

Sample Form 28

Local Civil Rules -- Northern District of Ohio

Rule 16.1 Differentiated Case Management

(a) **Purpose and Authority.** The United States District Court for the Northern District of Ohio ("Northern District") adopts Local Rules 16.1 to 16.3 in compliance with the mandate of the United States Congress as expressed in the Civil Justice Reform Act of 1990 ("CJRA" or "Act"). These Rules are intended to implement the procedures necessary for the establishment of a differentiated case management ("DCM") system.

The Northern District has been designated as a DCM "Demonstration District." The DCM system adopted by the Court is intended to permit the Court to manage its civil docket in the most effective and efficient manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual Judicial Officer. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

(b) **Definitions.**

(1) "Differentiated case management" ("DCM") is a system providing for management of cases based on case characteristics. This system is marked by the following features: the Court reviews and screens civil case filings and channels cases to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each track employs a case management plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.

(2) "Case Management Conference" is the conference conducted by the Judicial Officer where track assignment, Alternative Dispute Resolution ("ADR"), and discovery are discussed and where discovery and motion deadlines, deadlines for amending pleadings and adding parties, and the date of the Status Conference are set. Such conference shall, as a general rule, be conducted no later than thirty (30) days after the date of the filing of the last permissible responsive pleading, or the date upon which such pleading should have been filed, but not later than ninety (90) days from the date counsel for the defendant(s) has entered notice of appearance, regardless of whether a responsive pleading has been filed by that date.

The Court may, upon motion for good cause shown or *sua sponte*, order the conference to be held before such general time frame. Unless otherwise ordered, no Case Management Conference shall be held in any action in which the sole plaintiff or defendant is incarcerated and is appearing pro se.

(3) "Status Conference" is the mandatory hearing which is held at a time set by the judicial officer.

(4) "Case Management Plan" ("CMP") is the plan adopted by the Judicial Officer at the Case Management Conference and shall include the determination of track assignment, whether the case is suitable for reference to an ADR program, the type and extent of discovery, the setting of a discovery cut-off date, directions regarding the filing of discovery materials, deadline for filing motions, deadlines for amending pleadings and adding parties, and the date of the Status Conference.

(5) "Dispositive Motions" shall mean motions to dismiss pursuant to Fed. R. Civ. P. 12(b), motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), motions for summary judgment pursuant to Fed. R. Civ. P. 56, or any other motion which, if granted, would result in the entry of judgment or dismissal, or would dispose of any claims or defenses, or would terminate the litigation.

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(6) "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown.

(c) **Date of DCM Application.** Local Rules 16.1 to 16.3 shall apply to all civil cases filed on or after January 1, 1992 and may be applied to civil cases filed before that date if the assigned Judge determines that inclusion in the DCM system is warranted and notifies the parties to that effect.

(d) **Conflicts with Other Rules.** In the event that Local Rules 16.1 to 16.3 conflict with other Local Rules adopted by the Northern District, Local Rules 16.1 to 16.3 shall prevail.

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Rule 16.2 Tracks and Evaluation of Cases

(a) Differentiation of Cases.

(1) Evaluation and Assignment. The Court shall evaluate and screen each civil case in accordance with subsection (b) of this Local Rule, and then assign each case to one of the case management tracks described in subsection (a)(2).

(2) Case Management Tracks. There shall be five (5) case management tracks, as follows:

(A) Expedited - Cases on the Expedited Track should be completed within nine (9) months or less after filing.

(B) Standard - Cases on the Standard Track should be completed within fifteen (15) months or less after filing.

(C) Complex -- Cases on the Complex Track should have the discovery cut-off established in the CMP and should have a case completion goal of no more than twenty-four (24) months.

(D) Administrative - Cases on the Administrative Track, except actions under 28 U.S.C. § 2254 and government collection cases in which no answer is filed, shall be referred by Court personnel directly to a Magistrate Judge for a report and recommendation. See Local Rule 72.2(b). Administrative Track cases shall be controlled by scheduling orders issued by the Judicial Officer.

(E) Mass Torts -- Cases on the Mass Torts Track shall be treated in accordance with the special management plan adopted by the Court.

(b) Evaluation and Assignment of Cases. The Court shall consider and apply the following factors in assigning cases to a particular track:

(1) Expedited:

- (A) Legal Issues: Few and clear
- (B) Required Discovery: Limited
- (C) Number of Real Parties in Interest: Few
- (D) Number of Fact Witnesses: Up to five (5)
- (E) Expert Witnesses: None
- (F) Likely Trial Days: Less than five (5)
- (G) Suitability for ADR: High
- (H) Character and Nature of Damage Claims: Usually a fixed amount

(2) Standard:

- (A) Legal Issues: More than a few, some unsettled
- (B) Required Discovery: Routine
- (C) Number of Real Parties in Interest: Up to five (5)
- (D) Number of Fact Witnesses: Up to ten (10)
- (E) Expert Witnesses: Two (2) or three (3)
- (F) Likely Trial Days: five (5) to ten (10)
- (G) Suitability for ADR: Moderate to high
- (H) Character and Nature of Damage Claims: Routine

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(3) Complex:

- (A) Legal Issues: Numerous, complicated and possibly unique
- (B) Required Discovery: Extensive
- (C) Number of Real Parties in Interest: More than five (5)
- (D) Number of Witnesses: More than ten (10)
- (E) Expert Witnesses: More than three (3)
- (F) Likely Trial Days: More than ten (10)
- (G) Suitability for ADR: Moderate
- (H) Character and Nature of Damage Claims: Usually requiring expert testimony

(4) Administrative: Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.

(5) Mass Tort: Factors to be considered for this track shall be identified in accordance with the special management plan adopted by the Court.

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Rule 16.3 Track Assignment and Case Management Conference

(a) Notice of Track Recommendation and Case Management Conference.

(1) The Court may issue a track recommendation to the parties in advance of the Case Management Conference, or may reserve such determination for the Case Management Conference. If the notice of Case Management Conference does not contain a track recommendation, counsel must confer to determine whether they can agree to a track recommendation, which shall be subject to the Judicial Officer's approval at the Case Management Conference. The track recommendation shall be made in accordance with the factors identified in Local Rule 16.2(b).

(2) In any action in which the defendant (or all defendants in any action with multiple defendants) is in default of answer, no track recommendation will be made and no Case Management Conference held so long as such default continues. In such a case the plaintiff shall go forward and seek default judgment within one hundred and twenty (120) days of perfection of service (or of sending of a request for a waiver of service under Fed. R. Civ. P. 4(d)), or show cause why the action should not be dismissed for want of prosecution. If such default occurs and the party/parties in default is/are thereafter granted leave to plead, issuance of a track recommendation and scheduling of the Case Management Conference shall proceed in accordance herewith, based upon the date set for the filing of the responsive pleading.

(b) Case Management Conference.

(1) The Judicial Officer shall conduct the Case Management Conference. Lead counsel of record must participate in the Conference and parties must attend unless, upon motion with good cause shown or upon its own motion, the Judicial Officer allows the parties to be available for telephonic communication. Counsel, upon good cause shown, may seek leave to participate by telephone.

(2) The agenda for the Conference shall include:

- (A) Determination of track assignment;
- (B) Determination of whether there is any impediment to putting the case in the Court's electronic filing system;
- (C) Determination of whether the case is suitable for reference to an ADR program;
- (D) Determination of whether the parties consent to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. § 636(c);
- (E) Disclosure of information that may be subject to discovery, including key documents and witness identification;
- (F) Determination of the type and extent of discovery, including the discovery of electronically stored information. If the parties have not agreed on how to conduct electronic discovery, the default standard for discovery of electronically stored information attached as Appendix K shall apply;
- (G) Determination of a whether an order is necessary to protect confidential information. A form protective order is attached as Appendix L;
- (H) Setting of a discovery cut-off date;
- (I) Setting of a deadline for joining other parties and amending the pleadings;
- (J) Setting of deadline for filing motions; and
- (K) Setting the date of the Status Conference.

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(3) Except in categories of proceedings exempted from initial disclosure under Fed. R. Civ. P. 26(a)(1)(E), the parties must confer before the Fed. R. Civ. P. 16(b) conference. In addition to discussing the items identified in Fed. R. Civ. P. 26(f), counsel for all parties are directed to engage in meaningful discussions regarding any track recommendation issued by the Court and each of the other agenda items established by the Court. This discussion shall also be generally guided by the provisions of Fed. R. Civ. P. 26(f). The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference. The parties must submit a report on their discussion at least seven days before the Fed. R. Civ. P. 16(b) conference. The Court shall provide forms to counsel for all parties for indicating the parties' positions regarding all such agenda items when it issues its track recommendation.

(4) At the conclusion of the Case Management Conference, the Judicial Officer shall prepare, file, and issue to the parties an order containing the Case Management Plan governing the litigation.

(c) Notification of Complex Litigation.

(1) Definitions.

(A) As used in this Rule, "Complex Litigation" has one or more of the following characteristics:

- (i) it is related to one or more other cases;
- (ii) it arises under the antitrust laws of the United States;
- (iii) it involves more than five (5) real parties in interest;
- (iv) it presents unusual or complex issues of fact;

(v) it involves problems which merit increased judicial supervision or special case management procedures.

(B) As used in this Rule, a "case" includes an action or a proceeding.

(C) As used in this Rule, a case is "related" to one or more other cases if:

(i) they involve the same parties and are based on the same or similar claims;

(ii) they involve the same property, transaction or event or the same series of transactions or events; or

(iii) they involve substantially the same facts.

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(2) Notice Identifying Complex Litigation. An attorney who represents a party in Complex Litigation, as defined above, must, with the filing of the complaint, answer, motion, or other pleading, serve and file a statement which briefly describes the nature of the case, identifies by title and case number all other related case(s) filed in this and any other jurisdiction (federal or state) and identifies, where known, counsel for all other parties in the action who have not yet entered an appearance.

(3) Manual For Complex Litigation. Counsel for each of the parties receiving notice of a Case Management Conference must become familiar with the principles and suggestions contained in the most recent edition of the Manual for Complex Litigation.

(4) Case Management Conference. (See subsection (b)). In preparation for the Case Management Conference, at least seven (7) days prior to the date of the conference counsel for each party must file and serve a proposed agenda of the matters to be discussed at the conference. At the Case Management Conference, counsel for each party must be prepared to discuss preliminary views on the nature and dimensions of the litigation, the principal issues presented, the nature and extent of contemplated discovery, and the major procedural and substantive problems likely to be encountered in the management of the case. Coordination or consolidation with related litigation should be considered. Counsel should be prepared to suggest procedures and timetables for the efficient management of the case.

(5) Determination By Order Whether Case to be Treated as Complex Litigation. At the conclusion of the Case Management Conference, the Court shall prepare, file, and issue an order containing the Case Management Plan which shall set forth whether the case thereafter shall be treated as Complex Litigation pursuant to orders entered by the Court consistent with the principles and suggestions contained in MCL 2d. An order under this subdivision may be conditional and may be altered and amended as the litigation progresses.

(6) Subsequent Proceedings.

(A) Once the Court has determined by order that an action shall be treated as Complex Litigation, thereafter the Court shall take such actions and enter such orders as the Court deems appropriate for the just, expeditious and inexpensive resolution of the litigation. Measures should be taken to facilitate communication and coordination among counsel and with the Court.

(B) Throughout the pendency of a case which has been determined to be treated as Complex Litigation, counsel for the parties are encouraged to submit suggestions and plans designed to clarify, narrow and resolve the issues and to move the case as efficiently and expeditiously as possible to a fair resolution.

(d) Status Conference. The parties, each of whom will have settlement authority, and lead counsel of record must participate in the Status Conference. The parties must participate in person unless, upon motion with good cause shown or upon its own motion, the Judicial Officer allows the parties to be available for telephonic communication. Counsel, upon good cause shown, may seek leave to participate by telephone. When the United States of America or any officer or agency thereof is a party, the federal attorney responsible for the case shall be deemed the authorized representative for the purpose of the Status Conference. At the Status Conference the Judicial Officer will:

(1) review and address:

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- (A) settlement and ADR possibilities;
 - (B) any request for revision of track assignment and/or of the discovery cut-off or motion deadlines; and
 - (C) any special problems which may exist in the case;
- (2) assign a Final Pretrial Conference date, if appropriate; and
 - (3) discuss setting a firm trial date.

If, for any reason, the assigned Judicial Officer is unable to hear the case within one week of its assigned trial date, the case shall be referred to the Chief Judge for reassignment to any available District Judge or, upon consent of the parties, Magistrate Judge for prompt trial.

(e) Final Pretrial Conference. A Final Pretrial Conference, if any, may be scheduled by the Judicial Officer at the Status Conference. The parties and lead counsel of record must be present at the conference. When the United States of America or any officer or agency thereof is a party, the federal attorney responsible for the case shall be deemed the authorized representative for the purpose of the Final Pretrial Conference. The Final Pretrial Conference shall be scheduled as close to the time of trial as reasonable under the circumstances. The Judicial Officer may, in the Judicial Officer's discretion, order the submission of pretrial memoranda.

(f) Video and Telephone Conferences. The use of telephone conference calls and, where appropriate, video conferencing for pretrial and status conferences is encouraged. The Court, upon motion by counsel or its own instance, may order pretrial and status conferences to be conducted by telephone conference calls. In addition, upon motion by any party and upon such terms as the Court may direct, the Court may enter an order in appropriate cases providing for the conduct of pretrial and status conferences by video conference equipment.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No.

Plaintiff,

CASE MANAGEMENT
CONFERENCE ORDER

-vs-

JUDGE JACK ZOUHARY

Defendant.

Case Management Conference held on (date of CMC) .

1. The following parties were present:
 - a. Plaintiff(s):
 - b. Defendant(s):
2. The following attorneys were present:
 - a. Plaintiff(s) lead counsel:
 - b. Defendant(s) lead counsel:
3. A written stipulation (Local Rule 16.3(b)(3)) was / was not filed.
4. After consultation with the parties and counsel, the Court determined that this case will proceed on the STANDARD track.
5. Case referred to Alternative Dispute Resolution (ADR):
Yes _____ No _____ Delay _____

If yes, by the following ADR process:

ENE Mediation Arbitration Summary Jury Trial Summary Bench Trial

ADR PROCESS TO BE COMPLETED BY: _____

6. This Case does / does not involve electronic discovery.
7. The parties did / did not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
8. Rulings as to type and extent of discovery:

Discovery Disputes

No motion to compel, motion for protective order or motion for sanctions shall be filed unless the parties have undertaken in good faith to resolve discovery disputes and, if unable to do so, have next contacted the Court by phone or e-mail with a request for judicial resolution. Local Civil Rule 37.1 governs discovery disputes and counsel are expected to comply with this Rule.

9. Rule 26(a) disclosures:
10. Discovery cut-off date:
 - a. Plaintiff's expert disclosures, with reports, due:
 - b. Defendant's expert disclosures, with reports, due:
11. Without leave of Court, no discovery material shall be filed, except as necessary to support dispositive motions. Depositions filed either electronically or through the Clerk's Office shall include the Word Index.
12. Deadline for amending pleadings / adding parties:

13. Deadline for filing dispositive motions on or before _____ ; THREE (3) WEEKS FOR RESPONSE; ONE (1) WEEK FOR REPLY. Dispositive motions, without **prior** Court approval, shall not exceed page limits set forth in Local Civil Rule 7.1(f) (e.g., twenty (20) pages for standard cases) and shall use Sixth Circuit requirements: doubled-spaced (except for quotes) in a font not less than 12 points in size with margins of not less than one inch.
14. Telephone status hearing:
15. Settlement pretrial conference:
- Lead Counsel and Parties, or a representative with full authority to negotiate and settle, are to appear in person. Further, each party shall submit an ex parte letter summarizing the settlement position to the Judge's Chambers by fax (419-213-5680) three (3) days before the conference.
16. Trial date:

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No.

Plaintiff,

-vs-

NOTICE
CASE MANAGEMENT CONFERENCE

JUDGE JACK ZOUHARY

Defendant.

This case is subject to the provisions of Local Rule 16.1 of the Northern District of Ohio entitled "Differentiated Case Management" (DCM). Counsel are expected to familiarize themselves with applicable Local Rules and Federal Rules of Civil Procedure. The Court shall evaluate this case pursuant to Local Rule 16.1 and assign this case to an appropriate management track (expedited, standard, complex, mass tort and administrative) described in Local Rule 16.2(a). The track assignment will dictate time lines for discovery, motions and trial. Unless otherwise ordered, discovery shall be guided by Local Rule 26.1 and motion practice shall be guided by Local Rule 7.1.

SCHEDULING OF CASE MANAGEMENT CONFERENCE

The Case Management Conference (CMC) shall be held on (date and time) before Judge Jack Zouhary, in Room 203, Ashleys Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio. [If settlement discussions would be helpful at this stage of the case, please notify Chambers

(419-213-5675) so that additional time can be set aside and party attendance can be secured.] [or]
[Counsel and parties shall attend in person and be prepared to discuss settlement.]

Local Rule 16.3(b) requires the attendance of both parties and lead counsel. "Parties" means either the named individuals or, in the case of a corporation or similar legal entity, a person who is familiar with the case. If the presence of a party or lead counsel will constitute an undue hardship, call opposing counsel and the Judge's Chambers (419-213-5675) at least one week prior to the conference to request participation by telephone.

TRACK RECOMMENDATION

Pursuant to Local Rule 16.2(a), and subject to further discussion at the CMC, the Court recommends the following track: [STANDARD]

APPLICATION OF FEDERAL CIVIL RULE 26(a)

Rule 26(a) mandates required disclosures in lieu of discovery requests unless otherwise stipulated or directed by order of the court or by local rule. In this case, all disclosures mandated by Rule 26(a) shall apply, including Initial Disclosures, Expert Testimony, and Pre-Trial Disclosures. These disclosures shall be exchanged no later than one week prior to the CMC.

Prior to the CMC, parties may undertake such informal or formal discovery as mutually agreed. Absent such agreement, no preliminary **formal** discovery may be conducted prior to the CMC except as necessary and appropriate to support or defend against any challenges to jurisdiction or claim for emergency, temporary, or preliminary relief. Local Rule 30.1 governs conduct at depositions, and counsel shall comply with this Rule.

PREPARATION FOR CMC BY COUNSEL

The general agenda for the CMC is set by Local Rule 16.3(b). Counsel for plaintiff shall arrange with opposing counsel to hold the meeting required by Federal Civil Rule 26(f) and Local Rule 16.3(b). A Report of this planning meeting shall be jointly signed and filed at least three (3) days before to the CMC. The Report shall be in a form substantially similar to Attachment 1.

FILING OF DISCOVERY MATERIALS

Unless otherwise ordered, initial disclosures and discovery materials shall **not** be filed with the Clerk, except where submitted in support of a motion or for use at trial. More detail on Judge Zouhary's case management practices and trial procedures can be found at the Court's website: www.ohnd.uscourts.gov.

GERI M. SMITH,
Clerk of Court

/s/ CAROL J. BETHEL
Carol J. Bethel
Courtroom Deputy for Judge Zouhary

ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No.

Plaintiff,

REPORT OF PARTIES'
PLANNING MEETING

-vs-

JUDGE

Defendant.

1. Pursuant to Fed. R. Civ. P. 26(f) and L.R. 16.3(b), a meeting was held on _____

_____, and was attended by:

_____ Counsel for Plaintiff(s) _____

_____ Counsel for Defendant(s) _____

2. The parties:

_____ Have exchanged the pre-discovery disclosures required by Rule 26(a)(1) and the
Court's prior order; or

_____ Will exchange such disclosures by _____

3. The parties recommend the following track:

_____ Expedited _____ Standard _____ Complex

_____ Administrative _____ Mass Tort

4. This case ____ is / ____ is not suitable for one or more of the following Alternative Dispute Resolution (“ADR”) mechanisms:

____ Early Neutral Evaluation ____ Mediation ____ Arbitration
____ Summary Jury Trial ____ Summary Bench Trial

5. The parties ____ do/ ____ do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. 636(c).

If you are consenting to the jurisdiction of the United States Magistrate Judge, please contact the Judge’s Chambers (419 213-5675) **prior** to the Case Management Conference. A Consent to the Exercise of Jurisdiction will then be issued for signature by all parties and the case will be sent to the Magistrate Judge for the Case Management Conference and all further proceedings.

6. The parties agree that this case ____ does / ____ does not involve electronic discovery.

7. **Recommended Discovery Plan (Counsel are reminded to review the default standard for e-discovery set forth in Appendix K to the Local Rules):**

(a) Describe the subjects on which discovery is to be sought, the nature and extent of discovery and any potential problems: _____

(b) Describe anticipated e-discovery issues (i.e., what ESI is available and where it resides; ease/difficulty and cost of producing information; schedule and format of production; preservation of information; agreements about privilege or work-production protection, etc.):

(c) Describe handling of expert discovery (i.e., timetable for disclosure of names and exchange of reports, depositions): _____

(d) Discovery Deadlines:

(i) Liability: _____

(ii) Damages: _____

8. Recommended dispositive motion date: _____

9. Recommended cut-off for amending the pleadings and/or adding additional parties:

10. Recommended date for status hearing and/or final pretrial settlement conference:

11. Other matters for the attention of the Court: _____

Attorney for Plaintiffs: _____ s/ _____

Attorney for Defendants: _____ s/ _____