REPORT SUPPLEMENT

GONZAGA UNIVERSITY

PROF. MARK E. WILSON
SCHOOL OF LAW

November 1, 1993

Hon. Justin A. Quackenbush, Chief Judge
Hon. Alan McDonald
Hon. Fred Van Sickle
Hon. William Fremming Nielsen
United States District Court,
Eastern District of Washington

U.S. Courthouse
W. 920 Riverside
Spokane, WA 99201

RE: CJRA Advisory Committee Proposal on Amendment to Local Rule 39.1 (Mediation)

Dear Members of the Court:

At the most recent meeting of the CJRA Advisory Committee, held September 17, 1993, this Court reviewed the committee's April 1993 Report, and advised the membership as to the Court's response to the 15 recommendations the Report sets forth. During the course of that meeting, there was an extended discussion on court-annexed mediation, focusing on the importance of mediators associated with the program being trained and compensated. In fact, in Finding No. 11 of the Report, at pp. 30-31, there is explicit mention of mediator payment and training as crucial to an effective ADR process. Through evident inadvertence, however, mediator compensation was omitted from the recommendations that paralleled Finding No. 11.

By the general comments made, the committee indicated a consensus that mediators who are provided under the local rule be at least semi-professional, that is, have undergone some mediation training and have accumulated some experience in that endeavor, and accordingly charge a fee for professional mediation services. Because the existing rule provides that individuals listed on the register of available mediators do so on a voluntary and uncompensated basis, bringing that local rule in line with the committee's proposal would require an amendment.

Accordingly, a proposed amended Local Rule 39.1 is submitted to this Court with this correspondence (an intervening step, the submission of a separate Recommendation paralleling Report Finding No. 11, as an amendment to the Committee's Report, is dispensed with as

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superfluous). The current rule, although titled "Mediation," deals at length with the appointment of Special Masters and Arbitrators; as the same justification supporting compensation of mediators would apply to masters and arbitrators as well, the attached proposal also covers individuals furnishing those services.

The proposal accomplishes four objectives:

1. It changes the status of mediators, arbitrators, and special masters selected under the rule from voluntary to compensated;

2. It provides that compensation of mediators, arbitrators, and special masters shall be by the parties, pursuant to a fee schedule approved by the Court.

3. It provides for payment of a party's share of mediator, etc., compensation from Court funds in the event the Court finds that party financially unable to pay for those services;

4. It provides that individuals included on the Court register of mediators must have completed a minimum of 25 hours of mediation training.

The proposed amendment was drafted by the CJRA Advisory group subcommittee, and was circulated to all members of the full committee for comment. The draft proposal is attached, as is a copy of the existing Local Rule 39.1, for cross-reference. Also attached, of interest because it reflects the timeliness of the need for standardization of mediator services and for mediator training, is an article from the Wall Street Journal of October 20, 1993, "Calls Increase for Guidelines on Mediation."

I should point out to the Court that a bench-bar committee is currently in the process of drafting a local rule on mediation for the Spokane County Superior Court. The most recent draft of that proposal also provides for mediator compensation (by the parties).

Respectfully,

Mark E. Wilson
CJRA Advisory Group Reporter

MEW:rk
Attachments
letters\cjrarpt.mew\r

[Draft Proposal]

LR 39.1 MEDIATION

(a) **Preliminary.** The Court finds that a shortage of judges in this district, together with sharply increased filings of criminal and civil cases, and the adoption of Congressional requirements for the priority scheduling of criminal trials, have placed substantially greater pressures on litigants, counsel, and the Court. The program for court-annexed mediation, in which litigants and counsel come together with an independent mediator, offers an opportunity to settle legal disputes with less cost or time, and to the satisfaction of all the parties. In addition, it offers to the Court the prospect of some relief from the heavy and constantly increasing case load. This Rule is accordingly adopted for these purposes.

(b) **Register ~~of Volunteer Attorneys~~ of Mediators, Special Masters and Arbitrators.**

(1) The Judges of the District shall establish and maintain a register of qualified attorneys who have ~~volunteered~~ agreed to serve ~~without compensation~~, as Mediators, Special Masters and Arbitrators in civil cases in this Court. The attorneys so registered shall be selected by the Judges of the District from lists of qualified attorneys at law, who are members of the bar of this Court, and who are recommended to the Judges by the Federal Bar Association of the Eastern and Western Districts of Washington. The Federal Bar Association shall request the county bar associations within the geographical boundaries of the District to cooperate with the association in ~~obtaining well qualified volunteers for the register~~ recommending persons who are well-qualified to serve as Mediators, Special Masters, or Arbitrators.

(2) ***Minimum Qualifications.*** In order to qualify for service as a Mediator, Special Master or Arbitrator under this Rule, an attorney shall have the following minimum qualifications:

(A) Have been admitted to practice in a state court for at least 5 years; and

(B) Be a member of the bar of the United States District Court for the Eastern or Western District of Washington.

(C) Attorneys serving as Mediators shall in addition have completed a minimum of 25 hours mediation training approved through an established attorney CLE program or otherwise approved by the Court.

(3) *Compensation.* Mediators, Special Masters, or Arbitrators providing those professional services pursuant to this rule shall be compensated by the parties pursuant to a fee schedule to be approved by the Court. In the event a party is determined by the Court to be unable to pay for professional services under this

rule, the Court shall provide for payment of that party's share of those services from Court funds.

[Subparts (c) and (d)(1), (2), and (3) are not changed by this proposal; see photocopy of Rule 39.1, attached.]

(4) *Notice to Clients of Mediator's Suggestions.* If the Mediator makes any oral or written suggestion as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to his client.

The Mediator shall have no obligation to make any written comments or recommendations but may in his discretion provide the attorneys for the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Clerk or made available in whole or in part, directly or indirectly, either to the Court or to the jury.

The attorneys for the parties shall forward copies of any such memorandum to their clients and shall advise them of the fact that the Mediator is a qualified attorney ~~who has volunteered to act as an~~ acting as an impartial mediator ~~without compensation~~ in an attempt to help the parties reach agreement and avoid the time, expense and uncertainly of trial.

The Mediator shall have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the Mediator's recommendation having in mind that the purpose of this Order is prompt dispute resolution.

[The remainder of Rule 39.1 is likewise not changed by this proposal.]

(2) *Service.* A party submitting the interrogatories shall serve and leave with the person to whom the interrogatories are directed the original and two copies thereof. Proof of service is governed by LR 5.

(3) *Answers to Interrogatories.* The party to whom interrogatories are directed shall answer each interrogatory within the space so provided or use additional pages, if necessary, and thereafter shall serve the original and one copy of the same upon the party propounding the interrogatories.

(4) *Objections to Interrogatories.* A party objecting to written interrogatories shall set forth each interrogatory objected to followed by his objection and the reasons for it.

[Effective August 1, 1990.]

LR 34. REQUESTS FOR PRODUCTION

(a) Requests for production and material submitted in response thereto shall not be filed. The initiating party shall have responsibility for maintaining the original and making them available as may be required during proceedings.

(b) Requests for production may be propounded together with interrogatories, and in such event shall not be counted against the limitation on the number of interrogatories which may be propounded.

[Effective August 1, 1990.]

LR 35. [RESERVED]

LR 36. REQUESTS FOR ADMISSION

Requests for admission shall not be combined in the same document with any other form of discovery. The number of requests for admission which may be directed to any one party by any adverse party shall be fifteen, including subparts. The genuineness of multiple documents may be included in one request. The limitation in this rule may be modified by the Court for good cause shown.

[Effective August 1, 1990.]

LR 37. DISCOVERY MOTIONS

(a) Form. Motions to compel answers to interrogatories or questions, or to determine the sufficiency of answers to either, and all objections to requests for admissions shall identify and quote in full each interrogatory or question and the answer, if any, or the admission sought to be obtained. Motions for production and motions for protective orders must set forth, without reference to other pleadings or documents, the objects sought to be produced.

(b) Obligation to Confer. A motion made pursuant to Rules 26 to 37 inclusive or Rule 45, Federal Rules of Civil Procedure, will not be heard unless the parties have conferred and attempted to resolve their differences. At least ten (10) days before the date of the hearing, the parties shall file a statement setting forth the matters on which they have been unable to agree.

(c) Time for Compliance. The party against whom an order to compel has been entered shall comply with the order within ten (10) days after receiving notice of the Court order, unless the period is extended or reduced by Court order.

(d) Inappropriate Discovery Practices.* The parties are reminded that F.R.Civ.P. 37(a)(4) *mandates* the award of costs and attorney fees for inappropriate discovery practices.

(e) Expedited Hearing. Notwithstanding the provisions of this rule, expedited argument, which may be telephonic, is encouraged to resolve discovery matters which are not excessively complex or broad. The Court may dispense with formal motion practice and may require or allow expedited argument either on its own motion or upon application of any party.

(f) Appointment of Special Master. Where anticipated discovery is unusually complex, or where it appears that disputes over matters relating to discovery will be numerous, the Court may appoint a special master pursuant to Rule 53, Federal Rules of Civil Procedure. The fees and costs of the master shall be borne by the parties in such amount and proportion as may be determined by the Court.

[Effective August 1, 1990.]

*Suggested title added by Publisher.

LR 38. JURY DEMAND

Federal practice sets forth stringent time requirements for submitting a jury demand. Counsel shall comply with Rule 38 and Rule 81, Federal Rules of Civil Procedure.

[Effective August 1, 1990.]

LR 39. [RESERVED]

LR 39.1 MEDIATION

(a) Preliminary. The Court finds that a shortage of judges in this district, together with sharply increased filings of criminal and civil cases, and the adoption of Congressional requirements for the priority scheduling of criminal trials, have placed substantially greater pressures on litigants, counsel, and the Court. A program for court-annexed mediation, in which litigants and counsel come together with an independent mediator, offers an opportunity to settle legal disputes with less cost or time, and to the satisfaction of all the parties. In addition, it offers to the Court the prospect of some relief from the heavy and constantly increasing case load. This Rule is accordingly adopted for these purposes.

(b) Register of Volunteer Attorneys.

(1) The Judges of the District shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as Mediators, Special Masters and Arbitrators in civil cases in this Court. The attorneys so registered shall be selected by the Judges of the District from lists of qualified attorneys at law, who are members of the bar of this Court, and who are recommended to the Judges by the Federal Bar Association of the Eastern and Western Districts of Washington. The Federal Bar Association shall request the county bar associations within the geographical boundaries of the District to cooperate with the association in obtaining well-qualified volunteers for the register.

(2) *Minimum Qualifications.* In order to qualify for service as a Mediator, Special Master or Arbitrator under this Rule, an attorney shall have the following minimum qualifications:

(a) Have been admitted to practice in a state court for at least 5 years; and

(b) Be a member of the bar of the United States District Court for the Eastern or Western District of Washington.

(c) Settlement Conference. In every civil action designated by the Court as a mediation case, the attorneys for all parties to the action, except nominal parties and stakeholders, shall meet at least once and engage in a good faith attempt to negotiate a settlement of the action. Such conference shall take place within thirty days after the parties are notified by the Clerk of the Court that the action has been designated as a mediation case.

(d) Mediation.

(1) *Selection of Mediator.* If, upon meeting, the parties are unable to agree upon a settlement, they shall have ten (10) days to attempt to agree upon the selection of a single Mediator for settlement purposes from the register of attorneys. If they agree upon a selection, they shall immediately file notice of their selection with the Clerk of the Court and shall send a copy of that notice to the selected attorney, who will thereupon be the Mediator for that action unless he or she is unwilling or unable to so act. If the parties cannot agree upon the selection of a Mediator within the ten days, the attorney for the plaintiff shall promptly apply to the Court for the designation of a Mediator. The Court shall then designate a Mediator from the register and shall send notice of that designation to the Mediator and to all attorneys of record in the action.

(2) *Mediation Procedure.*

A. Copy of Pretrial Order or Pleadings. Upon selection of a Mediator the parties shall forthwith provide the Mediator with a copy of the Pretrial Order, if one has been lodged in the cause. If a Pretrial Order has not been lodged, they shall provide the Mediator with copies of their then effective pleadings.

B. Time and Place. The Mediator shall fix a time and place for the mediation conference, and all adjourned sessions, that is reasonably convenient for the parties and shall give them at least 14 days' written notice of the initial conference. The conference shall be set to begin as soon as practicable after submission of the papers referenced in the preceding paragraph, but in no event more than two months after the Mediator has been notified of his selection.

C. Memoranda.

(1) Each party shall provide the Mediator with a memorandum presenting in concise form his contentions relative to both liability and damages. This memorandum shall not exceed 10 pages in length. Copies of this memorandum shall be served upon all other parties at least 7 days before the mediation conference.

(2) The mediator may request an additional memorandum be submitted on a confidential basis to the mediator, and not served on the other parties, indicating strengths and weaknesses in that party's case and the range in which that party proposes settlement. Memorandum so submitted shall be treated with confidentiality by the mediator.

D. Attendance and Preparation Required. The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith.

1. All liability issues.

2. All damage issues.

3. The position of his client relative to settlement.

E. Parties to Be Available. The Mediator shall determine if the parties shall personally attend or are to be available. The Mediator shall decide when the parties are to be present in the conference room. Parties whose defense is provided by a liability insurance company need not personally attend said mediation conference, but a representative of the insurer of said parties, if such representative is available in this district, shall attend and shall be empowered to bind the insurer to a settlement if a settlement can be reached within the limits set by that insurer.

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F. Failure to Attend. Wilful failure to attend the mediation conference, unless excused by the Mediator, shall be reported to the Court by the Mediator and may result in the imposition of such sanctions as the Court may find appropriate.

G. Time Requirements. Any of the time requirements of this Rule may be waived or extended by the Court, upon application, and a showing of good cause.

(3) *Proceedings Privileged.* All proceedings of the mediation conference, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement.

(4) *Notice to Clients of Mediator's Suggestions.* If the Mediator makes any oral or written suggestion as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to his client.

The Mediator shall have no obligation to make any written comments or recommendations but may in his discretion provide the attorneys for the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Clerk or made available in whole or in part, directly or indirectly, either to the Court or to the jury.

The attorneys for the parties shall forward copies of any such memorandum to their clients and shall advise them of the fact that the Mediator is a qualified attorney who has volunteered to act as an impartial mediator without compensation in an attempt to help the parties reach agreement and avoid the time, expense and uncertainty of trial.

The Mediator shall have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the Mediator's recommendation having in mind that the purpose of this Order is prompt dispute resolution.

(5) *Consideration of Special Master or Arbitrator.* If the Mediator is unable to mediate a settlement, he shall explore with counsel the desirability of the appointment of a Special Master or an Arbitrator under this Rule and whether such an appointment might lead to the resolution of all or any of the matters in controversy. With the consent of counsel the Mediator shall convey in writing to the Judge to whom the matter has been assigned, the conclusions of counsel and of the Mediator relative to the possible narrowing of issues and relative to the appointment of a Special Master or an Arbitrator.

(6) *Notice of Compliance.* If no settlement results from the private negotiations or from the mediation, the plaintiff shall promptly file with the Clerk a certificate showing that there has been compliance with the settlement and mediation requirements of this Rule but that no settlement has been reached.

(e) Procedure Upon Failure of Mediation. After the filing of the certificate specified in (d)(6) of this Rule, the Court shall as promptly as possible convene a conference of counsel in order to consider the appointment of a Special Master or of an Arbitrator pursuant to the following sections of this Rule.

(f) Special Master.

(1) *Appointment of Special Master.* If all of the parties to an action stipulate in writing to the reference of the action to a Special Master and agree upon a particular attorney from the register as Special Master, and if the Special Master and the Court consent to the assignment, an Order of Reference shall be entered. If the parties cannot agree upon the selection of a Special Master but stipulate in writing that there be a reference to a Special Master, the Court shall promptly designate a Special Master from the register and shall send notice of that designation to the Special Master and to all attorneys of record in the action.

(2) *Powers and Duties.* The powers and duties of the Special Master and the effect of his report shall be as set forth in Rule 53 of the Federal Rules of Civil Procedure, except as the same may be modified or limited by agreement of the parties and incorporated in the Order of Reference.

(3) *Time and Place.* The Special Master shall fix a time and place for hearing, and all adjourned hearings, which is reasonably convenient for the parties and shall give them at least 14 days' written notice of the initial hearing.

(4) *Discovery.* If discovery has not been completed, it may continue during the pendency of the matter before the Special Master, unless the Special Master concludes that the matters before him require no further discovery and discovery would impede the exercise of his powers and duties, in which event he may order a stay of discovery.

(5) *Other Special Master Appointments.* This Rule shall not limit the authority of the Court to appoint compensated Special Masters to supervise discovery or for other purposes, under the provisions of Rule 53 of the Federal Rules of Civil Procedure.

(g) Arbitration.

(1) *Agreement for Arbitration.* If all parties agree to submit the action to arbitration under this Rule, they shall reduce their agreement to writing and file the same with the Court. This Agreement to Arbitrate shall state whether or not the arbitration award is to be final and conclusive with trial de novo waived, or whether a party dissatisfied with the award may obtain a trial de novo upon timely application to the Court.

(2) *Appointment of Arbitrator and Order Directing Arbitration.* The parties may agree on the appointment of a particular attorney from the register as Arbitrator, and if that attorney and the Court consent to the assignment, an order directing arbitration and appointing that Arbitrator shall be entered. The parties may stipulate to arbitration under this Rule without agreeing upon an Arbitrator, in which event the Court shall designate an Arbitrator from the register and shall send notice of that designation to the parties, together with its order directing arbitration. The order to arbitrate shall incorporate the term set forth in the Agreement to Arbitrate.

(3) *Oath or Affirmation.* The Arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. § 453.

(4) *Pleading and Discovery.* The arbitration shall be conducted on the basis of the order to arbitrate, the pleadings before the Court (or the Pretrial Order if theretofore filed) and the pretrial discovery had before the Court. Further proceedings before the Court shall be stayed during the pendency of the arbitration; provided, however, that the Arbitrator may authorize additional discovery and may order hearing briefs and memoranda filed with him.

(5) *Time and Place of Hearing.* The Arbitrator shall designate a place and time for hearing the case on its merits as early as possible consistent with the parties' needs to complete their preparation for the hearing.

(6) *Conduct of Hearing.* All testimony shall be given under oath or affirmation administered by the Arbitrator. In receiving evidence, the Arbitrator shall apply the Federal Rules of Evidence. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45, Federal Rules of Civil Procedure. The Arbitrator may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing and prehearing proceedings. Failure, without good cause, to comply with the Arbitrator's rules and orders shall be reported to the Court for its consideration of imposition of sanctions.

(7) *Transcript or Recording.* A party may cause a transcript or recording to be made of the proceedings at his expense but shall, at the request of the opposing party, make a copy available to any other party upon the payment by that party of the cost of this copy. In the absence of agreement of the parties, no transcript of the proceedings shall be admissible in evidence at any subsequent de novo trial except for purposes of impeachment.

(8) *Ex Parte Communication.* There shall be no ex parte communication between the Arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

(9) *Filing of Award.* The Arbitrator shall file his award with the Clerk's Office with reasonable promptness following the closing of the hearing. The Clerk shall transmit copies of the award to all parties.

(10) *Form of Award.* The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money and other relief, if any, which is awarded. Unless otherwise required by the Agreement to Arbitrate, the award need not disclose the facts or reasons in support of the award. The award shall be in writing and signed by the Arbitrator.

(11) *Vacation, Modification or Correction of Award.*

A. Within 30 days of the filing of the award, any party may move the Court to vacate and set aside the award on one or more of the grounds set forth in 9 U.S.C. § 10, or may move to modify or correct the award on one or more of the grounds set forth in 9 U.S.C. § 11. Thereafter, the Court shall hear and determine the issues raised therein, and enter an order in conformity therewith.

B. After said 30-day period, and any extended time required for hearing and determining the issues presented by motion filed under (11) A. above, the Court may direct the entry of judgment on the award in accordance with Rule 58, Federal Rules of Civil Procedure. The judgment shall thereupon have the same force and effect as that of any other judgment of the Court in a civil action.

(12) *Trial De Novo.*

A. Time for Demand. Notwithstanding any other provisions of this Rule, if the parties in the Agreement to Arbitrate did not agree to waive trial de novo, either party may, within 30 days of the filing of the award, serve and file a written demand for trial de novo and thereafter the action shall proceed as a trial de novo before the Judge to whom the case has been assigned.

B. Limitation of Evidence. At a trial de novo, unless the parties have otherwise stipulated, no

evidence of or concerning the arbitration may be received into evidence except that statements made by a witness at the arbitration hearing may be used for impeachment only.

C. Costs and Attorney's Fees. If trial de novo is not had, costs and attorney's fees will not be assessed against any party unless authorized by contract or specific statute and itemized and included in the arbitration award. If trial de novo is had, costs and attorney's fees for the arbitration proceeding may be assessed as in any other proceeding before the Court; provided, however, that, if the party who requested the trial de novo fails to obtain a judgment which is more favorable to that party than was the arbitration award, a reasonable attorney's fee for the trial de novo may be assessed against that party by the Court.

(13) *Other Agreements for Arbitration.* Notwithstanding the provisions of this Rule, the parties to any action or proceeding may stipulate to its referral to arbitration upon such terms as they may agree to, subject to approval of the Court. In the event of such referral, the applicable provisions of state and federal law governing voluntary arbitration shall control.

(h) Criteria for Designations. In designating a Mediator, a Special Master or an Arbitrator, the Judge shall take into consideration the nature of the action and the nature of the practice of the attorneys on the register. When feasible, the Judge shall designate an attorney who has had substantial experience in the type of action in which he is to act as Mediator, Special Master or Arbitrator. It is expected that an attorney who resides in the Western District of Washington will be asked to serve only when the nature of the action, and the experience of the attorney, makes that selection particularly desirable.

[Effective August 1, 1990.]

LR 40. TRIAL CALENDAR

(a) Precedence. The trial calendar shall be arranged in the following order of precedence:

(1) Criminal cases;

(2) Civil cases with statutory precedence;

(3) All other civil cases.

(b) Setting and Notice. Cases shall be set on the trial calendar by the Court.

[Effective August 1, 1990.]

LR 41. DISMISSAL OF CASES

(a) By Plaintiff—Voluntary. In case of dismissal by filing notice pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, such notice shall contain a statement that no answer, counterclaim, or motion for summary judgment has been served, and shall be signed by the plaintiff or plaintiff's attorney.

(b) For Lack of Prosecution. In any civil case in which no action of record has been taken by the parties for the preceding one year the Clerk shall note the case for dismissal and give thirty (30) days' notice to counsel of record. If no action of record is taken in the meantime, and no satisfactory explanation of non-action is submitted, an order of dismissal without prejudice will be entered by the Court on the date the case is noted for hearing.

[Effective August 1, 1990.]

LR 42. [RESERVED]

LR 43. COURTROOM PROCEDURE

(a) Conduct of Trial.

(1) On the trial of an issue of fact, only one attorney on either side shall examine or cross-examine any witness, except with the permission of the Court.

(2) It is the right and duty of an attorney to be present in the courtroom at all times the court may be in session. If an attorney is voluntarily absent during a court session, he waives his right to be present and consents to proceedings which take place on the courtroom during his absence.

(3) A party shall not be permitted to call more than two (2) expert witnesses on any issue, except with the permission of the Court.

(b) Courtroom Decorum. Counsel should be familiar with the guidelines set forth in LR 100.

[Effective August 1, 1990.]

LR 44 TO 46. [RESERVED]

LR 47. JURORS AND JURY TRIALS

(a) Number of Jurors. A jury for the trial of civil cases shall consist of not less than six jurors unless agreed by all parties. The number of jurors will be established by the Court on a case-by-case basis, and in determining the appropriate number, the Court may consider the length and complexity of trial and any other factors which may be relevant in light of the particular case under consideration.

(b) Alternates. The number of alternate jurors, if any, shall be determined on a case-by-case basis. On the motion of any party, or on its own motion, the Court may elect to utilize additional regular jurors in lieu of alternates. In such case, the matter will be submitted to the full complement of jurors remaining in attendance at the close of trial. Absent a stipulation to the contrary, unanimity will still be required regardless of the number of jurors deliberating.

(c) Examination of Jurors. Examination of trial jurors shall be conducted by the Court. Counsel shall submit to the Court any proposed voir dire questions at least five (5) business days prior to trial, excluding Saturdays, Sundays and holidays, or at such other time as the Court may direct.

(d) Manner of Selection and Order of Examination of Jurors. Unless otherwise ordered by the Court, six jurors plus a number of jurors equal to the total number of peremptory challenges which are allowed by the law shall be called in the first instance. These jurors constitute the initial panel. As the initial panel is called, the Clerk shall assign numbers to the jurors in the order in which they are called. If any juror in the initial panel is excused for cause, an additional juror shall be immediately called to fill out the initial panel. A juror called to replace a juror excused shall take the number of the juror who has been excused. When the initial panel is qualified, the parties shall exercise their peremptory challenges secretly and alternately, with plaintiff exercising the first challenge. When peremptory challenges have all been exercised or waived, the Court shall call the names of the selected jurors having the lowest assigned numbers. These jurors shall constitute the trial jury. See Rule 47(b), Federal Rules of Civil Procedure.

(e) Presence of Attorney. If an attorney is voluntarily absent while a jury is deliberating, he waives his right to be present and consents to proceedings which take place in the courtroom during his absence, after the expiration of 20 minutes from the time that either he or his office has been notified or attempted to be notified by telephone that his presence in the courtroom is required.

(f) Contacting Jurors. Counsel or the parties shall not contact or interview jurors or cause jurors to be contacted or interviewed after trial without first having been granted leave to do so by the Court.

[Effective August 1, 1990.]

LR 48 TO 50. [RESERVED]

LR 51. JURY INSTRUCTIONS

(a) Giving Instructions Prior to Argument. It is the general policy of this Court to give the instructions to the jury after the close of evidence and prior to argument. However, the court may give instructions at anytime.

(b) Copy of Instructions for Jury Use. A written set of the Court's instructions may be given to the jury when they retire to deliberate their verdict.

(c) Submission of Proposed Instructions. In jury cases, counsel for each party shall at least five (5) days prior to trial, excluding Saturdays, Sundays and holidays, or such other time as may be fixed by the Court, file the original plus two clearly legible copies of proposed instructions with the Clerk. Each set of proposed instructions is to bear a cover sheet styled in the name and number of the case and titled (PLTF/DEF) PROPOSED JURY INSTRUCTIONS. Each proposed instruction shall be typewritten or printed on a separate, plain, unnumbered 8½" by 11" paper and shall be headed "Instruction No. _____." The original of each instruction shall be unnumbered, bear no citation of authorities and shall not be identified as to the proposed party. All other copies of each instruction shall be numbered and contain supporting citations at the end of the instruction.

Proposed instructions upon questions of law developed by the evidence, which could not reasonably be anticipated, may be submitted at any time before closing argument. Except as otherwise provided above, the failure to submit proposed instructions in accord with this rule, or at such other time as the Court may set by Order in a given case, shall be deemed a waiver of the defaulting party's right to propose instructions.

[Effective August 1, 1990.]

LR 52 AND 53. [RESERVED]

LR 54. COST BILLS

(a) Verified Bill—Time for Serving. The party in whose favor a judgment is rendered, and who is entitled to claim his costs, shall within ten days after the entry of judgment, serve on the attorney for the adverse party and file with the Clerk of the Court a verified bill of costs on a form which will be furnished by the Clerk of the Court upon request. The form of bill of costs shall contain a statement of notice to the adverse party specifying the time when such costs will be taxed, which shall not be less than five days from the date of service of the notice.

(b) Proof of Service. Proof or admission of service of the bill of costs and notice of taxation shall be filed before the time of hearing.

(c) Objections to—How Made. At the time specified in the notice, the party objecting to any item of costs contained in said bill of costs shall present his objections either orally or in writing, specifying each item to which objection is made, and the ground of the objection, and file any affidavit or other evidence relied on to support his objections, which evidence may be rebutted by other evidence.

(d) Taxation of by Clerk. The Clerk shall thereupon proceed to tax the costs, and shall allow only such items specified in the bill of costs as are properly chargeable as costs. The taxation of costs