

LOCAL CIVIL RULES

July 2011 Edition

Rule 1.1 Scope and Citation of Local Civil Rules

These local rules of civil practice shall govern the conduct of the United States District Court for the Eastern District of North Carolina except when the conduct of this court is governed by federal statutes and rules. A judge or magistrate judge, for good cause and in his or her discretion, may alter these rules in any particular case. These rules shall be cited as “Local Civil Rule ____.” The Local Civil Rules posted on the district’s website, www.nced.uscourts.gov, shall be the court’s official record of such rules.

Rule 2.1 Reserved for Future Purposes

Rule 3.1 Subsequent Litigation by Parties Proceeding *In Forma Pauperis*

A plaintiff who has proceeded unsuccessfully *in forma pauperis* and had the costs of that litigation taxed against him or her must demonstrate that he or she has paid or made a reasonable effort to pay those costs prior to being authorized to proceed again *in forma pauperis*.

Rule 4.1 Reserved for Future Purposes

Rule 5.1 Filing and Service of Papers

(a) Electronic Filing

- (1) **Parties’ Pleadings and Other Documents.** Unless otherwise permitted by the Electronic Case Filing Administrative Policies and Procedures Manual (Policy Manual), or otherwise authorized by the assigned judge, all documents submitted for filing shall be filed electronically using the Case Management/Electronic Case Filing system (CM/ECF) and in accordance with the Policy Manual. A document shall not be considered filed for the purposes of the Federal Rules of Civil, Criminal or Appellate Procedure until the filing party receives a system generated Notice of Electronic Filing (NEF). Any document electronically filed or converted by the clerk’s office to electronic format shall be the official record of the court. As such, the clerk’s office will not maintain a paper record of these documents. The clerk’s office will not accept any e-mail or facsimile transmission for filing unless ordered by the court.
- (2) **Court-Generated Documents.** All orders, decrees, judgments, and proceedings of the court will be filed in accordance with the Policy Manual, which shall constitute entry of that document on the docket

kept by the clerk under Rules 58 and 79 of the Federal Rules of Civil Procedure. All signed orders will be filed electronically by the court or court personnel. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order or other court-issued document and as if it had been entered on the docket in a conventional manner. Orders may be 'text only' entries on the docket, without an attached document. Such orders are official and binding.

- (b) **Registered User.** Only an attorney who is registered in CM/ECF may file documents electronically. Registration constitutes written consent to service of all documents by electronic means as provided by the federal rules and the Policy Manual.
- (c) **Signature.** The electronic filing of a document by an attorney who is a registered user shall constitute the signature of that attorney under Rule 11 of the Federal Rules of Civil Procedure. No attorney shall knowingly permit or cause to permit the attorney's CM/ECF password to be used by anyone other than an authorized employee of the attorney's law firm. No person shall knowingly use or cause another person to use the password of a registered attorney unless such person is an authorized employee of the attorney's law firm.
- (d) **Entry on Docket.** The electronic filing of a document in accordance with the Policy Manual shall constitute entry of that document on the docket kept by the clerk under Rule 79 of the Federal Rules of Civil Procedure. Except in the case of documents first filed in paper, a document filed electronically is deemed filed at the date and time stated on the NEF that is automatically generated by CM/ECF.
- (e) **Service of Document.** Transmission of the NEF that is automatically generated by CM/ECF, except as provided in (f) below, constitutes service of the filed document on registered party users. Parties who are not registered users must be served with a copy of any document filed electronically in accordance with the Federal Rules of Civil Procedure. When more than one attorney in a law firm appears in a case, and not all of the attorneys are registered filing users, service of any court-generated document (i.e., orders, notices, etc.) will only be made on the attorneys registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify all other firm members appearing in the case who are not receiving electronic notification. Non-registered attorneys will not receive paper copies from the court.
- (f) **Exceptions to Electronic Filing.** Documents filed by a party who is not represented by an attorney permitted to practice in the Eastern District of

North Carolina and registered in CM/ECF, and those documents listed in Section H of the Policy Manual, shall be filed in paper, and are excluded from electronic filing. Any document filed in paper that is not exempt pursuant to this section must be accompanied by a motion for leave to file the document and a proposed order. When filed in paper form, the document must contain the original signature of the attorney or each unrepresented party, and must be served upon opposing parties as provided in Fed. R. Civ. P. 5(b).

Rule 5.2 Appearance of Counsel in Civil Cases

- (a) **Notice of Appearance.** Counsel shall file a Notice of Appearance with the clerk and serve opposing counsel. The Notice of Appearance should contain the attorney's name, the name of the attorney's law firm, street address, phone number, e-mail address, and state bar number, in compliance with the requirements of the signature block illustrated in Local Civil Rule 10.1. The attorney shall also contemporaneously file a client disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3.

Rule 6.1 Motions for an Extension of Time to Perform Act

All motions for an extension of time to perform an act required or allowed to be done within a specified time must show good cause, prior consultation with opposing counsel and the views of opposing counsel. The motion must be accompanied by a separate proposed order granting the motion.

Rule 7.1 Motion Practice

- (a) **Time for Filing.** All motions in civil cases except those relating to the admissibility of evidence at trial must be filed on or before thirty (30) days following the conclusion of the period of discovery. If an extension of the original period of discovery is approved by the court, the time for filing motions is automatically extended to thirty (30) days after the new date unless otherwise ordered by the court.
- (b) **General Requirements.** All motions shall be concise and shall state precisely the relief requested. Motions shall conform to the general motions requirements, standards and practices set forth in the applicable Federal Rules of Civil Procedure and in Local Civil Rule 10.1.
- (c) **Motions Relating to Discovery and Inspection.** No motions to compel discovery or other motions relating to discovery or inspection will be considered by the court unless the motion sets forth or has attached thereto, by item, the specific question, interrogatory, etc., with respect to which the motion is filed, and any objection made along with the grounds supporting or in opposition to the objection. Counsel must also certify that there has

been a good faith effort to resolve discovery disputes prior to the filing of any discovery motions.

- (d) **Supporting Memoranda.** Except for motions which the clerk may grant as specified in Local Civil Rule 7.2, all motions made, other than in a hearing or trial, shall be filed with an accompanying supporting memorandum in the manner prescribed by Local Civil Rule 7.2(a). Where appropriate, motions shall be accompanied by affidavits or other supporting documents.
- (e) **Responses to Motions.** Any party may file a written response to any motion. A response shall be in the form of a memorandum in the manner prescribed by Local Civil Rule 7.2(a), and may be accompanied by, without limitation, affidavits and other supporting documents.
 - (1) **Non-discovery Motions.** Responses and accompanying documents shall be filed within twenty-one (21) days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable Federal Rules of Civil Procedure.
 - (2) **Discovery Motions.** Responses and accompanying documents relating to discovery motions shall be filed within fourteen (14) days after service of the motion in question unless otherwise ordered by the court.
- (f) **Replies.**
 - (1) **Non-discovery Motions.** Replies to responses are discouraged. However, except as provided in Local Civil Rule 7.1(f)(2), a party desiring to reply to matters initially raised in a response to a motion shall file the reply within fourteen (14) days after service of the response, unless otherwise ordered by the court.
 - (2) **Discovery Motions.** Replies are not permitted in discovery disputes. See Local Civil Rule 26.1(d).
- (g) **Subsequently Decided Controlling Authority.** A suggestion of subsequently decided controlling authority, without argument, may be filed and served at any time prior to the court's ruling and shall contain only the citation to the case relied upon if published or a copy of the opinion if the case is unpublished.
- (h) **Affidavits.** Ordinarily, affidavits will be made by the parties and other witnesses and not by counsel for the parties. However, affidavits may be made by counsel for a party if the sworn facts are known to counsel or counsel can swear to them upon information and belief, and

- (1) the facts relate solely to an uncontested matter; or
 - (2) the facts relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the facts; or
 - (3) the facts relate solely to the nature and value of the legal services rendered for the party by such counsel or counsel's law firm; or
 - (4) the refusal to accept the affidavit would work a substantial hardship on the party and the court finds that its acceptance of the affidavit would not be such as to require that counsel or counsel's law firm be disqualified from continuing to appear for the party.
- (i) **Hearings on Motions.** Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions shall be determined without a hearing.

Rule 7.2 Memoranda

- (a) **Form and Content.** A memorandum in support of or in opposition to a motion shall comply with Local Civil Rule 10.1 and shall contain:
- (1) a concise summary of the nature of the case;
 - (2) a concise statement of the facts that pertain to the matter before the court for ruling;
 - (3) the argument (brevity is expected) relating to the matter before the court for ruling with appropriate citations in accordance with Local Civil Rules 7.2(b), (c) and (d); and
 - (4) copies of any decisions in cases cited as required by Local Civil Rules 7.2(c) and (d).
- (b) **Citation of Published Decisions.** Published decisions cited should include parallel citations (except for U.S. Supreme Court cases), the year of the decision, and the court deciding the case. The following are illustrations:
- (1) State Court Citation: *Rawls v. Smith*, 238 N.C. 162, 77 S.E.2d 701 (1953);
 - (2) District Court Citation: *Smith v. Jones*, 141 F. Supp. 248 (E.D.N.C. 1956);
 - (3) Court of Appeals Citation: *Smith v. Jones*, 237 F.2d 597 (4th Cir.

1956);

(4) United States Supreme Court Citation: *Smith v. Jones*, 325 U.S. 196 (1956). United States Supreme Court cases should be cited in accordance with current Bluebook form.

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

(d) **Citation of Unpublished Decisions.** Unpublished decisions may be cited only if the unpublished decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed. The unpublished decision of a United States District Court may be considered by this court. The unpublished decision of a United States Circuit Court of Appeals will be given due consideration and weight but will not bind this court. Such unpublished decisions should be cited as follows: *United States v. John Doe*, 5:94-CV-50-F (E.D.N.C. Jan. 7, 1994) (unpublished) and *United States v. Norman*, No. 74-2398 (4th Cir. June 27, 1975) (unpublished).

(e) **Length of Memoranda.** Memoranda in support of or in opposition to a motion (other than a motion regarding discovery) shall not exceed thirty (30) pages in length excluding the certificate of service page, without prior court approval. Memoranda in support of or in opposition to a discovery motion shall not exceed ten (10) pages in length, excluding the certificate of service page, without prior court approval. Reply memoranda (where allowed) shall not exceed ten (10) pages in length, excluding the certificate of service page, without prior court approval.

Rule 7.3 Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation

(a) All parties to a civil or bankruptcy case, whether or not they are covered by the terms of Fed. R. Civ. P. 7.1, shall file a corporate affiliate/financial interest disclosure statement. This rule does not apply to the United States or to state and local governments in cases in which the opposing party is proceeding without counsel.

(b) The statement shall set forth the information required by Fed. R. Civ. 7.1 and the following:

(1) A trade association shall identify in the disclosure statement all

members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock;

(2) All parties shall identify any publicly held corporation, whether or not a party to the present litigation, that has a direct financial interest in the outcome of this litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement;

(3) Whenever required by Fed. R. Civ. P. 7.1 or this rule to disclose information about a corporation that has issued shares to the public, a party shall also disclose information about similarly situated master limited partnerships, real estate investment trusts, or other legal entities whose shares are publicly held or traded.

(c) The disclosure statement shall be on a form provided by the clerk. A negative statement is required if a party has no disclosures to make.

(d) The disclosure statement shall be filed when the party makes an initial appearance in the action. The parties are required to amend their disclosure statements when necessary to maintain their current accuracy.

Rule 7.4 *Ex Parte Motions*

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

Rule 8.1 *Reserved for Future Purposes*

Rule 9.1 *Reserved for Future Purposes*

Rule 10.1 *Forms of Pleadings, Motions, and Documents*

All pleadings, motions, discovery procedures, memoranda, and other papers filed with the clerk of court shall:

(a) be double-spaced on single-sided, standard letter size (8½ x 11) paper, with all typed matter appearing in at least 11 point font size with a one inch margin on all sides;

(b) state the court and division in which the action is pending;

(c) except for the initial filing, bear the case number assigned by the clerk;

(d) contain the caption of the case;

- (e) if applicable, state the title of the pleading, motion, discovery procedure or document and the federal statute or rule number under which the party is proceeding;
- (f) contain the individual name, firm name, address, telephone number, fax number, e-mail address, and State Bar identification, where applicable, of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to Local Civil Rule 83.1(e).
- (g) bear the date when signed by counsel;
- (h) be signed by counsel as required by Local Civil Rule 83.1(d). Where permitted by order pursuant to Local Civil Rule 5.2 and Local Civil Rule 83.1, counsel may submit for filing a facsimile copy of the signature of out of state counsel on pleadings; provided however, a signature page with all original signatures must be submitted to the court within seven (7) days after the original filing;
- (i) include on all documents, the signature of counsel and each shall be followed, on the line immediately below, by the typed or printed name in the exact form as the signature. In preparation of documents for signature by a judge or magistrate judge, a blank space shall be provided below the signature line in which the name may be typed or printed; and
- (j) have each page numbered sequentially. The following forms are examples to be followed:

THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 SOUTHERN DIVISION
 No. __:____-CV-__-__

JANE T. SMITH,)
)
 Plaintiff,)
)
 v.)
)
 AARON R. JONES et al.,)
)
 Defendants.)

OFFER OF JUDGMENT
 Fed. R. Civ. P. 68

This __ day of January 201_.

/s/ John B. Counselor
John B. Counselor
Abbott, Ball and Counselor
Attorneys at Law
200 Main Street
Post Office Box 50
Raleigh, North Carolina 27602
(919) 878-8787
Fax (919) 878-8000
John.B.Counselor@email.address.com
State Bar No. _____
Attorney for Defendant

Rule 10.2 Form of Exhibits to Motions

Exhibits containing double-sided documents are not permitted and will not be considered by the court. Condensed deposition transcripts are discouraged.

Rule 10.3 Reserved for Future Purposes

Rule 11.1 Sanctions

If an attorney or any party fails to comply in good faith with any local rule of this court, the court in its discretion may impose sanctions.

Rule 11.2 Disclosure Statements

- (a) As part of making an appearance in every case, an attorney shall include the attorney's name and the name of the attorney's law firm. The attorney also shall file contemporaneously a client disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3.
- (b) As part of making an appearance in every case, all *pro se* litigants (other than prisoners) shall file contemporaneously a disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3.

Rule 12.1 Reserved for Future Purposes

Rule 13.1 Reserved for Future Purposes

Rule 14.1 Reserved for Future Purposes

Rule 15.1 Reserved for Future Purposes

Rule 16.1 Final Civil Pretrial Conference

- (a) **Scheduling and Notice.** A final pretrial conference shall be scheduled in every civil action after the time for discovery has expired. In most actions, the clerk shall give at least twenty-eight (28) 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" pretrial conference may be scheduled.
- (b) **Preparation by Counsel for Final Pretrial Conference.**
- (1) At least twenty-eight (28) days before the pretrial conference, all parties must provide to all other parties the pretrial disclosures required under Fed. R. Civ. P. 26(a)(3). Twenty-one (21) days before the pretrial conference, a party may designate and serve any objections listed in Fed. R. Civ. P. 26(a)(3). The parties' Rule 26(a)(3) disclosures, and objections thereto, shall be incorporated into the final pretrial order, consistent with Local Civil Rule 16.1(c). The pretrial order must be submitted to the court seven (7) days prior to the pretrial conference.
 - (2) In preparing for the pretrial conference, the parties shall confer and prepare a final pretrial order. It shall be the duty of counsel for the plaintiff to arrange for the parties to confer and prepare a final pretrial order. Where video depositions are to be used, parties should endeavor to reach early agreement on editing; where agreement cannot be reached, required rulings by the court should be sought in sufficient time to allow for final edited versions of depositions to be used at trial.
- (c) **Form of Pretrial Order.** The pretrial order shall be prepared in one sequential document without reference to attached exhibits or schedules and shall contain the following in five (5) separate sections, numbered by roman numerals, as indicated:
- (1) **Stipulations.** Stipulations covering jurisdiction, joinder, capacity of the parties, all relevant and material facts, legal issues and factual issues.
 - (2) **Contentions.** Contentions covering matters on which the parties have been unable to stipulate, including jurisdiction, misjoinder, capacity of the parties, relevant and material facts, legal issues and factual issues. Claims and defenses as to which no contentions are listed in the pretrial order are deemed abandoned.
 - (3) **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 Local Civil Rule 16.1(b). The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pretrial 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 pretrial 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. It is not necessary to designate exhibits that are to be used solely for impeachment or cross-examination.

- (4) **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 shall be noted by reference, where applicable, to document volume, page number and line. Objection by opposing counsel shall be noted by reference, where applicable, to document volume, page number and line, and reasons for such objections shall be stated. It is not necessary to designate a deposition, any portion of a deposition, or any other discovery material, that is to be used solely for impeachment or cross-examination.
- (5) **Witnesses.** A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

(d) Conduct of the Final Pretrial Conference.

- (1) **Purpose.** To resolve any disputes concerning the contents of the pretrial order.
- (2) **Preparation.** Counsel shall be fully prepared to present to the court all information and documentation necessary for completion of the pretrial order. Failure to do so shall result in the sanctions provided by this local rule.
- (3) **Sanctions.** Failure to comply with the provisions of Local Civil Rule 16.1(d)(2) may result in the imposition of a monetary fine not to exceed \$250.00 against the offending counsel and may result in any other sanction allowable by the Federal Rules of Civil Procedure against the parties or their counsel.
- (4) **Pretrial Order.** Counsel for all parties shall be responsible for preparing the final pretrial 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. Failure to provide a unified pretrial order may result in sanctions being imposed against all parties to the action.

- (e) **Sample Pretrial Order.** A pretrial order in the following form shall be sufficient to comply with Local Civil Rule 16.1(c): [The case caption should be in the form provided as an example in Local Civil Rule 10.1.]

JOHN DOE, by his guardian)	No. 5:94-CV-125-F
ad litem, and JANE DOE,)	
Plaintiffs,)	
)	
v.)	PRETRIAL ORDER
)	
XYZ CORPORATION,)	
Defendant.)	

Date of Conference: August 12, 1998

Appearances: Jane Y. Lawyer, Raleigh, North Carolina for plaintiff;
Sam X. Attorney, Fayetteville, North Carolina for defendant.

I. STIPULATIONS.

- A. all parties are properly before the court;
- B. the court has jurisdiction of the parties and of the subject matter;
- C. all parties have been correctly designated;
- D. there is no question as to misjoinder or nonjoinder of parties;
- E. plaintiff, a minor, appears through his or her guardian;

F. Facts:

- 1. Plaintiff is a citizen of Wake County, North Carolina.
- 2. Defendant is a New York corporation, licensed to do business and doing business in the State of North Carolina.

G. Legal Issues:

May a nine-year old minor be guilty of contributory negligence?

H. Factual Issues:

1. Was plaintiff injured and damaged by the negligence of defendant?
2. What amount, if any, is plaintiff entitled to receive of defendant as compensatory damages?

II. CONTENTIONS.

A. Plaintiff

1. Facts:

- (a) That Richard Roe was driving defendant's truck as defendant's agent.
- (b) That Richard Roe was negligent in that he drove at an excessive speed and while under the influence of intoxicating liquor.

2. Factual Issues:

What amount, if any, is plaintiff entitled to recover of defendant as punitive damages?

B. Defendant

1. Facts:

That Richard Roe, a former employee, took defendant's truck without authorization and, at the time of the accident, was not the agent or employee of defendant.

2. Factual Issues:

Did plaintiff, by his or her own negligence, contribute to his or her injury and damage?

III. EXHIBITS.

A. Plaintiff

<u>Number</u>	<u>Title</u>	<u>Objection</u>
1	Patrol Report	Hearsay
2	Photo of Plaintiff	

B. Defendant

<u>Number</u>	<u>Title</u>	<u>Objection</u>
1	Photo of Scene	

IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS.

A. Plaintiff

<u>Document</u>	<u>Portion</u>	<u>Objection</u>	<u>Reason</u>
Plaintiff's first set of interrogatories	Nos. 1, 8 and 9	No. 8	Privilege
Deposition of Richard Roe	Vol. 1, line 6, p. 1 thru line 5, p. 6	Line 6, p. 1 thru line 2, p. 7	Hearsay

B. Defendant

None

V. WITNESSES.

A. Plaintiff

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
John Jones	615 Rains Street Raleigh, NC	Facts surrounding accident, extent of
Frank Flake	Selma, NC	Speed of defendant's vehicle, intoxication of driver

B. Defendant

All witnesses listed by plaintiff.

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
Sam Smith	4 Appian Way Rome, Italy	Facts surrounding the theft by driver of the vehicle

TRIAL TIME ESTIMATE: ___ days

/s/ Jane Y. Lawyer
JANE Y. LAWYER
Attorney for Plaintiff

/s/ Sam. S. Attorney
SAM X. ATTORNEY
Attorney for Defendant

APPROVED BY:

BILL SMITH
U.S. MAGISTRATE JUDGE
_____, 201____.

Rule 17.1 Minors or Incompetent Parties

- (a) **Representation.** Representation of minor or incompetent parties in a civil action shall be in accordance with Fed. R. Civ. P. 17(c). Appointments of guardians *ad litem* by any state court shall satisfy the requirements of the Federal Rules of Civil Procedure unless the court finds that the interests of the parties so represented are not being adequately protected.
- (b) **Settlement or Dismissal of Actions.** No civil action to which a minor or incompetent person is a party shall be compromised, settled, discontinued, or dismissed without an Order of Approval entered by the court. It shall be the responsibility of counsel for the minor or incompetent parties to prepare a proposed Order of Approval for submission to the court. The Order of Approval shall bear the written consent of (1) counsel for all the parties to the action, (2) the legal representative of the minor or incompetent parties, and (3) in the case of minors, at least one of the natural parents or persons standing *in loco parentis*. Unless otherwise ordered by the court, the Order of Approval shall contain statements as to the following:
- (1) that all parties are properly represented and are properly before the court; that no questions exist as to misjoinder or nonjoinder of parties; and that the court has jurisdiction over the subject matter and the parties;
 - (2) if the minor or incompetent parties are plaintiffs, a summary of

contentions sufficient to show that the complaint states a claim upon which relief can be granted; if the minor or incompetent parties are defendants, a statement of contentions sufficient to show that no affirmative defenses could clearly be raised in bar of recovery;

- (3) a summary of services rendered by counsel for the minor or incompetent parties, along with an opinion as to the fairness and reasonableness of the settlement, if any; and
- (4) in cases involving claims for personal injuries asserted by minor or incompetent parties, an estimate of actual and foreseeable medical, hospital and related expenses, and a statement by an examining physician setting forth the nature and extent of the plaintiff's injuries, extent of recovery, and prognosis.

(c) **Approval of Counsel Fees and Payment of Judgments.** In its Order of Approval, the court shall approve or fix the amount of the fee to be paid to counsel for the minor or incompetent parties and make appropriate provision for the payment thereof. The Order of Approval shall also provide the manner in which judgments, if any, are to be paid and may make specific provisions for the payment of medical, hospital and similar expenses when allowed by applicable law.

(d) In compliance with the E-Government Act of 2002, and to promote electronic access to case files while also protecting personal privacy and other legitimate interests, all parties to any litigation in which a minor is a party, with the exception of the paper administrative records in Social Security cases filed with the court, shall redact the minor child's name from all documents filed with the court. If the name of the minor must be included in a document, including the caption, only the initials of the child should be used.

Rule 18.1 Reserved for Future Purposes

Rule 19.1 Reserved for Future Purposes

Rule 20.1 Reserved for Future Purposes

Rule 21.1 Reserved for Future Purposes

Rule 22.1 Reserved for Future Purposes

Rule 23.1 Reserved for Future Purposes

Rule 24.1 Reserved for Future Purposes

Rule 25.1 Reserved for Future Purposes

Rule 26.1 Discovery

- (a) **Discovery Materials Not to Be Filed Unless Ordered or Needed.** Discovery materials, including but not limited to disclosures and objections required under Fed. R. Civ. P. 26, depositions upon oral examination and interrogatories, requests for documents, notices to take a deposition, expert witness designations, expert witness reports, requests for admissions, and answers and responses thereto are not to be filed unless by order of the court or for use in the proceedings. All such papers must be served on other counsel or parties entitled to service of papers filed with the clerk. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.
- (1) **Medical Records.** When filed in accordance with subsection (a), copies of medical records shall not be open to inspection or copying by any persons, except the parties and their attorneys. Thus, any medical records must be accompanied by a motion to seal as provided in Local Civil Rule 79.2.
- (b) **Conducting Discovery.** In all civil actions, the parties shall schedule and conduct discovery in accordance with the order entered pursuant to Fed. R. Civ. P. 16. All discovery shall be served so as to allow the respondent sufficient time to answer prior to the time when discovery is scheduled to be completed. To shorten discovery time, it is expected that discovery procedures will proceed concurrently. After the time for completing discovery has expired, further discovery may proceed only by order of the court and may, in no event, interfere with the conduct of either the final pretrial conference or the trial.
- (c) **Numbering Discovery Procedures.** Each time a particular discovery procedure is used, it shall be sequentially numbered (e.g., "First Set," "Second Set," "First Request," "Second Request," etc.) so that it will be distinguishable from a prior procedure.
- (d) **Discovery Disputes - Expedited Briefing Schedule.** Any motion relating to a discovery dispute shall be handled on an expedited basis:
- (1) Memoranda in support of or in opposition to a discovery motion shall not exceed ten (10) pages in length, excluding the certificate of service page, and shall otherwise comply with Local Civil Rules 7.1(d) and 7.2.
- (2) Responses and accompanying documents relating to discovery motions shall be filed within fourteen (14) days after service of the motion in question unless otherwise ordered by the court.

- (3) Replies are not permitted in discovery disputes. See also Local Civil Rule 7.1(f)(2).
- (4) In any instance in which oral argument is scheduled, counsel may be given the option of oral presentations by telephone in lieu of a live appearance.

(e) Other Discovery Matters.

- (1) Through appropriate written discovery, a party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment. The discovery permitted shall include inspection and copying of any such agreements pursuant to Fed. R. Civ. P. 34. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subparagraph, an application for insurance shall not be treated as part of an insurance agreement.
- (2) In accordance with Fed. R. Civ. P. 16(b), this court will routinely issue an order for a discovery plan and will thereafter enter a scheduling order. The planning meeting of counsel required by Fed. R. Civ. P. 26(f) and the report of counsel contemplated by said rule are a mandatory part of the process of formulating a scheduling order. A report in accordance with Form 52 shall be sufficient to comply with Fed. R. Civ. P. 26(f), although the parties may include greater detail or additional topics. If the parties cannot agree on a joint report, each party shall file a separate Rule 26(f) report setting forth its position on disputed matters. The parties may include in their report an agreement to mediate and a proposed time table for conducting that mediation.

Rule 27.1 Reserved for Future Purposes

Rule 28.1 Reserved for Future Purposes

Rule 29.1 Reserved for Future Purposes

Rule 30.1. 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.

Rule 31.1 Reserved for Future Purposes

Rule 32.1 Depositions for Use at Trial

Depositions *de bene esse* may be taken outside of the period of discovery.

Rule 33.1 Form of Interrogatories, Responses and Objections

All interrogatories shall be served on opposing counsel. Counsel are encouraged to provide interrogatories in a form that is electronically fillable to facilitate responses.

Rule 34.1 Requests for Production

All Rule 34 requests shall be served on opposing counsel. Counsel are encouraged to provide such requests in electronic form to facilitate responses.

Rule 35.1 Reserved for Future Purposes

Rule 36.1 Requests for Admission

All requests for admission shall be served on opposing counsel. Counsel are encouraged to provide such requests in electronic form to facilitate responses.

Rule 37.1 Reserved for Future Purposes

Rule 38.1 Reserved for Future Purposes

Rule 39.1 Attorney Preparations for Trial

(a) **In General.** Seven (7) 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:

- (1) A concise memorandum of authorities on all anticipated evidentiary questions and on all contested issues of law;
- (2) Motions relating to the admissibility of evidence; however, no party shall be required to file a written response to a motion relating to the admissibility of evidence which is filed after the final pretrial conference has taken place.

(b) **Exhibits.**

- (1) All exhibits shall be pre-marked with stickers available at the clerk's office with the sequential numbers as listed in the pretrial order. Each exhibit at trial shall contain the case number of the action on the exhibit sticker and a party designation where there are different plaintiffs and defendants introducing exhibits.

- (2) Copies of all exhibits, properly bound shall be provided to the court at the beginning of the trial.
 - (3) The original shall bear a sticker. After receipt into evidence, it shall remain in the custody of the courtroom deputy, except when being used by a witness or viewed by the jury.
 - (4) Copies of all exhibits shall bear the photostatic image of the sticker or a typed or printed reproduction thereof.
 - (5) Counsel are encouraged to provide one (1) or more copies of exhibits for use by the jury.
 - (6) Upon presentation of an exhibit to a witness, counsel shall announce to the court the exhibit number. The exhibit shall not be handed to opposing counsel. Should opposing counsel contend that a copy has not been provided or that the exhibit has been lost or misplaced, opposing counsel shall bring the issue to the attention of the court.
- (c) **Related Rules.** The parties shall comply, as provided therein, with Local Civil Rules 16.1, 47.1(b), and 51.1 (or Local Civil Rule 52.1 in nonjury cases).

Rule 39.2 Late Developments in the Case

Counsel shall immediately inform the court, opposing counsel and counsel in the next succeeding two (2) cases on the calendar of any settlement or of any developments of an emergency which may necessitate a motion for continuance.

Rule 39.3 Opening Statements

At the beginning of the trial, each party (beginning with the party having the burden of proof on the first issue) shall, without argument and in such reasonable time as the court allows, state to the court and the jury the following:

- (a) the substance of the claim, counterclaim, crossclaim or defense; and
- (b) what counsel contends the evidence will show. Parties not having the burden of proof on the first issue may elect to make an opening statement immediately prior to presenting evidence, rather than at the beginning of the trial.

Rule 39.4 Closing Arguments

The court will set the times for closing arguments after consultation with the parties. Unless otherwise ordered by the court, the party with the burden of proof shall open

and close the arguments.

Rule 40.1 Court Schedule and Conduct of Business

- (a) **Headquarters of the Clerk.** The headquarters of the clerk of court shall be in Raleigh.
- (b) **Divisions of the District.** There shall be four (4) divisions of the court. Headquarters of each division and the counties comprising each division are as follows:

<u>Name of Division</u>	<u>Headquarters</u>	<u>Counties</u>	
Northern Division	Elizabeth City	Bertie	Hertford
		Camden	Northampton
		Chowan	Pasquotank
		Currituck	Perquimans
		Dare	Tyrrell
		Gates	Washington
Eastern Division	Greenville	Beaufort	Hyde
		Carteret	Jones
		Craven	Lenoir
		Edgecombe	Martin
		Greene	Pamlico
		Halifax	Pitt
Western Division	Raleigh	Cumberland	Vance
		Franklin	Wake
		Granville	Warren
		Harnett	Wayne
		Johnston	Wilson
		Nash	
Southern Division	Wilmington	Bladen	Onslow
		Brunswick	Pender
		Columbus	Robeson
		Duplin	Sampson
		New Hanover	

- (c) **Assignment of Cases to a Division.**
 - (1) **Civil Actions.** The clerk shall assign all civil actions to a division when the action is filed or removed. If one or more plaintiffs are residents of this District, the clerk shall assign the case to the division

in which the first named such plaintiff resides. If no plaintiff resides in the District and one or more defendants reside in the District, the clerk shall assign the action to the division in which the first named such defendant resides. In the event no party resides in the District but the claim is alleged to have arisen in the District or to involve real property in the District, the clerk shall assign the action to the division in which such claim is alleged to have arisen or in which the real property is situated. In all other instances, a case shall be assigned to a division in the discretion of the clerk. In removed actions, the matter will be assigned to the division in which the state court is located from which the action is removed.

(2) **Residence of Corporation.** For the purposes of this local rule, a corporate plaintiff shall be deemed to reside in the state in which it was incorporated and in the district and division in which it has its principal office; and, a corporate defendant shall be deemed to reside in the division in which the corporation is alleged (a) to be incorporated and have its principal office, or (b) to be licensed to do business, or (c) to be doing business.

(3) **United States as Plaintiff.** For the purposes of this local rule, in cases where the United States, its agencies or officers acting in an official capacity is the plaintiff, it shall be deemed that such plaintiff does not reside in this district.

(d) **Scheduling Trials.** Each judicial officer shall maintain an individual trial calendar with due regard for the priorities and requirements of law. Selected cases may be expedited by the judicial officer on his or her own motion, or on the motion of any party.

Rule 40.2 Electronic Designation of Judges

Any electronically generated designation of a district judge or magistrate judge does not mean that the judge so designated is assigned to the case.

Rule 41.1 Reserved for Future Purposes

Rule 42.1 Reserved for Future Purposes

Rule 43.1 Reserved for Future Purposes

Rule 44.1 Reserved for Future Purposes

Rule 45.1 Witnesses

Counsel may not release a person from a subpoena without notice to opposing counsel

and leave of court. A party objecting to the release of a person shall bear all costs incident to such person which arise subsequent to the request for release. The court may, in its discretion and in the interest of justice, permit a party to call and examine a witness not listed in the final pretrial order.

Rule 46.1 Reserved for Future Purposes

Rule 47.1 Jurors

- (a) **Jury Lists.** When the jury for a session of the court is drawn, the clerk shall furnish a copy of the list to counsel for the parties or to any party acting *pro se* on a relevant trial roster, upon their request. The list shall set out the name and county of residence of each prospective juror. The jurors and their families shall not be contacted, either directly or indirectly, in an effort to secure information concerning the background of any member of the jury panel. When the jurors are seated in the jury box, a chart or list shall be furnished by the clerk to the parties or their counsel, showing the name and seating assignment of each juror.

- (b) **Examination of Jurors.** The court shall conduct the examination of prospective jurors. Seven (7) days preceding the first day of the session at which a civil action is set for trial, counsel shall file a list of any *voir dire* questions counsel desires the court to ask the jury other than routine questions such as (1) the occupations and addresses of jurors and their spouses, (2) the identity and relation of jurors, the parties, counsel and witnesses and (3) the knowledge of the jurors concerning the case.

- (c) **Contact with Trial Jurors.** Following the discharge of a jury from further consideration of a case, no attorney or party litigant shall individually or through an investigator or any person acting for such attorney or party litigant ask questions of or make comments to a member of that jury or the members of the family of such a juror that are calculated merely to harass or embarrass such a juror or member of such juror's family or to influence the actions of such a juror or a member of such juror's family in future jury service.

Rule 48.1 Taking Verdicts and Polling the Jury

The court may take the verdict of the jury in open court in the absence of any party or counsel. Unless the contrary affirmatively appears of record, it will be presumed that the parties were present or by their voluntary absence waived their presence. The jury will not be polled unless a party requests a poll at the time the verdict is taken or unless a poll is ordered by the court.

Rule 49.1 Reserved for Future Purposes

Rule 50.1 Reserved for Future Purposes

Rule 51.1 Requests for Jury Instructions

Five (5) business days preceding the first day of the session at which a civil action is set for trial, counsel shall file requests for jury instructions. Requests using *Federal Jury Practice and Instructions* (5th Ed.) by O'Malley, Grenig, and Lee, *5th Circuit Pattern Instructions*, and *North Carolina Pattern Instructions* shall include both the text of the proposed instruction as well as a citation reference to the proposed instruction. All other requests shall contain citations to supporting authorities.

Rule 52.1 Proposed Findings of Fact and Conclusions of Law

In nonjury cases, counsel shall file proposed findings of fact and conclusions of law five (5) business days preceding the session at which a civil action is set for trial.

Rule 53.1 Reserved for Future Purposes

Rule 54.1 Application for Costs

All applications for costs must be made fourteen (14) days after the entry of judgment. Objections to applications for costs must be filed within fourteen (14) days after service of the application for costs.

(a) Filing Bill of Costs.

- (1) A prevailing party may request the clerk to tax allowable costs, other than attorney's fees, in a civil action as part of a judgment or decree by filing a bill of costs, on AO form 133, available on the court's internet website: www.nced.uscourts.gov.
- (2) The original bill of costs shall be filed with the clerk, with copies served on adverse parties.
- (3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

(b) Objections to Bill of Costs.

- (1) If an adverse party objects to the bill of costs or any item claimed by a prevailing party, that party must state its objection in a motion for disallowance with a supporting brief within fourteen (14) days after the filing of the bill of costs. Within seven (7) days thereafter, the prevailing party may file a response and brief. Unless a hearing is ordered by the clerk, a ruling will be made by the clerk on the record.
- (2) A party may request review of the clerk's ruling by filing a motion

within seven (7) days after the action of the clerk. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

(c) Taxable Costs.

(1) Items normally taxed include, without limitation:

- (a) those items specifically listed on the bill of costs form. The costs incident to the taking of depositions (when allowable as necessarily obtained for use in the litigation) normally include only the reporter's fee and charge for the original transcript of the deposition;
- (b) premiums on required bonds;
- (c) actual mileage, subsistence, and attendance allowances for necessary witnesses at actual costs, but not to exceed the applicable statutory rates, whether they reside in or out of the district;
- (d) one copy of the trial transcript for each party represented by counsel.

(2) Items normally not taxed, without limitation:

- (a) witness fees, subsistence, and mileage for individual parties, real parties in interest, parties suing in representative capacities, and the officers and directors of corporate parties;
- (b) multiple copies of depositions;
- (c) daily copy of trial transcripts, unless prior court approval has been obtained.

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

(e) Payment of Costs. Costs are to be paid directly to the party entitled to reimbursement.

Rule 54.2 Taxation of Juror Costs

(a) Settlement before Trial. Whenever a civil action scheduled for jury trial is

not settled or otherwise disposed of by the applicable deadline set forth herein, then, except for good cause shown, juror costs for one (1) day shall be assessed equally against the parties and their counsel or otherwise assessed or relieved as directed by the court. Juror costs include attendance fees, per diem, mileage, and parking. No juror costs will be assessed if notice of settlement or other disposition of the case is given to the court one (1) full business day prior to the scheduled trial date. In asbestos-related litigation, notice must be given to the court seven (7) days prior to the scheduled trial date.

- (b) **Settlement before Verdict.** Except upon a showing of good cause, the court shall assess the juror costs equally against the parties and their counsel whenever a civil action proceeding as a jury trial is settled at trial in advance of the verdict. The judge may, in his or her discretion, direct that the juror costs be relieved or that they be assessed other than equally among the parties and their counsel.

Rule 55.1 Reserved for Future Purposes

Rule 56.1 Summary Judgment Memoranda

A memorandum in support of or in opposition to a motion for summary judgment shall comply with Fed. R. Civ. P. 56 and Local Civil Rule 7.2.

Rule 57.1 Reserved for Future Purposes

Rule 58.1 Reserved for Future Purposes

Rule 59.1 Reserved for Future Purposes

Rule 60.1 Reserved for Future Purposes

Rule 61.1 Reserved for Future Purposes

Rule 62.1 Reserved for Future Purposes

Rule 63.1 Reserved for Future Purposes

Rule 64.1 Seizure of Person or Property

All acts and duties pertaining to the seizure of person or property as provided by the law of the State of North Carolina authorized to be done by a judge or the clerk of the state court may be done in like cases by a judge of this court or the clerk of this court, respectively.

Rule 65.1 Sureties

- (a) **Approval of Security.** The clerk or deputy clerk is authorized to approve all recognizances, stipulations, bonds, guaranties, or undertakings, in the penal sum prescribed by statute or order of the court, whether the security be property, or personal or corporate surety.
- (b) **Security.** Except as otherwise provided by law, every recognizance, stipulation, bond, guaranty, or undertaking shall be with security that consists of either (1) cash or negotiable government bonds, or (2) one or more sureties, as provided by law or the applicable Federal Rule of Civil Procedure. A judge may enter pertinent orders restricting any bonding company or surety company from being accepted as surety upon any bond in any case or matter in this district.
- (c) **Use of Real Property as Security.** Whenever a surety seeks to justify assets by demonstrating ownership of real property, a judge or magistrate judge shall determine by satisfactory evidence that the property is of sufficient unencumbered value to protect the interests of the adverse party.
- (d) **Prohibited Sureties.** Members of the bar, administrative officers and employees of this court, and the marshal and deputies and assistants thereto shall not act as surety in any matter pending in this court.

Rule 66.1 Reserved for Future Purposes

Rule 67.1 Deposit of Registry Funds in Interest Bearing Accounts

A party seeking to have interest accrue on funds deposited into the court registry shall file a motion requesting deposit of the funds into an interest-bearing account. Upon appropriate order of the court directing the clerk to place registry funds into interest-bearing accounts, counsel shall confer with the clerk, within seven (7) days after receipt of the order, concerning the manner and place of investment. If counsel and the clerk do not agree, the clerk shall seek further direction from the court. No officer or employee of this court shall incur any liability for failure to invest or for improper investment unless counsel have complied with their obligations under this local rule.

Rule 68.1 Reserved for Future Purposes

Rule 69.1 Reserved for Future Purposes

Rule 70.1 Reserved for Future Purposes

Rule 71.1 Reserved for Future Purposes

Rule 72.1 Magistrate Judges: Standards of Performance

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the Local Civil Rules and procedures of this court, and to the requirements specified in any order of reference from a judge.

Rule 72.2 Magistrate Judges: Assignments of Matters

(a) **General.** Upon filing, all civil cases shall be assigned by the clerk to a magistrate judge for the conduct of such discovery and pretrial conferences as are necessary and for the hearing and determination of all pretrial procedural and discovery motions, in accordance with Local Civil Rule 72.3(b). Where designated by a judge, the magistrate judge may conduct additional pretrial conferences and hear motions and perform the duties set forth in Local Civil Rules 72.3(c), 72.3(d), 72.3(e), and 72.3(f).

(b) **Consent to Civil Trial Jurisdiction of Magistrate Judges.**

(1) Where the parties consent to trial and disposition of a civil case by a magistrate judge, such case shall, with the approval of the assigned judge, be reassigned to a specially designated magistrate judge for the conduct of further proceedings and the entry of judgment, pursuant to 28 U.S.C. § 636(c). Except as provided in subsection (2), the magistrate judges of this court are specially designated to exercise consent jurisdiction under 28 U.S.C. § 636 (c).

(2) A part-time magistrate judge not serving as a full-time judicial officer may exercise jurisdiction under 28 U.S.C. § 636(c) only if: the parties consent to trial and disposition of the case by such magistrate judge, pursuant to their specific written request; the magistrate judge meets the bar membership requirements set forth in 28 U.S.C. § 631(b)(1); the chief district judge certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the Judicial Council of the Fourth Circuit; and the judge assigned to the case approves of its reassignment to the magistrate judge.

(c) **Reserving and Changing Assignments.** Nothing in these local rules shall preclude a judge from reserving any proceeding for conduct by a judge, rather than a magistrate judge. The judge, moreover, may by order modify the method of assigning proceedings to magistrate judge as circumstances may warrant.

Rule 72.3 Authority of Magistrate Judge

(a) **Duties Under 28 U.S.C. § 636(a).** A magistrate judge is authorized to perform the duties prescribed by 28 U.S.C. § 636(a).

(b) **Determination of Non-Dispositive Pretrial Matters -- 28 U.S.C. § 636(b)(1)(A).** A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a civil case, other than the motions which are specified in Local Civil Rule 72.3(c)(1).

(c) **Recommendations Regarding Case-Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).**

(1) A magistrate judge may submit to a judge a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions:

a. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

b. Motions for judgment on pleadings;

c. Motions for summary judgment;

d. Motions to dismiss or permit the maintenance of a class action;

e. Motions to dismiss for failure to state a claim upon which relief may be granted;

f. Motions to involuntarily dismiss an action;

g. Motions for review of default judgments;

(2) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this Local Civil Rule 72.3.

(d) **Prisoner Cases Under 28 U.S.C. § 2254 and § 2255.** A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States district courts under 28 U.S.C. § 2254 and § 2255. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition shall only be made by a judge.

(e) **Prisoner Civil Rights Actions.** A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

- (f) **Special Master References.** A magistrate judge may be designated by a judge to serve as special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(b).
- (g) **Conduct of Trial and Disposition of Civil Cases Upon Consent of the Parties – 28 U.S.C. § 636(c).** Subject to the provisions of Local Civil Rule 72.2(c), a specially designated magistrate judge may conduct any or all proceedings in any civil case which is filed in this court and assigned to the magistrate judge, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings, the magistrate judge may hear and determine any and all pretrial and post-trial motions, including case-dispositive motions.
- (h) **Other Duties.** A magistrate judge is also authorized to:
- (1) exercise general supervision of calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;
 - (2) conduct discovery conferences, pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;
 - (3) conduct *voir dire* and select petit juries for the court;
 - (4) accept petit jury verdicts in civil cases in the absence of a judge;
 - (5) issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum*, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
 - (6) order the exoneration or forfeiture of bonds;
 - (7) conduct proceedings for the collection of civil penalties of not more than \$200.00 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);
 - (8) conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
 - (9) perform the duties specified by the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3001 et. seq.;

- (10) perform any additional duty consistent with the Constitution and laws of the United States.

Rule 72.4 Review and Appeal

- (a) **Appeal of Non-Dispositive Matters -- 28 U.S.C. § 636(b)(1)(A).** Any party may appeal from a magistrate judge's order determining a motion or matter under Local Civil Rule 72.3(b) within fourteen (14) days after service of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider *sua sponte* any matters determined by a magistrate judge under this local rule.
- (b) **Review of Case-Dispositive Motions and Prisoner Litigation -- 28 U.S.C. § 636(b)(1)(B).** Any party may object to a magistrate judge's proposed findings, recommendations or report under Local Civil Rules 72.3(c), 72.3(d) or 72.3(e), within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objection. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, needs to conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.
- (c) **Special Master Reports -- 28 U.S.C. § 636(b)(2).** Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Fed. R. Civ. P. 53(e).
- (d) **Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties -- 28 U.S.C. § 636(c).** Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. § 636(c), an aggrieved party may appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

- (e) **Appeals from other Orders of a Magistrate Judge.** Appeals from any other decisions and orders of a magistrate judge not provided for in this Local Civil Rule 72.4 should be taken as provided by governing statute, rule, or decisional law.

Rule 73.1 Consent of Parties to Civil Trial Jurisdiction of Magistrate Judges

- (a) Unless the judge to whom a civil action is assigned directs otherwise, the clerk shall routinely assign to a magistrate judge cases in which all parties consent to the exercise of civil trial jurisdiction pursuant to 28 U.S.C. § 636(c).
- (b) Appeals from a judgment of a magistrate judge pursuant to 28 U.S.C. § 636(c)(4) shall lie to the judge to whom the case was originally assigned.

Rule 74.1 Reserved for Future Purposes

Rule 75.1 Reserved for Future Purposes

Rule 76.1 Reserved for Future Purposes

Rule 77.1 Court in Continuous Session

This court shall be in continuous session in all divisions of the District on all business days throughout the year. All matters not reached at the regular sessions of court are deemed to be in an open status and subject to being called for disposition before the next regular session of court upon reasonable notice to the interested parties.

Rule 77.2 Orders and Judgments

The clerk or deputy clerk is authorized to enter the orders and judgments listed below without further direction of the court. However, such action may be suspended, altered or rescinded by the court for cause shown.

- (a) Consent orders for substitution of attorneys.
- (b) Orders enlarging time periods in civil actions authorized to be entered by the court by Fed. R. Civ. P. 6(b).
- (c) Orders extending for a reasonable amount of time the period within which an act must be performed under the local rules of this court.
- (d) Consent order dismissing an action, except in bankruptcy proceedings and in cases to which Fed. R. Civ. P. 23(c) and Fed. R. Civ. P. 66 apply.
- (e) Orders canceling liability on bonds.

- (f) Orders changing the time of opening and adjourning court in the absence of the judge.
- (g) Judgments by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1).
- (h) Orders authorizing service of process by a person other than a United States Marshal pursuant to Fed. R. Civ. P. 4(c).
- (i) Certification of law students and supervising attorneys pursuant to Local Civil Rule 83.2.
- (j) Any other motion, rule or order which may be granted of course or without notice.
- (k) Pursuant to the provisions of 28 U.S.C. § 956, the clerk or a deputy clerk, when there is need to serve a complaint and attachment upon a vessel, or any other process incident to admiralty and maritime claims, either *in rem* or *in personam*, are empowered to grant and enter an order authorizing any sheriff or any deputy sheriff, or other suitable person, to serve all such process.

Rule 78.1 Reserved for Future Purposes

Rule 79.1 Exhibits

The clerk shall be the custodian of all exhibits admitted into evidence. Upon ten (10) days notice by mail to counsel for all parties, the clerk may, within thirty (30) days after the entry of final judgment, destroy or otherwise dispose of the exhibits.

Rule 79.2 Sealed Documents

(a) **Filing Sealed Documents.** No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section T of the CM/ECF Policy Manual. All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court.

(b) **Proposed Sealed Documents.**

(1) Unless otherwise permitted by Section T of the CM/ECF Policy Manual or order of the court, all proposed sealed documents must be accompanied by a motion to seal. The motion to seal shall be a public document and noted with a docket entry that gives the public notice of the request to seal. The docket entry for the proposed sealed document shall identify it as a “proposed” sealed document and describe the type of document it is (e.g., affidavit, record) and the substantive motion or other specific proceedings in the case to which

it relates (e.g., in support of defendant's motion to compel at D.E. ____). The proposed sealed document is deemed to be provisionally sealed until the court rules on the motion to seal.

- (2) If the motion to seal is granted, the clerk will remove the word "proposed" from the docket entry.
- (3) If the motion to seal is denied, the document will remain sealed and the word "proposed" will remain in the docket entry for the document in order to preserve the record. The document will not be considered by the court, except as provided herein or as otherwise ordered by the court. A party desiring to remove a proposed sealed document or docket entry therefor from the docket sheet must file a motion to strike in accordance with Local Civil Rule 7.1. A party whose motion to seal is denied but that desires the court to consider a proposed sealed document as a publicly filed document shall file the document as a public document within 3 days after entry of the order denying the motion to seal or within such other period as the court directs.

(c) Return of Sealed Documents.

- (1) For those sealed documents not scanned into CM/ECF, upon fourteen (14) days notice to all parties, the clerk may destroy or dispose of the sealed documents, unless the attorney or party who filed them retrieves them from the clerk. This notice may occur no earlier than thirty (30) days after final disposition.
- (2) If, during the 14-day period after the clerk has given notice of intent to dispose of the sealed documents, any party files an objection to such disposition, the presiding judge in the case shall resolve the dispute over the proposed disposition.

- (d) Procedures for Manual Filers.** For those parties who are required to manually file all court documents (i.e., *pro se* litigants), proposed sealed documents shall be delivered to the clerk's office in paper form in a sealed envelope. The proposed sealed documents must be accompanied by a motion to seal in accordance with Section T of the CM/ECF Policy Manual. Both the documents and the envelope shall be prominently labeled "UNDER SEAL." The envelope must also have written on it: the case caption; the case number; the title of the document or, if the title contains proposed sealed information, the title omitting the proposed sealed information; and the following notice in all capital letters and otherwise prominently displayed:

PROPOSED SEALED DOCUMENTS: SUBMITTED PURSUANT TO MOTION TO SEAL.

Rule 80.1 Reserved for Future Purposes

Rule 81.1 Civil Rights Actions by Prisoners

All complaints on behalf of state prisoners or pretrial detainees seeking relief under 42 U.S.C. § 1983 and federal prisoners challenging conditions of confinement shall be filed with the clerk in compliance with the instructions of the clerk and on the appropriate form available without charge.

Rule 81.2 Habeas Corpus Actions

All petitions on behalf of prisoners seeking relief under 28 U.S.C. § 2241, 28 U.S.C. § 2254, or 28 U.S.C. § 2255 shall be filed with the clerk in compliance with the instructions of the clerk and on the appropriate form available without charge. Such proceedings shall be governed by the rules promulgated by the United States Supreme Court.

Rule 81.3 Naturalization

Petitions for naturalization will be considered and acted upon, and appropriate ceremonies conducted in connection therewith, on Friday of the first week of any regular session of court at which naturalization hearings are set, beginning at 11:00 A.M., unless otherwise ordered by the court. The court may at other times, in its discretion, for good cause shown, and upon reasonable prior notice by the applicant to the Immigration and Naturalization Service, consider and act upon petitions for naturalization by members of the armed services, seamen on merchant vessels registered under the laws of the United States, and members of the immediate families and dependents of such personnel, and in other exceptional cases.

Rule 82.3 Reserved for Future Purposes

Rule 83.1 Attorneys

- (a) **Roll of Attorneys.** The bar of this court consists of those previously admitted and those hereafter admitted as prescribed by this Local Civil Rule 83.1.
- (b) **Eligibility.** A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.
- (c) **Procedure for Admission.** Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:
 - (1) Is a member in good standing of the bar of the Supreme Court of North Carolina; and

- (2) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the local rules of this court.

In addition to these certifications, the written application shall contain the certification of two (2) attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

I do solemnly swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney of this court, uprightly and according to law. So help me God.

Following the administration of the oath, the application shall be signed by the judge, bankruptcy judge or magistrate judge and the applicant shall file the application, accompanied by a fee of \$180.00, with the clerk. The clerk shall then issue the applicant a certificate of admission to the bar of this court. Upon the filing of a properly certified and executed application accompanied by the admission fee of \$180.00, the clerk may accept for filing papers signed by the applicant. However, no applicant shall make an appearance on behalf of a client, either before a magistrate, bankruptcy judge or district judge, by telephone conference or in person, until the applicant has taken the oath.

- (3) Current law clerks to judges, magistrate judges and bankruptcy judges within this District shall be admitted to the bar of this court without payment of an admission fee.

- (d) **Representation by Local Counsel Who Must Sign All Pleadings.** Litigants in civil actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign all documents filed in this court, including his or her state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this local rule, he or she shall in each instance designate himself or herself "Local Civil Rule 83.1 Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. However, counsel does not make the certification

required by Rule 11 of the Federal Rules of Civil Procedure. Nevertheless, the requirements of Rule 11 must be complied with by out-of-state counsel. Signatures in the following form shall be sufficient to comply with this local rule. Local Civil Rule 83.1 Local Counsel must include the state bar number and fax number in the signature block on all pleadings:

Jane M. Jones
Attorney for Defendant
Jones, Jones and Jones
P.O. Box 500
New York, NY 10050
Jane.jones@email.address.com
(212) 555-1212
State Bar No.

John B. Counselor
Attorney for Defendant
Abbott, Ball and Counselor
P.O. Box 50
Raleigh, NC 27602
John.B.Counselor@email.address.com
(919) 878-8787
Fax (919) 878-8000
State Bar No.
Local Civil Rule 83.1 Counsel

(e) Appearances by Attorneys Not Admitted in the District – Special Appearance.

(1) Attorneys who are members in good standing of the bar of a United States District Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By filing a Notice of Appearance, completing an Electronic Filing Attorney Registration Form, and complying with Section J.(1) of the Policy Manual, an attorney agrees that:

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

(B) the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing; and

(C) for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure and the Local Civil Rules of this court, the special appearance attorney's electronic signature shall carry the same force and effect as an original signature.

(2) An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of Appearance.

(3) A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the litigation of the proceeding, must be a CM/ECF registrant and shall review for submission by the special appearance attorney all pleadings and papers electronically filed in compliance with Section J.(1) of the Policy Manual. The responsibility of the member of the bar who accepts employment in association with a special appearance attorney and designates him or herself as Local Civil Rule 83.1 local counsel shall be governed by Local Civil Rule 83.1(d).

(4) Any document filed by a special appearance attorney that does not comport with associated Local Civil Rule 83.1 counsel's standards may be objected to. Any such objection must be filed within seven (7) days of the issuance of the NEF for the document.

(f) Pleadings Service and Attendance by Local Counsel in Cases Where Out-of-State Attorney's Appear by Special Appearance. Pleadings and other documents filed in a case where an attorney appears who is not admitted to the bar of this court shall contain the individual name, firm name, address and phone number of both the attorney making a special appearance under this local rule and the associated local counsel. As part of making an appearance in every case, an attorney also shall file contemporaneously a client disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3. The service of all pleadings and notices as required shall be sufficient if served only upon the associated local counsel. Local counsel shall attend all court proceedings unless excused by the court.

(g) Withdrawal of Appearance. No attorney or law firm whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the court. However, if an attorney within the same firm replaces counsel for a party, the new attorney may file a notice of substitution of counsel and the court will substitute the attorneys without order

of the court.

- (h) **Courtroom Decorum.** Counsel shall conduct themselves with dignity and propriety. Counsel shall rise when addressing the court, and all statements to the court shall be made from a counsel table or from behind the lectern facing the court. Counsel shall not approach the bench unless requested to do so by the court or unless permission is granted upon the request of counsel.
- (i) **Questioning of Witnesses.** Only one attorney for each party may question a particular witness unless the court allows otherwise. Counsel shall remain seated while questioning witnesses.
- (j) **Professional Standards.** The ethical standard governing the practice of law in this court is the Revised Rules of Professional Conduct, now in force and as hereafter modified by the Supreme Court of North Carolina, except as may be otherwise provided by specific rule of this court. Counsel are directed to advise the clerk within fourteen (14) days of disciplinary action taken against them resulting in suspension or disbarment. The disciplinary procedures of this court shall be on file with the clerk and furnished to counsel upon request.
- (k) **Admission of Attorneys Previously Admitted to the United States District Courts for the Middle or Western Districts of North Carolina.** Attorneys already admitted to the bar of either the United States District Court for the Middle District of North Carolina or the United States District Court for the Western District of North Carolina may be admitted to the bar of this court upon tendering the application and fees required by Local Civil Rule 83.1(c), together with a copy of the order admitting the attorney to practice in one of the other districts, without the necessity of taking the oath that is otherwise required and without obtaining the character certification by two (2) members of the bar of this court.

Rule 83.2 Student Practice Rule

- (a) **Compliance with Rule.** Students may participate as counsel in civil and criminal cases in this court subject to their compliance with all of the requirements of this Local Civil Rule 83.2.
- (b) **Eligibility.** An eligible student must:
 - (1) be duly enrolled in a law school accredited or provisionally accredited by the American Bar Association;
 - (2) have completed at least three semesters of legal studies;
 - (3) have knowledge of the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the Code of Professional Responsibility, and the

local rules of this court;

(4) be supervised by a supervising attorney as defined in Local Civil Rule 83.2(c);

(5) be certified by the Dean of the law school where the student is enrolled, or the Dean's designee, as being of good character, sufficient legal ability, and adequately trained to fulfill the responsibilities of a legal intern to both the client and the court;

(6) be certified by the court to practice pursuant to this Local Civil Rule 83.2; and

(7) decline personal compensation for his or her legal services from a client or any other source.

(c) Supervising Attorney. A supervisor must:

(1) either (i) have faculty or adjunct faculty status at a law school at which a portion of the supervisor's duties includes supervision of students in a clinical program; or (ii) be a member of the bar of this court for at least two (2) years, who in the determination of the court, is competent to carry out the role of supervising attorney;

(2) be admitted to practice in this court;

(3) be certified by the court as a student supervisor;

(4) be present with the student at all times in court, and at other proceedings in which testimony is taken;

(5) co-sign all pleadings or other documents filed with the court;

(6) assume full personal and professional responsibility for a student's guidance and any work undertaken and for the quality of the student's work, and to be available for consultation with represented clients;

(7) assist and counsel the student in activities mentioned in Local Civil Rule 83.2(e), and review such activities with the student, all to the extent required for proper practical training of the student and the protection of the client; and

(8) supplement oral or written work of the student as necessary to insure proper representation of the client.

(d) Certification of Student and Supervisor.

(1) Student. The court's certification of a student to practice under this Local Civil Rule 83.2 shall be filed with the clerk and shall remain in effect for eighteen (18) months or until the student graduates from law school, whichever is earlier. Certification to appear generally or in a particular case may be withdrawn by the court at any time, in the discretion of the court, and without any showing of cause.

(2) Supervising Attorney. Certification of the supervising attorney shall be filed with the clerk, and shall remain in effect indefinitely unless withdrawn by the court, in its discretion, and without any showing of cause.

(e) **Activities.** A certified student may under the personal supervision of his or her supervisor:

(1) represent any client including federal, state or local governmental bodies, if the client on whose behalf the certified student is appearing has consented in writing to that appearance and the supervising lawyer has given written approval of that appearance;

(2) represent a client in any criminal, civil or administrative matter; however, the court retains the authority to limit a student's participation in any individual case;

(3) in connection with matters in this court, engage in other activities on behalf of the client in all ways that a licensed attorney may, under the general supervision of the supervising lawyer; however, a student shall make no binding commitments on behalf of a client absent prior client and supervisor approval, and in any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising lawyer. Documents or papers which are filed shall be read, approved, and co-signed by the supervising lawyer. The court retains the authority to establish exceptions to such activities; and

(4) prior to oral participation by a certified student in a hearing or trial, the supervising attorney shall provide the court with a written statement of the scope of participation anticipated on the part of the certified student

Rule 83.3 Change of Address

All attorneys and *pro se* parties must notify the court in writing within fourteen (14) days of any change of address. Within the same time period, attorneys must also maintain their user account in CM/ECF. Failure to notify the court in a timely manner of an address change may result in dismissal of the action or the imposition of such other relief that the court deems just and proper.

Rule 83.4 Release of Information to News Media

- (a) **Court Personnel.** All court personnel, including but not limited to, the marshal and deputy marshals and office personnel, the clerk and deputy clerks and office personnel, probation officers and office personnel, bailiffs, court reporters, and the judges' and magistrate judges' office personnel, are prohibited from disclosing to any person, where it can reasonably be expected to be disseminated by means of public communication, without authorization of the court, information relating to any pending matter that has not been filed as a part of the public records of the court. This proscription applies to the divulgence of any information concerning arguments and hearings held in chambers or otherwise outside the presence of the jury or the public.
- (b) **Copies of Public Records.** The members of the news media and others may obtain copies of all public records from the clerk upon payment of copying fees as prescribed by the Judicial Conference of the United States.

Rule 83.5 Correspondence

Correspondence addressed to the court shall indicate that copies have been transmitted to all other parties and failure to transmit the same to all other parties may result in sanctions by the court. Such correspondence shall not become a part of the record in the case.

Rule 83.6 Photographing and Reproducing Court Proceedings

The taking of photographs, broadcasting or recording of proceedings in any form in the courtroom, court offices or in the corridors immediately adjacent thereto, during judicial proceedings or during any recess of the court is prohibited except as set forth below. The taking of photographs, broadcasting or recording of ceremonial proceedings, such as naturalization proceedings, the administration of oaths of office to officers of the court, presentation of portraits and other ceremonial occasions may be allowed with the permission of the presiding judge and under the supervision and control of the court.

Rule 83.7 Purpose of Disciplinary Rules

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

Rule 83.7a Attorneys Convicted of Crimes

- (a) **Filing of Judgment of Conviction.** Upon the filing with the clerk of a certified copy of a judgment of conviction stating that an attorney admitted to practice before the court has been convicted in any court in the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, this

court may enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of the disciplinary proceeding to be commenced in accordance with the provision of Local Civil Rule 83.7e. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.

- (b) **Definition of Serious Crime.** The term serious crime shall include any felony and other lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy or solicitation of another to commit a serious crime.
- (c) **Certified Copy of Judgment Conclusive Evidence.** A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime
- (d) **Suspension and Referral.** Upon the filing with the clerk of a certified copy of a judgment of conviction of an attorney for a serious crime, the court may in addition to suspending that attorney in accordance with the provisions of Local Civil Rule 83.7d, also refer the matter to counsel in accordance with Local Civil Rule 83.7b for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all direct appeals from the conviction are concluded.
- (e) **Conviction of Non-Serious Crime.** Upon the filing with the clerk of a certified copy of a judgment of conviction of an attorney for a crime not constituting a serious crime, the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court; provided, however, that the court may in its discretion make no referral with respect to convictions for minor offenses.
- (f) **Reinstatement.** An attorney suspended under the provisions of this Local Civil Rule 83.7a will be reinstated immediately upon the filing with the clerk of a certificate demonstrating that the underlying conviction has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the

extent of the discipline to be imposed.

Rule 83.7b Discipline Imposed by Other Courts

- (a) **Duty to Inform This Court.** Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court or administrative body of the United States or the District of Columbia, or by a court or administrative body (or state agency clothed with disciplinary authority), or any state, territory, commonwealth or possession of the United States, promptly inform the clerk of this court of such action.
- (b) **Notice to Attorney.** Upon the filing with the clerk of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court or administrative body (or state agency clothed with disciplinary authority), this court shall forthwith issue a notice directed to the attorney containing:
- (i) a copy of the judgment or order from the other court or administrative body (or state agency clothed with disciplinary authority); and,
 - (ii) an order to show cause directing that the attorney inform this court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Local Civil Rule 83.7b(d) that the imposition of the identical discipline by the other court would be unwarranted and the reasons therefor.
- (c) **Deferral of Action.** In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.
- (d) **Imposition of Discipline.** Upon the expiration of thirty (30) days from service of the notice issued pursuant to this Local Civil Rule 83.7b, this court shall impose the identical discipline, unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
- (i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (ii) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or
 - (iii) that the imposition of the same discipline by this court would result in grave injustice; or

(iv) that the misconduct established is deemed by this court to warrant substantially different discipline.

Where this court determines that any said element exists, it shall enter such order as it deems appropriate.

- (e) **Effect of Final Adjudication.** In all other respects, a final adjudication in another court or administrative body (or state agency clothed with disciplinary authority) that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.
- (f) **Appointment of Counsel.** This court may at any time appoint counsel to prosecute the disciplinary proceedings.

Rule 83.7c Disbarment on Consent or Resignation in Another Court or Before a State Bar

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

Rule 83.7d Standards for Professional Conduct

- (a) **Form of Discipline.** For misconduct defined in these local rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court, may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.
- (b) **Grounds for Discipline.** Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Rules of Professional Conduct adopted by this court are the North Carolina State Bar Revised Rules of Professional Conduct adopted by the Supreme Court of North Carolina, except as may be otherwise provided by specific rule of this court.

Rule 83.7e Disciplinary Proceeding

- (a) **Referral by the Court.** When misconduct or allegations of misconduct in any case or proceeding in this court on the part of an attorney admitted to practice before this court which, if substantiated, would warrant discipline of

such attorney shall come to the attention of a judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these local rules, the judge shall refer the matter to counsel in accordance with Local Civil Rule 83.7b(f) for investigation and if warranted the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

- (b) **Recommendation for Disposition.** Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of counsel should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.
- (c) **Initiation of Disciplinary Proceedings.** To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.
- (d) **Procedure for Hearing.** Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this court shall set the matter for prompt hearing before one or more judges of this court; provided however that, if the disciplinary proceeding is predicated upon the complaint of a judge of this court, the hearing shall be conducted before another judge of this court appointed by the Chief Judge, or if the Chief Judge is the complainant, by the next senior judge of this court.

Rule 83.7f Disbarment on Consent While Under Disciplinary Investigation or Prosecution

- (a) **Consent to Disbarment.** Any attorney practicing before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:
 - (i) the attorney's consent is freely given,
 - (ii) the attorney is aware of the pending investigation or proceeding,
 - (iii) the attorney acknowledges the material facts of misconduct, and
 - (iv) the attorney consents because the attorney knows that he or she could

not defend successfully against charges of misconduct.

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

Rule 83.7g Reinstatement

- (a) **Automatic Reinstatement; Reinstatement by Order.** An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon filing with the court an affidavit of compliance with the provisions of the suspension order. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by order of this court.
- (b) **Time for Petition.** An attorney who has been disbarred after hearing or by consent may not petition for reinstatement until the expiration of at least three (3) years from the effective date of disbarment.
- (c) **Procedure.** Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the court. Upon receipt of the petition, the Chief Judge shall assign the matter for a prompt hearing before a judge (or judges) of the court and may, in the Chief Judge's discretion, refer the petition to counsel for investigation in accordance with Local Civil Rule 83.7b(f). The judge assigned to the matter shall schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that the attorney has the moral qualifications, competency, and learning of the law required for admission to practice law before this court, and that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice or subversive of the public interest. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel if the matter has been referred to counsel by the court in accordance with Local Civil Rule 83.7b(f).
- (d) **Costs.** Petitions for reinstatement under this rule shall be accompanied by an advanced cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.
- (e) **Order of Reinstatement.** If the petitioner is found to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found to be

fit to resume the practice of law, the judgment shall reinstate the petitioner, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment.

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

Rule 83.7h Service of Papers and Other Notices

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the most recent registration filed pursuant to N.C.G.S. § 84-34, or, in the case of an attorney admitted to this court pursuant to Local Civil Rule 83.1, at the address shown in papers filed with the court. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the respondent- attorney at the address determined as aforesaid, or to counsel or the attorney for the respondent attorney at the address indicated in the most recent pleading or other document filed by the respondent.

Rule 83.7i Appointment of Counsel

Whenever counsel is to be appointed in accordance with Local Civil Rule 83.7b(f) to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition, the court may appoint as counsel the disciplinary agency of the Supreme Court of North Carolina or any other disciplinary agency having jurisdiction. Alternatively, the court may appoint as counsel one or more members of the Bar, provided, however, that the respondent-attorney may move to disqualify an attorney for good cause shown. Counsel, once appointed, may not resign unless permission to do so is given by the court. Nothing in this rule limits the court's authority to refer any matter to the appropriate state bar for investigation, prosecution of disciplinary proceedings, or reinstatement.

Rule 83.7j Duties of the Clerk

- (a) **To Secure Certificate of Conviction.** Upon being informed that an attorney admitted to practice before this court has been convicted of any serious crime, the clerk shall determine whether the clerk of the court (or the state agency clothed with disciplinary authority) in which such conviction occurred has forwarded a certificate of such conviction to the court. If a certificate has not been so forwarded, the clerk shall promptly obtain a certificate and cause it to be filed in this court.

- (b) **To Secure Disciplinary Judgment or Order.** Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court, an administrative body, or a state agency clothed with disciplinary authority, the clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and, if not, the clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and cause it to be filed in this court.
- (c) **Transmittal to Other Jurisdictions.** Whenever it appears that any person convicted of any serious crime, disbarred, suspended, censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk shall, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the respondent attorney.
- (d) **National Discipline Data Bank.** The clerk shall notify the National Discipline Data Bank operated by the American Bar Association of any order of this court imposing public discipline upon any attorney admitted to practice before this court.

Rule 83.7k Publicity

All parties in a disciplinary proceeding shall conduct themselves in accord with the provisions of Local Civil Rule 83.4.

Rule 83.8 Bankruptcy Appeals

In appeals from any judgment, order, or decree of a bankruptcy judge to the district court, the appellant shall serve and file a brief within fourteen (14) days after the clerk gives notice to parties of the date on which the appeal was docketed.

Rule 83.9 Jurisdiction

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

Rule 100.1 Court Libraries

The clerk shall maintain the court libraries in the District. Use of the facilities is limited to judicial officers, court staff and members of the bar of this court. Books

shall not be removed from the library without the consent of the person responsible for the maintenance of the particular library, and shall not be removed from the courthouse under any circumstances. A violation of this local rule shall be punishable as for contempt of court.

Rule 100.2 Jurisdictional Agreements with Other Courts

The clerk shall maintain all jurisdictional agreements entered into by the Chief Judge of this court and the Chief Judge of any other United States District Court, and a copy of such agreements shall be furnished to counsel upon request.

Rule 100.3 Civil Contempt

- (a) **Rights of Contemnor.** In all cases of civil contempt, the contemnor shall have due notice of the contempt charges, opportunity to reply to the charges and notice of the date and place of hearing in open court from which the public shall not be excluded.
- (b) **Summary Contempt Proceedings.** In contempt proceedings where the court may act summarily, the contemnor shall have the right to defend against the charges and to offer evidence in the form of affidavits. The movant shall have the right to offer similar evidence.
- (c) **Plenary Contempt Proceedings.** In contempt proceedings where the court may not act summarily, the presentation of evidence is governed by Rule 1101 of the Federal Rules of Evidence. In no case of civil contempt, however, shall the parties be entitled to trial by jury, but rather the district judge before whom the matter is tried shall find the facts and enter a judgment or order in accordance with the provisions of the Federal Rules of Civil Procedure applicable to non-jury cases.

Rule 100.4 Standing Orders

- (a) **Issuance.** Standing orders shall be issued by the Chief Judge.
- (b) **Subject Matter.** Standing orders are used to address matters of court business, including court policies and administrative matters, not adequately addressed by orders in individual cases, but not appropriate for inclusion in the local rules because of improbability of recurrence, level of importance, degree of interest to the Bar or public, or other reasons.
- (c) **Form.** Each standing order shall bear a heading identifying it as such and specifying the subject matter to which it relates. Standing orders shall be given such additional identifiers, including docket numbers, as the clerk determines are appropriate to facilitate orderly storage of and access to such orders.

- (d) **Posting and Retention.** Standing orders shall be posted for review by the public and court personnel and, when appropriate, archived in such manner as the Chief Judge directs in consultation with the clerk.

- (e) **Annual Review.** The Local Rules committee shall review the court's standing orders each year to determine whether any should be converted into Local Rules, amended, or vacated. The committee shall report the results of its review, including any recommendations, to the Chief Judge.