UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

IN RE: CIVIL JUSTICE REFORM ACT ORDER

The judges of this Court, having considered the Report of the Advisory Group of the United States District Court for the Eastern District of North Carolina appointed under the Civil Justice Reform Act of 1990, hereby adopt the attached Expense and Delay Reduction Plan for this Court, effective December 1, 1993.

SO ORDERED for the Court this 4th day of November, 1993.

James C. Fox

JAMES C. FOX
Chief United States District Judge

142

CIVIL JUSTICE REFORM ACT OF 1990

EASTERN DISTRICT OF NORTH CAROLINA

CIVIL JUSTICE EXPENSE AND DELAY

REDUCTION PLAN

October 8, 1993

INTRODUCTION

Pursuant to the mandates of the Civil Justice Reform Act of 1990, 28 U.S.C. §§471-482 ("CJRA"), the United States District Court for the Eastern District of North Carolina adopts this Civil Justice Expense and Delay Reduction Plan ("the Plan"). Pursuant to the provisions of the Act, the court directs that the Plan be implemented on or before December 1, 1993. The Plan shall be applicable to all cases filed after that date, despite the fact that specific written procedures will not be effective until the local rules are amended.

The Plan is based upon the Report on Expense and Delay Reduction presented to the court by the Civil Justice Reform Act Advisory Group on June 15, 1993. Based upon extensive study and survey analysis, the Advisory Group reported that the Eastern District of North Carolina "functions in a productive manner, with no major areas of unnecessary cost or delay." (Report at p. 1). The report provided an indepth background of case management procedures in the district, as well as a thorough examination of the state of the court's criminal and civil dockets, filing trends, and assessments of cost and delay. The recommendations offered by the Advisory Group present thoughtful modifications to the existing practices and procedures in the district. After review of the Report's findings and recommendations, the Court adopts the following plan.[1]

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[1] Pursuant to 28 U.S.C. §473(a) and (b), the Court has considered the "six principles and guidelines of litigation management and cost and delay reduction." As set forth more fully

EXPENSE AND DELAY REDUCTION PLAN

A. STANDING COMMITTEE ON LOCAL RULES

It shall be the responsibility of the Chief Judge to appoint a standing committee to draft proposed amendments to the local rules to effectuate the provisions of this Plan and to consider other changes to the local rules that the committee may deem necessary. In addition, the local rules committee shall consider the project urged by the September 1988 resolution of the Judicial Conference of the United States and outlined in Judge Keeton's March 25, 1992 letter regarding uniform renumbering of local rules.

The local rules committee shall be comprised of no less 10 members and no more than 18 members, representing a broad segment of the Federal Bar having experience in litigating different types of actions in the district. The committee shall be appointed no later than November 30, 1993, and it will be responsible for the consideration, clarification, and recommendation of new local rules and amendments to the existing local rules to facilitate the realization of the goals of this plan. In so doing, the committee shall consider the rule changes proposed in the Advisory Group Report.

The recommendation process should be completed no later than February 28, 1994, and based upon the recommendations of the local rules committee and after reasonable notice and comment from the

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in the Advisory Group's Report on Expense and Delay Reduction, the Court has adopted some of the principles and guidelines and declined to adopt others. See Advisory Group Report on Expense and Delay Reduction, Section IV.G. (pps. 79-85).

Bar and public, the Court shall adopt the local rule changes that it deems proper, no later than March 28, 1994. The local rules committee will meet at least once per year to consider the present rules and the possibility of further amendments. Members of the local rules committee shall serve no more than three years, in staggered terms, to ensure continuity and minimize disruption.

B. CASE TRACKING AND CASE MANAGEMENT

1. Adoption of a local rule which requires the parties to notify the court of the need for early judicial intervention. To ensure that complicated cases or cases with special needs are identified quickly, the local rules shall be amended to require the attorneys (or parties if pro se) in each case to notify the court at the outset of the case whether they believe the case is one that would benefit from early judicial intervention. In the event that an attorney or pro se party believes early judicial intervention would be advantageous, the clerk's office will refer the case to a magistrate judge for review and possible implementation of special case management techniques.

2. Adoption of Rule 16(b) scheduling orders in prisoner civil rights litigation. In prisoner civil rights cases involving a pro se party, the clerk's office will enter a Rule 16(b) scheduling order after an answer has been filed. The scheduling order will set a dispositive motions deadline, as well as a firm trial date. In those cases in which both sides are represented by counsel, the court will enter the traditional Rule 16(b) scheduling

order. In addition, both types of scheduling orders will offering the parties the option of consenting to magistrate judge jurisdiction. Consequently, cases will move more expeditiously.

3. **Assignment of Magistrate Judges.** A magistrate judge will be assigned to a civil case at the same time that a district judge is selected, and unless circumstances require otherwise, all non-dispositive motions, hearings and conferences will be assigned to the same magistrate judge. Assigning cases to district and magistrate judges for the duration of the case will avoid unnecessary duplication of work and encourage expeditious resolution of cases.

4. **Certification Process.** The Court shall request that the state legislature adopt a certification process in federal diversity cases involving substantive state law issues to the North Carolina Supreme Court.

C. Discovery

1. **Conference Between Counsel Before Filing Discovery Motion.** A local rule shall be implemented to require that as a condition precedent to filing any discovery-related motion (and in particular motions to compel discovery), counsel shall certify that they have conferred and had a full and frank discussion in an effort to informally resolve their dispute.

2. **Expedited Schedule For Discovery.** The local rules shall be modified to shorten the time and page limits relating to discovery motions and responses. Specifically, memoranda in support or opposition to a discovery motion shall not exceed ten

pages in length. No reply will be permitted. Responses to discovery motions shall be filed within ten days after service of the motion in question.

If oral argument is request and scheduled by the court, counsel will be given the option of oral presentations by telephone in lieu of a live appearance.

4. **Discovery Pertaining to Experts.** The local rules shall be amended to provide for more meaningful disclosure regarding expert testimony and qualifications. The parties will be required to mandatorily disclose the following information: (1) the name and address of each person the other party expects to call as an expert witness at trial; (2) the substance of the facts to which the witness will testify; (3) a meaningful statement of each opinion to which the expert is expected to testify and the basis for each opinion; (4) any exhibits to be used as a summary of or support for the opinions; (5) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (6) the compensation to be paid for the study and testimony; and (7) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

In addition, all designated expert witnesses shall be subject to examination by deposition by the opposing party, and any opinions not expressed by the expert witness in deposition or by statement required by these modifications shall not be admitted into evidence at trial. Finally, the designation statement

required by these modifications shall not be admissible at trial, except for the limited purpose of cross-examination.

D. MOTIONS

1. **Early Resolution of Dispositive Motions.** The Request for Discovery Stipulations form shall be amended to include the following question: "Do you anticipate that dispositive motions will be filed in this case by any party?" In the event that at least one of the parties provides an affirmative response, the deadline for filing dispositive motions will be scheduled 90 days prior to the pre-trial conference rather than the current practice of setting the dispositive motions deadline 90 days prior to trial.

2. **Motions in Limine.** The local rules shall be amended to provide that no party shall be required to file a written response to a motion in limine which is filed after the pre-trial conference has taken place.

E. FINAL PRE-TRIAL CONFERENCE AND TRIAL

1. **Deposition Numbering.** Deposition exhibits shall be numbered consecutively during the discovery process, and where possible, the same numbers shall be maintained as trial exhibit numbers. Additionally, parties shall change deposition testimony references and deposition exhibit numbers to trial exhibit numbers to save time and confusion at trial.

2. **Pre-Trial Orders.** The responsibility for preparing the pre-trial order shall be a shared responsibility of all attorneys or pro se parties rather than the plaintiff's counsel. Failure to

provide a unified pre-trial order may result in sanctions being imposed on both parties.

3. **Juror Evidence Notebooks.** The pre-trial conference shall address the use and regulation of juror evidence notebooks.

4. **Working Pre-Trial Conference.** The court will institute a policy of allowing a working pre-trial conference in complex cases. The working pre-trial conference will be in addition to the final pre-trial conference. The working pre-trial conference shall address issues that arise during the preparation of the pre-trial order, as well as the parties' stipulations and contentions.

5. **Designation of Deposition Testimony.** The local rules shall be amended to specify that a deposition need not be designated in the pre-trial order if it is to be used solely for cross-examination purposes.

F. ALTERNATIVE DISPUTE RESOLUTION

1. **Court-Hosted Settlement Conferences.** The Court adopts the following rule regarding court-hosted settlement conferences:

> **RULE 30.00 COURT-HOSTED SETTLEMENT CONFERENCES**
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> The Court, upon its own initiative or at the request of any party, may order a settlement conference at a time and place to be fixed by the Court. Upon request by all parties to an action, the Court shall order a settlement conference. A District Judge other than the Judge assigned to the case, or a Magistrate Judge, will normally preside at such a settlement conference. At least one attorney for each of the parties who is fully familiar with the case shall attend the settlement conference for each party. Each individual party or a representative of a corporate or governmental agency party with full settlement authority also shall attend the settlement

conference. Other interested parties, such as insurers, shall attend through fully authorized representatives and are subject to the provisions of this Rule. The settlement conference Judge or Magistrate Judge may, however, upon prior written application, allow a party or representative having full settlement authority to be telephonically available. The parties, representatives and attorneys are required to be completely candid with the settlement conference Judge or Magistrate Judge so that he or she may properly guide settlement discussions. The Judge or Magistrate Judge presiding over the settlement conference may make such other and additional requirements of the parties and conduct the proceedings as shall seem proper to the Judge or Magistrate Judge in order to expedite an amicable resolution of the case. The settlement Judge or Magistrate Judge will not discuss the substance of the conference with anyone, including the Judge to whom the case is assigned, and may excuse the parties or the attorneys from the conference any time. During the settlement conference, the settlement Judge or Magistrate Judge also may confer ex parte with any parties, representatives or attorneys, to meet jointly or individually with the parties and/or representatives without the presence of counsel, and to elect to have the parties and/or representatives meet alone without the presence of the settlement Judge or Magistrate Judge or counsel with the specific understanding that any conversation relative to settlement will not constitute an admission and will not be used in any form in the litigation or in the event of trial.

2. **Summary Trials.** The Court adopts the following rule regarding summary trials:

RULE 31.00 SUMMARY TRIALS

31.01 Eligible Cases. The assigned Judge may, after consultation with counsel, refer for summary jury trial any civil case in which jury trial has been properly demanded. Either or both parties may move the Court to order summary jury trial; however, the Court will

not require a party to participate against its will.

31.02 Selection of Cases. Cases selected for summary jury trial should be those in which counsel feel that a non-binding verdict by the jury could be helpful in a subsequent settlement negotiation. Since an investment of time by counsel and by the Court is necessary for the procedure, it should be used only in those cases that would take more than seven (7) trial days to try.

31.03 Procedural Considerations. Summary jury trial is a flexible ADR process. The procedures to be followed should be determined by the assigned Judge in advance of the scheduled summary jury trial date, in light of the circumstances of the case and after consultation with counsel. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial.

a. Presiding Judge. Either a District Judge or a Magistrate Judge may preside over a summary jury trial. During the process, the summary jury trial judge will ordinarily participate in on-going settlement negotiations and may have ex-parte conferences with each side. For this reason, normally a judge other than the trial judge will be selected to preside over the summary jury trial.

b. Submission of Written Materials. Counsel must submit proposed jury voir dire questions, jury instructions and briefs on any novel issues of law within three (3) working days before the date set for summary jury trial. In addition, counsel may also choose to submit other items, such as a statement of the case, stipulations, and exhibit lists.

c. Attendance. Summary jury trials are effective in promoting settlement because, among other reasons, they give parties their "day in court" (meeting a need to voice their position in a public forum), and because they allow parties to see the merits of their opponent's position. It is therefore critical that the parties and all other persons or entities involved in the settlement decision attend the summary jury trial. This includes all individual parties and representatives of corporations and other parties and insurers vested with full settlement authority. Since absence of any decision maker makes the process less likely to proceed, this attendance requirement can be waived only by order of the Court.

d. Size of jury panel. The jury shall consist of 6 to 12 members.

e. Voir dire. Each counsel may exercise a maximum of 2 peremptory challenges. There will be no alternate jurors. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the Court.

f. Transcript or recording. Upon consent of the parties, counsel may arrange for the proceedings to be recorded by a court reporter at his or her own expense. However, no transcript of the proceedings will be admitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

g. Conference between counsel. Prior to trial, counsel are to confer with regard to the use of physical exhibits, including documents and reports, and reach such agreement as is possible. Prior to the day of

the summary jury trial, the court will hear all matters in dispute and make appropriate rulings.

h. Timing. The summary jury trial should take no more than 1 and 1/2 days from jury selection to jury deliberation. In consultation with counsel before the summary jury trial, the Court shall establish a scheme of time allotment for presentations by counsel.

i. Case presentations. The attorney presentations shall be organized in the manner of a typical trial, except that no witness testimony will be allowed, absent the court's permission. First, the plaintiff shall present an opening statement, followed immediately by defendant's opening statement. Next, plaintiff and defendant shall present their cases-in-chief by informing the jury in more detail than the opening statement who the witnesses are and what their testimony would be. Finally, the plaintiff and then defendant will make closing arguments to the jury. Plaintiff may present a final rebuttal if his or her presentation time limit has not expired. The parties are free to divide their allotted time among the three trial segments as they see fit.

j. Manner of presentation. All evidence shall be presented through the attorneys for the parties. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence and sworn statements of potential witnesses; however, no witness' testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon a written, sworn statement of the

witness, or upon sworn affidavits of counsel that the witness would be called at trial and will not sign an affidavit, and that counsel has been told the substance of the witness' proposed testimony by the witness. Demonstrative evidence, such as videotapes, charts, diagrams, and models may be used unless the Court finds, on objection, that this evidence is neither admissible nor accurately reflects evidence which is admissible.

k. Objections. Formal objections are discouraged. Nevertheless, in the event counsel makes a representation not supported by admissible evidence, an objection will be entertained. If such an objection is sustained, the jury will be instructed appropriately.

l. Jury instructions. Jury instructions will be given in an abbreviated form, adapted to reflect the nature of the proceeding. The jury will be instructed to return a unanimous verdict, if possible. Barring unanimity, the jury may be instructed to submit a statement of each juror's findings.

m. Jury deliberations. Jury deliberations should be limited in time.

n. Settlement negotiations. While the summary jury is deliberating, the presiding Judge should direct the parties to meet and explore settlement possibilities. The Judge may participate in this process.

o. Continuances. The proceedings may not be continued or delayed other than for short recesses at the discretion of the Court.

p. Final Determination. Although ordinarily non-binding in nature, counsel may stipulate among themselves that a consensus verdict by the summary jury will be a final determination on the merits of the case and judgment may be entered thereon by the Court. In addition, counsel may stipulate to any other use of the verdict that will aid in resolution of the case. For example, the parties should consider a bracketed settlement with specific minimum and maximum settlement amounts and being bound by the summary jury's verdict within the brackets.

q. Trial. If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.

r. Limitation on admission of evidence. The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or
(2) The parties have otherwise stipulated.

s. Purpose. These rules shall be construed to secure the just, speedy, effective, and inexpensive conclusion of the summary trial procedure. Bearing in mind that the summary jury trial should be flexible to meet the needs of any case in which it is used, the Judge presiding over the procedure may modify or disregard any of these rules and fashion instead an alternative deemed more likely to produce settlement.

31.04 Non-Jury Summary Trials. The Assigned Judge may, after consultation with counsel, refer any civil case for summary non-jury trial. Either or both parties may move the court to order summary non-jury trial; however, the Court will not require a party to participate against its will. The procedure for a summary non-jury trial shall be directed by the Court on a case-by-case basis.

3. **Mediated Settlement Conferences.** The Court adopts the following rules regarding mediated settlement conferences:

RULE 32.00 MEDIATED SETTLEMENT CONFERENCES

32.01 Definition. Mediation is a supervised settlement conference presided on by a qualified, certified and neutral mediator to facilitate and promote conciliation, compromise and the ultimate resolution of a civil action.

32.02 Referral. The Court may at the request of the parties, order any action, or portion thereof, to be referred for a mediated settlement conference.

32.03 Motion to Dispense with Mediation. A party may move, within 10 days after the Court's order referring an action, or portion thereof, to mediation, to dispense with or defer the conference. The Court shall grant the motion only for good cause shown.

32.04 Referral Order. The Court's order referring a civil action for a mediated settlement conference shall:

(1) require the mediated settlement conference be held in the case,

(2) establish a deadline for the completion of the conference,

(3) appoint a mediator, and

(4) state the rate of compensation of the appointed mediator.

Provided, however, in lieu of appointing a mediator in the referral order, the Court may direct the parties to notify the Court, within fourteen days of the entry of the Order referring the action for a mediated settlement conference, of the nomination of a mediator agreeable to all parties, together with the rate of the mediator's compensation. Upon notification of a mutually agreeable mediator, the Court will appoint the mediator nominated by the parties at the agreed date, unless the Court finds the mediator nominated is not qualified by training or experience to mediate all or some of the issues in the action. In the event of the failure of the parties to nominate a mediator within fourteen days, the Court shall appoint the mediator and state the rate of compensation of the appointed mediator.

32.05 Mediators. The Court may appoint as mediator any person certified as provided in Local Rule 32.06.

32.06 Certified Mediators.

(a) **Certification of Mediators.** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any certified mediator at any time.

(b) **List of Certified Mediators.** Lists of certified mediators shall be maintained in each division of the Court and shall be made available to counsel and the public upon request.

(c) **Qualifications of Certified Mediators.** An individual may be certified to serve as a mediator if:

(1) He or she is a former state judge who presided in a court of general jurisdiction and was also

a member of the bar in the state in which he presided; or

(2) He or she is a retired federal judicial officer; or;

(3) He or she has been certified as a mediator by the Administrative Office of the Courts pursuant to the Rules Implementing Court Ordered Mediated Settlement Conferences adopted by the Supreme Court of North Carolina pursuant to N.C.G.S. § 7A-38(d); or

(4) He or she has been a member of the North Carolina Bar for at least 10 years and is currently admitted to the Bar of this Court.

(d) **Oath Required.** Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 upon qualifying as a mediator.

(e) **Disqualification of a Mediator.** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

(f) **Compensation of Mediators.** Mediators shall be compensated at the rate provided by standing order of the Court, as amended from time to time by the chief judge. Absent agreement of the parties to the contrary, the cost of the mediator's

services shall be borne equally by the parties to the mediated settlement conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement.** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases.** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

RULE 32.07 The Mediated Conference.

(a) **Where Conference Is to Be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in a United States District Courthouse. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) **When Conference Is to Be Held.** Unless otherwise ordered by the Court, the mediated settlement conference shall begin no later than 60 days after the court's referral order. It shall be completed within 30 days after it has begun.

(c) **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(d) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** The mediated settlement conference shall not be cause for the delay of other proceedings in this case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

(e) **Memoranda.** Each party may, at any time after appointment of the mediator, provide the mediator with a memoranda presenting his contentions and positions. The memoranda need not be served on other parties.

(f) **Preparation.** All parties shall be prepared to discuss, in detail and in good faith, the following:

(1) all liability issues;
(2) all damage issues; and
(3) his or her position relative to settlement.

(g) **Settlement Documentation.** In the event settlement is reached at the mediated settlement conference, the essential terms and conditions of the settlement should be noted and signed or initialled by all parties and/or counsel before departing the conference. More formal documentation may be prepared later on an agreed timetable if appropriate.

(h) **Proceedings Privileged.** All proceedings of the mediated settlement conference, including any statement made by any party, attorney or other participant,

shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be binding upon all parties to the agreement.

Rule 32.08 Attendance at Mediated Settlement Conference.

(a) The following persons shall physically attend a mediated settlement conference:

(1) All individual parties; or an officer, director or employee having authority to settle on behalf of a corporate party; or, in the case of a governmental agency, a representative of that agency with full authority to settle on behalf of the agency;

(2) The party's counsel of record, if any; and

(3) For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.

(i) In the event any party desires to be represented at the settlement conference other than as provided in Local Rule 32.08(a), the party shall promptly apply to the Mediator for leave to appear otherwise. Said application shall be delivered (not filed) to the mediator not later than eleven (11) days prior to the

conference and shall contain:

(1) The reasons which make it impracticable for a party or a party's representative to appear as required by Local Rule 32.08(a);

(2) a detailed description of the authority to be exercised at the conference; and

(3) alternative proposals by which full authority may be exercised at the conference.

Such application shall be made only after all other alternatives have been, in good faith, considered and rejected. The application need not be transmitted to the opposing parties. Upon consideration of the application, the mediator, in his discretion, may excuse a party or representative from attending the settlement conference, may allow a party or representative to be available by telephone during the conference, to appear with limited authority or may, notwithstanding the application, require appropriate persons to appear as may be necessary to have full settlement authority at the conference.

Rule 32.09 Authority and Duties of Mediator.

(a) **Authority of Mediator.** The mediator shall, at all times be in control of the mediated settlement conference and the procedures to be followed subject to the orders of the Court and this Rule.

(b) **Duty of Impartiality.** The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on his or her possible bias, prejudice or lack of

impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28, U.S.C. Section 144 and shall disqualify themselves in any action in which they would be required under Title 28 U.S.C. Section 455 to disqualify themselves if they were a judge or magistrate judge. Any party may move the Court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the Court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) **Duties at Conference.** The mediator shall define and describe the following to the parties at the beginning of mediated settlement conference:

(1) The process of mediation.

(2) The differences between mediation settlement conference 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 with any other person.

(6) Whether and under what conditions communications with the mediator will be held in confidence during the conference.

(7) The inadmissibility of conduct and statements as provided by Rule 408 of the Rules of Evidence.

(8) The duties and responsibilities of the mediator and the parties.

(9) The fact that any agreement reached will be reached by mutual consent of the parties.

(d) **Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference.

(e) **Declaring Impasse.** It is the duty of the mediator to timely determine when mediation is not viable, that an impasse exists, or that mediation should end.

(f) **Reporting Results of Conference.** The mediator shall report to the Court in writing within 5 days of the conclusion of the mediated settlement conference. The report shall include the parties attending the conference, and whether or not an agreement was reached by the parties. If an agreement is reached, the report shall state whether the action will conclude by consent judgment or voluntary dismissal and shall identify the

person designated to file such a consent judgment or dismissal. If an agreement is not reached, the report shall state whether or not there has been compliance with the mediation requirements of this Rule and if not, in what respects compliance was not met.

Rule 32.10 Sanctions. In the event a party fails to attend or to participate in good faith in a mediated settlement conference ordered by the Court without good cause, the Court may impose upon the party any lawful sanction, including but not limited to assessments of attorney fees, mediator fees and expenses, expenses incurred by parties attending the conference, contempt, or any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

Rule 32.11 Judicial Immunity. A mediator appointed by the Court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

G. SPONSOR CONTINUING LEGAL EDUCATION (CLE) PROGRAMS ON LOCAL FEDERAL PRACTICE.

The Court will encourage continuing legal education (CLE) programs on local federal practice and procedure, including increasing public awareness of the changes adopted in this Plan.

H. CREATION OF A PERMANENT CJRA STAFF ATTORNEY POSITION.

To insure implementation and monitoring of the Plan, the Court will create a permanent CJRA position. The CJRA Staff Attorney will oversee case management practices in the district as well as compile and evaluate statistical data pertaining to the district and make projections and suggestions to reduce cost and delay based on that information. Additionally, this person will manage the implementation of the proposed ADR program from the CJRA report on

Expense and Delay Reduction, including the initial start-up of ADR programs involving mediation and summary jury trials. Finally, this person will assist the court in preparing the mandated periodic evaluations of the CJRA project.

In addition, the CJRA Staff Attorney will be responsible for coordinating the continuing legal education programs on local federal practice and procedure.

I. DISPOSITION OF THE PLAN.

This plan shall remain in effect for the longest period of time permitted by the Civil Justice Reform Act. The court may, in its discretion, revise the plan, affording due notice to members of the bar and public of any pending modifications.

In addition, the Civil Justice Reform Act Local Advisory Group will report to the court at least once per calendar year, in an advisory capacity, on matters relating to the Plan's implementation and its effect on case management.

Pursuant to 28 U.S.C. §472(d) and §474(a), the Court hereby ORDERS that this plan and the Report of the Civil Justice Reform Act Advisory Group be submitted to the Chief Judge of this District for distribution to (1) the Director of the Administrative Office of the United States Courts; (2) the Judicial Council of the United States Fourth Circuit Court; (3) the Chief Judges of all other United States District Courts located within the Fourth Circuit; and (4) the Chief Judge of the United States Court of Appeals for the Fourth Circuit.

So Ordered.

Adopted by the Court,

October 8, 1993

/s
James C. Fox
Chief United States District Judge

/s
W. Earl Britt
United States District Judge

/s
Terrence W. Boyle
United States District Judge

/s
Malcolm J. Howard
United States District Judge

/s
Franklin T. Dupree
United States District Judge

APPENDIX 1

RECOMMENDATIONS SECTION OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP REPORT ON EXPENSE AND DELAY REDUCTION

IV. Recommendations

In light of the cost and delay problems noted by the Advisory Group in the previous section, the Advisory Group makes the following recommendations:

A. Case Tracking & Case Management

1. Notification of Need for Early Judicial Intervention

As previously stated, the Advisory Group performed substantial analysis of the court's case management procedures and found that the district's case load is well under control. However, in rejecting the concept of "differentiated case management," the Advisory Group notes that there is a need for continued case management in the current system. Consequently, because there may be some complicated cases that are not brought to the court's attention quickly enough under the present system, the Advisory Group recommends that attorneys be asked on the civil cover sheet or other form at the outset of the case whether they believe the case is one that would benefit from early judicial involvement. Such an indication could then alert the clerk's office to have the case reviewed by a magistrate judge for possible implementation of special case management techniques. In this regard the Advisory Group notes with regret the loss of the combined clerk/magistrate judge position, since such a dual official would be in an especially good position to monitor and administer heightened case management for complex cases.

2. Scheduling Orders in Prisoner Cases

The Advisory Group's second recommendation relates to the management of prisoner cases. As set forth in Section IV.C.2.a., approximately one-third of the civil docket is comprised of prisoner litigation. As a result, it is imperative that prisoner matters be handled in an expeditious and efficient manner. Because most prisoner cases are resolved by dismissal or summary judgment with limited discovery, the court's general practice for the entry of scheduling orders is not followed in these cases. For those prisoner cases that are not disposed of by summary judgment, however, the lack of a scheduling order may mean that they are permitted to languish unnecessarily on the court's docket. The Advisory Group therefore recommends that the court adopt a practice of entering Rule 16 scheduling orders in prisoner cases at the point that the parties' motions for summary judgment have been denied, in order to ensure the case's prompt movement toward final disposition.

3. Elimination of Unnecessary Appeals from Magistrate Judge's Rulings

Another case management issue considered by the Advisory Group concerns the feasibility of eliminating unnecessary appeals from rulings by magistrate judges. Under the United States Court of Appeals for the Fourth Circuit's ruling in United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), a party must file written objections to a magistrate judge's proposed findings and recommendations within ten days of service in order to be able to appeal from the district court's judgment based on

those findings and recommendations. The result of this requirement is that some attorneys feel compelled to appeal from a generally favorable ruling by a magistrate judge to preserve for potential appeal to the United States Court of Appeals for the Fourth Circuit any issues that were decided against their clients. The district court thereby becomes burdened unnecessarily, and the parties are put to extra expense and delay.

The Advisory Group recognizes that the district court is powerless to alter the court of appeals' ruling on this issue or the wording of Fed. R. Civ. P. 72(b), which requires "specific, written objections" to a magistrate judge's proposed findings and recommendations. The Advisory Group however advocates either a statutory change or the implementation of a procedure for conditional objections that might reduce the burden for the parties and the court.

4. Assignment of Magistrate Judges

At present, the Eastern District of North Carolina assigns one judge to a civil case, and the assigned judge handles the case until its disposition. Magistrate judges, however, hear motions on a random basis, and there is no guarantee that a single magistrate judge will hear all of the motions in a given case. Accordingly, the Advisory Group recommends that a magistrate judge be assigned to a civil case at the same time that a district judge is selected, and unless circumstances require otherwise, all non-dispositive motions, hearings, and

conferences be assigned to the same magistrate judge. The Advisory Group believes that assigning cases to both district judges and magistrate judges for the duration of the case will avoid unnecessary duplication of work and encourage the expeditious resolution of cases.

5. Certification Process

It is the Advisory Group's view that a procedure for certifying substantive state law issues from a federal court sitting in diversity to the North Carolina Supreme Court would be desirable. As things now stand, no such mechanism exists under state law. In the Advisory Group's view, this procedural void is most unfortunate, since significant state law issues of first impression are ones obviously best left to state courts to authoritatively decide. Federal courts can only act as predictors of state law, and "prediction is a hazardous occupation at best." Jackson v. Volkswagen of America, No. 84-857-CIV-5 (E.D.N.C. June 4, 1986). The expense of litigating questions of first impression concerning state substantive law, questions over which the federal courts in each of North Carolina's three districts can reasonably differ, simply cannot be justified: the costs are unfair to the judicial system, the individual litigants, and the public. Therefore, the Advisory Group recommends that the Eastern District of North Carolina urge the adoption of a certification process of state substantive law issues in diversity cases to the North Carolina Supreme Court.

B. Discovery

1. Discovery Hotline

The Advisory Group strongly believes that discovery disputes increase costs and delay more than any other area of litigation practice. This increase in time and money is often caused by the parties' inability to receive immediate rulings on important discovery matters, thereby slowing the progress of the case and occasioning increased legal fees in preparing and briefing discovery disputes. As a solution to this chronic problem, the Advisory Group recommends the adoption of a local rule establishing a discovery hotline. The telephone number and the availability of this service would be publicized to counsel with a goal of providing a prompt hearing on the record and, as appropriate, a verbal ruling, mediation, or guidance on discovery disputes or requests to enforce any provisions of the local rules or the rules of civil procedure which pertain to discovery. The following local rule change is suggested:

> **Proposed Local Rule 24.05: Discovery Hotline.** In any civil action, there shall be available to all parties a "discovery hotline," which consists of a dedicated phone number at which there will be a judicial officer on call during business hours to rule or offer guidance on discovery disputes and to enforce the local discovery rules of the Eastern District of North Carolina.

2. Requirement of Certification that Counsel Have Conferred in an Attempt to Resolve Discovery Disputes Prior to Filing Formal Motions

The Advisory Group feels that many attorneys may file discovery motions without first attempting to resolve the dispute through a simple discussion. Many discovery motions could be

avoided if counsel conferred informally before resorting to more formal procedures. Therefore, the Advisory Group recommends that a local rule be implemented to require that as a condition precedent of filing any discovery-related motion (and in particular motions to compel discovery) counsel certify that they have conferred and had a full and frank discussion in an effort to informally resolve their dispute.

The Advisory Group contemplates that a requirement that counsel confer might also provide opportunities for recourse to the discovery hotline set forth in Proposed Local Rule 24.05. For example, if counsel had resolved most, but not all of their dispute, it is entirely likely that the final disagreements could be resolved with the guidance of a judicial officer in a phone conference, thereby alleviating the necessity of a formal motion.

> **Proposed Local Rule 24.06 Certification of Attempt to Resolve Discovery Disputes.** Prior to filing a motion or objection relating to discovery, counsel for the moving party must first certify to the court in writing that counsel has conferred and had a full and frank discussion in a diligent attempt to resolve the dispute, but the parties were unable to reach an accord.

3. Expedited Schedule for Resolution of Discovery Disputes

In those instances where a formal motion relating to discovery is unavoidable, the Advisory Group recommends that the present rules regarding such motions and their supporting memoranda be amended to shorten and abbreviate the process. The Advisory Group contemplates that if a "discovery hotline" is initiated, the judicial officer assigned to that duty on any given day could

also hear discovery-related motions during that day.

> **Proposed Local Rule 24.07 Discovery Disputes - Expedited Briefing Schedule.** Any motion relating to a discovery conflict shall be handled on an expedited basis:
>
> (a) Memoranda in support or opposition to a discovery motion shall not exceed ten (10) pages in length. Reply memoranda, when allowed by these rules, shall not exceed five (5) pages in length.
>
> (b) Responses and accompanying documents relating to discovery motions shall be filed within ten (10) days after service of the motion in question unless otherwise ordered by the court. Reply memoranda, when allowed by these rules, shall be filed within five (5) days after service of the motion in question, unless otherwise provided by the court.
>
> (c) If oral argument is requested and scheduled by the court, the option of a reply memorandum shall be eliminated. If, however, oral argument is not scheduled by the court, a reply will be allowed.
>
> (d) In any instance in which oral argument is scheduled, counsel shall be given the option of oral presentations by telephone in lieu of a live appearance.
>
> **Proposed Local Rule 5.05: Length of Memoranda.** Except as otherwise provided by Local Rule 24.07, memoranda in support of or opposition to a motion (other than a motion regarding discovery) shall not exceed thirty (30) pages in length without prior court approval. Memoranda in support of or opposition to a discovery motion shall not exceed ten (10) pages in length without prior court approval. Reply memoranda (other than reply memoranda regarding a discovery motion) shall not exceed ten (10) pages in length without prior court approval. Reply memoranda addressing a discovery motion shall not exceed five (5) pages in length without prior court approval. These limitations apply to memoranda submitted in connection with an appeal in a bankruptcy proceeding.

Proposed Local Rule 4.05: Responses to Motions. Any party may file a written response to any motion. The response may be a memorandum in the manner prescribed by Local Rule 5.01 and may be accompanied by affidavits and other supporting documents. When the response is not a memorandum, the written response shall be accompanied by a supporting memorandum in the manner prescribed by Local Rule 5.01 and, when appropriate, by affidavits and other supporting documents. Responses and accompanying documents shall be filed within 20 days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable Federal Rules of Procedure. Responses and accompanying documents relating to discovery motions shall be filed within ten (10) days after service of the motion in question unless otherwise ordered by the court.

Proposed Local Rule 4.06: Replies.
(a) **Non-Discovery Motions:** Replies to responses are discouraged. However, except as provided in Local Rule 4.06(b), a party desiring to reply to matters initially raised in a response to a motion or in accompanying supporting documents shall file the reply within 10 days after service of the response, unless otherwise ordered by the court.

(b) **Discovery motions:** If oral argument is requested and scheduled by the court regarding a discovery motion, the option of a reply memorandum shall be eliminated. If, however, oral argument is not scheduled by the court, a reply will be allowed. However, a party desiring to reply to matters raised in a response to a discovery motion or in accompanying supporting documents shall file the reply within five (5) days after service of the response, unless otherwise ordered by the court.

4. Discovery Pertaining to Experts

The Advisory Group believes that one of the major areas of unnecessary cost and delay in the federal system involves the use of unregulated expert testimony. The Advisory Group was very concerned with the problem of enforcement of the existing rules

of civil procedure pertaining to experts, especially Fed.R.Civ. P. 26(a)(4). In considering modifications to this area of practice, the Advisory Group considered the changes contemplated by the proposed Federal Rules of Civil Procedure pertaining to experts. After exhaustive discussions on this topic, the Advisory Group felt that many of the proposed revisions to Rule 26 should not be implemented in this district, especially in light of the approaching deadline for adoption or rejection of these rules by Congress. However, the Advisory Group does believe that a modification of the current rules of practice regarding experts is necessary. Consequently, the Advisory Group recommends the following mandatory disclosure requirements pertaining to expert testimony:

> **Proposed Local Rule 24.08: Discovery of Expert Testimony.**
> (a) A party may through interrogatories require any other party to provide (1) the name and address of each person the other party expects to call as an expert witness at trial; (2) the substance of the facts to which the witness will testify; (3) a meaningful statement of each opinion to which the expert witness is expected to testify and the basis for each opinion; (4) any exhibits to be used as a summary of or support for the opinions; (5) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (6) the compensation to be paid for the study and testimony; and (7) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
>
> (b) All designated expert witnesses shall be subject to examination by deposition by the opposing party.
>
> (c) Any opinions not expressed by the expert witness in deposition or by statement required

by Local Rule 24.08(a) shall not be admitted into evidence at trial.

(d) The designation statement required by Local Rule 24.08(a) shall not be admissible at trial, except for the limited purpose of cross-examination.

C. Motions

1. Early Resolution of Dispositive Motions

As discussed previously, the Advisory Group is unanimous in its belief that one of the primary causes of increased cost in the system involves a ruling on a dispositive motion on the eve of trial which terminates the action or eliminates claims or defenses. The Advisory Group believes that costs could be reduced significantly if the court allows ample time between the ruling on dispositive motions and the trial date set by the court. With regard to this issue, the Advisory Group recognizes the competing interests between cost and delay -- any decrease in costs occasioned by a longer time period for resolution of the dispositive motion would consequently increase the delay in the case reaching a trial on the merits. However, in such a situation, the Advisory Group believes that the cost savings outweigh the increased delay. As a result, the Advisory Group believes that the current practice of scheduling cases for trial should be modified, and the following local rule adopted:

Proposed Local Rule 23.01(a): Scheduling in Cases with Dispositive Motions. No final pre-trial conference shall be scheduled to take place until at least thirty (30) days have elapsed from a ruling on a dispositive motion. The trial shall not be scheduled to take place less than fourteen (14) days after the pre-trial conference.

In addition, the Advisory Group recommends that the Request for Discovery Stipulation be modified to include the question, "Does any party anticipate dispositive motions to be filed in this case?" Alternatively, the court could require parties to file a Notice of Dispositive Motions.

In recommending these changes, the Advisory Group strongly feels that significant cost reduction will occur because litigants will no longer be faced with preparing a case for trial unnecessarily. In addition, the Advisory Group believes that such a rule may ultimately encourage settlement during the thirty day time period between the resolution of the dispositive motion and the pre-trial conference.

2. Oral Argument

As set forth in Section IV.C.3., the Advisory Group believes that hearings should generally be allowed by the court, unless the judge believes that oral argument would not assist him in his determinations. In addition, when a hearing is scheduled on a discovery motion, the Advisory Group believes that counsel should be given the opportunity of appearing by telephone, in lieu of a live appearance, thereby reducing costs in resolving those matters. The following local rule change is recommended:

> **Proposed Local Rule 4.09: Hearings on Motions.** (a) Except as provided in Local Rule 24.07, hearings on non-discovery motions may be ordered by the court in its discretion. Unless so ordered, motions shall be without hearing. However, if a party believes that oral argument would assist the court in resolving the issues or further the court's understanding of the facts or issues, the party should so state in the

motion and request oral argument. If requested, oral argument will generally be granted, unless the court, in its discretion, determines that oral argument would not be of assistance in its determinations.

(b) When a discovery motion has been set for hearing before the court, counsel shall be given the option of oral presentations by telephone in lieu of a live appearance.

3. Motions in Limine

The Advisory Group believes that the current practice of requiring written responses to motions in limine immediately prior to trial is too burdensome and may force the parties to neglect trial preparation to prepare a response to a motion in limine filed immediately prior to trial. Consequently, the Advisory Group recommends that Local Rule 26 be amended to provide that no written response is required when a motion in limine is filed shortly before trial.

Proposed Local Rule 26.00 et seq.:

Five business days preceding the first day of the session at which a civil action is set for trial, counsel for all parties shall file with the clerk:

26.01: In All Cases.
(a) A concise memorandum of authorities on all anticipated evidentiary questions and on all contested issues of law;

(b) motions relating to the admissibility of evidence; however, no party shall be required to file a written response to a motion in limine which is filed after the pre-trial conference has taken place.

D. Final Pre-Trial Conference and Trial

1. Deposition Numbering

To save time and money during the pre-trial process, the Advisory Group recommends that deposition exhibits be numbered consecutively during the discovery process and, where possible, the same numbers should be maintained as trial exhibit numbers. Additionally, the Advisory Group believes that the parties should change deposition testimony references and deposition exhibits numbers to trial exhibit numbers to save time and confusion at trial. The following Local Rule change is recommended:

> **Proposed Local Rule 24.05: Deposition Exhibits.** The parties are encouraged to mark all deposition exhibits consecutively during discovery without reference to the deposition taken or the party using the exhibit.
>
> **Proposed Local Rule 25.03(c)(III): Form of Pre-Trial Order:** Exhibits. A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Rule 25.02. The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pre-trial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pre-trial order.
>
> When practicable, trial exhibits should carry the same number as in the depositions and references to exhibits in depositions should be changed to refer to the trial exhibit number.

2. Pre-Trial Orders

The Advisory Group recommends that the responsibility for preparing the pre-trial order should be a shared responsibility of all of the attorneys rather than plaintiff's counsel, thereby

ensuring that the pre-trial order is completed in a timely manner, with an equitable sharing of costs between the parties. The following Local Rule change is suggested:

> **Proposed Local Rule 25.04(d):** Counsel for all parties shall be responsible for preparing the final pre-trial order and presenting it to the Court properly signed by all counsel at a time designated by the Court. Upon approval by the Court, the original shall be filed with the Clerk.

3. Use of Trial Exhibits

The Advisory Group recommends that the use of trial exhibits during opening statements should be addressed in the local rules. Specifically, parties should be allowed to use trial exhibits during opening statements as long as the exhibits are not objected to in the pre-trial order or if the objection has been overruled by the Court prior to opening statements.

> **Proposed Local Rule 27.01(c):** Counsel may use trial exhibits during opening statements if no objection to the exhibit has been made in the pre-trial order or if the Court, prior to the opening statements, has overruled the objection.

4. Juror Evidence Notebooks

The Advisory Group feels that the use of evidence notebooks for jurors should be more closely regulated and suggests that the use of juror notebooks, including form and content, be addressed at the pre-trial conference. Further, no exhibit should be included in a juror notebook that has been objected to in the final pre-trial order unless the Court had overruled the objection prior to submission of the notebooks to the jurors.

It is suggested that the local rules remind the parties to be prepared to discuss juror notebooks at the final pre-trial conference.

RULE 25.04 CONDUCT OF THE FINAL PRE-TRIAL CONFERENCE

> **Proposed Local Rule 25.04(b): Conduct of the Final Pre-Trial Conference:** Counsel shall be fully prepared to present to the Court all information and documentation necessary for completion of the pre-trial order and to discuss the matters listed in Rule 16, F.R.Civ.P. and, among other things:
>
> (1) Stipulations;
> (2) Contentions;
> (3) Length of trial;
> (4) Bifurcation;
> (5) Opening statements;
> (6) Juror notebooks;
> (7) Settlement.
>
> Failure to do so shall result in sanctions provided by this rule.

5. Working Pre-Trial Conference

In complex cases, a "working" pre-trial conference, in addition to the final pre-trial conference, would be helpful. Many of the issues that arise during the preparation of the pre-trial order could be addressed by the Court, and the Court could provide guidance, minimizing the time and cost aspects of the pre-trial order. In addition, such a conference would be an excellent opportunity for the Court to address stipulations and contentions with the parties and attempt to determine if a more realistic approach could be taken to save trial time.

> **Proposed Local Rule 25.01: Scheduling and Notice.** A final pre-trial conference shall be scheduled in every civil action after the time

for discovery has expired. The Clerk shall give at least 25 days notice of such conference.

In the Court's discretion and upon request of any party or on the Court's own initiative, a preliminary or "working" pre-trial conference may be scheduled.

6. Designation of Deposition Testimony

The Advisory Group recommends that the local rules specify that a deposition need not be designated in the pre-trial order if it is to be used solely for cross-examination purposes.

> **Proposed Local Rule 25.03(d)(IV) Designation of Pleadings and Discovery Materials.** The designation of all portions of pleadings and discovery materials, including depositions, interrogatories and requests for admission that each party may offer at trial by reference to document volume, page number, and line. Objection by opposing counsel shall be noted by document volume, page number and line, and reasons for such objections shall be stated. It is not necessary to designate a deposition, or any portion of a deposition, that is to be used solely for cross-examination.

E. Alternative Dispute Resolution

After considerable discussion and deliberation on the multiple methods of alternative dispute resolution, the Advisory Group believes that the Eastern District of North Carolina should formally adopt local rules for summary jury trials, mediated settlement conferences and court-hosted settlement conferences.

It is recommended that the U.S. District Court for the Eastern District of North Carolina adopt the following Local Rules:

> **RULE 30.00 COURT-HOSTED SETTLEMENT CONFERENCES**
>
> The Court, upon its own initiative or at the request of any party, may order a settlement conference at a time and place to be fixed by the

Court. Upon request by all parties to an action, the Court shall order a settlement conference. A District Judge other than the Judge assigned to the case, or a Magistrate Judge, will normally preside at such a settlement conference. At least one attorney for each of the parties who is fully familiar with the case shall attend the settlement conference for each party. Each individual party or a representative of a corporate or governmental agency party with full settlement authority also shall attend the settlement conference. Other interested parties, such as insurers, shall attend through fully authorized representatives and are subject to the provisions of this Rule. The settlement conference Judge or Magistrate Judge may, however, upon prior written application, allow a party or representative having full settlement authority to be telephonically available. The parties, representatives and attorneys are required to be completely candid with the settlement conference Judge or Magistrate Judge so that he or she may properly guide settlement discussions. The Judge or Magistrate Judge presiding over the settlement conference may make such other and additional requirements of the parties and conduct the proceedings as shall seem proper to the Judge or Magistrate Judge in order to expedite an amicable resolution of the case. The settlement Judge or Magistrate Judge will not discuss the substance of the conference with anyone, including the Judge to whom the case is assigned, and has the right to excuse the parties or the attorneys from the conference any time. During the settlement conference, the settlement Judge or Magistrate Judge also has the right to confer ex parte with any parties, representatives or attorneys, to meet jointly or individually with the parties and/or representatives without the presence of counsel, and to elect to have the parties and/or representatives meet alone without the presence of the settlement Judge or Magistrate Judge or counsel with the specific understanding that any conversation relative to settlement will not constitute an admission and will not be used in any form in the litigation or in the event of trial.

RULE 31.00 SUMMARY TRIALS

31.01 Eligible Cases. The assigned Judge may, after consultation with counsel, refer for

summary jury trial any civil case in which jury trial has been properly demanded. Either or both parties may move the Court to order summary jury trial; however, the Court will not require a party to participate against its will.

31.02 Selection of Cases. Cases selected for summary jury trial should be those in which counsel feel that a non-binding verdict by the jury could be helpful in a subsequent settlement negotiation. Since an investment of time by counsel and by the Court is necessary for the procedure, it should be used only in those cases that would take more than seven (7) trial days to try.

31.03 Procedural Considerations. Summary jury trial is a flexible ADR process. The procedures to be followed should be determined by the assigned Judge in advance of the scheduled summary jury trial date, in light of the circumstances of the case and after consultation with counsel. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial.

a. Presiding Judge. Either a District Judge or a Magistrate Judge may preside over a summary jury trial. During the process, the summary jury trial judge will ordinarily participate in on-going settlement negotiations and may have ex-parte conferences with each side. For this reason, normally a judge other than the trial judge will be selected to preside over the summary jury trial.

b. Submission of Written Materials. Counsel must submit proposed jury voir dire questions, jury instructions and briefs on any novel issues of law within three (3) working days before the date set for summary jury trial. In addition, counsel may also choose to submit other items, such as a statement of the case, stipulations, and exhibit lists.

c. Attendance. Summary jury trials are effective in promoting settlement because, among other reasons, they

give parties their "day in court" (meeting a need to voice their position in a public forum), and because they allow parties to see the merits of their opponent's position. It is therefore critical that the parties and all other persons or entities involved in the settlement decision attend the summary jury trial. This includes all individual parties and representatives of corporations and other parties and insurers vested with full settlement authority. Since absence of any decision maker makes the process less likely to proceed, this attendance requirement can be waived only by order of the Court.

d. Size of jury panel. The jury shall consist of 6 to 12 members.

e. Voir dire. Each counsel may exercise a maximum of 2 peremptory challenges. There will be no alternate jurors. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the Court.

f. Transcript or recording. Upon consent of the parties, counsel may arrange for the proceedings to be recorded by a court reporter at his or her own expense. However, no transcript of the proceedings will be admitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

g. Conference between counsel. Prior to trial, counsel are to confer with regard to the use of physical exhibits, including documents and reports, and reach such agreement as is possible. Prior to the day of the summary jury trial, the court will hear all matters in dispute and make appropriate rulings.

h. Timing. The summary jury trial should take no more than 1 and 1/2 days from jury selection to jury deliberation. In consultation with counsel before the summary jury trial, the Court shall establish a scheme of time allotment for presentations by counsel.

i. Case presentations. The attorney presentations shall be organized in the manner of a typical trial, except that no witness testimony will be allowed, absent the court's permission. First, the plaintiff shall present an opening statement, followed immediately by defendant's opening statement. Next, plaintiff and defendant shall present their cases-in-chief by informing the jury in more detail than the opening statement who the witnesses are and what their testimony would be. Finally, the plaintiff and then defendant will make closing arguments to the jury. Plaintiff may present a final rebuttal if his or her presentation time limit has not expired. The parties are free to divide their allotted time among the three trial segments as they see fit.

j. Manner of presentation. All evidence shall be presented through the attorneys for the parties. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence and sworn statements of potential witnesses; however, no witness' testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon a written, sworn statement of the witness, or upon sworn affidavits of counsel that the witness would be called at trial and will not sign an affidavit, and that counsel has been told the substance of

the witness' proposed testimony by the witness. Demonstrative evidence, such as videotapes, charts, diagrams, and models may be used unless the Court finds, on objection, that this evidence is neither admissible nor accurately reflects evidence which is admissible.

k. Objections. Formal objections are discouraged. Nevertheless, in the event counsel makes a representation not supported by admissible evidence, an objection will be entertained. If such an objection is sustained, the jury will be instructed appropriately.

l. Jury instructions. Jury instructions will be given in an abbreviated form, adapted to reflect the nature of the proceeding. The jury will be instructed to return a unanimous verdict, if possible. Barring unanimity, the jury may be instructed to submit a statement of each juror's findings.

m. Jury deliberations. Jury deliberations should be limited in time.

n. Settlement negotiations. While the summary jury is deliberating, the presiding Judge should direct the parties to meet and explore settlement possibilities. The Judge may participate in this process.

o. Continuances. The proceedings may not be continued or delayed other than for short recesses at the discretion of the Court.

p. Final Determination. Although ordinarily non-binding in nature, counsel may stipulate among themselves that a consensus verdict by the summary jury will be a final determination on the merits of the case and judgment may be entered thereon by the Court. In addition,

counsel may stipulate to any other use of the verdict that will aid in resolution of the case. For example, the parties should consider a bracketed settlement with specific minimum and maximum settlement amounts and being bound by the summary jury's verdict within the brackets.

q. Trial. If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.

r. Limitation on admission of evidence. The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or
(2) The parties have otherwise stipulated.

s. Purpose. These rules shall be construed to secure the just, speedy, effective, and inexpensive conclusion of the summary trial procedure. Bearing in mind that the summary jury trial should be flexible to meet the needs of any case in which it is used, the Judge presiding over the procedure may modify or disregard any of these rules and fashion instead an alternative deemed more likely to produce settlement.

31.04 Non-Jury Summary Trials. The Assigned Judge may, after consultation with counsel, refer any civil case for summary non-jury trial. Either or both parties may move the court to order summary non-jury trial; however, the Court will not require a party to participate against its will. The procedure for a summary non-jury trial shall be directed by the Court on a case-by-case basis.

RULE 32.00 MEDIATED SETTLEMENT CONFERENCES

32.01 Definition. Mediation is a supervised settlement conference presided on by a qualified, certified and neutral mediator to facilitate and promote conciliation, compromise and the ultimate resolution of a civil action.

32.02 Referral. The Court may, upon its own initiative or at the request of any party, order any action, or portion thereof, to be referred for a mediated settlement conference. Upon request by all parties to an action, the Court will refer the action for a mediated settlement conference.

32.03 Motion to Dispense with Mediation. A party may move, within 10 days after the Court's order referring an action, or portion thereof, to mediation, to dispense with or defer the conference. The Court shall grant the motion only for good cause shown.

32.04 Referral Order. The Court's order referring a civil action for a mediated settlement conference shall:

(1) require the mediated settlement conference be held in the case,

(2) establish a deadline for the completion of the conference,

(3) appoint a mediator, and

(4) state the rate of compensation of the appointed mediator.

Provided, however, in lieu of appointing a mediator in the referral order, the Court may direct the parties to notify the Court, within fourteen days of the entry of the Order referring the action for a mediated settlement conference, of the nomination of a mediator agreeable to all parties, together with the rate of the mediator's compensation. Upon notification of a mutually agreeable mediator, the Court will appoint the mediator nominated by the parties at the agreed date, unless the Court finds the mediator nominated is not qualified by training or experience to mediate all or some of the issues

in the action. In the event of the failure of the parties to nominate a mediator within fourteen days, the Court shall appoint the mediator and state the rate of compensation of the appointed mediator.

32.05 Mediators. The Court may appoint as mediator any person certified as provided in Local Rule 32.06.

32.06 Certified Mediators.

(a) **Certification of Mediators.** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any certified mediator at any time.

(b) **List of Certified Mediators.** Lists of certified mediators shall be maintained in each division of the Court and shall be made available to counsel and the public upon request.

(c) **Qualifications of Certified Mediators.** An individual may be certified to serve as a mediator if:

(1) He or she is a former state judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he presided; or

(2) He or she is a retired federal judicial officer; or;

(3) He or she has been certified as a mediator by the Administrative Office of the Courts pursuant to the Rules Implementing Court Ordered Mediated Settlement Conferences adopted by the

Supreme Court of North Carolina pursuant to N.C.G.S. § 7A-38(d); or

(4) He or she has been a member of the North Carolina Bar for at least 10 years and is currently admitted to the Bar of this Court.

(d) **Oath Required.** Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 upon qualifying as a mediator.

(e) **Disqualification of a Mediator.** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate governed by 28 U.S.C. Section 455.

(f) **Compensation of Mediators.** Mediators shall be compensated at the rate provided by standing order of the Court, as amended from time to time by the chief judge. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediated settlement conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement.** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases.** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from

appearing and acting as counsel in any other case pending before the Court.

RULE 32.07 The Mediated Conference.

(a) **Where Conference Is to Be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in a United States District Courthouse. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) **When Conference Is to Be Held.** Unless otherwise ordered by the Court, the mediated settlement conference shall begin no later than 60 days after the court's referral order. It shall be completed within 30 days after it has begun.

(c) **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(d) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** The mediated settlement conference shall not be cause for the delay of other proceedings in this case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

(e) **Memoranda.** Each party may, at any time after appointment of the mediator, provide the mediator with a memoranda presenting his contentions and positions. The memoranda need not be served on other parties.

(f) **Preparation.** All parties shall be prepared to discuss, in detail and in good faith, the following:

(1) all liability issues;
(2) all damage issues; and
(3) his or her position relative to settlement.

(g) **Settlement Documentation.** In the event settlement is reached at the mediated settlement conference, the essential terms and conditions of the settlement should be noted and signed or initialled by all parties and/or counsel before departing the conference. More formal documentation may be prepared later on an agreed timetable if appropriate.

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

Rule 32.08 Attendance at Mediated Settlement Conference.

(a) The following persons shall physically attend a mediated settlement conference:

(1) All individual parties; or an officer, director or employee having authority to settle on behalf of a corporate party; or, in the case of a governmental agency, a representative of that agency with full

authority to settle on behalf of the agency;

(2) The party's counsel of record, if any; and

(3) For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.

(b) In the event any party desires to be represented at the settlement conference other than as provided in Local Rule 32.08(a), the party shall promptly apply to the Mediator for leave to appear otherwise. Said application shall be delivered (not filed) to the mediator not later than eleven (11) days prior to the conference and shall contain:

(1) The reasons which make it impracticable for a party or a party's representative to appear as required by Local Rule 32.08(a);

(2) a detailed description of the authority to be exercised at the conference; and

(3) alternative proposals by which full authority may be exercised at the conference.

Such application shall be made only after all other alternatives have been, in good faith, considered and rejected. The application need not be transmitted to the opposing parties. Upon consideration of the application, the mediator, in his discretion, may excuse a party or representative from attending the settlement conference, may allow a party or representative to be available by telephone during the

conference, to appear with limited authority or may, notwithstanding the application, require appropriate persons to appear as may be necessary to have full settlement authority at the conference.

Rule 32.09 Authority and Duties of Mediator.

(a) **Authority of Mediator.** The mediator shall, at all times be in control of the mediated settlement conference and the procedures to be followed subject to the orders of the Court and this Rule.

(b) **Duty of Impartiality.** The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on his or her possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28, U.S.C. Section 144 and shall disqualify themselves in any action in which they would be required under Title 28 U.S.C. Section 455 to disqualify themselves if they were a judge or magistrate. Any party may move the Court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the Court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) **Duties at Conference.** The mediator shall define and describe the following to the parties at the beginning of mediated settlement conference:

(1) The process of mediation.

(2) The differences between mediation settlement conference 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 with any other person.

(6) Whether and under what conditions communications with the mediator will be held in confidence during the conference.

(7) The inadmissibility of conduct and statements as provided by Rule 408 of the Rules of Evidence.

(8) The duties and responsibilities of the mediator and the parties.

(9) The fact that any agreement reached will be reached by mutual consent of the parties.

(d) **Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference.

(e) **Declaring Impasse.** It is the duty of the mediator to timely determine when

mediation is not viable, that an impasse exists, or that mediation should end.

(f) **Reporting Results of Conference.** The mediator shall report to the Court in writing within 5 days of the conclusion of the mediated settlement conference. The report shall include the parties attending the conference, and whether or not an agreement was reached by the parties. If an agreement is reached, the report shall state whether the action will conclude by consent judgment or voluntary dismissal and shall identify the person designated to file such a consent judgment or dismissal. If an agreement is not reached, the report shall state whether or not there has been compliance with the mediation requirements of this Rule and if not, in what respects compliance was not met.

Rule 32.10 Sanctions. In the event a party fails to attend or to participate in good faith in a mediated settlement conference ordered by the Court without good cause, the Court may impose upon the party any lawful sanction, including but not limited to assessments of attorney fees, mediator fees and expenses, expenses incurred by parties attending the conference, contempt, or any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

Rule 32.11 Judicial Immunity. A mediator appointed by the Court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

F. Role of the Court, Litigants and Bar

1. Contributions by the Court

Over the years, the judges in the Eastern District of North Carolina have demonstrated an interest in active case management, and the procedures established by the court have worked very well

to keep cost and delay problems to a minimum. In addition, the recommendations suggested by the Advisory Group provide even further judicial involvement in the areas of case management, settlement, alternative dispute resolution, and trial preparation. Consequently, the Advisory Group firmly believes that the proposed changes include a significant contribution by the court.

2. Contributions by Counsel

The Advisory Group also believes that the attorneys in the district are actively involved in case management, and the proposed recommendations will strengthen this involvement. Specifically, the availability of alternative dispute resolution mechanisms will require attorneys to become knowledgeable about their cases at an earlier point in the litigation process. In addition, attorneys will be required to learn about alternative dispute resolution and be prepared to use it. Finally, the modified pre-trial procedures, including "working" pre-trial conferences, will also require more interactive involvement with the court, which will reduce cost and delay in the district.

3. Contributions by Litigants

Since parties to the litigation will have the ultimate decision on whether to participate in the various alternative dispute resolution procedures, the litigants will become more seriously involved in the litigation process. In addition, ADR techniques, such as summary jury trials, will require the presence of parties or their representatives in court well before

APPENDIX 2

SECTION IV.G. OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP REPORT ON EXPENSE AND DELAY REDUCTION

the scheduled trial date. Consequently, the litigants will have greater control over the handling of their cases.

G. Compliance with the Requirements of §473 of the Civil Justice Reform Act

Section 473 of the Civil Justice Reform Act states that each district court, in consultation with the local advisory group "shall consider and may include" six "principles and guidelines of litigation management and cost and delay reduction." The principles of litigation management include the following: (1) systematic, differential treatment of civil cases tailored to the individual case, 28 U.S.C. §473(a)(1); (2) early and ongoing control of the pre-trial process through involvement of a judicial officer, 28 U.S.C. §473(a)(2); (3) monitoring complex cases through discovery-case management conferences, 28 U.S.C. §473(a)(3); (4) encouragement of cost-effective discovery through cooperative discovery devices, 28 U.S.C. §473(a)(4); (5) requiring the parties' certification of their effort to reach agreement before filing discovery motions, 28 U.S.C. §473(a)(5); (6) authorizing referral of cases to alternative dispute resolution, 28 U.S.C. §473(a)(6).

The litigation management techniques include: (1) a requirement that counsel jointly prepare a discovery-case management plan, 28 U.S.C. §473(b)(1); (2) a requirement that each party be represented at the pre-trial conference by an attorney with authority to bind the party in matters to be discussed at the conference, 28 U.S.C. §473(b)(2); (3) a

requirement that all requests for extensions of the discovery period or for postponement of the trial be signed by the attorney and the client, 28 U.S.C. §473(b)(3); (4) a neutral evaluation program, 28 U.S.C. §473(b)(4); (5) a requirement that representatives of the parties with full settlement authority be available by telephone during settlement discussions, 28 U.S.C. §473(b)(5).

Section 472(b)(4) requires the local Advisory Group to explain "the manner in which the recommended plan complies with section 473" of the Act. In addition, section 472(b)(2) has been interpreted by the Judicial Conference to require the local Advisory Group to explain in its report how the group's proposals incorporate these principles and techniques, and why any techniques or principles have not been adopted or implemented.

1. Statutory Principles and Guidelines for Litigation Management

a. Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) requires the court to consider systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to factors such as case complexity, trial preparation, and resources required for the disposition of the case. In its discussions and deliberations, the Advisory Group considered the adoption of a differentiated case tracking system. However, such a measure was rejected by the group as unnecessary in this district. As discussed previously, the court already engages in individualized

case management of civil matters which allows cases to move quickly through the system without rigid "tracking" mechanisms. In addition, the court has developed specific procedures for dealing with matters such as pro se prisoner litigation, as well as bankruptcy and social security appeals. These procedures, although not specified as "individualized case management" by the court, appear to fall within this statutory provision.

b. Early and Ongoing Control of the Pre-Trial Process by a Judicial Officer

Section 473(a)(2) recommends early and ongoing control of the pre-trial process through involvement of a judicial officer through measures such as: (1) assessing and planning the progress of the case; (2) setting firm trial dates within eighteen months after the filing of the complaint; (3) controlling the discovery process; and (4) setting deadlines for filing and ruling on motions.

The Advisory Group believes that the procedures in existence in this district include these suggested procedures. Specifically, after a responsive pleading is filed, the parties are required to stipulate to discovery matters or appear before a magistrate judge to address scheduling disputes. This "Request for Discovery Stipulation" forms the basis of the court's scheduling order which sets the amount of discovery to be undertaken, the deadlines for the end of discovery and filing of dispositive motions, as well as setting the case for trial well within the eighteen month period, usually no later than ninety days after the close of discovery. These procedures indicate the

court's control over the discovery process and demonstrate the court's compliance with this requirement.

c. Discovery-Case Management Conference

Section 472(a)(3) suggests that the court monitor cases through a discovery-case management conference at which the presiding judicial officer explores settlement options, discusses issues in contention and the possibility of bifurcation, as well as preparing a discovery schedule which identifies and limits the volume of discovery and discusses the possibility of phased discovery.

The Advisory Group believes that it has adequately addressed these issues in the following ways. The Request for Discovery Stipulation and resulting Rule 16(b) Scheduling Order which are already in effect in the district require the parties to discuss and prepare a discovery schedule which limits number and types of discovery available. This discovery schedule will be set, with or without court intervention. In addition, several judges in the district have shown an interest in the area of trial bifurcation; consequently, it is already in use in the district. In addition, the proposed local rules dealing with court-hosted settlement conferences, as well as the recommendation for a "working" pre-trial conference offer many possibilities for settlement discussions, as well as a narrowing of the issues in contention.

d. Encouragement of Cost-Effective Discovery

Section 472(a)(4) requires the local Advisory Groups to consider "encouragement of cost-effective discovery through voluntary exchange of information among litigants." As stated previously in this report, the Advisory Group encourages voluntary exchange of information. [5]

e. Certification of Effort to Resolve Discovery Disputes

Section 472(a)(5) recommends "conservation of judicial resources by prohibiting consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion." As set forth in Section IV.B.2, the Advisory Group is proposing such a change in its recommendations section.

f. Alternative Dispute Resolution

Section 472(a)(6) proposes that Advisory Groups consider "authorization to refer appropriate cases to alternative dispute resolution . . . including mediation, minitrial, and summary jury trial." As set forth in Sections IV.E., not only did the Advisory Group consider these options, but it has recommended adoption of both mediation and summary trials in this district,

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[5]The Advisory Group reviewed the proposed changes to Rule 26 of the Federal Rules of Civil Procedure, and it awaits the Congressional determination on those rules. However, the Advisory Group was reluctant to advocate changes which are incongruent with the existing rules of civil procedure. Additionally, there is a strong sentiment by some members of the Advisory Group in opposition to the adoption of Proposed Rule 26 of the Federal Rules of Civil Procedure.

and has proposed local rule modifications to effect these changes.

2. Litigation Management and Cost/Delay Reduction Techniques

Section 473(b) requires the Court to consider five litigation management and cost and delay reduction techniques as a way of integrating the six principles and guidelines for litigation management. The following is a brief comment on how the proposed plan assimilates these techniques into practice.

a. Joint Preparation of Discovery-Case Management Plan

Section 473(b)(1) suggests a "requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pre-trial conference, or explain the reasons for their failure to do so." As explained in Section II.C.1.b., this district already has in place a requirement that parties confer and present a joint discovery plan. Failure to present such a joint plan results in judicial intervention of either a default schedule being set or a conference before a judicial officer on the points that have not been agreed upon by counsel.

b. Counsel with Binding Authority at Pre-Trial Conference

Section 473(b)(2) suggests a "requirement that each party be represented at each pre-trial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters." The Advisory Group believes that

such a rule is unnecessary in this district. The local rules in the district contemplate that attorneys attending the pre-trial conference will be knowledgeable about the matters at issue in the case, especially because the pre-trial conference is usually only two to three weeks prior to the scheduled trial date. Because the Advisory Group does not perceive that such a rule is necessary to ensure an efficient, effective pre-trial conference, and because it has recommended other measures to streamline the pre-trial conference procedures, the Advisory Group declines to recommend this measure for the Eastern District of North Carolina.

c. Signature of Party and Counsel on Extension Requests

Section 473(b)(3) recommends a "requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request." The Advisory Group believes that such a requirement would only increase cost and delay, in that more time and money will be expended in an attempt to coordinate obtaining a party's signature for filing with the court. In addition, there is no evidence to suggest that attorneys in this district file unnecessary or dilatory motions for extensions of time. Due to its impracticability and the fact that there is nothing to demonstrate that such a measure will reduce costs or delay, the Advisory Group declines to recommend this suggestion.

d. Neutral Evaluation Program

Section 473(b)(4) recommends a "neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation." As presented in Section IV.E. and II.C.4, the Advisory Group expended considerable energy discussing the desirability and feasibility of numerous alternative dispute resolution techniques, including early neutral evaluation. The Advisory Group, however, feels that a neutral evaluation program would not be beneficial at this time. This finding is due to the large number of new measures recommended by the Advisory Group, one of which is the court-hosted settlement conference, which will contain many of the same techniques as early neutral evaluation. In addition, there is no evidence to suggest this group that early neutral evaluation will significantly reduce cost or delay. Consequently, the Advisory Group believes that this measure is not necessary at present.

e. Availability of Party Representative with Settlement Authority

Section 473(b)(5) suggests a "requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference." Since the judges in this district already possess the inherent authority to order counsel, parties, or their representatives to appear before the

court, the Advisory Group believes that such a recommendation is unnecessary in the district.

H. Recommendation Regarding Adoption of a Plan

Pursuant to Section 471 of the Act, each district may adopt a plan developed by the district court or a model plan developed by the Judicial Conference of the United States. The Local Advisory Group for the Eastern District of North Carolina recommends that the court adopt its own plan for reducing cost and delay in civil litigation. The proposed Expense and Delay Reduction Plan is set forth in Appendix 3.

V. Conclusion

The Advisory Group wholeheartedly believes that the Eastern District of North Carolina is an effective and efficient court in which to litigate disputes. An indepth examination of the court's docket, including an analysis of survey results, discussions with other practitioners, and reflection upon personal experiences only serve to reinforce the Advisory Group's initial perception -- that the district need only implement relatively minor changes to "fine-tune" an already productive operation.

The Advisory Group recognizes that the congressional mandate set forth in the CJRA requires ongoing scrutiny and evaluation of the efficiency of the court, in conjunction with periodic assessments of any procedures implemented by the court. Consequently, the Advisory Group looks forward to a sustained

relationship with the court that will assist in maintaining and increasing a high level of productivity within the district.

The Advisory Group wishes to recognize the hard-working members of the clerk's office who oversee the day-to-day management of cases and ensure that they continue to move through the system toward a prompt and fair disposition.

Finally, the Advisory Group gives sincere thanks to the judges of the district who work very diligently to control the growing civil and criminal docket and who conduct prompt and timely trials, for the benefit of all of those involved in the case.