# CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

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# AND RELATED

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# AMENDMENTS TO THE RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

*(Effective April 1, 1992)*

## JUDICIAL OFFICERS

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

Paul G. Hatfield, Chief Judge

Judge Charles C. Lovell

Judge Jack D. Shanstrom

Senior Judge James F. Battin

Magistrate Judge Robert M. Holter

Magistrate Judge Richard W. Anderson

Magistrate Judge Leif B. Erickson

## CIVIL JUSTICE REFORM ACT

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THE BENCH AND BAR:

The United States District Court for the District of Montana has adopted various amendments to its rules of procedure which impact significantly upon the pretrial process that will guide the course of civil litigation in the District. The amendments have been adopted in conjunction with the adoption of a comprehensive Civil Justice Expense and Delay Reduction Plan, implemented in response to the mandate of the Civil Justice Reform Act of 1990 (28 U.S.C. §§ 471 *et. seq.*). The present booklet includes the complete text of the Civil Justice Expense and Delay Reduction Plan, as well as the amendments to the local rules of procedure. The amendments to the local rules shall become effective April 1, 1992.

With the able assistance of the Civil Justice Reform Act Advisory Group, the court has concluded that a system of differential case management, centered on the active and informed participation of both counsel and a judicial officer in the development of a case specific management plan, will insure the civil litigation process accomplishes its intended purpose, *i.e.*, the fair and efficient disposition of civil disputes. The amendments to the local rules of procedure operate to effect that system.

The amendments to the local rules of procedure have, in accordance with Fed.R.Civ.P. 83, been submitted to the Judicial Council and the Administrative Office of the United States Courts for their consideration. Copies of the amendments are available to the public through the Clerk of Court.

Paul G. Hatfield
Chief Judge

# CIVIL JUSTICE EXPENSE
# AND
# DELAY REDUCTION PLAN

# INTRODUCTION

The Civil Justice Reform Act of 1990 has mandated that each United States District Court implement a plan to "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." 28 U.S.C. § 471. The United States District Court for the District of Montana has responded to that mandate by developing a Civil Justice Expense and Delay Reduction Plan that will improve the civil litigation process in the district, and foster the Act's goal of facilitating access to the court. The Plan developed and adopted by the court is set forth in detail and is accompanied by the local rules of procedure which will be formally adopted to effectuate the provisions of the Plan.

The Plan shall be implemented by December 31, 1991, in order that the United States District Court for the District of Montana will be designated an "early implementation" district court pursuant to section 103(c) of the Civil Justice Reform Act of 1990. In satisfaction of the statutory requirements, the Plan, together with the Report of the Advisory Group, shall be filed with the Judicial Conference of the United States and the committee designated to review the Plan, pursuant to 28 U.S.C. § 474(a)(1). Each specific provision of the Plan shall become effective as specifically designated in the text of the Plan. The schedule provides for the Plan to become fully effective by April 1, 1992; a time frame which will allow sufficient time for public comment to the amendments to the local rules of procedure necessitated by the Plan.

Pursuant to the directive of the Civil Justice Reform Act of 1990, the Plan incorporates those "principles and guidelines of litigation management and cost and delay reduction," 28 U.S.C. § 473(a), which the court, in consultation with the Advisory Group, believes will effectively improve the civil litigation system of the district. With the able assistance of the Advisory Group, the court has concluded that a system of differential case management centered on the active and informed participation of both counsel and a judicial officer in the development of a case specific management plan will ensure the civil litigation process accomplishes its intended purpose, *i.e.*, the fair and efficient disposition of civil disputes. Through the cooperative effort of the bench, the bar and the litigants of the district, the Plan will prove effective in facilitating access to the court. The implementation of the Plan is one step in the continuing process of improving access to justice through the reduction of the delay and expense attendant to civil litigation. The court shall assess the effectiveness of the various Plan provisions on an ongoing basis, and with the assistance of the Advisory Group, periodically assess the condition of the court's civil and criminal dockets, *see, 28 U.S.C. § 475.* The Plan will be modified as circumstances warrant to continuously improve the civil litigation process of the district.

Paul G. Hatfield
Chief Judge

# PART I

## DIVISION OF THE BUSINESS OF THE COURT

### A. CASE ASSIGNMENT BY DIVISION

The District of Montana shall, for purposes of effective administration, be divided into five divisions, as presently provided by Rule 105-1, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

The composition of each division shall be modified, as deemed necessary by a majority of the Article III judges in regular active service, to ensure efficient administration of the court's business.

Civil cases shall be assigned to a particular division based upon consideration of the following factors:

(i) situs of the transaction in which the controversy centers;

(ii) location of the property that is the subject of the controversy; and

(iii) the residence of the parties. The initial assignment shall conform, as nearly as possible, to the laws of the State of Montana governing venue of civil cases.

Criminal cases shall be assigned to a particular division in accordance with the Federal Rules of Criminal Procedure governing venue.

### B. FILING BY DIVISIONS

The Clerk of Court shall maintain staffed offices in each of the five divisions, specifically in those federal facilities located in Billings, Butte, Great Falls, Helena and Missoula. Regardless of the division to which a particular case is assigned, parties may file pleadings in any division office maintained by the Clerk of Court, and the pleadings shall be promptly transmitted to the divisional office where the case has been assigned.

## C. ASSIGNMENT OF CASES TO JUDICIAL OFFICERS

### (1) Assignment of Cases to Article III Judges

(a) Cases shall be assigned to the Article III judges in active service through assignment by division. The chief judge of the district shall, in consultation with the other district judges, assign each of the divisions of the court to one of the district judges. The judge assigned a particular division shall be responsible for all business, both civil and criminal, of that division. The chief judge of the district shall, however, retain the discretionary authority to assign cases from a particular division to a judge other than the judge regularly assigned the business of that division.

(b) All proceedings in a case shall be held at the duty station of the judge assigned the case. Where a judge is assigned responsibility for more than one division of the court, the judge shall, to the extent allowed by the status of his docket, conduct proceedings at the federal court facilities in the division to which the case has been assigned.

### (2) Assignment of Cases to Magistrate Judges

(a) The Article III judges of the district shall endeavor to utilize, to the fullest extent allowed by law, the magistrate judges appointed in the district. Every magistrate judge may be included in the automatic or discretionary assignment of cases from any division of the district.

(b) Assignment Practices -- Each Article III judge in regular active service shall immediately develop and implement an assignment plan which specifically delineates the assignment practices the judge shall employ relative to the assignment of civil cases to magistrate judges under authority of 28 U.S.C. § 636. The judge shall reduce the plan to writing, and submit a copy to every judicial officer of the district. The plan shall state which of the following assignment practices will be utilized by the judge:

> (i) automatic assignment of civil cases upon a random basis with the Article III judge, excluding those classes of cases specifically excepted from assignment to the magistrate judge by the Article III judge;
>
> (ii) assignment of civil cases to the magistrate judge, on a discretionary basis, for the purpose of supervising any or all pretrial aspects of the case, and determining any pretrial matter

presented in the case not otherwise excepted from the jurisdiction of the magistrate judge by 28 U.S.C. § 636(b)(1); or

(iii) a combination of the assignment practices set forth in subsections (i) and (ii).

(c) Notification Procedure -- Where the assignment practices of an Article III judge provide for automatic assignment of civil cases to a magistrate judge, the Clerk of Court shall notify each party, at the time of that party's first appearance, that the case has been assigned to a magistrate judge. The notice, which shall be filed in the record by the Clerk of Court, shall identify the magistrate judge to whom the case has been assigned, and shall set forth, in full, the text of Rule 105-2(d) of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA. (*See*, Appendix I.) The action shall be reassigned to an Article III judge upon a demand for reassignment being timely filed by any party in accordance with the time limitations imposed by Rule 105-2(d). Failure of a party to serve a demand for reassignment as required by Rule 105-2(d) shall be deemed a waiver by the party to have any pretrial matter heard and determined, or trial proceedings conducted and judgment entered, by an Article III judge.

## D. AUTOMATIC MODIFICATION OF ASSIGNMENT PROCEDURE

When the total number of cases, both civil and criminal, pending before a particular judicial officer at the end of a calendar quarter, exceeds, by 20% or more, the ratio of the district's total number of pending cases to the number of district judges in regular active service for that same quarter, the court may, after consultation, modify the assignment of cases to that judicial officer.

## NOTES

STATUTORY OBJECTIVE:

28 U.S.C. § 471: "[E]nsure [the] just, speedy, and inexpensive resolutions of civil disputes."

28 U.S.C. § 473(a)(1), (2): Consideration by the court of systematic differential case treatment and direct involvement of a judicial officer in the pretrial process.

IMPLEMENTATION:

Amendment of Rule 105-2, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

EFFECTIVE DATE:

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

COMMENT:

The district is divided into geographical divisions for the purpose of increasing accessibility to the court in a district with significant geographical constraints. The maintenance of five divisions, and the correlative division of business among the judicial officers by assignment of all cases filed in a division, is designed to alleviate the increase in cost associated with transmitting documents and requiring the movement of court personnel, litigants, and counsel throughout the district. The divisional assignment has resulted in a relatively equitable distribution of the caseload among the Article III judges on active status. Reassignment of civil cases, where necessitated by recusal, disqualification, backlog, etc., may be accomplished pursuant to directive of the chief judge.

The emphasis that the Plan places upon assertive judicial management of civil cases will necessitate the direct involvement of judicial officers on a routine basis in the preliminary pretrial stages. The case assignment by division will minimize the time and costs associated with extensive travel by judicial officers in satisfaction of the directives of the Plan. The individual calendaring system results in assignment of cases to a judicial officer who can implement and monitor a case from filing through disposition, and is conducive to expeditious and informed disposition of a case.

The assignment procedure recognizes the magistrate judges of the district have become an integral part of the civil dispute resolution system of the district. *See*, ADVISORY GROUP REPORT, p.46. The Plan incorporates a differential case management system that will necessarily place an additional burden upon the judicial resources of the district. *See*, Part III, *infra*. The incorporation of the magistrate judges in the case assignment process will enhance the efficacy of the system. The Article III judges may assign cases to the magistrate judges on either an automatic or discretionary basis. However, each judge must develop a plan which delineates the assignment practices which the Article III judge intends to utilize in order that the judicial officers, attorneys, and litigants of the district will be apprised of the judge's practice. The provision is conducive to expeditious case disposition through effective utilization of all judicial officers.

The Plan mandates the direct involvement of a judicial officer in the establishment, supervision and enforcement of a case management plan for discovery and disposition. (*See*, Part III, *infra*.) In order to ensure that cases will be assigned promptly to the judicial officer who will be responsible for the case through disposition, the Plan provides that in cases which are automatically assigned to a magistrate judge, the parties must timely demand their right to have all proceedings in the case conducted, and judgment entered, by an Article III judge. (*See*, Rule 105-2(d).) The assignment practices are consistent with the recommendations suggested by the Ninth Circuit Judicial Council's United States Magistrates Advisory Committee. *See*, "Study of Magistrates Within the Ninth Circuit Court of Appeals" (August 15, 1990). 28 U.S.C. § 636(c)(2) provides that "[r]ules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent." Rule 105-2(d) is designed to protect the voluntariness of the parties' consent to the jurisdiction of the magistrate judge and, at the same time, require timely assertion of the right to have all civil proceedings conducted by an Article III judge.

# PART II

# CASE MONITORING AND INFORMATION SYSTEM

## A. CASE INFORMATION AND REPORTING SYSTEM

### (1) Case Status Information

The Clerk of Court shall develop and maintain an information and reporting system which allows ready access to the current status of every active case on the court's civil docket. The information system shall provide the following information relative to each active case upon the court's civil docket:

(a) date of filing;

(b) date of preliminary pretrial conference;

(c) deadline established for completion of discovery;

(d) date for submission of proposed final pretrial order;

(e) dates of any amendments to pretrial scheduling order;

(f) date of trial; specific identification of cases not scheduled for trial within 18 months of the date of filing;

(g) pending motions; date motion taken under advisement.

### (2) Report to Judicial Officers

The Clerk of Court shall prepare a monthly report that sets forth the case specific information referenced in subpart A(1) for every active civil case pending before each judicial officer. A copy of the report shall be provided to the particular judicial officer, as well as the chief judge of the district.

### (3) Report of Pending Motions

The Clerk of Court shall prepare a monthly report for each judicial officer of the district which sets forth all motions, or other matters, that the officer has had under advisement, as of the date of the report, for a period in excess of forty-five (45) days. A copy of the report shall be provided to the chief judge of the district.

## B. CASE MONITORING SYSTEM

(1) The Clerk of Court shall have responsibility to monitor every active civil case upon the docket of the court to ensure:

(i) compliance with the service of process requirements prescribed by Rule 4(j) of the Federal Rules of Civil Procedure;

(ii) a preliminary pretrial conference is scheduled in accordance with the directive of Rule 235-1, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA;

(iii) compliance with the deadlines established by the pretrial scheduling order implemented in the case; and

(iv) compliance with the mandate of Rule 235-4, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, regarding the establishment of a trial date.

The clerk shall note those cases where compliance with the referenced deadlines has not occurred and immediately notify the judicial officer to whom the case is assigned.

## C. AGGREGATE CASE INVENTORY

The Clerk of Court shall prepare a monthly report that inventories the caseload of each judicial officer of the district by summarizing the number of civil and criminal cases pending before each judicial officer at the close of each calendar month. The report shall categorize each judicial officer's pending civil caseload according to the following categories:

(i) one year or less;

(ii) one to two years; and

(iii) more than two years.

## NOTES

STATUTORY OBJECTIVE:

28 U.S.C. § 471: "[E]nsure [the] just, speedy, and inexpensive resolutions of civil disputes."

28 U.S.C. § 473(a)(1), (2): Consideration by the court of systematic differential case treatment and direct involvement of a judicial officer in the pretrial process.

IMPLEMENTATION:

The issuance of an appropriate directive to the Clerk of Court by the chief judge of the district.

EFFECTIVE DATE:

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

COMMENT:

The differential case management system embodied in the Plan requires a complete information and monitoring system. The Clerk of Court shall be required to develop and maintain an information and monitoring system which provides the court with ready access to: (1) aggregate statistical information concerning the court's entire caseload, and (2) individual case information. M. Solomon, Case Flow Management in the Trial Court, 1987, A.B.A. DIV. JUD. SRV., Lawyer Conference Task Force on Reduction of Litigation Cost and Delay. The system will allow each judicial officer to monitor the progress of every case he is assigned from filing to disposition. The system will also facilitate effective management of the case by tracking the case during the course of pretrial activity.

The aggregate information of the court's entire caseload will allow the chief judge of the district to monitor work load distribution among the judicial officers, as well as the work load activity of each judicial officer. Additionally, the aggregate information will allow the court to determine the effectiveness of the case management system and to implement timely revisions to minimize delay in disposition.

# PART III

# CASE MANAGEMENT

## A. PRETRIAL ACTIVITY

### (1) Assertive Judicial Management

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 a case-specific plan for discovery and a schedule for disposition of the case. The judicial officer shall:

(i) timely convene and conduct a preliminary pretrial conference as contemplated by Rule 16, Federal Rules of Civil Procedure;

(ii) assess the complexity of the case and the anticipated discovery attendant to the case, and in consultation with counsel for the parties, implement a case management plan which establishes, to the extent possible, deadlines for: joinder of additional parties; amendment of pleadings; filing motions; identification of expert witnesses; completion of discovery; filing of proposed final pretrial order; trial; and any other dates necessary for appropriate case management.

### (2) Informed Participation by Counsel for All Parties at Preliminary Pretrial Conference

(a) Pretrial Statement -- Counsel for all parties shall be required to file a written statement in advance of the preliminary pretrial conference which specifically addresses all matters critical to the development of a realistic and efficient case management plan and which are specifically set forth in Rule 235-1(c) of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

(b) Mandatory Pre-discovery Disclosure Statement -- In order to facilitate the implementation of an informed case management plan, every party shall, not later than fifteen (15) days prior to the date set for the preliminary pretrial conference, serve a pre-discovery disclosure statement, identified in Rule 200-5(a) of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

(c) Representation by Attorney With Requisite Authority -- Where a party is represented at a preliminary pretrial conference by an attorney, the attorney shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. *See*, Rule 235-8, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

**(3) Pretrial Scheduling Order**

The judicial officer who presided over the preliminary pretrial conference shall immediately enter an order summarizing the matters discussed and action taken in establishing case management plan which establishes time limits for the accomplishment of those pretrial matters referred to in Rule 235-1(a) of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA. The order shall specifically designate whether the case has been placed upon the court's expedited trial docket pursuant to Rule 235-4(a) of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

## B. TRIAL SCHEDULING

Consistent with the concept of individualized case management adopted by the Plan, the judicial officer presiding at the preliminary pretrial conference shall determine whether a trial date is appropriately established at the time of the preliminary pretrial conference.

**(1) Expedited Trial Docket**

The court shall establish an expedited civil trial docket. A case placed upon the expedited trial docket shall be placed on the trial calendar for a date certain not later than six (6) months from the date of the preliminary pretrial conference. At the time of the preliminary pretrial conference, any party may request placement of the case upon the expedited trial docket. After considering the demands of the case and its complexity, the judicial officer, in consultation with all parties, or their counsel, shall determine if placement of the case upon the expedited trial docket is appropriate under the circumstances.

**(2) General Trial Docket**

(a) In those cases where a trial date is not established at the time of the preliminary pretrial conference, the judicial officer to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial

order, convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date.

(b) The date established for trial shall not be more than sixty (60) calendar days from the date of the status conference unless the assigned judicial officer's trial docket precludes accomplishment of trial within that time frame.

(c) In the event the trial date established is beyond eighteen (18) months from the date the complaint was filed, the judicial officer to whom the case is assigned shall enter an order certifying that

(i) the demands of the case and its complexity render a trial date within the 18-month period incompatible with serving the ends of justice; or

(ii) the trial cannot be reasonably held within the 18-month period because of the status of the judicial officer's trial docket.

**(3) Maintenance of Trial Setting**

(a) An established trial date shall not be vacated unless there exists a compelling reason necessitating the continuance.

(b) It shall be the policy of the court to utilize all available judicial resources to allow the court to adhere to an established trial date.

(c) When the judicial officer to whom a civil case has been assigned is unable to convene a trial as scheduled, the judicial officer shall, as soon as practicable, take the following action:

(i) determine the other judicial officers of the district that would be available to preside over the trial on the date scheduled;

(ii) convene a status conference for the purpose of advising counsel and the parties of the necessity to consider vacation of the trial date;

(iii) establish a new trial date which will not unnecessarily inconvenience either counsel or the parties;

(iv) advise the parties of the availability of any other judicial officer of the district to preside over trial on the date originally established; and

(v) determine whether a consensus exists among counsel and the parties regarding reassignment of the case to another specifically identified judicial officer of the district. Where a consensus on reassignment exists, the assigned judicial officer shall effect reassignment of the case to the judicial officer identified by counsel and the parties.

## NOTES

**STATUTORY OBJECTIVE:**

28 U.S.C. § 473(a)(1): The consideration and inclusion, where appropriate, of the principles and guidelines of litigation management set forth in section 473(a), and the litigation management and cost and delay reduction techniques specifically set forth in section 473(b).

**IMPLEMENTATION:**

Rule 235, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

**EFFECTIVE DATE:**

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

**COMMENT:**

**Case Management Plan**

The Plan incorporates a comprehensive case management system which centers on the direct involvement of a judicial officer in the establishment, supervision and enforcement of a plan for discovery and time-table for disposition suitable to the circumstances of each particular case. Certain non-complex cases, as well as any case specifically identified by the assigned judicial officer, are specifically exempted from the detailed pretrial procedure. However, in essentially every other civil case, the judicial officer to whom the case is assigned shall timely convene a preliminary pretrial conference for the purpose of establishing a case specific management plan. Consistent with the directive of 28 U.S.C. § 473(a), the judicial officer shall establish a case specific management plan which incorporates those principles and guidelines of litigation management identified in 28 U.S.C. § 473(a) that the judicial officer, in consultation with counsel, finds would be conducive to the expeditious and cost efficient disposition of the case. Through informed discussion with counsel, the judicial officer will implement a case management plan that incorporates a deadline for the completion of discovery and filing of motions. A trial date may be established in accordance with the provisions of the Plan regarding trial setting. *See*, Rule 235-4, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

The Plan adopts the three following specific measures to facilitate comprehensive consideration of all matters pertinent to the establishment of a case management plan:
(i) filing of a pretrial statement in advance of the conference; (ii) service of mandatory pre-discovery disclosure statement, the specifics of which are more fully discussed in Part IV, B, *infra*; and (iii) presence of an attorney with authority to enter stipulations and make admissions on behalf of a party. The measures were adopted in specific response to the directive of 28 U.S.C. § 473(b)(1), (2). The procedure, which requires the parties to file separate pretrial statements, is considered more effective in providing the dynamic of dialogue essential to the development of an effective case management plan.

The provisions of the Plan are not intended to have the judicial officer superintend the litigation strategy of the attorneys. Rather, the role of the judicial officer shall be to assist counsel in developing a case management plan which will preclude the utilization of court process as a strategic weapon and facilitate resolution of civil cases in a time frame which will allow full, yet efficient, development of the case. *See*, ADVISORY GROUP REPORT, p.62.

**Trial Scheduling**

Subpart B delineates the procedure to be utilized by the judicial officers of the district in establishing a firm trial date. The certainty of a trial date is necessary for effective case flow management and efficient disposition of civil cases. However, the desire for expediency must be balanced with the concern that litigants are afforded an adequate opportunity to properly prepare their cases and achieve a just disposition of civil disputes. The trial scheduling procedure must effectively address the ever present and unpredictable element that the demands of the court itself will preclude the court from adhering to an established trial date. The procedure adopted by the Plan tends to strike the proper balance.

The existence of an expedited trial docket will foster the expeditious and cost efficient resolution of non-complex cases as well as more complex cases in which counsel and the litigants timely and efficiently complete discovery.

The general trial docket presents an alternate procedure which calls for the establishment of a trial date at the time the parties submit a proposed final pretrial order. The procedure provides the flexibility necessary to deal with contingencies, thereby insuring a case will proceed to trial in an orderly and efficient manner. The procedure achieves the desirable end of avoiding the squander of judicial and litigant resources associated with the last minute continuance of a trial. *See*, ADVISORY GROUP REPORT, p.69.

The certainty of litigation events occurring that provides impetus for the efficient completion of discovery and serious settlement negotiations is provided by the following provisions:

> (i) the date certain for completion of discovery that must be incorporated into the case management plan; and
>
> (ii) the mandatory limitation upon the time within which a case must be scheduled for trial following submission of the proposed final pretrial order.

*See*, ADVISORY GROUP REPORT, p.72.

# PART IV

# CONTROL OF DISCOVERY

## A. ASSERTIVE JUDICIAL MANAGEMENT

The judicial officer to whom a civil case is assigned shall manage the discovery process by establishing, in consultation with counsel, a discovery management plan consonant with the complexity of the case and conducive to the expeditious and cost efficient accomplishment of discovery. The judicial officer shall, at the time of the preliminary pretrial conference or subsequent status conference, implement a discovery management plan that:

(i) establishes a date certain for the completion of discovery;

(ii) establishes limitations upon the methods and extent of discovery which are appropriate under the circumstances of the case; and

(iii) establishes a procedure for management of discovery as it bears upon the identification and discovery of facts known and opinions held by expert witnesses.

## B. MANDATORY PRE-DISCOVERY DISCLOSURE

### (1) CONTENT

Every party shall, without awaiting a discovery request, disclose, in writing, to every opposing party, to the full extent known to the disclosing party, the following information:

(i) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense;

(ii) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities;

(iii) the identity of all persons known or believed to have discoverable information about the claims or defenses, and a statement of the subject matter of that information;

(iv) a description, including the location and custodian of any tangible evidence or relevant documents that are reasonably likely to bear on the claims or defenses;

(v) a computation of any damages claimed; and

(vi) the substance of any insurance agreement that may cover any resulting judgment.

The disclosure obligation is reciprocal and continues throughout the case.

## (2) TIMING OF MANDATORY DISCLOSURE

Except with leave of court, a party may not seek discovery from any source before making an appropriate pre-discovery disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written interrogatories upon a party simultaneously with service of the required disclosure statement upon that party. Every party shall serve an appropriate disclosure not later than fifteen (15) days in advance of the preliminary pretrial conference.

## (3) SUPPLEMENTATION OF MANDATORY DISCLOSURE

A party who has made a pre-discovery disclosure is under a duty to seasonably supplement or correct the disclosure if the party learns that the information disclosed is not complete and correct or is no longer complete and correct.

## (4) SIGNING OF MANDATORY DISCLOSURE

Every mandatory disclosure or supplement made by a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

## C. EXCESSIVE INTERROGATORIES

A party upon whom interrogatories have been served may seek relief from responding to interrogatories which are excessive in number. The court shall consider interrogatories which exceed fifty (50) in number, including subparts, to be excessive, unless the party propounding them can establish that the interrogatories are not unduly burdensome, have been propounded in good faith, have been tailored to the needs of the particular case, and are justified under the circumstances of the case.

## D. RESOLUTION OF DISCOVERY DISPUTES

The court shall deny any motion presented pursuant to the Federal Rules of Civil Procedure governing discovery unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange the necessary conference, and opposing counsel wilfully refuses or fails to confer, the judicial officer may order payment of reasonable expenses, including attorney's fees, pursuant to Fed.R.Civ.P. 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this rule.

## E. PEER REVIEW OF DISCOVERY PRACTICES AND LITIGATION CONDUCT

The court shall, not later than June 30, 1992, establish in each division in the district a standing committee comprised of not less than five (5) practicing members of the district bar, which shall sit to review the discovery practices and other litigation conduct of attorneys practicing before the court in the particular division where the committee is established. The members of the committee shall be appointed by majority vote of the Article III judges of the district in regular active service.

A request for review may be submitted to the committee by any judicial officer of the district. In presenting the request for review, the judicial officer shall provide a statement which delineates the discovery or litigation practice submitted to the committee for review. Upon consideration of the record in the case, the committee shall present the judicial officer with an advisory opinion stating whether the practice or conduct falls within the bounds of accepted discovery or litigation practice.

## NOTES

STATUTORY OBJECTIVE:

28 U.S.C. § 473(a)(2)(C), (3)(C), (4): The consideration and inclusion of principles and guidelines of litigation management which controls the extent of discovery, establishes deadlines for completion, imposes limits upon the use of discovery which will avoid unnecessary, unduly burdensome or expensive discovery, and encourage cost-effective discovery through voluntary exchange of information among litigants and their attorneys.

IMPLEMENTATION:

Amendments to Rule 200-5, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

Establishment of a peer review group that shall act in an advisory capacity to the court in assessing the propriety of the discovery practices and other litigation conduct of attorneys.

EFFECTIVE DATE:

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

COMMENT:

The Plan provides for the early and ongoing control of the pretrial process, and particularly the discovery process, through involvement of a judicial officer in establishing a case management plan. The judicial officer is required, in consultation with counsel, to develop a plan for the accomplishment of discovery which will provide full, yet efficient, development of the case for trial. The Plan requires the judicial officer to establish deadlines for the completion of discovery. (*See*, Part III, *supra*.)

Subpart B(2) mandates disclosure by every party of certain information that is essential to both the preparation of the case for trial and the establishment of an informed case management plan. The provision is more extensive than the proposed amendments to Fed.R.Civ.P. 26, which imposes upon parties a duty to disclose, and appropriately supplement, certain basic information that is needed in most cases to prepare for trial, or make an informed decision about settlement. (*See*, Preliminary Draft to the Proposed Amendments to the Federal Rules of Civil Procedure and the Federal Rules of Evidence, August 1991.) The intent of the provision is to ensure that the specifically delineated items of information are promptly disclosed early in the course of litigation, avoiding unnecessary and protracted discovery and to enhance the prospect of early resolution through settlement. *See*, ADVISORY GROUP REPORT, p.80. Unlike the proposed amendment to Rule 26, the Plan provision does not limit the disclosure to persons and documents that "significantly" bear upon the issues in the case. The elimination of any qualifying term will make it more difficult for a litigant or attorney to avoid appropriate disclosure by relying upon the relative concept of significance. (*See*, Gerald R. Powell, The Docket Movers: A Critique of Proposed Amendments to the Federal Rules of Civil Procedure, Volume 1, p.14 (1991)). The parties are required to make a disclosure based upon the information then available.

Subpart B(4) imposes an obligation on the party to make reasonable inquiry into the facts of the case prior to serving the disclosure. A duty to supplement the initial disclosure is imposed by subpart B(3). Subpart B(4) imposes the same signature requirement imposed by Fed.R.Civ.P. 26 with respect to discovery requests, responses, and objections.

No presumptive limits on the volume of discovery are included in the Plan. *See*, ADVISORY GROUP REPORT, p.62. Rather, the Plan adopts a methodology to control and enhance the discovery process that is based upon the early and active involvement of the judicial officer in the development of a case management plan. *See*, ADVISORY GROUP REPORT, p.79. Subpart C does, however, establish a presumption of interrogatories exceeding 50 in number are excessive. The provision is designed to encourage the concise use of interrogatories.

Subpart D incorporates the principle of litigation management referenced in 28 U.S.C. § 473(a)(5), *i.e.*, conservation of judicial resources by prohibiting the consideration of discovery motions unless the moving party has made a reasonable and good faith effort to resolve the discovery dispute. This principle of litigation management which has existed in the district *i.e.*, has proven effective in promoting the informal resolution of discovery disputes. *See*, ADVISORY GROUP REPORT, p.37.

The establishment of a peer review process in the district to assist the court in monitoring litigation practices of attorneys, and in particular, discovery practices, will promote the proper use of the tools of discovery. *See*, ADVISORY GROUP REPORT, p.79. A peer review committee will be established that will be available to assist the judicial officers of the district, in an advisory capacity, to assess whether the discovery practices, or the other litigation conduct of an attorney is considered abusive among practicing attorneys. A committee will be established in each division of the court to assist the court in relation to requests for review arising from each particular division.

# PART V

# MOTION PRACTICE

## A. ASSERTIVE JUDICIAL MANAGEMENT

The judicial officer to whom a case is assigned shall develop a case management plan which satisfies the following requirements:

(i) identifies the principal issues to be presented to the court for pretrial resolution;

(ii) establishes a time frame for disposition of pretrial motions which is conducive to the orderly and efficient disposition of the case; and

(iii) establishes a deadline by which all pretrial motions must be presented to the court for determination.

## B. LIMITATION ON LENGTH OF SUPPORTING MEMORANDA

Memoranda submitted to the court for consideration in conjunction with any motion shall contain an accurate statement of the questions to be decided, set forth succinctly the relevant facts and the argument of the party with supporting authority. No memoranda shall be presented to the court which is longer than twenty (20) pages (exclusive of exhibits, table of contents, and cover), unless prior court approval is obtained.

## C. SUMMARY JUDGMENT

All motions for summary judgment shall be accompanied by a statement which specifically identifies the facts the movant believes are uncontroverted. The response of an adverse party shall specifically identify the facts the adverse party believes establishes a genuine issue of material fact. In the alternative, the parties may file a joint stipulation that sets forth a statement of the stipulated facts if the parties agree there is no genuine issue of any material fact.

## D. PENDING MOTIONS REPORT

In any civil case where a motion has been pending for determination 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 pendency of the motion. If the judicial officer does not render his decision within thirty (30) days of the Clerk's advisement, the judicial officer shall immediately issue a written report as to the status of the pending motion. A copy of the written report from the judicial officer shall be provided to the chief judge of the district.

## NOTES

**STATUTORY OBJECTIVE:**

28 U.S.C. § 473(a)(2)(D), (3)(D): The consideration and inclusion, if appropriate for the district, of provisions which provide for "setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

**IMPLEMENTATION:**

Amendment to Rules 220 and 235, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

**EFFECTIVE DATE:**

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

**COMMENT:**

Part V is designed to control motion practice. The Plan incorporates a comprehensive case management system which centers on the direct involvement of a judicial officer in the establishment, supervision and enforcement of a case specific management plan. In the development of an appropriate case management plan, the judicial officer, in conjunction with counsel, is required to identify issues properly resolved by pretrial motion, establish a time-frame for disposition of those motions in an expeditious and cost-efficient manner. With respect to the more "standard" pretrial motions, a deadline for submission of those motions is to be incorporated into the case management plan to avoid disruption of an established trial date by the untimely filing of motions. *See*, ADVISORY GROUP REPORT, p.86.

The remaining provisions of Part V address a problem in civil litigation specifically identified by congress in its enactment of the Civil Justice Reform Act of 1990, *i.e.*, the undue delay often associated with the resolution of motions. S.REP. No. 101-406, pp.26-27; H.R. REP. No. 101-650, p.15. Subpart B imposes a limitation in length of 20 pages upon memoranda submitted to the court for consideration in conjunction with any motion. *See*, ADVISORY GROUP REPORT, pp.86-87. Subpart C is designed to enhance the summary judgment process by requiring parties to specifically and completely identify facts which bear upon the motion for summary judgment and which are, or are not, in dispute. *See*, ADVISORY GROUP REPORT, p.87. Both measures will promote timely resolution of motions.

The problem of delay in resolution of motions is specifically addressed by subpart D. This provision requires a judicial officer who is unable to decide a motion within 60 days of submission, to issue a written report as to the status of the pending motion. The report is required to be provided to the chief judge of the district. The provision will operate to ensure that the untimely resolution of pretrial motions will not jeopardize the case management plan implemented in the case. *See*, ADVISORY GROUP REPORT, p.88.

# PART VI

# ALTERNATIVE DISPUTE RESOLUTION

## A. COURT CONDUCTED SETTLEMENT CONFERENCES

### (1) Mandatory Consideration

The judicial officer to whom a case is assigned shall consider, both at the time of the preliminary pretrial conference 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) Presiding Judicial Officer

Any judicial officer of the district may preside over a settlement conference convened by the court. The judicial officer to whom the case is assigned for disposition may, in his or her discretion, preside over the settlement conference.

## B. MEDIATION SERVICES

The court shall establish and maintain a list of court-approved mediation masters available to assist a party in formally mediating civil disputes. Applications of individuals seeking placement upon the list shall be received by the Clerk of Court and presented to the Article III judges on active service for review. Upon approval by a majority of the Article III judges on active status, the applicant shall be placed upon the list. A current listing of court-approved mediation masters shall be maintained by the Clerk of Court.

## NOTES

**STATUTORY OBJECTIVE:**

28 U.S.C. § 473(a)(3)(A), (6) and (b)(4): Consideration by the court at all stages of the civil litigation process of achieving settlement of a case through the employment of acceptable alternative dispute resolution techniques.

**IMPLEMENTATION:**

Promulgation of Rules 235-1(c)(11), 235-5, and 235-7, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

**EFFECTIVE DATE:**

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

**COMMENT:**

The district has employed case-specific measures, principally settlement conferences presided over by a magistrate judge, of achieving termination of civil cases through settlement. The technique has proven successful and is reputed among members of the bar, as well as regular litigants, to be effective and cost efficient. *See*, ADVISORY GROUP REPORT, p.91. Subpart A mandates the judicial officer to whom a civil case is assigned to determine the advisability of requiring the parties to participate in a settlement conference presided over by a judicial officer of the district. The provision, as implemented through appropriate amendments to local Rule 235, codifies what is essentially the practice presently implemented throughout the district. Subpart A(2) mandates that a court-convened settlement conference be attended by representatives of every party who possess full authority to effect settlement. The judicial officer to whom the case is assigned shall explore the parties' receptivity to settlement through consultation with counsel at all conferences held in the case, including the final pretrial conference. *See*, Part VII, A, *infra*.

The proven efficiency of the court-convened settlement conferences in the district renders that technique the preferred technique of the bench, bar, and the litigants. *See*, ADVISORY GROUP REPORT, p.91. The Plan does not provide for any court-wide program of alternative dispute resolution as there is no perceived need, at this juncture, for a court-wide program. *See*, ADVISORY GROUP REPORT, pp.91-92. However, subpart B calls for the establishment and maintenance of a list of court-approved mediation masters. The provision is included to make qualified mediation masters available to assist litigants in resolving civil disputes where the required commitment of time by the magistrate judge to undertake the task of mediation would place an undue burden upon the district's judicial resources. *See*, ADVISORY GROUP REPORT, p.92.

Cognizant of the ongoing duty to assess the effectiveness of the present Plan, the court shall assess, on an ongoing basis, the need for implementation of a court-wide program of alternative dispute resolution.

# PART VII

# FINAL PRETRIAL PROCEEDINGS

## A. FINAL PRETRIAL ORDER

Counsel for all parties shall participate in a conference for the purpose of jointly preparing a comprehensive proposed final pretrial order. All counsel shall endeavor to arrive at stipulations and agreements conducive to simplification of the issues to be presented for determination at trial.

## B. FINAL PRETRIAL CONFERENCE

The judicial officer who will preside during trial shall convene a final pretrial conference. The judicial officer will consider all matters bearing upon presentation of the case in an orderly and expeditious fashion. The judicial officer may, within his or her discretion, explore the prospect of the parties effecting a settlement of the case. Counsel attending the conference shall possess authority to effect a complete and binding settlement, or insure that a party or appropriate representative may be consulted to obtain the necessary authority during the course of the conference.

## NOTES

**STATUTORY OBJECTIVE:**

28 U.S.C. § 471: "[E]nsure [the] just, speedy, and inexpensive resolutions of civil disputes."

**IMPLEMENTATION:**

Amendment to Rule 235-7, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

**EFFECTIVE DATE:**

April 1, 1992. *See*, Rule 83, Federal Rules of Civil Procedure.

**COMMENT:**

The final pretrial order and conference provide the vehicles to ensure that a civil case proceeds to trial in an orderly and expeditious fashion. *See*, ADVISORY GROUP REPORT, pp.97-98. Subpart A requires counsel for the parties to jointly prepare a comprehensive final pretrial order. The joint preparation will be conducive to effective streamlining of the case for trial. *See*, ADVISORY GROUP REPORT, p.98. Subpart B provides that the judicial officer who will preside over trial will convene and direct the final pretrial conference, which shall be attended by the attorneys who will be trying the case. Each party is required to have at least one attorney participating in the conference that has authority to enter into stipulations and make admissions regarding all matters, including settlement, that the participants may reasonably anticipate may be discussed. *See*, Rule 235-8, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

# APPENDIX I

## NOTICE OF ASSIGNMENT OF CIVIL CASE

## TO UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
_____DIVISION

| | | |
|---|---|---|
| Plaintiff, | ) | NO._____ |
| vs. | ) | |
| | ) | NOTICE OF ASSIGNMENT |
| | ) | TO MAGISTRATE JUDGE |
| Defendant. | ) | |

YOU ARE HEREBY NOTIFIED that the present case has been assigned to the Honorable _____, United States Magistrate Judge for the District of Montana, pursuant to 28 U.S.C. § 636.

The case will be reassigned to the Honorable _____, United States District Judge, upon your filing of a timely demand for reassignment in accordance with Rule 105-2(d), RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.*

DATED:

_____
CLERK OF COURT

*RULE 105-2. ASSIGNMENT OF CASES

**(d) Consent to Proceed Before a Magistrate Judge**

The right to have all civil proceedings conducted by a United States District Judge appointed pursuant to Article III of the United States Constitution shall be preserved to the parties inviolate.

Any party to a civil action that has been assigned to a magistrate judge pursuant to subsection (c) of the present rule may demand that all pretrial matters excepted from the jurisdiction of the magistrate judge by 28 U.S.C. § 636(b)(1)(A) be heard and determined, and all trial proceedings conducted and judgment entered, by an Article III judge, by serving upon the other parties a demand therefor in writing at anytime after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to the issue. Such demand may be endorsed upon a pleading of the party. The failure of a party to serve a demand as required by this rule and to file it as required by Fed.R.Civ.P. 5(d) constitutes a waiver by the party to have any pretrial matter heard and determined, or trial proceedings conducted and judgment entered, by an Article III judge, and a consent by the party to have the magistrate judge hear and determine any pretrial matter and to conduct any or all trial proceedings and order the entry of judgment in the case.

# AMENDMENTS TO THE

# RULES OF PROCEDURE OF THE

# UNITED STATES DISTRICT COURT

# FOR THE DISTRICT OF MONTANA

# AMENDMENTS TO THE RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

## RULE 105

## DIVISIONS–ASSIGNMENT OF DIVISIONS–VENUE TERMS OF THE COURT AND CALENDAR

### 105-1 DIVISIONS WITHIN DISTRICT

Unchanged

### 105-2 ASSIGNMENT OF CASES

**(a) Jurisdiction**

All of the judges of the District of Montana, including the senior judges designated to serve in Montana by the chief judge of the circuit, shall have jurisdiction over all criminal and civil cases filed in the District of Montana, and may make and sign any orders, decrees or judgments.

**(b) Assignment of Division Workload**

For the purpose of allocating the work of the judges, however, the chief judge of the District shall by order, assign each of the divisions of the court to one of the judges in regular active service in the District. All applications for orders in cases pending in any division shall be made to the judge to whom the division is assigned unless by order of the chief judge, a particular cause is specifically assigned to a judge other than the one regularly assigned, in which case application for orders shall be to the judge so specifically assigned.

**(c) Assignment of Cases to Magistrate Judges**

The judge to whom the work of a particular division is assigned may direct that any civil case filed within that division be assigned to any magistrate judge of the District of Montana in accordance with 28 U.S.C. § 636, and Rule 400-1 of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

**(d) Consent to Proceed Before a Magistrate Judge**

The right to have all civil proceedings conducted by a United States District Judge appointed pursuant to Article III of the United States Constitution shall be preserved to the parties inviolate.

Any party to a civil action that has been assigned to a magistrate judge pursuant to subsection (c) of the present rule may demand that all pretrial matters excepted from the jurisdiction of the magistrate judge by 28 U.S.C. § 636(b)(1)(A) be heard and determined, and all trial proceedings conducted and judgment entered, by an Article III judge, by serving upon the other parties a demand therefor in writing at anytime after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. The failure of a party to serve a demand as required by this rule and to file it as required by Fed.R.Civ.P. 5(d) constitutes a waiver by the party to have any pretrial matter heard and determined, or trial proceedings conducted and judgment entered, by an Article III judge, and a consent by the party to have the magistrate judge hear and determine any pretrial matter and to conduct any or all trial proceedings and order the entry of judgment in the case.

105-3 VENUE

Unchanged

105-4 TERMS OF COURT AND CALENDAR

Unchanged

## RULE 200

## CIVIL PROCEEDINGS

### 200-1 CIVIL COVER SHEET

Unchanged

### 200-2 FILING OF PLEADINGS REQUIRING LEAVE OF COURT

Unchanged

### 200-3 DOCUMENTS OF DISCOVERY

Unchanged

### 200-4 FILING OF BRIEFS

Unchanged

### 200-5 DISCOVERY AND DISCOVERY RESPONSES

**(a) Pre-Discovery Disclosure**

(1) Except with leave of court, a party may not seek discovery from any source before making an appropriate pre-discovery disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written interrogatories upon a party simultaneously with service of the required disclosure statement upon that party. Every party shall serve an appropriate disclosure not later than fifteen (15) days in advance of the preliminary pretrial conference.

The disclosure shall contain the following information:

(i) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(ii) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(iii) the identity of all persons known or believed to have discoverable information about the claims or defenses, and a summary of that information.

(iv) a description, including the location and custodian of any tangible evidence or relevant documents that reasonably likely to bear on the claims or defenses;

(v) a computation of any damages claimed; and

(vi) the substance of any insurance agreement that may cover any resulting judgment.

(2) Supplementation of Disclosure -- The disclosure obligation is reciprocal and continues throughout the case. A party who has made a pre-discovery disclosure is under a duty to seasonably supplement or correct the disclosure if the party learns that the information disclosed is not complete and correct or is no longer complete and correct.

(3) Signing of Disclosure -- Every mandatory disclosure or supplement made by a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

(b) Responses to Discovery

Answers and objections to interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, and responses and objections to requests for admission pursuant to Rule 36 of the Federal Rules of Civil Procedure shall identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

### (c) Excess of Interrogatories

A party upon whom interrogatories have been served may seek relief from responding to interrogatories which are excessive in number. For the purpose of this rule, more than fifty (50) interrogatories, including subparts, shall be considered excessive, unless the party propounding them can establish that the interrogatories are not unduly burdensome, have been propounded in good faith, have been tailored to the needs of the particular case, and are necessary because of the complexity or other unique circumstances of the case.

### (d) Demand for Prior Discovery

Whenever a party makes a written demand for discovery which took place prior to the time he became a party to the action, each party who has previously provided responses to interrogatories, requests for admission or requests for production shall furnish to the demanding party the documents in which the discovery responses in question are contained, for inspecting and copying, or a list identifying each such document by title, and upon further demand shall furnish to the demanding party, and at the expense of the demanding party, a copy of any listed discovery response specified in the demand; or, in the case of request for production, shall make available for inspection by the demanding party all documents and things previously produced. Furthermore, each party who has taken a deposition shall advise the demanding party of the availability of a copy of the transcript at the latter's expense.

### (e) Discovery Motions

(1) All motions to compel or limit discovery shall set forth, in full, the text of the discovery originally sought and the response made thereto, if any, and identify the reason why the proposed discovery is objectionable or should be limited.

(2) The court will deny any motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel wilfully refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Fed.R.Civ.P. 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this rule.

(f) Filing Discovery Papers

Originals of responses to requests for admissions or production and answers to interrogatories shall be served upon the party who made the request or propounded the interrogatories, and that party shall make such originals available for use by any other party at the time of any pretrial hearing or at trial. Likewise, the deposing party shall make the original transcript of a deposition available for use by any party at the time of any pretrial hearing and at trial, or filing with the court if so ordered.

## 200-6 DEMAND FOR JURY TRIAL

Unchanged

## 200-7 STATUTORY THREE-JUDGE COURT

Unchanged

## RULE 220

## MOTIONS–NOTICE AND OBJECTIONS–EXTENSIONS

### 220-1 MOTIONS

(a) Same as previous text

(b) Briefs on motions shall contain an accurate statement of the questions to be decided, set forth succinctly the relevant facts and the argument of the party with supporting authorities, and not be longer than twenty (20) pages (exclusive of exhibits, table of contents, and cover) without prior court approval. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references.

### 220-2 NOTICE TO OPPOSING COUNSEL, AND OBJECTIONS

Unchanged

### 220-3 EXTENSIONS OF TIME

Unchanged

### 220-4 MOTIONS FOR SUMMARY JUDGMENT

(a) Any party filing a motion for summary judgment shall also file a "Statement of Uncontroverted Facts" which shall set forth separately from the memorandum of law, and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (*e.g.*, affidavit, deposition, etc.).

Any party opposing a motion for summary judgment must file a "Statement of Genuine Issues", setting forth the specific facts, which the opposing

party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party.

In the alternative, the movant and the party opposing the motion shall jointly file a stipulation setting forth a statement of the stipulated facts if the parties agree there is no genuine issue of any material fact. Such stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

220-5 **HEARING ON MOTIONS** (same as former 220-4)

220-6 **INFORMAL MATTERS** (same as former 220-5)

220-7 **REMINDER TO THE COURT OF PENDING MATTERS**

(a) In any civil case where a motion has been pending for determination 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 pendency of the motion.

(b) If the judicial officer does not render his decision within thirty (30) days of the date of the clerk's advisement, the judicial officer shall immediately issue a written report as to the status of the pending matter. A copy of the written report from the judicial officer shall be provided to the chief judge of the District.

(c) As long as the matter remains under advisement, a similar advisement, as mandated by subsection (a), shall be made to the judicial officer at intervals of forty-five (45) days. A similar report, as mandated by subsection (b), shall be issued by the judicial officer.

220-8 **MOTIONS HEARD ON CLERK'S RECORD** (same as former 220-6)

## RULE 235

## PRETRIAL PROCEEDINGS–CIVIL

### 235-1 PRELIMINARY PRETRIAL CONFERENCE

(a) Not later than forty-five (45) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judge or magistrate judge to whom the case is assigned shall hold a preliminary pretrial conference to discuss the matters included in the preliminary pretrial statements and discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) filing and hearing motions;

(4) identification of expert witnesses;

(5) completion of discovery;

(6) filing of proposed final pretrial order;

(7) final pretrial order conference;

(8) a trial date, if applicable;

(9) any other dates necessary for appropriate case management.

All parties receiving notice of the conference shall attend in person or by counsel, prepared to discuss the implementation of a pretrial scheduling order conducive to the efficient and expeditious determination of the case.

(b) Every party shall serve a Pre-Discovery Disclosure Statement required by Local Rule 200-5(a) not later than fifteen (15) days prior to the date set for the preliminary pretrial conference.

(c) Every party shall file a Preliminary Pretrial Statement no later than seven (7) days prior to the date set for the conference. The statement shall include a brief factual outline of the case. The statement shall also address:

(1) issues concerning jurisdiction;

(2) identifying, defining and clarifying issues of fact and law genuinely in dispute;

(3) making stipulations of fact and law and otherwise narrowing the scope of the action to eliminate superfluous issues;

(4) deadlines relating to joinder of other parties and amendments to pleadings;

(5) the pendency or disposition of related litigation;

(6) propriety of special procedures including reference to a master or a magistrate judge;

(7) controlling issues of law which the party anticipates presenting for pretrial disposition;

(8) anticipated course of discovery, and time frame for completion, including procedure for management of expert witnesses;

(9) propriety of modifying standard pretrial procedure established by Local Rule 235;

(10) advisability of the case being considered for placement upon the court's expedited trial docket in accordance with Rules 235-4(a); and

(11) prospect for compromise of case and feasibility of initiating settlement negotiations or invoking alternate dispute resolution procedures.

(d) The following cases shall be excepted from the requirements of the present rule:

(1) Appeals from proceedings of an administrative body of the United States of America.

(2) Petitions for a Writ of Habeas Corpus.

(3) Proceedings under the Bankruptcy Code, Title 11, United States Code.

(4) Actions prosecuted by the United States of America to collect upon a debt.

(5) Forfeiture actions prosecuted by the United States of America.

(6) Any case which the judge or magistrate judge to whom the case is assigned orders to be excepted from the requirements of the present rule.

In those cases excepted from the requirements of the present rule, the assigned judicial officer shall, not later than forty-five (45) days from the date the case is at issue, or one hundred twenty (120) days after filing of the initial pleading, establish a schedule for final disposition of the case.

## 235-2 PRETRIAL SCHEDULING ORDER

After the Preliminary Pretrial Conference, the presiding judge or magistrate judge shall immediately enter an order summarizing the matters discussed and action taken, setting a schedule limiting the time for those matters referred to in Rule 235-1(a) and covering such other matters as are necessary to effectuate the agreements made at the conference.

The scheduling order shall specifically designate whether the case has been placed upon the court's expedited trial docket pursuant to Rule 235-4(a).

## 235-3 STATUS CONFERENCES

Status conferences may be held in any case as deemed necessary by the judge or magistrate judge to whom the case is assigned. A party may move the assigned judicial officer to convene a status conference by filing an appropriate motion advising the judicial officer of the necessity for a conference.

## 235-4 TRIAL SETTING

### (a) Expedited Trial Docket

(1) The court shall establish an expedited trial docket. A case placed on the expedited trial docket shall be set on the court's trial calendar for a date not later than six (6)

months from the date of the preliminary pretrial conference.

(2) A party may, at the time of the preliminary pretrial conference, request placement of the case upon the expedited trial docket. With the consensus of the parties, the assigned judicial officer may place the case upon the expedited trial docket, establishing a date certain for trial in the pretrial scheduling order. By consenting to placement upon the expedited trial docket, the parties agree the trial shall not be continued absent a showing that a continuance is necessary to prevent manifest injustice.

(b) **General Trial Docket**

Unless a trial date has been established by previous order, the judge or magistrate judge to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial order, convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date.

Pursuant to the status conference the judicial officer to whom the case is assigned shall immediately enter a final scheduling order which establishes date for the following:

(1) a final pretrial conference unless deemed unnecessary by the judicial officer;

(2) filing of each party's proposed charge to the jury, or, where appropriate, proposed findings of fact and conclusions of law; and

(3) trial; the date established shall not be more than sixty (60) calendar days from the date of the status conference, unless the assigned judicial officer's trial docket precludes accomplishment of trial within that time frame, in which event the case shall be given priority on the next trial calendar. In the event the trial date established is beyond eighteen (18) months from the date the complaint was filed, the judge or magistrate judge to whom the case is assigned shall enter an order certifying that (i) the demands of the case and its complexity render a trial date within the eighteen-month period incompatible with serving the ends of justice; or (ii) the trial cannot be reasonably held within

the eighteen-month period because of the status of the judicial officer's trial docket.

## 235-5 SETTLEMENT CONFERENCE

The judge or magistrate judge to whom a civil case is assigned may, upon written request of any party filed in the record, or upon the judicial officer's own initiative, order the parties to participate in a settlement conference to be convened by the court. Each party, or a 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. The judicial officer may, in his or her discretion, preside over the settlement conference.

## 235-6 FINAL PRETRIAL ORDER

### (a) Procedure

Counsel for the parties shall prepare and sign a proposed consolidated final pretrial order to be lodged with the Clerk of Court by the date established in the pretrial scheduling order. It shall be the responsibility of counsel for the plaintiff(s) to convene a conference of all counsel at a suitable time and place. The purpose of the conference is to arrive at stipulations and agreements conducive to simplification of the triable issues and to otherwise jointly prepare a proposed final pretrial order. If counsel for any party is unreasonably refusing to cooperate in the preparation of the pretrial order, the opposing party shall move the court to enter an appropriate order.

### (b) Form and Content

(1) Nature of Action. A plain, concise statement of the nature of the action.

(2) Jurisdiction. The statutory basis of jurisdiction and factual basis supporting jurisdiction.

(3) Jury; Nonjury. Whether a party has demanded a jury of all or any of the issues and whether any other party contests trial of any issue by jury.

(4) Agreed Facts. A statement of all material facts that are not in dispute.

(5) Disputed Factual Issues. A concise narrative statement of each material issue of fact in dispute. This statement shall include a concise narrative of each party's contentions to each material issue of fact in dispute

(6) Relief Sought. The elements of monetary damage, if any, and the specific nature of any other relief sought.

(7) Points of Law. A concise statement of each disputed point of law with respect to liability and relief, with reference to pertinent statutory and decisional law. Extended legal argument shall not be included.

(8) Amendments; Dismissals. A statement of requested or proposed amendments to the pleadings, or dismissals of parties, claims or defenses.

(9) Witnesses. Each party shall identify by name and address all prospective witnesses, and specifically designate those who are expected to be called as an expert witness.

(10) Exhibits; Schedule, and Summaries. An exhibit list furnished by the Clerk of Court shall be completed by each party and appended to the proposed pretrial order. The list shall include all documents or other items that the party expects to offer as an exhibit at trial, except for impeachment or rebuttal.

(11) Discovery Documents. A list of all answers to interrogatories and responses to requests for admissions that a party expects to offer at trial.

(12) Bifurcation, Separate Trial or Issues. A statement whether bifurcation or separate trial of specific issues is feasible and advisable.

(13) Estimate of trial time. An estimate of the number of court days counsel for each party expects to be necessary for the presentation of their respective cases in chief.

## 235-7 FINAL PRETRIAL CONFERENCE

The final pretrial conference shall be convened by the assigned judicial officer at the time designated, and shall be attended by the attorneys who will be trying the case.

Unless otherwise ordered, counsel for the parties shall, not less than seven (7) days prior to the day on which the final pretrial conference is scheduled, accomplish the following:

**(a) Exchange of Exhibits.** Exchange copies of all items expected to be offered as exhibits, and all schedules, summaries, diagrams, charts, etc., to be used at trial, other than for impeachment or rebuttal.

The copies of the proposed exhibits shall be premarked for identification, with the plaintiff's proposed exhibits being identified by numbers 1 to 500 and the defendant's by numbers 501 to 1000. Upon request, a party shall make the original or the underlying documents of any proposed exhibit available for inspection.

(b) **Deposition Testimony.** Serve and file statements designating excerpts from depositions (specified by witness, page and line reference) proposed to be offered at trial other than for impeachment and rebuttal.

The opposing party shall, at the time of the final pretrial conference, serve and file a statement which sets forth both (1) any objection to the excerpts of each deposition identified; and (2) any additions to the excerpts of each deposition (specified by witness, page and line reference) that he/she proposes to offer.

## 235-8 REPRESENTATION AT PRETRIAL CONFERENCES

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.