United States District Court

Western District of Oklahoma
United States Courthouse
200 N.W. 4th Street
Oklahoma City, Oklahoma 73102

Ralph G. Thompson
Chief Judge

Telephone
405-231-5153
FTS 736-5153

December 31, 1991

Mr. Abel J. Mottos
Court Administration Division
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Mr. Mottos:

Enclosed is a copy of this Court's Civil Justice Expense and Delay Reduction Plan, promulgated as a Pilot Court under the Act.

Yours truly,

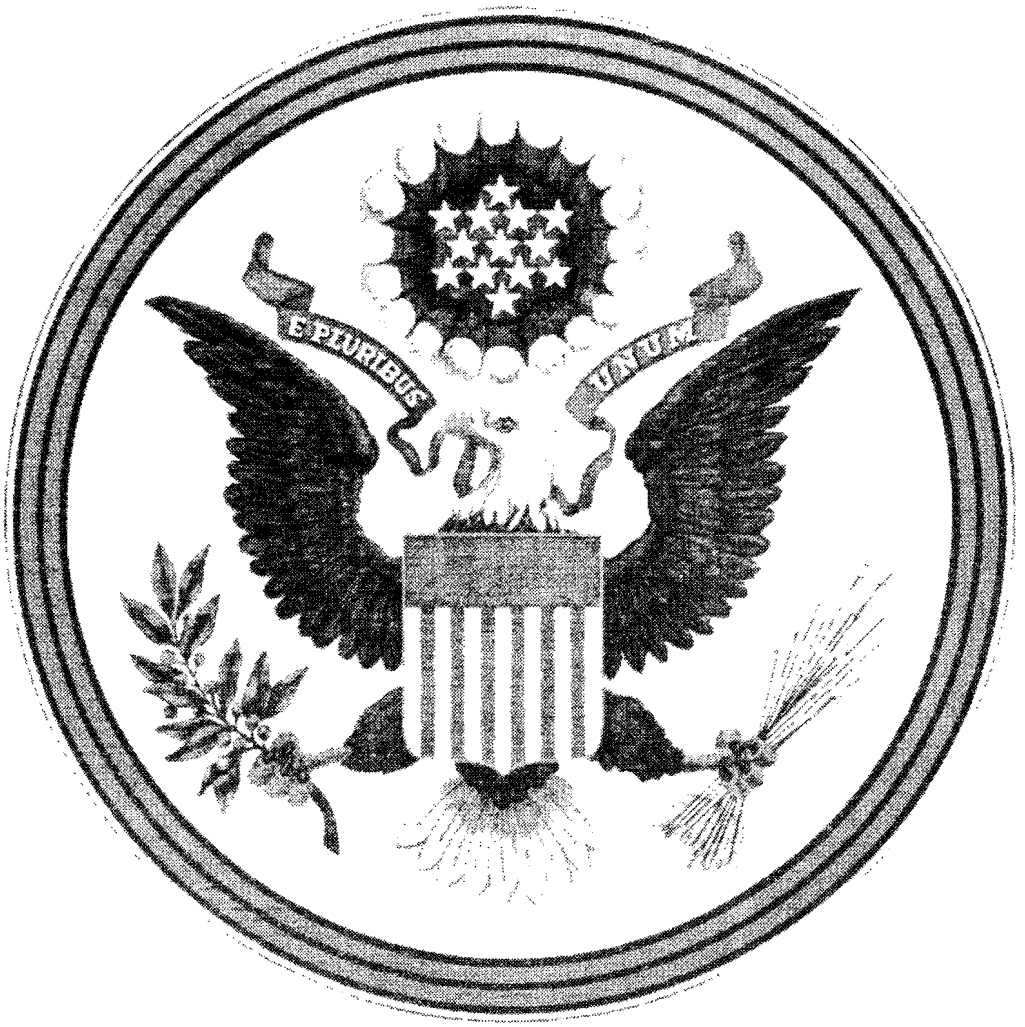
Ralph G. Thompson

RGT/jj

Marked up Copy

United States District Court
Western District of Oklahoma

Civil Justice Expense and Delay Reduction Plan



Effective December 31, 1991

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APPENDICES

INTRODUCTION

As a "Pilot Court" under the Civil Justice Reform Act of 1990 (CJRA), the Chief Judge of the Court appointed a thirteen member Advisory Group to assess the Court's workload and litigation practices and procedures in order to identify and address causes of unreasonable cost and delay in civil litigation in this district. The Group is composed of widely-experienced legal practitioners who represent a broad spectrum of civil practice and, as its non-lawyer member, a distinguished business executive and civic leader. The Advisory Group conducted a completely independent and extraordinarily thorough assessment of the court's docket and litigation practices, including broad-based inquiries of both lawyers and litigants.

The Group rendered a formal report containing extensive findings and recommendations.[1] The report states that the Court's litigation practices, case management procedures and alternative dispute resolution programs already in place have worked well, having resulted in the court's ranking between 4th and 5th nationally, among all United States District Courts in the prompt disposition of cases going to trial, even when burdened by the heaviest weighted caseload per judge in the nation.[2] The Report also stated that eighty-nine percent of the attorneys questioned reported the time from filing to disposition of their cases was "about right." Eighty-one percent of the parties questioned reported there were no excessive costs or expenses in their cases and ninety-three percent of the parties felt no excessive delay had occurred. The Group also found that in most respects the Court's procedures already

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[1] *See Report of the Advisory Group of the United States District Court for the Western District of Oklahoma, October 21, 1991.*

[2] *Federal Court Management Statistics, prepared by the Administrative Office of the United States Courts.*

comply with the required principles and guidelines of litigation management and cost reduction techniques as set forth in § 473 of the Act and recommended that these procedures be retained.

The Advisory Group did, however, make excellent recommendations that are intended to improve the Court's existing case management programs by further controlling costs and enhancing the prospect of even earlier dispositions of its cases. The Court greatly appreciates the work of the Advisory Group and accepts and adopts its recommendations. Accordingly, combining the recommendations of the Advisory Group, the Court's own revisions and other procedures required for compliance with the Civil Justice Reform Act, the Court has promulgated this Civil Justice Expense and Delay Reduction Plan[3] which shall be effective December 31, 1991.

Ralph G. Thompson
Chief U.S. District Judge

Lee R. West
U.S. District Judge

David L. Russell
U.S. District Judge

Wayne E. Alley
U.S. District Judge

Robin J. Cauthron
U.S. District Judge

[3] *This Plan does not supplant the Local Court Rules of this Court, full compliance with which is still required.*

CHAPTER 1. SYSTEMATIC DIFFERENTIAL TREATMENT OF CIVIL CASES.

Section 1.1 Case Management Track. Each civil case will be assigned to one of the following tracks:

(a) Prisoner Litigation

(b) Social Security

(c) Asbestos

(d) Special Management

(e) Standard Management

Section 1.2 Tracks Defined.

(a) Prisoner Litigation: Prisoner petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2241 and 2254, motions/complaints pursuant to 28 U.S.C. §§ 1331 and 2255, motions pursuant to Fed.R.Crim.P. 35 and civil rights complaints pursuant to 42 U.S.C. § 1983.

(b) Social Security: Cases seeking review of a denial of Social Security benefits by the Secretary of Health and Human Services.

(c) Asbestos: Due to the low number, but unique complexity of asbestos cases filed in the district, such cases, when filed, will be designated for Special Management.

(d) Special Management: Cases designated at the Status/Scheduling Conference as requiring specialized and more intense management because of their complexity, urgency, number of parties, extensive discovery, or otherwise in the Court's discretion.

(e) Standard Management: All other cases not designated at the Status/Scheduling Conference as requiring assignment to any other track, shall be handled in accordance with the standard practices and procedures of the Court as governed by Fed.R.Civ. P.16 and Local Court Rule 17.

Section 1.3. Assignment of Tracks.

(a) Cases falling within tracks 1.1(a) and 1.1(b) will be assigned to the appropriate track by the court, based on the initial pleading. All others will be assigned by the Court at the Status/Scheduling Conference (See Chapter 2).

(b) Counsel may request assignment or reassignment of a case to a particular track. The request will be made in writing, delivered to the Court not less than ten days prior to the Status/Scheduling Conference.

(c) The Court in its discretion may reassign any case to a different track at any time. *Own motion*

Section 1.4 Management Procedures.

(a) Standard Track. Cases assigned to the Standard Track shall be managed in accordance with the standard practice and procedures of this Court pursuant to Fed.R.Civ.P. 16 and Local Court Rule 17.

(b) Prisoner Cases. Prisoner cases will routinely be referred to a magistrate judge upon filing pursuant to 28 U.S.C. § 636(b). These cases are exempt from the Status/Scheduling Conferences unless

otherwise ordered by the Court. The magistrate judge will enter such orders as are necessary for the efficient management of the case and will enter a Report and Recommendation for the Court.

(c) Social Security Cases. These cases are routinely referred to a magistrate judge upon filing pursuant to U.S.C. § 636(b). The magistrate judge will prepare a Report and Recommendation for the Court.

(d) Special Management. All requirements of Fed.R.Civ.P. 16 and Local Court Rule 17 apply. In addition, counsel shall indicate on the status conference memorandum that the case is one requiring specialized case management due to the complexity of the case, number of parties, number of claims or defenses, volume of evidence, or other factors requiring extensive pre-trial preparation and management. (See Chapter 3)

CHAPTER 2. TREATMENT OF CASES ON THE SPECIAL MANAGEMENT TRACK.

If the Court determines the case is appropriate for special management, all of the requirements of the Status/Scheduling Conference under Local Court Rule 17 apply. In addition, the Court may direct counsel to jointly prepare and present a proposed Case Management Plan addressing such matters as the Court may direct, such as:

(a) identification of lead and liaison counsel and the responsibilities of each;

(b) suggestions for maintaining confidentiality;

(c) a description of, and the sequence of, discovery to be had under relevant provisions of the Federal Rules of Civil Procedure;

(d) in class action cases, a proposed timetable for class issue discovery, briefing, and hearing;

(e) a timetable for the filing and service of dispositive motions under Fed.R.Civ.P. 12 and/or Fed.R.Civ.P. 56;

(f) proposals relating to the addition of parties, bifurcation, and special needs concerning service of process; and

(g) subjects bearing upon the administration of the case, including considering appointment of a special master to administer discovery, resolving initial discovery disputes, identifying a custodian of exhibits, and serving notices and court orders to multiple parties when necessary.

The Court may hold additional conferences as deemed necessary to monitor discovery, to explore settlement opportunities and to consider the possibility of referring the case for alternative dispute resolution.

CHAPTER 3. CONTROL OF THE PRETRIAL PROCESS.

Section 3.1 Status/Scheduling Conference. In accordance with Fed.R.Civ.P. 16 and Local Court Rule 17 the Court shall hold a Status/Scheduling Conference within 120 days from the filing of the complaint. To ensure efficient case management, the Status/Scheduling Conference shall ordinarily be set within 30 days following the filing of an answer.

(a) Prior to the conference, counsel must confer and jointly prepare a Status Report which shall include, to the extent then determinable, the contentions of each party, the issues of fact and law, witnesses, exhibits, stipulations and other matters conforming to the form attached as Appendix 1.

(b) Counsel for plaintiff must take the initiative in arranging for consultation between counsel. All trial counsel must participate in and facilitate the conference.

(c) The Status Report shall be a single document, signed by all trial counsel and filed with the clerk no less than five work days prior to the Status/Scheduling Conference.

Section 3.2 **Attendance at Status/Scheduling Conference**. The conference must be attended by all pro se litigants, and by at least one fully participating, responsible trial counsel with authority to commit his or her co-counsel and client for all purposes. Counsel may participate in the conference by telephone, when justified by the circumstances and allowed by the Court.

Section 3.3 **Agenda of Status/Scheduling Conference.** Attending counsel and pro se litigants must be fully ready to discuss:

(a) streamlining of claims and/or defenses, which shall include, to the extent then possible,

(i) stipulating to all facts not disputed or reasonably disputable, in order to eliminate unnecessary witnesses and exhibits, to enhance settlement chances, and to limit discovery to essential matters.

(ii) identifying all dispositive issues or other matters critical to early case evaluation and limiting initial discovery to them. This is to ensure that necessary discovery as to dispositive issues is given first priority and completed as quickly as practicable.

(b) agreeing on admissions of fact and of documents, and on stipulations of expected testimony, so as to avoid unnecessary proof and cumulative evidence.

(c) identifying witnesses and documents which are neither disputed nor reasonably disputable, to further limit discovery to essential matters and enhance settlement chances.

(d) initiating exploration of settlement prospects.

(e) disposing of any pending matters.

(f) referring the matter to arbitration under Local Court Rule 43 or mediation under Local Court Rule 46.

(g) any other measure designed to settle the case or litigate it as inexpensively and quickly as possible.

Section 3.4 **Deadlines Established.** At the Status/Scheduling Conference the Court shall establish deadlines for all subsequent events in the case, including dates for:

(a) motions to join additional parties and amend pleadings.

(b) parties' exchange of a final list of witnesses, their addresses and a brief summary of the expected testimony of witnesses not deposed.

(c) parties' exchange of a final exhibit list.

(d) completion of discovery.

(e) submission of final contentions by counsel for all parties to counsel for all other parties.

(f) filing dispositive motions.

(g) filing stipulations.

(h) filing motions in limine.

(i) filing requested jury instructions.

(j) submitting a joint statement of the case.

(k) submitting requested voir dire.

(l) filing trial briefs.

(m) submitting proposed findings of fact and conclusions of law in non-jury cases.

(n) jointly submitting to the Court a final proposed pretrial order approved by all counsel.

(o) plaintiff's counsel or pro se litigant to initiate settlement discussions.

(p) jointly reporting the status of such settlement discussions to the Court.

(q) setting the case for trial on a month certain. (See Section 3.8)

Section 3.5 **Objections to Deadline.** Objections to any of the above pretrial deadlines must be stated at the time of the conference.

Section 3.6 **Additional Deadlines and Requirements.** The Court may set other deadlines and impose other requirements it deems useful to move the case to disposition smoothly and quickly.

Section 3.7 **Scheduling Order.** Deadlines ordered by the Court at the Status/Scheduling Conference shall be immediately incorporated in a Scheduling Order and distributed to counsel, substantially in the format set out in Appendix 2.

Section 3.8 **Prompt Disposition of Cases.** As of the effective date of this Plan, in this Court, the median time for disposition of civil cases, from issue to trial, is 9 months.[4] The Court expects at least to maintain this standard. In all cases it shall be the goal of the Court that:

(a) Except for matters requiring special management, cases shall normally be tried within twelve months from the date of filing the action.

(b) Whenever practicable, the Court at the Status/Scheduling Conference shall designate a month certain for trial.

(c) If the Court cannot adhere to a trial date once set, counsel will be advised promptly and a new date set forthwith.

(d) Once a trial date has been set, no continuances will be granted without compelling reasons.

(e) In all cases that cannot be set for trial within eighteen months after the filing of the complaint, the judicial officer shall certify that:

(i) the demands of the case and its complexity make such a trial incompatible with serving the ends of justice; or

[4] 1991 Federal Court Management Statistics, prepared by the Administrative Office of the United States Courts.

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases.[5]

Section 3.9 **Final Pretrial Order.** On or before the first day of the month in which a case is scheduled for trial, plaintiff's counsel shall file a Final Pretrial Order conforming to the form attached as Appendix 1.

CHAPTER 4. COOPERATIVE DISCOVERY.

Section 4.1 **Required Disclosure.** In the interest of reducing delay and expense, the Court directs the parties to exchange discovery materials. Prior to the Status/Scheduling Conference each party shall, without awaiting a discovery request, disclose to all other parties:

(a) The identity of any expert witness whom the party intends to call, together with the expert's qualifications, a statement of the substance of the expert's expected testimony, and a summary of the grounds for the expert's opinion.

(b) A general description, including the location, of all books, documents, data, compilations, and tangible things in the possession, custody or control of the party that are likely to bear significantly on any claim or defense.

(c) The existence and content of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action

[5] See 28 U.S.C. § 473(a)(2)(B).

or to indemnify or reimburse for payments made to satisfy the judgment.

(d) Exchange a privilege log separately listing each document for which a privilege is asserted, including the date, author(s), addressee(s), general description of the subject matter, and the specific authority for assertion of the privilege.

Section 4.2 Supplementation of Responses. Each party is under a continuing obligation to supplement or correct its disclosures if the party obtains additional information which makes previously disclosed information incorrect or incomplete.

Section 4.3 Signing of Disclosures. Every disclosure or supplementation 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 the certification under, and is consequently governed by, the provisions of the Federal Rules of Civil Procedure. In addition, signing constitutes a certification that the signer has read the disclosure, and 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.

Section 4.4 Failure of Compliance. Failure to comply with the requirements of this chapter may result in the imposition of sanctions by the Court.

CHAPTER 5. REASONABLE AND GOOD FAITH EFFORTS OF PARTIES TO RESOLVE DISCOVERY DISPUTES.

a(5)

Every motion or other application relating to discovery, made under Federal Rules of Civil Procedure or Local Court Rules or this Plan, must include certification by counsel that the parties have made a reasonable good-faith effort to resolve the discovery dispute to which the

motion or application pertains. Good-faith efforts to resolve discovery disputes must include a face-to-face meeting between counsel as required by Local Court Rule 14(E).

CHAPTER 6. ALTERNATE DISPUTE RESOLUTION PROGRAMS.

Section 6.1 **Settlement Conferences.** Unless the Court otherwise directs, each case shall be scheduled for a mandatory settlement conference at the earliest practicable time pursuant to Local Court Rule 17(H). To this end, counsel shall determine the dispositive issues or facts especially bearing on settlement prospects as early in the case as practicable, and conduct early discovery thereon.

(a) The settlement conference shall ordinarily be held before a magistrate judge, as the Court may direct.

(b) At least one trial counsel for each party shall attend.

(c) For each party, a person empowered to fully settle the case shall also attend.

(d) At any time counsel believes the prospects of a fruitful settlement exist, counsel shall so advise the Court.

Section 6.2 **Mediation.** Local Court Rule 46 provides for a court-annexed mediation program to augment the court's previously existing alternate dispute resolution procedures. Although available at any stage in the case, it is intended as a mechanism for especially early resolution of civil cases, with resultant savings in time and expense.

Section 6.3 **Court-Annexed Arbitration.** Certain civil cases are automatically referred to mandatory, non-binding arbitration as required by Local Rule 43 and, upon consent of the parties, any civil case may also be referred to this program for purposes of an earlier, more economical resolution of the dispute.

Section 6.4 **Summary Jury Trials.** A summary jury trial may be ordered by the Court where the expense is reasonably justified by the circumstances, or by the potential for resolution of the case. (Local Court Rule 17(I))

APPENDIX 1

STATUS REPORT/FINAL PRETRIAL ORDER FORM

NOTE: Use this form for both
STATUS REPORT
(complete to extent possible at time filed)
and
FINAL PRETRIAL ORDER
(complete fully)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

_____	)	
Plaintiff,	)	
	)	
vs.	)	CIV- _____
	)	
_____	)	
Defendant.	)	

(STATUS REPORT)
or
(FINAL PRETRIAL ORDER)
(use title as appropriate)

Date of Conference: _____, 19 _____.

Appearing for Plaintiff:_____

Appearing for Defendant:_____

JURY TRIAL DEMANDED _____ **NONJURY TRIAL** _____

I. BRIEF PRELIMINARY STATEMENT. State summarily the facts and positions of the parties. (Suitable for use as the statement of the case in jury selection)

II. JURISDICTION. The basis on which the jurisdiction of the Court is invoked.

III. STIPULATED FACTS. List stipulations as to all facts that are not disputed or reasonably disputable, including jurisdictional facts.

Examples:

A. All parties are properly before the Court;
B. The Court has jurisdiction of the parties and of the subject matter;
C. All parties have been correctly designated;
D. Etc.

IV. DISPUTED FACTS. Those facts not stipulated to, which are legitimately in dispute and as to which opposing counsel expects to present contrary evidence at trial or genuinely challenges on credibility grounds.

Examples:

A. Was plaintiff injured and damaged by the negligence of the defendant?

B. What amount, if any, is plaintiff entitled to receive of defendant as compensatory damages?

C. Etc.

V. LEGAL ISSUES. State separately, and by party, each disputed legal issue and the authority relied upon.

Examples:

A.

B.

VI. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. Plaintiff:

Examples:

1. As to liability.
2. As to damages.
3. Etc.

B. Defendant:

Examples:

1. As to liability.
2. As to damages.
3. Etc.

VII. EXHIBITS. (The following exclusionary language MUST be included).

Exhibits not listed will not be admitted by the Court unless good cause be shown and justice demands their admission.

A. Plaintiff:

Number (Pre-marked for trial)	Title/Description *Examples:*	Objection	Federal Rule of Evidence Relied Upon
1	Police Report	Hearsay	803(8)
2	Photo of plaintiff	None	

B. Defendant:

Number (Pre-marked for trial)	Title/Description *Examples:*	Objection	Federal Rule of Evidence Relied Upon
1	Photo of scene	None	
2	Scale model	None	

VIII. WITNESSES. (The following exclusionary language MUST be included)

No unlisted witness will be permitted to testify as a witness in chief except by leave of Court when justified by exceptional circumstances.

A. Plaintiff:

Name	Address	Proposed Testimony

B. Defendant:

Name	Address	Proposed Testimony

IX. ESTIMATED TRIAL TIME: For liability _____ For damages _____

X. BIFURCATION REQUESTED: Yes ____ No ____

XI. POSSIBILITY OF SETTLEMENT:

Good _____ Fair _____ Poor _____

XII. ***FOR STATUS REPORTS ONLY***
(Not For Final Pretrial Orders)

A. Possibility of Court-Annexed Arbitration - Local Rule 43.

Include a statement as to the eligibility of this case for mandatory arbitration and/or whether you wish to consent to arbitration under Local Rule 43. In accordance with 28 U.S.C. §652(a)(2) and Local Rule 43(B)(2)(c), this statement should also include any necessary certification as to amount of damages.

B. Mediation Requested. Yes ____ No ____

C. Parties Consent to Trial by Magistrate Judge. Yes ____ No ____

D. Management Plan Requested. Standard _____ Specialized _____

All parties approve this order and understand and agree that this order supersedes all pleadings, shall govern the conduct of the trial and shall not be amended except by order of the Court.

_____
Counsel for Plaintiff

_____
Counsel for Defendant

APPROVED this _____ day of _____, 19___.

_____
UNITED STATES DISTRICT JUDGE

APPENDIX 2

SCHEDULING ORDER FORM

(ORDER ENTERED AT STATUS CONFERENCE)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

_____ Plaintiff,	)	
vs.	)	Case No. _____
_____ Defendant.	)	TRACK: _____

SCHEDULING ORDER

Date _____ Time _____ To _____

Judge _____ Clerk _____ Total _____

JURY TRIAL DEMANDED _____ **NONJURY TRIAL** _____ Trial Docket _____

Appearing for Plaintiff: _____

Appearing for Defendant: _____

THE FOLLOWING DEADLINES ARE SET BY THE COURT

1. Motions to join additional parties to be filed by _____

2. Motions to amend pleadings to be filed by _____

3. Plaintiff to submit to defendant final list of **witnesses** in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed*_____

   Submission of **expert witness(es)** _____

4. Defendant to submit to plaintiff final list of **witnesses** in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed*_____

   Submission of **expert witness(es)** _____

5. Plaintiff to submit to defendant final **exhibit** list (if exhibit is nondocumentary, a photographorbrief description thereof sufficient to advise defendant of what is intended will suffice)* _____

6. Defendant to submit parties final **exhibit** list (if exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise plaintiff of what is intended will suffice)*_____

7. Discovery to be completed by _____

   (May not be extended except by Court order pursuant to Local Court Rule 14)

8. Plaintiff's final contentions to be submitted to defendant's counsel by _____

9. Defendant's final contentions to be submitted to plaintiff's counsel by _____

10. All dispositive motions to be filed by_____

11. All stipulations to be filed by _____

12. Motions in limine to be filed by _____

13. Requested jury instructions to be submitted on or before _____

14. Joint Statement of case to be submitted on or before _____

15. Requested voir dire to be submitted by: _____

16. Trial Briefs to be filed by _____

17. NON JURY CASES ONLY: Proposed findings and con-clusions of law to be submitted no later than _____

18. Any objections to the above trial submissions to be filed 5 days thereafter.

19. Final pretrial order approved by all counsel to be submitted to the Court by _____

20. Plaintiff's counsel is directed to initiate settlement discussions with defendant _____ and report status of such discussions to the Court no later than _____

21. Supplemental Status Conference to be set _____

22. Final Pretrial to be set _____

23. This case is hereby assigned to the **Special Management Track.** ☐

A Joint Specialized Case Management Plan shall be filed by _____ and include the following topics:

> (1) Identification of lead and liaison counsel and the responsibilities of each; (2) suggestions for maintaining confidentiality; (3) a description of, and the sequence of, discovery to be had under relevant provisions of the Federal Rules of Civil Procedure; (4) in class action cases, a proposed timetable for class issue discovery, briefing, and hearing; (5) a timetable for the filing and service of dispositive motions under Fed.R.Civ.P. 12 and/or Fed.R.Civ.P. 56; (6) proposals relating to the addition of parties, bifurcation, and special needs concerning service of process; and (7) subjects bearing upon the administration of the case, including consideration of the appointment of a special master to administer discovery, resolving initial discovery disputes, identifying a custodian of exhibits, and serving notices and court orders to multiple parties when necessary.

24. This case is referred to Mandatory Arbitration under Local Rule 43 ☐.

This case is referred to Consensual Arbitration under Local Rule 43 ☐.

The proposed Arbitration Hearing date is _____.

The Court exempts the case from Arbitration ☐.

25. This case is referred to Mediation under Local Rule 46 ☐.

A Mediation Session will be held between _____ and _____

26. The parties consent to trial by a magistrate judge. ☐

27. IT IS ORDERED that all exhibits intended to be offered herein be premarked at least _____ days before the commencement of the trial. The Clerk will supply labels for this purpose.

28. Other: _____

_____

BY ORDER OF THE COURT.
ROBERT D. DENNIS, CLERK

By: _____
Deputy Clerk

* The exchange of witnesses required by numbers 3 and 4 above shall be by letter with two copies of the letter of transmittal to be submitted to the Clerk of this Court for filing. Except for good cause shown, no witness shall be permitted to testify in chief for any party unless such witness' name was listed in the letter of transmittal. The exchange of exhibits required by numbers 5 and 6 above shall also be accomplished via a letter of transmittal with a copy thereof to be furnished to the Clerk for filing. If upon receipt of such final exhibit list a party does not make written objection thereto within five (5) days, he is deemed to have waived all objection to said exhibit or exhibits. If written objection is so filed, the basis of same shall be spelled out in detail by way of brief. Further, in the event of objection both sides shall, in the pretrial order, state the rule or rules upon which they rely.

APPENDIX 3

LOCAL COURT RULE 14

Rule 14
MOTIONS, APPLICATIONS AND OBJECTIONS

(A) Briefs. Each motion, application or objection shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Each party opposing the motion, application or objection shall, within fifteen (15) days after the same is filed, file with the Clerk and serve upon all other parties a response which shall be supported by a concise brief. Any motion, application or objection which is not opposed within fifteen (15) days, as set out above, shall be deemed confessed. The Court may, in its discretion, shorten or lengthen the time in which to respond. The original and one copy of each motion, application or objection shall be deposited with the Clerk. No brief shall be submitted which is longer than twenty-five (25) typewritten pages without special permission of the Court. Reply and supplemental briefs are not encouraged and may be filed only upon application and leave of Court. They shall be limited to ten (10) pages in length unless otherwise authorized by the Court. Oral arguments on motions, applications or objections will not be conducted unless ordered by the Court.

(B) Summary Judgment Motions. The brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.

(C) Motions Not Requiring Briefs. No brief is required by either movant or respondent unless otherwise directed by the Court, with respect to the following motions:

(1) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed, or as extended by previous orders;

(2) to continue a pretrial conference, hearing or motion, or the trial of an action;

(3) to amend pleadings;

(4) to file supplemental pleadings;

(5) to appoint next friend or guardian ad litem;

(6) for substitution of parties; and

(7) motions to compel answers to interrogatories.

Any of the above motions not requiring briefs shall be accompanied by a proposed order stating the relief requested by said motion.

(D) Brief with Motion, Application or Objection. The Clerk shall not accept for filing any motion, application or objection

requiring a brief, unless accompanied by such brief, without permission of the Court.

(E) Conference of Attorneys with Respect to Motions or Objections Relating to Discovery; Sanctions. With respect to all motions or objections relating to discovery pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, this Court shall refuse to hear any such motion or objection unless counsel for movant first advises the Court in writing that he has personally met and conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, they have been unable to reach an accord. However, no personal conference shall be required where the movant's counsel represents to the Court in writing that he has conferred with opposing counsel by telephone and (1) the motion or objection arises from failure to timely make a discovery response, or (2) distance between counsels' offices renders a personal conference infeasible. When the locations of counsels' offices, which will be stated with particularity by movant, are in Oklahoma only, a personal conference is always deemed feasible as to distance. After the presentation of a discovery dispute to the Court following compliance with this Rule, an award of expenses may be made or sanctions may be imposed in accordance with Rule 37, Federal Rules of Civil Procedure.

(F) Motions in Criminal Cases. Motions in criminal cases, and particularly motions made pursuant to Rules 7(f), 12, 16, 21 and 41(e), Federal Rules of Criminal Procedure, shall be in writing and state with particularlity the grounds therefor and the relief or order sought. All such motions shall be filed with the Clerk within eleven (11) calendar days after arraignment, and a copy served upon the United States Attorney, who shall respond within five (5) days after filing, unless a different time is fixed by statute or the Federal Rules of Criminal Procedure for such motions or responses thereto. All motions and responses thereto must be accompanied by a concise brief citing all authorities upon which the movant or respondent relies. The Court may, however, in its discretion, order or allow such motions or responses thereto to be filed at a time earlier than or later than that fixed by this Rule.

(G) Motions to Reconsider or Overrule Orders Issued by Judges of This District. Once a motion or application has been presented and an order entered by a judge sitting in this district, a motion to reconsider or overrule said order shall be presented only to the judge entering the order or to the other active judges sitting en banc. A unanimous vote of the other active judges sitting en banc will be required to overrule such order previously entered. The movant or applicant shall make known the action taken by the judge to whom it was previously submitted. This provision is intended to apply to such things as applications for search warrants, wiretaps, pen registers and other such applications or motions which are made to a judge without a case having been filed. It is not a means to appeal an order entered in a case, nor is it intended to apply where a case is transferred from one judge to another and a motion to reconsider a prior ruling is made.

(H) Applications for Extensions of Time. All applications for extension of time for the performance of an act required or allowed to be done shall state:

(1) the date the act is due to occur without the requested extension;

(2) whether previous applications for extensions have been made to include the number, length of extension, or other disposition of them;

(3) specific reasons for such requested extension to include an explanation why the act was not done within the originally allotted time;

(4) whether the opposing counsel or party agrees or objects to the requested extension; and

(5) the impact, if any, on scheduled trials or other deadlines.

Such requirements shall apply to all applications to extend the date for discovery cutoff, to file dispositive or other motions, to amend the pleadings, to bring in new parties, and/or to continue a trial or hearing date or to extend any other schedule established by the Court or by law. All applications shall be accompanied by a proposed order for the Court's use if such relief is granted.

APPENDIX 4

LOCAL COURT RULE 17

RULE 17

CIVIL STATUS CONFERENCES; CRIMINAL PRETRIAL CONFERENCES; MANAGEMENT

(A) Scheduling. A scheduling order shall issue in civil cases (excepting administrative reviews and prisoner cases) within one hundred twenty (120) days from the date of filing the complaint, in accordance with Rule 16, Federal Rules of Civil Procedure.

(B) Preparation by Counsel for Status Conference Scheduled by the Court. Prior to the first status conference scheduled by the Court, trial counsel for each of the parties shall confer and prepare a status report. Said report shall include, to the extent then known, the contentions of each party and the issues of fact and law. It will also contain a list of all exhibits, witnesses, and discovery materials to the extent then known, together with estimates of time needed to complete discovery and trial time. It shall be the duty of counsel for the plaintiff to arrange this conference and the duty of all counsel to jointly participate in and facilitate it. The information exchanged shall be incorporated into the status report. This status report will be prepared and signed jointly and filed as a single document with the Clerk of the Court no later than five (5) days prior to the status conference scheduled by the Court. (The Status Report shall conform to the form required for Final Pretrial Order, attached to these Rules as Appendix IV, but shall be entitled "Status Report.")

(C) Exchange of Discovery Materials.

(1) Prior to the first status conference scheduled by the Court, each party shall, without awaiting a discovery request, disclose to all other parties:

(a) the identity of any expert witness whom the party intends to call, together with the expert's qualifications, a statement of the substance of the expert's expected testimony, and a summary of the grounds for the expert's opinion;

(b) a general description, including the location, of all books, documents, data, compilations, and tangible things in the possession, custody or control of the party that are likely to bear significantly on any claim or defense;

(c) the existence and content of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;

(d) exchange a privilege log separately listing each document for which a privilege is asserted, including the date, author(s), addressee(s), general description of the subject matter, and the specific authority for assertion of the privilege.

(2) Each party is under a continuing obligation to supplement or correct its disclosure if the party obtains additional information which makes previously disclosed information incorrect or incomplete.

(3) Every disclosure or supplementation 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 the certification under, and is consequently governed by , the provisions of the Federal Rules of Civil Procedure. In

addition, signing constitutes certification that the signer has read the disclosure, and 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.

(4) Failure to comply with the requirements of this rule may result in the imposition of sanctions by the Court.

(D) Agenda at Conference.

(1) Counsel who will conduct the trial and pro se litigants shall attend any conference required by the Court. When justified by the circumstances, the Court may allow counsel to participate in such conference by telephone. Pro se litigants and counsel shall be prepared to discuss:

(a) the streamlining of claims and/or defenses;
(b) the possibility of obtaining admissions of fact and of documents;
(c) the avoidance of unnecessary proof and of cumulative evidence;
(d) the identification of witnesses and documents;
(e) the possibility of settlement or use of extra-judicial procedures;
(f) the disposition of any pending matters;
(g) the need for adopting special procedures for managing of difficult or protracted litigation that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and
(h) all other appropriate matters.

(2) The Court at the status conference will establish insofar as feasible the time:

(a) to join other parties and to amend the pleadings;
(b) to serve and hear motions;
(c) to conduct and complete discovery; and
(d) to file the submissions required by the Final Pretrial Order entered by the Court, said submissions including proposed voir dire, requested jury instructions or proposed findings of fact and conclusions of law, witness lists, exhibit lists, trial briefs, joint preliminary statements, stipulations, and hypothetical questions.

(3) The Court will also set if necessary or feasible the dates of any supplemental status conferences, the date of the final pretrial conference, if any, and the date of trial.

(E) Preparation of Status Reports, Final Pretrial Orders, and Other Orders.

(1) Unless otherwise ordered by the Court, counsel for the plaintiff, with full and timely cooperation of other counsel and pro se parties, is responsible for preparing, obtaining approval of all parties, and furnishing the Court any status reports, pretrial orders or other orders required by the Court or these Rules.

(2) The clerk who keeps the minutes of the status conference shall have forms available substantially conforming to that attached to these Rules as Appendix V whereby the time and/or

date fixed by the Court for the performance of specified duties may be inserted. Upon request therefor, counsel will be supplied with a copy of such form so that they may make their own notations of deadlines and of other orders prescribed by the judge presiding over the conference. Such executed form, when approved by the Court and filed, shall constitute the order of the Court as to such schedules without the necessity of filing of any other order to the same effect. Unless otherwise directed by the assigned judge, the form and content of a Final Pretrial Order, conforming to the sample form shown at Appendix IV, attached hereto, shall be filed by plaintiff's counsel on or before the first day of the month that the case is scheduled for trial.

(F) Default. Failure to prepare and file a required status report, failure to comply with the Final Pretrial Order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions: the striking of a pleading, a preclusion order, staying the proceeding, default judgment, assessment of expenses and fees (either against a party or the attorney individually), or such other order as the Court may deem just and appropriate.

(G) Criminal Case -- Pretrial Conference. A pretrial conference may be held in criminal cases for the purpose of considering such matters as will promote a fair and expeditious trial. Such conference may, at the discretion of the Court, be conducted by a magistrate, as provided in Rule 39(B)(2) hereof.

(H) Criminal Case -- Stipulations -- Exhibits. Consistent with the applicable Federal Rules of Criminal Procedure, and whenever it can be done without violating or jeopardizing the constitutional rights of the defendant in any criminal case, stipulations should be made at or prior to the pretrial conference with respect to the undisputed facts and the authenticity of documents. Each instrument which it is anticipated may be offered in evidence by either side (or photostatic copy of such instrument, if agreeable), should be marked with an exhibit number prior to the trial.

(I) Settlement Conferences. The Court may upon its own motion or at the request of any of the parties order a settlement conference at a time and place to be fixed by the Court. A magistrate or a district judge other than the judge assigned to the case, to be known as the settlement conference judge, shall conduct it. The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly and actively associated with the party or parties. Other interested parties such as insurers or indemnitor shall attend and are subject to the provisions of this Rule. Only the settlement conference judge may excuse attendance by any attorney, party or party's representative. The parties, their representatives and attorneys are required to be completely candid with the settlement conference judge so that he may properly guide settlement discussions, and the failure to attend a settlement conference or the refusal to cooperate fully may result in imposition of

sanctions mentioned in paragraph (E) of this Rule. The settlement conference judge may issue such other and additional requirements of the parties or persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. The settlement judge will not discuss the merits of the case with the assigned judge but may discuss the status of motions and other procedural matters and shall have the right to meet jointly or individually with parties or persons or representatives interested in the outcome of the case without the presence of counsel. No statements, admissions, or conversations will, in any form, be used in the event of subsequent trial.

(J) Summary Jury Trial; Alternative Methods of Dispute Resolution. The Court may, in its discretion, set any civil case for summary jury trial, mandatory (nonbinding) arbitration (in accordance with Rule 43), mediation (in accordance with Rule 46) or other alternative method of dispute resolution as the Court may deem proper.

APPENDIX 5

LOCAL COURT RULE 18

RULE 18
SETTING CASES FOR TRIAL

(A) Trial on Merits. All civil cases which have been pretried shall be set for trial on the merits, upon reasonable notice to counsel of record, at times to be designated by the Court.

(B) En Banc. In nonjury cases of great public interest or of first impression the Court may sit and consider same en banc.

(C) Notice of Requirement of Three-Judge Court. Whenever any action or proceeding is required by Title 28 U.S.C. § 2284 to be heard and determined by a district court of three judges, the plaintiff shall simultaneously file with the complaint a separate notice to the Court to this effect. If the plaintiff fails to do so, every other party shall file such notice, provided, that as soon as a notice is filed by any party, all other parties are relieved of this obligation. The Clerk shall notify the Court promptly of such notice.

(D) Notice of Request for Class Action Determination. Whenever any action or proceeding is commenced which includes a request that the Court certify the case or proceeding as a class action, the plaintiff shall immediately notify the judge to whom said action is assigned of the request for class action determination. If the plaintiff fails to do so, every other party receiving notice of such suit shall so notify the judge to whom the case is assigned, provided, however, that as soon as a notice is given by any party the other parties are relieved of this obligation. The notice herein required shall be in writing and the Clerk shall promptly notify the judge to whom the case is assigned of such notice.

(E) Notice of Bankruptcy Filing. Whenever any civil case is interrupted by one of the parties filing bankruptcy or being filed against as an involuntary bankrupt, counsel for the party filed against shall notify the Court within five (5) days of the filing of said bankruptcy by filing a formal notice in the civil case, with proof of service to all parties.

APPENDIX 6

LOCAL COURT RULE 43

RULE 43
COURT-ANNEXED ARBITRATION

(A) Scope and Purpose of Rule. This Rule governs the consensual and mandatory referral of certain actions to non-binding arbitration in accordance with 28 U.S.C. §651, et seq. This Rule shall not affect Title 9 of the United States Code. The purpose of this Rule is to provide an alternative mechanism for the early disposition of many civil cases and an incentive for the just, efficient, and economical resolution of controversies by informal procedures while preserving the right to a full trial on demand.

(B) Actions Subject to this Rule. Notwithstanding any provision of law to the contrary and except as otherwise provided herein, the following actions are subject to this Rule:

(1) Consensual Reference to Non-binding Arbitration. Any civil action, including any adversary proceeding in Bankruptcy, may be referred to non-binding arbitration under this Rule, upon consent of the parties. The following is the procedure for consent to arbitration under this rule:

(a) Notice. The Clerk of Court shall notify the parties in all civil cases not otherwise required to proceed to arbitration under this Rule that they may voluntarily consent to non-binding arbitration under this Rule. Such notice shall be furnished the parties at pretrial/scheduling conferences or may be included with pretrial conference notices and instructions. Consent to arbitration under this Rule may be discussed at the pretrial/scheduling conference. (See Appendix IV) No party or attorney shall be prejudiced for refusing to participate in arbitration.

(b) Execution of Consent. The Clerk shall not accept a consent form unless it has been signed by all the parties in the case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of Court within ten (10) days after receipt of such form. No Judge, Magistrate, or other court official shall attempt to persuade or induce any party to consent to reference of a civil case not otherwise required to participate in the arbitration program. Such consent shall be freely and knowingly obtained.

(2) Mandatory Reference to Non-binding Arbitration. Any of the following civil actions (excepting administrative reviews and prisoner cases, or any action based on an alleged violation of a right secured by the Constitution of the United States or if jurisdiction is based in whole or in part on 28 U.S.C. §1343) shall be referred to mandatory non-binding arbitration:

(a) Actions in which the United States is not a party and seek relief limited to money damages not exceeding $100,000.00, exclusive of interest and costs, and in which any claim for non-monetary relief is determined by the assigned Judge or Magistrate to be insubstantial.

(b) Actions in which the United States is a party which

(i) seek relief limited to money damages not exceeding $100,000.00, exclusive of interest and costs, and which arise under the Federal Tort Claims Act (28 U.S.C. §§2671, et seq.), the Longshoremen's and Harbor Workers Act (33 U.S.C. §§901 et seq.), or under the Admiralty Act (46 U.S.C. §§741 et seq.) and involve no general average, or

(ii) arise under the Miller Act (40 U.S.C. §270b), with the United States having no monetary interest in the claim, and seek relief limited to money damages not exceeding $100,000.00, exclusive of interest and costs, and in which any claim of nonmonetary relief is determined by the assigned Judge or Magistrate to be insubstantial.

(c) For purpose of this section only, and in order to make a determination as to whether the damages are in excess of $100,000.00, damages shall be presumed not to exceed $100,000.00, exclusive of interest and costs, unless counsel asserting such claims certify in writing before the case is referred to arbitration that to the best of his or her knowledge and belief, in good faith, the damages which may be recoverable exceed such amount. Such certification shall be included on the Status Report form. (See Appendix IV)

(d) Actions which are subject to this Rule except that they include a claim for nonmonetary relief shall be referred to the assigned Judge or designated Magistrate at the initial pretrial/scheduling conference or at any appropriate time thereafter for determination of whether, for purposes of this Rule the nonmonetary claim is insubstantial. That determination may be made, in the judge's discretion, either ex parte or following consultation with the parties.

(e) At the initial pretrial/status conference or at any appropriate time thereafter in any action subject to this section, the assigned Judge or designated Magistrate may determine, on a motion by any party or sua sponte, that for purposes of this section no genuine claim for damages in excess of $100,000.00 exists and that the action is subject to mandatory arbitration. The determination may be made at any hearing or conference at which the parties are represented. In the event of such a determination, the action shall be referred to arbitration as herein provided.

(C) Time for Referral.

(1) Every action subject to this Rule under (B)(1) shall be referred to arbitration in accordance with the procedures under this Rule after the consent form has been executed and filed.

(2) Every action subject to this Rule under (B)(2) shall be referred to arbitration in accordance with the procedures under this Rule at the initial pretrial/scheduling conference, except as otherwise provided.

(3) Prior to the initial pretrial/scheduling conference, if any party files a motion to dismiss the complaint, motion for judgment on the pleadings, or motion for summary judgment, the motion shall be heard by the assigned Judge and further proceedings under this Rule shall be deferred pending resolution of the motion unless the parties agree otherwise, and provided, however, that the filing of such a motion on or after the referral shall not stay the proceedings unless the Court so orders. If the action is not dismissed or otherwise terminated as the result of the decision on the motion, it shall be referred to arbitration. Counsel shall promptly notify the Clerk of Court (arbitration deputy) and receive scheduling information.

(D) Authority of Assigned Judge. Notwithstanding any provision of this Rule, every action subject to this Rule shall be assigned to a Judge upon filing in the normal course in accordance

with Rule 8 and the assigned Judge shall have authority, in his discretion, to conduct status/pretrial conferences, to refer the case for settlement conference, to hear motions, and to supervise the action in all other respects in accordance with these Rules and the Federal Rules of Civil Procedure notwithstanding the referral of the action to arbitration.

(E) Relief from Referral. Any party may request relief from the operation of this Rule by filing with the Court a motion for such relief within twenty (20) days after entry of the initial pretrial/scheduling order or any other order which refers the case for arbitration unless modified by the Court. Such motion shall conform to Rule 14(A). The assigned Judge may, sua sponte or on motion, in his discretion, exempt an action from the application of this Rule where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) because legal issues predominate over factual issues, or (3) for other good cause.

(F) Certification, Compensation, and Selection of Arbitrators.

(1) Certification.

(a) The Clerk of Court shall maintain a roster of arbitrators who shall hear and determine actions under this Rule. Arbitrators shall be selected by the Court from applications submitted by or on behalf of attorneys willing to serve. Any attorney who has been admitted to practice for not less than five (5) years, who has been admitted to practice in this Court, and who is determined by the Court en banc to be competent to perform the duties of an arbitrator shall be eligible for selection. Each person shall upon selection take the oath or affirmation prescribed in 28 U.S.C. §453.

(b) No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. §455 exist or may in good faith be believed to exist.

(c) Any person whose name appears on the roster maintained by the Clerk of Court may ask at any time to have his or her name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

(d) An arbitrator is an independent contractor and is subject to the provisions of 18 U.S.C. §§201-211 to the same extent as such provisions apply to a special government employee of the Executive Branch. A person may not be barred from the practice of law because such person is an arbitrator.

(2) Compensation.

(a) Subject to limits set by the Judicial Conference of the United States, arbitrators shall be paid $150.00 per day or portion of each day of hearing in which they participate as a single arbitrator or as a member of a panel of three arbitrators. At the time when the decision of the arbitrator(s) is filed, each arbitrator shall submit a voucher on the form prescribed by the Clerk of Court for payment by the Administrative Office of the United States Courts for compensation and transportation expenses necessarily incurred in the performance of their duties under this Rule. Only transportation expenses (including mileage and parking) which have been itemized on said voucher and can be reasonably documented are reimbursable.

(b) Those attorneys who are eligible for selection as arbitrators and whose names appear on the roster maintained by the Clerk of Court shall be exempted from the list of attorneys from which counsel are appointed to represent indigent criminal defendants pursuant to the Criminal Justice Act, 18 U.S.C. §3006(A), unless they request to remain eligible for such appointment or otherwise agree to accept such appointment.

(3) Selection. Whenever an action eligible for arbitration is set for pretrial/scheduling conference or referred to arbitration pursuant to this Rule, the Clerk of Court shall furnish to each party a list of ten (10) arbitrators whose names have been drawn at random from the roster of arbitrators maintained in the Clerk's Office. The parties shall confer for the purpose of selecting a single arbitrator or, if all parties so request in writing, a panel of three (3) arbitrators.

(a) The process to be utilized for selecting a single arbitrator or a panel of three (3) in cases involving one plaintiff and one defendant and in cases involving multiple plaintiffs and/or multiple defendants when all plaintiffs and all defendants can agree among themselves as to the selection of the arbitrators is as follows:

(i) Each side shall be entitled to strike two names from the list, plaintiff(s) to strike the first name, defendant(s) the next, then plaintiff(s), and then defendant(s);

(ii) The parties shall then select the panel from the remaining six names by alternately selecting one name, defendant(s) to make the first choice, plaintiff(s) the second, and continuing in this fashion.

(b) In cases involving multiple plaintiffs and/or multiple defendants when all plaintiffs or all defendants cannot agree among themselves as to the selection of the arbitrator(s), then each defendant and each plaintiff shall propose one name from the list of ten (10) arbitrators furnished by the Clerk of Court until a list of at least six (6) arbitrators has been selected. In instances of third party action, if parties cannot agree, selection shall proceed as above between primary defendants and plaintiffs and then third party defendants until a list of at least six (6) arbitrators has been selected. If the number of plaintiffs and/or defendants is greater than ten (10), then the Clerk of Court shall furnish a list of arbitrators which is one (1) greater in number than the total number of plaintiffs and/or defendants who are to participate in the selection process;

(c) At the conclusion of these processes, the parties shall list the six names in the order selected and submit them to the Clerk of Court at the time of the initial pretrial/ scheduling conference or no later than ten (10) days from receipt by them of the original list of ten (10) names if received at or after the scheduling conference. In the event the parties fail to submit such a list within the time provided, the Clerk of the Court shall make the selection of arbitrators at random from the original list of ten names;

(d) The Clerk of Court shall promptly notify the person or persons whose name or names appear as the first choice or choices of the parties of the selection, or if no choices have been made, the persons the Clerk has selected. If any person so

selected is unable or unwilling to serve, the Clerk shall notify the person whose name appears next on the list. If the Clerk is unable to select an arbitrator or constitute a panel of arbitrators from the six selections, the process of selection under this Rule shall be completed by the parties in conjunction with instructions from the Office of the Clerk (arbitration deputy).

(G) Hearing Date.

(1) Determination. The assigned Judge or designated Magistrate shall assist counsel of record at the initial scheduling conference (pursuant to Local Rule 17) to see that a mutually convenient date for hearing is set. Normally this date shall be set prior to the discovery cut-off date scheduled for the trial case; however, in the discretion of the assigned Judge or designated Magistrate, such hearing date may be set after the discovery cut-off date. If the case is later referred to arbitration, the Clerk shall communicate with the parties to ascertain a mutually agreeable date within the same time frame. In no event should an arbitration hearing date be within thirty (30) days of the scheduled trial date. No arbitration hearing under this Rule shall begin later than 180 days after the filing of an answer and no arbitration proceedings shall, in the absence of the consent of the parties, commence until thirty (30) days after the disposition by the Court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if such motion was filed in accordance with these local rules or other orders of the Court. Both the 180 and 30-day periods may be modified by the Court for good cause shown.

(2) Notification. When the requisite number of arbitrators has agreed to serve, the assigned Judge shall direct the Clerk to enter an order setting forth the date and time of the arbitration hearing and the name(s) of the arbitrator(s) designated to hear the case, and the Clerk shall promptly send said order to each arbitrator, counsel of record, and pro se parties, if any.

(3) Continuance. This date shall not be continued except for extreme and unanticipated emergencies as established in writing and approved by the assigned Judge. The Clerk of Court (arbitration deputy) must be notified immediately of any request for or order granting continuance or other pleading, situation or settlement of the case that would affect the hearing date. Any continuance must be to a date certain and cleared with the Clerk of Court (arbitration deputy).

(4) Discovery. Critical discovery necessary for purposes of meeting the goals of an arbitration hearing shall be completed prior to the hearing.

(5) Default of Party. Subject to the provisions of this Rule, the hearing shall proceed on the noticed date. Absence of a party shall not be grounds for a continuance but damages shall be awarded against an absent party only upon presentation of proof thereof satisfactory to the arbitrator(s). Failure to appear by a person required to be present or other failure to participate in good faith may constitute a default in accordance with Local Rule 17(E). In such instances, the hearing shall proceed and the arbitrator(s) shall enter an award. Upon a report of absence or

other non-compliance with this Rule, or, on the motion of opposing counsel, appropriate action may be taken by the Court.

(H) Joint Stipulations Arbitration Summary. Ten (10) days prior to the hearing, the parties shall submit to the arbitrator(s) assigned to a particular action and to the Clerk of Court (arbitration deputy) a joint statement containing all facts and legal issues that (a) are not in dispute and (b) are in dispute. In addition, each party shall submit to the arbitrator(s), to opposing counsel, and to the Clerk of Court (arbitration deputy), a summary of the position of that party which includes any remaining factual issues or legal issues in dispute and any damages requested or defenses asserted. Each Arbitration Summary should not exceed five (5) pages in length and neither it nor the Joint Stipulations will be made a part of the case file.

(I) Attendance at and Conduct of Hearing.

(1) In addition to lead counsel who will try the case for each party, a person with actual settlement authority must likewise be present for the hearing. This will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested parties such as insurers or indemnifiers shall attend and are subject to the provisions of this Rule. Only the assigned Judge may excuse attendance by any attorney, party, or party's representative.

(2) Hearings are intended to last approximately 2-21/2 hours. Counsel for each party shall have up to one hour to communicate the highlights of his or her case. Plaintiff(s) will be permitted to reserve a limited time for rebuttal. In the case of multiple parties and multiple claims, adjustments are made at the discretion of the arbitrator.

(3) The hearing shall be conducted informally. All evidence shall be presented through counsel who may incorporate argument on such evidence in his or her presentation. The Federal Rules of Evidence shall be a guide, but shall not be binding. Counsel may present factual representations supportable by reference to discovery materials, including depositions, stipulations, signed statements of witnesses, or other documents or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports, and depositions may be read from, but not at undue length. Physical evidence, including documents, may be exhibited during a presentation.

(4) The hearing supplements the arbitration summary submitted to each arbitrator and allows the arbitrator(s) to pursue during the hearing those points which appeared particularly pertinent in the summaries.

(J) Transcript or Recording. A party may cause a transcript or recording to be made of the hearing at its expense but shall, at the request and expense of opposing party, make a copy available to that party. In the absence of agreement of the parties, and except as provided in this Rule, no transcript of the hearing shall be admissible in evidence at any subsequent de novo trial of the action.

(K) Place and Time of Hearing.

(1) Hearings shall be held in any courtroom, hearing room, or other room in the U.S. Courthouse or Federal Complex made available by the Clerk of Court. When no such room is available, the hearing shall be held in any location within this judicial district assigned by the Clerk in consultation with the arbitrator(s) with consideration to the convenience of the arbitrator(s) and the parties.

(2) Unless the parties agree otherwise, hearing shall be held during normal business hours.

(L) Optional Waiver of Trial De Novo; Voluntary Arbitration. At any time prior to the commencement of the hearing, the parties may by written stipulation approved by order of the assigned judge waive the right to a trial de novo following the award and proceed as in voluntary arbitration. In the event of such a stipulation, the provision of state and federal law governing review of awards rendered in voluntary arbitration shall govern.

(M) Authority of Arbitrator. The arbitrator to whom an action is referred shall have the following powers: to conduct arbitration hearings and make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing; to administer oaths and affirmations if necessary; and to make awards. Any two members of a panel shall constitute a quorum, but (unless the parties stipulate otherwise) the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

(N) Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or any party on any matter concerning the action except for purposes of scheduling or continuing the hearing.

(O) Arbitration Award and Judgment.

(1) Filing of Arbitration Award. The arbitrator shall file the award with the Clerk of Court promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. The Clerk shall promptly serve copies on the parties.

(2) Contents of the 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, awarded. It shall be in writing and signed by the arbitrator or by at least two (2) members of a panel. No member of a panel shall participate in the award without having attended the hearing. Arbitrators are not required to issue an opinion explaining the award. All awards shall be in keeping with the evidence presented and the applicable law.

(3) Sealing of the Award. Promptly upon the filing of the award with the Clerk, the after the Clerk has served copies on the parties, the award shall be sealed and filed under seal. The contents of any arbitration award made under this Rule shall not be made known to any Judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise been terminated, except for purposes of preparing the report required by §903(b) of the Judicial Improvements and Access to Justice Act.

(4) Effect of the Award. If no party files a demand for

trial de novo within thirty (30) days of the filing of the sealed award in accordance with section (P), the award will be unsealed and the Clerk shall enter judgment thereon in accordance with Rule 58 Fed.R.Civ.P., and the judgment shall have the same force and effect as any judgment of the Court in a civil action, except that no appeal shall lie from such judgment (any notice of appeal shall be treated as a demand for a trial de novo if filed within thirty (30) days of the filing of the sealed award). Any applications for attorney's fees and costs following the entry of judgment should be in conformity with Local Rule 6.

(P) Trial De Novo.

(1) Time for Demand and Restoration to Court Docket. Within thirty (30) days after the filing of the arbitration award with the Court, any party may file with the Court and serve on all the parties a written demand for a trial de novo. In such cases, the sealed award shall not be unsealed, become or be filed as a judgment in the case, and the action shall be restored to the docket of the Court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the Court calendar which is no later than that which a party otherwise would have had, are preserved and the action shall proceed in the normal manner before the assigned judge.

(2) Limitation on Admission of Evidence. At a trial de novo, the Court shall not admit any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless the evidence would otherwise be admissible in the Court under the Federal Rules of Evidence, or the parties have otherwise stipulated.

(3) Fees Required for Demanding Trial De Novo. Upon making a timely demand for a trial de novo, the moving party, other than the United States or its agencies or officers, shall, unless permitted to proceed in forma pauperis, deposit with the Clerk of Court an amount equal to the fees for each arbitrator ($150.00) as provided in Rule 43(F)(2).

(4) Return of Deposited Fees. Upon application within fifteen (15) days of the entry of a final judgment, the sum so deposited shall be returned to the party demanding the trial de novo, if

(a) the party demanding the trial de novo obtains a final judgment, exclusive of interest and costs, more favorable than the arbitration award, or

(b) the Court determines that the demand for trial de novo was made for good cause.

In the event that the moving party does not obtain a more favorable result and the sum so deposited is not returned to the moving party, such sum shall be paid to the Treasury of the United States.

(5) In mandatory arbitration cases only, no penalty for demanding a trial de novo, other than that provided in section (P)(3) and (4), shall be assessed by the Court.

(Q) Evaluation. Ongoing evaluation may be conducted by the Clerk of Court in conjunction with the Court's alternative dispute resolution committee, if established, to monitor this and other programs to assure conformity with the stated purpose(s).

APPENDIX 7

LOCAL COURT RULE 46

Rule 46
MEDIATION

(A) GENERAL PROVISIONS.

(1) Purpose. The purpose of this Rule is to provide a supplementary procedure to the Court's existing alternative dispute resolution procedures. It provides for an earlier resolution of civil disputes with resultant savings in time and costs to the litigants and to the Court without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial on all issues not resolved through mediation.

(2) Definitions. Mediation is a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement.

The mediator is an advocate for settlement and uses the mediation process to help the parties fully explore any potential area of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. The parties themselves are responsible for negotiating any resolution(s) to their dispute.

(B) CERTIFICATION, QUALIFICATIONS AND COMPENSATION OF MEDIATORS.

(1) Certification of Mediators. The judges of this Court shall certify those persons who are eligible and qualified to serve as mediators under this Rule in such numbers as the Court shall deem appropriate. The Court may withdraw certification of any mediator at any time.

(2) Lists of Certified Mediators. The Clerk of Court shall appoint a mediation clerk who shall maintain a list of certified mediators which shall be made available to counsel and the public upon request.

(3) Qualifications of Mediators.

(a) An individual may be certified as a mediator if he or she:

(i) has been admitted to the practice of law for at least five (5) years, and is a member in good standing of the bar of this court; or

(ii) is a professional mediator who would otherwise qualify as a special master, and

(iii) is determined by the Court to be competent to perform the duties of the mediator and has completed appropriate training in the process as the Court may from time to time determine and direct.

(b) Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(c) No person shall serve as a mediator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist and any mediator may be disqualified for bias or prejudice as provided in

28 U.S.C. § 144. The mediator has a continuing obligation of disclosure.

(d) Any member of the bar who is certified and designated as a mediator pursuant to this Rule shall not for that reason be disqualified from appearing or acting as counsel in any other case pending before this Court.

(4) Compensation of Mediators. Unless provided pro bono, mediators shall be compensated at the rate provided by standing order of the Court. Unless otherwise agreed to by counsel, the cost of the mediator's services shall be born equally by all the parties, payable immediately upon the conclusion of the mediation session. If settlement is not accomplished by mediation, and the case is later concluded by trial or otherwise, the prevailing party, upon motion, may recover as costs in the instant action fees paid to the mediator.

(C) ACTIONS SUBJECT TO MEDIATION.

(1) The Court in its discretion, on its own motion, on the motion of any party, or by stipulation and agreement of the parties may refer any civil action, or any portion thereof, to mediation under this rule, except administrative reviews and prisoner cases. The Court may excuse from mediation any case arbitrated or to be arbitrated in order to avoid unnecessary compounding of expenses.

(2) Any civil action or claim referred to mediation pursuant to this Rule may be withdrawn from mediation by application to the assigned judge at least ten (10) days prior to the scheduled mediation session upon a determination that the case is not suitable for mediation.

(D) PROCEDURES FOR REFERRAL, SELECTING THE MEDIATOR AND SCHEDULING THE MEDIATION SESSION.

(1) The possibility and appropriateness of mediation under this rule shall be discussed at the initial status/scheduling conference of the case in accordance with Local Rule 17.

(2) In every case in which the court determines that referral to mediation is appropriate pursuant to Section C(1) of this Rule, the Court shall enter an order of referral which shall define the window of time in which the mediation session shall be conducted. The Court intends that mediation under this Rule occur at the earliest practical time in an effort to encourage earlier, less costly resolution.

Referral to mediation under this rule shall not delay or stay other proceedings unless so ordered by the Court.

(3) Within ten (10) days of the order of referral, parties are to select a mediator of their choice from a list of mediators available from the Court and submit the selection to the mediation clerk in the court clerk's office. If no such selection is timely made or if the parties cannot agree upon the mediator, the mediation clerk shall make the selection. The mediation clerk shall work with the selected mediator and counsel of record to set a mutually agreeable date within the time prescribed by the order of referral and an order appointing the mediator and setting the time and place of the session shall issue.

(4) Mediation sessions under this rule may be held in any available court space or in any other suitable location agreeable to the mediator and the parties. Consideration shall be given to the convenience of the parties and the cost and time of travel involved.

(5) There shall be no continuance of a mediation session beyond the time set in the order of referral except by order of this Court upon a showing of good cause. If any rescheduling occurs within the prescribed time, the mediation clerk must be notified and availability of the place of the hearing considered. Any settlement prior to the scheduled mediation shall promptly be reported to the mediator and the Court.

(E) THE MEDIATION SESSION.

(1) Memorandum for Mediation. At least two (2) days prior to the mediation session, each party shall provide to the mediator and all other parties a memorandum for mediation stating the name and role of each person expected to attend, identity of each person with full settlement authority, and including a concise summary of the parties' claims/defenses/counter-claims, etc., relief sought and contentions concerning liability and damages. The summary shall not exceed five (5) pages and shall not be filed in the case or made part of the court file.

(2) Attendance Required. The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested parties such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Only the assigned judge may excuse attendance of any attorney, party or party's representative.

(3) Default. Subject to the approval of the mediator, the mediation session may proceed in the absence of a party, who, after due notice, fails to be present. Sanctions may be imposed by the Court on any party who, absent good cause shown, fails to attend or participate in the mediation session in good faith in accordance with Local Rule 17(E).

(4) Good Faith Participation and the Process. Parties and counsel commit to participate in good faith, without any time constraints and to put forth their best efforts toward settlement. Typically, the mediator meets initially with all parties to the dispute and their counsel in joint session and then separately in caucus. The process permits the mediator and the parties to explore the needs and interests underlying the stated positions, generate and evaluate alternative settlement proposals or potential solutions as well as interests that may be outside the scope of the stated controversy or which could not be addressed by judicial actions. The parties participate in crafting a resolution of the dispute.

(5) Confidentiality. Mediation is regarded as a settlement procedure and is confidential and private. No

participant may disclose, without consent, any confidential information acquired during mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

The mediator may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(6) Conclusion of the Mediation Session. The mediation shall be concluded:

(a) by resolution and settlement of the dispute by the parties, or

(b) by adjournment for future mediation by agreement of the parties and the mediator, or

(c) upon declaration of impasse by the mediator that future efforts to resolve the dispute are no longer worthwhile.

If the mediation is adjourned by agreement for further mediation, the additional session shall be concluded within the time ordered by the court.

(F) MEDIATION REPORT; NOTICE OF SETTLEMENT OR TRIAL.

(1) Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the Clerk of Court indicating only whether the case settled, settled in part, or that the case did not settle.

(2) In the event the parties reach an agreement to settle the case, each lead counsel shall promptly notify the Court and promptly prepare and file the appropriate dismissal or closing papers.

(3) If the mediation session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.