPLS will accept appointment as ordered by the court.

8. The Clerk will send a copy of the Order of Investigation to the plaintiff. It will include notice to the prisoner plaintiff of the investigation and its role in the court's process, and will include a form by which the plaintiff can indicate if he wishes to cooperate with the investigation, or to reject help from NCPLS.

## II. Defendants not employed by the Department of Correction

The Clerk of the United States District Court for the Eastern District of North Carolina and North Carolina Prisoner Legal Services (NCPLS) hereby establish the following procedures for handling pro se lawsuits filed by prison or jail inmates, in which the claim or cause of action does not arise from terms or conditions of confinement in the North Carolina Department of Correction.

1. When the lawsuit has survived the administrative exhaustion test, passed frivolity review, the plaintiff has been granted in forma pauperis status (if justified), and any required filing fee has been paid, the Clerk will transmit to NCPLS an "Order of Investigation" (Form A) and a copy of the Complaint.

2. Within 90 days of receipt of the Request for Investigation, NCPLS will file with the court a Response to Order of Investigation (Form C). The Response will indicate a) that NCPLS will provide representation; b) that in the opinion of the NCPLS attorney, appointment of counsel is not necessary; c) that the plaintiff does not want NCPLS to provide counsel



for him; d) that the plaintiff has not cooperated in the investigation, and therefore NCPLS cannot complete its investigation; or e) NCPLS cannot obtain adequate information to form an opinion regarding the need for counsel, but will accept an appointment to conduct discovery, subject to a later motion to withdraw as counsel, if such a motion is justified.

3. During the investigation period, the Clerk will issue process to the United States Marshal for service upon defendants. NCPLS will provide clerical help to the Clerk for this task.

4. If the court determines, in any particular case, at any stage of the proceedings, that appointment of counsel is necessary to preserve the prisoner plaintiff's rights, or is in the interests of justice, or would assist the court or the parties, then NCPLS will accept appointment as ordered by the court.

5. A copy of the Order of Investigation will be sent to the plaintiff and to the defendant, if possible. The Order will inform the prisoner plaintiff of the investigation and its role in the court's process, and will include a form by which the plaintiff can indicate whether he wishes to cooperate with the investigation, or to reject help from NCPLS.

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

JOHN PRISONER,  
Plaintiff,

v.

JOE OFFICER,  
Defendant.

No. \_\_\_\_\_

ORDER OF  
INVESTIGATION

This action having been filed pro se by an inmate of the North Carolina Department of Correction, and it appearing to the Court that an investigation of the claims of the plaintiff is warranted prior to the appointment of Counsel,

IT IS ORDERED,

1. That pursuant to this Court's Eastern District Prisoner Representation Plan, North Carolina Prisoner Legal Services is requested to investigate the claims of the plaintiff and respond to the court within 90 days of the date of entry of this Order.

2. That the North Carolina Department of Correction furnish, upon request, copies of the appropriate documents as called for by the Plan.

3. The time for defendants to answer the complaint is hereby extended until 30 days after the Response filed by NCPLS.

\_\_\_\_\_  
Clerk, U.S. District Court

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NOTICE TO PLAINTIFF

You are hereby notified that North Carolina Prisoner Legal Services (NCPLS) has been ordered to conduct an investigation of the claims raised in your complaint and to report to the court whether NCPLS is willing to provide representation for you.

During the investigation period, NCPLS is not representing you. However, information you give to NCPLS regarding your claim will be held in confidence, consistent with the Rules of Professional Conduct.

You are not required to cooperate with the investigation, and you can decide now that you do not want NCPLS to investigate your claims or to represent you. However, failure to cooperate with the investigation, or a decision not to accept representation from NCPLS, may be interpreted by the court as a waiver of any right to court-appointed counsel. If you do not cooperate with the investigation, or if you reject representation by NCPLS, it is highly unlikely that the court will appoint other counsel for you.

Please fill out the enclosed waiver form indicating whether you want NCPLS to investigate you claim, and return it immediately to:

Clerk, United States District Court  
Post Office Box 25670  
Raleigh, North Carolina 27611

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REJECTION OF INVESTIGATION BY NCPLS

I have read the "Notice to Plaintiff" in the Order of Investigation. Even though I understand that my decision may be interpreted as a waiver of any right to court-appointed counsel, I do not want North Carolina Prisoner Legal Services (NCPLS) to investigate my claims, and I hereby reject any assistance, including legal representation, from NCPLS.

\_\_\_\_\_  
Plaintiff

Date \_\_\_\_\_

Case No. \_\_\_\_\_

ACCEPTANCE OF INVESTIGATION BY NCPLS

I have read the "Notice to Plaintiff" in the Order of Investigation. I agree to cooperate with the North Carolina Prisoner Legal Services' investigation.

\_\_\_\_\_  
Plaintiff

Date \_\_\_\_\_

Case No. \_\_\_\_\_

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

JOHN PRISONER,  
Plaintiff,

v.

JOE OFFICER,  
Defendant.

No. \_\_\_\_\_

RESPONSE TO ORDER  
OF INVESTIGATION

In response to the Court's request, I have conducted the factual investigation and legal research that I find to be warranted and adequate for the claims raised. As a result of my investigation:

- \_\_\_ a) North Carolina Prisoner Legal Services (NCPLS) will provide representation to plaintiff.
- \_\_\_ b) In the opinion of the undersigned attorney, appointment of counsel is not required in this action. NCPLS has provided advice and assistance to the plaintiff.
- \_\_\_ c) The plaintiff has declined the services of NCPLS.
- \_\_\_ d) The plaintiff has not cooperated with the investigation and NCPLS cannot complete its investigation or render any opinion.

[For non-Department of Correction cases]

- \_\_\_ e) NCPLS has not been able to obtain adequate information to evaluate the claim. NCPLS will accept appointment

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as counsel, and will conduct discovery, but may later request permission to withdraw as counsel.

---

Staff Attorney  
N.C. Prisoner Legal Services, Inc.  
Post Office Box 25397  
Raleigh, North Carolina 27611  
(919) 828-3508

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served upon the defendants by mailing a copy to their attorney at the following address:

---

Assistant Attorney General  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602

This the \_\_\_\_ day of \_\_\_\_\_, 1990.

---

Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

JOHN PRISONER,  
Plaintiff,

v.

JOE OFFICER,  
Defendant.

No. \_\_\_\_\_

REQUEST FOR  
DOCUMENTS

Pursuant to this Court's Eastern District Prisoner Representation Plan, the North Carolina Department of Correction is requested to supply to the undersigned within 30 days of its receipt hereof, the following documents, to the extent the documents directly concern the incidents raised in the complaint.

\_\_\_ The specific grievances (Form DC-410) listed below and the responses filed at each step;

\_\_\_ Any Use of Force Reports (Form DC-422), Incident Reports (Form DC-432), or Offense and Disciplinary Reports (Form DC-138), along with the Statements by Witnesses (except for confidential statements which will be handled in accordance with Part I, paragraph 3).

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\_\_\_\_ The portions of the medical records and charts of the Plaintiff indicated below (an executed release will be forwarded within ten days, or this request is withdrawn), provided that mental health records, and any copies made thereof, shall not be redisclosed to the client or anyone other than the court, except as actually adduced at trial or otherwise expressly ordered by the court, and shall be returned to the custody of the North Carolina Department of Correction if representation is refused.

Dates of medical records:

---

Staff Attorney  
N.C. Prisoner Legal Services, Inc.  
Post Office Box 25397  
Raleigh, North Carolina 27611  
(919) 828-3508

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served by mailing a copy to the following address:

Corrections Division  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602

This the \_\_\_\_ day of \_\_\_\_\_, 1990.

---

NCPLS Staff Attorney

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Misc. 03#6 p. 78

FILED

SEP 24 1980

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

J. RICH LEONARD, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

IN THE MATTER OF )  
EASTERN DISTRICT PRISONER ) PROTECTIVE ORDER  
REPRESENTATION PLAN )

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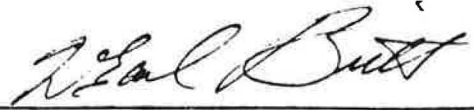
Pursuant to the Eastern District Prisoner Representation Plan agreed to between the Office of the Attorney General and North Carolina Prisoner Legal Services (NCPLS) pertaining to certain relevant documents which will be made available to NCPLS without the formality of discovery to facilitate their preliminary investigation of lawsuits filed by inmates committed to the North Carolina Department of Correction against state employees and/or a state contractor, it is hereby ORDERED;

When pursuant to the aforementioned agreement counsel becomes aware of the existence of, the content of, or the identity of the maker of a confidential statement, they will not in any manner divulge such information to the potential inmate-client or any other person outside of those NCPLS staff who need to be involved in the decision whether to provide representation.

For the purposes of this Order, confidential statements are those which indicate that they were made by inmates who requested that their information be kept confidential. Counsel

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will treat as "confidential" any such statement so designated  
by the Office of the Attorney General.

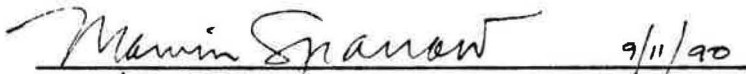


\_\_\_\_\_  
Chief Judge  
United States District Court

AGREED TO:



\_\_\_\_\_  
Lucien Capone III  
Special Deputy Attorney General



\_\_\_\_\_  
Marvin Sparrow  
Director, North Carolina Prisoner Legal Services

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

---

In Re: ASBESTOS-RELATED )  
LITIGATION ) COORDINATED PROCEEDING 81-1  
) OR  
) CP-81-1

FIRST PRE-TRIAL ORDER

Currently pending in the United States District Court for the Eastern District of North Carolina are at least twelve actions alleging claims for injury or death as a result of exposure to asbestos. A substantial number of additional actions are expected. Each case is brought against a large number of defendants, and many of the defendants in any one case are also defendants in several others. Considerable discovery and other preparation will be done by the parties in each action, and common questions of fact and law are presented.

Accordingly, the court is of the opinion that the orderly administration of justice and the interests, both in time and economy, of all parties concerned dictate that pre-trial proceedings in these cases should be coordinated. Following a first pre-trial conference held on August 7, 1981, and considering the views expressed by all parties, the court hereby enters this First Pre-Trial Order.

GENERAL ORGANIZATION

1. The civil actions listed on Schedule A attached to this order, and any other cases hereafter coordinated with these actions, shall be governed by the terms of this order. Any action which may hereafter be instituted or conducted in the United States District Court for the Eastern District of North Carolina and which alleges claims for injury, disease, death or loss of consortium as a result of exposure to asbestos shall be made a part of these Coordinated Proceedings and shall be governed by the terms of this order unless otherwise ordered.

2. The Clerk is directed to review complaints filed in civil actions in this district from this day forward in order to make an initial determination of whether the complaint seeks recovery for

J-1

damages from exposure to asbestos and therefore whether the action should be included in these Coordinated Proceedings. Upon making an initial determination that an action should be included in these Coordinated Proceedings, the Clerk shall forward a copy of the complaint to the undersigned judge and shall serve on plaintiff's attorney an order indicating that the action will be included in these proceedings and incorporating this order by attachment. The Clerk shall also send one copy of each new complaint to Liaison Counsel for the defendants as soon as it is determined that the action will be included in these proceedings.

3. Any attorney who represents a plaintiff in any action in these Coordinated Proceedings who hereafter files a complaint initiating a new asbestos-related action shall state in paragraph 1 of the complaint whether the action appears appropriate for coordination in these proceedings.

4. Any party wishing to object to the Clerk's initial determination that an action should or should not be included in these proceedings shall do so by a motion to this court.

5. These Coordinated Proceedings shall be known as "In Re: Asbestos-Related Litigation, CP-81-1," and the Clerk shall establish a master docket sheet and master file for maintaining records of these proceedings.

6. The Clerk is directed to maintain the official case file in each action included in these proceedings in the Raleigh Division office. The Clerk is to designate a deputy clerk to handle the asbestos litigation and shall make known the identity of this deputy clerk to counsel. The actions included in these proceedings will not be officially transferred to the Raleigh Division and will continue to be assigned to the division appropriate under Local Rule 3.03. The location of hearings or trials may vary depending on the convenience of the court, the parties, counsel and witnesses.

7. Filings with a general application to all or a substantial portion of the actions in these proceedings shall be filed under the CP-81-1 designation and docketed appropriately. Filings pertaining solely to individual cases shall be filed only in the individual case and should not carry the Coordinated Proceeding designation. A filing

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in the Coordinated Proceeding constitutes a filing in each asbestos case pending in the district at the time of filing unless the pleading on its face indicates that it applies only to specified cases.

8. In any filing in the Coordinated Proceedings, all references to "plaintiffs" or to "defendants" shall refer to any and all plaintiffs and any and all defendants mentioned in any action made a part of these proceedings, unless otherwise specifically stated.

9. Counsel for defendants are directed to confer and select two Liaison Counsel for the purpose of coordinating and simplifying communication with defendants. Similarly, counsel for plaintiffs shall confer and select a Liaison Counsel. The duties of Liaison Counsel may from time to time rotate among the many attorneys involved in these actions. It shall be the duty of Liaison Counsel to keep the court, the Clerk and opposing Liaison Counsel informed at all times of the identity of Liaison Counsel.

10. Liaison Counsel will be responsible for coordinating all matters appropriate for group coordination, including scheduling hearings and depositions, conducting discovery, and preparing and arguing motions. Counsel for any party to any action shall not be precluded from participating to the extent necessary to represent the individual interests of his or her client so long as said participation does not involve unnecessary duplication. Liaison Counsel shall serve as or designate a spokesman at all hearings, conferences and meetings with the court and shall designate an attorney with primary responsibility for conducting depositions whenever more than two parties are represented at such depositions.

11. In view of the nature of this litigation and the desirability of cooperation in and among the defendants, it is recognized that defendants may coordinate and cooperate among themselves. No communication or interaction between the parties in the course of coordinating these proceedings will be considered as evidence pertaining to any allegation of conspiracy in these cases or as a waiver of any privilege or protection otherwise available. However, no privilege not otherwise available will be created merely because the exchange or cooperation took place among defendants.

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#### FILINGS AND PLEADINGS

12. Court orders and notices of court hearings or trials shall be distributed by the Clerk to all counsel in the pertinent proceedings.

13. All future complaints shall include the plaintiff's Social Security Number and, to the extent possible, the dates of the alleged exposure of the plaintiff to asbestos products. Any attorney filing a complaint in an action included in these proceedings which does not contain plaintiff's Social Security Number is hereby directed to submit plaintiff's Social Security Number to the court and to Liaison Counsel for defendants within twenty days of service of this order.

14. Defendants shall have sixty days from the date of service of process in which to file answers, defenses, and non-responsive pleadings. Defendants are encouraged to develop a "Master Answer" for use in these proceedings which raises common defenses. Individual defendants would supplement the Master Answer with appropriate individual pleadings or motions.

#### DISCOVERY

15. Standard Interrogatories.

(a) Counsel for plaintiffs shall confer and prepare a Standard First Set of Interrogatories to defendants which shall be designed to obtain information common to the claims of most or all of the plaintiffs. Within thirty days of the entry of this order, plaintiffs shall serve the Standard First Set of Interrogatories on each defendant. Within sixty days after service of those interrogatories, each defendant shall file objections to individual interrogatories as appropriate or answers which shall be deemed applicable to each action which is now or may hereafter be included in these Coordinated Proceedings. Answers of defendants may refer to answers given to interrogatories in individual actions now coordinated in these proceedings. Counsel for plaintiffs may serve upon any defendant supplemental interrogatories as appropriate so long as they are not duplicative. In the event a defendant not previously named in these actions is named by a plaintiff, that plaintiff's counsel shall promptly inform Liaison Counsel for plaintiffs who will serve the Standard First Set of Interrogatories on such defendant.

(b) Counsel for defendants shall confer and prepare three Standard First Sets of Interrogatories, one applicable to the case of a living plaintiff, the second applicable in a death case, and the third applicable in the case of bystander exposure. Upon receipt of notice of the filing of a new action and its inclusion in these Coordinated Proceedings, Liaison Counsel for defendants will serve on the plaintiff the appropriate Standard First Set of Interrogatories applicable to his or her claim. Within sixty days of service of those interrogatories, each plaintiff shall provide answers or objections thereto and serve them on all parties. Individual defendants shall be permitted to address supplemental interrogatories to the plaintiff concerning matters peculiar to their individual interests to the extent they are not duplicative. Once any plaintiff's attorney has been served with the defendants' standard interrogatories, such interrogatories will be deemed to apply to all pending and after-filed cases without the necessity of further filing and service. However, in the case of a new plaintiff represented by an attorney who has not previously appeared for some other plaintiff, Liaison Counsel for defendants will serve a copy of the standard interrogatories on such counsel.

16. Each party shall have sixty days to respond to requests for admission and requests for production of documents.

17. Counsel for all plaintiffs shall provide to Liaison Counsel for defendants the following documents within sixty days after filing of the complaint: authorizations allowing defendants to obtain hospital and medical records, social security records, worker's compensation records, tax records, employment records, union records, military records, Veterans Administration records; along with all medical records concerning the plaintiffs which are in the possession of plaintiffs or plaintiffs' counsel. Defendants shall consult among themselves and prepare a standard request for such documents, which when served upon plaintiffs' counsel shall be deemed to apply to all pending and after-filed cases without the necessity of further filing and service in individual cases except upon a plaintiff's counsel who has not previously appeared on behalf of some other plaintiff.

18. Counsel for plaintiffs are directed to develop a comprehensive standard document request for each defendant, taking due care to avoid duplicative requests. Each defendant shall produce documents by serving one set of the requested documents on plaintiffs' Liaison Counsel who will permit other plaintiffs to inspect and copy such documents as they desire.

19. Depositions.

(a) All counsel of record shall be given notice of depositions and have the right to attend and participate. Examination on oral deposition shall be by a primary attorney and one backup attorney designated by Liaison Counsel for each side. Other counsel shall not be precluded from participating in the deposition to the extent necessary to represent the individual interest of his or her client as long as participation does not involve unnecessary duplication.

(b) All depositions taken shall be subject to the rule that all objections and motions to strike, except objections as to the form of the question, shall be reserved and shall be stated and heard at a subsequent date. At the request of the examining party, any objection as to form shall be clearly stated with the reason given, to enable the questioner to amend the question to correct any possible error as to form. An objection by one plaintiff or defendant shall be deemed to be an objection by all plaintiffs or defendants unless a disclaimer of the objection is made.

(c) During the questioning of a witness and while a question is pending, no counsel shall confer with the witness.

(d) A party noticing the deposition of an out-of-state witness who is not an expert shall accompany such notice with a statement of the name and complete address of the witness and a brief summary of the facts to which the witness is expected to testify. A party noticing the deposition of any expert witness shall accompany the notice with a statement of the expert's name, address, and field of expertise, and a brief summary of the facts and opinions to which the witness is expected to testify.

(e) Whenever any party notices the deposition of a witness who has not previously been deposed in asbestos-related litigation (not limited to asbestos-related litigation in this district), the

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opposing parties shall have the right to take a discovery deposition of such witness prior thereto, provided, however, that unless specifically waived, there shall be a hiatus of at least five days between the discovery deposition and the noticed deposition.

(f) Videotape depositions may be taken without leave of court, other than ordinary notice, in accordance with the following guidelines:

1. The deposition shall be stenographically transcribed and recorded by a qualified court reporter.

2. All parties to the deposition, including operators and court reporters, shall identify themselves for the record on camera at the beginning of the deposition, and the swearing or affirming of the witness shall be on camera. The party conducting the videotape deposition shall bear the expense of the original video tape and shall prepare a log index that includes the subject matter of the testimony cross-referenced to the reading on the digital counter on the videotape recorder, a list of exhibits and the names of all persons present at the deposition. The party conducting the deposition shall bear the cost of transcription.

3. At the termination of the deposition, the operator must certify on camera the accuracy and completeness of the videotape recording and the original of the recording shall remain in the possession of the court reporter transcribing it.

4. At the beginning of the examination by any counsel, counsel shall identify himself or herself by name and client within the field of vision. Subsequently, the camera shall focus exclusively on the witness and on any demonstrative material about which the witness is testifying.

5. Objections to the admissibility of testimony from the videotape deposition, except as to the form of the question, shall be reserved until some later date.

6. No part of the videotape deposition shall be released or made available in any way to any member of the public prior to entry of an order of the court upon notice to all counsel with right to object.

(g) The court is aware of the problems which have arisen in the past in connection with multi-jurisdictional depositions in asbestos litigation. These difficulties are not inherent in multi-jurisdictional depositions but rather have arisen because of the irresponsible and even childish behavior of counsel in other proceedings, as exhibited by the materials submitted with the memorandum of Raybestos-Manhattan, Inc., filed May 14, 1981 in the Whitehead case. In view of the coordination of these proceedings and the appointment of the primary attorneys for examining witnesses, the court expects counsel to be able to conduct multi-jurisdictional depositions in such a fashion as to save time and expense for all. Accordingly, the court will permit multi-jurisdictional depositions of: (a) witnesses having charge of records of associations, trade organizations, worker's compensation commissions, insurance companies, or other groups or entities whose records contain documents or whose personnel have knowledge of facts or evidence common to all pending asbestos cases; (b) state of the art experts; (c) corporate officials of any defendant; (d) government officials who possess knowledge of facts relevant to all asbestos cases. Notice of multi-jurisdictional depositions shall be at least thirty days prior to the date of the proposed deposition and shall include a statement of each jurisdiction in which the deposition has been or will be noticed. Liaison Counsel for the parties may apply to the court for relief from this provision in extraordinary circumstances.

20. Defendants shall coordinate their medical examinations of the plaintiffs so that there will not be more than one examination of each plaintiff by specialists in any given field of medicine unless otherwise agreed by the parties or ordered by the court. Defendants through Liaison Counsel shall to the extent practical provide thirty days' prior notice of the identity of the examining doctor and the time, place, scope of examination and the diagnostic tests proposed. Defendants shall pay all applicable costs for such examination, including plaintiffs' travel and accommodation expenses. Plaintiffs' counsel shall be furnished with copies of all reports that result from said examinations. Plaintiffs shall make available to the defendants'

doctor or doctors any medical records, available tissue slides or samples, x-rays, and other available diagnostic results or tools which might be used to establish a diagnosis or medical opinion.

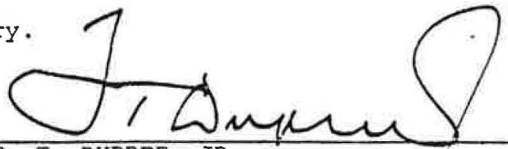
21. Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, discovery materials in these proceedings are not to be filed with the court unless and until submitted in support of a particular motion or used at trial.

MISCELLANEOUS

22. In all respects except where specifically altered by this order, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of this court shall govern these proceedings.

23. Liaison Counsel for plaintiffs and defendants shall confer and devise a method for the consecutive numbering of exhibits which will be applicable to all actions included in these Coordinated Proceedings.

24. Counsel are expected to cooperate, respond promptly and in good faith to interrogatories, requests to produce, motions, depositions and procedures adopted in or applicable to these actions, and to all orders of the court. Prior to making any motion regarding discovery, counsel are directed to confer with their opponents and make every attempt to resolve the matter without the intervention of the court. Counsel are admonished that the court will not hesitate to impose sanctions where necessary.

  
F. T. DUPREE, JR.  
UNITED STATES DISTRICT JUDGE

September 15, 1981.

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FILED

JUN 29 1983

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

J. RICH LEONARD, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

IN RE: ASBESTOS-RELATED  
LITIGATION

)  
)

CP-81-1

28  
28 O.B. #70

SECOND PRETRIAL ORDER

Upon further consideration of the asbestos-related litigation which is presently pending in this District, and in light of the experiences of the parties and the Court in preparing for the trials of the first four cases in these coordinated proceedings, the Court hereby concludes that in order to properly and judiciously prepare such cases for disposition, either by trial or settlement, it is necessary that additional guidelines for pretrial proceedings be set forth, and the Court enters this Second Pretrial Order supplementing its First Pretrial Order dated September 15, 1981.

It is therefore ORDERED that:

1. For cases filed subsequent to the entry of this Order and which are proper for inclusion in these coordinated proceedings, within 210 days after the filing of a complaint, each plaintiff shall file with the Court and serve on defendants a statement designating his co-worker, exposure and product identification witnesses (including the plaintiff) who will actually testify at trial along with identification of all other evidence upon which the plaintiff intends to rely to

K-1

establish the identification of each particular individual defendant as being a defendant to whose product or products the plaintiff was exposed (designating separately as to each defendant the separate portions of such other evidence allegedly applicable to that defendant); and with respect to the witnesses (including the plaintiff) so designated, providing the following information about each:

(a) Name, address and telephone number of the witness (name only for plaintiff).

(b) The asbestos-containing products which each witness can identify by brand name, if known, and if unknown, by generic name and, if he knows, specific application.

(c) For each such asbestos-containing product in (b) above, the defendant to which the witness attributes said product, if the witness thinks he knows the product's seller or manufacturer (and if not, to which defendant the plaintiff or the plaintiff's attorneys contend such product is attributed).

(d) For each such asbestos-containing product and defendant to which it is attributed pursuant to (b) and (c) above, to the best of the witness' knowledge, the dates, specific jobs, job sites, and specific locations within each job site where the witness contends said product was seen or used.

(e) As to each such witness, whether or not the witness has been deposed in any asbestos-related action;

and if so, the title of the case (or cases) in which the deposition was taken, the jurisdiction involved and the approximate date of the deposition or depositions.

2. For the cases included in these coordinated proceedings which were filed prior to the entry of this Order, all the requirements of paragraph 1 above shall apply, except that the times for providing the information called for in said paragraph shall run from the date of this Order and shall be as set forth in the attached Schedule A.

3. Any defendant to which no product is attributed by timely compliance with subparagraphs 1(a), 1(b) and 1(c) as to testimonial evidence to be presented by witnesses or by timely compliance with paragraph 1 with respect to identification of other evidence, shall, upon written application to the Court served upon plaintiff, be entitled to the entry of an Order dismissing plaintiff's action with prejudice, unless the plaintiff shall thereafter file with the Court and serve on defendants, within five days of service of defendant's application, a supplementary statement as to that defendant which fully complies with the above-required identification of evidence.

4. Defense motions for summary judgment on the basis of insufficient product identification or product exposure, statute of limitations or repose, or any other basis assertable

K-

based on plaintiff's disclosures, shall be served and filed no later than 30 days after the plaintiff is required to provide the information required in paragraphs 1, 2, and 3 above.

5. ~~Within 30 days after service of any~~ defendant's motion for summary judgment made on the basis of insufficient product identification or product exposure, the plaintiff must comply with the following requirements:

(a) A response to any motion for summary judgment must be served and filed.

(b) All affidavits proposed to be utilized by the plaintiff in opposition to motions for summary judgment must be served and filed.

(c) The plaintiff must serve and file a designation of discovery or other materials proposed to be utilized in opposition to said motions for summary judgment and must make specific references to the applicable portion or portions of the discovery or other materials which the plaintiff contends supports his opposition to the motion.

(d) The plaintiff individually shall be precluded from giving additional evidence relating to identification of or exposure to asbestos-containing products that is not disclosed either in accordance with Paragraph 1 of this Order or in response to a summary judgment filed pursuant to Paragraph 4.

The failure of the plaintiff to comply with the foregoing requirements of this paragraph as to any motion for summary judgment will result in the entry of an order by

this Court granting the motion. Upon a showing of extraordinary circumstances and good cause, the plaintiff may request the Court in the interest of justice to be allowed to supplement his responses to any such motion.

6. As soon as possible after the plaintiff is required to file responses to motions for summary judgment based upon insufficient product identification or product exposure, the Court will hear and decide said motions.

7. Upon the Court's notice that a case included in these coordinated proceedings is set for trial, the following pretrial procedures and deadlines shall apply:

(a) On or before 150 days prior to trial, the plaintiff is required, as to remaining defendants, to supplement the information earlier provided pursuant to paragraph 1.

The plaintiff shall be precluded from listing or calling as a witness any co-worker, exposure or product identification witness not designated at this time; and plaintiff shall also be precluded from using any other evidence to establish the identity of any particular individual defendant as being a defendant to whose product or products the plaintiff was exposed if such evidence is not identified in the manner set forth in paragraphs 1 and 2. Further, with regard to co-worker, exposure, or product identification witnesses (including the plaintiff himself) listed by the plaintiff by the applicable deadlines, if the plaintiff fails to provide with his designation any of the information required in subparagraphs 1(a)-(c) above, he shall be precluded from using said witness or said witness'



testimony for any purpose (and with regard to himself, that he be precluded from testifying with regard to product identification). That with regard to any co-worker, exposure and product identification witnesses designated, the plaintiff shall be bound by the product identification information provided under subparagraphs 1(b) and 1(c) above; and said witness (including the plaintiff) may not later be used by the plaintiff to identify any additional asbestos-containing products or product manufacturers.

Upon a showing of extraordinary circumstances and good cause, the plaintiff may request the Court in the interest of justice, to be relieved from the preclusive effects of this paragraph.

(b) On or before ~~150 days prior to trial~~, the ~~plaintiff is required to narrow~~ and reduce the number of expert witnesses listed as state-of-the-art witnesses by designating those state-of-the-art witnesses who plaintiff reasonably anticipates will actually testify at trial.

(c) On or before ~~150 days prior to trial~~, the ~~plaintiff is required to narrow~~ and reduce the number of expert witnesses listed as diagnosing witnesses by designating those diagnostic witnesses who plaintiff reasonably anticipates will actually testify at trial.

(d) On or before ~~150 days prior to trial~~, the ~~plaintiff is required to narrow~~ and reduce the physicians listed as treating physicians by designating those treating physicians

who plaintiff reasonably anticipates will actually testify at trial.

(e) In addition to the witness designations required in subparagraphs (a) through (c) above, on or before ~~150 days prior to trial~~, plaintiff is required to designate ~~all other witnesses who plaintiff reasonably anticipates will actually testify at trial~~; and with regard to each such witness, the subject of his or her testimony; if he or shall will be offered as an expert, and if so, a statement of the witness' opinions and a summary of the supporting facts and grounds for each such opinion.

(f) On or before ~~150 days prior to trial~~ the ~~plaintiff is required to designate which witnesses will testify in person and which will testify by deposition~~; and in the event of testimony by deposition, the plaintiff is required to provide the date and place of the deposition and whether or not the deposition will be by videotape.

(g) That each party shall require the party's diagnostic witnesses to have examined all x-rays, medical records, tissue slides, or any other materials which serve as a basis for the witness' testimony and which are known to the party or the party's attorneys at the time of the witness' discovery deposition; and that each such witness be prepared to give his final trial opinion as of the date of taking of his discovery deposition by an opposing party to the extent that he can do so on such information and materials then available. If new or additional information or materials become known to a party

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or a party's attorneys after the date of a witness' discovery deposition, opposing counsel will be immediately notified and will be allowed to depose, or redepose, as the case may be, each such expert with respect to the new information or materials if the new information or materials in any way changes the opinion of the witness.

(h) That on or before ~~350 days prior to trial,~~ ~~the plaintiff is required to designate from his master trial exhibit list~~ (i.e., from those exhibits which apply to asbestos litigation generally, but not exhibits uniquely applicable to a particular plaintiff) those ~~specific exhibits~~ that he reasonably anticipates will be offered at trial, including any other such trial exhibits which do not appear on the master list which plaintiffs have heretofore furnished to defendants; and as to each exhibit so designated, state which defendant or defendants the exhibit will be introduced against. With respect to any exhibits known to ~~plaintiff~~ or his attorneys which are not requires to be designated pursuant to the above provisions of this subparagraph, such exhibits shall be identified by plaintiff to defendants no later than ~~30 days~~ before the cut-off of discovery as provided for in paragraph 7(j) of this Order; and with respect to the exhibits so identified, the plaintiff shall designate the ones which he reasonably anticipates will actually be offered at trial no later than the date of the attorneys pretrial conference as provided for in paragraph 7(1) of this Order.

(i) Within 20 days after defendants have been served with the plaintiff's designations included in paragraphs 7(a) through (g) above, defendants shall designate their state-of-the-art witnesses, diagnostic witnesses, and any treating physicians who they reasonably anticipate will actually testify at trial. Further, the defendants are required to designate which of these witnesses will testify in person and which will testify by deposition; and if any expert witness will testify by deposition, the defendants are required to state the date and place of the deposition and whether the deposition was or will be by videotape.

Additionally, within 20 days after the defendants have been served with the plaintiff's exhibit designation from his master trial exhibit list (paragraph 7(h) above) of those specific exhibits that he reasonably anticipates will be offered at trial, along with the designation as to which defendant or defendants such exhibits will be offered against, the defendants shall designate those exhibits which apply to the asbestos litigation generally, that they reasonably anticipate will actually be offered into evidence at trial. With respect to any exhibits known to defendants or their attorneys which are not required to be designated pursuant to the above provisions of this subparagraph, such exhibits shall be identified by defendants no later than 30 days before the cut-off of discovery as provided for in paragraph 7(j) of this Order; and with respect to the exhibits so identified, the defendants shall designate the ones which they reasonably anticipate will

actually be offered into evidence at trial no later than the date of the attorneys pretrial conference as provided for in paragraph 7(1) of this Order.

(j) The plaintiff and defendants will be precluded from listing or calling at trial any witness, or offering into evidence at trial any exhibits, not designated in accordance with the requirements of subparagraphs (a) through (h) above. Upon a showing of extraordinary circumstances and good cause, a party may request the Court in the interest of justice to be allowed to list and call a witness, or offer an exhibit, not designated as required hereinabove.

(k) All discovery must be completed no later than 90 days prior to trial.

(l) All other motions by any part (including additional motions for summary judgment), except motions relating to the admissibility of evidence at trial, must be filed and served no later than 70 days prior to trial; responses in opposition to such motions must be filed and served within 20 days of the filing and service of the motions; and the Court will hold a hearing on all such motions as soon as possible after responses are due. Motions relating to the admissibility of evidence at trial shall be governed by the applicable provisions of the Local Rules for the Eastern District of North Carolina.

(m) The attorneys pretrial conference required by Local Rule 25.02 shall be held no later than 40 days prior to trial.

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(n) The Court will schedule ~~a final pre-trial conference~~ pursuant to Local Rule 25 ~~to be held approximately 30 days prior to trial.~~

(o) ~~The parties shall comply with the provisions of Local Rule 26 no later than 10 days prior to trial.~~

(p) Except as modified hereinabove, all requirements of this Court's Local Rules shall apply.

AND IT IS SO ORDERED.

This 29 day of June, 1983.

  
\_\_\_\_\_  
J. RICH LEONARD  
United States Magistrate

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SCHEDULE A

	<u>TRIAL DATE</u>	<u>PARAGRAPH ONE COMPLIANCE</u>	<u>PARAGRAPH SEVEN COMPLIANCE</u>
81-20-CIV-4 (Stocks)	January 9, 1984	Not Applicable	August 9, 1983
81-14-CIV-2 (Eason)	February 27, 1984	Not Applicable	Sept. 27, 1983
81-16-CIV-2 (Silver)	April 9, 1984	Not applicable	Nov. 9, 1983
81-46-CIV-4 (Hulon)	June 4, 1984	September 1, 1983	January 4, 1984
81-716-CIV-5 (Choplin)	August 6, 1984	October 1, 1983	March 6, 1984
81-112-CIV-7 (Craig)	September 10, 1984	November 1, 1983	April 10, 1984
81-31-CIV-2 (Morrell)	November 5, 1984	December 1, 1983	June 5, 1984
81-89-CIV-4 (Sasser)	December 3, 1984	January 1, 1984	July 3, 1984
82-01-CIV-2 (Stotesburry)	NOT SET	February 1, 1984	NOT SET
82-07-CIV-7 (Massie)	NOT SET	February 1, 1984	NOT SET
82-18-CIV-4 (Simmons)	NOT SET	February 1, 1984	NOT SET
82-175-CIV-5 (Betts)	NOT SET	March 1, 1984	NOT SET
82-27-CIV-4 (Seamester)	NOT SET	March 1, 1984	NOT SET
82-14-CIV-8 (Bland)	NOT SET	March 1, 1984	NOT SET
82-509-CIV-5 (Smith)	NOT SET	April 1, 1984	NOT SET
82-45-CIV-4 (Creech)	NOT SET	April 1, 1984	NOT SET
82-46-CIV-4 (Waters)	NOT SET	April 1, 1984	NOT SET
82-49-CIV-7 (Jernigan)	NOT SET	May 1, 1984	NOT SET
2-76-CIV-7 (Thompson)	NOT SET	May 1, 1984	NOT SET
2-82-CIV-7 (Shaver)	NOT SET	May 1, 1984	NOT SET
82-50-CIV-3 (Carter)	NOT SET	June 1, 1984	NOT SET
82-53-CIV-3 (Lucas)	NOT SET	June 1, 1984	NOT SET
82-46-CIV-8 (Wilkins)	NOT SET	June 1, 1984	NOT SET
82-92-CIV-4 (Lancaster)	NOT SET	July 1, 1984	NOT SET
82-115-CIV-7 (Burr)	NOT SET	July 1, 1984	NOT SET
82-119-CIV-7 (Womac)	NOT SET	July 1, 1984	NOT SET
82-139-CIV-7 (Fowler)	NOT SET	August 1, 1984	NOT SET
82-38-CIV-2 (Stallings)	NOT SET	August 1, 1984	NOT SET
83-04-CIV-2 (Davis)	NOT SET	August 1, 1984	NOT SET
83-13-CIV-8 (Tyler)	NOT SET	September 1, 1984	NOT SET
83-21-CIV-8 (Waters)	NOT SET	September 1, 1984	NOT SET
83-22-CIV-8 (Moore)	NOT SET	September 1, 1984	NOT SET
83-30-CIV-7 (Canady)	NOT SET	October 1, 1984	NOT SET
83-18-CIV-2 (Barnes)	NOT SET	October 1, 1984	NOT SET
83-67-CIV-4 (Humphrey)	NOT SET	October 1, 1984)	NOT SET

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
OFFICE OF THE CLERK

J. RICH LEONARD  
CLERK

REPLY TO:

- ( ) P. O. BOX 25670  
RALEIGH, N.C. 27611  
919-755-4370 (FTS 672-4370)
- ( ) P. O. BOX 43  
FAYETTEVILLE, N.C. 28302  
919-483-9509 (FTS 670-7316)
- ( ) P. O. BOX 1336  
NEW BERN, N.C. 28560  
919-638-8534
- ( ) P. O. BOX 338  
WILMINGTON, N.C. 28402  
919-343-4663 (FTS 671-4663)

\_\_\_\_\_  
(Date)

TO: COUNSEL OF RECORD IN \_\_\_\_\_

FROM: J. RICH LEONARD, CLERK

RE: Time period for filing motions

The court has directed me to inform you that this action will proceed by motions for judgment on the pleadings pursuant to Rule 12(c), Federal Rules of Civil Procedure. Counsel for the plaintiff must file a motion for a judgment reversing or modifying the decision of the Secretary, or remanding the case for a rehearing. If counsel for the defendant opposes plaintiff's motion, a motion must be filed for a judgment affirming the decision of the Secretary.

Plaintiff's motion must be filed within sixty days from the date of this letter, accompanied by a supporting memorandum in compliance with Rule 5 of the Local Rules of Practice and Procedure for the Eastern District. Additionally, the memorandum must identify specific portions of the record which counsel contends justify the action sought.

Defendant's motion must be filed within sixty days after the filing of plaintiff's motion and memorandum. The Memorandum of defendant must also specifically identify portions of the record that may justify a decision affirming the Secretary.

Failure to comply with these instructions may result in dismissal or other appropriate action by the court.

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SERVED ON:

L



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
OFFICE OF THE CLERK  
June 11, 1990

Example

J. RICH LEONARD  
CLERK

REPLY TO:  
(X) P. O. BOX 28670  
RALEIGH, N.C. 27611  
919-755-4370 (FTS 672-4370)  
( ) P. O. BOX 43  
FAYETTEVILLE, N.C. 28302  
919-483-9509 (FTS 670-7316)  
( ) P. O. BOX 1338  
NEW BERN, N.C. 28560  
919-638-8534  
( ) P. O. BOX 338  
WILMINGTON, N.C. 28402  
919-343-4663 (FTS 671-4663)

TO: All Counsel of Record

FROM: J. Rich Leonard, Clerk  
U. S. District Court  
Raleigh, N. C.

Re: Gerald E. Creech and Brenda G. Creech  
v. Appellants  
Wachovia Bank & Trut Company  
James M. Clark  
Larry Parker and Brenda Parker  
Appellees

Case No. 90-302-Civ-5-BR

This is to advise counsel that the above captioned record on appeal was filed in this office June 11, 1990. The action has been assigned to Judge Britt.

The record will be forwarded to the Judge for ruling as soon as briefs are filed in accordance with Rule 8009, Bankruptcy Rules.

J. RICH LEONARD, Clerk

By

\_\_\_\_\_  
Deputy Clerk

cc.

Dean R. Davis  
Attorney at Law  
P. O. Box 1761  
Wilmington, N. C. 28402

Richard Burrows  
Attorney at Law  
P. O. Box 816  
Wallace, N. C. 28466

M