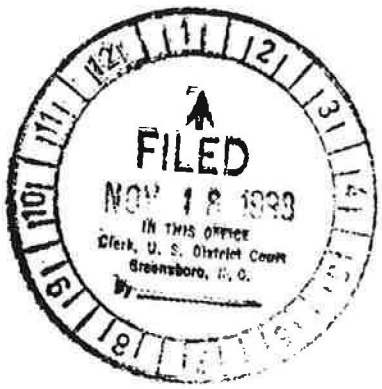


THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CJRA PLAN

Effective December 1, 1993

CJRA PLAN

OF THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Introduction

The Middle District of North Carolina adopts this expense and delay reduction plan ("CJRA Plan") for the purpose of facilitating the "just, speedy, and inexpensive resolutions of civil disputes." See the Civil Justice Reform Act of 1990, 28 U.S.C. § 471, et seq. Last year, the CJRA Advisory Group for this district found that the court's civil docket is seriously backlogged. It also found that the overriding cause of delay in the civil docket is the tremendous growth of the criminal docket since 1989 and the increased amount of judge-time now being consumed by criminal cases. We agree with these assessments. The court has no control, however, over the number of criminal defendants prosecuted in this district by the United States Attorney or the continuing federalization of criminal law by the Congress. Further, the court is required by law to give priority to criminal cases over civil cases. Thus, the court has no direct means of addressing the major cause of the civil backlog.

Nonetheless, the court has carefully studied the manner in which civil cases in this district proceed through pretrial, discovery, motions, and trial. We have considered alternatives to our current practices. As a result of this review, the court

adopts a CJRA Plan that radically changes the local rules of this court for pretrial management of civil cases. Our CJRA Plan and local rule amendments account for, and are designed to operate within, the revised framework for civil litigation created by the December 1, 1993 amendments to the Federal Rules of Civil Procedure.

A. The Plan: Ten Fundamental Principles

Our CJRA Plan consists of ten principles that have been followed by this court in amending its local rules for pretrial, discovery, summary judgment, and trial. These principles underlie the local rule amendments set out in Appendix A. The ten principles are as follows:

1. In all civil cases (except for a few categories of exempted cases), there should be an early face-to-face meeting of the parties, through lead counsel, to discuss a discovery plan and other important pretrial issues. The meeting may be by telephone only if the offices of lead counsel are separated by more than 150 miles. The topics of discussion will include (a) all matters listed in Federal Rules 16[b] and [c] and 26[f], (b) the possibility of settlement, (c) the appropriate differentiated case management track for the case under amended Local Rule 204, (d) the timing of mediation under the local rules and the identity of any agreed upon mediator, (e) the nature of the documents and information believed necessary for the case, (f) issues of burden and relevance and the discoverability of different types of

documents, (g) a preliminary schedule for depositions, to be updated at reasonable intervals upon communication between the parties, and (h) whether or not each party consents to the trial jurisdiction of a magistrate judge. The parties cannot "stipulate out" of this meeting of the parties, mandated by new Federal Rule 26(f).

2. An initial pretrial order should be entered by the court on the basis of (a) a joint Federal Rule 26(f) Report submitted by the parties if they have reached agreement on a discovery plan, or (b) separate Rule 26(f) Reports and an in-court initial pretrial conference if they have failed to reach agreement. The initial pretrial order will set the end-date for discovery and control the conduct of the litigation.

3. Immediately after entry of the initial pretrial order, the clerk should set a firm trial date in the action and give notice thereof. Ordinarily, to provide adequate notice of trial and time for ruling on any dispositive motions, the trial date will be set for a time not earlier than four months after the close of discovery.

4. Discovery should be governed by Differentiated Case Management ("DCM"), as set out in amended Local Rule 204. An objective of DCM is to reduce the amount of discovery conducted in most civil cases. The DCM program will have three management tracks: Standard, Complex, and Exceptional. In the Standard track, each side of the litigation will presumptively be limited to 4 depositions and each party to 15 interrogatories (including

subparts) and 15 requests for admission during a 4 month discovery period. The Complex track will permit 7 depositions per side and 25 interrogatories and requests for admission per party in a 6 month discovery period. The Exceptional track, reserved for cases of unusual complexity, will permit 10 depositions per side and 30 interrogatories and requests for admission per party in an 8 month discovery period. In all tracks, expert discovery must be accomplished within the discovery period, and disclosures regarding experts will be governed by amended Federal Rule 26(a)(2) (except for its timing provisions).

5. The amended local rules should specifically state that the court expects counsel to cooperate and be courteous in all phases of discovery. As a part of their Federal Rule 26(f) Report, the parties must formulate a preliminary deposition schedule; they must continue to communicate throughout discovery to update the schedule. The amended local rules will include specific guidelines concerning the manner in which depositions are to be conducted. (See amended Local Rule 204[b][2].)

6. The amended local rules should create procedures for expedited resolution of some discovery disputes without the delays and costs that result from full briefing of the issues. If the parties agree that the matter can be ruled upon by a magistrate judge in a one-half hour telephone conference or in a one hour in-court hearing, without briefing, the court will promptly schedule such a conference or hearing. (See amended Local Rule 204[d].) Even in these expedited proceedings, discovery sanctions will be

imposed if the position taken by a party is not substantially justified.

7. In a wide range of civil cases (contract, tort, civil rights, labor, property rights, antitrust, banking, securities, and environmental claims, except where the plaintiff appears pro se), the parties should hold a mediated settlement conference during the discovery period. The mediation rules (amended Local Rules 601 et. seq.) will be similar to those used in the state courts of North Carolina. Each side will pay a portion of the mediator's fee for the mediation conference, which ordinarily will require one day's time or less. Although the local rules will set out the procedure for mediation, by agreement the parties may alter these procedures (except for the requirement that mediation take place during discovery). The court will discontinue its arbitration program. In the last several years, since the Congress enacted legislation requiring that dispositive motions be ruled on before arbitration can occur, arbitration has been less effective in saving time or money for litigants or in deflecting work from the court.

8. Summary judgment motions should be due shortly after the close of the discovery period, but their pendency should not delay trial of the action. If, by the time set for trial, the court has been unable to reach any pending motion, the court will rule on the motion at the outset of trial. Summary judgment briefs will be required to be drawn in accordance with specific page limitations and a particular format in order to clearly demonstrate the

existence or nonexistence of genuine factual disputes. (See amended Local Rule 206.)

9. Final pretrial proceedings should be simplified. There will be no final pretrial conference unless specifically called for by the court, and no final pretrial order will be entered. The parties will prepare their case for trial by (a) complying with the final pretrial disclosure provisions of new Federal Rule 26[a][3] and (b) filing trial briefs, with proposed jury instructions or proposed findings and conclusions, 20 days before trial. (See amended Local Rule 207.)

10. Cases should be set for trial on the calendar of the assigned judge or on a master calendar to be called by two or more district judges. A magistrate judge may assist with the master calendar, although no case may be referred to the magistrate judge for trial without the parties' consent. Cases not reached on the calendar, if any, will be given priority on a following calendar.

2. Implementation of the CJRA Plan

The court does not intend that this CJRA Plan become a continuing source of authority that regulates practice in this court. The Federal Rules of Civil Procedure and our local rules should be the controlling authorities, without a requirement that litigants look to a CJRA Plan as yet a third repository of rules. Accordingly, although the court adopts this CJRA Plan, litigants should examine the federal and local rules to determine what is required of them. This plan is implemented by the local rule

amendments which are attached as Appendix A. (Appendix B is a copy of the existing local rules, with amendments shown by red-lined deletions and underlined additions.)

The court formally adopts this CJRA Plan as of December 1, 1993. It will also adopt the amended local rules set out in Appendix A effective that date. It is important that the local rule amendments take effect on that date because the new Federal Rule amendments become effective December 1. The local rule amendments are coordinated with the new Federal Rules to create a unified procedure for civil pretrial and trial.

By the terms of the order adopting the amended local rules, the amended rules are applicable in all respects to civil cases filed on or after December 1, 1993. As to civil cases already pending on that date, some of the new rules apply, depending upon the stage of litigation. Amended Local Rules 203 (initial pretrial proceedings), 204 (discovery and DCM), and 205 (mediation) do not apply to any pending cases, unless the parties so stipulate or the court so orders in a specific case. In cases in which the discovery period has not closed before December 1, amended Local Rules 206 and 207 apply fully. In cases in which summary judgment motions are pending on December 1, Local Rules 206(e) and (f) and 207 apply. In cases in which there are no pending summary judgment motions but a final pretrial conference has not yet been conducted, the provisions of Local Rule 207 apply.

Under Federal Rule 83, a district court may adopt or amend local rules "after giving appropriate public notice and an

opportunity to comment." The extensive work of the Advisory Group supports this CJRA Plan and the resulting local rule amendments. The Advisory Group's proceedings have been public and its Report constitutes "comment." Accordingly, the court will (by separate order) direct that the local rule amendments made a part of this CJRA Plan take effect on December 1, 1993. Soon after December 1, however, the court will submit to its Local Rules Advisory Committee for additional comment both the local rule amendments described in this plan and also a number of other amendments. By June 1, 1994, the court will expect to have received comment on all local rule amendments, and may make modifications based on such comment.

3. Response to Recommendations of the Advisory Group

In its Report of December 10, 1992, the Advisory Group made twelve recommendations for consideration by the court in formulating a plan for cost and delay reduction. These recommendations may be summarized as follows:

1. Discovery control could be improved by (a) clearly stating in the local rules the obligations of counsel to be cooperative and courteous, and (b) amending Local Rule 205 to allow nonstenographic depositions upon notice or stipulation;

2. Initial pretrial proceedings could be improved by (a) providing for the automatic disclosure, without discovery request, of certain information, (b) adopting a program of Differentiated Case Management, and (c)-(g) inquiring at pretrial whether the

parties will consent to the trial jurisdiction of a magistrate judge, or stipulate to arbitration, mediation, or appointment of a special master;

3. Federal Rule 16(b) should be amended to key the time for entry of the initial pretrial order to the time when the case becomes "at issue" rather than the time when the complaint was filed;

4. Local Rule 207 should be amended to require disclosure of information regarding expert witnesses;

5. Final pretrial procedures should be amended to include inquiry whether the parties wish to consent to trial by a magistrate judge or to reference to arbitration, mediation, or a special master. Also, settlement possibilities should be discussed as a part of the final pretrial conference;

6. The court should consider adopting a general rule concerning Alternate Dispute Resolution ("ADR"). In particular, the Advisory Group recommended consideration of the state court rules for mediation;

7. Local Rule 107 should be amended to limit briefs to 35 pages in length;

8. The local rules should be amended to encourage greater use of telephone conferences with the court or among counsel;

9. The local rules should be amended to give the court discretion to require the attendance of parties or insurers at settlement conferences or other proceedings;

10. A third magistrate judge should be provided to the Middle District;

11. A second law clerk should be provided to magistrate judges; and

12. A staff law clerk should be provided to the district to assist with prisoner cases.

Obviously, these recommendations have been important to the court. Most of the recommendations are reflected in the principles of pretrial management adopted by the court. Recommendations 1(a), 2(b)-(g), 6, 7, 8, and 9 are being implemented by the court. (See amended Local Rules 204[b][1], 204[a], new Forms 1 and 2, 601 et seq., 206[c], 204[d], and 207[c].) Recommendations 10, 11, and 12 are beyond the power of the district court to implement by means of a CJRA plan, but the court concurs with the recommendations and will pursue them by appropriate means. Recommendations 1(b), 3, and 4 need not be acted upon by local rule in view of amended Federal Rules 30(b), 16(b), and 26(a)(2). Recommendation 5 is mooted by the court's revision of its local rules for final pretrial preparation. (See amended Local Rule 207.) The court decides not to accept Recommendation 2(a) for the adoption of a requirement for automatic disclosure, without discovery request, of certain information. Some district courts have recently adopted such a rule. This court believes that it is well advised to wait for results from these experimental programs before considering such a requirement.

In sum, the recommendations of the Advisory Group have been most helpful to the court, and the court wishes to express its thanks to the members of the Group and particularly to its chairperson, William K. Davis, Esq. As a part of its proceedings, the Advisory Group conducted a survey of the attorneys who practice before this court. Attorneys were invited to make general comments. The comments of counsel have been influential in the court's formulation of this CJRA Plan, and the court expresses its gratitude to those attorneys who took the time to offer suggestions.

4. Compliance with the CJRA

The Civil Justice Reform Act requires the court to consider certain matters in formulating a CJRA Plan. The court has in fact considered all of the matters mandated by statute.

The court has adopted Differentiated Case Management. (See 28 U.S.C. § 473[a][1] and amended Local Rule 204[a].) The court has considered the guidelines, principles, and techniques set out in 28 U.S.C. § 473(a)(2)-(6) and (b)(1)-(6). The principles adopted by the court, and the amended local rules implementing these principles, incorporate the techniques described in § 473(a)(2),(5), and (6) and (b)(1),(2),(5), and (6). (See amended Local Rules 203[c] and [d], 204[a], 206, 207, 204[c], 205, 203[b], 203[c], and 207[c].) Other techniques mentioned by the statute are not included because the court believes that its pretrial and trial procedures, as amended by its CJRA plan, are adequate and would not be improved by the inclusion of such other techniques.

Conclusion

The court believes that this CJRA Plan, and the local rule amendments which implement it, will significantly reduce expense and delay in civil litigation in this district. Of course, the major cause of delay found by the Advisory Group, the recent expansion of the criminal docket, cannot be remedied by changes in civil procedure. Further, a second cause of delay, the extended vacancy in a district judgeship and the need for a third magistrate judgeship, cannot be addressed by a CJRA Plan. Nonetheless, the CJRA Plan adopted by the court makes significant changes in the way civil cases are managed by the court and the parties during initial pretrial proceedings, discovery, summary judgment motions, and final pretrial preparations. We believe these changes will improve the administration of civil justice in the Middle District of North Carolina.

We express our great appreciation to the lawyers and laymen who serve on the court's CJRA Advisory Group. The Advisory Group's Report of December 10, 1992 has already proven to be a valuable asset of the court and will undoubtedly continue to be an important resource for long-range planning. The Advisory Group has a continuing assignment. It is required each year to report to the court its recommendations regarding litigation management practices. The court will make annual assessments of its criminal and civil dockets in consultation with the Advisory Group. 28 U.S.C. § 475. We look forward to this association with dedicated members of the bar and the public.

This CJRA Plan is not a standing order or local rule of the court. Its provisions will be implemented by the adoption of local rule amendments contemporaneously with the adoption of this plan. This CJRA Plan is adopted this 18th day of November, 1993.

Frank W. Bullock, Jr., Chief Judge
United States District Court

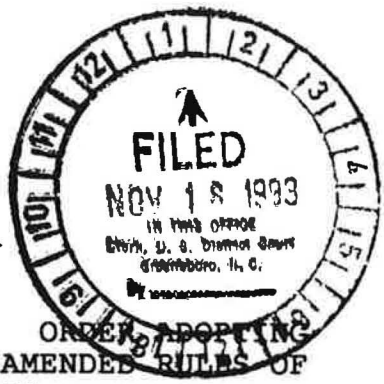
N. Carlton Tilley, Jr., Judge
United States District Court

William L. Osteen, Sr., Judge
United States District Court

Eugene A. Gordon, Senior Judge
United States District Court

Hiram H. Ward, Senior Judge
United States District Court

Richard C. Erwin, Senior Judge
United States District Court



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

IN THE MATTER OF RULES OF PRACTICE AND PROCEDURE IN THIS COURT	)))	ORDER ADOPTING AMENDED RULES OF PRACTICE AND PROCEDURE

For good cause appearing to the court,

IT IS ORDERED that:

1. The attached amended Rules of Practice and Procedure in the United States District Court for the Middle District of North Carolina be and they hereby are adopted, effective at 12:01 a.m., on the 1st day of December, 1993. At that time these amended local rules shall supersede present Local Rules 204, 205, 206, and 207, and apply fully to all civil cases filed on or after December 1. The application of the amended local rules to cases pending on December 1 shall be as set out below in paragraph 4 of this order.

2. The adoption of amended Local Rules 203, 204, 205, 206, and 207 and the implementation of the court's CJRA Plan of December 1, 1993 requires the court to make additional changes to its local rules. Rules 601 et. seq. regarding court-annexed arbitration are withdrawn (except as to pending arbitration cases) and deleted since the court will require mediation in most civil cases and the current arbitration program will be ended. Cases currently in arbitration shall proceed under the old arbitration rules unless the parties stipulate to mediation or the court orders mediation on the motion of any party. The new mediation rules will now appear as Local Rules 601 et. seq.

3. The adoption of amended Local Rules 203, 204, 205, 206, and 207 requires some renumeration and other changes in the existing local rules. Existing Local Rule 202 (Filing of Papers and Proof of Service) is withdrawn and deleted as unnecessary. Existing Local Rule 203 (Motion Practice) is renumbered as Local Rule 202. Existing Local Rules 204 (Initial Pretrial Order), 205 (Discovery), 206 (Time for Filing Dispositive Motions), and 207 (Final Pretrial Conference) are withdrawn and deleted since they are fully replaced by amended Local Rules 203, 204, 205, 206, and 207. Old forms 1 and 2 are withdrawn and replaced by new forms 1 and 2.

4. Amended Local Rules 203, 204, 205, 206, 207, and 601, et. seq. are fully applicable to all civil cases filed on or after December 1, 1993. As to civil cases already pending on that date, some of the amended rules apply, depending upon the stage of litigation. Amended Local Rule 203 (Initial Pretrial Proceedings), 204 (Discovery and Differentiated Case Management), and 205 and 601 et. seq. (Mediation) do not apply to any pending case unless the

parties so stipulate or the court so orders in a specific case. In cases in which the discovery period has not closed before December 1, 1993, amended Local Rules 206 and 207 apply. In cases in which summary judgment motions are pending on December 1, amended Local Rules 206(d) and (e) and 207 apply. In cases in which there are no pending summary judgment motions but no final pretrial conference has yet been conducted, the provisions of amended Local Rule 207 apply. By specific order entered in a case, the court may alter these rules of application as to that case.

5. These amended local rules are adopted in compliance with and pursuant to the authority of Fed. R. Civ. P. 83.

This the 16th day of NOVEMBER 1993.

Frank W. Bullock, Jr., Chief Judge
United States District Court

N. Carlton Tilley, Jr., Judge
United States District Court

William L. Osteen, Sr., Judge
United States District Court

Eugene A. Gordon, Senior Judge
United States District Court

Hiram H. Ward, Senior Judge
United States District Court

Richard C. Erwin, Senior Judge
United States District Court

APPENDIX A

RULE 203

INITIAL PRETRIAL PROCEEDINGS

(a) **Requirement for Initial Pretrial Order.** There shall be an initial pretrial order entered pursuant to the provisions of Fed. R. Civ. P. 16(b) and 26(f) in every civil case, except in:

(1) Social Security cases and other actions for review of administrative decisions;
(2) Prisoner petitions;
(3) Summons or subpoena enforcement proceedings;
(4) Bankruptcy appeals;
(5) Government collection cases and forfeiture proceedings; and
(6) Cases brought by pro se plaintiffs.

The above categories of cases are exempted from the timing-and-sequence-of-discovery provisions of Rule 26(d), and the meeting of parties described in Rule 26(f). Category (1),(2),(3), and (4) cases require no pretrial management and are ready for adjudication on the pleadings of the parties, unless the court orders otherwise. Category (5) cases (government collections and forfeitures) shall be governed by a 90-day period of discovery from the filing of answer or other response, with dispositive motions due in accordance with Local Rule 206. Category (6) cases (brought by pro se plaintiffs) shall be governed by a scheduling order entered by the court after an initial pretrial conference, unless the court determines, in its discretion, that no conference is necessary.

(b) **Meeting of the Parties.** Within the time set by Fed. R. Civ. P. Rule 16(b), the clerk shall schedule an initial pretrial conference and give at least thirty (30) days notice thereof. The parties must hold their Fed. R. Civ. P. 26(f) meeting at least 14 days before the scheduled initial pretrial conference and submit to the court their report within 10 days thereafter. The parties may not stipulate out of the Rule 26(f) meeting but must meet to discuss a proposed discovery plan. At the Rule 26(f) meeting, the parties shall discuss:

(1) All matters identified in Rules 16(b) and (c) and 26(f),
(2) The possibility of settlement,
(3) The proper management track for the case under Local Rule 204,
(4) The timing of any mediated settlement conference under Local Rules 205 and 602, and the identity of any agreed-upon mediator.
(5) The nature of the documents and information believed necessary for the case,
(6) Issues of burden and relevance and the discoverability of differently types of documents, and
(7) A preliminary schedule for depositions, to be updated at reasonable intervals upon communication

between the parties.

(8) The decision of each party whether or not to consent to the trial jurisdiction of a magistrate judge.

Lead counsel for each party must meet and discuss the above-listed matters in a face-to-face meeting unless the offices of the parties' lead counsel are separated by more than 150 miles, in which event lead counsel may conduct the conference by telephone. In the absence of agreement to the contrary, the meeting of the parties shall be held in the office of the attorney nearest the court location where the initial pretrial conference is scheduled.

The parties shall jointly prepare a Rule 26(f) Report (Local Rule Form 1) if they are in agreement concerning a discovery plan for the case. If they do not agree, each shall file a separate Rule 26(f) Report (Local Rule Form 2), setting forth its position on disputed matters. The Reports must be filed with the court within 10 days of the Rule 26(f) meeting.

(c) **Initial Pretrial Order by Conference.** If the parties are unable to reach agreement on a discovery plan and therefore submit separate Rule 26(f) Reports (Form 2), they shall appear for the scheduled initial pretrial conference. Each party shall personally appear or be represented by an attorney who has full authority to bind the party on the matters for discussion at the conference. After hearing from the parties, the court will enter an initial pretrial order that will control the conduct of the litigation.

(d) **Initial Pretrial Order upon the Joint Rule 26(f) Report.** If the parties reach agreement on a discovery plan and submit a joint Rule 26(f) Report, the court will enter an order on the basis of the proposed plan as submitted or as modified by the court. The parties shall submit to the clerk sufficient copies of the joint Report so that all parties can receive a copy after approval by the court. The court may, on its own motion, modify the plan if it finds in its discretion that the plan provides for an excessive amount of discovery or the parties selection of a case management track under Local Rule 204 is unreasonable. The scheduled initial pretrial conference is automatically canceled upon the submission to the court of the joint Rule 26(f) Report.

(e) **Discovery With Respect to Expert Witnesses.** The initial pretrial order, whether based upon a joint Rule 26(f) Report or a conference following the filing of separate reports, shall provide that discovery with respect to experts be conducted within the discovery period established in the case. The order shall set the date on which disclosure of expert information under Fed. R. Civ. P 26(a)(2) must be made.

RULE 204

DIFFERENTIATED CASE MANAGEMENT AND DISCOVERY

(a) **Differentiated Case Management.** Every case in which an initial pretrial order is entered pursuant to Local Rule 203(b)-(d) shall be assigned, by agreement of the parties (if adopted by the court) or by order of the court, to one of three case-management tracks. The three tracks are defined as follows:

(1) Standard. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within 4 months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 15 in number by each party. Depositions are presumptively limited to 4 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(2) Complex. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within 6 months from the date of the initial pretrial order, subject to agreement of the parties for a larger discovery period, if approved by the court. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 25 in number by each party. Depositions are presumptively limited to 7 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(3) Exceptional. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within 9 months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admissions are limited to 30 in number by each party. Depositions are presumptively limited to 10 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants. This management track is reserved for cases of exceptional complexity. It is not to be used for ordinary federal cases even though such cases have some complexity and require significant discovery.

(b) **Discovery Procedures and Materials.**

(1) The court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. As a part of their Rule 26(f) Report, the parties must formulate a preliminary deposition schedule. They must continue to communicate throughout the discovery period to update the schedule.

(2) Depositions shall be conducted in accordance with the

following guidelines:

(i) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.

(ii) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.

(iii) Counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege.

(iv) Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

(3) Interrogatories, requests for production of documents, or requests for admission shall be numbered consecutively by each party regardless of the number of sets into which they are divided.

(4) Depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless the court so orders or unless the court will need such documents in a pretrial proceeding. All discovery papers must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court when needed or ordered. Any party seeking to compel discovery or other pretrial relief based upon discovery material which has not been filed with the clerk must identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.

(c) **Conference of Attorneys With Respect to Motions and Objections Relating to Discovery.** The court will not consider motions and objections relating to discovery unless moving counsel files a certificate that after personal consultation and diligent attempts to resolve differences the parties are unable to reach an accord. The certificate shall set forth the date of the conference, the names of the participating attorneys and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference and, in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court location where the initial pretrial conference was convened or, in the absence

thereof, nearest to Greensboro. Alternatively, at any party's request, the conference may be held by telephone.

(d) **Expedited Resolution of Some Discovery Disputes** If, after a Local Rule 204(c) conference, the parties agree that a discovery dispute can be ruled upon in a telephone conference of no more than 30 minutes, the magistrate judge will schedule such a conference and rule on the dispute without briefing by the parties. Alternatively, if the parties agree that the dispute can be ruled upon in an in-court hearing of no more than one hour, without briefing, the magistrate judge will schedule an early hearing. The fact that these proceedings are expedited and without briefing does not alter the application of Fed. R. Civ. P. 37(a)(4) and subsection (e) of this rule regarding the imposition of sanctions in discovery motions.

(e) **Award of Expenses of Discovery Motion.** Any ruling on a discovery motion shall ordinarily result in the imposition of sanctions under Fed. R. Civ. P. 37(a)(4) unless the court determines that the position taken by the losing party was justifiable or some other circumstance would make a sanction unjust.

(f) **Completion of Discovery.** The requirement that discovery be completed within a specified time means that adequate provisions must be made for interrogatories and requests for admission to be answered, for documents to be produced, and for depositions to be held within the discovery period.

(g) **Extension the Discovery Period or Request for More Discovery.** Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the initial pretrial order must be made or presented prior to the expiration of the time within which discovery is required to be completed. They must set forth good cause justifying the additional time and will be granted or approved only upon a showing that the parties have diligently pursued discovery. The court will permit additional depositions only on a showing of exceptional good cause.

(h) **Trial Preparation After the Close of Discovery.** For good cause appearing therefor, the physical or mental examination of a party may be ordered at anytime prior to trial. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear at trial, but who later becomes unable or refuses to attend, may be ordered at any time prior to trial.

RULE 205

MEDIATED SETTLEMENT CONFERENCES

(a) **Mediated Settlement Conferences during Discovery.** In selected civil cases (see section [b] for a description of cases automatically selected for mediation) there shall be conducted a mediated settlement conference in accordance with Local Rule 601 et. seq. The conference may be set for any time during the discovery period, as agreed by the parties. In appropriate cases, the parties may wish to schedule the mediation early in the discovery period, after a first round of depositions or other discovery. In other cases, the parties may choose to set the conference near the end of the discovery period after all, or substantially all, discovery is complete. The parties shall discuss the timing of the mediated settlement conference during the Rule 26(f) meeting of the parties.

(b) **Automatic Selection by these Rules.** Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to designations on the civil cover sheet (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/ commodities/exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed. R. Civ. P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. see Local Rule 203(b)(c) and (d). Cases wherein the plaintiff appears pro se are not included within this automatic selection for mediation.

(c) **Exemption from Mediated Settlement Conference.** Any party, or parties jointly, may move for exemption from the requirement for a mediated settlement conference. The court will grant such a request only for good cause. A general assertion that settlement is unlikely or only a remote possibility does not serve as good cause for exemption.

RULE 206

SUMMARY JUDGMENT MOTIONS

(a) **Notice of Dispositive Motion.** Any party who intends to file a motion for summary judgment, or any other dispositive motion, must file and serve notice of intention to file a dispositive motion within 10 days following the close of the discovery period.

(b) **Filing of Dispositive Motions.** All dispositive motions and supporting briefs must be filed and served within 30 days following the close of the discovery period.

(c) **Form of Briefs -- Summary Judgment Motion by Claimant.** A party requesting summary judgment upon its claim(s) shall set out in no more than 4 pages per claim the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of those elements.

In a responsive brief of no more than 4 pages per claim, the opposing party may, within 30 days after service of the summary judgment motion and brief, set out the elements that the claimant must prove (with citations to supporting authority), and either identify any element as to which evidence is insufficient (and explain why the evidence is insufficient), or point to specific, authenticated facts existing in the record or set forth in accompanying affidavits that show a genuine issue of material fact, or explain why some rule of law (e.g., an applicable statute of limitations) would defeat the claim. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief of no more than 2 pages per claim, the claimant may, within 10 days of service of the response, address matters newly raised in the response.

Page limitations set by this rule are exclusive of a cover page and conclusion page for each brief.

(d) **Form of Briefs -- Summary Judgment Motion by Defending Party.** A party moving for summary judgment upon an opposing party's claim(s) shall set out in no more than 4 pages per claim the elements that the claimant must prove (with citations to supporting authority), and explain why the evidence is insufficient to support a jury verdict on an element or elements, or why some other rule of law would defeat the claim.

In a responsive brief of no more than 4 pages per claim, the party having made the challenged claim may, within 30 days after service of the summary judgment motion and brief, file with the court a response that sets out the elements that it must prove

(with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of the disputed elements. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief of no more than 2 pages per claim, the defending party **may**, within 10 days of service of the response, address matters newly raised in the response.

Page limitations set by this rule are exclusive of a cover page and conclusion page for each brief.

(e) **Summary Judgment Motions and Trial Dates.** The pendency of summary judgment motions will not serve to delay trial on the date set by the court in accordance with Local Rule 207. If by the time set for trial, the court has been unable to reach any pending summary judgment motion, the case will nonetheless be reached according to the trial calendar. The court will rule on the motion at the outset of trial.

(f) **Failure to Timely File Dispositive Motions.** A dispositive motion which is not noticed and filed within the prescribed time will not be reached by the court prior to trial unless the court determines that its consideration will not cause delay to the proceedings.

RULE 207

TRIAL DATES AND FINAL PRETRIAL PREPARATION

(a) **Establishment of Trial Date.** While the case is in discovery, the clerk shall establish a trial date and give at least 4 months' notice thereof to the parties. The case may be set on a trial calendar of the assigned judge or placed on a master calendar to be called by one or more district judges. A magistrate judge may assist with the master calendar, although no case may be referred to the magistrate judge for trial unless the parties consent to the magistrate judge's trial jurisdiction.

(b) **Continuance of Trial.** The court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

(c) **Final Pretrial Preparation.** The parties shall comply in all respects with Fed. R. Civ. P. 26(a)(3) regarding final pretrial disclosure, including the time requirements set out therein. The pretrial disclosures mandated by that rule shall be served on other parties but should not be filed with the court. No later than 20 days before trial, each party shall file a trial brief, along with proposed instructions on the issues (jury cases) or findings of fact and conclusions of law (non-jury cases). Any party, or the court on its own motion, may request a pretrial hearing or telephone conference to address matters relating to final pretrial preparation or settlement of the case. At any settlement conference, the court may require the attendance of parties and insurers.

VI. RULES FOR MEDIATED SETTLEMENT CONFERENCES

RULE 601

PURPOSE OF MEDIATED SETTLEMENT CONFERENCES

These rules govern reference of selected civil actions for mediated settlement conferences. Their purpose is to provide for an informal process conducted by a mediator with the objective of helping the parties reach a mutually acceptable settlement of their dispute. The rules are not intended to force settlement upon any party. The rules shall be construed to secure the speedy, fair, and economical resolution of controversies while preserving the right of all parties to a conventional trial.

RULE 602

SELECTION OF CASES FOR MEDIATED SETTLEMENT CONFERENCES

(a) **Automatic Selection by these Rules.** Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to designations on the civil cover sheet (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed. R. Civ. P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See Local Rule 203(b)(c) and (d). Cases wherein the plaintiff appears pro se are not included within this automatic selection for mediation.

(b) **Discretionary Selection by the Court.** In its discretion, the court may order a mediated settlement conference in any action not automatically selected under section (a), above. After entry of such an order, the parties shall have 20 days to file a statement identifying an agreed-upon mediator.

(c) **Stipulated Selection by the Parties.** In any case where selection for a mediated settlement conference is not automatic under section (a) of this rule, the parties may file a stipulation for mediation. In such stipulation, the parties may state any agreements they have reached regarding the identity of the mediator, the timing of the conference, and any modification of the procedures described by these rules.

(d) **Exemption from Mediation.** Any party, or parties jointly, may file a motion for exemption from mediation. Such a motion will be granted only on a showing of good cause. A general assertion that a case is not likely to settle or that settlement possibilities are remote does not constitute good cause.

RULE 603

MEDIATORS

(a) Certification. The clerk shall maintain a list of mediators who have agreed to serve under these rules. The list shall identify areas of subject matter expertise of each mediator (according to the categories identified in Local Rule 602[a]) and include such biographical information as each mediator may wish to provide. Attorneys who have been certified as mediators pursuant to the rules of the North Carolina Supreme Court and who have at least 8 years of civil trial practice or membership on the faculty of an accredited law school may serve on the panel of mediators. Further, attorneys who were on the court's panel of arbitrators as of December 1, 1993 may serve on the panel of mediators. Appointment to the list does not guarantee any mediator that he or she will be appointed to serve in any case before the court.

(b) Compensation of Mediators. All mediators under these rules, whether agreed upon by the parties or selected by the clerk, shall be compensated by the parties at the hourly rate set by the Chief Judge, except that the court may permit a higher compensation rate to an agreed upon mediator on joint application by the parties and a showing that the case involves extraordinary complexities. The parties shall make payment directly to the mediator at the termination of the mediated settlement conference, whether or not the case is settled. The mediator shall be compensated for up to 2 hours of preparation time and for the time expended in the conference. The only compensable expense of the mediator is travel mileage at the ordinary government rate. The mediator's fee and travel expense shall be paid in one equal share by the plaintiff (or plaintiffs), one equal share by the defendant (or defendants), and one equal share by any third party (or parties), unless otherwise agreed by all parties or ordered by the court in the interest of fairness.

(c) Compensation of Mediators when a Party is Unable to Pay. If a party contends it is unable to pay its share of the mediator's fee, that party shall, before the conference, file a motion with the court to be relieved of the obligation to pay. The motion shall be accompanied by an affidavit of financial standing. The mediated settlement conference should proceed without payment by the moving party, and the court will rule on the motion upon completion of the case. The court will take into consideration the outcome of the case, whether by settlement or judgment, and may relieve the party of its obligation to pay the mediator if payment would cause a substantial financial hardship. If the party is relieved of its obligation, the mediator shall remain uncompensated as to that portion of his or her fee, a circumstance that reflects the mediator's duty of pro bono service.

RULE 604

SELECTION OF THE MEDIATOR

(a) Selection by Agreement. The parties are encouraged to select their own mediator by agreement. If, within 20 days of the initial pretrial order, the parties file with the clerk a statement identifying an agreed-upon mediator, such statement shall be effective to select the mediator, and the clerk will notify the mediator of his or her selection. The parties may select an agreed-upon mediator who is not on the clerk's list of certified mediators, but any such mediator must, prior to service, agree to be bound by all provisions of these rules.

(b) Selection by the Clerk. If no timely statement pursuant to section (a) of this rule is filed, the clerk shall appoint a mediator from the certified list. The appointment is within the discretion of the clerk, who may consider subject matter expertise in making the appointment. The clerk shall give notice of the appointment to the mediator and the parties.

(c) Disqualification. On motion made to the court not later than 20 days before a scheduled mediated settlement conference, a mediator may be disqualified by the court for bias or prejudice as provided in 28 U.S.C. §144. Further, a mediator shall disqualify himself or herself if the mediator could be required to do so under 28 U.S.C. §455 if he or she were a justice, judge, or magistrate judge.

(d) Copies of Pleadings. On request of the mediator, the clerk shall furnish to the mediator a copy of the complaint, answer, and any third party pleadings in the action.

RULE 605

PROCEDURES FOR MEDIATED SETTLEMENT CONFERENCES

(a) **Time Period for the Mediated Settlement Conference.** The mediated settlement conference shall be held during the discovery period unless the court specifically orders otherwise.

(b) **Scheduling the Mediated Settlement Conference.** The mediated settlement conference shall ordinarily be held in the office of the mediator, but may be held at any other place agreed to by the parties and the mediator. Because of space limitations, the federal courthouses are not available for mediated settlement conferences. After conferring with the attorneys for the parties regarding scheduling matters, the mediator shall determine the place and time of the conference (within the period established by these rules), and give notice to the parties.

(c) **Submission of Position Papers to Mediator.** No later than 5 business days before the scheduled date of the mediated settlement conference, any party may submit a confidential position paper to the mediator. The position paper shall be limited in length to 5 pages, double-spaced, and may be accompanied by up to 5 pages of exhibits. Position papers are confidential, shall be held so by the mediator, and need not be served on other parties. The purpose of these submissions is to help the mediator become familiar with the assertions of the parties, and the parties may agree to the submission of additional information, if they believe the information will facilitate the mediated settlement conference.

(d) **Duties of Parties, Representatives, and Attorneys.** The following persons shall be physically present at the entire mediated settlement conference unless excused by the mediator:

(1) Individual parties; an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or recommend a settlement;

(2) At least one attorney of record for each represented party; and

(3) A representative of the insurance carrier for any party against whom a claim is made; the representative must have full authority to settle the claim and must be a person other than the carrier's outside counsel.

Upon reaching a settlement agreement at a mediated settlement conference, the parties shall forthwith reduce the agreement to writing and prepare a stipulation of dismissal or consent judgment for presentation to the court.

(e) **Authority of the Mediator.** The mediator is authorized by these rules to exercise control over the mediated settlement conference and to direct all proceedings therein. The mediator is specifically authorized to meet or consult privately with any party

or their counsel during the conference. The mediator may report in writing to the court, with copies to the parties, any conduct of any party that may be in violation of these rules for mediated settlement conferences.

(f) Duties of the Mediator. At the beginning of the mediated settlement conference, the mediator shall describe the following matters to the parties:

(1) The process of mediation,

(2) The differences between mediation and other forms of conflict resolution,

(3) The costs of the mediated settlement conference,

(4) The fact that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement,

(5) The circumstances under which the mediator may meet alone with either of the parties or any other person,

(6) The conditions under which communications with the mediator will be held in confidence during the conference,

(7) The inadmissibility of negotiating statements and offers at trial,

(8) The fact that the court will not permit parties in other litigations to conduct discovery regarding the mediation in this case,

(9) The duties and responsibilities of the mediator and the parties, and

(10) The fact that any agreement reached will be reached by mutual consent of the parties.

The mediator may recess or suspend the conference at any time and set a schedule for reconvening. It is the duty of the mediator to determine if an impasse has been reached or mediation should for any reason be terminated. He shall then inform the parties that mediation is terminated.

(g) Agreement to Modify Mediation Procedures. By agreement filed with the court, the parties, with the consent of the mediator, may modify the mediation procedures described in these rules, except that the parties may not alter time limitations set by these rules or order of the court.

(h) Sanctions for Failure to Appear. If a person fails to attend a mediated settlement conference without good cause, the court may impose on that person (or any associated party) any lawful sanction, including, but not limited to, the imposing the cost of attorney's fees, mediator's fees, and expenses of persons incurred in attending the conference.

RULE 606

COMPLETION OF THE MEDIATED SETTLEMENT CONFERENCE

When the mediated settlement conference is completed, the mediator shall immediately submit to the clerk a report of the status of the case, on a form supplied by the clerk. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, it proceeds without further order of the court in accordance with the local rules of the court.

RULE 607

EVALUATION OF THE MEDIATION PROGRAM

The mediation program established by these rules is experimental in nature and will be periodically reviewed by the court. For purposes of evaluation of the program, the mediator, the attorneys, and the litigants may be requested to complete confidential evaluation reports at the completion of the mediation. These reports shall be kept confidential by the clerk and shall be maintained in a file separate and apart from the case file. The clerk shall compile information from the evaluation reports to assist the court in determining the effectiveness of the mediation program.

FORMS

FORM 1

(See Local Rule 203[b] and [d])

Joint Rule 26(f) Report

1. Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 203(b), a meeting was held on _____date_____ at _____place_____ and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The parties propose to the court the following discovery plan:

Discovery will be needed on the following subjects:

(brief descriptions)_____

_____

_____

_____

_____

Discovery shall be placed on a case-management track established in Local Rule 204. The parties agree that the appropriate plan for this case (with any stipulated modifications by the parties as set out below) is that designated in Local Rule 204(a) as:

Standard _____

Complex _____

Exceptional _____

The date for the completion of all discovery (general and expert) is: _____

Stipulated modifications to the case management track include:

_____

_____

_____

Reports from retained experts under Rule 26(a)(2) are due during the discovery period:

From Plaintiff(s) by _____

From Defendant(s) by _____

Supplementations under Rule 26(e) are due:

_____ (time[s] or interval[s])

3. Mediation. [For cases selected for mediation under Local Rules 205 and 601, et seq.]

Mediation should be conducted [early] [mid-way] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties.

The parties agree that the mediator shall be _____ (identity).

(If the parties report no agreement, the clerk will select a mediator from the court's panel of mediators.)

4. Preliminary Deposition Schedule. Preliminarily, the parties agree to the following schedule for depositions:

_____

_____

_____

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until ___date___ to join additional parties or to amend pleadings.

Defendant(s) should be allowed until ___date___ to join additional parties or to amend pleadings.

The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. §636(c), or appointment of a master:

(Report any agreements on these matters)

Trial of the action is expected to take approximately _____ days. A jury trial [has] [has not] been demanded.

Date: _____

Signatures of parties or counsel

Signatures of parties or counsel

ORDER OF APPROVAL

The court has reviewed the Joint Rule 26(f) Report submitted by the parties. The order is approved without modification.

_____

For the Court

FORM 2

(See Local Rule 203[b] and [c])

Rule 26(f) Report

1. Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 203(b) and (c), a meeting was held on _____date_____ at _____place___ and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The undersigned party proposes to the court the following discovery plan:

Discovery will be needed on the following subjects:

_(brief descriptions)_____

_____

_____

Discovery shall be placed on a case-management track established in Local Rule 204. The undersigned party proposes that the appropriate plan for this case is that designated in Local Rule 204(a) as:

Standard _____

Complex _____

Exceptional _____

The date for the completion of all discovery (general and expert) should be:

_____

Modifications to the case management track should include:

_____

_____

_____

Reports from retained experts under Rule 26(a)(2) should be due during the discovery period:

From Plaintiff(s) by _____

From Defendant(s) by _____

Supplementation under Rule 26(e) should be due:

_____ (time[s] or interval[s])

3. Mediation. [For cases selected for mediation under Local Rules 205 and 601, et seq.]

Mediation should be conducted [early] [mid-way] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties.

The parties agree that the mediator shall be

_____ (identity).

(If the parties report no agreement, the clerk will select a mediator from the court's panel of mediators.)

4. Preliminary Deposition Schedule. Preliminarily, the parties agree to [or the undersigned proposes] the following schedule for depositions:

_____

_____

_____

The parties will update this schedule at reasonable intervals.

5 Other items.

Plaintiff(s) should be allowed until ___date___ to join additional parties or to amend pleadings.

Defendant(s) should be allowed until ___date___ to join additional parties or to amend pleadings.

The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. §636(c), or appointment of a master:

_____(Report any agreements on these matters)_____

_____

Trial of the action is expected to take approximately _____ days. A jury trial [has] [has not] been demanded.

[Other matters.]

Date: _____

Signature of party or counsel

APPENDIX B

Local Rule 204,

(4) The timing of any mediated settlement conference under Local Rules 205 and 602, and the identity of any agreed-upon mediator.

(5) The nature of the documents and information believed necessary for the case,

(6) Issues of burden and relevance and the discoverability of differently types of documents, and

(7) A preliminary schedule for depositions, to be updated at reasonable intervals upon communication between the parties.

(8) The decision of each party whether or not to consent to the trial jurisdiction of a magistrate judge.

Lead counsel for each party must meet and discuss the above-listed matters in a face-to-face meeting unless the offices of the parties' lead counsel are separated by more than 150 miles, in which event lead counsel may conduct the conference by telephone. In the absence of agreement to the contrary, the meeting of the parties shall be held in the office of the attorney nearest the court location where the initial pretrial conference is scheduled.

The parties shall jointly prepare a Rule 26(f) Report (Local Rule Form 1) if they are in agreement concerning a discovery plan for the case. If they do not agree, each shall file a separate Rule 26(f) Report (Local Rule Form 2), setting forth its position on disputed matters. The Reports must be filed with the court within 10 days of the Rule 26(f) meeting.

~~(c) Initial Pretrial Order By Stipulation. The initial pretrial order may be entered upon the stipulations of the parties, without a conference, if the parties submit to the court satisfactory stipulations at least ten (10) days before the scheduled initial pretrial conference. See suggested Form 1, Appendix of Forms. Stipulations not received by the clerk at least ten (10) days prior to the initial pretrial conference will not be considered by the court and the conference will be convened as scheduled. The court may also direct that the initial pretrial conference be convened in any case in which it determines that the stipulations prepared by the parties are inadequate to control the litigation or that a conference will materially assist in managing the orderly and efficient conduct of the litigation.~~

~~The Initial Pretrial Stipulations and Order (Form 1) must set forth the stipulations, or respective positions of the parties, with respect to:~~

(1) ~~Whether all parties defendant have been properly served with process;~~

~~(2) Whether there is any question concerning jurisdiction over the parties and over the subject matter;~~

~~(3) Whether all parties plaintiff and defendant have been~~

~~correctly designated;~~

~~(4) Whether any third-party complaint or impleading petition is contemplated;~~

~~(5) Whether there is any question concerning misjoinder or nonjoinder of parties;~~

~~(6) Whether there is a present need to join other parties or amend the pleadings;~~

~~(7) Whether there is a necessity for, or question concerning the validity of, the appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;~~

~~(8) Whether there are pending motions;~~

~~(9) Whether a trial by jury has been demanded within the time provided by the Federal Rules of Civil Procedure;~~

~~(10) Whether a separation of the issues would be feasible or desirable for purposes of trial or discovery;~~

~~(11) Whether there are related actions pending or contemplated in this or any other court;~~

~~(12) The estimated trial time;~~

~~(13) The time reasonably required for the completion of discovery, including identification of experts and discovery with respect thereto.~~

~~The stipulations must be signed by all parties, or counsel therefor, and must substantially conform to the suggested form set forth in the Appendix of Forms, Form 1. The parties shall submit to the clerk sufficient copies of the Initial Pretrial Stipulations and Order so that all parties can receive a copy after consideration and action by the court.~~

(c) **Initial Pretrial Order by Conference.** If the parties are unable to reach agreement on a discovery plan and therefore submit separate Rule 26(f) Reports (Form 2), they shall appear for the scheduled initial pretrial conference. Each party shall personally appear or be represented by an attorney who has full authority to bind the party on the matters for discussion at the conference. After hearing from the parties, the court will enter an initial pretrial order that will control the conduct of the litigation.

(d) **Initial Pretrial Order upon the Joint Rule 26(f) Report.** If the parties reach agreement on a discovery plan and submit a joint Rule 26(f) Report, the court will enter an order on the basis of the proposed plan as submitted or as modified by the court. The parties shall submit to the clerk sufficient copies of the joint Report so that all parties can receive a copy after approval by the

court. The court may, on its own motion, modify the plan if it finds in its discretion that the plan provides for an excessive amount of discovery or the parties selection of a case management track under Local Rule 204 is unreasonable. The scheduled initial pretrial conference is automatically canceled upon the submission to the court of the joint Rule 26(f) Report.

(e) **Discovery With Respect to Expert Witnesses.** The initial pretrial order, whether based upon a joint Rule 26(f) Report or a conference following the filing of separate reports, shall provide that discovery with respect to experts be conducted within the discovery period established in the case. The order shall set the date on which disclosure of expert information under Fed. R. Civ. P 26(a)(2) must be made.

RULE 204

DIFFERENTIATED CASE MANAGEMENT AND DISCOVERY

(a) **Differentiated Case Management.** Every case in which an initial pretrial order is entered pursuant to Local Rule 203(b)-(d) shall be assigned, by agreement of the parties (if adopted by the court) or by order of the court, to one of three case-management tracks. The three tracks are defined as follows:

(1) Standard. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within 4 months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 15 in number by each party. Depositions are presumptively limited to 4 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(2) Complex. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within 6 months from the date of the initial pretrial order, subject to agreement of the parties for a larger discovery period, if approved by the court. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 25 in number by each party. Depositions are presumptively limited to 7 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(3) Exceptional. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within 9 months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admissions are limited to 30 in number by each party. Depositions are presumptively limited to 10 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants. This management track is reserved for cases of exceptional complexity. It is not to be used for ordinary federal cases even though such cases have some complexity and require significant discovery.

(a~~b~~) **Discovery Procedures and Materials.**

(1) The court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. As a part of their Rule 26(f) Report, the parties must formulate a preliminary deposition schedule. They must continue to communicate throughout the discovery period to update the schedule.

(2) Depositions shall be conducted in accordance with the

following guidelines:

(i) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.

(ii) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.

(iii) Counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege.

(iv) Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

(~~1~~3) Interrogatories, requests for production of documents, or requests for admission shall be numbered consecutively by each party regardless of the number of sets into which they are divided.

(~~2~~4) Depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless the court so orders or unless the court will need such documents in a pretrial proceeding. All discovery papers must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court when needed or ordered. Any party seeking to compel discovery or other pretrial relief based upon discovery material which has not been filed with the clerk must identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.

~~(b) **Limitation on Use of Interrogatories.** A party may direct no more than 50 interrogatories to any other party, except upon leave granted by the court for good cause shown. Interrogatory parts and subparts shall be counted as separate interrogatories for purposes of this rule.~~

(c) **Conference of Attorneys With Respect to Motions and Objections Relating to Discovery.** The court will not consider motions and objections relating to discovery unless moving counsel files a certificate ~~shall first advise the court in writing~~ that after personal consultation and diligent attempts to resolve differences the parties are unable to reach an accord. The

~~statement~~ certificate shall set forth the date of the conference, the names of the participating attorneys and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference and, in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court location where the initial pretrial conference was convened or, in the absence thereof, nearest to Greensboro. Alternatively, at any party's request, the conference may be held by telephone.

(d) **Expedited Resolution of Some Discovery Disputes** If, after a Local Rule 204(c) conference, the parties agree that a discovery dispute can be ruled upon in a telephone conference of no more than 30 minutes, the magistrate judge will schedule such a conference and rule on the dispute without briefing by the parties. Alternatively, if the parties agree that the dispute can be ruled upon in an in-court hearing of no more than one hour, without briefing, the magistrate judge will schedule an early hearing. The fact that these proceedings are expedited and without briefing does not alter the application of Fed. R. Civ. P. 37(a)(4) and subsection (e) of this rule regarding the imposition of sanctions in discovery motions.

(e) **Award of Expenses of Discovery Motion.** Any ruling on a discovery motion shall ordinarily result in the imposition of sanctions under Fed. R. Civ. P. 37(a)(4) unless the court determines that the position taken by the losing party was justifiable or some other circumstance would make a sanction unjust.

(~~d~~f) **Completion of Discovery.** The requirement that discovery be completed within a specified time means that adequate provisions must be made for interrogatories and requests for admission to be answered, ~~and~~ for documents to be produced, and for depositions to be held within the discovery period.

(~~e~~g) **Extension of ~~Time for Discovery~~ the Discovery Period or Request for More Discovery.** Motions ~~or stipulations~~ seeking an extension of the discovery period or permission to take more discovery than is permitted under the initial pretrial order must be made or presented prior to the expiration of the time within which discovery is required to be completed. They must set forth good cause justifying the additional time and will be granted or approved only upon a showing that the parties have diligently pursued discovery. The court will permit additional depositions only on a showing of exceptional good cause.

(~~f~~h) **Trial Preparation After the Close of Discovery.** For good cause appearing therefor, the physical or mental examination of a party may be ordered at anytime prior to trial. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear at trial, but who later becomes unable or refuses to attend, may be ordered at any time prior to trial.

RULE 205

MEDIATED SETTLEMENT CONFERENCES

(a) **Mediated Settlement Conferences during Discovery.** In selected civil cases (*see* section [b] for a description of cases automatically selected for mediation) there shall be conducted a mediated settlement conference in accordance with Local Rule 601 et. seq. The conference may be set for any time during the discovery period, as agreed by the parties. In appropriate cases, the parties may wish to schedule the mediation early in the discovery period, after a first round of depositions or other discovery. In other cases, the parties may choose to set the conference near the end of the discovery period after all, or substantially all, discovery is complete. The parties shall discuss the timing of the mediated settlement conference during the Rule 26(f) meeting of the parties.

(b) **Automatic Selection by these Rules.** Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to designations on the civil cover sheet (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/ commodities/exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed. R. Civ. P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See Local Rule 203(b)(c) and (d). Cases wherein the plaintiff appears pro se are not included within this automatic selection for mediation.

(c) **Exemption from Mediated Settlement Conference.** Any party, or parties jointly, may move for exemption from the requirement for a mediated settlement conference. The court will grant such a request only for good cause. A general assertion that settlement is unlikely or only a remote possibility does not serve as good cause for exemption.

RULE 206

SUMMARY JUDGMENT MOTIONS

(a) **Notice of Dispositive Motion.** Any party who intends to file a motion ~~to dismiss~~ for summary judgment, or any other dispositive motion, must file and serve notice of intention to file a dispositive motion within 10 days following the close of the discovery period.

(b) **Filing of Dispositive Motions.** All dispositive motions and supporting briefs must be filed and served within 30 days following the close of the discovery period.

(c) **Form of Briefs -- Summary Judgment Motion by Claimant.** A party requesting summary judgment upon its claim(s) shall set out in no more than 4 pages per claim the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of those elements.

In a responsive brief of no more than 4 pages per claim, the opposing party may, within 30 days after service of the summary judgment motion and brief, set out the elements that the claimant must prove (with citations to supporting authority), and either identify any element as to which evidence is insufficient (and explain why the evidence is insufficient), or point to specific, authenticated facts existing in the record or set forth in accompanying affidavits that show a genuine issue of material fact, or explain why some rule of law (e.g., an applicable statute of limitations) would defeat the claim. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief of no more than 2 pages per claim, the claimant may, within 10 days of service of the response, address matters newly raised in the response.

Page limitations set by this rule are exclusive of a cover page and conclusion page for each brief.

(d) **Form of Briefs -- Summary Judgment Motion by Defending Party.** A party moving for summary judgment upon an opposing party's claim(s) shall set out in no more than 4 pages per claim the elements that the claimant must prove (with citations to supporting authority), and explain why the evidence is insufficient to support a jury verdict on an element or elements, or why some other rule of law would defeat the claim.

In a responsive brief of no more than 4 pages per claim, the party having made the challenged claim may, within 30 days after service of the summary judgment motion and brief, file with the court a response that sets out the elements that it must prove

(with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of the disputed elements. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief of no more than 2 pages per claim, the defending party may, within 10 days of service of the response, address matters newly raised in the response.

Page limitations set by this rule are exclusive of a cover page and conclusion page for each brief.

(e) **Summary Judgment Motions and Trial Dates.** The pendency of summary judgment motions will not serve to delay trial on the date set by the court in accordance with Local Rule 207. If by the time set for trial, the court has been unable to reach any pending summary judgment motion, the case will nonetheless be reached according to the trial calendar. The court will rule on the motion at the outset of trial.

(ef) **Failure to Timely File Dispositive Motions. A dispositive motion which is not noticed and filed within the prescribed time will not ~~delay a scheduled event and will~~ be reached by the court prior to trial unless the court determines that its consideration will not cause delay to the proceedings.**

RULE 207

TRIAL DATES AND FINAL PRETRIAL PREPARATION

(a) **Establishment of Trial Date.** While the case is in discovery, the clerk shall establish a trial date and give at least 4 months' notice thereof to the parties. The case may be set on a trial calendar of the assigned judge or placed on a master calendar to be called by one or more district judges. A magistrate judge may assist with the master calendar, although no case may be referred to the magistrate judge for trial unless the parties consent to the magistrate judge's trial jurisdiction.

(b) **Continuance of Trial.** The court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

(c) **Final Pretrial Preparation.** The parties shall comply in all respects with Fed. R. Civ. P. 26(a)(3) regarding final pretrial disclosure, including the time requirements set out therein. The pretrial disclosures mandated by that rule shall be served on other parties but should not be filed with the court. No later than 20 days before trial, each party shall file a trial brief, along with proposed instructions on the issues (jury cases) or findings of fact and conclusions of law (non-jury cases). Any party, or the court on its own motion, may request a pretrial hearing or telephone conference to address matters relating to final pretrial preparation or settlement of the case. At any settlement conference, the court may require the attendance of parties and insurers.