THE NEW LOCAL RULES FOR FEDERAL PRACTICE IN IOWA

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I. Introduction: The New Local Rules in Context

A. *Promulgation and Effective Date*

By order of July 20, 1973, the three judges[1] of the United States District Court for the Northern and Southern Districts of Iowa promulgated new Local Rules of Practice to govern all proceedings in cases pending from and after October 1, 1973.[2] These new consolidated rules supersede all former rules of practice in both districts of Iowa.[3] Accordingly, the lawyer who finds himself in federal court must learn to live with the new rules and to operate their mechanisms in order that his case be advanced and personal embarrassment or more stringent sanctions be avoided. In that spirit, this article is submitted as a guide to peaceful coexistence with the local rules. The rule-making background is presented, the new rules are analyzed in the context of other rules and actual application by the courts, and a topical index and practice forms are appended for convenient reference. The author neither makes nor disclaims any warranty of usefulness, for the lawyer who ventures into federal court understands that the burden of good practice is personal and nondelegable. On the other hand, this article will have succeeded if surprise and embarrassment are avoided for one lawyer in one case.

B. *Rule-Making Power: Relation To Other Rules and Acts*

The local rule-making power is derived from statutes and other federal rules. It is provided by federal statute, in language with origins as early as 1793,[4] that:

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1. The order is signed by Edward J. McManus, Chief Judge of the Northern District, William C. Hanson, Chief Judge of the Southern District and William C. Stuart, Judge of the Southern District.

2. In fact, the effective date of the new rules was suspended by printing delays until March 1, 1974, when copies of the rules were mailed to all counsel admitted to the practice before the court. The rules, as a matter of fairness, were not applied to the detriment of counsel until this mailing had been accomplished, and the judges continue to observe a period of transition in cases of good-faith compliance with superseded rules.

3. The former local rules for the Northern District were last revised on September 1, 1969. The Southern District revised its rules on May 1, 1970. The new local rules present, for the first time in one publication, a consolidated guide to practice in both districts of Iowa.

4. *See* Act of March 2, 1793, ch. 22, § 7, 1 Stat. 335.

> The Supreme Court, and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court.[5]

The Supreme Court has implemented this grant of rule-making power through Rule 83 of the *Federal Rules of Civil Procedure*, which provides that:

> Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.[6]

Thus, Rule 83 explains the manner in which district courts may exercise the rule-making power which, however, is derived from 18 *U.S.C.* section 2071 and not from Rule 83. Local rules must be promulgated by a majority of the judges for the district, and the Supreme Court must be advised thereof. Subject to these mechanical limitations, the district court may make rules limited only by the requirement of consistency with the procedural rules adopted by the Supreme Court.[7] Local rules which are consistent with rules of the Supreme Court and not inconsistent with the Constitution or any Act of Congress have the force of law.[8] The local rule-making power is limited to matters of practice and procedure which may not affect or create any substantive right, but rules so drafted are binding upon the parties and the court which promulgated them until changed in the appropriate manner.[9] It has been held that local rules, as desirable and necessary for the conduct of trial courts, should

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5. *See* 28 U.S.C. § 2071 (1970). This is a general grant of rule-making power to all federal courts on all levels. The Supreme Court has additional statutory authority for promulgation of the *Federal Rules of Civil Procedure, see* 28 U.S.C. § 2072, and the *Federal Rules of Criminal Procedure, see* 18 U.S.C. § 3771 and § 3772.

6. FED. R. CIV. P. 83. For a similar criminal rule, see *Federal Rules of Criminal Procedure* 57(a).

It is arguable that the majority requirement of Rule 83 constitutes a narrowing of the statutory grant of rule-making power in 28 *U.S.C.* section 2071. If so, the limitation is desirable insofar as it promotes greater uniformity of practice within a single district.

7. *See, e.g.*, 7 J. MOORE, FEDERAL PRACTICE ¶ 83.02, at 83-3 (2d ed. 1948): "The rule [83] itself, and especially the history behind it, evidence an intention that the power of a district court, by action of a majority of the judges thereof, to make and amend rules governing its practice is limited only by the requirement that the district court rules be not inconsistent with the Rules of Civil Procedure."

8. Local rules must not be inconsistent with the civil rules, the Constitution, or an Act of Congress. *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3153, at 226-28 (1973). Local rules have the force of law. *See* Weil v. Neary, 278 U.S. 160, 169 (1929); C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3153, at 223 (1973).

9. The local rule-making power extends only to matters of practice and procedure. *See* United States v. Hvass, 147 F. Supp. 594, 596 (N.D. Iowa 1956), *appeal dismissed on stipulation*, 257 F.2d 812 (8th Cir.), *rev'd*, 355 U.S. 570 (1958) (*see* 147 F. Supp. at 596). No substantive rights may be affected or created thereby. *See* Adams Dairy Co. v. National Dairy Products Co., 293 F. Supp. 1168, 1170 (W.D. Mo. 1968); 28 U.S.C. § 2072 (1970). But local rules are binding upon parties and the court. *See* Woods Construction Co. v. Atlas Chemical Industries, Inc., 337 F.2d 888, 890 (10th Cir. 1964).

not be ignored or declared invalid except for compelling reasons.[10] And local rules promulgated before the *Federal Rules of Civil Procedure* in 1938, but consistent therewith, remain in force until amended or superseded.[11] Nor does the requirement that copies of local rules be provided to the Supreme Court imply an absolute power of review, for this is construed as a housekeeping provision designed to create a central file of local rules for the convenience of parties and counsel.[12]

It follows from the above principles that the district court has broad power to regulate its practice through local rules, a conclusion which rests upon statutory authority, the first sentence of Rule 83, and the inherent power of a court to control the flow of business. This inherent power, however, is made explicit in the concluding sentence of Rule 83 which contemplates that the court may resolve procedural questions not regulated by local or other rule in such manner as to facilitate the just resolution of the case.[13] It is through this sentence that the court fashions tools and remedies to do justice in the inevitable gaps between existing rules of procedure. Indeed, the "omnibus sentence" of Rule 83 has been regarded as eliminating the necessity for comprehensive local rules.[14] And some commentators have criticized the growth of local rules as an undue restraint upon the useful power of the omnibus sentence.[15] The proper approach, however, seems to lie between the extremes of excessively detailed rules which tie the hands of the court and a paucity of rules which give little warning to counsel of procedural preferences in a given district.[16]

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10. *See* Wirtz v. Hooper-Holmes Bureau, Inc., 327 F.2d 939, 943 (5th Cir. 1964).

11. *See* Clair v. Philadelphia Storage Battery Co., 29 F. Supp. 299 (E.D. Pa. 1939); 7 J. MOORE, FEDERAL PRACTICE ¶ 83.03, at 83-4 (2d ed. 1948).

12. *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3153, at 226 (1973). The Supreme Court, however, does have the limited power of review to determine whether proposed local rules are consistent with the *Federal Rules of Civil Procedure. Id. See also* 7 J. MOORE, FEDERAL PRACTICE ¶ 83.02, at 83-4 (2d ed. 1948). It has been held that the failure of the Supreme Court to object to a local rule constitutes tacit approval so as to preclude review by an intermediate appellate court, *see* Cooley v. Strickland Transp. Co., 459 F.2d 779, 785 (5th Cir. 1972), but this approach mistakes the house-keeping philosophy of the central rule file. *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE AND PROCEDURE: CIVIL § 3153, at 226 (1973).

13. FED. R. CIV. P. 38. For a similar criminal provision, *see* FED. R. CRIM. P. 57(b).

The philosophy of the "omnibus sentence" is to facilitate the just resolution of the case through the fashioning of procedural relief in any manner not inconsistent with federal statutes, federal rules or local rules. *See* In re United Corp., 283 F.2d 593 (3d Cir. 1960); 7 J. MOORE, FEDERAL PRACTICE ¶ 83.03, at 83-7 (2d ed. 1948).

14. *See* 7 J. MOORE, FEDERAL PRACTICE ¶ 83.02, at 83-4 (2d ed. 1948).

15. *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3155, at 242-43 (1973). The criticism is valid if the court destroys the vitality of the omnibus sentence by providing, as some districts have done, that state or other procedure governs in the absence of a local rule. *Id.*, at 244. The court should be free to follow state practice in appropriate cases. *See* Wells v. Equitable Life Assur. Soc., 29 F. Supp. 144 (W.D. Ky. 1939) (federal court free to follow Kentucky practice on priority of opening and closing statements in final argument). However the court should not be precluded from formulating imaginative relief in unusual cases. *See* Harris v. Nelson, 394 U.S. 286 (1969) (federal court could fashion discovery procedures to assure an adequate hearing in federal civil habeas corpus proceedings to which federal discovery rules do not apply).

16. The absence of rules can be dangerous for counsel. In *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962), the court affirmed the power of the trial court under the omnibus sentence, in absence of a local rule, to dismiss the action without hearing or notice

All problems cannot be foreseen, but recurring procedural issues can be formalized by rule in such manner as to save time for the court and provide guidance for parties and lawyers.

It remains to determine how these abstract considerations have been balanced in the new local rules for federal practice in Iowa.

C. *Drafting, Philosophy and Organization of the New Rules*

According to some commentators, local rules are unsatisfactory because they originate in judicial chambers which are insulated from the beneficial influence of law practitioners and law teachers.[17] Judges, of course, do have superior opportunity to evaluate the practical effect of rules upon practice in their own courts. If the purported criticism has validity in some districts, however, it seems that the evil has been avoided in the Northern and Southern Districts of Iowa where the new local rules were promulgated by the judges and their staffs within the framework of the Special Committee on Federal Practice and Procedure of the Iowa State Bar Association. The guiding impetus for the rules originated, naturally and properly, with the Honorable Edward J. McManus, William C. Hanson and William C. Stuart. The philosophy of the judges found expression, however, through Magistrates James D. Hodges, Jr. of the Northern District and Ronald E. Longstaff of the Southern District whose membership and presence on the committee facilitated consideration of the views of the organized bar at appropriate stages of drafting and promulgation. Accordingly, the new local rules represent a cooperative merger of bench and bar to an extent unrealized in most districts. The new rules remain rules of court, but lawyers cannot complain of ex parte promulgation.

The existence of consolidated local rules for both districts of Iowa is, moreover, as important as the content of the rules. Lawyers can live with most rules if they are familiar and understood, and the draftsmen of the new rules deemed it vitally important to produce a single set of rules for federal practice in Iowa. This goal has been achieved. Each new rule applies to all federal courts in Iowa unless otherwise provided. The procedural preferences of each district are maintained, not by separate publications of separate rules, but by alternative provisions within a single rule under one cover. The result, it is hoped, is uniformity of practice wherever possible and clear warning where differing procedures are applicable. The contemplation of the *Federal Rules of Civil Procedure* is that federal practice will be uniform among the districts.

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upon the failure of counsel to attend a pretrial conference. *See also* Note, *Dismissal for Failure to Attend a Pretrial Conference and the Use of Sanctions at Preparatory Stages of Litigation*, 72 YALE L.J. 819 (1963).

17. It is worthy of mention that the proponents of such criticism are often members of the groups whose advice is deemed valuable. *See, e.g.*, C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3153, at 220 (1973):

> In most districts the judges consult with each other and make local rules on their own. It is decidedly the exception for the bar and the law schools to be given an opportunity to comment on proposed drafts of local rules.

Undoubtedly, law practitioners are less vocal than law teachers for good reasons.

While differences remain between the federal districts of Iowa, the new rules are certainly consistent with that tradition.

II. Rules Analysis

A. *Scope and Effect*

Rules 1, 27 and 39 establish the scope of the new local rules. Rule 1 provides that the rules apply to all civil and criminal cases, including proceedings before magistrates.[18] Rule 27 repeats that all local rules apply to criminal cases unless otherwise provided,[19] subject to the court's "plan" for the prompt disposition of such cases.[20] Rule 39 provides that the local rules shall be applicable to proceedings in bankruptcy. Having established the broad scope of the rules, however, Local Rule 2 provides that: "Any of these rules shall be subject to such modification by the presiding judge as may be necessary in the interests of justice." We have seen that local rules are binding upon the court and parties until changed in the appropriate manner,[21] and that such rules should not be ignored or declared invalid except for compelling reasons.[22] Accordingly, it has been said that the suspension of a local rule is unsound practice inasmuch as one judge should not have power to suspend what a majority of judges has promulgated.[23] Yet the power to suspend local rules has been upheld,[24] and the fact is that such retained power is often the circumstance which permits compromise between judges in the adoption of local rules. It is commonly understood that judges differ upon the importance of local rules in the transaction of litigation business.[25] Local Rule 2 permits compromise

18. The new rules do not expressly apply to magistrates, but the only proceedings before magistrates are civil and criminal "cases" which are subject to the rules. *See* Local Rule 1. Thus, the new rules are applicable to magistrates. Also, the Supreme Court has promulgated *Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates* under the authority of the Federal Magistrates Act of 1968. *See* 18 U.S.C. § 3771 (1970). These should be consulted in appropriate cases.

19. The new local rules are organized into general, civil, criminal, magistrate and bankruptcy divisions. Obviously, not "all" local rules apply to criminal cases. *See* Local Rule 27. Rather, the intent of the draftsmen was that Rule 27 would incorporate in criminal cases the motion practice of civil Rule 16.

20. *Federal Rules of Criminal Procedure* 50(b) requires each district court to prepare a "plan" for the prompt disposition of criminal cases. These plans establish important time limits for pretrial, trial and sentencing procedures. Inasmuch as failure of the United States or the defendant to proceed in timely manner under the plans may raise the possibility of serious sanctions or sweeping relief, the plans of the Northern and Southern Districts of Iowa are appended hereto for reference. Little known, these important plans should be consulted upon any question of timeliness in a criminal case.

The plans of the districts have not been consolidated.

21. *See* Woods Construction Co. v. Atlas Chem. Industries, Inc., 337 F.2d 888, 890 (10th Cir. 1964).

22. *See* Wirtz v. Hooper-Holmes Bureau, Inc., 327 F.2d 939, 943 (5th Cir. 1964).

23. *See* C. Wright & A. Miller, 12 Federal Practice & Procedure: Civil § 3153, at 224 (1973).

24. *See* Trans World Airlines, Inc. v. Hughes Tool Co., 314 F. Supp. 94 (S.D.N.Y. 1970); Frankel v. Alan Wood Steel Co., 31 F.R.D. 284, 287 (E.D. Pa. 1962).

25. Generalizations are hazardous in this sensitive area. It may be said that local rules are more closely observed in the Northern District of Iowa upon the basis that compliance is helpful to the orderly flow of litigation business. The Southern District tends to regard local rules as less vital to the function of the court and only a procedural frame-

in the interest of obtaining a single set of rules, while continuing the useful power to do justice in a particular case which would otherwise be controlled by a temporarily unjust local rule. In sum, Rule 2 makes practical and good sense.

B. *Attorneys*

The district court may provide by local rule the qualifications for practice before it.[26] Indeed, the qualification, admission, conduct and discipline of attorneys have long been regarded as appropriate subjects for the local rule-making power. This power is expressed in Local Rule 5 wherein the bar of the court is described as those attorneys previously or hereafter admitted to practice who have taken the prescribed oath.[27] Attorneys will be eligible for admission who are admitted to practice before the Supreme Court of Iowa and who maintain an office or residence in Iowa.[28] The formal admission procedure is by written application,[29] although eligible attorneys may be admitted upon oral motion in open court.[30] Admitted attorneys who do not reside in Iowa may appear without local counsel if they do maintain a functioning law office in Iowa, but all other nonresident attorneys must obtain admitted local counsel who maintain both office and residence in Iowa.[31]

The local counsel requirement is strictly enforced in civil cases. As a practical matter, the requirement is policed through the Rule 5(G) provision that an appearing attorney must state his name and office address in the appearance or other pleading first filed by him.[32] If said appearance or pleading

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work which will be observed so long as helpful and required by justice. In this regard, however, the author repeats the *caveat* previously made herein. Also, it is apparent that compliance with a local rule will be safer than noncompliance in any case.

26. *See, e.g., In re* Crow, 283 F.2d 685 (6th Cir. 1960).

27. LOCAL RULE 5(A).

28. LOCAL RULE 5(B).

29. LOCAL RULE 5(C)(1). Application forms are obtained from the clerk of court. These forms are substantially identical in both districts of Iowa. See Appendix B(2) for the Southern District form.

30. LOCAL RULE 5(C)(2). Leave of court is required. Admission upon oral motion avoids the requirement that the application be signed by a judge of the district or Supreme Court of Iowa. *See* LOCAL RULE 5(C)(1).

31. LOCAL RULE 5(F). Thus, the standard for serving as local counsel (admission, Iowa office and Iowa residence) is higher than principal counsel (admission and Iowa office). The basis of the difference is unclear, for the lower standard seems to provide adequate accountability.

The local counsel requirement has been upheld. *See* United States v. Hvass, 147 F. Supp. 594 (N.D. Iowa 1956), *appeal dismissed on stipulation*, 257 F.2d 812 (8th Cir.), *rev'd*, 355 U.S. 570 (1958); De Parcq v. United States District Court, 235 F.2d 692 (8th Cir. 1956) (by implication). But the local rule should be waived when its enforcement, as a practical matter, would deny access to the federal court to a party whose principal attorney cannot find local counsel to sign the pleadings with him. *See* Lefton v. City of Hattiesburg, Mississippi, 333 F.2d 280 (5th Cir. 1964) (civil rights case). Nor can the local counsel requirement be expanded to limit nonresident attorneys by number of appearances or seniority in the bar. *See* Sanders v. Russell, 401 F.2d 241 (5th Cir. 1968).

32. LOCAL RULE 5(G). The *Federal Rules of Civil Procedure* do not contemplate the filing of an appearance. *See* FED. R. CIV. P. 7. It is generally assumed that a formal written appearance is unnecessary, if not improper, in federal practice. Local Rule 5(G), however, continues and validates the Iowa practice of filing written appearance as the initial responding paper in a civil case. As with Iowa practice, no appearance

indicates a failure to obtain local counsel where required, the clerk will refuse filing until local counsel is obtained.[33] The local counsel requirement does not apply to parties appearing pro se,[34] nor will the rule require local counsel for a criminal defendant if principal counsel is admitted to any state or federal bar.[35]

If it is difficult to get into federal court, it can also be difficult to get out. Rule 5(G) permits the withdrawal of appearing counsel only upon application to the court, notice to opposing counsel and the client, proof of service filed with the clerk, and leave of court for good cause shown.[36] The rule is strictly construed in both districts, especially in criminal cases.

C. *Trial Practice*

The new local rules have important bearing upon pretrial, trial, and post-trial practice.

1. *Pretrial Practice*

(a) *Matters of Form.*

A common function of local rules is to prescribe matters of form. Thus, Local Rule 11 should be consulted for the form of pleadings wherein provision is made for caption,[37] signatures,[38] and the filing of copies.[39] Local Rule 12 implements Rule 5 of the *Federal Rules of Civil Procedure* in providing the manner for proof of service in a civil case.[40] Local Rule 14 provides minimum standards for approved bonds in criminal and civil cases,[41] and Rule

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is necessary if an answer is filed. Unlike Iowa practice, the filing of an appearance in a federal civil case does not extend the time for answer.

See Local Rule 28 for an appearance requirement in federal criminal cases. See also Local Rule 32 for the appointment of counsel in criminal cases.

33. LOCAL RULE 5(F).

34. LOCAL RULE 5(F). Nor could the rule so apply. *See* Brasier v. Jeary, 256 F.2d 474 (8th Cir. 1958).

35. LOCAL RULE 5(K).

36. LOCAL RULE 5(G). See Appendix B(3) for a practice form on application for withdrawal of counsel. See Appendix B(4) for practice form on withdrawal of counsel.

37. Local Rule 11(C) prescribes the form of caption for federal pleadings. *See* Appendix B(5).

38. LOCAL RULE 11(D). Federal pleadings are signed by the attorney in his individual capacity. The attorney's law firm, if any, may appear "of counsel" without signature. This quirk of federal practice is based equally upon Local Rule 11 and *Federal Rule of Civil Procedure* 11 ("Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. . . ."). *See* Appendix B(6).

39. LOCAL RULE 11(E). The original and one copy of each pleading must be filed with the clerk. The clerk retains the original, and the copy is forwarded to the judge to whom the case is assigned for his private file.

40. *Federal Rule of Civil Procedure* 5 provides the manner in which pleadings may be served, but the rule is silent upon the manner of proof of service. Local Rule 12 fills the gap by validating proof of service by written acknowledgement of the recipient, by attorney's certificate, by affidavit of the person making service, or by other approved manner. The attorney's certificate is most commonly used. *See* Appendix B(7). Local Rule 12(B) requires proof of service to be filed "promptly", but the clerk will often refuse filing unless such proof is filed contemporaneously with the pleadings served.

41. 18 *U.S.C.* section 3146 provides detailed procedures and requirements for forms

17(C) provides that the form of answers to interrogatories shall include each interrogatory with each answer in alternating manner.[42]

(b) *Commencement of Action.*

Another series of local rules establishes procedural requirements for the commencement of a lawsuit. Rule 15 is an informational rule which describes proper offices for filing complaints,[43] the preparation of the summons[44] with accompanying instructions for service,[45] and the payment of filing and service fees.[46] An appropriate notice must be filed upon the institution of cases requiring a three-judge court,[47] or cases subject to multi-district litigation procedures,[48] or complex criminal cases,[49] or cases raising the alleged unconstitutionality of a federal statute.[50]

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of release, including release on bond, which will usually be controlling in a criminal case. Thus, Local Rule 14 is primarily a civil rule.

Not every corporate surety is qualified to write bonds in federal court. *See* LOCAL RULE 14(A)(2). A list of approved corporate sureties may be obtained from the clerk of court.

42. This rule makes excellent sense, although *Federal Rule of Civil Procedure* 33 does not so provide.

43. LOCAL RULE 15(A). 28 *U.S.C.* section 95 announces the organization, by county, of the two federal judicial districts and ten judicial divisions of Iowa. *See* Appendix B(8). Once the proper district and division are determined under the statute, Local Rule 15(A) explains the filing point for each district and division.

44. LOCAL RULE 15(B). Under the rule, the summons is prepared by the clerk and forwarded to the marshal. In practice, the clerk *may* ask counsel to prepare the summons. The standard form should be used. *See* Appendix B(9). This basic form is easily adapted for third-party litigation. Note, however, that counsel must prepare the summons if service will be made upon a nonresident pursuant to special federal statute, court order, or the "long-arm" or other provision of state law. The standard form of summons should be altered in conformity with the special order or statute, and any language required by the statute or order should be incorporated in the summons. *See* FED. R. CIV. P. 4(e).

45. LOCAL RULE 15(C) and (D). Counsel provides instructions for service by completion of a "Form 285" which is delivered to the clerk with the complaint and filing fee. These forms are obtained from the clerk. *See* Appendix B(10).

46. LOCAL RULE 15(E). The marshal "demands" his service fees by written statement upon completion of service.

47. LOCAL RULE 20. In general, three-judge courts are required to hear applications for temporary and permanent injunctive relief against the enforcement of a federal or state statute upon the ground of unconstitutionality. *See* 28 U.S.C. § 2281 *et seq.* (1970). Local Rule 20 requires the attorney for the applicant to give written notice to the clerk, with supporting authorities, that a three-judge court is requested. *See* Appendix B(11). The attorney's notice is not compelled by 28 *U.S.C.* section 2281 *et seq.*, but a failure to give notice which results in failure to convene a three-judge court will invalidate any action taken by a single judge as beyond his subject matter jurisdiction. *Id.* Accordingly, the attorney's notice is in the best interest of the attorney and his client seeking injunctive relief.

48. LOCAL RULE 19(B). 28 *U.S.C.* section 1407 provides, *inter alia*, that "when civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." The actions will be remanded upon the completion of pretrial proceedings. *Id.* The transfer may be initiated by a party upon motion, or by action of a national panel of judges which coordinates multi-district litigation procedures. *See* 28 U.S.C. § 1407 (1970). The purpose of the attorney's notice under Local Rule 19(B) is to facilitate action by the national judicial panel. *See* Appendix B(12).

49. LOCAL RULE 19(D). *See* Appendix B(13).

50. LOCAL RULE 21(A). The United States has a statutory right to intervene in any action wherein the constitutionality of a federal statute affecting the public interest is questioned. *See* 28 U.S.C. § 2403 (1970). In such cases, the court must notify the Attorney

(c) *Motion Practice.*

Motion practice is regulated in important particulars by the new local rules. A "motion" is any request for court action.[51] Motions must be written, not ex parte, and presented in the same form as other pleadings.[52] Rule 78 of the *Federal Rules of Civil Procedure* provides, in part, that:

> To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Pursuant to Rule 78, the new local rules provide:

> Oral Arguments: Motions shall be submitted and determined upon the motion papers hereinafter provided. Oral argument of motions may be had on the written request and showing of cause by any party or upon order of Court. The request for oral argument may be made in the motion or written memorandum of either party. Such request shall be separately stated at the conclusion of the motion or memorandum.[53]

Accordingly, the new rules indicate that hearings on motions will be infrequently granted. Judges may believe that oral argument is over-valued by lawyers and lawyers may hold that oral argument is under-rated by judges, but counsel must note that this timeless difference of opinion has been resolved in favor of the judges by the new rules. Oral argument is not a matter of right.[54] Thus, the attorney who desires hearing for oral argument or evident-

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General of the pendency of the case and permit intervention by the United States. *Id. See also* FED. R. CIV. P. 24(c). Local Rule 21(A) is designed to assist the court in said duty. The attorney's notice is simple. *See* Appendix B(14).

51. LOCAL RULE 16(A).

52. LOCAL RULE 16(B).

53. LOCAL RULE 16(C).

54. Oral argument on motions is not required by due process. *See* Federal Communication Comm'n v. WJR, The Goodwill Station, Inc., 337 U.S. 265 (1949). Nor is a local rule which provides a method for requesting oral argument invalid as inconsistent with the *Federal Rules of Civil Procedure*. *See* Jefferson v. Asplund, 467 F.2d 199 (9th Cir. 1972).

Dispositive motions under *Federal Rule of Civil Procedure* 12(b) may be submitted and determined without oral hearing. *See* Morrow v. Topping, 437 F.2d 1155 (9th Cir. 1971); Rose Barge Line, Inc., v. Hicks, 421 F.2d 163 (8th Cir. 1970). But a Rule 12(b) motion to dismiss cannot be sustained without affording the losing party an opportunity to submit some form of argument, either oral or written. *See* Jordan v. County of Montgomery, 404 F.2d 747 (3d Cir. 1969); Council of Federated Organizations v. Mize, 339 F.2d 898 (5th Cir. 1964). The requirement for argument is satisfied if written brief and argument are presented. *See* Skolnick v. Martin, 317 F.2d 855, 857 (7th Cir. 1963).

Motions under *Federal Rule of Civil Procedure* 60(b) for relief from a judgment or order do not require oral hearing, at least where the motion is frivolous and an abuse of process. *See* United States Fid. & Guar. Co. v. Lawrenson, 8 Fed. Rules Serv. 2d 60b.27, Case 2 (4th Cir. 1964), *cert. denied*, 379 U.S. 869 (1964); 7 J. MOORE, FEDERAL PRACTICE ¶ 78.02, at 78-5 (2d ed. 1948).

The courts are split on the propriety of entertaining motions for summary judgment under Rule 56 without oral argument. The Ninth Circuit holds that a local rule denying oral argument cannot stand in the face of Rule 56. *See* Dredge Corp. v. Penny, 338 F.2d 456 (9th Cir. 1964). But the Seventh Circuit has upheld the denial of argument on Rule 56 motions. *See* Sarelas v. Porikos, 320 F.2d 827 (7th Cir. 1963), *cert. denied*, 375 U.S. 985 (1964) (at least where issues are fully covered in briefs and only legal issues are presented). And the Eighth Circuit has approved the application of Local Rule 16(C) to

iary offer must request a hearing *and* show good cause therefor.[55] No form for the request is prescribed by the rules, but it seems prudent to request oral argument in the concluding paragraph of a motion which incorporates an attached affidavit of counsel stating the specific grounds for the request.[56] The motion must be supported by written brief.[57] And no motion relating to depositions and discovery will be filed by the clerk without an affidavit by counsel for the moving party that the motion is actually contested.[58] The party opposing the motion must file and serve a written resistance and brief within ten days after service of the motion, for failure to resist may cause the motion to be sustained.[59] A motion or resistance in violation of the local rules is ground for sanctions.[60]

Motion practice in criminal cases follows the civil procedure.[61] Criminal and civil pretrial motions are usually within the jurisdiction of the magistrate.[62]

(d) *Pretrial Conferences.*

The new local rules provide important information on pretrial conferences in civil and criminal cases. Rule 16 of the *Federal Rules of Civil Procedure* establishes, of course, that the court may hold pretrial conferences for the consideration of appropriate matters.[63] Local Rule 18 amplifies this general rule by the establishment of specific pretrial procedures. Detailed pretrial rules have been criticized by some commentators,[64] but all counsel understand that pretrial is helpful in many cases and, in any event, is mandatory when ordered by the court.

Pretrial procedures in the Northern District of Iowa are characterized by the service of three standard orders in civil cases. The first order,[65] issued

deny oral argument on a Rule 56 motion. *See* Parish v. Howard, 459 F.2d 616 (8th Cir. 1972). The court noted that "the rule should be sparingly applied" to such cases and that oral argument is "ordinarily" appropriate, but there was no error where the affidavits, depositions and other documents revealed only law questions which were briefed by both parties. *See Id.* at 620. Also, neither party showed good cause for oral argument in violation of the same local rule. *Id.*

55. LOCAL RULE 16(C).

56. *See* Appendix B(15).

57. LOCAL RULE 16(D).

58. LOCAL RULE 16(E). *See* Appendix B(16).

Local rules requiring a good faith effort to resolve discovery disputes before litigation are common in at least 21 federal districts. *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3154, at 237 (1973).

59. LOCAL RULE 16(F). A resistance is absolutely necessary in both districts of Iowa.

60. LOCAL RULE 16(G).

61. LOCAL RULE 29.

62. LOCAL RULE 37(C)(3).

63. FED. R. CIV. P. 16. The conference may involve narrowing of issues, amendments to pleadings, admissions, reference to a special master, or any other helpful action. *Id.*

64. Elaborate local rules for pretrial conference are said to "reinstate the complexity and formality that the Civil Rules were intended to end." *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE: CIVIL § 3154, at 239 (1973). In fairness, however, these commentators have little good to say about any local rules of court.

65. LOCAL RULE 18(A)(2). *See* Appendix B(17) for Standard Pretrial Order #1:

by the clerk when the case is at issue, requires counsel to meet and prepare a preliminary pretrial report by a designated date. This report covers, *inter alia*, jurisdictional questions, names of attorneys, parties and trial witnesses,[66] conflict of law problems, identification of exhibits, the completion of pleadings, and the nature and extent of personal injuries claimed, if any.[67] The second order, issued by the clerk upon the filing of a preliminary pretrial report, establishes a completion deadline for discovery.[68] Upon the completion of discovery, the court may order counsel to appear at a final pretrial conference.[69] If so, the clerk provides a form of order which counsel should follow in drafting a proposed final pretrial order.[70] This proposed order is presented to the court at the final pretrial conference, and it must contain a factual stipulation, a list of exhibits and objections, the names of witnesses who may or will be called to testify for all parties, and the factual and legal contentions of the parties. The court then incorporates the proposed order in the final pretrial order which is issued by the judge or magistrate.[71] Settlement negotiations must cease not later than fifteen days after the final pretrial conference.[72]

The local rules for pretrial conference in the Sourthern District are less formal than the Northern District provisions detailed above.[73] In general, Rule 16 of the *Federal Rules of Civil Procedure* is the applicable source of law.[74] Discovery, however, will cease within 90 days after completion of the pleadings and upon service of an appropriate order by the clerk.[75] In "extraordi-

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Notice to Conduct Preliminary Pretrial Proceedings.

66. The failure to identify a witness in pretrial proceedings may result in the exclusion of his testimony at trial. *See* Globe Cereal Mills v. Scrivener, 240 F.2d 330 (10th Cir. 1956) (no abuse of discretion in excluding testimony of witness not disclosed on pretrial list in violation of local rule). A rule requiring pretrial disclosure of trial witnesses is valid. *See* Wirtz v. Hooper-Holmes Bureau, Inc., 327 F.2d 939 (5th Cir. 1964).

67. If the nature or extent of permanent injury is not described in the report, testimony thereon may be excluded at trial. *See* Frankel v. Todd, 260 F. Supp. 772 (E.D. Pa. 1966), *aff'd*, 377 F.2d 553 (3d Cir. 1966), *rev'd en banc on other grounds*, 393 F.2d 435 (3d Cir. 1968), *cert. denied*, 393 U.S. 855 (1968).

68. *See* Appendix B(18) for Standard Pretrial Order #2: Order For Completion of Discovery. Counsel should note that this order contemplates the completion of all discovery—both the propounding of the request *and* the response—by the discovery deadline. Thus, a set of interrogatories or request for production of documents filed less than 30 days prior to the deadline is not timely under the order.

Local rules limiting the time for discovery are valid. *See* Greyhound Lines, Inc. v. Miller, 402 F.2d 134 (8th Cir. 1968) (court has inherent power to control time for discovery within reasonable limits).

69. LOCAL RULE 18(A)(4).

70. *See* Appendix B(19) for Standard Pretrial Order #3: Suggested Form of Order For Final Pretrial Conference.

71. The magistrate has jurisdiction to conduct pretrial conference. *See* LOCAL RULE 37(C)(2).

72. LOCAL RULE 18(A)(4)(c). This controversial rule has the beneficial effect of allowing the court and counsel to rely upon a firm date for trial after passage of the settlement deadline. Lawyers and parties may plan their schedules with certainty, and distant witnesses may make travel plans. Moreover, the court may suspend the rule and permit late settlement in proper cases. *See* LOCAL RULE 2.

73. The districts chose to retain their own pretrial procedures, but the differing rules are promulgated as different divisions of the same local rule. *See* LOCAL RULE 18(A) *and* 18(B). Hopefully, this side-by-side printing will enhance understanding of both pretrial procedures.

74. FED. R. CIV. P. 16. *See also* LOCAL RULE 18(B).

75. LOCAL RULE 18(B)(1).

nary" cases, an extension of time for completion of discovery will be granted.[76]

Pretrial conferences in criminal cases are governed by Local Rule 31. Termed an "omnibus hearing," the purpose is to eliminate written motion practice and to encourage the free exchange of information. At present, only the Southern District is utilizing the omnibus hearing provisions of Local Rule 31.[77]

(e) *Exhibits.*

Local Rule 23 on exhibits should be considered with the pretrial rules aforesaid. In the Northern District, exhibits are listed in the preliminary pretrial report, listed and examined at the final pretrial conference, and marked prior to trial but preferably at or before the final pretrial conference. In the Southern District, exhibits are listed and exchanged at the pretrial conference but not marked until immediately prior to trial[78] because of the high settlement rate for cases. Accordingly, the Local Rule 23(B) requirement for service of a list of exhibits is not strictly observed in either district. Note, however, that the other requirements of the rule are followed in both districts, including the dangerous provision which excludes from consideration at trial those exhibits which were not identified and exchanged in compliance with the rule.[79]

(f) *Impartial Medical Examination.*

Local Rule 22 allows the appointment of an impartial medical expert by the court upon his own motion, upon motion of a party, or by stipulation in any case where the medical condition of a party is at issue.[80] The expert conducts the examination and reports his conclusions to the court with copies to counsel.[81] The expert may be called as a witness by either party or

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76. LOCAL RULE 18(B)(2).

77. The heart of the omnibus hearing is completion by counsel for defendant and the government of an Order on Omnibus Hearing. *See* Appendix B(20). This helpful form is designed to aid counsel and parties in raising all appropriate motions while eliminating voluminous motion papers. The omnibus hearing has been successful in the Southern District of Iowa.

78. If exhibits are numerous, it is proper to mark them during the week before trial in the Southern District.

79. LOCAL RULE 23(B).

80. LOCAL RULE 22(A); *cf.* FED. R. CRIM. P. 28 (impartial expert in criminal cases); FED. R. CIV. P. 35 (physical and mental examinations); FED. R. CIV. P. 26(b)(4) (discovery of facts and opinions held by experts).

The motion by a party under Local Rule 22 must be supported "by an affidavit of one of the parties setting forth the need." No particular form of affidavit is required, but a case of "need" may be shown by, *e.g.*, a statement that the party is unable to obtain the cooperation of a medical expert or that expert opinions on the same subject have differed widely.

It is believed that the Rule 22 procedure has not been employed in any case in either district. Thus, no panel of physicians has been appointed pursuant to the rule.

The validity of a local rule on impartial medical examinations is open to question in light of the Supreme Court's decision that "basic procedural innovations" are beyond the scope of the local rule-making power. *See* Miner v. Atlass, 363 U.S. 641, 650 (1960). But Rule 706 of the proposed *Federal Rules of Evidence* would resolve the issue by validating such examinations. *See* 56 F.R.D. 286-88 (1973).

81. LOCAL RULE 22(B).

the court,[82] but the party calling the expert must pay his fees.[83] If the expert is called by the court or not called by anyone, then his fees will be shared equally by the parties unless otherwise ordered.[84]

(g) *Dismissal.*

Local Rule 24 regulates the voluntary and involuntary dismissal of actions. Rule 24(A) on voluntary dismissals is an informational rule designed to alert counsel to Rule 41 of the *Federal Rules of Civil Procedure* which permits the voluntary dismissal of actions (1) by the plaintiff upon filing a "notice of dismissal"[85] before responsive pleadings or motions are filed by the defendant, or (2) by all parties upon filing a "stipulation of dismissal"[86] at any time. Counsel should note that no further order of court is required, and that the notice or stipulation should provide that the action *is* dismissed. Rule 24(B) establishes standards of dismissal for want of prosecution. This is a proper function of local rules of court.[87] Upon written notice by the clerk that dismissal will occur unless action is taken,[88] the case will be dismissed for failure to proceed in timely manner.[89] This procedure is followed in the Northern District, but the Southern District tends, in lieu of the clerk's notice, to issue an order of court to show cause why the case should not be dismissed for want of prosecution. The standards of Rule 24(B)(1), however, would be relevant to the determination of the show cause hearing.

2. *Trial Practice*

The new local rules contain a limited number of provisions on trial practice.

(a) *Courtroom decorum.*

Rule 5(H) is an informational rule designed to acquaint new or nonresident attorneys with the local amenities of courtroom decorum which are familiar to most Iowa lawyers. The examination of witnesses is conducted from the counsel table, and counsel should ask permission to approach the bench

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82. LOCAL RULE 22(C).
83. LOCAL RULE 22(E).
84. LOCAL RULE 22(D). It would seem appropriate that the expert's fee for *examination* should be shared by the parties in most cases, but that the fee for *testimony* should be paid by the party calling the expert as a witness unless said expert witness is called by the court. Rule 22 makes no such distinction.
85. *See* Appendix B(21).
86. *See* Appendix B(22).
87. Pursuant to Rule 83 of the *Federal Rules of Civil Procedure*, the district court has the power to promulgate local rules on dismissal for want of prosecution. *See* Hicks v. Bekins Moving & Storage Co., 115 F.2d 406 (9th Cir. 1940); 7 J. MOORE, FEDERAL PRACTICE ¶ 83.03, at 83-9 (2d ed. 1948). Local rules on dismissal for want of prosecution exist in at least 48 federal districts. *See* Link v. Wabash R. Co., 370 U.S. 626, 631 (1962) (*see* note 7).
88. *See* Appendix B(23). Notice is required for validity. *See* Radock v. Norwegian America Line Agency, Inc., 318 F.2d 538 (2d Cir. 1963).
89. Various grounds are specified in the rule. *See* LOCAL RULE 24(B)(1).

or the witness. This rule is followed closely in both districts as a matter of courtesy and good practice.

(b) *Jury trials.*

Rule 6 provides a trial outline for jury cases, both civil and criminal, in federal court. A verdict of six jurors is binding in civil cases, but twelve-man juries are mandatory for criminal practice.[90] Different practices are followed in the districts, however, under the same local rule.

In the Northern District, Rule 6 is applied to require a jury of six and a unanimous verdict. Voir dire examination is conducted by the magistrate in most civil cases.[91] Alternate jurors are not called, but the jury is enlarged from six to seven or eight in protracted cases. A sealed verdict is used in most civil cases.[92] Additional instructions are given to the jury if a serious question arises, and the procedure of Rule 6(G)(3) is followed.

In the Southern District, a jury of eight is selected in civil cases. Two jurors may be excused for illness or other cause, but the verdict must be unanimous. No alternates are called, nor does the magistrate conduct voir dire examination. The sealed verdict is used occasionally. Local Rule 6(G)(3) is followed.

(c) *Instructions.*

In both districts, jury instructions must be requested in accordance with Local Rule 6(G)(1) and (2). The request must be drawn in certain form.[93]

3. *Post-Trial Practice*

The local rules contain provisions on costs and, in criminal cases, the disclosure of pre-sentence reports.

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90. LOCAL RULE 6(B). See Appendix to *Cooley v. Strickland Transportation Co.*, 459 F.2d 779, 786-88 (5th Cir. 1972) for local rules of 31 districts providing for juries of less than twelve in some or all cases.

In criminal cases, a state court may reduce the size of the jury to less than twelve. *See* Williams v. Florida, 399 U.S. 78 (1970). Convictions based upon non-unanimous verdicts are constitutionally permissible. *See* Apodaca v. Oregon, 406 U.S. 404 (1972); Johnson v. Louisiana, 406 U.S. 356 (1972). In federal court, however, criminal prosecutions must be tried to a jury of twelve. *See* Apodaca v. Oregon, *supra*; FED. R. CRIM. P. 23(b). Non-unanimous verdicts are not permissible. *See* Apodaca v. Oregon, *supra*; FED. R. CRIM. P. 31(a).

In civil cases, a state court may reduce the jury below twelve. *See* Williams v. Florida, 399 U.S. 78 (1970); Colgrove v. Battin, 456 F.2d 1379 (9th Cir. 1972). Non-unanimous verdicts are permissible. *See* Apodaca v. Oregon, *supra*; Colgrove v. Battin, *supra*. In federal civil cases, it is permissible to reduce the jury to less than twelve. *See* Apodaca v. Oregon, *supra*; Colgrove v. Battin, *supra*. The validity of a non-unanimous verdict is doubtful. *See* Apodaca v. Oregon, *supra*; American Publishing Co. v. Fisher, 166 U.S. 464 (1897); FED. R. CIV. P. 48.

Caveat: Local Rule 6(B) can be interpreted to permit reduction of jury size *and* non-unanimous verdicts in civil cases. Accordingly, the rule must be applied in consonance with the foregoing authority. *See generally* Devitt, *The Six Man Jury in the Federal Courts*, 53 F.R.D. 273 (1971).

91. LOCAL RULE 6(C). *See also* LOCAL RULE 37(C)(9).

92. LOCAL RULE 6(I).

93. *See* Appendix B(24).

(a) *Costs.*

The allowance, taxation and review of costs in federal court are controlled by a confusing assortment of rules and statutes.[94] Definitive explanations of this complex subject are few[95] and, for this reason, Local Rule 25 was promulgated as an informational guide to procedure in that pleasant period when a judgment has been obtained or affirmed.[96] In general, the process is initiated by rendition and entry of a judgment allowing costs to the prevailing party.[97] The clerk must advise such fact by mailing a copy of the judgment to all parties not in default.[98] Unless the court has provided in the judgment that costs shall *not* be allowed,[99] the clerk will also mail a bill of costs in blank form to the prevailing party.[100] At this point, counsel for the prevailing party may proceed in formal or informal fashion. Because costs are payable from one party to another and not to the clerk,[101] it is common practice for the parties to compute and pay costs by agreement of counsel. If, however, the parties cannot agree upon costs, then the prevailing party must complete, file and serve his bill of costs within fourteen days after mailing by the clerk.[102] This limitation upon time of filing is strictly enforced and valid.[103] A failure to file the bill of costs within fourteen days constitutes a waiver of costs,[104] and the clerk will not tax costs in the absence of any filing. The bill of

94. A partial compilation of federal statutes and rules on costs would include 28 U.S.C. § 1821 (costs for witnesses); 28 U.S.C. § 1824 (mileage of person summoned as witness and juror); 28 U.S.C. § 1825 (payment of fees for witnesses summoned by United States); 28 U.S.C. § 1920 (taxation of costs); 28 U.S.C. § 1921 (fees of marshal); 28 U.S.C. § 1923 (docket fees); 28 U.S.C. § 1924 (verification of bill of costs); 28 U.S.C. § 1927 (liability of attorney for excessive costs); FED. R. CIV. P. 30(d) (costs for bad-faith discovery practice in depositions); FED. R. CIV. P. 30(g) (costs for failure to attend deposition or serve subpoena); FED. R. CIV. P. 37(a) (costs for bad-faith demand or refusal of discovery); FED. R. CIV. P. 37(b) (costs for failure to comply with discovery order); FED. R. CIV. P. 37(c) (costs for failure to make admissions); FED. R. CIV. P. 37(d) (costs for failure to provide discovery); FED. R. CIV. P. 42(a) (consolidation of actions to avoid costs); FED. R. CIV. P. 53(a) (compensation of special master as costs); FED. R. CIV. P. 54(d) (allowance, taxation and review of costs); FED. R. CIV. P. 68 (costs upon offer of judgment); FED. R. CIV. P. 71A(1) (costs in condemnation cases); FED. R. APP. P. 39 (costs on appeal).

95. The Honorable Richard Peck, clerk and magistrate of the United States District Court for the District of Nebraska, has written two excellent articles on costs which are reported at 37 F.R.D. 481 (1965) and 43 F.R.D. 55 (1968).

96. The taxation of costs is regulated by local rule in many federal districts. *See* C. WRIGHT & A. MILLER, 12 FEDERAL PRACTICE & PROCEDURE, CIVIL § 3154, at 241 (1973).

97. A judgment is "rendered" by the judge, but it can only be "entered" of record by the clerk. *See* FED. R. CIV. P. 79.

98. *See* FED. R. CIV. P. 77(d).

99. Under *Federal Rule of Civil Procedure* 54(d), "costs shall be allowed as of course to the prevailing party unless the court otherwise directs. . . ." Thus, a judgment which is silent upon the allowance of costs is construed to grant costs to the prevailing party. Ony a judgment which expressly disallows costs will prevent the clerk from proceeding with the ministerial acts contemplated by Rule 54(d) and Local Rule 25.

100. LOCAL RULE 25(A)(1)(a). For the form of the Bill of Costs, see Appendix Rule B(25).

101. LOCAL RULE 25(B).

102. LOCAL RULE 25(A)(1)(b).

103. *See* Dickinson Supply, Inc. v. Montana-Dakota Utilities Co., 423 F.2d 106, 110 (8th Cir. 1970) (ten day limitation under local rule was valid); Woods Constr. Co. v. Atlas Chem. Ind., Inc., 337 F.2d 888, 891 (10th Cir. 1964).

104. LOCAL RULE 25(A)(1)(b).

costs must be itemized[105] and supported by affidavit of the party or his attorney.[106] Thereafter, the opposing party must file his resistance within ten days.[107] Upon the expiration of time for resistance, the clerk has discretion to tax costs in an "appropriate" amount.[108] Either party may appeal from the clerk's order by filing a motion to review within five days after said taxation.[109] But time is of essence, and the district court has broad discretion to deny the motion for untimeliness[110] or to issue any appropriate order.[111] *Caveat*: Local Rule 25, and not Rule 54(d) of the *Federal Rules of Civil Procedure*, constitutes the applicable source of law which must be consulted and followed in the above particulars.[112]

The filing of a notice of appeal does not stay the requirements of Local Rule 25. A notice of appeal in a civil case may be filed within 30 days after judgment entry,[113] but the bill of costs must be filed within fourteen days from mailing of the form.[114] Thus, prevailing counsel should proceed to obtain taxation of costs in every case if waiver is to be avoided.[115] Indeed, an award of costs is part of a final judgment which can only be stayed by proper application for supersedeas bond to the district court or court of appeals.[116] Costs on

105. LOCAL RULE 25(A)(1)(c).
106. *Id.* *See* 28 U.S.C. § 1924 (1970).
107. LOCAL RULE 25(A)(1)(d).
108. *Id.*
109. *Id.* *See* FED. R. CIV. P. 54(d).
110. *See* Dickinson Supply, Inc. v. Montana-Dakota Utilities Co., 423 F.2d 106, 110 (8th Cir. 1970).
111. The court has broad discretion in matters of costs. *See, e.g.*, Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964) (district court had discretion to allow transportation costs of witnesses from outside the district and more than 100 miles from the place of hearing or trial); Moylan v. AMF Overseas Corp., 354 F.2d 825 (9th Cir. 1965) (roundtrip transportation expenses of witness between Japan and Guam allowed as costs). A local rule may provide for the posting of security for costs. *See* Brewster v. North American Van Lines, Inc., 461 F.2d 649 (7th Cir. 1972); Russell v. Cunningham, 233 F.2d 806 (9th Cir. 1956). This also includes security or reimbursement for the costs of depositions and discovery. *See* 7 J. MOORE, FEDERAL PRACTICE ¶ 83.03, at 83.8 (2d ed. 1948). But a local rule limited to matters of procedure cannot be construed to authorize allowance of an item of cost not authorized by statute. *See* Adams Dairy Co. v. National Dairy Prod. Co., 293 F. Supp. 1168, 1170 (W.D. Mo. 1968) (attorney fee disallowed as item of cost).
112. Rule 54(d) appears to contemplate a quasi-judicial hearing before the clerk, after notice to all parties, wherein the proponents and opponents of costs may appear and argue the merits of allowance without necessity for a written bill of costs or resistance thereto. The language of the rule that costs "shall be allowed as of course to the prevailing party . . ." tends to mislead said party into inactivity, while the language of the standard form on bill of costs seems to indicate that rule 54(d) will be followed. *See* Appendix B(25). In fact, Local Rule 25 has superseded rule 54(d) in vital particulars. There is no notice, there is no hearing, a written bill of costs and resistance are mandatory within certain time periods, and costs will be *disallowed* "as of course" unless Local Rule 25 is followed. Nonetheless, the local rule is valid. *See* Dickinson Suppiy, Inc. v. Montana-Dakota Utilities Co., 423 F.2d 106, 110 (8th Cir. 1970) (similar local rule of district of North Dakota is valid and not inconsistent with *Federal Rules of Civil Procedure*).
113. FED. R. APP. P. 4(a).
114. Local Rule 25(A) (1)(b).
115. *Id.*
116. A money judgment, including any order for the payment of costs, is automatically stayed for ten days after its entry by the clerk. Thereafter, the judgment will be stayed during appeal if a supersedeas bond is given by the appellant. The stay is effective upon approval of the bond by the district court. *See* FED. R. CIV. P. 62(a) and 62(d).
The application for approval of a supersedeas bond should be first presented to the

appeal may be claimed by the filing of a separate bill of costs at the termination of appeal[117] but costs taxed by the court of appeals in its mandate need not be included to insure taxation.[118] Good practice requires that a judgment for costs be satisfied of record upon payment.[119]

(b) *Pre-sentence reports.*

Local Rule 33 represents a significant departure from the traditional secrecy of pre-sentence reports which are prepared by probation officers for federal judges as an aid to the sentencing of defendants. The new rule creates a presumption that the entire factual content of the report will be disclosed to the defendant and his attorney. If disclosure is denied, the rule contemplates that the judge will make an appropriate record upon the effect of the undisclosed information in the determination of sentence. The disclosure contemplated by the rule is not legally compelled,[120] but the policy of fairness is admirable.

D. *Fair Trial-Free Press*

Local Rules 7, 34, 35 and 36 are designed to insulate the judicial process from improper publicity. Lengthy comment is unnecessary here, but counsel should be aware that the rules do contain very specific definitions of professional conduct which should be consulted in appropriate cases.

E. *House-Keeping Rules*

Numerous local rules regulate the duties of the clerk and marshall. These rules affect lawyers only incidentally. For convenience, citations to these rules are collected in the first appendix.

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district court. If denied, the application may be made to the court of appeals or any judge thereof. *See* FED. R. APP. P. 8(a). If approved, the bond is filed in the district court. *See* FED. R. APP. P. 8(b).

The appellant must file a bond for costs on appeal in civil cases. *See* FED. R. APP. P. 7. This obligation is satisfied if the supersedeas bond includes security for the payment of such costs. *Id.*

117. LOCAL RULE 25(A)(3). *See* FED. R. APP. P. 39.

The judgment of the appellate court is "rendered" by the court and "entered" of record by the clerk. FED. R. APP. P. 36. Counsel are advised of the judgment and the date of judgment entry by the clerk. *Id.* Thereafter, prevailing counsel may obtain taxation of the printing costs for briefs, appendices or copies of records by filing an itemized and verified bill of costs with the appellate clerk within fourteen days of judgment entry. FED. R. APP. P. 39(c). These costs will be allowed to the prevailing party, *see* FED. R. APP. P. 39(a), and will be included in the formal order which restores jurisdiction in the district court following the appeal, *see* FED. R. APP. P. 39(d). This order (the "mandate") will be issued 21 days after judgment entry. *See* FED. R. APP. P. 41(a). The costs so allowed will be entered by the district clerk. *See* LOCAL RULE 25(A)(2). If prevailing counsel desires to recover the *additional* costs of appeal permitted by *Federal Rules of Appellate Procedure* 39(e), however, a timely bill of costs must be filed with the clerk of district court. *See* LOCAL RULE 25(A)(3).

118. LOCAL RULE 25(A)(2).

119. A federal judgment, including a judgment for costs, constitutes a lien upon property to the extent that state law recognizes such liens for the judgments of state courts. *See* 28 U.S.C. § 1962 (1970).

120. *See* FED. R. CRIM. P. 32(c)(2).

F. *Special Rules and Proceedings*

The new local rules contain limited provisions of special application to proceedings before magistrates and bankruptcy judges and to habeas corpus and related matters. Citations to these specialized rules are collected in the first appendix.

III. Conclusion: The Case for Local Rules

We have seen that lively criticism follows local rules which are directed to issues beyond the fees of the clerk and opening the courthouse on Saturday morning.[121] The new local rules for federal practice in Iowa do affect the lawyer in important particulars, and the inevitable criticism should be expected. If comprehensive local rules tarnish the goal of uniform federal practice across the nation, however, it must be asked whether greater uniformity or certainty would follow from the absence of local rules. It seems doubtful. In truth, the contemplation of the *Federal Rules of Civil* and *Criminal Procedure* is that the inevitable gaps between rules will be filled by a reference to local practice. Either we may decline to articulate our local practice in written rules so that local practice always remains a matter of local knowledge, or we may publicize and scrutinize our local habits through the promulgation of written rules of court. Any lawyer who has been suddenly victimized by an unknown local practice will appreciate the preferable approach. Local rules are simply guides to the behavior of judges in recurring situations. It is nonsense to complain where, as here, the judges have given fair warning of the standards of practice which will be required in their courts.

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121. *See* C. Wright & A. Miller, 12 Federal Practice & Procedure: Civil § 3152, at 218 (1973):

> The expectation of the draftsmen of Rule 83 was that the power to make local rules would be used only on rare occasions when the Civil Rules deliberately had left gaps to be filled in the light of recognized local needs. . . . But this is not the fashion in which all courts have used Rule 83. Although some districts have adopted very few rules, in others the local rules are almost as numerous as the Civil Rules themselves. . . . The strong interest in developing a uniform federal procedure has been seriously compromised by the proliferation of local rules.

See also Note, *Rule 83 and the Local Federal Rules*, 67 Colum. L. Rev. 1251 (1967); Note, *The Local Rules of Civil Procedure in the Federal District Courts—A Survey*, 1966 Duke L.J. 1011 (1966).

APPENDIX A

A TOPICAL INDEX TO THE LOCAL RULES

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Rule 37(C)(9): Jury Selection—Magistrates

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APPENDIX B

PRACTICE FORMS FOR THE NEW LOCAL RULES

INDEX TO FORMS

Form B(1): Plan for the Prompt Disposition of Criminal Cases Southern District of Iowa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

In The Matter Of
ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES — ORDER

The Suggested Plan for Achieving Prompt Disposition of Criminal Cases in the Southern District of Iowa under Rule 50(b), of the Federal Rules of Criminal Procedure, copy of which is hereto appended, and by this reference made a part hereof, having been prepared by the Court, and having been approved by the Circuit Council of the United States Court of Appeals, Eighth Circuit, now therefore:

IT IS HEREBY ORDERED that the said Plan, as set out as a part of this Order, be and is hereby adopted and declared operative in the United States District Court, Southern District of Iowa, from and after January 1, 1973.

Dated this 14th day of December, 1972.

/s/ William C. Hanson, Chief Judge
United States District Court
Southern District of Iowa

/s/ W. C. Stuart, Judge
United States District Court
Southern District of Iowa

SUGGESTED PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES IN THE SOUTHERN DISTRICT OF IOWA UNDER THE CRIMINAL JUSTICE ACT

Pursuant to the provisions of Rule 50(b) of the Federal Rules of Criminal Procedure, the Judges of the United States District Court for the Southern District of Iowa have adopted the following Plan for achieving prompt disposition of criminal cases as provided therein.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

*

PLAN OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES

*

PLAN

Pursuant to the requirement of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 1, 1972, the Judges of the United States District Court for the Southern District of Iowa have adopted the following Plan to minimize undue delay and to further the prompt disposition of criminal cases.

1. *Priorities in Scheduling Criminal Cases.*

(a) Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure.

(b) The trial of defendants in custody and defendants whose pre-trial liberty is reasonably believed to present unusual risks should be given preference over other criminal cases.

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting.

2. *Time Requirements.*

Subject to the provisions of Section 3 hereof, the Judges of this Court will observe the following time limits, which are deemed to be maximum time limits:

(a) Arraignments. If a defendant is prosecuted on an information or an indictment he shall be arraigned and enter a plea within 20 days if in custody, or within 30 days if not in custody, calculated from the date of the filing of the information or the return of the indictment, except as provided in sub-section (d).

(b) Trial. The trial shall commence within 90 days after a plea of not guilty, if the defendant is held in custody or within 180 days if he is not in custody.

(c) Sentencing. A defendant shall be sentenced within 45 days of the date of his conviction or plea of guilty.

(d) - (1) Where a defendant is apprehended outside of this District, the time set out above shall begin to run when the defendant is returned to this District, if he is incarcerated. If a defendant apprehended outside of this District is placed on bond prior to being returned to this District, the time set out above shall begin to run from the time the Clerk receives the bond from the District of arrest.

(2) If a defendant charged in this District is ultimately arrested within the District but has not been apprehended within 10 days after the filing of the information or the return of the indictment, the time set out above shall run from the time of the arrest.

(3) If the case of a defendant charged in another District is transferred to this District pursuant to Rule 20 or Rule 21 of the Federal Rules of Criminal Procedure, the time set out above shall run from the time the District where the case is pending either orders or consents to the transfer.

(e) The implementation of other sections of this Plan will in most cases dispose of a criminal case in substantially less time than the maximums as herein set forth.

3. *Extension of Time Limits.*

Any period of time prescribed by this rule may be extended by the Court. Among other reasons, the Court may take into consideration:

(a) A reasonable period of delay resulting from other proceedings concerning the defendant, including, but not limited to, proceedings for the determination of competency and the period during which he is incompetent to stand trial, extraordinary pretrial motions, stays, interlocutory appeals, trial of other charges, and the period during which such matters are under consideration.

(b) The period of delay resulting from continuances granted by the Court for persuasive reasons, on application of the defendant or the prosecution. The Court shall grant such continuances only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges and the interest of the defendant in a speedy trial. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the Court of his rights under these rules and the effect of his consent.

(c) The period of delay resulting from a continuance granted at the request of a prosecuting attorney if:

(1) the continuance is granted because of the unavailability of evidence material to the government's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or

(2) the continuance is granted to allow the prosecuting attorney additional time to prepare the government's case and additional time is justified by the exceptional circumstances of the case.

(d) The period of delay resulting from the absence or unavaliability of the defendant.

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.

(f) The period of delay resulting from detention of the defendant in another jurisdiction, provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.

(g) The period during which the defendant is without counsel for reasons other than the failure of the Court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.

(h) Other periods of delay occasioned by exceptional circumstances.

4. *Effect of Noncompliance With Time Limits.*

Upon the expiration of a time limit, as prescribed by or extended under this rule, a defendant who is in custody shall be released from custody unless the Court finds that the defendant is responsible for the failure to comply with the time limits. Subject to the provisions of 18 U.S.C. § 3146, if the Court finds that a defendant who is not in custody is responsible for failure to comply with the time limits, such defendant may have his release revoked unless there is good cause shown for the failure to comply. Subject to the power of the Court to dismiss a case for unnecessary delay, the failure to conform with the time limits herein prescribed shall not require the dismissal of the prosecution.

5. *Definition of "Custody."*

As used in this Plan, "custody" means custody on the federal charge contained in the pertinent complaint, information, or indictment.

6. *Procedures Intended to Facilitate Prompt Disposition of Cases.*

(a) When it appears practicable and beneficial the Magistrate shall conduct an omnibus hearing prior to arraignment. If the United States District Attorney, defense counsel and defendant stipulate as to the matters usually considered in an omnibus hearing, such stipulation may be filed and the hearing waived.

(b) All other pre-trial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

(c) The Court or the Magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel his arraignment may be postponed not more than one week to permit him to obtain or to consult with counsel. When appropriate, the Court may cause a plea of not guilty to be entered for the defendant. The Court shall take adequate steps to ensure that defendants are represented by counsel.

(d) A trial date shall be set at the time of arraignment or at the earliest practicable time thereafter.

(e) Except for good cause shown, the Court may not extend the time for motions under Federal Rules of Criminal Procedure 12(b) (3) beyond 10 days after plea. Such motions will be heard and ruled upon promptly, so that the trial need not be delayed.

(f) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

7. *Post-trial Motions.*

Post-trial motions shall be submitted promptly to the Court to permit its disposition of any such motion within the period of time set as a goal for pronouncing sentence against the defendant, except that recognition is given to the fact that a post-trial motion for a new trial on the ground of newly discovered evidence may not fall within this time limitation in some cases.

8. *Retrials.*

Where a new trial has been ordered by the District Court or a trial or a new trial has been ordered by an Appellate Court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause.

9. *Review of Defendants in Custody and Delinquent Cases.*

(a) The United States Attorney shall within 5 days after the close of the reporting period furnish the Court with a copy of the biweekly DJ-130 report of persons in custody. A copy of such report shall be furnished each Judge of the Court.

(b) The United States Marshall shall every month furnish each Judge of the Court with a statement of persons in federal custody and the date of such custody according to his records.

(c) At not more than 6 month intervals the Judge of the Court shall meet to review the status of all persons in custody and all cases in which the maximum time limits set forth in Section 2 have been exceeded. Cases shall be reassigned as appropriate in order to carry out the purpose of this Plan. The United States Attorney shall be informed of any case in which his office appears to be responsible for unnecessary delay.

10. *Responsibility of United States Attorney.*

(a) The Court has sole responsibility for setting and calling cases for trial. A conflict in schedules of Assistant United States Attorneys will not be ground for a continuance or delayed setting except under unusual circumstances approved by the Court and called to the Court's attention at the earliest practicable time. Each Judge will schedule criminal trials at such times as may be necessary to assure prompt disposition of criminal cases. The United States Attorney will familiarize himself with the scheduling procedures of each Judge and will assign or reassign cases in such manner that the government will be able to announce ready for trial.

(b) If the United States Attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a federal, state or other institution or that of another jurisdiction, it is his duty promptly:

(1) to undertake to obtain the presence of the prisoner for plea and trial; or

(2) when the government is unable to obtain the presence of the defendant, to cause a detainer to be filed with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this Plan.

11. *Effective Date of Plan.*

This Plan shall become effective upon approval of the reviewing panel designated in accordance with the Federal Rules of Criminal Procedure 50(b).

Form B(1): Plan for the Prompt Disposition of Criminal Cases Northern District

PLAN

OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA PURSUANT TO FRCrP 50(b)

Pursuant to FRCrP 50(b) the judges of the United States District Court for the Northern District of Iowa adopt the following Plan to minimize undue delay and to further the prompt disposition of criminal cases.

1. *Priorities in Scheduling Criminal Cases in Accordance with FRCrP 50(a).*

(a) Criminal proceedings shall be given preference over civil matters insofar as practicable.

(b) The trial of defendants in custody and defendant whose pre-trial liberty is reasonably believed to present unusual risks should be given preference over other criminal cases.

2. *Time Requirements.*

(a) *Omnibus Proceedings.*

(1) Where prosecution is by information or indictment an Omnibus hearing shall be scheduled within 20 days from the filing thereof if the defendant is in custody or he is present within the district and reasonably available. The date shall be set by the Magistrate and notice mailed by the United States Attorney.

(2) At least 5 days prior to the date set for the Omnibus hearing, counsel for defendant and the government shall meet at a mutually convenient time and place to discuss the matters contained in Appendix VIII of this court's local rules.

(3) If, at the conference, all counsel conclude that no motions will be urged, and that formal Omnibus hearing is not desired, they may complete, approve, and have each defendant sign the Omnibus Hearing Report and submit it to the United States Magistrate before whom the hearing was to be held, not later than 3 days prior to the date set for the Omnibus hearing. If he deems it appropriate, the Magistrate may then cancel the Omnibus hearing.

(b) *Arraignments.*

The arraignment shall be held by the court within 14 days from the filing of the Omnibus Report unless:

(1) at the Omnibus hearing defendant executes a petition to enter a plea of guilty and consent to a stay of arraignment pending receipt of a presentence report; or

(2) at the Omnibus hearing defendant indicates a desire to plead not guilty and the Magistrate thereafter conducts the arraignment.

(c) *Trial.*

The trial shall commence within 90 days from arraignment.

(d) *Sentencing.*

A defendant ordinarily shall be sentenced within 45 days from the date of his conviction or plea of guilty. Post-trial motions shall be submitted promptly to the Court to permit its disposition of any such motion within the period of time set as a goal for pronouncing sentence against the defendant, except that recognition is given to the fact that a post-trial motion for a new trial on the ground of newly discovered evidence may not fall within this time limitation in some cases.

(e) *Apprehension Outside District.*

Where a defendant is a fugitive or arrested outside the district, all time limits shall begin to run when the defendant is reasonably available in this district.

3. *Extension of Time Limits.*

Any period of time prescribed herein may be extended by the Judge or Magistrate upon his own motion or upon motion made before the expiration of the time period and upon a showing that postponement is in the interest of justice.

4. *Effect of Noncompliance with Time Limits.*

Subject to the power of the Court to dismiss a case for unnecessary delay, the failure to conform with the time limits herein prescribed shall not require the dismissal of the prosecution. Upon the expiration of a time limit, as prescribed by or extended under this rule, a defendant who is in custody shall be released from custody unless the Court finds that the defendant is responsible for the failure to comply with the time limits. Subject to the provisions of 18 USC 3146, if the Court finds that the defendant is responsible for failure to comply with the time limits, the defendant not in custody may have his release revoked unless there is good cause shown for the failure to comply.

5. *Definitions.*

(a) As used in this Plan, "custody" means arrest and incarceration on the federal charge.

(b) "Reasonably available" means subject to the process of the Court.

6. *Procedures Intended to Facilitate Prompt Disposition of Cases.*

(a) All pre-trial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of those matters on the Court's criminal docket.

(b) The Court or Magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel his arraignment may be postponed not more than one week to permit him to obtain or to consult with counsel. When appropriate the Court may cause a plea of not guilty to be entered for the defendant. The Court shall take adequate steps to ensure that the defendant is represented by counsel.

(c) A trial setting shall be made at the time of arraignment or at the earliest practicable time thereafter.

(d) Except for good cause shown, the Court will not extend the time for motions after plea under FRCrP 12(b)(3) beyond 10 days. Such motions will be heard and ruled upon promptly so that the trial need not be delayed.

(e) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty, nolo contendere or a conviction. Forthwith upon receipt of a mandate the Clerk of this Court shall notify the defendant to surrender to the United States Marshal within 10 days.

7. *Retrials.*

(a) Where a new trial has been ordered by the district court it shall commence at the earliest practicable time, but in any event not later than 60 days after the entry of such order, unless extended for good cause.

(b) Where a new trial has been ordered by an appellate court it shall commence within 60 days from the receipt of the mandate.

8. *Review of Defendants in Custody and Delinquent Cases.*

(a) The United States Attorney shall within 5 days after the close of the reporting period furnish the Court with a copy of the biweekly DJ-130 report of persons in custody.

(b) The United States Marshal shall every month furnish the Court with a statement of persons in federal custody and the date of such custody according to his records.

(c) Each month the Clerk shall submit a list of all pending criminal cases to the court and the court shall review the status of all persons in custody and all cases in which the minimum time limits herein set forth have been exceeded.

9. *Responsibility of United States Attorney.*

(a) The Court has sole responsibility for setting cases for trial. A conflict in schedule of the United States Attorney will not be ground for a continuance or delayed setting except under unusual circumstances approved by the Court and called to the Court's attention at the earliest practicable time.

(b) If the United States Attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a federal, state, or other institution or that of another jurisdiction, it is his duty promptly:

(1) to undertake to obtain the presence of the prisoner for plea and trial; or

(2) when the government is unable to obtain the presence of the defendant, to cause a detainer to be filed with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this Plan.

10. *Effective Date of Plan.*

This Plan shall become effective upon approval of the reviewing panel designated in accordance with FRCrP 50(b).

/s/ Edward J. McManus, Chief Judge
United States District Court

Approved December 20, 1972.

JUDICIAL COUNCIL EIGHTH CIRCUIT

by _____ /s/
Secretary

AMENDMENT TO PLAN

OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

PURSUANT TO FRCrP 50(b)

Pursuant to FRCrP 50(b) this Court's plan approved December 20, 1972 is modified as follows:

1. Add to paragraph (b) the following:

(3) The Court sets arraignment in lieu of the Omnibus procedures within 20 days of defendant becoming reasonably available.

/s/ William C. Hanson, Judge
United States District Court

/s/ Edward J. McManus, Chief Judge
United States District Court

Approved October 12, 1973
JUDICIAL COUNCIL EIGHTH CIRCUIT
by _____ /s/
Secretary

Form B(2): Application for Admission to Practice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

Application for Admission to Practice

I, _____, of _____, Iowa do hereby certify that I am duly enrolled as a member of the Bar of the Courts of the State of Iowa, and apply now to be enrolled as a member of the Bar of the United States District Court for the Southern District of Iowa.

Dated _____, 19__ _____
(Sign first name in full)

_____
(Address)

UNITED STATES DISTRICT COURT (
SOUTHERN DISTRICT OF IOWA (Oath of Applicant
_____ County (

I, _____, being duly sworn, on oath say that I will support the Constitution of the United States and the Constitution of the State of Iowa;

I will maintain the respect due to Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, will account for his money or property entrusted to my care, or received in his behalf, and will accept no compensation in connection with his matters except from him or with his knowledge and approval;

I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

_____

Subscribed and sworn to by the said _____ before me this _____ day of _____, 19__

_____

_____

I do hereby certify that I am acquainted with _____ of _____, Iowa; that he is a member of the Bar of the Supreme Court of the State of Iowa, in good standing, and is a person of good moral character, and I hereby recommend him for admission as a member of the Bar of the United States District Court for the Southern District of Iowa.

Signed _____, 19__ _____
Judge _____ Court of Iowa
in and for _____ County

Signed _____, 19__ _____
Member of the Bar, U. S. District Court,
Southern District of Iowa.

To be signed by a member of the Bar of the United States District Court for the Southern District of Iowa, and a Judge of the State Supreme or District Court.

Form B(3): Application for Withdrawal of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, v. SAM SMITH, Defendant.	((Civil) (Criminal) NO. _____ (APPLICATION FOR WITHDRAWAL (OF ATTORNEY, NOTICE OF WITH- (DRAWAL, AFFIDAVIT, PROOF OF (SERVICE, AND ORDER (_____

COMES NOW, the undersigned Attorney and states to the Court as follows:

1. He has previously appeared in the above-entitled matter as attorney for _____.

2. Good cause exists to permit his withdrawal as attorney for said party in that _____ (State good cause) _____.

3. A copy of this Application and Notice has been served upon the said party and all counsel herein.

4. Proof of service, attached hereto, has been filed with the Clerk of this Court.

WHEREFORE, the undersigned attorney prays that he be permitted to withdraw as attorney for _____ in this action, for the reasons stated herein.

/s/
_____
Name of Attorney
Address
Attorney for _____

AFFIDAVIT AND PROOF OF SERVICE

STATE OF IOWA)
: ss
COUNTY OF _____)

I, _____(name of attorney)_____, being first duly sworn on oath, do depose and say that I am the person making the foregoing Application, that the facts recited therein are true and correct as I verily believe, and that this Application and Notice has been served upon _____(name of client)_____ and all attorneys herein by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to the said persons at their last known addresses, on the _____ day of _____, 1974.

/s/
Name of Attorney

Subscribed and sworn to before me on this _____ day of _____, 1974.

/s/
Notary Public

ORDER

UPON the Application for Withdrawal of Attorney filed herein by _____(name of attorney)_____ and it appearing that good cause is shown in said Application, Notice of which has been served upon _____(name of client)_____ and all attorneys herein,

IT IS HEREBY ORDERED that said Application is sustained and that said Attorney be, and he is hereby granted leave to withdraw as attorney herein.

Dated: _____

BY THE COURT:

Judge

Form B(4): Withdrawal of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, ((Civil) (Criminal) No. _____
v. (WITHDRAWAL OF ATTORNEY
SAM SMITH, Defendant. (

COMES NOW, the undersigned Attorney, pursuant to Order of Court, and withdraws as Attorney for (name of client) in the above-entitled action.

/s/
Name of Attorney
Address

(Attach Proof of Service)

Form B(5): Caption of Pleadings

The following caption is sufficient under Local Rule 11(C):

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, (CIVIL NO. _____
v. (ANSWER OF SAM SMITH
SAM SMITH, Defendant. (

Form B(6): Signature of Pleadings

The attorney signs in his individual capacity with the firm, if any, of counsel:

/s/

Jonas P. Jones
1000 Main Street
Backwater, Iowa 59019

Of Counsel:

Jones & Jones
1000 Main Street
Backwater, Iowa 59019

Attorney for Defendant

Form B(7): Proof of Service

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing instrument was served upon all parties by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record for said parties at their last known addresses as disclosed upon the pleadings herein, on the ____ day of _____, 1974.

/s/

(signature of attorney)

CAVEAT: Only an attorney may make proof of service by unsworn certificate.

Form B(8): The Organization of Federal Courts in Iowa

28 U.S.C. § 95 provides as follows:

Iowa is divided into two judicial districts to be known as the Northern and Southern Districts of Iowa.

Northern District

(a) The Northern District comprises four divisions.

(1) The Cedar Rapids Division comprises the counties of Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, and Tama.

Court for the Cedar Rapids Division shall be held at Cedar Rapids.

(2) The Eastern Division comprises the counties of Allamakee, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, and Winneshiek.

Court for the Eastern Division shall be held at Dubuque and Waterloo.

(3) The Western Division comprises the counties of Buena Vista, Cherokee, Clay, Crawford, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, and Woodbury.

Court for the Western Division shall be held at Sioux City.

(4) The Central Division comprises the counties of Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth, and Wright.

Court for the Central Division shall be held at Fort Dodge and Mason City.

Southern District

(b) The Southern District comprises six divisions.

(1) The Central Division comprises the counties of Boone, Dallas, Green, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren.

Court for the Central Division shall be held at Des Moines.

(2) The Eastern Division comprises the counties of Des Moines, Henry, Lee, Louisa, and Van Buren.

Court for the Eastern Division shall be held at Keokuk.

(3) The Western Division comprises the counties of Audubon, Cass, Harrison, Mills, Montgomery, Pottawattamie, and Shelby.

Court for the Western Division shall be held at Council Bluffs.

(4) The Southern Division comprises the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne.

Court for the Southern Division shall be held at Creston.

(5) The Davenport Division comprises the counties of Clinton, Johnson, Muscatine, Scott, and Washington.

Court for the Davenport Division shall be held at Davenport.

(6) The Ottumwa Division comprises the counties of Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and Wapello.

Court for the Ottumwa Division shall be held at Ottumwa.

Form B(9): Summons in a Civil Case

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT
FOR THE

Civil Action File No. _____

Plaintiff
v.
Defendant
SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

plaintiff's attorney , whose address

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the day of 19 , I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel ____ $_____

Service ____ _____

_____

_____
United States Marshal.

By _____
Deputy United States Marshal.

Subscribed and sworn to before me, a this day of , 19 .

[SEAL]

_____

No. _____

UNITED STATES DISTRICT COURT
FOR THE

_____

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

_____

Attorney for Plaintiff

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

Form B(10): Form 285: Instructions to Marshal for Service

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (*No. 5*) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF | COURT NUMBER

DEFENDANT | TYPE OF WRIT

SERVE | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

AT | ADDRESS (*Street or RFD, Apartment No., City, State and ZIP Code*)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. | NO. | OF | TOTAL

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR | TELEPHONE NUMBER | DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (*or applicable code*) and sign USM-285 for first writ only if more than one writ submitted. | DEPOSIT/CODE | DIST. OF ORIGIN | DISTRICT TO SERVE | LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (*if applicable*) shown. | SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK | DATE

☐ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (*If not shown above*) | ☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (*Complete only if different than shown above*) | FEE (*If applicable*) | MILEAGE

$ | $

DATE(S) OF ENDEAVOR (*Use Remarks if necessary*) | DATE OF SERVICE | TIME AM PM | SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS

USM-285 (Ed. 7-1-70) 1. CLERK OF THE COURT

Form B(11): Attorney's Notice to Clerk of Request for Three-Judge Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, v. SAM SMITH, Defendant.	((Civil) (Criminal) NO. _____ (((NOTICE TO CLERK OF REQUEST (TO CONVENE THREE-JUDGE (COURT ((((

COMES NOW, the Plaintiff, pursuant to Local Rule 20, and gives notice to the Clerk that the above-entitled matter requires the action of a three-judge court for the reason that temporary and permanent injunctive relief is sought to restrain the enforcement, operation or execution of (citation to state or federal statute) upon the basis of unconstitutionality.

Authority

28 U.S.C. § 2281 et. seq.

/s/
(signature of attorney)

Form B(12): Attorney's Notice of Complex or Multiple Litigation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
_____ DIVISION

Plaintiff,	
vs.	(Civil No.
Defendant.	(NOTICE OF COMPLEX OR MULTIPLE LITIGATION PURSUANT TO LOCAL RULE 19 (B)

The undersigned attorney hereby notifies the Court that the above entitled case is subject to multi-district litigation procedures for the following reasons:

Form B(13): Attorney's Notice of Potentially Complex Criminal Case

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

UNITED STATES OF AMERICA,	(Cr. No.
Plaintiff,	(NOTICE OF POTENTIALLY COMPLEX CRIMINAL CASE PURSUANT
vs.	(TO LOCAL RULE 19 (D)

The undersigned attorney hereby notifies the Court that the above entitled case is a potentially complex case for the following reasons:

Form B(14): Attorney's Notice of Claim of Unconstitutionality

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, v. SAM SMITH, Defendant.	(Civil) (Criminal) NO. _____ NOTICE OF CLAIM OF UNCONSTITUTIONALITY

The undersigned attorney hereby notifies the Court and Clerk that the above-entitled action raises a question of the constitutionality of an Act of Congress affecting the public interest, to-wit: (citation to statute) .

/s/
(signature of attorney)

Form B(15): Request for Oral Argument on Motion

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, v. SAM SMITH, Defendant.	((Civil) (Criminal) NO. _____ (((MOTION TO DISMISS AND RE- (QUEST FOR ORAL ARGUMENT ((

1. _____.

2. _____.

3. _____.

4. The defendant requests oral argument. See Affidavit of Counsel attached hereto as Exhibit "A" and incorporated by this reference as fully as if set out at length.

/s/
_____
Signature

AFFIDAVIT

STATE OF IOWA)
: ss
COUNTY OF _____)

I, (name of attorney), being first duly sworn on oath, do depose and say that good cause exists for oral argument of the foregoing motion, as follows:

1. The parties desire to offer evidence at the hearing, which, as a practical matter, cannot be presented by affidavit because _____

_____.

2. The motion raises complex issues of law. There is a clear split of authority on said issues, and the parties desire to confront each other with oral argument upon the policy considerations supporting the conflicting rules.

3. There is a factual dispute because _____

_____.

4. The decision in this case will be controlling in other pending cases involving the same issues and, accordingly, all parties desire to be fully heard in order to expedite the final determination of this and other cases.

5. The affiant, an attorney for _____, herein, has personal knowledge of the statements made herein which are true and correct as he verily believes.

/s/
_____
(signature of attorney)

Subscribed and sworn to before me this ____ day of _____, 1974.

/s/
_____
Notary Public

Form B(16): Affidavit of Contested Motion

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, v. SAM SMITH, Defendant.	(Civil) (Criminal) NO. _____ AFFIDAVIT OF CONTESTED MOTION

STATE OF IOWA)
: ss
COUNTY OF _____)

I, _____, being first duly sworn upon oath, do depose and say as follows:

1. I, as attorney for _____, have filed a motion for _____ herein.

2. Prior to the filing of said motion, I conferred with counsel for the opposing party in good faith to resolve by agreement the issues raised by the motion without the intervention of the court. We have been unable to reach agreement, and the resulting motion is contested.

3. I have personal knowledge of the facts recited herein which are true and correct as I verily believe.

/s/
Attorney

Subscribed and sworn to before me this ____ day of _____, 1974.

/s/
Notary Public

Form B(17): Northern District Standard Pretrial Order #1: Notice to Conduct Preliminary Pretrial Proceedings

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

)	
)	CIVIL NO.
)	
)	NOTICE TO CONDUCT
)	
)	PRELIMINARY PRE-TRIAL
)	
)	PROCEEDINGS
)	
)	
)	
)	

TO:

Pursuant to Local Rule 21 of the Northern District of Iowa you and each of you are hereby notified as follows:

1. By not later than 197 , counsel for all parties appearing in the above entitled matter shall meet at a mutually convenient time and place and conduct a Preliminary Pre-Trial Conference for the purpose of reaching agreement and stipulation of all applicable matters set out in the check-list hereto attached marked Appendix II.

All parties must be reprsented at said Preliminary Pre-Trial Conference by counsel familiar with the facts in the case and who have authority to make stipulations within purview of the attached Appendix. An attorney who will participate in the trial must attend for each party.

In the absence of agreement, the meeting of the attorneys for said conference will be held in the office of the counsel for the plaintiff, if said office is located in the city wherein the district court for the division is situated; otherwise, it shall be held in the office of the attorney located in the city nearest the division of the District Court in which the case is pending.

2. Said conference may be recessed or adjourned from time to time in order to accommodate the convenience of counsel and better accomplish, to the fullest extent, the purpose of said conference, provided, however, that

said conference shall be completed by not later than the last day of the period set out in paragraph 1.

3. By not later than ten (10) days after completion of the conference counsel for plaintiff shall file with the Clerk a written report signed by counsel for all parties to this action setting forth the results of said Preliminary Pre-Trial Conference.

4. All matters stipulated in the Preliminary Pre-Trial Report shall be incorporated in the Final Pre-Trial order unless modified by agreement of the parties or by the Court to prevent manifest injustice.

, 197 .

K. W. FUELLING, Clerk

By: _____

Chief Deputy Clerk, United States District Court

APPENDIX II

Preliminary Pre-Trial Check-List

A. CASES GENERALLY

1. Is there dispute as to jurisdiction of the parties and of the subject matter?

2. Name of the principal attorneys for all parties who will attend the final pre-trial conference and participate in the trial.

3. Are the names of the parties correctly stated in the pleadings? Is there any question of misjoinder or nonjoinder? Are any of the parties infants or otherwise incompetent?

4. Laws involved: State or Federal statutes and regulations of the State and Federal regulatory bodies, foreign laws and conflicts of laws questions, if any.

5. Are there any military personnel or other persons involved as parties or witnesses not immediately available for trial? If so, their names and addresses.

6. Is it contemplated that any third-party complaint or impleading petition will be filed?

7. Are there other actions pending or contemplated which involve the same general subject matter?

8. Have all discovery proceedings been completed and, if not, give the estimated date of completion.

9. Are any amendments to the pleadings contemplated and, if so, when will they be presented?

10. All exhibits and documentary evidence should be exhibited and identified. All exhibits and documentary evidence to be offered at trial with-

out objection should be briefly described with exhibit number. All exhibits and documentary evidence regarded as objectional should be briefly described, given exhibit number and reasons for objection set forth with authorities.

11. A list of names, addresses, age and identification of all known witnesses to be called at the trial by all parties and a brief synopsis of the testimony of each witness.

12. Has a jury trial been demanded in writing?

13. Explore possibilities of settlement.

B. NEGLIGENCE ACTIONS

1. Specific statutes, ordinances and regulations alleged to have been violated.

2. If *res ipsa loquitur* is relied upon, what is the basis for such reliance?

3. A detailed list of personal injuries claimed and, if claimed to be permanent, the nature and extent thereof.

4. The age of the plaintiff or libellant.

5. Where permanent injuries are claimed, their nature must be described with particularity together with plaintiff's life and work expectancy.

6. An itemized list of all special damages, such as medical, hospital, nursing, drugs, and other expenses, with the amount and to whom paid or owed. If claim is made for the reasonable value of such services actually paid or provided by a third party, such reasonable value shall be considered, or stipulation of total amount if possible.

7. A detailed statement of loss of earnings claimed, or stipulation of total amount if possible.

8. A detailed list of any property damage or stipulation of total amount if possible.

9. The acts of contributory negligence claimed, and any other defenses to be interposed.

10. Possible agreement as to use of medical reports of physicians, hospital records, etc.

11. Will a plat or survey of the scene of the accident be submitted in evidence? If so, will the parties agree upon same without the formality of calling an engineer?

12. Will photographs demonstrating the scene of the accident, the extent of the injuries, or of objects or vehicles, be submitted in evidence? If so, will the parties agree upon same without the formality of proof?

C. DEATH ACTIONS

1. Comply with the provisions respecting negligence actions where applicable.

2. Is the death conceded to be the result of the accident? Will a death certificate be required?

3. State the age, employment, rate of earning, marital status and life expectancy of deceased. State the names, ages and relationship of dependents, if any, together with the amount of contributions made to them by deceased for a three-year period prior to death.

D. MOTOR VEHICLE ACTIONS

1. Comply with negligence or death actions above, if applicable.
2. Name of owner, type and make of vehicles, name and address of driver and his agency.
3. Place and time of accident, whether daylight or dark.
4. Condition of the weather.
5. Character and width of street, road or highway; shoulders and nature of terrain as to level, uphill or downhill.
6. Traffic controls, if any, location and signs and significant landmarks.
7. Any claimed obstructions to view and presence of other vehicles, where significant.
8. Traffic regulations, traffic charges and disposition, with extenuating explanation, if any.
9. If property damages claimed, the cost of repairs and name of person making them, or if incapable of repair, the purchase price, age, mileage and value immediately before and immediately after the accident, or stipulation of total amount, if possible.

E. CONTRACT ACTIONS

1. Whether the contract relied upon was oral or in writing.
2. The date thereof and the parties thereto.
3. The terms of the contract which are relied upon by the party.
4. Any collateral oral agreement, if claimed, and the terms thereof.
5. Any specific breach of contract claimed.
6. Any misrepresentation of fact alleged.
7. Does the party rely upon a contract implied by law?
8. Is any party claiming as a third-party beneficiary of a contract?
9. Whether modification of the contract or waiver of covenant is claimed, and if so, what modification or waiver and how accomplished.
10. An itemized statement of damages claimed to have resulted from any alleged breach; the source of such information, how computed, and any books and records available to sustain such damage claim, or stipulation of total amount, if possible.
11. If the case does not fall within the foregoing enumeraged categories, the attorneys shall set forth their positions with as much detail as possible.

F. ANY OTHER MATTERS OCCURRING TO COUNSEL

Form B(18): Northern District Standard Pretrial Order #2. Order for Completion of Discovery

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

(CIVIL NO.
(ORDER FOR COMPLETION
(OF DISCOVERY

It having been brought to the court's attention that certain processes of discovery are contemplated and not completed, it is therefore

ORDERED

That all parties in the above entitled matter shall commence forthwith the processes of discovery, including the propounding of interrogatories, filing of motions for the production of documents, requests for admission of facts and genuineness of documents and taking of all depositions of all witnesses or parties, and have the same completed on or before*

If a party does not complete all processes of discovery on or before the aforesaid date, such party shall be precluded from thereafter attempting to discover, unless by leave of court first granted and by showing good cause why the processes of discovery were not completed prior to the time limit specified herein; but nothing contained herein shall be construed as preventing the further use of discovery if an opposing party brings out matter at the time of discovery which may, in the discretion of the court, justify additional discovery proceedings.

The time required to transcribe discovery deposition shall not be considered in determining the completion dates of discovery.

Dated:

K. W. FUELLING, Clerk

By _____
Chief Deputy Clerk, United States District Court

*Note: This order contemplates the completion of all discovery by the date indicated. This includes not only the propounding of the request, but the response to it as well as the taking of all depositions, including those to be used at trial.

Form B(19): Northern District Standard Pretrial Order #3: Order for Final Pretrial Conference

(Caption of action has been omitted.)

ORDER ON FINAL PRE-TRIAL CONFERENCE

Pursuant to Rule 16, Federal Rules of Civil Procedure and final pre-trial conference in the above matter held in the Judge's chambers, United States District Courthouse, _____, Iowa, on _____, 19____, it is ORDERED:

1. The parties hereto agree and stipulate with respect to certain undisputed facts as follows:

(here set forth all factual stiplations.)

2. (a) The parties hereto agree that the following exhibits, identified by the initials of counsel, may be introduced in evidence without proof and without objection:

Plaintiff(s) exhibits (numbered 1, 2, 3, etc.)
Defendant(s) exhibits (lettered A, B, C, etc.)

(b) The plaintiff(s) desires to introduce in evidence Exhibit(s) _____, identified by the initials of counsel, and states that the purpose of said exhibit(s) is (state purpose), but defendant objects to said exhibit(s) and, as grounds for said objection, states:

(give objections.)

(c) The defendant(s) desires to introduce in evidence Exhibit(s) _____, identified by the initials of counsel, and states that the purpose of said exhibit(s) is (state purpose), but plaintiff objects to said exhibit(s) and, as grounds for said objection, states:

(give objections.)

3. (a) The names and addresses of all witnesses who will or may testify on behalf of the plaintiff(s), either in person or by deposition, and the purpose of such testimony, are:

John Doe—1002 Second Avenue, N.E., Cedar Rapids, Iowa—eye witness
Dr. Richard Roe—Medical Arts Building, Dubuque, Iowa—Medical
John Smith—201 Main Street, Davenport, Iowa—expert

(b) The names and addresses of all witnesses who will testify on behalf of defendant(s), either in person or by deposition, and the purposes of such testimony, are:

[same form at 3(a)]

4. (a) The factual contentions of the plaintiff(s) are:
   (b) The factual contentions of the defendant(s) are:

5. (a) The triable issues as contended by the plaintiff(s) are:
   (b) The triable issues as contended by the defendant(s) are:

Note: The court may incorporate into the formal order, or counsel may agree, that other matters may be set forth in the pre-trial order including, but not limited to:

(a) A settlement deadline after which there will be no further negotiations.
(b) Rulings on objections to depositions.
(c) Time for presentation of written requests for instructions.
(d) Special interrogatories for jury.
(e) Time for filing trial briefs on triable issues.
(f) Limitation of number of expert witnesses.
(g) Special questions to be asked by the court on voir dire.
(h) Setting trial date.

Date (month, day, year)

_____
Counsel for Plaintiff(s)

_____
Counsel for Defendant(s)

Form B(20): Southern District Order on Omnibus Hearing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES
OF AMERICA,

v.

CRIMINAL NO. _____

MAGISTRATE NO. _____

ORDER ON OMNIBUS HEARING

Instructions

If an item numbered below is not applicable to this case then counsel will note the same in the margin opposite the item number with the letters "N.A."

A. DISCOVERY BY DEFENDANT

(Circle appropriate response)

1. The defendant states he (has) (has not) obtained full discovery and (has) (has not) inspected the government file.

(If government has refused discovery of certain materials, defendant's counsel shall state nature of such material:

_____

_____

_____.)

2. The government states it (has) (has not) disclosed all evidence in its possession, favorable to defendant on the issue of guilt.

3. The defendant requests and moves for (circled sub-paragraph shows motion requested):

a. Discovery of all oral, written or recorded statements or memorandum of them made by defendant to investigating officers or to third parties and in the possession of the government.

(Granted) (Denied) By _____
Magistrate

Date to be supplied _____

b. Discovery of the names and addresses of the government's witnesses.

(Granted) (Denied) By _____
Magistrate

Date to be supplied _____

4. Defendant, having had discovery of Items 2 and 3a, 3b and 3c, requests and moves for discovery and inspection of all further or additional information coming into the government's possession as to Items 2 and 3a, 3b and 3c between this conference and trial.

(Granted) (Denied) By _____
Magistrate

5. The defendant moves and requests the following information, and the government states (circle the appropriate responses):

a. The government (will) (will not) rely on prior acts or convictions of a similar nature for proof of knowledge or intent. Defendant stipulates to the following prior convictions, but reserves the right to object (on grounds other than authenticity) to their introduction in evidence at trial:

Date of conviction _____ Offense _____

Date of conviction _____ Offense _____

Date of conviction _____ Offense _____

_____
Defendant

_____
Attorney for Defendant

Date _____

b. The government (will) (may) (will not) call expert witnesses to testify. The name of each witness, his qualifications, the subject of his testimony, and his reports (have been) (will be) supplied to defendant.

c. Reports of physical or mental examinations in the control of the government (have been) (will be) supplied to defendant.

d. Reports of scientific tests, experiments or comparisons and other reports of experts in the control of the government pertaining to this case (have been) (will be) supplied to defendant.

e. Inspection and/or copying of any books, papers, documents, photographs or tangible objects which the government

(1) obtained from or which belong to defendant, or

(2) which will be used at the hearing or trial, (have been) (will be) supplied to defendant.

f. Information in the United States Attorney's possession concerning a prior conviction of any person the government intends to call as a witness at the hearing or trial (has been) (will be) supplied to defendant.

g. The government (will) (may) (will not) use any prior felony conviction for impeachment of defendant if he testifies.

Date of conviction _____ Offense _____

Date of conviction _____ Offense _____

Date of conviction _____ Offense _____

Defendant stipulates to such prior convictions, but reserves the right to object (on grounds other than authenticity) to their introduction in evidence at trial.

_____
Defendant

_____
Attorney for Defendant

Date _____

6. The government states that:
   a. Proceedings before the grand jury (were) (were not) recorded.
   b. Transcriptions of the grand jury testimony of the accused and all persons whom the prosecution intends to call as witnesses at a hearing or trial (have been) (will be) (will not be) supplied. The defendant (moves) (does not move) for the production of transcripts of such testimony. The hearing on the motion is hereby set before a District Judge, on _____.
7. The government states that:
   a. There (was) (was not) an informer (or Lookout) involved.
   b. The informer (will) (will not) be called as a witness at the trial.
   c. It has given defendant the name, address and phone number of of the informer.
   d. It will claim privilege of nondisclosure. The defendant moves for the disclosure of the name of such informer. The hearing on the motion is hereby set before a District Judge on _____.
8. The government states that there
   a. (has) (has not) been any electronic surveillance of the defendant or his premises;
   b. (has) (has not) been any lead obtained by electronic surveillance of defendant's person or premises.

9. Any information the government has, indicating entrapment of defendant, (has been) (will be) supplied to defendant.

B. DISCOVERY BY THE GOVERNMENT

The following statements are made by the defendant in response to the government's request:

10. Competency, Insanity and Diminished Mental Responsibility.
    a. There (is) (is not) any claim of incompetency of defendant to stand trial.
    b. Defendant (will) (will not) rely on a defense of insanity at the time of the offense.
    c. Defendant (has) (has not) supplied the name of his witnesses, both lay and professional, on the issue.

d. Defendant (has) (has not) permitted the government to inspect and copy all medical reports under his control or the control of his attorney.

e. Defendant (will) (will not) submit to a psychiatric examination by a court-appointed doctor on the issue of his sanity at the time of the alleged offense.

11. Alibi.

a. Defendant (will) (will not) rely on an alibi.

b. Defendant (has) (has not) furnished the government a list of his alibi witnesses.

12. Scientific Testing.

a. Defendant (has) (has not) furnished the government the results of scientific tests, experiments or comparisons and the names of the persons who conducted the tests.

b. Defendant (has) (has not) provided the government with all records and memoranda constituting documentary evidence respecting such tests in his possession or under his control or (has) (has not) disclosed the whereabouts of said material. If such documentary evidence is not available but destroyed, the defendant (has) (has not) stated the time, place and date of said destruction.

13. Nature of the Defense.

a. Defendant states that his defense includes (circle appropriate response):

(1) lack of knowledge of contraband
(2) alibi
(3) diminished mental responsibility
(4) entrapment
(5) self defense
(6) general denial.

b. Defendant (will) (will not) waive husband and wife privilege.

c. Defendant (will) (may) (will not) testify.

d. Defendant (will) (may) (will not) call additional witnesses.

e. Defendant (will) (will not) call character witnesses.

f. Defendant will supply the government the names and addresses of additional witnesses for defendant, _____ days before trial.

14. Defendant's counsel states that (circle appropriate response):

a. As of the date indicated below he (does) (does not) know of any problems involving delay in arraignment, the *Miranda* Rule or illegal search and seizure or arrest, or any other constitutional problem, except as set forth above.

b. He has inspected this form and (does) (does not) know of any motion or matter that defendant desires to present to the Court, other than those indicated on this form.

c. There (is) (is not) (may be) a probability of a disposition of this case without trial.

d. Defendant (will) (will not) waive a jury and ask for a court trial.

C. MOTIONS REQUIRING SEPARATE HEARING BEFORE DISTRICT JUDGE

15. The defendant moves (circled sub-paragraph shows motion requested):

a. To suppress physical evidence in the government's possession on the grounds of (circle appropriate response):

(1) illegal search and seizure

(2) illegal arrest

The hearing on such motion to suppress is hereby set before a District Judge on _____.
(Defendant will file a formal motion to suppress such evidence accompanied by a memorandum brief within _____ days. The government will file a responsive memorandum brief within _____ days after receipt of defendant's brief.)

b. To suppress admissions or confessions made by defendant on the grounds of (circle appropriate sub-paragraph):

(1) delay in arraignment

(2) coercion or unlawful inducement

(3) violation of the *Miranda* Rule

(4) unlawful arrest

(5) improper use of lineup (*Wade, Gilbert, Stovall* decisions)

(6) improper use of photographs

The hearing on such motion to suppress is set for:

(1) date of trial, or

(2) on _____

c. All material uncovered during the course of such surveillance (will) (will not) be supplied to defendant. The defendant (moves) (does not move) for the production of such material. The hearing on the motion is hereby set before a District Judge on _____.

16. The defendant moves (circled sub-paragraph indicates the motion):

a. To dismiss for failure of the indictment (or information) to state an offense.

(Granted) (Denied) By _____
District Judge

Date _____

b. To dismiss the indictment or information (or count _____ thereof) on the ground of duplicity.

(Granted) (Denied) By _____
District Judge

Date _____

c. To sever case of defendant _____ and for a separate trial.

(Granted) (Denied) By _____
District Judge

Date _____

d. To sever count _____ of the indictment or information and for a separate trial thereon.

(Granted) (Denied) By _____
District Judge

Date _____

e. For a Bill of Particulars.

(Granted) (Denied) By _____
District Judge

Date _____

f. To take a deposition of witness _____ for testimonial purposes and not for discovery.

(Granted) (Denied) By _____
District Judge

Date _____

g. To require government to secure the appearance of witness _____ who is subject to government direction at the trial or hearing.

(Granted) (Denied) By _____
District Judge

Date _____

h. To dismiss for delay in prosecution.

(Granted) (Denied) By _____
District Judge

Date _____

i. To inquire into the reasonableness of bail. Amount fixed _____.
(Affirmed) (Modified to _____.)

By _____
District Judge

Date _____

j. To continue the trial of the case.

(Granted) (Denied) By _____
District Judge

Date _____

17. The government moves that the defendant (circle appropriate paragraph):

a. Appear in a lineup.

(Granted) (Denied) By _____
District Judge

Date _____

b. Speak for voice identification by witness.

(Granted) (Denied) By _____
District Judge

Date _____

c. Be fingerprinted.

(Granted) (Denied) By _____
District Judge

Date _____

d. Pose for photographs (not involving a reenactment of the crime).

(Granted) (Denied) By _____
District Judge

Date _____

e. Try on articles of clothing.

(Granted) (Denied) By _____
District Judge

Date _____

f. Surrender clothing or shoes for experimental comparison.

(Granted) (Denied) By _____
District Judge

Date _____

g. Permit the taking of specimens of material under fingernails.

(Granted) (Denied) By _____
District Judge

Date _____

h. Permit the taking of samples of blood, hair and other materials of his body which involves no unreasonable intrusion.

(Granted) (Denied) By _____
District Judge

Date _____

i. Provide samples of his handwriting.

(Granted) (Denied) By _____
District Judge

Date _____

j. Submit to a physical external inspection of his body.

(Granted) (Denied) By _____
District Judge

Date _____

D. STIPULATIONS

It is stipulated between the parties, pursuant to Rule 23, Federal Rules of Criminal Procedure, and agreed by and between the parties hereto as follows:

a. That (no) (one) (two) alternates be selected in the trial of this case.

b. It is further stipulated that if at any time before a verdict, a juror becomes incapacitated or otherwise excused by the Court for good cause shown and no alternate is available to take the place of said juror, the parties agree to proceed with (11) (10) jurors.

c. It is further stipulated by the parties as follows:

_____

_____

_____

_____

APPROVED:

_____
Attorney for the United States

_____
Attorney for Defendant

_____
Defendant

SO ORDERED:

_____
District Judge/Magistrate

Date _____

WITNESS LIST FOR UNITED STATES

The names and addresses of persons who may be called as witnesses in United States of America v. _____, Case No. _____, are as follows:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Assistant United States Attorney

I acknowledge receipt of a copy of this list of _____ names this _____ day of _____, 19____.

Counsel for the Defendant

EXHIBIT LIST FOR UNITED STATES

Exhibits that may be introduced into evidence at the trial in United States of America v. _____, Case No. _____, are listed below:

Assistant United States Attorney

I have viewed, or been furnished a copy of, the documents listed above, this _____ day of _____, 19____.

_____
Counsel for the Defendant

WITNESS LIST FOR DEFENDANT

The names and addresses of persons who may be called as witnesses in United States of America v. _____, Case No. _____, are as follows:

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

_____
Counsel for the Defendant

I acknowledge receipt of a copy of this list of _____ names this _____ day of _____, 19____.

_____
Assistant United States Attorney

EXHIBIT LIST FOR DEFENDANT

Exhibits that may be introduced into evidence at the trial in United States of America v. _____, Case No. _____, are listed below:

Counsel for the Defendant

I have viewed, or been furnished a copy of, the documents listed above, this _____ day of _____, 19____.

Assistant United States Attorney

Form B(21): Notice of Dismissal

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff,	(Civil) (Criminal) NO. _____
v.	NOTICE OF DISMISSAL
SAM SMITH, Defendant.	

Notice is hereby given that the above-entitled action is dismissed.

/s/
(Attorney's signature)
Address
ATTORNEY FOR PLAINTIFF

Form B(22): Stipulation of Dismissal

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES, Plaintiff, v. SAM SMITH, Defendant.	(Civil) (Criminal) NO. _____ STIPULATION OF DISMISSAL

COMES NOW, the parties hereto, by their attorneys of record, and stipulate that the above-entitled action is dismissed (with or without prejudice) at the costs of (provide for costs).

/s/
Attorney for Plaintiff

/s/
Attorney for Defendant

Form B(23): Clerk's Notice of Dismissal for Want of Prosecution

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

CIVIL NO. _____

NOTICE OF DISMISSAL

This action is dismissed pursuant to Local Rule 24(B), of which is attached, unless some action is taken by not later than _____, _____, 197__. _____, 197__.

K. W. FUELLING, Clerk

By _____
Chief Deputy Clerk

Form B(24): Requested Jury Instructions

Title Page:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(SOUTHERN)
_____ DIVISION

JOHN JONES,	(Civil) (Criminal) NO. _____
Plaintiff,	
v.	REQUESTED JURY INSTRUCTIONS By (Plaintiff) (Defendant) _____
SAM SMITH,	
Defendant.	

COMES NOW, the Defendant, Sam Smith, pursuant to Local Rule 6(G), and submits his Requested Jury Instruction as follows:

(The requested jury instructions, separately numbered, follow the title page. Each instruction is presented on a separate page with authorities, if any, and concluding provisions to reflect the disposition of the request by the Court, as follows:)

REQUESTED JURY INSTRUCTION NO. 1

It is the law of Iowa that in all cases where damage is done by any motor vehicle by reason of the negligence of the driver, and driven with the consent of the owner, that the owner of the motor vehicle shall be liable for such damage. Accordingly, you are instructed that the owner of the 1967 Ford automobile involved in this case, Sam Smith, is responsible for the damage done by his automobile to the Plaintiff, if any, if said automobile was being driven by William Johnson with the consent of Sam Smith at the time of the accident.

Authorities:

Iowa Code § 321.493

Disposition of Requested Instruction:

Given: _____

Refused: _____

Other Disposition: _____

Dated: _____ BY THE COURT

/s/
_____
Judge

Form B(25): Bill of Costs

Form A. O. 133 (1-63) BILL OF COSTS

UNITED STATES DISTRICT COURT
FOR THE

_____

_____ *vs.* _____ CIVIL ACTION FILE No. _____

Judgment having been entered in the above entitled action on the day of _____, 19__, against _____
the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	$_____
Fees of the marshal	_____
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	_____
Fees and disbursements for printing	_____
Fees for witnesses (itemized on reverse side)	_____
Fees for exemplification and copies of papers necessarily obtained for use in case	_____
Docket fees under 28 U. S. C. 1923	_____
Costs incident to taking of depositions	_____
Cost as shown on Mandate of Court of Appeals	_____
Other Costs (Please itemize)	
	_____
	_____
	_____
	_____
	_____
Total	$_____

State of
County of } ss:

I, _____ do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to _____
with postage fully prepaid thereon.

Please take notice that I will appear before the Clerk who will tax said costs on _____, 19__ at _____

Attorney for _____

Subscribed and sworn to before me this _____ day of _____ A.D. 19__
at _____

_____
Notary Public

Costs are hereby taxed in the amount of $_____ this _____ day of _____, 19__, and that amount included in the judgment.

_____
Clerk

By _____
Deputy Clerk

Note: See Reverse Side for Authorities on Taxing Costs.

Witness Fees (computation, cf. 28 U. S. C. 1821 for statutory fees)

Name and Residence	Attendance Days	Attendance Total Cost	Subsistance Days	Subsistance Total Cost	Mileage Miles	Mileage Total Cost	Total Cost Each Witness
					TOTAL		

NOTICE

Section 1924, Title 28, U. S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28 which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54 (d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but cost against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6 (e)

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)

"The entry of the judgment shall not be delayed for the taxing of costs."