RULES OF

PRACTICE AND PROCEDURE

of the

UNITED STATES

DISTRICT COURT

FOR THE MIDDLE DISTRICT

OF NORTH CAROLINA

TABLE OF CONTENTS

PART ONE LOCAL RULES OF CIVIL PROCEDURE

PART ONE

LOCAL RULES OF CIVIL PRACTICE

CITE THE LOCAL CIVIL RULES AS:
LR ____ (e.g., LR16.1)

LR1.1

SCOPE AND PURPOSE OF RULES

These local rules govern practice in the District Court for the Middle District of North Carolina consistent with the Federal Rules of Civil Procedure. These rules shall be interpreted and applied to foster civility in the practice of law before this Court, and to promote the just and prompt determination of all proceedings.

LR5.1

ADDITIONAL COPIES FOR COURT USE

A paper copy of the following documents shall be delivered to the clerk for use by the court within a reasonable time after the original is filed:

(1) A brief.
(2) Proposed findings of fact and conclusions of law.
(3) Requests for jury instructions.

LR5.2

FILINGS WITHIN THREE DAYS OF SCHEDULED HEARINGS

A party who files documents which relate to a matter noticed for hearing within the next three business days shall so advise the clerk.

LR5.3

ELECTRONIC FILING OF DOCUMENTS

Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the court's Standing Order regarding Electronic Case Administrative Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposed of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR5.4

SERVICE OF ELECTRONICALLY FILED DOCUMENTS

Documents may be served through the court's transmission facilities by electronic means to the extent and in the manner authorized by the court's Standing Order regarding Electronic Case Administrative Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing (NEF) constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR6.1

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 comply with Fed.R.Civ.P. 6(b) and show prior consultation with opposing counsel and the views of opposing counsel.

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

LR7.1

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 single-sided and shall be unfolded and bound at the top and numbered at the bottom, without manuscript cover. The margin at the top of each page shall not be less than one and one-quarter inches, and bottom, left and right margins shall be set at not less than one inch. Typewritten documents should be double spaced. Mechanically reproduced copies which bear an original signature will be accepted by the court as originals.

All pleadings, motions and other original papers filed with the Clerk shall be in a fixed-pitch type size no smaller than ten characters per inch or in a proportional font size

no smaller than 13 point. There shall be no more than 27 lines of regularly spaced text on a page.

(b) **Personal Data Identifiers**. In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court:

(1) **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

(2) **Names of minor children.** If the involvement of a minor child must be mentioned in a pleading, only the initials of that child should be used.

(3) **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.

(4) **Financial account numbers.** If financial account numbers are relevant and must be included in a pleading, only the last four digits of the financial account number should be used.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted version of the document under seal, or file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its(their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right. The court may, however, still require a redacted copy for the public file. The redacted version of the document or the reference list shall be retained by the court as part of the record and disposed of in accordance with Local Rule 79.4. Counsel who file personal identifier data under seal should be mindful that the confidentiality of sealed documents transferred to the General Services Administration for holding after the case is closed cannot be assured.

The responsibility for redacting these personal identifiers rests solely with counsel and parties. The Clerk will not review each pleading for compliance with this rule.

(c) **Identification of Documents.** All papers submitted for filing shall follow the heading format set out in the Appendix of Forms, Fed.R.Civ.P.

(d) **Telephone Numbers and Addresses.** Parties or attorneys signing papers submitted for filing must state their telephone numbers, mailing addresses, e-mail addresses and the N.C. State Bar number of attorneys who are admitted to practice before this court.

(e) **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.

(f) **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.

LR7.2

BRIEFS

(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 Published Decisions.** For purposes of these rules, published decisions include decisions published in widely used reports and electronic databases, specifically including Westlaw and LEXIS. The preferred form of citation is in accordance with The Bluebook, a Uniform System of Citation.

(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 brief is filed. Unpublished decisions should be cited as follows: Wise v. Richardson, No. C-70-191-S (M.D.N.C., Aug. 11, 1971).

(d) **Citation of Decisions Not Appearing in Certain Published Reports**. Decisions published only in reports other than the West Federal Reporter System, Westlaw, LEXIS, 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 brief is filed.

LR7.3

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 (j) of this rule. Each motion shall be set out in a separate pleading.

(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) **Limitations on Length of Briefs**. Briefs in support of motions and responsive briefs are limited in length to 20 pages, and reply briefs are limited to 10 pages.

(e) **Movant's Supporting Documents and Briefs**. When allegations of facts not appearing of record are relied upon to support a motion, affidavits, 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 (g) of this rule.

(f) **Response to Motion and Brief**. The respondent, if opposing a motion, shall file a response, including brief, within 20 days after service of the motion (30 days if the motion is for summary judgment; see LR56.1(d).) If supporting documents are not then available, the respondent may move for an extension of time in accordance with section (g) of this rule. For good cause appearing therefor, a respondent may be required to file any response and supporting documents, including brief, within such shorter period of time as the court may specify.

(g) **Extension of Time for Filing Supporting Documents and Briefs.** Upon proper motion accompanied by a proposed order, the Court may enter an ex parte order, specifying the time within which supporting documents and briefs may be filed pursuant to sections (e) and (f), if it is shown in writing that such documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension. If good cause to grant the motion is not apparent upon the face of the motion, the Court may direct that the motion be served upon the opposing party, who shall be allowed 10 days to respond.

(h) **Reply Brief.** A reply brief may be filed within 10 days after service of the response. A reply brief is limited to discussion of matters newly raised in the response.

(i) **Suggestion of Subsequently Decided Authority.** As an addendum to a brief, response brief, or reply brief, 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.

(j) **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) discovery motions in which the parties have agreed to the expedited procedures described in LR37.1(b); (2) 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; (3) to continue a pretrial conference, hearing, or the trial of an action; (4) to add parties; (5) to amend the pleadings; (6) to file supplemental pleadings; (7) to appoint a next friend or guardian ad litem; (8) for substitution of parties; and (9) to stay proceedings to enforce judgment. The above motions, while not required to be accompanied by a brief, must state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions must be accompanied by a proposed order.

(k) **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.

LR7.4

EX PARTE MOTIONS

Unless the related case is already under seal, an ex parte motion shall only be sealed upon specific order of the court. A motion requesting permission to file an ex parte motion under seal shall include the ex parte motion as an attachment. The clerk shall treat the motion to seal and attachment as sealed pending order of the court.

LR16.1

INITIAL PRETRIAL PROCEEDINGS

(a) **Requirement for Initial Pretrial Order.** There shall be an initial pretrial order entered pursuant to the provisions of Fed.R.Civ.P. 16(b) and 26(f) in every civil case, except in:

(1) Social Security cases and other actions for review of administrative decisions;
(2) Prisoner petitions;
(3) Summons or subpoena enforcement proceedings;
(4) Bankruptcy appeals;
(5) Government collection cases and forfeiture proceedings; and
(6) Cases brought by *pro se* plaintiffs.

The above categories of cases are exempted from the timing-and-sequence-of-discovery provisions of Rule 26(d), and the meeting of parties described in Rule 26(f). Category (1), (2), (3), and (4) cases require no pretrial management and are ready for adjudication on the pleadings of the parties, unless the court orders otherwise. Category (5) cases (government collections and forfeitures) shall be governed by a 90-day period of discovery from the filing of answer or other response, with dispositive motions due in accordance with LR56.1. Category (6) cases (brought by *pro se* plaintiffs) shall be governed by a scheduling order entered by the court after an initial pretrial conference, unless the Court determines, in its discretion, that no conference is necessary.

(b) **Meeting of the Parties**. Within the time set by Fed.R.Civ.P. Rule 16(b), the clerk shall schedule an initial pretrial conference and give at least thirty (30) days notice thereof. The parties must hold their Fed.R.Civ.P. 26(f) meeting at least 14 days before the scheduled initial pretrial conference and submit to the court their report within 10 days thereafter. The parties may not stipulate out of the Rule 26(f) meeting but must meet to discuss a proposed discovery plan. At the Rule 26(f) meeting, the parties shall discuss:

(1) All matters identified in Rules 16(b) and (c) and 26(f),
(2) The possibility of settlement,
(3) The proper management track for the case under LR26.1,
(4) The timing of any mediated settlement conference under LR16.4 and LR83.9a-g, and the identity of any agreed-upon mediator,
(5) The nature of the documents and information believed necessary for the case,
(6) Issues of burden and relevance and the discoverability of different types of documents,
(7) A preliminary schedule for depositions, to be updated at reasonable intervals upon communication between the parties, and
(8) The decision of each party whether or not to consent to the trial jurisdiction of a magistrate judge.

The parties shall jointly prepare a Rule 26(f) Report (LR16.2) if they are in

agreement concerning a discovery plan for the case. If they do not agree, each shall file a separate Rule 26(f) Report (LR16.3), setting forth its position on disputed matters. The Reports must be filed with the court within 10 days of the Rule 26(f) meeting.

(c) **Initial Pretrial Order by Conference.** If the parties are unable to reach agreement on a discovery plan and therefore submit separate Rule 26(f) Reports (LR16.3), they shall appear for the scheduled initial pretrial conference. Each party shall personally appear or be represented by an attorney who has full authority to bind the party on the matters for discussion at the conference. After hearing from the parties, the court will enter an initial pretrial order that will control the conduct of the litigation.

(d) **Initial Pretrial Order Upon the Joint Rule 26(f) Report.** If the parties reach agreement on a discovery plan and submit a joint Rule 26(f) Report, the court will enter an order on the basis of the proposed plan as submitted or as modified by the court. The court may, on its own motion, modify the plan if it finds in its discretion that the plan provides for an excessive amount of discovery or the parties selection of a case management track under LR26.1 is unreasonable. The scheduled initial pretrial conference is automatically canceled upon the submission to the court of the joint Rule 26(f) Report.

(e) **Discovery with Respect to Expert Witnesses.** The initial pretrial order, whether based upon a joint Rule 26(f) Report or a conference following the filing of separate reports, shall provide that discovery with respect to experts be conducted within the discovery period established in the case. The order shall set the date on which disclosure of expert information under Fed.R.Civ.P. 26(a)(2) must be made.

LR16.2

JOINT RULE 26(f) REPORT (FORM)

If the parties are in agreement concerning a discovery plan, they shall file a joint report in substantially the following form:

Joint Rule 26(f) Report

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held on date at place and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The parties propose to the court the following discovery plan:

Discovery will be needed on the following subjects:

(brief descriptions) _____.

Discovery shall be placed on a case-management track established in LR26.1. The parties agree that the appropriate plan for this case (with any stipulated modification by

the parties as set out below) is that designated in LR26.1(a) as:

Standard _____

Complex _____

Exceptional _____

The date for the completion of all discovery (general and expert) is: _____.

Stipulated modifications to the case management track include: _____.

Reports from retained experts under Rule 26(a)(2) are due during the discovery period:

From Plaintiff(s) by _____.

From Defendant(s) by _____.

Supplementations under Rule 26(e) are due: (time[s] or interval[s]) .

3. Mediation. [For cases selected for mediation under LR16.4 and LR83.9a-g et seq.]

Mediation should be conducted [early][midway] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree that the mediator shall be (identity) .

(If the parties report no agreement, the clerk will select a mediator from the court's panel of mediators.)

4. Preliminary Deposition Schedule. Preliminarily, the parties agree to the following schedule for depositions: _____.

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until date to request leave to join additional parties or amend pleadings.

Defendant(s) should be allowed until date to request leave to join additional parties or amend pleadings.

After these dates, the court will consider, *inter alia,* whether the granting of leave would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. §§636(c), or appointment of a master:

(Report any agreements on these matters) .

Trial of the action is expected to take approximately _____ days. A jury trial [has][has not] been demanded.

Date: _____

Signatures of parties or counsel
Signatures of parties or counsel

LR16.3

RULE 26(f) REPORT (FORM)

If the parties are unable to agree on a discovery plan, each party shall file a separate report in substantially the following form:

Rule 26(f) Report

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held on date at place and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The undersigned party proposes to the court the following discovery plan:

Discovery will be needed on the following subjects:
(brief descriptions) _____.

Discovery shall be placed on a case-management track established in LR26.1. The undersigned party proposes that the appropriate plan for this case (with any stipulated modification by the parties as set out below) is that designated in LR26.1(a) as:

Standard _____
Complex _____
Exceptional _____

The date for the completion of all discovery (general and expert) is: _____.

Stipulated modifications to the case management track include: _____.

Reports from retained experts under Rule 26(a)(2) are due during the discovery period:

From Plaintiff(s) by _____.
From Defendant(s) by _____.
Supplementations under Rule 26(e) are due: (time[s] or interval[s]).

3. Mediation. [For cases selected for mediation under LR16.4 and LR83.9a-g et seq.]

Mediation should be conducted [early][midway] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree that the mediator shall be (identity).

(If the parties report no agreement, the clerk will select a mediator from the court's panel of mediators.)

4. Preliminary Deposition Schedule. The undersigned proposes the following schedule for depositions: _____.

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until __date__ to request leave to join additional parties or amend pleadings.

Defendant(s) should be allowed until date to request leave to join additional parties or amend pleadings.

After these dates, the court will consider, *inter alia,* whether the granting of leave would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. §§636(c), or appointment of a master:

(Report any agreements on these matters) .

Trial of the action is expected to take approximately _____ days. A jury trial [has][has not] been demanded.

Date: _____

Signatures of party or counsel

LR16.4

MEDIATED SETTLEMENT CONFERENCES

(a) **Mediated Settlement Conferences During Discovery**. In selected civil cases (see section [b] for a description of cases automatically selected for mediation) there shall be conducted a mediated settlement conference in accordance with LR83.9a-g. The conference may be set for any time during the discovery period, as agreed by the parties. In appropriate cases, the parties may wish to schedule the mediation early in the discovery period, after a first round of depositions or other discovery. In other cases, the parties may choose to set the conference near the end of the discovery period after all, or substantially all, discovery is complete. The parties shall discuss the timing of the mediated settlement conference during the Rule 26(f) meeting of the parties.

(b) **Automatic Selection by these Rules**. Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to the nature of suit designations made in

opening the case in CM/ECF or as listed within the court forms appearing at www.ncmd.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/ exchange [category 850] and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed.R.Civ.P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See LR16.1(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears *pro se* are not included within this automatic selection for mediation.

(c) **Exemption from Mediated Settlement Conference**. Any party, or parties jointly, may move for exemption from the requirement for a mediated settlement conference. The court will grant such a request only for good cause. A general assertion that settlement is unlikely or only a remote possibility does not serve as good cause for exemption.

LR17.1

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.

(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.

LR23.1

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 claimed to justify class treatment, 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 or oppose the class action motion, the party must so inform the court in its motion or opposition. 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.

LR26.1

DIFFERENTIATED CASE MANAGEMENT AND DISCOVERY

(a) **Differentiated Case Management.** Every case in which an initial pretrial order is entered pursuant to LR16.1(b)-(d) shall be assigned, by agreement of the parties (if adopted by the court) or by order of the court, to one of three case-management tracks. (See LR16.2 and 16.3 for forms of the Fed.R.Civ.P. 26(f) report wherein parties advise the court regarding case management tracks.) The three tracks are defined as follows:

(1) **Standard**. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within four (4) months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 15 in number by each party. Depositions are presumptively limited to four (4) depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(2) **Complex**. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within six (6) months from the date of the initial pretrial order, subject to agreement of the parties for a larger discovery period, if approved by the court. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 25 in number by each party. Depositions are presumptively limited to seven (7) depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(3) **Exceptional.** Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within nine (9) months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the

court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 30 in number by each party. Depositions are presumptively limited to 10 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants. This management track is reserved for cases of exceptional complexity. It is not to be used for ordinary federal cases even though such cases have some complexity and require significant discovery.

(b) **Discovery Procedures and Materials.**

(1) The court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. As a part of their Rule 26(f) Report, the parties must formulate a preliminary deposition schedule. They must continue to communicate throughout the discovery period to update the schedule.

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

(3) Initial disclosures, disclosures of expert testimony, depositions and deposition notices, 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.

(c) **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, for documents to be produced, and for depositions to be held within the discovery period.

(d) **Extension of the Discovery Period or Request for More Discovery.** Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the initial pretrial order 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. The court will permit additional depositions only on a showing of exceptional good cause.

(e) **Trial Preparation After the Close of Discovery**. For good cause appearing therefor, the physical or mental examination of a party may be ordered at any time 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.

LR30.1

CONDUCT OF DEPOSITIONS

Depositions shall be conducted in accordance with the following guidelines:

(1) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.

(2) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.

(3) Counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege. Counsel may confer with their clients during mid-morning, lunch, mid-afternoon, or overnight breaks in the deposition. However, counsel for a deponent may not request such a break while a question is pending or while there continues a line of questioning that may be completed within a reasonable time preceding such scheduled breaks.

(4) Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

LR37.1

MOTIONS TO COMPEL DISCOVERY

(a) **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 files a certificate that after personal consultation and diligent attempts to resolve differences the parties are unable to reach an accord. The certificate 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.

(b) **Expedited Resolution of Some Discovery Disputes**. If, after a LR37.1(a) conference, the parties agree that a discovery dispute can be ruled upon in a telephone conference of no more than 30 minutes, the magistrate judge will schedule such a conference and rule on the dispute without briefing by the parties. Alternatively, if the parties agree that the dispute can be ruled upon in an in-court hearing of no more than one hour, without briefing, the magistrate judge will schedule an early hearing. The fact that these proceedings are expedited and without briefing does not alter the application of Fed.R.Civ.P. 37(a)(4) and subsection (e) of this rule regarding the imposition of sanctions in discovery motions.

LR40.1

TRIAL DATES AND FINAL PRETRIAL PREPARATION

(a) **Establishment of Trial Date.** While the case is in discovery, the clerk shall establish a trial date and give at least 4 months' notice thereof to the parties. The case may be set on a trial calendar of the assigned judge or placed on a master calendar to be called by one or more district judges. A magistrate judge may assist with the master calendar, although no case may be referred to the magistrate judge for trial unless the parties consent to the magistrate judge's trial jurisdiction.

(b) **Continuance of Trial.** The court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

(c) **Final Pretrial Preparation.** The parties shall comply in all respects with Fed.R.Civ.P. 26(a)(3) regarding final pretrial disclosure, including the time requirements set out therein. Additionally, no later than 20 days before trial, each party shall file a trial brief, along with proposed instructions on the issues (jury cases) or findings of fact and conclusions of law (non-jury cases). Any party, or the court on its own motion, may request a pretrial hearing or telephone conference to address matters relating to final pretrial preparation or settlement of the case. At any settlement conference, the court may require the attendance of parties and insurers.

LR43.1

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.

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

LR47.1

JURIES

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

LR51.1

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.

LR54.1

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, that party must state objection in a motion for disallowance with a supporting brief within 10 days after the filing of the bill of costs. Within five 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 five 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 one 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.

(iv) One copy of the trial transcript for each party represented by separate counsel.

(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) 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.

LR54.2

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.

Within 60 days after the entry of final judgment, (i) the parties shall file an appropriate stipulation and request for an order if they have reached an agreement on an award of statutory attorney's fees; or (ii) if the parties have not reached such an

agreement, the moving party shall file the statement of consultation required by this rule and a motion, supported by affidavits, time records, or other evidence, setting forth the factual basis for each criterion which the court will consider in making such an award.

LR56.1

SUMMARY JUDGMENT MOTIONS

(a) **Notice of Dispositive Motion.** Any party who intends to file a motion for summary judgment, or any other dispositive motion, must file and serve notice of intention to file a dispositive motion within 10 days following the close of the discovery period.

(b) **Filing of Dispositive Motions.** All dispositive motions and supporting briefs must be filed and served within 30 days following the close of the discovery period.

(c) **Limitations of Length of Briefs.** The page limitations for briefs on all motions, established by LR7.3(d), apply to summary judgment briefs. Principal briefs are limited to 20 pages, and reply briefs are limited to 10 pages.

(d) **Form of Briefs -- Summary Judgment Motion by Claimant.** A party requesting summary judgment on its claim shall set out a statement of the nature of the matter before the court, a statement of facts, and a statement of the questions presented as provided in LR7.2(a)(1)-(3). The party shall also set out the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of those elements.

In a responsive brief the opposing party may, within 30 days after service of the summary judgment motion and brief, set out the statements required by LR7.2(a)(1)-(3) and also set out the elements that the claimant must prove (with citations to supporting authority), and either identify any element as to which evidence is insufficient (and explain why the evidence is insufficient), or point to specific, authenticated facts existing in the record or set forth in accompanying affidavits that show a genuine issue of material fact, or explain why some rule of law (e.g., an applicable statute of limitations) would defeat the claim. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief the claimant may, within 10 days of service of the response, address matters newly raised in the response.

(e) **Form of Briefs -- Summary Judgment Motion by Defending Party.** A party moving for summary judgment upon an opposing party's claim shall set out a statement of the nature of the matter before the court, a statement of facts, and a statement of the questions presented as provided in LR7.2(a)(1)-(3). The party shall also set out the elements that the claimant must prove (with citations to supporting authority), and explain

why the evidence is insufficient to support a jury verdict on an element or elements, or why some other rule of law would defeat the claim.

In a responsive brief the party having made the challenged claim may, within 30 days after service of the summary judgment motion and brief, file with the court a response that sets out the statements required by LR7.2(a)(1)-(3) and also sets out the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of the disputed elements. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief the defending party may, within 10 days of service of the response, address matters newly raised in the response.

(f) **Summary Judgment Motions and Trial Dates.** The pendency of summary judgment motions will not serve to delay trial on the date set by the court in accordance with LR40.1. If by the time set for trial, the court has been unable to reach any pending summary judgment motion, the case will nonetheless be reached according to the trial calendar. The court will rule on the motion at the outset of trial.

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

LR65.1

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.

LR65.1.1

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 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 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 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 certificate of title, and a title search conducted by an attorney other than the attorney representing the party on whose behalf the bond is being posted, and give security in the form of a proper security instrument or deed of trust.

LR67.1

REGISTRY FUND

(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. The court may determine the motion upon the record or may, in its discretion, call for a hearing on the matter. If an order is entered prior to the filing of a response in opposition, the motion will be reconsidered by the court.

(3) When an order is issued to invest or reinvest registry funds into some form of interest-bearing account or accounts, the party presenting the order shall deliver a copy of said order either personally, or by certified mail, return receipt requested, to the Clerk, or in his absence, the Chief Deputy Clerk or the Financial Deputy. Further, it shall be incumbent upon the presenting party to confirm that the appropriate action has been accomplished by the Clerk in accordance with the provisions of the particular order.

(4) The clerk of court shall deduct from the income earned the fee specified in 28 U.S.C. § 1914 for deposit to the credit of the Judiciary, without order of the court.

AUTHORITY OF MAGISTRATE JUDGES

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

(1) Magistrate judges 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) Magistrate judges serving this court are specially designated to:

(i) exercise civil jurisdiction to conduct any or all proceedings in jury or non-jury 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), magistrate judges 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 judge 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 district 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 district 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.

LR72.2

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

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

LR72.3

STAY OF ORDER

Application for stay of a magistrate judge's order pending review of objections made thereto must first be made to the magistrate judge.

LR73.1

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 the party's attorney, or by any other manner provided for by law.

(2) 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 judge.

(b) **Withdrawal of Consent.** After a case has been referred, the consent of the parties to the exercise of a magistrate judge's jurisdiction may not be withdrawn without the approval of the district judge who signed the order of reference.

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

LR77.1

COURT SCHEDULE AND CONDUCT OF BUSINESS

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

(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 February, May, August, and on the Friday before Thanksgiving in November. 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.

LR77.2

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) Upon a showing of good cause, consent orders in civil actions for extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the

time within which to answer or otherwise plead.

(2) Upon a showing of good cause, consent orders in social security administrative review cases for extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the time within which to file dispositive motions.

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

LR77.3

COURT LIBRARIES

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

LR79.1

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, paper, or index card may be removed from the clerk's office without the approval of a judge.

(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. The official court record for documents filed prior to March 1, 2005 consists of items filed on the right side of the case folder; items filed on the left side of the case folder, while available for public examination, may not be copied without the written approval of a judge. Requests for copies of items filed on the left side of the case folder must be submitted in writing to the clerk of court, who will refer the matter to the appropriate judge and advise the requester of the judge's decision. For documents filed on or after March 1, 2005, the CM/ECF electronic documents are the official court record.

LR79.2

RELEASE OF INFORMATION BY COURT PERSONNEL

All court personnel, including, among others, the United States Marshal and

deputies, the clerk of court and deputies, the chief probation officer and officers, the chief pretrial services officer and 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.

LR 79.3

ADMINISTRATIVE RECORDS IN SOCIAL SECURITY CASES

Administrative records and transcripts in Social Security cases and transcripts or voluminous exhibits in other administrative proceedings will be returned to counsel at conclusion of action.

LR79.4

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, disk, 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.

Complaints, answers, motions, responses and replies, whether sealed or not, must be forwarded to the General Services Administration for permanent storage. The confidentiality of sealed documents cannot be assured after the case file is transferred to the General Services Administration for records holding.

(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.

LR83.1

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 admitted to the practice of law in this state and in good standing with the Supreme Court of North Carolina. A judge 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, on the application for admission to practice form provided for use in this court, that the attorney 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 required by the Administrative Office of the United States Courts for admission to practice in this district. When the application form prescribed for use by this court is completed and the appropriate filing fee has been paid to the Clerk of Court of this court, a judge or magistrate judge of the Eastern or Western Districts of North Carolina, upon being presented evidence that the above-mentioned application has been filed and that the requisite fees have been paid, may admit an attorney who is qualified according to these rules to practice before this court. Attorneys already admitted to the bars of either the United States District Court for the Eastern District of North Carolina or the United States District Court for the Western District of North Carolina may be admitted to the bar of this court upon tendering the application and fees required by this rule, together with a copy of the order admitting the attorney to practice in either of the aforementioned districts.

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

(1) Litigants in civil and criminal actions and parties in bankruptcy proceedings before this court, except parties appearing *pro se*, must be represented by at least one

attorney who is a member of the bar of this court. Federal government attorneys representing the interests of the United States are not required to secure local counsel. The service of all pleadings and papers permitted by the Federal Rules of Civil and Criminal Procedure 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 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) the attorney 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) the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation for which the attorney 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 an appearance, or have it stricken from the record, except on order of the court or when the attorney has provided notice of substitution of counsel by an attorney who is a member of the withdrawing attorney's law firm.

LR83.2

COURTROOM PRACTICES

(a) **Addressing the Court.** Attorneys or 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.

LR83.3

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. Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all jury costs, including any marshal's fees, mileage and per diem, may be assessed equally against the parties or otherwise assessed as determined by the court, unless the clerk's office is notified at least one full business day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

LR83.4

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 the party 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 the party's 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.

LR83.5

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 LR83.4 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.

LR83.6

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 nor 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.

LR83.7

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, 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.

LR83.8

COURTROOM SECURITY

The United States Marshal or a Court Security Officer shall be present at all proceedings held in open court, unless otherwise ordered by the court.

LR83.9a

PURPOSE OF MEDIATED SETTLEMENT CONFERENCES

These rules govern reference of selected civil actions for mediated settlement conferences. Their purpose is to provide for an informal process conducted by a mediator with the objective of helping the parties reach a mutually acceptable settlement of their dispute. The rules are not intended to force settlement upon any party. The rules shall be construed to secure the speedy, fair, and economical resolution of controversies while preserving the right of all parties to a conventional trial.

LR83.9b

SELECTION OF CASES FOR MEDIATED SETTLEMENT CONFERENCES

(a) **Automatic Selection by these Rules.** Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the

court. These categories include, according to the nature of suit designations made in opening the case in CM/ECF or as listed within the court forms appearing at www.ncmd.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/ exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed.R.Civ.P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See LR16.1(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears *pro se* are not included within this automatic selection for mediation.

(b) **Discretionary Selection by the Court.** In its discretion, the court may order a mediated settlement conference in any action not automatically selected under section (a), above. After entry of such an order, the parties shall have 20 days to file a statement identifying an agreed-upon mediator.

(c) **Stipulated Selection by the Parties.** In any case where selection for a mediated settlement conference is not automatic under section (a) of this rule, the parties may file a stipulation for mediation. In such stipulation, the parties may state any agreements they have reached regarding the identity of the mediator, the timing of the conference, and any modification of the procedures described by these rules.

(d) **Exemption from Mediation.** Any party, or parties jointly, may file a motion for exemption from mediation. Such a motion will be granted only on a showing of good cause. A general assertion that a case is not likely to settle or that settlement possibilities are remote does not constitute good cause.

LR83.9c

MEDIATORS

(a) **Certification.** The clerk shall maintain a list of mediators who have agreed to serve under these rules. The list shall identify areas of subject matter expertise of each mediator according to the categories identified in LR83.9b(a) and include such biographical information as each mediator may wish to provide. Attorneys who have been certified as mediators pursuant to the rules of the North Carolina Supreme Court and who have at least 8 years of civil trial practice or membership on the faculty of an accredited law school may serve on the panel of mediators. Further, attorneys who were on the court's panel of arbitrators as of December 1, 1993 may serve on the panel of mediators. Appointment to the list does not guarantee any mediator that he or she will be appointed to serve in any case before the court.

(b) **Compensation of Mediators.** Mediators under these rules shall be compensated by the parties at the hourly rate set by the Chief Judge, except that in the case of an agreed-upon mediator, the parties may agree to greater compensation and expense reimbursement. The parties shall make payment directly to the mediator at the termination of the mediated settlement conference, whether or not the case is settled. The mediator shall be compensated for up to 2 hours of preparation time and for the time expended in the conference. The only compensable expense of the mediator is travel mileage at the ordinary government rate. The mediator's fee and travel expense shall be paid in one equal share by the plaintiff (or plaintiffs), one equal share by the defendant (or defendants), and one equal share by any third party (or parties), unless otherwise agreed by all parties or ordered by the court in the interest of fairness.

(c) **Compensation of Mediators when a Party is Unable to Pay.** If a party contends it is unable to pay its share of the mediator's fee, that party shall, before the conference, file a motion with the court to be relieved of the obligation to pay. The motion shall be accompanied by an affidavit of financial standing. The mediated settlement conference should proceed without payment by the moving party, and the court will rule on the motion upon completion of the case. The court will take into consideration the outcome of the case, whether by settlement or judgment, and may relieve the party of its obligation to pay the mediator if payment would cause a substantial financial hardship. If the party is relieved of its obligation, the mediator shall remain uncompensated as to that portion of his or her fee, a circumstance that reflects the mediator's duty of pro bono service.

LR83.9d

SELECTION OF THE MEDIATOR

(a) **Selection by Agreement.** The parties are encouraged to select their own mediator by agreement. If, within 20 days of the initial pretrial order, the parties file with the clerk a statement identifying an agreed-upon mediator, such statement shall be effective to select the mediator, and the clerk will notify the mediator of his or her selection. The parties may select an agreed-upon mediator who is not on the clerk's list of certified mediators, but any such mediator must, prior to service, agree to be bound by all provisions of these rules.

(b) **Selection by the Clerk.** If no timely statement pursuant to section (a) of this rule is filed, the clerk shall appoint a mediator from the certified list. The appointment is within the discretion of the clerk, who may consider subject matter expertise in making the appointment. The clerk shall give notice of the appointment to the mediator and the parties.

(c) **Disqualification.** On motion made to the court not later than 20 days

before a scheduled mediated settlement conference, a mediator may be disqualified by the court for bias or prejudice as provided in 28 U.S.C. §§144. Further, a mediator shall disqualify himself or herself if the mediator could be required to do so under 28 U.S.C. §§455 if he or she were a justice, judge, or magistrate judge.

(d) **Copies of the Pleadings.** On request of the mediator, the clerk shall furnish to the mediator a copy of the complaint, answer, and any third-party pleadings in the action.

LR83.9e

PROCEDURES FOR MEDIATED SETTLEMENT CONFERENCES

(a) **Time Period for the Mediated Settlement Conference.** The mediated settlement conference shall be held during the discovery period unless the court specifically orders otherwise.

(b) **Scheduling the Mediated Settlement Conference.** The mediated settlement conference shall ordinarily be held in the office of the mediator, but may be held at any other place agreed to by the parties and the mediator. Because of space limitations, the federal courthouses are not available for mediated settlement conferences. After conferring with the attorneys for the parties regarding scheduling matters, the mediator shall determine the place and time of the conference (within the period established by these rules), and give notice to the parties.

(c) **Submission of Position Papers to Mediator.** No later than five (5) business days before the scheduled date of the mediated settlement conference, any party may submit a confidential position paper to the mediator. The position paper shall be limited in length to five (5) pages, double-spaced, and may be accompanied by up to five (5) pages of exhibits. Position papers are confidential, shall be held so by the mediator, and need not be served on other parties. The purpose of these submissions is to help the mediator become familiar with the assertions of the parties, and the parties may agree to the submission of additional information if they believe the information will facilitate the mediated settlement conference.

(d) **Duties of Parties, Representatives, and Attorneys.** The following persons shall be physically present at the entire mediated settlement conference unless excused by the mediator:

(1) Individual parties; an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or recommend a settlement;

(2) At least one attorney of record for each represented party; and

(3) A representative of the insurance carrier for any party against whom a claim is made. The representative must have full authority to settle the claim and must be a

person other than the carrier's outside counsel.

Upon reaching a settlement agreement at a mediated settlement conference, the parties shall forthwith reduce the agreement to writing and prepare a stipulation of dismissal or consent judgment for presentation to the court.

(e) **Authority of the Mediator.** The mediator is authorized by these rules to exercise control over the mediated settlement conference and to direct all proceedings therein. The mediator is specifically authorized to meet or consult privately with any party or their counsel during the conference. The mediator may report in writing to the court, with copies to the parties, any conduct of any party that may be in violation of these rules for mediated settlement conferences.

(f) **Duties of the Mediator.** At the beginning of the mediated settlement conference, the mediator shall describe the following matters to the parties:

(1) The process of mediation,
(2) The differences between mediation and other forms of conflict resolution,
(3) The costs of the mediated settlement conference,
(4) The fact that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement,
(5) The circumstances under which the mediator may meet alone with either of the parties or any other person,
(6) The conditions under which communications with the mediator will be held in confidence during the conference,
(7) The inadmissibility of negotiating statements and offers at trial,
(8) The fact that the court will not permit parties in other litigations to conduct discovery regarding the mediation in this case,
(9) The duties and responsibilities of the mediator and the parties, and
(10) The fact that any agreement reached will be reached by mutual consent of the parties.

The mediator may recess or suspend the conference at any time and set a schedule for reconvening. It is the duty of the mediator to determine if an impasse has been reached or mediation should for any reason be terminated. He shall then inform the parties that mediation is terminated.

(g) **Agreement to Modify Mediation Procedures.** By agreement filed with the court, the parties, with the consent of the mediator, may modify the mediation procedures described in these rules, except that the parties may not alter time limitations set by these rules or order of the court.

(h) **Sanctions for Failure to Appear.** If a person fails to attend a mediated settlement conference without good cause, the court may impose on that person (or any associated party) any lawful sanction, including, but not limited to, the imposing of the cost of attorney's fees, mediator's fees, and expenses of persons incurred in attending the conference.

LR83.9f

COMPLETION OF THE MEDIATED SETTLEMENT CONFERENCE

When the mediated settlement conference is completed, the mediator shall immediately submit to the clerk a report of the status of the case, on a form supplied by the clerk. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, it proceeds without further order of the court in accordance with the local rules of the court.

LR83.9g

EVALUATION OF THE MEDIATION PROGRAM

The mediation program established by these rules is experimental in nature and will be periodically reviewed by the court. For purposes of evaluation of the program, the mediator, the attorneys, and the litigants may be requested to complete confidential evaluation reports at the completion of the mediation. These reports shall be kept confidential by the clerk and shall be maintained in a file separate and apart from the case file. The clerk shall compile information from the evaluation reports to assist the court in determining the effectiveness of the mediation program.

LR83.10a

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.

LR83.10b

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. The court is not restricted from taking such other disciplinary action as is within the inherent authority of the court.

(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.

LR83.10c

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.

LR83.10d

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.

LR83.10e

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.

LR83.10f

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. The court is not restricted from taking such other disciplinary action as is within the inherent authority of the court.

(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 of 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.

LR83.10g

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) the attorney's consent is freely given,

(2) the attorney is aware of the pending investigation or proceeding,

(3) the attorney acknowledges the material facts of misconduct, and

(4) the attorney consents because the attorney knows that he or she could not defend 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.

LR83.10h

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 the chief judge's 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 the attorney has the moral qualifications, competency, and learning of the law required for admission to practice law before this court, and that the attorney's 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 the petitioner, 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.

LR83.10i

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.

LR83.10j

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 the attorney's counsel and is posted by regular mail.

LR83.10k

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 may appoint as counsel the disciplinary agency of the Supreme Court of North Carolina or any other disciplinary agency having jurisdiction. Alternatively, the court may 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. Nothing in this rule limits the court's authority to refer any matter to the appropriate state bar for investigation, prosecution of disciplinary proceedings, or reinstatement.

LR83.10l

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.

LR83.10m

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 OF

PRACTICE AND PROCEDURE

of the

UNITED STATES

DISTRICT COURT

FOR THE MIDDLE DISTRICT

OF NORTH CAROLINA

TABLE OF CONTENTS

PART TWO LOCAL RULES OF CRIMINAL PROCEDURE

PART TWO

LOCAL RULES OF CRIMINAL PRACTICE

CITE THE LOCAL CRIMINAL RULES AS:

LCrR (e.g., LCrR12.1)

LCrR12.1

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) **Extensions 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.

LCrR16.1

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 LCrR57.3 in the discretion of the court.

LCrR24.1

JURIES

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

LCrR26.1

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.

LCrR32.1

SENTENCING RECOMMENDATIONS BY PROBATION OFFICERS

Any sentencing recommendation made to the court by a probation officer is for the judge's use only and shall not be disclosed to the parties at any time.

LCrR44.1

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.

LCrR50.1

PROMPT DISPOSITION OF CRIMINAL CASES

The Court's Plan for Prompt Disposition of Criminal Cases in compliance with 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.

LCrR57.1

INCORPORATION OF CERTAIN LOCAL RULES OF CIVIL PRACTICE

Local Rules of Civil Practice 1.1, 5.3, 5.4, 6.1, 7.1, 7.2, 65.1.1, 72.1, 77.1, 77.3, 79.1, 79.2, 79.4, 80.1, 83.1, 83.2, 83.5, 83.7, 83.8, and 83.9a-m shall apply fully to criminal proceedings, and shall be interpreted consistent with the Federal Rules of Criminal Procedure and other Local Rules of Criminal Practice.

LCrR57.2

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.

(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.

(4) The foregoing provisions of this rule do not preclude an attorney from replying to charges of misconduct publicly made against the attorney 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 employees and associates from making any extrajudicial statement which the attorney would be prohibited from making under this rule.

LCrR57.3

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 the party 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 the party's 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.

LCrR 58.1

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

Pursuant to Fed. R. Crim.P. 58(d) 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.