

**RULES OF
PRACTICE AND PROCEDURE
of the
THE UNITED STATES
DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA**

- . GENERAL RULES
- . CIVIL RULES
- . CRIMINAL RULES
- . MAGISTRATE RULES
- . RULES OF DISCIPLINARY
ENFORCEMENT

January 1, 1985

CITE THESE RULES AS:

Local Rule _____

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

CHIEF JUDGE
Hiram H. Ward
Suite 246, Federal Building
251 North Main Street
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DISTRICT JUDGE
Richard C. Erwin
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* * * *

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MAGISTRATE
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* * * *

BANKRUPTCY JUDGE
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* * * *

CLERK
J. P. Creekmore
P. O. Box V-1
Greensboro, NC 27402

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

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

For good cause appearing to the Court,

IT IS ORDERED that:

1. The following Rules of Practice and Procedure in the United States District Court for the Middle District of North Carolina be and they hereby are adopted, effective at 12:01 a.m., on the 1st day of January 1985. At that time these local rules shall supersede local rules theretofore in effect and shall apply to all pending cases, unless the Court finds that their application in a specific case would result in injustice or hardship.

2. These rules are adopted in compliance with and pursuant to the authority of Rule 83, Fed. R. Civ. P.; Rule 57, Fed. R. Crim. P.; and other federal rules and statutes providing for district court local rules.

3. The Clerk is directed to make appropriate arrangements to see that these rules are published promptly and that copies of the rules are made available for distribution to the bar and the public.

This the 15th day of August 1984.

s/ Hiram H. Ward

Chief Judge, United States District Court

s/ Richard C. Erwin

Judge, United States District Court

s/ Frank W. Bullock, Jr.

Judge, United States District Court

ACKNOWLEDGMENT

These Rules of Practice and Procedure are the result of dedicated study and work by many individuals. Several years ago, Chief Judge Gordon recognized that the passage of time had inevitably brought changes in federal practice which impacted upon the Court's long-standing local rules. He therefore appointed a committee to study revision of the rules. As a part of that committee, Judge Ward, Magistrate Eliason, then Clerk Carmon J. Stuart, Professor Leon H. Corbett, Jr. of Wake Forest University School of Law, W. Pendleton Sandridge, Jr., Larry B. Sitton, and Kenneth K. Kyre, Jr. prepared preliminary drafts and background research which substantially assisted in preparation of these rules. Further study of the rules was undertaken, at the direction of Chief Judge Ward, by Magistrates Eliason and Sharp, beginning in late 1983. The Magistrates were ably assisted in their work by J.P. Creekmore, Clerk of this Court. The rules prepared by the Magistrates, after consideration and revision by the full Court, were submitted to an Advisory Committee of the Bar, for comment and advice. Thornton H. Brooks chaired the Committee, which included Jonathan R. Harkavy, H. Grady Barnhill, Jr., Mary W. Root, James B. Maxwell, Walter F. Brinkley, Fred W. Bynum, Jr., and Benjamin H. White, Jr. The Advisory Committee provided the Court with wise counsel which has served to strengthen the Rules of Practice and Procedure.

The Court wishes to express its deep appreciation to all who have served to bring these Rules of Practice and Procedure into existence. The Court is well aware of the many hours of hard work which were generously given by members of the Bar. It is the Court's hope and belief that these rules will fairly serve the Bar and all litigants who come before this district court.

Hiram H. Ward, Chief Judge
United States District Court

Richard C. Erwin, Judge
United States District Court

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

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SCOPE OF RULES

These rules shall govern the procedure in all proceedings before this court, except for proceedings before the bankruptcy court. As used in these rules, the term "judge" refers to a United States district court judge, and the term "magistrate" refers to a full-time United States magistrate.

RULE 103

ATTORNEYS

(a) **Roll of Attorneys.** The bar of this court shall consist of those attorneys admitted to practice before this court.

(b) **Eligibility and Admission.** To be eligible for admission to the bar of the court, a person must be a resident of this state, admitted to the practice of law in this state, and in good standing with the Supreme Court of North Carolina. A judge or magistrate will consider a request for admission only upon motion made in open court by a member of the bar of this court. Prior to being admitted to practice, an attorney must certify that he has read and is familiar with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of this court, and the North Carolina Code of Professional Responsibility. Attorneys seeking admission to practice in this court must take an oath or make an affirmation in a form approved by the court and pay the filing fee. Attorneys who move their permanent residence outside the state of North Carolina after admission to this bar will be dropped from the roll of members.

(c) **Litigants Must Be Represented by Member of the Bar of This Court.**

(1) Litigants in civil and criminal actions and parties in bankruptcy proceedings before this court, except governmental agencies and parties appearing *pro se*, must be represented by at least one attorney who is a member of the bar of this court. The service of all pleadings and papers permitted by the Federal Rules of Civil and Criminal Procedures shall be sufficient if made upon such attorney.

(2) All pleadings and papers presented to the clerk for filing, except by attorneys representing governmental agencies or parties appearing *pro se*, shall be rejected by the clerk unless signed by a member of the bar of this court.

(d) **Special Appearance.**

(1) Attorneys who are members in good standing of the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By entering an appearance, an attorney agrees that:

- (i) he will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings; and that

(ii) he submits himself to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation for which he is specially appearing.

(2) A member of the bar of this court who accepts employment in association with a specially appearing attorney is responsible to this court for the conduct of the litigation or proceeding and must sign all pleadings and papers, except for certificates of service. Such member must be present during pretrial conferences, potentially dispositive proceedings, and trial.

(e) **Withdrawal of Appearance.** No attorney who has entered an appearance in any civil or criminal action shall be permitted to withdraw his appearance, or have it stricken from the record, except on order of the court.

RULE 104

COURT SCHEDULE AND CONDUCT OF BUSINESS

(a) **Headquarters.** The headquarters of the court shall be located in Greensboro. All pleadings and papers submitted for filing shall be presented to the clerk in Greensboro, except that papers may be filed in open court in any court location when permitted by a judge or magistrate.

(b) **Scheduling.** Conferences, hearings, and trials will be scheduled by the court or by the clerk at the court's direction. All sessions of court will commence at 9:30 a.m. unless otherwise announced.

(c) **Naturalization.** Petitions for naturalization will be considered by the court at Greensboro, North Carolina, on Fridays after the third Mondays in March, July, and October, unless otherwise ordered. In its discretion, the court may at other times consider petitions for naturalization when made by members of the armed services, seamen on merchant vessels registered under the laws of the United States, members of the immediate families and dependents of such personnel, or other persons in exceptional circumstances.

(d) **Divisions of the Court.** There are five divisions of the court, as follows:

Division	Counties Comprising Division
Durham	Chatham Durham Lee Orange Person
Greensboro	Alamance Caswell Guilford Randolph Rockingham
Rockingham	Hoke Montgomery Moore Richmond Scotland

Salisbury

Cabarrus
Davidson
Davie
Rowan
Stanly

Winston-Salem

Forsyth
Stokes
Surry
Yadkin

RULE 105

EXTENSIONS OF TIME AND CONTINUANCES OF HEARINGS

(a) **Motions for an Extension of Time to Perform an Act.** All motions for an extension of time to perform an act required or allowed to be done within a specified time must show prior consultation with opposing counsel and the views of opposing counsel. Extensions will not be allowed unless the motion is made before the expiration of the specified time, except upon a showing of excusable neglect. Stipulations with respect to extensions of time are subject to the approval of the court. Consent orders extending time may be signed by the clerk to the extent provided by Local Rule 108. Extensions to file an answer or other responsive pleading will not be granted beyond a total of 30 days from the date the answer was originally due, except upon a showing of good cause.

(b) **Motions for Continuance.** All motions to continue a pretrial conference, hearing on a motion, or the trial of an action must be presented through the clerk's office for the court's consideration reasonably in advance of the hearing date and must reflect the views of opposing counsel.

RULE 106

FORM OF PLEADINGS AND PAPERS

(a) **Form.** Pleadings, motions, briefs, and other papers submitted for filing must be typewritten, printed, or legibly handwritten on letter size paper. The pages shall be unfolded and shall be bound at the top and numbered at the bottom, without manuscript cover. Typewritten documents should be double spaced or one and one-half spaced. Mechanically reproduced copies which bear an original signature will be accepted by the court as originals.

(b) **Identification of Documents.** All papers submitted for filing shall follow the heading format set out in the Appendix of Forms, Fed. R. Civ. P., and papers submitted subsequent to the original complaint shall bear the case number.

(c) **Telephone Numbers and Addresses.** Parties or attorneys signing papers submitted for filing must state their telephone numbers as well as their addresses.

(d) **Exhibits to Pleadings or Papers.** Bulky or voluminous materials should not be submitted for filing with a pleading or paper, or incorporated by reference therein, unless such materials are essential. The court may order any pleading or paper stricken if filed in violation of this rule.

(e) **Civil Rights Actions by Prisoners, 42 U.S.C. § 1983.** All *pro se* complaints filed by state prisoners seeking relief under 42 U.S.C. § 1983 shall be filed with the clerk in compliance with the instructions of the clerk and on appropriate forms which are available without charge in the clerk's office. In each action, an original and one copy of the complaint for the court and one copy of the complaint for each defendant must be provided by the plaintiff.

RULE 107

BRIEFS AND MEMORANDA OF LAW

(a) **Contents.** All briefs filed with the court shall contain:

(1) A statement of the nature of the matter before the court.

(2) A concise statement of the facts. Each statement of fact should be supported by reference to a part of the official record in the case.

(3) A statement of the question or questions presented.

(4) The argument, which shall refer to all statutes, rules and authorities relied upon.

(b) **Citation of Cases.** Cases cited should include parallel citations, the year of the decision, and the court deciding the case. If a petition for *certiorari* was filed in the United States Supreme Court, disposition of the case should be shown with three parallel citations (e.g., *Carson v. Warlick*, 238 F.2d 724 (4th Cir. 1956), *cert denied*, 353 U.S. 910, 77 S.Ct. 665, 1L.Ed.2d 664 (1957)).

(c) **Citation of Unpublished Decisions.** Unpublished decisions may be cited only if the unpublished decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed. Unpublished decisions should be cited as follows: *Wise v. Richardson*, No. C-70-191-S (M.D.N.C., August 11, 1971).

(d) **Citation of Decisions Not Appearing in Certain Published Reports.** Decisions published in reports other than the West Federal Reporter System, the official North Carolina reports and the official United States Supreme Court reports (e.g., C.C.H. Reports, Labor Reports, U.S.P.Q., reported decisions of other states or other specialized reporting services) may be cited only if the decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed.

(e) **Additional Copies of Briefs for Court Use.** At the time the original of a brief is filed, a working copy of the brief for use by the judge or magistrate shall be delivered to the clerk.

RULE 108

ORDERS AND JUDGMENTS GRANTABLE BY CLERK

(a) **Orders and Judgments.** The clerk is authorized to grant the following orders and judgments without direction by the court:

(1) Consent orders for the substitution of attorneys.

(2) Consent orders in civil actions for extending for not more than 30 days (plus an additional 30 days upon a showing of good cause) the time within which to answer or otherwise plead, to answer interrogatories, to respond to requests for production of documents, to respond to requests for admission, or to respond to motions.

(3) Consent orders dismissing an action, except in cases governed by Rules 23 or 66, Fed. R. Civ. P.

(4) Entry of default and judgment by default as provided for in Rules 55(a) and 55(b)(1), Fed. R. Civ. P.

(5) Orders canceling liability on bonds other than orders disbursing funds from the court's registry account.

(6) Orders appointing persons to serve process pursuant to Rule 4(c), Fed. R. Civ. P.

(7) *Ex parte* orders as authorized in Local Rule 203(f).

(b) **Clerk's Action Reviewable.** The actions of the clerk may be suspended, altered or rescinded by the court upon cause shown.

RULE 109

ACCESS TO COURT RECORDS

(a) **Access.** The public records of the court are available for examination in the clerk's office during normal business hours.

(1) No file, pleading or paper, or index card may be removed from the clerk's office without the approval of a judge or magistrate.

(2) When removal of a file or document is authorized, the clerk will set a date for its return and will require a written receipt for its release.

(b) **Copies.** The clerk will make and furnish copies of official court records upon request and upon payment of prescribed fees.

RULE 110

SURETIES

(a) **Security.** Except as otherwise provided by law or by order of the court, all bonds, guaranties, and undertakings must be secured by:

(1) Deposit of cash, certified check, certificate of deposit, bank draft, Post Office money order, negotiable bond, note of the United States as defined in Title 6, U.S.C. § 15, or other bond or note of the United States with the agreement provided for in 6 U.S.C. § 15;

(2) Undertaking of guaranty of a company holding a certificate of authority from the U.S. Department of Treasury as an acceptable surety on federal bonds; which company has filed with the clerk the designation of a resident of this district as agent, dated not more than three years earlier than the date of the undertaking, upon whom process may be served; and which company is otherwise qualified by having met all requirements of the law of North Carolina and of Title 6, U.S.C. §§ 6-13; or

(3) Undertaking of individual surety or sureties who are residents of North Carolina and own property within the state worth double the amount of the bond or undertaking over all exemptions, debts, liabilities and other obligations.

(b) **Individual Sureties.**

(1) An individual surety must execute an affidavit of justification giving full name, occupation, residence address, business address, and facts showing his financial qualification to act as surety.

(2) A husband and wife are considered as one surety.

(3) Members of the bar, officers and employees of this court, and employees of the Department of Justice serving in this district may not serve as sureties in any suit, action, or proceeding in this court.

(c) **Approval.** All bonds, guaranties, undertakings, and individual sureties must be approved by a judge, magistrate, or the clerk. Individual sureties who justify on the basis of ownership of real or personal property may be required to provide proof of ownership such as a title search and certificate of title, and give security in the form of a proper security instrument or deed of trust.

RULE 111

REGISTRY FUNDS

(a) **Deposit with the Treasury.** Unless otherwise ordered by the court, the clerk shall deposit registry funds in the Treasury of the United States.

(b) **Investment in Income-Earning Account.** Upon motion or upon consent of the parties, the court may order the clerk to invest certain registry funds in an income-earning account. The order may issue upon a consent request of the parties or upon motion by an interested party, in accordance with the following procedures:

(1) A consent request must demonstrate the assent of all interested and potentially interested parties. The agreement must demonstrate that the investment will be in compliance with applicable provisions of the law regulating the investment of public monies, provide for proper disposition of future earnings, and set out with particularity the following information:

- (i) the form of deposit;
- (ii) the amount to be invested;
- (iii) the type of investment to be made by the clerk of court; i.e., passbook savings, insured money fund, CD, etc.
- (iv) the name and address of the private institution where the deposit is to be made;
- (v) the rate of interest at which the deposit is to be made, if possible;
- (vi) the length of time the money should be invested, whether it should automatically be reinvested, etc., keeping in mind that some investments include a penalty for early withdrawal;
- (vii) the name and address of the designated beneficiary or beneficiaries;
- (viii) the form of additional collateral to be posted by the private institution in the event that the standard F.D.I.C. coverage is insufficient to insure the total amount of deposit; and
- (ix) such other information that may be deemed appropriate under the facts and circumstances of the particular case.

The consent request shall be accompanied by a proposed order directing the clerk to proceed with the investment.

(2) A motion may be filed *ex parte* by an interested party, and the court may enter an order in advance of the filing of any response thereto. The motion must set forth the showings required in subsection (b)(1) concerning the investment and must include a proposed

order. The motion must be served on all known interested parties who do not join therein. If an order is entered prior to the filing of a response in opposition, the motion will be reconsidered by the court. The court may determine the motion upon the record or may, in its discretion, call for a hearing on the matter.

RULE 112

JURIES IN CIVIL AND CRIMINAL CASES

(a) **Examination of Jurors.**

(1) The court will conduct the examination of prospective jurors.

(2) When the court's examination is completed, attorneys and parties appearing *pro se* may request that the court ask additional questions to the prospective jurors.

(b) **Contacts Prohibited.**

(1) All parties, witnesses, and attorneys shall avoid any extra-judicial contact or communication with a grand juror or member of a petit jury venire or panel who has been or may be selected in a case in which that person is involved. No person may have any extra-judicial contact or communication, either directly or indirectly, with a grand juror, member of a petit jury venire or panel which may reasonably have the effect of influencing, or which is intended to influence, the grand juror, potential petit juror, or sitting petit juror.

(2) Attorneys for parties shall inform their clients and witnesses of this rule.

(3) No person shall approach a juror, either directly or through any member of his immediate family, in an effort to secure information concerning the juror's background.

(4) No provision of this rule is intended to prohibit communication with a petit juror after the juror has been dismissed from further service, so long as the communication does not tend to harass, humiliate, or intimidate the juror in any fashion.

(c) **Disclosure of Names and Addresses of Prospective Jurors.**

(1) The names of prospective jurors for any session of court or for a specific case may not be disclosed prior to their reporting for duty except in compliance with instructions of the court. The clerk will make available to counsel for the parties, and to any parties appearing *pro se*, a list which sets forth the name, general address, and occupation of each potential juror when court is opened for the session for which the jurors have been summoned.

(2) The names, addresses, and telephone numbers of persons who have served as jurors may not be disclosed by the clerk's office without court permission.

(d) **Number of Jurors in Civil Jury Cases.** In civil jury cases the jury shall consist of six (6) members.

RULE 113

JURY ARGUMENTS AND INSTRUCTIONS

(a) **Jury Arguments.** In the trial of civil actions the party having the burden of proof shall have the right to open and close the jury argument, without regard to whether the defendant has offered evidence. If each of the parties has the burden of proof on one or more issues, the court, in its discretion, shall determine the order of arguments. All arguments shall be subject to such time limitations as may be imposed by the court.

(b) **Instructions to Jury.** In all cases tried to a jury, a party who desires the jury to be instructed on a particular point must set it out in writing and furnish it to the court before jury arguments commence.

RULE 114

COURTROOM PRACTICES

(a) **Addressing the Court.** Attorneys or *pro se* litigants shall rise when addressing the court, and shall make all statements to the court from behind the counsel table or the lectern facing the court. They shall not approach the bench, except upon the permission of the court.

(b) **Questioning Witnesses.** While questioning witnesses, attorneys or *pro se* litigants shall remain seated or standing behind the counsel table or standing at the lectern. They shall not approach the witness except for the purpose of examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

RULE 115

CUSTODY AND DISPOSITION OF TRIAL EXHIBITS, SEALED DOCUMENTS, AND FILED DEPOSITIONS

(a) **Custody with the Clerk.** Unless otherwise directed by the court, all trial exhibits admitted into evidence in criminal and civil actions shall be placed in the custody of the clerk, except as provided in section (b) below.

(b) **Custody with the Offering Party.** All exhibits not suitable for filing and transmission to the court of appeals as a part of a record on appeal shall be retained in the custody of the party offering them, subject to the orders of the court. Such exhibits shall include, but not be limited to, the following types of bulky or sensitive exhibits: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight.

At the conclusion of a trial or proceeding, the party offering such exhibits shall retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted until any appeal is resolved or the time for appeal has expired. The party retaining custody shall make such exhibits available to opposing counsel for use in preparation of an appeal and be responsible for their safe transmission to the appellate court, if required.

(c) **Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk.** Any exhibit, sealed document, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired or an appeal has been decided and mandate received, may be returned to the parties or destroyed by the clerk.

(d) **Depositions.** Depositions read into the court record are considered exhibits for which the parties shall be responsible as provided in section (b) above. Depositions on file admitted into evidence but not read into the record shall be retained in the clerk's custody and disposed of as authorized in section (c) of this rule.

RULE 116

DESIGNATION OF CONTENTS OF RECORD ON INTERLOCUTORY APPEAL

Unless the parties file a written stipulation with the clerk within 20 days after notice of interlocutory appeal is filed designating the papers which shall constitute the record on appeal, the clerk shall certify and forward to the court of appeals all the original papers in the file jacket dealing with the action or proceeding in which the appeal is taken.

RULE 117

DISPOSITION OF PRIVATE PROPERTY

(a) **Disposition.** Whenever, during the course of an investigation, a trial of any action, or any other proceeding in this court, money, contraband, or other private property comes into the possession or custody of a law enforcement officer or an officer of the court, which will require an order of this court to determine its ownership or proper disposition, it is the responsibility of the attorney representing the party having original custody or control of such property to apply to the court for an order determining its ownership and directing its disposition.

(1) This application must be made before the conclusion of the litigation while all parties are before the court in person or through their attorneys.

(2) If the court cannot determine ownership or the proper disposition on the basis of the record or information from the parties before it, application must be made for an order providing for temporary custody pending institution of appropriate civil proceedings to determine final ownership or disposition.

(b) **Sanctions.** The court may impose sanctions as provided in Local Rule 122 against any party or attorney whose failure to comply with this rule necessitates a subsequent hearing or court proceeding which would otherwise not have been necessary.

RULE 118

OFFICIAL COURT REPORTERS

The duties and responsibilities of official court reporters of this court are set forth in the Court Reporters Management Plan which is a public document on file with the office of the clerk.

RULE 119

PHOTOGRAPHS, RECORDINGS, AND BROADCASTS

Radio or television broadcasting and the use of photographic, electronic, or mechanical reproduction or recording equipment without court permission is prohibited in courtrooms or their environs. "Environs" is defined to mean the courtrooms, the offices of the judges, magistrates, clerk, probation officers, or any corridor connecting or adjacent thereto. Ceremonial proceedings such as the administration of oaths of office to appointed officials of the court, naturalization, and presentation of portraits, may be photographed in or broadcast from the courtroom, under the supervision of the court. This rule does not apply to courtroom proceedings by other government agencies.

RULE 120

COURT LIBRARIES

The court's libraries are maintained for the exclusive use of the judges and magistrates.

RULE 121

RELEASE OF INFORMATION BY COURT PERSONNEL

All court personnel, including, among others, the United States marshal and his deputies, the clerk of court and his deputies, the chief probation officer and his officers, bailiffs, and court reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a case that is not part of the public records of the court. This proscription applies to the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

RULE 122

SANCTIONS

(a) **Imposition of Sanctions.** If an attorney or a party fails to comply with a local rule of this court, the court may impose sanctions against the attorney or party, or both. The court may make such orders as are just under the circumstances of the case, including the following:

(1) an order that designated matters or facts shall be taken as established for purposes of the action;

(2) an order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) an order striking out pleadings or parts thereof, or staying proceedings until the rule is complied with, or dismissing the action or any part thereof, or rendering a judgment by default against the failing party;

(4) an order imposing costs, including attorney's fees, against the party, or his attorney, who has failed to comply with a local rule.

(b) **Sanctions Within the Discretion of the Court.** The imposition of sanctions for violation of a local rule is discretionary with the court. In considering the imposition of sanctions, the court may consider whether a party's failure was substantially justified or whether other circumstances make the imposition of sanctions inappropriate.

RULE 123

MARSHAL SECURITY

The United States marshal or a deputy shall be present at all proceedings held in open court, unless otherwise ordered by the court.

Rules 124-199: Reserved for future purposes.

II. CIVIL RULES

RULE 201

COMMENCEMENT OF ACTIONS

(a) **Civil Docket Cover Sheet.** A civil docket cover sheet, in a form supplied by the clerk, must be completed and submitted in duplicate with any complaint commencing an action or any petition for removal from state court.

(b) **Removal Petitions.** The penal sum of a bond required by 28 U.S.C. § 1446(d) upon removal of an action is \$500.00, unless otherwise ordered.

RULE 202

FILING OF PAPERS AND PROOF OF SERVICE

(a) **Additional Copies for Court Use.** A copy of the following documents should be delivered to the clerk for use by the court when the original is filed:

- (1) A brief.
- (2) Proposed findings of facts and conclusions of law.
- (3) Requests for jury instructions.
- (4) Final pretrial order.

(b) **Proof of Service.** Proof of service of papers other than the original complaint may be made by written acknowledgment of service by the party served, or by a certificate of counsel for the party filing the pleading or paper, or by affidavit of the person making service, but these methods of proof shall not be exclusive. The original of all papers filed shall indicate the date and method of service.

(c) **Ex Parte Orders.** Whenever the court has made an *ex parte* order, the party obtaining it shall serve, within two days thereafter, a copy thereof upon each adverse party who is affected thereby, together with a copy of the papers on which the order was based.

(d) **Files in Condemnation Actions Commenced by the United States.** When the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the clerk is authorized to establish a master file in which the declaration of taking may be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates.

RULE 203

MOTION PRACTICE

(a) **Form.** All motions, unless made during a hearing or at trial, shall be in writing and shall be accompanied by a brief except as provided in section (h) of this rule.

(b) **Content.** All motions shall state with particularity the grounds therefor, shall cite any statute or rule of procedure relied upon, and shall set forth the relief or order sought.

(c) **Decided on Motion Papers and Briefs.**

(1) Motions shall be considered and decided by the court on the pleadings, admissible evidence in the official court file, and motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the court's attention in the motion or response.

(2) The clerk shall give at least five days' notice of the date and place of oral argument. The court, however, for good cause shown may shorten the five-day notice period.

(d) **Movant's Supporting Documents and Briefs.** When allegations of facts not appearing of record are relied upon in support of a motion, all affidavits, all parts of depositions, and other pertinent documents then available shall accompany the motion. If supporting documents are not then available, the party may move for an extension of time in accordance with section (f) of this rule.

(e) **Response to Motion and Brief.** If the respondent opposes a motion, he shall file his response, including brief, within twenty days after service of the motion. If supporting documents are not then available, he may move for an extension of time in accordance with section (f) of this rule. For good cause appearing therefor, a respondent may be required to file his response and supporting documents, including brief, within such shorter period of time as the court may specify.

(f) **Extension of Time For Filing Supporting Documents and Briefs.** The clerk may enter an *ex parte* order, or approve a stipulation by the parties, specifying the time within which supporting documents and briefs may be filed pursuant to sections (d) and (e), upon a showing in writing that such documents are not available or cannot be filed contemporaneously with the motion or response. Application for an extension of time shall be filed with the motion or response and shall be accompanied by a proposed order. The time allowed to an opposing party for filing a response shall not run during any such extension.

(g) **Reply Brief.** A reply brief of no more than ten pages may be filed within ten days after service of the response. A reply brief is

limited to discussion of matters newly raised in the response. A suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the court's ruling and shall contain only the citation to the case relied upon if published or a copy of the opinion if the case is unpublished.

(h) **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 the trial of an action; (3) to add parties; (4) to amend the pleadings; (5) to file supplemental pleadings; (6) to appoint a next friend or guardian *ad litem*; (7) for substitution of parties; and (8) to stay proceedings to enforce judgment. The above motions, while not required to be accompanied by a brief, must state the grounds therefor and cite any applicable rule, statute, or other authority justifying the relief sought.

(i) **Failure to File and Serve Motion Papers.** The failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a required brief may, in the discretion of the court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the court, be disregarded and the pending motion may be considered and decided as an uncontested motion. If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

RULE 204

INITIAL PRETRIAL ORDER

(a) **Requirement for Initial Pretrial Order.** There shall be an initial pretrial order entered in every civil case, except in:

(1) Social Security cases and other actions for review of administrative decisions;

(2) Prisoner petitions;

(3) Internal Revenue summons proceedings.

(b) **Initial Pretrial Order By Conference.** After the issue is joined, the clerk shall schedule an initial pretrial conference and give at least twenty (20) days notice thereof. At the initial pretrial conference, the court and the parties may discuss any matter suggested in Rule 16, Fed. R. Civ. P., and all matters identified in section (c) of this rule. At the conclusion of the conference, the court will enter a written initial pretrial order which will control the conduct of the litigation.

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

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

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

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

(3) Whether all parties plaintiff and defendant have been correctly designated;

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

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

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

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

(8) Whether there are pending motions;

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

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

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

(12) The estimated trial time;

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

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

RULE 205

DISCOVERY

(a) Discovery Procedures and Materials.

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

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

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

(c) Conference of Attorneys With Respect to Motions and Objections Relating to Discovery. The court will not consider motions and objections relating to discovery unless moving counsel shall first advise the court in writing that after personal consultation and diligent attempts to resolve differences the parties are unable to reach an accord. The statement shall set forth the date of the conference, the names of the participating attorneys and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference and, in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court location where the initial pretrial conference was convened or, in the absence thereof, nearest to Greensboro. Alternatively, at any party's request, the conference may be held by telephone.

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

(e) Extension of Time for Discovery. Motions or stipulations seeking an extension of the discovery period must be made or

presented prior to the expiration of the time within which discovery is required to be completed. They must set forth good cause justifying the additional time and will be granted or approved only upon a showing that the parties have diligently pursued discovery.

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

RULE 206

TIME FOR FILING DISPOSITIVE MOTIONS

(a) **Notice of Dispositive Motion.** Any party who intends to file a motion to dismiss or for summary judgment, or any other dispositive motion, must file and serve notice of intention to file a dispositive motion within twenty (20) days following the close of the discovery period.

(b) **Filing of Dispositive Motions.** All dispositive motions must be filed and served within sixty (60) days following the close of the discovery period.

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

RULE 207

FINAL PRETRIAL CONFERENCE

(a) **Conference of Attorneys.** At least fifteen days prior to the final pretrial conference, counsel for each of the parties who will participate in the trial shall meet for the purpose of preparing a final pretrial order. It shall be the duty of counsel for the plaintiff to arrange for the conference. In the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court location where the initial pretrial conference was convened or, in the absence thereof, nearest to Greensboro. A litigant proceeding *pro se* must appear at this conference and proceed in accordance with this rule.

(b) **Preparation for the Conference of Attorneys.** In advance of the conference of attorneys, each of the parties shall prepare and have available at the conference a proposed order which addresses the following:

(1) **Contentions of Plaintiff.** Plaintiff shall have prepared a brief statement of the contentions of plaintiff as to the basis of recovery.

(2) **Contentions of Defendant.** Defendant shall have prepared a brief statement of how defendant expects to defeat recovery and the basis for any asserted counterclaim.

(3) **Contentions of Cross-Claimant or Third-Party Defendant.** Any cross-claimant or third-party defendant shall follow the same procedure required of plaintiff and defendant in regard to disclosure of contentions and with respect to all provisions of this rule.

(4) **Suggested Stipulations.** Each of the parties shall have prepared a list of suggested stipulations covering relevant and material facts not considered to be in genuine dispute.

(5) **Exhibits.** Each of the parties shall have prepared a list of all exhibits with pretrial identification numbers that may be offered by that party at trial. At the conference of attorneys, the parties shall exchange copies of exhibits. In the event that an exhibit cannot feasibly be reproduced, it shall be made available for inspection. Counsel shall discuss and attempt to stipulate the admissibility of each proposed exhibit. If the authenticity or admissibility (except upon objection for relevance or materiality) of any exhibit is not to be stipulated in the final pretrial order, the objection must be stated by counsel with particularity.

During the conference of attorneys, proposed exhibits shall be numbered for pretrial identification only.

(i) If counsel subsequently discovers an exhibit which was not known at the time of the conference of attorneys, counsel shall im-

mediately disclose to the court and to opposing counsel the identity of the exhibit.

(ii) Ordinarily, only exhibits identified in the final pretrial order may be introduced at trial. However, the court may, in its discretion, permit a party to introduce an exhibit not listed in the final pretrial order under such circumstances as the court deems just.

(6) **Witnesses.** Each of the parties shall have prepared a list of the names and addresses of all witnesses who may be offered by that party at the trial, together with a brief statement of what counsel proposes to establish by the testimony of each witness. Only material points of testimony must be disclosed, but failure to disclose a material point may render evidence on that point inadmissible at the trial.

(i) If counsel subsequently discovers the name of a witness who was not known at the time of the attorneys' conference, counsel shall immediately disclose to the court and to opposing counsel the identity of the witness and the material testimony expected from the witness.

(ii) Ordinarily, only witnesses listed by a party in the pretrial order may be called by that party to give testimony at trial. However, the court may, in its discretion, permit a party to call a witness not listed by that or any party under such circumstances as the court deems just.

(iii) If a person is listed as a witness by the plaintiff and by another party, it shall be the responsibility of the plaintiff to produce the witness at the trial. If a person is listed as a witness by a defendant and a party other than the plaintiff, it shall be the responsibility of the defendant to produce the witness at the trial. All listed witnesses subject to subpoena shall be produced at the trial, unless good cause is shown for their absence. Additionally, diligent effort must be made to produce all witnesses not subject to subpoena. If at any time prior to trial, it is determined that a listed witness cannot be produced, immediate notice of such fact must be given opposing counsel.

(iv) If a party lists as a witness an adverse party, or an officer, director, or managing agent of an adverse party, not subject to subpoena, it shall be the responsibility of the adverse party to attend or produce the witness at trial.

(v) If a deposition is to be used at the trial, the individual giving the deposition should be listed as a witness by deposition. Those portions of the deposition which will be offered into evidence must be identified. If opposing counsel disputes the admissibility of the deposition testimony, the basis of the objection must be noted with particularity in the final pretrial order.

(7) **Issues for Trial.** Each party shall have prepared a list of

the triable issues for trial. Failure to list an issue will constitute a waiver and abandonment of such issue.

(c) **Discussion of Settlement Possibilities.** At the time of the conference of attorneys, counsel for all parties shall enter into a frank discussion concerning settlement possibilities. Clients should either be consulted in advance of the conference concerning settlement negotiations, or be available for consultation. Settlement prospects will be discussed at the final pretrial conference, and counsel should be fully prepared in this regard. The court will aid in settlement negotiations to the extent deemed appropriate or as may be requested by the parties.

(d) **Preparation of Final Pretrial Order by Plaintiff's Counsel.** At the time of, or immediately following, the conference of attorneys, it shall be the duty of counsel for the plaintiff to prepare a final pretrial order. A copy of the final pretrial order shall be furnished to all opposing counsel and to the court at least five days in advance of the final pretrial conference. The order shall substantially conform to the suggested form of order set forth in the Appendix of Forms, Form 2. All matters addressed in the suggested form shall be addressed in the final pretrial order drawn by counsel, unless the circumstances of the case are such that issues raised in the suggested form are clearly inapplicable to the case at bar.

(e) **The Final Pretrial Conference.** At the final pretrial conference, the court will consider all pending motions and will address such other matters as will facilitate trial of the action. The court will announce requirements with respect to the filing of trial briefs, the filing of requests for jury instructions or proposed findings of fact and conclusions of law, the manner of marking exhibits, and the number of copies of exhibits to be furnished at trial. The court will also set an actual or tentative trial date. Counsel for all parties shall sign the final pretrial order. The order, when approved by the court and filed with the clerk, together with any memorandum entered by the court at the conclusion of the final pretrial conference, will control the subsequent course of the action unless modified by consent of the parties and court, or by an order of the court to prevent manifest injustice.

(f) **Sanctions.** Should counsel or a *pro se* litigant fail to appear at the attorney's conference or the final pretrial conference or fail to comply in good faith with the provisions of this rule, the court may, in its discretion, enter a judgment of dismissal or default. Alternatively, or in addition thereto, the court may impose any sanction provided for in Rule 16(f), Federal Rules of Civil Procedure, or Local Rule 122.

RULE 208

TRIAL PROCEDURE

(a) **Opening Statements in Civil Actions.** At the commencement of the trial of civil actions, the party with the burden of proof may, without argument, state his cause of action and the evidence by which he expects to sustain his claim. The adverse party may then, without argument, state his defense and the evidence by which he expects to sustain his defense. If the trial is to a jury, the opening statement shall be made immediately after the jury is sworn. If the trial is to the court, the opening statement shall be made immediately after the case is called for trial. Opening statements shall be subject to such time limitations as may be imposed by the court.

(b) **Documents, Other than Exhibits, Used at Trial.** When counsel expects to examine or cross-examine a witness concerning a document which will not be offered as an exhibit, counsel shall have at trial a copy of the document for use by the judge or magistrate.

(c) **Absence During Return of Verdict.** In a jury trial, if a party or counsel voluntarily absents himself from the courtroom prior to the return of the verdict, it shall be conclusively presumed that such party or counsel waived his presence.

RULE 209

TAXATION OF COSTS

(a) Filing Bill of Costs.

(1) A prevailing party may request the clerk to tax allowable costs in a civil action as a part of a judgment or decree by filing a bill of costs, on a form available in the clerk's office, within 30 days

- (i) after the expiration of time allowed for appeal of a final judgment or decree, or
- (ii) after receipt by the clerk of an order terminating the action on appeal.

(2) The original of the bill of costs shall be filed with the clerk, with copies served on adverse parties.

(3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

(b) Objections to Bill of Costs.

(1) If an adverse party objects to the bill of costs or any item claimed by a prevailing party, he must state his objection in a motion for disallowance with a supporting brief within 10 days after the filing of the bill of costs. Within 5 days thereafter, the prevailing party may file a response and brief. Unless a hearing is ordered by the clerk, a ruling will be made by the clerk on the record.

(2) A party may request review of the clerk's ruling by filing a motion within 5 days after the action of the clerk. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

(c) Taxable Costs.

(1) Items normally taxed include, without limitation:

- (i) Those items specifically listed on the bill of costs form. The costs incident to the taking of depositions (when allowable as necessarily obtained for use in the litigation) normally include only the reporter's attendance fee and charge for the original transcript of the deposition.
- (ii) Premiums on required bonds.
- (iii) Actual mileage, subsistence, and attendance allowances for necessary witnesses at actual cost, but not to exceed the applicable statutory rates, whether they reside in or out of this district.

(2) Items normally not taxed include, without limitation:

- (i) Witness fees, subsistence, and mileage for individual parties, real parties in interest, parties suing in representative capacities, and the officers and directors of corporate parties.
- (ii) Copies of trial transcripts and depositions.

(iii) Daily copy of trial transcripts, unless prior court approval has been obtained.

(d) **Costs in Settlements.** The court will not tax costs in any action terminated by compromise or settlement. Settlement agreements must resolve any issue relating to costs. In the absence of specific agreement, each party will bear its own costs.

(e) **Payment of Costs.** Costs are to be paid directly to the party entitled to reimbursement, who must file a certificate of satisfaction within 20 days of receipt of payment.

RULE 210

AWARD OF STATUTORY ATTORNEY'S FEES

The court will not consider a motion to award statutory attorney's fees until moving counsel shall first advise the court in writing that after consultation the parties are unable to reach an agreement in regard to the fee award. The statement of consultation shall set forth the date of the consultation, the names of the participating attorneys, and the specific results achieved.

If the parties reach an agreement, they shall file an appropriate stipulation and request for an order. If they are unable to agree, within 90 days of final judgment the moving party shall file the statement of consultation required by this rule and a motion setting forth the factual basis for each criterion which the court will consider in making an award. The motion shall be supported by time records, affidavits, or other evidence.

RULE 211

INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

(a) **Form of Application.** A prayer for a temporary restraining order or preliminary injunction set forth in a pleading will not bring the issue before the court prior to the time of trial. If a ruling before trial is desired, a party must separately file a motion and brief.

(b) **Hearing.** A motion seeking a preliminary injunction will be considered and determined on the official court file including affidavits, briefs and other documents filed in support thereof without oral argument or testimony unless otherwise ordered by the court. A request for leave to present oral argument or testimony in support of or in opposition to such motion must be included in the motion or response.

RULE 212

CLASS ACTIONS

(a) **Class Action Complaint.** The complaint shall bear next to its caption the legend, "Complaint -- Class Action." The complaint shall contain under a separate heading, styled "Class Action Allegations":

(1) A reference to the portion or portions of Rule 23, Fed. R. Civ. P., under which it is claimed that the suit is properly maintainable as a class action.

(2) Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

- (i) the size and definition of the alleged class,
- (ii) the basis upon which the plaintiff claims
 - (A) to be an adequate representative of the class, or
 - (B) if the class is comprised of defendants, that those named as parties are adequate representatives of the class.
- (iii) the alleged questions of law or fact claimed to be common to the class, and
- (iv) for actions sought to be maintained under Rule 23(b)(3), Fed. R. Civ. P., allegations thought to support the findings required by that subdivision.

(b) **Motion for Class Action Determination.** Within 90 days after the filing of a complaint in a class action, unless this period is extended by court order, the plaintiff shall file a separate motion for a determination under Rule 23(c)(1), Fed. R. Civ. P., as to whether the case may be maintained as a class action. If a party wishes to present oral testimony to support the class action motion, he must so inform the court in his motion. In ruling upon such a motion, the court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion.

(c) **Class Action Counterclaims or Cross-Claims.** The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

(d) **Burden of Proof; Notice.** The burden shall be upon any party seeking to maintain a case as a class action to present an evidentiary basis to the court showing that the action is properly

maintainable as such. If the court determines that an action may be maintained as a class action, the party obtaining that determination shall initially bear the expenses of and be responsible for giving such notice as the court may order to members of the class.

RULE 213

MINORS AND INCOMPETENTS AS PARTIES

(a) **Capacity to Sue or Be Sued.** Minors and incompetent persons may sue or defend only by their general or testamentary guardians within this state or by guardians *ad litem* appointed by this court.

(b) **Appointment of Guardian *ad Litem*.**

(1) Application for the appointment of a guardian *ad litem* to sue on behalf of a minor or incompetent may be made by motion submitted contemporaneously with a complaint. The complaint may be filed when the appointment is made by a judge or magistrate.

(2) Application for the appointment of a guardian *ad litem* to defend on behalf of a minor or incompetent person may be filed after service of summons and complaint and before time has expired to answer or otherwise to respond.

(3) Applications for the appointment of a guardian *ad litem* by this court must:

- (i) set out facts requiring such appointment,
- (ii) suggest a natural person suitable for appointment,
- (iii) contain information about that person, including willingness to serve, upon which the court can judge his or her qualifications, and
- (iv) be accompanied by a proposed order of appointment.

(c) **Termination of Actions; Court Hearing and Approval.**

(1) No civil action or proceeding in which a minor or incompetent person is a party may be compromised, settled, dismissed, or otherwise terminated without the approval of the court.

(2) In order to obtain court approval, a party must file a motion setting forth reasons justifying the termination and explaining its effect upon the rights of the minor or incompetent person.

(3) The court will conduct a hearing to determine whether the termination is fair, reasonable, and in the best interest of the minor or incompetent. The following persons must be present at the hearing unless excused by the court:

- (i) attorneys for all parties,
- (ii) the minor or incompetent party,
- (iii) the guardian *ad litem* or other legal representative, and
- (iv) a parent or other person in *loco parentis*.

(4) At the hearing the parties must establish to the satisfaction of the court:

- (i) the facts giving rise to the cause of action and the contentions of the parties with respect to liability and damage;
- (ii) the facts concerning the nature and extent of any injury or damage suffered by the minor or incompetent person, supported by medical records and reports in personal injury cases;
- (iii) medical and hospital expenses, if any incurred or likely to be incurred;
- (iv) the concurrence of the attorney, guardian *ad litem* or other legal representative that the proposed settlement is fair, reasonable, and in the best interest of the minor or incompetent person;
- (v) the facts with respect to any related claims or liens, including separate claims of parents for expenses, and the disposition or status of such other claims.

(5) Ordinarily, the requirements of section (c) (4) of this rule may be satisfied by summaries made by the parties or their attorneys. In every case, the parties may present sworn testimony of witnesses, affidavits or documentary evidence, and the court reserves the right to call for such evidence at any time.

(d) **Fees.** At the hearing, the court will consider requests for counsel fees and a fee for services by the guardian *ad litem* or other legal representative and may make appropriate orders relating to payment of fees.

(e) **Consent Judgments Approving Settlement.**

(1) Before a judgment approving a compromise settlement of claims of a minor or incompetent is presented to the court, it shall be consented and agreed to by counsel for the parties to the action and by the guardian *ad litem* or other legal representative of the minor or incompetent.

(2) The judgment presented should provide, *inter alia*, that the parties have agreed to a settlement of all matters in controversy between them and the amount of the settlement; that the court has conducted a hearing on the matter; that the court has found that the proposed compromise settlement is fair, reasonable, and in the best interest of the minor or incompetent; and that the court has approved the compromise settlement agreement.

(f) **Payment of Judgment.** The amount of the judgment shall be paid into the office of the clerk of this court, and the clerk shall make such disbursements from the proceeds as provided by the judgment of the court. The balance of the proceeds of the judgment shall be paid to the legal guardian of the minor or incompetent, if within this state. If there is no such guardian, the balance of the proceeds shall be paid to the clerk of superior court of the county in this

state in which the minor or incompetent resides. If the minor or incompetent does not reside within this state, the balance shall be paid to a legal guardian approved by the court.

RULE 214

CLAIM OF UNCONSTITUTIONALITY; THREE-JUDGE COURTS

(a) **Notification.** If at any time prior to the trial of an action to which (1) neither the United States nor any of its officers, agencies, or employees is a party and a party draws in question the constitutionality of an act of Congress affecting the public interest, or (2) neither the state or any of its agencies, officers, or employees is a party and a party draws in question the constitutionality of any statute of that state affecting the public interest, that party, to enable the court to comply with 28 U.S.C. § 2403, shall notify the court. The notice shall be in writing, stating the title of the action, the statute in question, and the respects in which it is claimed the statute is unconstitutional and a copy shall be served upon the Attorney General of the United States and the United States Attorney in this district or the North Carolina Attorney General, as applicable.

(b) **Additional Copies.** In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges, all pleadings, papers, and documents filed subsequent to the designation of the court, as provided in 28 U.S.C. § 2284 (a), shall be filed in triplicate, original and two copies, with the clerk. The clerk shall make timely distribution of these documents to the designated judges.

RULE 215
SETTLEMENT

Attorneys or *pro se* litigants shall immediately notify the clerk of an agreement in principle reached by the parties which resolves the litigation as to any or all parties.

Rules 216-299: Reserved for future purposes.

III. CRIMINAL RULES

RULE 301

**PROMPT DISPOSITION OF
CRIMINAL CASES**

The Court's Plan for the Prompt Disposition of Criminal Cases in compliance with Rule 50 (b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. § 3161, *et seq.*), and the Federal Juvenile Delinquency Act (18 U.S.C. § § 5036, 5037), as approved by the Judicial Council, is a public document available through the office of the clerk of this court. The Court's Plan for the Prompt Disposition of Criminal Cases as it now exists and as it is hereafter amended and approved by the Judicial Council shall have the same force and effect as a local rule of this court.

RULE 302

PRETRIAL MOTIONS IN CRIMINAL CASES

(a) **Time for Filing.** The time for filing pretrial motions and responses thereto shall be set by the court at arraignment in all cases in which a defendant pleads not guilty.

(b) **Extension of Time for Filing.** Motions for an extension of time to file pretrial motions must be made within the time set for the filing of motions and will be granted only upon a showing of good cause for delay.

(c) **Motions Adopting Other Motions.** Motions adopting motions filed by codefendants must clearly identify by character and date of filing the motions adopted. General adoptions which do not identify specifically the motions adopted may be summarily denied by the court.

(d) **Discovery Motions.** Discovery motions filed by a defendant who is represented by counsel must include a statement that counsel has fully reviewed the government's case file before bringing the motion or a statement that such file is not available for counsel's review. The filing of a discovery motion which does not include such certification may cause the court to deny the motion, to disapprove payment to court-appointed counsel in regard to a motion made unnecessary by examination of the file, or to impose other sanctions under Local Rule 122 in the discretion of the court.

RULE 303

REPRESENTATION OF CERTAIN DEFENDANTS

The Court's Plan for Furnishing Representation and Services to defendants who are financially unable to obtain an adequate defense, pursuant to the Criminal Justice Act of 1964, as amended, is a public document available through the office of the clerk of this court. The court's plan as it now exists and as it is hereinafter amended shall have the same force and effect as a local rule of this court. When deemed appropriate by the court, the court may appoint an attorney to represent a defendant even though such attorney's name does not appear on the panel of attorneys drawn pursuant to the plan.

RULE 304

PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE IN CERTAIN MISDEMEANOR CASES

Pursuant to Rule 4 (a), Rules of Procedure for Trial of Misdemeanors Before United States Magistrates, and in the interest of justice and good court administration, collateral may be posted in lieu of the appearance of an offender for certain misdemeanors under federal statutes and regulations or state statutes made applicable by the Assimilative Crimes Statute (18 U.S.C. § 13). There shall be maintained in the office of the clerk a list of the misdemeanors and fines applicable thereto for which forfeiture of collateral security may be posted.

The posting of collateral signifies that the defendant does not contest the charge nor request a trial. Such collateral shall be administratively forfeited to the United States. Forfeiture of collateral in lieu of personal appearance is not permitted for any listed offense denominated a "mandatory appearance" offense, for an aggravated or major offense, or for multiple offenses arising out of the same facts or sequence of events.

The clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.

RULE 305

FAIR TRIAL DIRECTIVES

(a) **Prohibited Statements; Attorney's Obligations.**

(1) An attorney participating in or associated with a grand jury or other investigation of a criminal matter shall not make or participate in making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication and which does more than state without elaboration:

- (i) Information contained in a public record.
- (ii) That the investigation is in progress.
- (iii) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.
- (iv) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
- (v) A warning to the public of any dangers.

(2) An attorney associated with the prosecution or defense of a criminal case to be tried by a jury shall not make or participate in making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication which relates to:

- (i) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
- (ii) The possibility of a plea of guilty to the offense charged or to a lesser offense.
- (iii) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.
- (iv) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
- (v) The identity, testimony, or credibility of a prospective witness.
- (vi) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(3) Section (a)(2) above does not preclude an attorney from announcing:

- (i) The name, age, residence, occupation, and family status of the accused.
- (ii) Any information necessary to aid in the apprehension of an accused or to warn the public of any dangers he may present.

- (iii) A request for assistance in obtaining evidence.
- (iv) The identity of the victim of the crime.
- (v) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
- (vi) The identity of investigating and arresting officers or agencies and the length of the investigation.
- (vii) The nature, substance, or text of the charge.
- (viii) Quotations from or references to public records of the court in the case.
- (ix) The scheduling or result of any step in the judicial proceedings.
- (x) That the accused denies the charges made against him.

(4) The foregoing provisions of this rule do not preclude an attorney from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(b) **Attorney's Employees and Associates.** An attorney must exercise reasonable care to prevent his employees and associates from making any extrajudicial statement which the attorney would be prohibited from making under this rule.

Rules 306-399: Reserved for future purposes.

IV. MAGISTRATE RULES

RULE 401

AUTHORITY OF MAGISTRATES

(a) Designation to Conduct Trials and to Perform Other Duties.

(1) Magistrates are authorized and designated to exercise the powers and authority and to perform the duties enumerated in 28 U.S.C. § 636(b)(1) and (2).

(2) Magistrates serving this court are specially designated to:

- (i) exercise civil jurisdiction to conduct any or all proceedings in jury or nonjury cases and order the entry of judgment in any case referred to them for that purpose, pursuant to 28 U.S.C. § 636(c), and
- (ii) exercise jurisdiction to try persons accused of, and sentence persons convicted of, criminal misdemeanors.

(b) **Authority to Perform Additional Duties.** Pursuant to 28 U.S.C. § 636(b)(3), magistrates are authorized to perform additional functions and duties, including the following:

(1) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;

(2) Conduct calendar and status calls for civil and criminal calendars, and determine motions to expedite or postpone the trial of cases;

(3) Conduct arraignments in cases not triable by the magistrate to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases;

(4) Conduct *voir dire* and select petit juries for the court;

(5) Accept petit jury verdicts in civil cases in the absence of a judge;

(6) Conduct preliminary proceedings relating to the potential revocation of probation;

(7) Issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings;

(8) Order the exoneration or forfeiture of bonds;

(9) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(10) Conduct examinations of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(11) Review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

(12) Conduct such hearings as are necessary or appropriate, and submit to a judge proposed findings of fact and recommendations for disposition of applications for judgment by default pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, or motions to set aside judgments by default pursuant to Rule 55(c) of the Federal Rules of Civil Procedure;

(13) Consider an application by complainant pursuant to 42 U.S.C. § 2000e-5(f)(1), and in such circumstances as may be deemed just, appoint an attorney for such complainant, and authorize the commencement of an action without payment of fees, costs, or giving security therefor;

(14) Issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States Government;

(15) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184;

(16) Supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. § 1782;

(17) Require compliance with local rules with regard to *pro se* petitions under 42 U.S.C. § 1983;

(18) Issue orders of withdrawal from the court registry of funds pursuant to 28 U.S.C. § 2042; and

(19) Perform any additional duty which is not inconsistent with the Constitution and laws of the United States.

RULE 402

CONSENT TO CIVIL TRIAL JURISDICTION

(a) Consent to Exercise of Civil Trial Jurisdiction.

(1) The consent of a party to the exercise of civil trial jurisdiction authorized in 28 U.S.C. § 636(c)(1) may be communicated to the clerk by letter, or by a form available in the clerk's office, signed by the party or his attorney.

(2) The consent shall be communicated to the clerk prior to the time of trial. The consent may not be limited to trial by a particular magistrate.

(3) The consent of a party will be placed in the public court file only when the court has ordered the case referred to a magistrate.

(4) Parties intervening by permission after reference are deemed to have consented.

(b) Withdrawal of Consent. After a case has been referred, the consent of the parties to the exercise of a magistrate's jurisdiction may not be withdrawn without the approval of the court.

(c) Reference Discretionary. Reference of a case to a magistrate after the consent of all parties is within the discretion of the court.

RULE 403

CONSENT TO DESIGNATION OF MAGISTRATE AS A SPECIAL MASTER

(a) **Consent.** Upon the written consent of the parties, a magistrate may be designated to serve as a special master in any civil proceeding without a showing of exceptional conditions or that the issues are complicated.

(b) **Reference.** Reference of a case to a magistrate as a special master is within the discretion of the court, but the consent of the parties may not thereafter be withdrawn without approval of the court.

RULE 404

ASSIGNMENT OF MATTERS TO MAGISTRATES

Duties and cases may be assigned or referred to a magistrate by a court order entered in the action or by the clerk in compliance with standing orders or the instructions of a judge.

RULE 405

OBJECTIONS; APPEALS; STAY OF ORDER

(a) **Objections to Magistrate's Order.** The procedure for filing objections to an order in a nondispositive matter shall be as set forth in Rule 72(a), Fed. R. Civ. P.

(b) **Objections to Magistrate's Recommendation.** The procedure for filing objections to a recommendation on a dispositive or other matter shall be as set forth in Rule 72(b), Fed. R. Civ. P.

(c) **Appeal From Judgment.** The procedure for appeal from a judgment in an action tried by consent to a magistrate shall be as set forth in Rules 73 through 76, Fed. R. Civ. P.

(d) **Application for Stay of Magistrate's Order.** Application for stay of a magistrate's order pending review of objections made thereto must first be made to the magistrate.

Rules 406-499: Reserved for future purposes.

V. RULES OF DISCIPLINARY ENFORCEMENT

RULE 501

PURPOSE OF DISCIPLINARY RULES

The court, in furtherance of its inherent power and responsibility to supervise attorneys who practice before it, adopts these rules of disciplinary enforcement.

RULE 502

ATTORNEYS CONVICTED OF A CRIME

(a) **Suspension Upon Filing of Judgment.** Upon the filing of a certified copy of a judgment of conviction demonstrating that any attorney practicing before the court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as herein defined, the court may enter an order immediately suspending that attorney from practice until final disposition of a disciplinary proceeding before this court, or until final disposition is made by the appropriate state bar.

(b) **Definition of Serious Crime.** "Serious crime" shall include any felony and also any other crime which involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy of solicitation of another to commit a "serious crime."

(c) **Conviction of Serious Crime.** Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court may refer the matter to counsel for institution of a disciplinary proceeding before the court, providing that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded. Alternatively, the court may refer the matter to the appropriate state bar.

(d) **Conviction of Other Crime.** Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court. Alternatively, the court may refer the matter to the appropriate state bar.

(e) **Reinstatement after Suspension.** An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

RULE 503

DISCIPLINE IMPOSED BY ANOTHER COURT OR BY A STATE BAR

(a) **Duty to Inform the Clerk.** Any attorney practicing before this court shall, upon being subjected to public discipline by any court or by the state bar of any state, promptly inform the clerk of such action.

(b) **Show Cause Order.** Upon the filing of a certified copy of a judgment or order demonstrating that an attorney has been disciplined by another court or by a state bar, this court shall forthwith issue a notice containing a copy of the judgment or order and an order to show cause directing that the attorney inform this court within 20 days why imposition of the identical discipline by this court would be unwarranted and the reasons therefor.

(c) **Imposition of Discipline.** Upon expiration of 20 days from service of the show cause order, this court will presume the misconduct to have been established and will impose the identical discipline unless the attorney demonstrates that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

- (1) that the attorney was deprived of due process; or
- (2) that there was such an infirmity of proof that this court could not accept as final the conclusion on that subject; or
- (3) that the imposition of the same discipline by this court would result in grave injustice; or
- (4) that the misconduct established is deemed by this court to warrant substantially different discipline.

Where this court determines that any of said elements exist, it shall enter such order as it deems appropriate. The grant of a stay of discipline by the other jurisdiction shall constitute grounds for a similar grant by this court.

RULE 504

DISBARMENT ON CONSENT OR RESIGNATION IN ANOTHER COURT OR BEFORE A STATE BAR

Any attorney practicing before this court who shall be disbarred on consent or resign from the bar of any court or state while an investigation into allegations of misconduct is pending, shall promptly inform the clerk, and upon the filing with this court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, shall cease to be permitted to practice before this court.

RULE 505

STANDARDS FOR PROFESSIONAL CONDUCT

(a) **Disciplinary Enforcement.** For misconduct defined in these rules, and after notice of an opportunity to be heard, any attorney practicing before this court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

(b) **Standards for Conduct.** Acts or omissions by an attorney practicing before this court which violate the Code of Professional Responsibility adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the Supreme Court of North Carolina, as amended from time-to-time by that state court, except as otherwise provided by a specific rule of this court.

RULE 506

DISCIPLINARY PROCEEDINGS

(a) **Referral of Complaints to Counsel or to a State Bar.** When allegations of misconduct by an attorney practicing before this court come to the attention of a judge of this court, whether by complaint or otherwise, the judge may refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Alternatively, the judge may refer the matter to the appropriate state bar.

(b) **Recommendation by Counsel.** Should counsel conclude after investigation that a formal disciplinary proceeding should not be initiated against the attorney, counsel shall file with the court a recommendation for disposition for the matter, whether by dismissal, admonition, or deferral and shall set forth the reasons for such recommendation.

(c) **Initiation of Disciplinary Proceedings.** To initiate formal disciplinary proceedings, counsel shall obtain an order of the court upon a showing of probable cause requiring the attorney to show cause within 20 days after service of the order why the attorney should not be disciplined.

(d) **Hearing.** Upon the attorney's answer to the order to show cause, if any issue of fact is raised or the attorney wishes to be heard, the court shall set the matter for prompt hearing.

RULE 507

DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

(a) **Consent to Disbarment.** Any attorney practicing before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

- (1) his consent is freely given,
- (2) he is aware of the pending investigation or proceeding,
- (3) he acknowledges the material facts of misconduct, and
- (4) he consents because he knows that he could not defend himself successfully against charges of misconduct.

(b) **Order of Disbarment.** Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney.

(c) **Record.** The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

RULE 508

REINSTATEMENT

(a) **Automatic Reinstatement; Reinstatement by Order.** An attorney suspended for 3 months or less shall be automatically reinstated at the end of the period of suspension upon filing with the court an affidavit of compliance with the provisions of the suspension order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this court.

(b) **Time for Petition.** An attorney who has been disbarred after hearing or by consent may not petition for reinstatement until the expiration of at least 5 years from the effective date of disbarment.

(c) **Procedure.** Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the court. Upon receipt of the petition, the chief judge shall assign the matter for a prompt hearing before a judge (or judges) of the court and may, in his discretion, refer the petition to counsel for investigation. The judge assigned to the matter shall schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning of the law required for admission to practice law before this court, and that his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice or subversive of the public interest. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel if the matter has been referred to counsel by the court.

(d) **Costs.** Petitions for reinstatement under this rule shall be accompanied by an advanced cost deposit in an amount to be set from time-to-time by the court to cover anticipated costs of the reinstatement proceeding.

(e) **Order of Reinstatement.** If the petitioner is found to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found to be fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the judge, upon the furnishing of proof of competency and learning in the law,

which proof may include certification by the bar examiners of North Carolina of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(f) **Successive Petitions.** No petition for reinstatement under this rule shall be filed within 1 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

RULE 509

ATTORNEYS SPECIALLY APPEARING

Whenever an attorney appears for purposes of a particular proceeding, the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in preparation for such proceeding.

RULE 510

SERVICE OF PAPERS AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney or to his counsel and is posted by regular mail.

RULE 511

APPOINTMENT OF COUNSEL

Whenever counsel is to be appointed by these rules to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition, the court shall appoint as counsel the disciplinary agency of the Supreme Court of North Carolina or any other disciplinary agency having jurisdiction. If no such agency exists or it declines appointment, or such appointment is clearly inappropriate, the court shall appoint as counsel one or more members of the Bar; provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or who has been engaged as an adversary of the respondent-attorney in any manner. Counsel, once appointed, may not resign unless permission to do so is given by the court.

RULE 512

DUTIES OF THE CLERK

(a) **Obtaining Certificate of Conviction.** Upon being informed that an attorney practicing before this court has been convicted of any crime, the clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If certificate has not been so forwarded, the clerk shall promptly obtain a certificate and file it with this court.

(b) **Obtaining Certificate of Disciplinary Judgment or Order.** Upon being informed that an attorney practicing before this court has been subjected to discipline by another court or a state bar, the clerk shall determine whether a certified copy of the disciplinary judgment or order has been filed with this court, and, if not, the clerk shall promptly obtain a certified copy of the disciplinary judgment or order and file it with this court.

(c) **Clerk to Inform Other Jurisdictions.** Whenever it appears that any attorney convicted of any crime, disbarred, suspended, censured, or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk shall, within 10 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the attorney.

(d) **Clerk to Inform the National Discipline Data Bank.** The clerk shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney practicing before this court.

RULE 513
JURISDICTION

Nothing contained in these rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure or other sanctions under the Federal Rules of Civil Procedure or these Local Rules.

Rules 514-599: Reserved for future purposes.

APPENDIX OF FORMS

FORM 1

(See Local Rule 204)

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

Plaintiff)
)
vs.) Civil Action
) No. _____
Defendant)

INITIAL PRETRIAL STIPULATIONS AND ORDER

In accordance with Local Rule 204, counsel for each of the parties in the above-entitled action hereby stipulates that:¹

- (1) All parties defendant have been properly served with process.
- (2) The court has jurisdiction over the parties and over the subject matter.
- (3) All parties plaintiff and defendant have been correctly designated.
- (4) No third-party complaint or impleading petition is contemplated.
- (5) There is no question concerning misjoinder or nonjoinder of parties.
- (6) There is no present need to join other parties or to amend the pleadings.
- (7) There is no need for, or question concerning the validity of, the appointment of a representative for any party.
- (8) There are no pending motions which the parties wish the court to consider.
- (9) A trial by jury has (not) been demanded within the time provided by the Federal Rules of Civil Procedure.
- (10) There is no need at this time to separate issues for purposes of discovery or trial, and discovery shall proceed on all issues.
- (11) There are no related actions pending or contemplated in this or any other court.

¹When no stipulation is reached on a particular matter, the parties shall state with specificity their respective positions. For example: (1) All parties defendant have been properly served with process, except defendant X does not so stipulate and claims . . .

(12) To the extent presently known, the parties estimate that a trial of this action will last approximately _____ days.

(13) The parties need _____ months to complete discovery.²

Stipulated and consented to:

Counsel for Plaintiff
Address
Telephone Number

Counsel for Defendant
Address
Telephone Number

IT IS ORDERED that all discovery be completed by the _____ day of _____ 19 ____ . IT IS FURTHER ORDERED that any motion for leave to amend pleadings must be filed on or before the _____ day _____ 19 ____ . IT IS FURTHER ORDERED that the scheduled initial pretrial conference is hereby canceled.

Notice of any intention to file a dispositive motion, including a motion for summary judgment, shall be filed within twenty (20) days from the close of discovery. See Local Rule 206(a). The motion must be filed within sixty (60) days from the close of discovery. See Local Rule 206(b).

United States District Judge or Magistrate

²The standard discovery period is 120 days. If the parties propose a longer period, they must set forth their reasons for believing an extended period is required. The discovery period must include time for identification of experts and discovery with respect thereto. In appropriate cases, the parties may wish to provide that experts be identified at the close of a "general" discovery period, with a subsequent 60 day discovery period with respect to experts only.

FORM 2

(See Local Rule 207)

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

_____ DIVISION

Plaintiff)
)
vs.)
)
Defendant) Civil Action
 No. _____

ORDER ON FINAL PRETRIAL CONFERENCE

Pursuant to the provisions of Rule 16 of the Federal Rules of Civil Procedure and Local Rule 207, a final pretrial conference was held in the above-entitled cause on the _____ day of _____, 19____. _____ appeared as counsel for the plaintiff, and _____ appeared as counsel for the defendant.

(1) It is stipulated that all parties are properly before the court and that the court has jurisdiction of the parties and the subject matter, except:

(2) It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties, except:

(3) It is stipulated that there is no question concerning the validity of the appointment of the representative of any party, except: [Letters or orders of appointment should be included as exhibits.]

(4) In general, the contentions of the plaintiff as to the basis of recovery are as follows:*

**IN CONTRACT CASES, the parties should stipulate upon, or state their contentions with respect to, where applicable, (a) whether the contract relied on was oral or in writing; (b) the date thereof and the parties thereto; (c) the substances of the contract, if oral; (d) the terms of the contract which are relied upon, and the portions in controversy; (e) any collateral oral agreement, if claimed, and the terms thereof; (f) any specific breach of contract claimed; (g) any misrepresentation of fact claims; (h) if modification of the contract or waiver of covenant is claimed, what modification or waiver, and how accomplished, and (i) an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claimed.*

(5) In general, the contentions of the defendant as to the basis of its defenses and counterclaims are as follows:*

(6) Any third-party defendant or cross-claimant should follow the same procedure as set out in paragraphs (4) and (5) for plaintiff and defendant.*

(7) In addition to the other stipulations contained herein, the parties hereto stipulate to the following undisputed material facts:

(a)

(b)

(8) The following is a list of the exhibits, with pretrial identification markings and a brief description of each exhibit, which plaintiff may offer at the trial:

(a)

(b)

(9) It is stipulated that opposing counsel has been furnished a copy of, inspected, or waives inspection of, each exhibit identified by the plaintiff, except:

(10) It is stipulated that each of the exhibits identified by the plaintiff is authentic and admissible and, if relevant and material,

IN NEGLIGENCE CASES, the parties should stipulate upon, or state their contentions with respect to, where applicable, (a) the owner, type and make of each vehicle involved; (b) the agency of each driver; (c) the place and time of accident, conditions of weather, and whether daylight or dark; (d) nature of terrain as to level, uphill or downhill; (e) traffic signs, signals, and controls, if any, and by what authority placed; (f) any claimed obstruction of view; (g) presence of other vehicles, where significant; (h) a detailed list of acts of negligence or contributory negligence claimed; (i) specific statutes, ordinances, rules, or regulations alleged to have been violated, and upon which each of the parties will rely at the trial to establish negligence or contributory negligence; (j) a detailed list of nonpermanent personal injuries claimed, including the nature and extent thereof; (k) a detailed list of permanent personal injuries claimed, including the nature and extent thereof; (l) the age of any party alleged to have been injured; (m) the life and work expectancy of any party seeking to recover for permanent injury; (n) an itemized statement of all special damages, such as medical, hospital, nursing, etc., with the amount and to whom paid; (o) if loss of earnings is claimed, the amount, manner of computation and period for which loss is claimed; (p) a detailed list of any property damages, and (q) in death cases, the decedent's date of birth, marital status, employment for five years before date of death, work expectancy, reasonable probability of promotion, rate of earnings for five years before date of death, life expectancy under mortality tables, and general physical condition immediately prior to date of death.

IN THE EVENT THIS CASE DOES NOT FALL WITHIN ANY OF THE CATEGORIES ENUMERATED ABOVE, OR ANY OF THE CATEGORIES SUGGESTED BY THIS FORM, COUNSEL SHALL NEVERTHELESS SET FORTH THEIR POSITIONS IN DETAIL.

may be received in evidence without further identification or proof, except: [Set out with particularity the basis of objection to specific exhibits.]

(11) The following is a list of the exhibits, with pretrial identification markings and a brief description of each exhibit, which the defendant may offer at the trial:

(12) It is stipulated that opposing counsel has been furnished a copy of, inspected, or waives inspection of each exhibit identified by the defendant, except:

(13) It is stipulated that each of the exhibits identified by the defendant is authentic and admissible and, if relevant and material, may be received in evidence without further identification or proof, except: [Set out with particularity the basis of objection to specific exhibits.]

(14) Any third-party defendant and cross-claimant should follow the same procedure with respect to exhibits as above outlined for plaintiff and defendant.

(15) The following is a list of the names and addresses of the witnesses plaintiff may offer at the trial, together with a brief statement of the material points that counsel proposes to establish by the testimony of each witness:

- (a)
- (b)

(16) The following is a list of the names and addresses of the witnesses defendant may offer at the trial, together with a brief statement of the material points that counsel proposes to establish by the testimony of each witness:

- (a)
- (b)

(17) Any third-party defendant and cross-claimant should follow the same procedure with respect to witnesses as above outlined for plaintiff and defendant.

(18) There are no pending or impending motions, and neither party desires further amendments to the pleadings, except:

(19) Additional consideration has been given to a separation of the triable issues, and counsel for all parties are of the opinion that a separation of issues in this particular case would (would not) be appropriate.

(20) The plaintiff contends that the contested issues are as follows:

(21) The defendant contends that the contested issues are as follows:

(22) Any third-party defendant and cross-claimant contends that the contested issues are as follows:

(23) Counsel for the parties announce that all witnesses are

available, and the case is in all respects ready for trial. The probable length of the trial is estimated to be _____ days.

(24) Counsel for the parties represent to the court that, in advance of the preparation of this order, there was a full and frank discussion of settlement possibilities and that prospects for settlement appear to be (excellent) (good) (fair) (poor) (remote). Counsel for the plaintiff will immediately notify the clerk in the event of material change in settlement prospects.

Counsel for Plaintiff
Address
Telephone

Counsel for Defendant
Address
Telephone

APPROVED AND ORDERED FILED:

Date _____

United States District Judge or
Magistrate

AT THE CONCLUSION OF THE FINAL PRETRIAL CONFERENCE, THE COURT WILL DICTATE A MEMORANDUM ANNOUNCING REQUIREMENTS WITH RESPECT TO THE FILING OF TRIAL BRIEFS, THE FILING OF REQUESTS FOR JURY INSTRUCTIONS OR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE MANNER OF MARKING EXHIBITS, AND THE NUMBER OF COPIES OF EXHIBITS TO BE FURNISHED AT TRIAL. THE COURT WILL ALSO SET AN ACTUAL OR TENTATIVE TRIAL DATE.