

GUIDELINES FOR PREPARATION OF THE CASE CONFERENCE REPORT

1. There can be no formal discovery done prior to the filing of the Case Conference Report without an Order from the Discovery Commissioner or Judge.

2. Follow the Case Conference Report form promulgated by the office of the Discovery Commissioner. Almost all reports should be joint; if one is not, a red flag is raised, indicating that one or both parties are not cooperating.

3. The Early Case Conference and the Case Conference Report are not meant to be mere procedural paperwork stops along the litigation road of a civil case. The purpose of the rules is to force counsel to make a reasonable investigation of their cases prior to filing and to prepare for and participate in an Early Case Conference after the Answer or Answers have been filed. The rules require counsel to think about their case at an early stage in the litigation, get the case settled if possible, and if further litigation is required, the case will be off to a good start because of the exchange of large amounts of information at the Early Case Conference or shortly thereafter. This takes the place of the traditional course of formal discovery.

4. In order to demonstrate compliance with the rules the section of the report dealing with proceedings prior to the filing of the report must be completed. Stipulations to extend time to hold the Early Case Conference should be noted or counsel will be exposed to sanctions for disregarding the time limitations of N.R.C.P. 16.1.

5. The brief description called for in Part II of the report requires more than a regurgitation of the allegations of the initial pleadings. The description, including that of the claims and defenses, must be specific in that some facts must be stated to give the Judge and/or Discovery Commissioner insight into the case. The rules of pleading will no longer tolerate either frivolous claims or frivolous defenses.

6. In regard to documents provided, identify those documents produced at the Early Case Conference with as much specificity as possible, so in the event a problem comes up as to the production of a document or other item at the time of trial, reference can be made to the report for a clear determination as to what the parties produced or were responsible to produce. Such information as dates and the number of pages of a particular item should prevent any problems. Numbering the pages of large sets of documents can save time in report preparation by obviating the need for further description of the documents. Also, when documents or other items are to be produced after the conference, please note a cut-off date for the production of those items. When that is done, it will then be easy for the requesting party to seek relief from the Discovery Commissioner for materials not supplied as promised. If such documents are not listed in the report and provided to opposing counsel at the Early Case Conference or as soon thereafter as

possible, such materials are in danger of being excluded at trial.

7. Section IV of the report only requires completion when one party refuses production of materials requested by another. The party refusing must state his reasons; this may often lead to a discovery dispute which would be handled by the Discovery Commissioner.

8. In addition to the names and addresses of your witnesses you must also give a brief description of the subject matter of the testimony for each one. Once again, specific facts or opinions to which each witness will testify are required and not simply a statement that witness Jones will testify as to liability and witness Smith will testify as to damages. This will help the Court have a better picture of the contemplated testimony and will help the parties narrow the issues prior to the time of trial, as well as demonstrate their preparedness pursuant to the mandate of N.R.C.P. 16.1.

9. The additional discovery plan should be just that, a plan, not a statement which says the parties will send out interrogatories and take the depositions of all witnesses and be ready in one year. There should be no need for general sets of interrogatories and broad requests for production. All early discovery should be taken care of at the Early Case Conference. The discovery plan should be tailored to the individual case, taking into consideration the amount of money at stake, the complexity of the issues, location and types of witnesses, as well as the pressing needs of your clients. It is only after thinking about, and detailing how and when you are going to schedule discovery, that you will arrive at that workable plan and a reasonable time frame in which you can complete your discovery. Your estimate for the time required for discovery will be meaningful and your case will be placed upon a stacked calendar in accordance with the contemplated time for discovery. Always indicate the estimated time for trial of the matter, in the event the case should go that far.

10. Unresolved discovery problems should be set forth in section VII. These problems can be raised for resolution by the Discovery Commissioner by simply checking the line on the front of the Case Conference Report form which requests a dispute resolution conference. When such a conference is requested, you will receive a notice to appear from the Commissioner's office. However, if the parties feel they can work out the problem, they may not wish to request dispute resolution. If later the problem does not resolve itself, either side may set a "motion to resolve dispute" before the Commissioner. All discovery disputes are first heard by the Discovery Commissioner.

11. The section on stipulations is simply a place to write down any significant agreements the parties may reach. This is a place to note how you may have agreed to clean up the pleadings to conform to Rule 11 or to list material facts which are not in dispute. It is a place to put agreements on routine matters and demonstrate you have considered your case and are not playing discovery "games." This section of the report can be especially helpful in detailing partial agreements in divorce cases.

12. Whereas it is important to discuss settlement and to indicate the nature of settlement discussions in your Case Conference Report, refrain from putting in figures as to where the parties stand. This is not so much a concern where a jury trial has been demanded, but it would obviously cause problems in the event the case were to go to trial and the Judge were the trier of fact. If the Court is ever able to work out arrangements for a separate settlement Judge or settlement conference by the Discovery Commissioner or if the parties can agree to anyone else hearing settlement negotiations, then the nuts and bolts of "how much" would be perfectly appropriate for a report to that person. Until then, however, please keep the settlement discussion material general, yet informative.

13. Do not forget the Rule requires the parties to supplement, but need not repeat, the contents of prior reports after any subsequent case conference. Also, the parties must supplement the report with any new information discovered after the filing of the original report, particularly witnesses and documents.