

**Civil Justice Expense and Delay Reduction Plan**

**Under the Civil Justice Reform Act of 1990**



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

**September 23, 1993**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CASE NO. A-MISC. 1153

**FILED**

SEP 28 1993

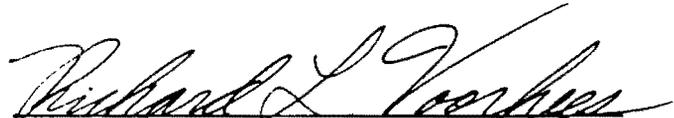
ASHEVILLE, N. C.  
U. S. DISTRICT COURT  
WESTERN DISTRICT OF N.C.

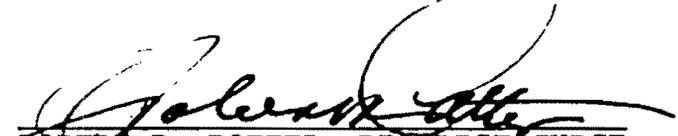
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CIVIL JUSTICE REFORM ) CIVIL JUSTICE EXPENSE AND  
ACT OF 1990 ) DELAY REDUCTION PLAN  
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The District Court, after considering (1) the recommendations of the Civil Justice Reform Act Advisory Group appointed pursuant to Title 28, United States Code, Section 478; (2) the principles and guidelines of litigation management and cost and delay reduction techniques listed in Title 28, United States Code, Section 473(a); and (3) the litigation management and cost and delay reduction techniques listed in Title 28, United States Code, Section 473(b), and after consulting with the Civil Justice Advisory Group in reference to Title 28, United States Code, Section 473(a) and (b),

THE COURT HEREBY ORDERS, ADOPTS, AND IMPLEMENTS this Civil Justice Expense and Delay Reduction Plan, attached as Exhibit A, pursuant to Title 28, United States Code, Section 471, et seq.

THIS the 23rd day of September, 1993.

  
RICHARD L. VOORHEES, CHIEF JUDGE

  
ROBERT D. POTTER, DISTRICT JUDGE

  
GRAHAM C. MULLEN, DISTRICT JUDGE

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

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## EXHIBIT A

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

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

THURSDAY, SEPTEMBER 23, 1993

### SECTION ONE: DIFFERENTIATED CASE MANAGEMENT (DCM)

#### I. GENERAL PROVISIONS

##### A. Purpose.

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

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

##### B. Definitions.

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

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

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

discovery cut-off date, deadline for filing motions, and the dates of anticipated hearings.

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

**C. Date of Application.**

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

**D. Conflicts with Other Rules.**

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

**II. TRACKS, EVALUATION, AND ASSIGNMENT OF CASES**

**A. Number and Types of Tracks.**

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

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

**B. Evaluation.**

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

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

**2. Standard.**

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

**3. Complex.**

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

**4. Administrative.**

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

**5. Mass Torts.**

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

**C. Assignment of Cases.**

Magistrate Judges shall be assigned as trial judges for civil cases in the same manner and to the same extent as District Court Judges, provided that any party may elect, in writing, to exercise the right to trial by a District Court Judge as protected by Article III of the United States Constitution and 28 U.S.C. §636. This provision is known as an "opt out" election, which must be exercised in writing within ten (10) days of the filing of the last required pleading.

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

### **I. PLANNING THE PROGRESS OF THE CASE.**

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

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

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

**B. Setting Early and Firm Trial Dates.**

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

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

**C. Settlement Conferences.**

- 1. Mandatory Consideration.** The Judicial Officer to whom a case is assigned shall consider, both at the time of the IPC and at any subsequent conference, the advisability of requiring the parties to participate in a settlement conference to be convened by the Court. Any party may also file a request for a settlement conference.
- 2. Mandatory Attendance by Representatives With Full Authority to Effect Settlement.** Each party, or representative of each party with authority to participate in settlement negotiations and effect a complete compromise of the case, shall be required to attend the settlement conference.
- 3. Mandatory Settlement Conference.** If an order for mandatory mediation has not been entered pursuant to Section Four of the Plan, then a settlement conference pursuant to this Section shall be mandatory unless waived by the Court upon a showing of good cause. Attendance by attorneys (or parties in pro se cases) is required.
- 4. Presiding Judicial Officer.** Any Judicial Officer of the District, including the Judicial Officer to whom the case is assigned for disposition, may preside over a settlement conference convened by the Court.

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

- 1. Authority to bind on specific topics.** Participating attorneys will be required to have authority to bind their clients on the following matters at the IPC and any other pretrial conferences:
  - a. Whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;
  - b. Whether all parties have been properly designated and served;
  - c. Whether all counsel have filed appearances;
  - d. Whether any issue exists concerning joinder of parties or claims;
  - e. Whether any party contemplates adding further parties;

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

**2. Additional matters by specific order.** By specific order, a Judicial Officer may also require participation in a settlement conference immediately after the IPC. The Judicial Officer may also require consideration of any other matters that appear

likely to further the just, speedy, and inexpensive resolution of the case, including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.

3. **Attendance of party.** In addition to attendance by counsel, the Judicial Officer may require the attendance or availability of the parties.

## **II. FINAL PRETRIAL CONFERENCE**

### **A. Scheduling.**

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

### **B. Individuals Attending.**

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

## **SECTION THREE: DISCOVERY CONTROL; MOTIONS PRACTICE**

### **I. CONTROLLING THE EXTENT AND TIMING OF DISCOVERY**

#### **A. Setting Discovery Deadlines.**

##### **1. DCM Tracks**

- a. "Expedited" - shall have a discovery cut-off no later than three (3) months after filing of the CMP.
- b. "Standard" - shall have a discovery cut-off no later than nine (9) months after filing of the CMP.
- c. "Complex" - shall have the discovery cut-off established in the CMP.

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

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

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

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

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

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

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

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

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

**II. MOTIONS PRACTICE**

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

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

**B. Form and Length of Motions.**

1. Each party opposing a motion may serve and file a memorandum in opposition within twenty (20) calendar days after service of the motion.
2. The moving party may serve and file a reply memorandum in support of its motion within ten (10) calendar days after service of the memorandum in opposition.
3. Motions will be decided without oral argument unless a motion for oral argument is granted by the Court. The Judicial Officer may grant or deny the requested relief for failure of any party to attend the hearing.
4. Motions which,
  - a. are filed prior to the filing of the last responsive pleading and
  - b. have the effect of tolling the progress of the case pending disposition of such motions (for example, Rule 12(b)(6) motions filed prior to and separately from an answer)

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

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

**C. Status Reports.**

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

## **SECTION FOUR: ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)**

### **I. ALTERNATIVE DISPUTE RESOLUTION COURT MEDIATED SETTLEMENT PROGRAM (ADR)**

**A. Order for Mediated Settlement Conference.**

1. **Order by the Judicial Officer.** The Judicial Officer may, by written order, require parties and their representatives to attend a pre-trial mediated settlement conference in any civil action except *habeas corpus* proceedings or other actions for extraordinary writs; appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals.
2. **Content of Order.** The Court's order shall (1) require the mediated settlement conference to be held in the case, (2) establish a deadline for the completion of the conference, (3) make a tentative appointment of a certified mediator or other mediator acceptable to the Court, (4) state the rate of compensation of the tentatively appointed mediator, (5) state clearly that the parties have the right to select their own mediator as provided by subsection B below, and (6) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Court. The order shall be on a form prepared and distributed by the Clerk of the United States District Court.

3. **Motion to Dispense with or Defer Mediated Settlement Conference.** A party may move, within ten (10) days after the Court's order, to dispense with or defer the conference. Such motion shall state the reasons the relief is sought. For good cause shown, the Judicial Officer or Clerk may grant the motion.
4. **Petition for Court Ordered Mediated Settlement Conference.** In cases not ordered to mediated settlement conference, any or all parties may petition the Judicial Officer to order such a conference. Such motion shall state the reasons why the order shall be allowed and shall be served on non-moving parties. Objections may be filed in writing with the Judicial Officer within ten (10) days after the date of the service of the motion. Thereafter, the Judicial Officer shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.
5. **Exemption from Mediated Settlement Conference.** In order to evaluate the program of mediated settlement conference, the Judicial Officer shall exempt from such conferences a random sample of cases so as to create a control group to be used for comparative analysis.

**B. Appointment of Mediator.**

1. **By Agreement of Parties.** The parties may stipulate to a mediator within fourteen (14) days after the Court's order. The mediator selected shall be either:
  - a. A certified mediator; or
  - b. A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and the Judicial Officer, is otherwise qualified by training or experience to mediate all or some of the issues in the action.
2. **Notification to Court.** Within seven (7) days after the parties select a mediator by agreement, the Plaintiff, or the Plaintiff's attorney shall notify the Court and the mediator tentatively named by the Court of the name, address and telephone

number of the mediator selected by agreement. Notification to the Court shall also include a statement of the training and experience or certification of the mediator selected. The notice shall be on a form prepared and distributed by the Clerk of the United States District Court.

3. **Appointment by Judicial Officer.** The Judicial Officer shall appoint certified mediators or other mediators satisfactory to the Judicial Officer.
4. **Disqualification of Mediator.** Any party may move the Judicial Officer for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered appointing a replacement mediator pursuant to this subsection. Nothing in this provision shall preclude mediators from disqualifying themselves.

**C. The Mediated Conference.**

1. **Where Conference is to be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the courthouse or other neutral public or community building in the division where the case is pending. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.
2. **When Conference is to be Held.** Except for good cause found by the Judicial Officer, the mediated settlement conference shall begin no earlier than 120 days after the filing of the last required pleading and no later than sixty (60) days after the Court's order. It shall be completed within thirty (30) days after it has begun.
3. **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.
4. **The Mediated Settlement Conference is not to Delay Other Proceedings.** The Mediated Settlement Conference shall not be cause for the delay of other proceedings in the case, including

the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Judicial Officer.

**D. Duties of Parties, Representatives, and Attorneys.**

1. **Attendance.** The following persons shall physically attend a mediated settlement conference:
  - a. All individual parties; or an officer, director or employee having authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and to recommend settlement to the appropriate decision making body of the agency;
  - b. The party's principal counsel of record, if any; and,
  - c. For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.
2. **Finalizing Agreement.** Upon reaching agreement, the parties shall reduce the agreement to writing and sign it along with their counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. A consent judgment or one or more voluntary dismissals shall be filed with the Court by such persons as the parties shall designate.
3. **Payment of Mediator's Fee.** The parties shall pay the mediator's fee as provided by subsection G, below.

**E. Sanctions for Failure to Attend.**

If a person fails to attend a duly ordered mediated settlement conference without good cause, a Judicial Officer may impose upon the person whose attendance is required under subsection D.1.a., above, or his principal, any lawful sanction (including, but not limited to the payment of attorneys fees, mediator fees, and expenses incurred by persons attending the conference), contempt, or any other sanction authorized by Rule 37(b) of the Rules of Civil Procedure.

**F. Authority and Duties of Mediators.**

- 1. Authority of Mediator.** The mediator shall at all times be in control of the conference and the procedures to be followed.
- 2. General Duties of Mediator.** The mediator shall define and describe the following to the parties at the beginning of the conference:
  - a. The process of mediation;
  - b. The differences between mediation and other forms of conflict resolution;
  - c. The costs of the mediated settlement conference;
  - d. The facts 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;
  - e. The circumstances under which the mediator may meet alone with either of the parties or with any other person;
  - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - g. The inadmissibility of conduct and statements as provided by Rule 408 of the Federal Rules of Evidence;
  - h. The duties and responsibilities of the mediator and the parties; and,
  - i. The fact that any agreement reached will be by mutual consent of the parties.
- 3. Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference. Pre-conference communications concerning procedure or other matters may be allowed at the discretion of the mediator.

4. **Disclosure.** The mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.
5. **Failure of Mediation.** The mediator shall timely determine when mediation is not viable, that an impasse exists, or that mediation should end.
6. **Reporting Results of Conference.** The mediator shall report to the Court in writing whether or not an agreement was reached by the parties. If an agreement were reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such judgment or dismissal. The Clerk of Court may require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Clerk's office.

**G. Compensation of the Mediator.**

1. **By Agreement.** When the mediator is stipulated to by the parties, compensation shall be as agreed among the parties and the mediator.
2. **By Court Order.** When the mediator is appointed by the court, the mediator shall be compensated by the parties at a standard rate set by the Court for all court appointed mediators in the District or, for good cause shown, the appointing Judicial Officer may modify the rate.
3. **Indigent Cases.** No party found to be indigent by the Court for the purposes of this Plan shall be required to pay a court appointed mediator. Any party may apply to the Judicial Officer for a finding of indigence and to be relieved of its obligation to pay its share of the mediator's compensation. Said motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their case, subsequent to the trial of the action. The Judicial Officer may take into consideration the outcome of the action and whether a judgment was rendered in the movant's favor. The Judicial Officer shall enter an order granting or denying the party's request.

4. **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties or ordered by the Court, costs of the mediated settlement conference shall be paid: one share by the plaintiffs, one share by the defendants and one share by third-party defendants. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference.

#### H. **Mediator Certification.**

Any person certified as a mediator pursuant to the Rules promulgated by the Supreme Court of North Carolina may be certified by the District Court Judge to act as a mediator in any appropriate case, provided that the person has been admitted to practice before the Court for at least five years and pays all administrative fees established by the Court. Only certified mediators who have agreed to mediate indigent cases without compensation shall be appointed.

## **SECTION FIVE: OTHER FEATURES**

### **I. *PRO SE* PRISONER AND SOCIAL SECURITY CASES**

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

### **II. FAXED FILINGS**

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

### **III. TELEPHONE CONFERENCES**

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

#### **IV. COURT TECHNOLOGY COMMITTEE**

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

#### **V. LOCAL RULES**

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

#### **VI. ADDITIONAL COURT PERSONNEL**

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