

Sample Form 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
_____ EASTERN DIVISION

NOTE: Revised 07/2009

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)	ORDER FOR RULE 26(f) PLANNING
Plaintiff,)	MEETING AND RULE 16(b)
)	SCHEDULING CONFERENCE,
vs.)	AND ORDER RE RESOLUTION
)	OF DISCOVERY DISPUTES
)	
)	
Defendant.)	Case No.:

IT IS ORDERED:

RULE 26(f) MEETING & RULE 16(b) SCHEDULING CONFERENCE

The court shall hold a Rule 16(b) initial pretrial scheduling/discovery conference on _____ . The scheduling conference will be held in the Magistrate Judge's Chambers, Room 440, Quentin N. Burdick U.S. Courthouse, 655 1st Avenue North, Fargo, ND 58102, if all counsel are from Fargo-Moorhead. Otherwise, the conference will be held by telephone conference call to be initiated by plaintiff's counsel. The telephone number for the Magistrate Judge's chambers is 701-297-7070.

In preparation for the conference, counsel are directed to confer in accordance with Rule 26(f) of the Federal Rules of Civil Procedure. Counsel shall submit to the magistrate judge a joint proposed scheduling/discovery plan that reflects the Rule 26(f) discussions and includes at least those items listed in the Scheduling Plan which can be found on the court's website at: <www.ndd.uscourts.gov/forms.html>. Counsel shall confer, complete and prepare the form, obtain the appropriate signatures, and e-mail the document in "WordPerfect" or in "Word" format to the following e-mail address: <ndd_J-Klein@ndd.uscourts.gov > **NO LATER THAN TWO**

BUSINESS DAYS PRIOR TO THE CONFERENCE. Any disagreements among counsel shall be addressed at the scheduling conference.

During the Rule 26(f) meeting, counsel shall discuss the nature and basis of their claims and defenses, the possibilities for a prompt settlement or resolution of the case, and the scope and type of discovery, including electronic discovery. Counsel shall also make or arrange for the disclosures required by Rule 26(a)(1), and develop their joint proposed scheduling/discovery plan. These are only the minimum requirements for the meeting. Counsel are encouraged to have a comprehensive discussion and are required to approach the meeting cooperatively and in good faith. The discussion of claims and defenses shall be a substantive, meaningful discussion. In addressing settlement or early resolution of the case, counsel are required to explore the feasibility of ADR not only between themselves but with their clients as well. If the parties elect not to participate in an early ADR effort, the court may nonetheless require a settlement conference shortly before trial.

In addressing the Rule 26(a)(1) disclosures, counsel shall discuss the appropriate timing, form, scope or requirement of the initial disclosures, keeping in mind that Rule 26(a)(1) contemplates the disclosures will be made by the date of the Rule 16(b) initial scheduling conference and will include at least the categories of information listed in the rule. Rule 26 affords the parties flexibility in the scope, form and timing of disclosures under both Rule 26(a)(1) (initial disclosures) and Rule 26(a)(2) (expert witness disclosures), but the parties' agreement on disclosures is subject to approval by the court. In their discussion of disclosures, counsel shall address issues of relevance in detail, with each party identifying what it needs and why. The discussion shall include as well the sequence and timing of follow-up discovery, including whether that discovery should be conducted informally or formally and whether it should be conducted in phases to prepare for filing of particular motions or for settlement discussions.

In addressing electronic discovery, counsel shall discuss what electronic sources each party will search, difficulty of retrieval, preservation of records, the form of production (electronic or hard-copy, format of production, inclusion of meta-data, etc.), cost of production and which party will bear the cost, privilege/waiver issues, and any other electronic discovery issues present in the case. Before engaging in the Rule 26 discussion, counsel should determine who is most familiar with the client's computer system, what electronic records the client maintains, how the client's electronic records are stored, the difficulty/ease of retrieving various records, the existence and terms of the client's document retention/destruction policy, and whether the client has placed a "litigation hold" preventing destruction of potentially relevant records.

The deadlines in the scheduling/discovery plan shall be mutually agreeable, with a view to achieving resolution of the case with a minimum of expense and delay. At the Rule 16(b) conference, the court will review the plan with counsel. The date for the dispositive motion deadline shall not be later than _____, unless good cause is shown at the scheduling conference for a later date. Counsel are informed that the dispositive motion deadline is used in assigning the trial date, and the court must allow adequate time for briefing and ruling prior to the final pretrial conference and trial dates.

RESOLUTION OF DISCOVERY DISPUTES

It is hereby **ORDERED** that the following steps be undertaken by all parties prior to the filing of any discovery motions:

- 1) The parties are strongly encouraged to informally resolve all discovery issues and disputes without the necessity of Court intervention. In that regard, the parties are first required to confer and fully comply with Rule 37(a)(2) of the Federal Rules of Civil Procedure and Local Rule 16.1(B)(4) by undertaking a sincere, good faith

effort to try to resolve all differences without Court action or intervention.

- 2) In the event that reasonable, good faith efforts have been made by all parties to confer and attempt to resolve any differences, without success, the parties are then required to schedule a telephonic conference with the Magistrate Judge in an effort to try to resolve the discovery dispute prior to the filing of any motions. The parties shall exhaust the first two steps of the process before any motions, briefs, memorandums of law, exhibits, deposition transcripts, or any other discovery materials are filed with the Court.
- 3) If the dispute still cannot be resolved following a telephonic conference with the Magistrate Judge, then the Court (Magistrate Judge) will entertain a motion to compel discovery, motion for sanctions, motion for protective order, or other discovery motions. In connection with the filing of any such motions, the moving party shall first fully comply with all requirements of Rule 37(a)(2) and Local Rule 16.1(B)(4) and shall submit the appropriate certifications to the Court as required by those rules.
- 4) The Court will refuse to hear any discovery motion unless the parties have made a sincere, good faith effort to resolve the dispute and all of the above-identified steps have been strictly complied with. A failure to fully comply with all of the prerequisite steps may result in a denial of any motion with prejudice and may result in an award of costs and reasonable attorney's fees.

Dated this _____ day of _____.

KAREN K. KLEIN, U.S. MAGISTRATE JUDGE

S A M P L E
 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NORTH DAKOTA
 DIVISION

Rev 3/24/2008

Caption of Case)
)
)
) Civil No. _____
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SCHEDULING/DISCOVERY PLAN

Pursuant to Rule 26(f), counsel for the parties certify that on _____, 200__ they conferred in person or by telephone person [**conferences by e-mail or letter not permitted**] to discuss the nature and basis of their clients' claims and defenses, the possibilities for a prompt settlement or resolution of the case, and a proposed discovery plan. After conferring, counsel for the parties have agreed upon the following [indicate any areas of disagreement and the position of each party as to the areas of disagreement]:

1. The parties have made (or shall make by ____) Rule 26(a)(1) disclosures as follows: (Include here a summary of the parties' agreement on subject matter, timing and form of Rule 26(a)(1) disclosures, but do not submit the disclosures themselves to the court.)

2. The issues on which the parties need to conduct discovery are: (list discovery issues and any agreement/disagreement on approach to discovery)

3. The parties shall have until ____ to complete fact discovery and to file discovery motions.
4. The parties shall provide the names of expert witnesses and complete reports under Rule 26(a)(2) as follows:

(Treating physicians need not prepare reports, only qualifications, unless they will express opinions not reflected in the medical records.) (Reports to be served on other parties, but not filed with the court.)
5. The parties shall have until ____ to complete discovery depositions of expert witnesses.
6. The parties shall have until ____ to move to join additional parties.
7. The parties shall have until ____ to move to amend pleadings to add claims or defenses, except for claims for punitive damages for which the deadline shall be _____.
8. The parties shall have until ____ to file other nondispositive motions (e.g., consolidation, bifurcation).
9. The parties shall have until ____ to file threshold motions (e.g., jurisdiction, qualified immunity, statute of limitations). Discovery (shall/shall not) be stayed during the pendency of such motions.
10. The parties shall have until ____ to file other dispositive motions (summary judgment as to all or part of the case).
11. Each party shall serve no more than ____ interrogatories, including subparts.

No broad contention interrogatories (i.e., "List all facts supporting your

claim that . . .") shall be used. (Show good cause for more than the 25 interrogatories allowed by Rule 33).

12. Each side shall take no more than ___ discovery depositions. (Show good cause for more than the 10 depositions allowed by Rule 30.)
13. Depositions taken for presentation at trial shall be completed ___ days before trial.
14. Counsel have discussed between themselves and explored with their clients early involvement in alternative dispute resolution. The following option(s) would be appropriate in this case:

_____ **arbitration**

_____ **mediation** (choose one):

_____ private mediator

_____ court-hosted early settlement conference-should the conference be held before a judge who will not be the trial judge?

_____ yes

_____ doesn't matter

_____ **early neutral evaluation** before (choose one):

_____ judge other than trial judge

_____ neutral technical expert

_____ neutral attorney

_____ other (specify)_____

_____ none (explain reasons) _____.

The parties shall be ready to evaluate the case for settlement purposes by _____ . (If an ADR option other than a court-hosted settlement conference is chosen, counsel shall designate one of themselves to report back to the magistrate judge that the ADR effort was completed and whether or not it was successful). The court reminds the parties that early involvement in ADR is voluntary, not mandatory. Participation in ADR is encouraged by the court but is not required except for a settlement conference shortly before trial.

15. A mid-discovery status conference (would/would not) be helpful in this case. An appropriate time for the conference would be (list month).
16. The parties (will/will not) voluntarily waive their rights to proceed before a district judge and consent to have a magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.
17. Trial of this case will be (jury/nonjury).
18. The estimated length of trial is _____ days.

****(Attorney Signatures)****