

plaintiff. This permits all claims arising out of the same transaction or occurrence to be heard and determined in the same action. See *Atlantic Coast Line R. Co. v. United States Fidelity & Guaranty Co.* (M.D.Ga. 1943) 52 F.Supp. 177. Accordingly, the next to the last sentence of subdivision (a) has also been revised to make clear that the plaintiff may, if he desires, assert directly against the third-party defendant either by amendment or by a new pleading any claim he may have against him arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. In such a case, the third-party defendant then is entitled to assert the defenses, counterclaims and cross-claims provided in Rules 12 and 13.

The sentence reading "The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff, or to the third-party plaintiff" has been stricken from Rule 14(a), not to change the law, but because the sentence states a rule of substantive law which is not within the scope of a procedural rule. It is not the purpose of the rules to state the effect of a judgment.

The elimination of the words "the third-party plaintiff, or any other party" from the second sentence of Rule 14(a), together with the insertion of the new phrases therein, are not changes of substance but are merely for the purpose of clarification.

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

Under the amendment of the initial sentences of the subdivision, a defendant as a third-party plaintiff may freely and without leave of court bring in a third-party defendant if he files the third-party complaint not later than 10 days after he serves his original answer. When the impleader comes so early in the case, there is little value in requiring a preliminary ruling by the court on the propriety of the impleader.

After the third-party defendant is brought in, the court has discretion to strike the third-party claim if it is obviously unmeritorious and can only delay or prejudice the disposition of the plaintiff's claim, or to sever the third-party claim or accord it separate trial if confusion or prejudice would otherwise result. This discretion, applicable not merely to the cases covered by the amendment where the third-party defendant is brought in without leave, but to all impleaders under the rule, is emphasized in the next-to-last sentence of the subdivision, added by amendment.

In dispensing with leave of court for an impleader filed not later than 10 days after serving the answer, but retaining the leave requirement for impleaders sought to be effected thereafter, the amended subdivision takes a moderate position on the lines urged by some commentators, see Note, 43 Minn.L.Rev. 115 (1958); cf. Pa.R.Civ.P. 2252-53 (60 days after service on the defendant); Minn.R.Civ.P. 14.01 (45 days). Other commentators would dispense with the requirement of leave regardless of the time when impleader is effected, and would rely on subsequent action by the court to dismiss the impleader if it would unduly delay or complicate the litigation or would be otherwise objectionable. See 1A Barron & Holtzoff, *Federal Practice & Procedure* 649-50 (Wright ed. 1960); Comment, 58 Colum.L.Rev. 532, 546 (1958); cf. N.Y.Civ.Prac. Act §193-a; Me.R.Civ.P. 14. The amended subdivision preserves the value of a preliminary screening, through the leave procedure, of impleaders attempted after the 10-day period.

The amendment applies also when an impleader is initiated by a third-party defendant against a person who may be liable to him, as provided in the last sentence of the subdivision.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Rule 14 was modeled on Admiralty Rule 56. An important feature of Admiralty Rule 56 was that it allowed

impleader not only of a person who might be liable to the defendant by way of remedy over, but also of any person who might be liable to the plaintiff. The importance of this provision was that the defendant was entitled to insist that the plaintiff proceed to judgment against the third-party defendant. In certain cases this was a valuable implementation of a substantive right. For example, in a case of ship collision where a finding of mutual fault is possible, one ship-owner, if sued alone, faces the prospect of an absolute judgment for the full amount of the damage suffered by an innocent third party; but if he can implead the owner of the other vessel, and if mutual fault is found, the judgment against the original defendant will be in the first instance only for a moiety of the damages; liability for the remainder will be conditioned on the plaintiff's inability to collect from the third-party defendant.

This feature was originally incorporated in Rule 14, but was eliminated by the amendment of 1946, so that under the amended rule a third party could not be impleaded on the basis that he might be liable to the plaintiff. One of the reasons for the amendment was that the Civil Rule, unlike the Admiralty Rule, did not require the plaintiff to go to judgment against the third-party defendant. Another reason was that where jurisdiction depended on diversity of citizenship the impleader of an adversary having the same citizenship as the plaintiff was not considered possible.

Retention of the admiralty practice in those cases that will be counterparts of a suit in admiralty is clearly desirable.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

Subdivisions (a) and (c) are amended to reflect revisions in Supplemental Rule C(6).

GAP Report. Rule B(1)(a) was modified by moving "in an in personam action" out of paragraph (a) and into the first line of subdivision (1). This change makes it clear that all paragraphs of subdivision (1) apply when attachment is sought in an in personam action. Rule B(1)(d) was modified by changing the requirement that the clerk deliver the summons and process to the person or organization authorized to serve it. The new form requires only that the summons and process be delivered, not that the clerk effect the delivery. This change conforms to present practice in some districts and will facilitate rapid service. It matches the spirit of Civil Rule 4(b), which directs the clerk to issue the summons "to the plaintiff for service on the defendant." A parallel change is made in Rule C(3)(b).

Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) AMENDMENTS TO CONFORM TO THE EVIDENCE. When issues not raised by the pleadings are tried by express or implied consent of the

parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) **RELATION BACK OF AMENDMENTS.** An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

(d) **SUPPLEMENTAL PLEADINGS.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Pub. L. 102-198, §11(a), Dec. 9, 1991, 105 Stat. 1626; Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

See generally for the present federal practice, [former] Equity Rules 19 (Amendments Generally), 28 (Amendment of Bill as of Course), 32 (Answer to Amended Bill), 34 (Supplemental Pleading), and 35 (Bills of Revivor and Supplemental Bills—Form); U.S.C., Title 28, §§399 [now 1653] (Amendments to show diverse citizenship) and [former] 777 (Defects of Form; amendments). See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r.r. 1-13; O. 20, r. 4; O. 24, r.r. 1-3.

Note to Subdivision (a). The right to serve an amended pleading once as of course is common. 4 Mont.Rev.Codes Ann. (1935) §9186; 1 Ore.Code Ann. (1930) §1-904; 1 S.C.Code (Michie, 1932) §493; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r. 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code. If there is no statute the power of the court to grant leave is said to be inherent. Clark, *Code Pleading*, (1928) pp. 498, 509.

Note to Subdivision (b). Compare [former] Equity Rule 19 (Amendments Generally) and code provisions which allow an amendment "at any time in furtherance of justice," (e. g., Ark.Civ.Code (Crawford, 1934) §155) and which allow an amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced (e.g., N.M.Stat. Ann. (Courtright, 1929) §§105-601, 105-602).

Note to Subdivision (c). "Relation back" is a well recognized doctrine of recent and now more frequent application. Compare Ala.Code Ann. (Michie, 1928) §9513; Ill.Rev.Stat. (1937) ch. 110, §170(2); 2 Wash.Rev.Stat. Ann. (Remington, 1932) §308-3(4). See U.S.C., Title 28, §399 [now 1653] (Amendments to show diverse citizenship) for a provision for "relation back."

Note to Subdivision (d). This is an adaptation of Equity Rule 34 (Supplemental Pleading).

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

Rule 15(d) is intended to give the court broad discretion in allowing a supplemental pleading. However, some cases, opposed by other cases and criticized by the commentators, have taken the rigid and formalistic view that where the original complaint fails to state a claim upon which relief can be granted, leave to serve a supplemental complaint must be denied. See *Bonner v. Elizabeth Arden, Inc.*, 177 F.2d 703 (2d Cir. 1949); *Bowles v. Senderowitz*, 65 F.Supp. 548 (E.D.Pa.), rev'd on other grounds, 158 F.2d 435 (3d Cir. 1946), cert. denied, 361 U.S. 836, 80 S.Ct. 88, 4 L.Ed.2d 77 (1959). But see *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons*, 257 F.2d 162 (5th Cir. 1958); *Genuth v. National Biscuit Co.*, 81 F.Supp. 213 (S.D.N.Y. 1948), app. dismissed, 177 F.2d 962 (2d Cir. 1949); 3 *Moore's Federal Practice* ¶15.01 [5] (Supp. 1960); 1A Barron & Holtzoff, *Federal Practice & Procedure* 820-21 (Wright ed. 1960). Thus plaintiffs have sometimes been needlessly remitted to the difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief.

Under the amendment the court has discretion to permit a supplemental pleading despite the fact that the original pleading is defective. As in other situations where a supplemental pleading is offered, the court is to determine in the light of the particular circumstances whether filing should be permitted, and if so, upon what terms. The amendment does not attempt to deal with such questions as the relation of the statute of limitations to supplemental pleadings, the operation of the doctrine of laches, or the availability of other defenses. All these questions are for decision in accordance with the principles applicable to supplemental pleadings generally. Cf. *Blau v. Lamb*, 191 F.Supp. 906 (S.D.N.Y. 1961); *Lendonsol Amusement Corp.*

v. B. & Q. Assoc., Inc., 23 F.R.Serv. 15d. 3, Case 1 (D.Mass. 1957).

NOTES OF ADVISORY COMMITTEE ON RULES—1966
AMENDMENT

Rule 15(c) is amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall “relate back” to the date of the original pleading.

The problem has arisen most acutely in certain actions by private parties against officers or agencies of the United States. Thus an individual denied social security benefits by the Secretary of Health, Education, and Welfare may secure review of the decision by bringing a civil action against that officer within sixty days. 42 U.S.C. § 405(g) (Supp. III, 1962). In several recent cases the claimants instituted timely action but mistakenly named as defendant the United States, the Department of HEW, the “Federal Security Administration” (a non-existent agency), and a Secretary who had retired from the office nineteen days before. Discovering their mistakes, the claimants moved to amend their complaints to name the proper defendant; by this time the statutory sixty-day period had expired. The motions were denied on the ground that the amendment “would amount to the commencement of a new proceeding and would not relate back in time so as to avoid the statutory provision * * * that suit be brought within sixty days * * *” *Cohn v. Federal Security Adm.*, 199 F.Supp. 884, 885 (W.D.N.Y. 1961); see also *Cunningham v. United States*, 199 F.Supp. 541 (W.D.Mo. 1958); *Hall v. Department of HEW*, 199 F.Supp. 833 (S.D.Tex. 1960); *Sandridge v. Folsom, Secretary of HEW*, 200 F.Supp. 25 (M.D.Tenn. 1959). [The Secretary of Health, Education, and Welfare has approved certain ameliorative regulations under 42 U.S.C. § 405(g). See 29 Fed.Reg. 8209 (June 30, 1964); Jacoby, *The Effect of Recent Changes in the Law of “Nonstatutory” Judicial Review*, 53 Geo.L.J. 19, 42–43 (1964); see also *Simmons v. United States Dept. HEW*, 328 F.2d 86 (3d Cir. 1964).]

Analysis in terms of “new proceeding” is traceable to *Davis v. L. L. Cohen & Co.*, 268 U.S. 638 (1925), and *Mellon v. Arkansas Land & Lumber Co.*, 275 U.S. 460 (1928), but those cases antedate the adoption of the Rules which import different criteria for determining when an amendment is to “relate back”. As lower courts have continued to rely on the *Davis* and *Mellon* cases despite the contrary intent of the Rules, clarification of Rule 15(c) is considered advisable.

Relation back is intimately connected with the policy of the statute of limitations. The policy of the statute limiting the time for suit against the Secretary of HEW would not have been offended by allowing relation back in the situations described above. For the government was put on notice of the claim within the stated period—in the particular instances, by means of the initial delivery of process to a responsible government official (see Rule 4(d)(4) and (5)). In these circumstances, characterization of the amendment as a new proceeding is not responsive to the reality, but is merely question-begging; and to deny relation back is to defeat unjustly the claimant’s opportunity to prove his case. See the full discussion by Byse, *Suing the “Wrong” Defendant in Judicial Review of Federal Administrative Action: Proposals for Reform*, 77 Harv.L.Rev. 40 (1963); see also Ill.Civ.P. Act § 46(4).

Much the same question arises in other types of actions against the government (see *Byse*, supra, at 45 n. 15). In actions between private parties, the problem of relation back of amendments changing defendants has generally been better handled by the courts, but incorrect criteria have sometimes been applied, leading sporadically to doubtful results. See 1A Barron & Holtzoff, *Federal Practice & Procedure* § 451 (Wright ed. 1960); 1 id. § 186 (1960); 2 id. § 543 (1961); 3 *Moore’s Federal Practice*, par. 15.15 (Cum.Supp. 1962); Annot., *Change in Party After Statute of Limitations Has Run*, 8 A.L.R.2d 6 (1949). Rule 15(c) has been amplified to provide a general solution. An amendment changing the party against whom

a claim is asserted relates back if the amendment satisfies the usual condition of Rule 15(c) of “arising out of the conduct * * * set forth * * * in the original pleading,” and if, within the applicable limitations period, the party brought in by amendment, first, received such notice of the institution of the action—the notice need not be formal—that he would not be prejudiced in defending the action, and, second, knew or should have known that the action would have been brought against him initially had there not been a mistake concerning the identity of the proper party. Revised Rule 15(c) goes on to provide specifically in the government cases that the first and second requirements are satisfied when the government has been notified in the manner there described (see Rule 4(d)(4) and (5)). As applied to the government cases, revised Rule 15(c) further advances the objectives of the 1961 amendment of Rule 25(d) (substitution of public officers).

The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs. Also relevant is the amendment of Rule 17(a) (real party in interest). To avoid forfeitures of just claims, revised Rule 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for correction of the defect in the manner there stated.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The rule has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.

Paragraph (c)(1). This provision is new. It is intended to make it clear that the rule does not apply to preclude any relation back that may be permitted under the applicable limitations law. Generally, the applicable limitations law will be state law. If federal jurisdiction is based on the citizenship of the parties, the primary reference is the law of the state in which the district court sits. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980). If federal jurisdiction is based on a federal question, the reference may be to the law of the state governing relations between the parties. *E.g.*, *Board of Regents v. Tomanio*, 446 U.S. 478 (1980). In some circumstances, the controlling limitations law may be federal law. *E.g.*, *West v. Conrail, Inc.*, 107 S.Ct. 1538 (1987). Cf. *Burlington Northern R. Co. v. Woods*, 480 U.S. 1 (1987); *Stewart Organization v. Ricoh*, 108 S.Ct. 2239 (1988). Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this rule, it should be available to save the claim. Accord, *Marshall v. Mulrenin*, 508 F.2d 39 (1st cir. 1974). If *Schiavone v. Fortune*, 106 S.Ct. 2379 (1986) implies the contrary, this paragraph is intended to make a material change in the rule.

Paragraph (c)(3). This paragraph has been revised to change the result in *Schiavone v. Fortune*, supra, with respect to the problem of a misnamed defendant. An intended defendant who is notified of an action within the period allowed by Rule 4(m) for service of a summons and complaint may not under the revised rule defeat the action on account of a defect in the pleading with respect to the defendant’s name, provided that the requirements of clauses (A) and (B) have been met. If the notice requirement is met within the Rule 4(m) period, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentifi-

cation. On the basis of the text of the former rule, the Court reached a result in *Schiavone v. Fortune* that was inconsistent with the liberal pleading practices secured by Rule 8. See Bauer, *Schiavone: An Un-Fortune-ate Illustration of the Supreme Court's Role as Interpreter of the Federal Rules of Civil Procedure*, 63 NOTRE DAME L. REV. 720 (1988); Brussack, *Outrageous Fortune: The Case for Amending Rule 15(c) Again*, 61 S. CAL. L. REV. 671 (1988); Lewis, *The Excessive History of Federal Rule 15(c) and Its Lessons for Civil Rules Revision*, 86 MICH. L. REV. 1507 (1987).

In allowing a name-correcting amendment within the time allowed by Rule 4(m), this rule allows not only the 120 days specified in that rule, but also any additional time resulting from any extension ordered by the court pursuant to that rule, as may be granted, for example, if the defendant is a fugitive from service of the summons.

This revision, together with the revision of Rule 4(i) with respect to the failure of a plaintiff in an action against the United States to effect timely service on all the appropriate officials, is intended to produce results contrary to those reached in *Gardner v. Gartman*, 880 F.2d 797 (4th cir. 1989), *Rys v. U.S. Postal Service*, 886 F.2d 443 (1st cir. 1989), *Martin's Food & Liquor, Inc. v. U.S. Dept. of Agriculture*, 14 F.R.S.3d 86 (N.D. Ill. 1988). But cf. *Montgomery v. United States Postal Service*, 867 F.2d 900 (5th cir. 1989), *Warren v. Department of the Army*, 867 F.2d 1156 (8th cir. 1989); *Miles v. Department of the Army*, 881 F.2d 777 (9th cir. 1989), *Barsten v. Department of the Interior*, 896 F.2d 422 (9th cir. 1990); *Brown v. Georgia Dept. of Revenue*, 881 F.2d 1018 (11th cir. 1989).

CONGRESSIONAL MODIFICATION OF PROPOSED 1991 AMENDMENT

Section 11(a) of Pub. L. 102-198 [set out as a note under section 2074 of this title] provided that Rule 15(c)(3) of the Federal Rules of Civil Procedure as transmitted to Congress by the Supreme Court to become effective on Dec. 1, 1991, is amended. See 1991 Amendment note below.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The amendment conforms the cross reference to Rule 4 to the revision of that rule.

AMENDMENT BY PUBLIC LAW

1991—Subd. (c)(3). Pub. L. 102-198 substituted “Rule 4(j)” for “Rule 4(m)”.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) PRETRIAL CONFERENCES; OBJECTIVES. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation, and;
- (5) facilitating the settlement of the case.

(b) SCHEDULING AND PLANNING. Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

- (1) to join other parties and to amend the pleadings;
- (2) to file motions; and
- (3) to complete discovery.

The scheduling order also may include

- (4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;
- (5) the date or dates for conferences before trial, a final pretrial conference, and trial; and
- (6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge.

(c) SUBJECTS FOR CONSIDERATION AT PRETRIAL CONFERENCES. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a magistrate judge or master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(10) the form and substance of the pretrial order;

(11) the disposition of pending motions;

(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the