

# FJC Staff Paper

DISTRICT COURT IMPLEMENTATION OF AMENDED FEDERAL CIVIL RULE 16:  
A REPORT ON NEW LOCAL RULES

Federal Judicial Center





DISTRICT COURT IMPLEMENTATION OF AMENDED FEDERAL CIVIL RULE 16:  
A REPORT ON NEW LOCAL RULES

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Federal Judicial Center  
April 1984

This paper is a product of a study undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been subjected to staff review within the Center, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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Federal Rule of Civil Procedure 16(b), the amendment requiring scheduling orders except in cases exempted by rule, became effective on August 1, 1983. Since then, a number of district courts have grappled with a variety of issues in formulating local rules on scheduling orders. This paper discusses how those courts have responded in general to the opportunities afforded by the new federal rule. It also presents some specific examples of local rules courts have passed to carry out the purposes of the rule 16(b) mandate.<sup>1</sup> Thirty-three district courts have passed local rules to implement the goals of 16(b) (see list in appendix A).<sup>2</sup> Nine courts are in the process of amending their local rules and forty-two courts have yet to take action.

### General Approaches

#### Function and Adoption of Local Rules

Developing and promulgating a local rule regarding scheduling orders is rarely an easy enterprise. Many judges see the exercise of individual discretion as an essential step in maintaining control of difficult caseloads. To adhere to the tenets of rule 16(b) in a district that has not passed a local rule, the

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1. Some of the rules cited in this discussion are included in their entirety in appendix B; the others are available from the Federal Judicial Center's Information Services Office.

2. A thirty-fourth district, the Eastern District of Virginia, already had a rule, which served as a model for the federal rule amendment.

judge must enter a scheduling order in every case. Although the type of scheduling order entered may vary among courts, judges may not exempt any cases when a local rule has not been passed. Thus, even among courts with a long and strong commitment to the underlying concepts of rule 16(b), some modification and fine-tuning of local rules will be needed.

Although these courts generally have moderate to extensive rules on pretrial behavior, their rules do not necessarily address the specific elements of rule 16. For the clearest example, none of the preexisting rules specifically state which cases will be exempted from the scheduling requirements, although the common lore of a court often seems to acknowledge such exemptions. Moreover, some courts do not comply with the 120-day deadline for filing a scheduling order. Courts that have previous experience with local rules concerning pretrial management are likely to need somewhat less modification of their local rules than courts without such background.

Another element contributing to the difficulty of rule promulgation is the confusion concerning the requirements for implementation of the comparative functions of scheduling orders and pretrial or status conferences. Some courts appear to read the requirements for action under 16(b) as optional if the court exercises pretrial management. Since pretrial conferences may occur anytime prior to trial and may deal with matters other than scheduling, a pretrial conference does not necessarily fulfill the requirements of 16(b). The purpose of rule 16(b) is to organize the processing of a case before substantive issues are



reached, as well as to try to organize cases comprehensively rather than piecemeal.<sup>3</sup> Many courts, in passing rules on scheduling orders, have tried to integrate the functions of the scheduling order and the pretrial conference. (See W.D. Mo.) Other courts have approached the scheduling order as an overlay to the preexisting situation. (See E.D. La.) In either of these approaches, a court should be sensitive to the need to eliminate inconsistencies and to maximize efficiency by avoiding overlap.

#### Fixed-Time versus Case-Specific Scheduling Orders

Courts have assessed differently the relative merits of fixed-time scheduling orders and case-specific scheduling orders. Some courts, such as the Western District of Washington and the Middle District of Alabama, have adopted scheduling orders dictating that in all cases certain pretrial/discovery phases must be completed no later than x days from the entry of the order (generally, sixty to ninety days). This kind of order is called a fixed-time scheduling order because the maximum time allowable does not differ from case to case. Case-specific scheduling orders provide individualized deadlines in either of two ways. First, the judge may have a form that uniformly structures pretrial behavior, but allows for the entering of an appropriate deadline for each phase of the pretrial process. (See W.D. Tex.) This method is similar to the fixed-time order in that the expected behavior is predetermined, but different in that the time

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3. See Rule 16, Comments, at 47 (West 1983).

allowed for completion varies from case to case. Second, some courts, such as the Northern District of Iowa, provide that counsel in the case submit, subject to the court's approval, deadlines for each phase of the process (consistent with other local rules).

The attractiveness of each approach to a particular district court will reflect the workload and style of that court. However, a choice between the two will relate to a very basic policy decision concerning what type of structure and organization should be imposed on the pretrial process. Some courts have found that cases can be made to proceed quite well simply by establishing final deadlines with fixed-time scheduling orders, but this approach may lack the flexibility necessary to accommodate some lawyers and some cases. The case-specific approach, in addition to decreasing the amount of time that elapses between each phase of the case, may also fulfill the intent of rule 16(b) to control case progression and the development of issues at each step. Therefore, the case-specific approach allows judges to retain some discretion in planning the timing of a case, while at the same time providing uniformity in the approach of the court as a whole.

#### Components of a Scheduling Order

Courts also vary in where they place the primary responsibility for formulating the preliminary scheduling order. The majority of the rules state that the judge or magistrate shall enter the order, but fail to mention who is to design that order.

The rules that do consider this topic have placed the responsibility on plaintiff's counsel. (See D. Md., W.D. Tex.) For example, the Western District of Texas gives this responsibility to the plaintiff's attorney, but the order must be submitted to all parties for "review, revision and execution." If parties cannot agree, each attorney must submit a draft order.

Local rules promulgated thus far have taken numerous approaches in stating what specifically must be included in the order. Rule 16(b) requires that the scheduling order state deadlines for joining parties and amending pleadings, for filing and hearing motions, and for completion of discovery. In addition to those areas, some courts designate that information such as use of expert witnesses and names of expected witnesses be presented. (See M.D. Ala., D. Md.)

Given that predictability and case organization are two of the primary goals of 16(b), a listing of the minimum subjects to be considered in the scheduling order seems prudent.<sup>4</sup> To leave these decisions up to the attorneys could allow the scheduling order to remain merely a pro forma deadline rather than an organizational, case-directing tool. A list of the minimum topics to be agreed upon can ensure that in preparing the scheduling order, attorneys will focus on more specific evidentiary information, as well as substantive legal aspects of the trial. Examples are discussed in the following section.

From this range of requirements arises the question of

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4. See Comments, supra note 3, at 48.

whether a party will be estopped from raising an issue or tactic not contemplated in the scheduling order. For example, in a court that requires that pretrial orders state whether parties contemplate filing any dispositive pretrial motions, does a preliminary negative answer prevent a party from filing such motions before the trial? The logic arguing for an affirmative conclusion is that the entire purpose of the scheduling order is comprehensive planning and when a party fails to state that it plans to employ a procedure provided for by the judge, that opportunity can be deemed to be foreclosed.

This analysis can also be extended to scheduling orders in which no guidelines are enumerated. Should a lawyer be expected to be aware of every alternative approach to a case at the early planning stages? Consideration of this question, and straightforward explanation of the conclusion to the practicing attorney in a court, will likely have an important effect on the attorney's compliance with the rule.

Rule 16(f) provides explicit authority for judges to apply sanctions for noncompliance with a scheduling order and also requires that a noncomplying party be assessed attorneys' fees in some situations. A number of courts have decided to apply sanctions for noncompliance with the rule. Courts that specifically mention sanctions in their local rules usually apply them for failure to attend a scheduling meeting, appearing unprepared, or refusing to deal in good faith. (See W.D. Mo.) Scheduling orders are an appropriate place to specify sanctions for delaying or disruptive behavior, since these sanctions reinforce the

"rule's intention to encourage forceful judicial management."<sup>5</sup>

It is also appropriate for a court to state how sanctions will be employed in conjunction with the new rule.

Another topic of marginal planning importance, but vast implementation importance, is the designation of the desired method of consultation. Rule 16(b) allows for the required consultation to be held by telephone, mail, or other means. Certain districts, such as Alaska and other courts that encompass an entire state, may have a greater interest in asserting a preferred method of consultation other than a face-to-face meeting. So far, several courts have stated a preference. The Northern District of West Virginia prefers a face-to-face scheduling conference. In Iowa, if the case will go to trial within one year, the mere filing of the scheduling report fulfills the consultation requirement, without the necessity of a face-to-face meeting; otherwise, a conference with all parties must occur, either in person or by telephone. In passing a local rule, a court can employ the form of meeting that best reflects its time demands, the geographic placement of the court, and the needs of the case.

#### Specific Procedural Elements

Fifteen local rules, contained in appendix B, illustrate the varying approaches to specific procedural elements taken by the courts. The entire rules have been included, not merely the sections dealing with the specific elements discussed here. In-

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5. Comments, supra note 3, at 50.

cluding the rules in their entirety is intended only to provide context for the illustrative sections and not to offer the rules as models for other courts. Indeed, the selection and presentation of these rules is intended to do no more than bring to the attention of district courts the decisions that other courts have reached. Needs will vary among courts, and these can be met in a number of ways; the best approach will depend upon the nature of a court and its cases.

#### Exemption of Cases

The examples of rules exempting certain categories of cases from scheduling orders are from Delaware, the District of Columbia, and New Mexico. All of the rules are quite comprehensive, and there is a degree of overlap among them. New Mexico's exemption of water law cases, in addition to the cases exempted by almost all districts, is noteworthy because it shows that the court has considered how the scheduling procedure mandated by rule 16 will affect its particular caseload. (See also D. Alaska, which exempts cases where travel is not feasible within the 120-day period.)

Complexity apparently remains a problematic factor in the decision to apply scheduling orders, and courts differ as to whether they exempt complex cases from scheduling orders. The District of Columbia exempts multidistrict litigation from scheduling orders, New Mexico exempts the inevitably complex water rights matters, and the Southern District of California exempts asbestosis cases. Alaska also provides that exceptionally com-

plex cases be exempted from the scheduling order requirement. The Eastern District of Missouri, however, does not exempt cases designated as complex.

Such complex cases raise questions concerning how to figure the 120-day period for cases with multiple parties and how to deal with consolidated or transferred cases. The rules passed to date have not determined how to resolve these problems within the framework of the scheduling order.

The courts differ in the labels they apply to characterize common cases that are exempted from scheduling orders. For example, some courts group prisoner cases into one category, while others separate them into habeas corpus, civil rights, and pro se cases. Since most lawyers do not compare their districts' rules with other districts' rules, these differences may not cause confusion, particularly where the rules codify the general practice of the court. In drafting new rules, however, the potential differences should be noted if any exist.

Several courts, in listing cases to be exempted from scheduling orders, have added a final category that gives a judge discretion to exempt cases as she or he sees fit. (See N.D. and S.D. Iowa.) This exception promotes the goal of flexibility, since a case that does not fit into an articulated category can still be exempted from a scheduling order when the circumstances require it. However, such exceptions could undermine the goals of certainty and predictability. Rule 16(b), as passed, does not seem hospitable to ad hoc exemptions. The drafters could easily have left such discretion to the trial judge, but they chose to

require that exception be by rule. The practice of judge-made exceptions could also create confusion among attorneys, since different judges might require different standards for excuse from the scheduling order.

#### Division of Labor between Judges and Magistrates

Review of the rules discloses that involvement of magistrates in formulating and implementing scheduling orders varies widely--ranging from sole responsibility for scheduling orders to no participation in the process. (See D.N.J., D. Del.) Rule 16 states that magistrates may enter scheduling orders when authorized by local rules. Thus, depending on how magistrates are currently being utilized by a court, the new scheduling procedure may merely add to the magistrates' tasks, or it may open up a whole new area of application for their services.

Some courts have used their local rules to explain the rationale for the allocation of responsibility between judge and magistrate. (See N.D. and S.D. Iowa, rule 2.4.14, which provides that if judge and magistrate agree a case is complex, the scheduling conference may be held before the judge.) But many courts do not mention whether magistrates may participate at all, or under what circumstances, despite magistrates' activity in other scheduling matters, such as pretrial conferences. Reading rule 16(b) literally, courts must specifically authorize magistrates to enter scheduling orders, even if they routinely perform other pretrial management chores. When new rules are passed, courts should consider detailing the expected participation of all par-



ties, rather than hope to leave such understanding to court tradition.

### Elements of the Scheduling Order

One of the most comprehensive prescriptions for handling the scheduling order is local rule 15 of the Western District of Missouri. The rule dictates the contents of the order, allocates responsibility for preparing the order, and explains the interaction between motions and the order. For example, the rule states that filing motions for summary judgment or motions to dismiss does not excuse lawyers from compliance with the deadlines of the scheduling order.

Courts seem to be of different minds on what should be included in a scheduling order. Some courts see the order as generally specifying dates for completion of certain broad activities, such as discovery, joinder of parties, and dispositive motions. (See D. Conn., D.N.J., N.D. W. Va., W.D. Wash., M.D. Ala.) Two of these courts, Washington and Alabama, have fixed-date scheduling orders rather than case-specific ones. The fixed-date orders are more useful in a court that wants to provide a fixed deadline for completion of certain pretrial phases, but does not plan to exercise control over the manner in which the case proceeds between deadlines.

Other courts require a much more elaborate exposition of information in the scheduling order. (See N.D. and S.D. Iowa, W.D. Mo.) The information required generally includes estimates of the time needed for each phase of discovery, names of expert

and lay witnesses, lists of exhibits, summaries of testimony, and status of settlement. Some courts go even further and require some discussion of legal and factual issues, what each party proposes to prove, and the legal theories supporting each claim. (See D. Md., D. Me.)

Requiring early exposition of the legal theories may be counterproductive in certain types of lengthy or complicated trials. When this formulation of issues occurs early, before discovery is completed and before parties know of the availability of physical evidence, the issues may become simply a laundry list of potential claims. Not until later, when discovery has progressed, does the formulation serve the purpose of limiting and shaping a narrow area of disagreement between the parties.

Confining the discovery phase and the legal analysis in too tight a time frame may be doing a disservice to clients and lawyers. Although in most cases these requirements will probably cause no difficulty, in complex cases, or cases with a number of possible theories, the requirements may confine the growth and equity of the law. Since most courts already have procedures for pretrial and status conferences to discuss the legal and strategic issues of a case, continued use of those procedures could eliminate any potential conflict between the goals of management and legal thoroughness. Courts may want to provide extended deadlines for the formulation of legal theories in scheduling orders for certain complex cases. For example, a court that generally allows 90 days for the formulation of legal issues under a fixed-time deadline might want to allow 120 days for a complex

case. This would provide a balance between promoting efficient narrowing of the issues and constraining the development of the case.

#### Extension of Scheduling Order Deadlines

Three courts have dealt with extension of scheduling order time limits: the Eastern District of Virginia, the Western District of Texas, and the Western District of Missouri. All expand on the "good cause" standard expressed in rule 16(b).

The Virginia rule, which served as the model for rule 16(b), states that failure to proceed with discovery does not constitute good cause. Similarly, the Western District of Texas states in its orders that the deadline is to be enforced "unless an extension is granted for good cause." Both of these rules leave the lawyers without standards to judge the merits of their requests for extensions. An overspecific enumeration of what constitutes good cause, however, can be as burdensome as providing no standards at all. Cases do differ from one another, and a valid excuse in one case may be invalid in another. To tie judges too strictly to a specific list of excusable categories may prove inefficient.

Rule 15N of the Western District of Missouri states a number of requirements for an extension. First, active discovery must have taken place. Second, mere delays in discovery are insufficient to establish good cause. A motion to extend must state a specific need for extension and must be accompanied by a detailed proposed amendment to the scheduling order.

Other courts allow attorneys to challenge a scheduling order within a specified number of days if they disagree with a deadline. This method has the benefit of putting the onus for a challenge on the attorney, but again lacks standards for what would constitute a proper exception. (See M.D. Ala., M.D. La.)

The Central District of California mentions modification of scheduling orders "to prevent manifest injustice." This seems to establish a higher standard of review for the exception to the order than that established by rule 16. The drafters of rule 16 stated that a "manifest injustice" standard might place too high a burden on parties, since the order is entered so early in proceedings.<sup>6</sup>

The establishment of standards for amending scheduling orders is the least developed area of the recently passed local rules. Even where judges are strongly committed to firm scheduling orders--enforced by the strictest sanctions--extensions will occasionally be required for reasons beyond the control of the parties. Omitting any reference to standards for extensions allows a great deal of discretion at the heart of the problem rule 16(b) attempts to rectify, namely, delay. A precise definition of good cause would put lawyers on notice concerning expected behavior and might prevent some after-the-fact arguments about what should have been done.

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6. See Comments, supra note 3, at 48.

Conclusion

The promulgation of rule 16(b) included a clear expectation that the rule would be fleshed out and given operational validity by local rules. About half the districts have taken steps in that direction.

Some of the remaining courts have stated that their pre-1983 rules are adequate. Even where the philosophy of pre-1983 local rules is clearly in tune with the new amendments, however, the existing local rules may leave some unintended hiatuses. For example, if a court does not establish exemptions, the prescriptions of rule 16(b) will apply to all cases, which may result in serious overmanagement of some very simple or routine categories of cases.

Others among the courts without new local rules have indicated that they intend to leave further implementation to the individual discretion of judges. This approach may undercut the basic goal of the 1983 amendment, which seeks to develop both within courts and among courts a firmer and more consistent managerial hand on the controls of case progress and pace.

Among the courts that have adopted local rule revisions, variations in approach indicate that important questions inhere in this subject that need to be considered by all district courts. The approaches mentioned in this paper and illustrated in appendix B may point the way toward initial steps for some courts and identify additional opportunities for others.



## APPENDIX A

LOCAL DISTRICT COURT RULES ADOPTED TO IMPLEMENT  
AMENDED FEDERAL RULE OF CIVIL PROCEDURE 16

<u>District</u>	<u>Rule Number</u>
1. Alabama Middle*	1. Order
2. Alaska*	2. Rule 9
3. California Central	3. Rule 9
4. California Eastern	4. Rule 125
5. California Southern	5. Order 299
6. Colorado	6. Rule 405
7. Connecticut	7. Rule 11
8. Delaware*	8. Order (9-12-83)
9. District of Columbia*	9. Rule 1-15
10. Florida Middle	10. Rule 3.05
11. Iowa (Northern & Southern)*	11. Rule 2.4.1
12. Kansas	12. Rule 16
13. Louisiana Eastern	13. Rule 11
14. Louisiana Middle*	14. Photocopied notice to attorneys
15. Louisiana Western	15. Rule 28
16. Maine*	16. Order (11-7-83)
17. Maryland*	17. Rule 35
18. Massachusetts	18. Rule 41
19. Minnesota	19. Rule 14(B)a
20. Mississippi Southern	20. Rule 12
21. Missouri Eastern	21. Rule 13
22. Missouri Western*	22. Rule 15
23. New Jersey*	23. Rule 40A(14)
24. New Mexico*	24. Rule 24
25. New York Eastern	25. Rule 45
26. New York Western	26. Rule 16(a)
27. Pennsylvania Middle	27. Rule 408.4
28. South Carolina	28. Order (10-7-83)
29. Texas Northern	29. Misc. Order 35
30. Texas Southern	30. Rule 6(A)
31. Texas Western*	31. Rule 300-6
32. Virginia Eastern* <sup>+</sup>	32. Rule 12
33. Washington Western*	33. Rule CR 16
34. West Virginia Northern*	34. Order (1-11-84)

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\*These rules are included in appendix B; copies of other rules in this list are available from the Information Services Office of the Federal Judicial Center.

<sup>+</sup>This rule antedates and served as a model for the 16(b) amendment.





APPENDIX B  
ILLUSTRATIVE LOCAL RULES



IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA

	)	
	)	
	)	
Plaintiff(s),	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	
	)	
	)	
Defendant(s).	)	

O R D E R

This cause is tentatively set for trial during the term of Court commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_, Alabama.

Under Rule 16, Federal Rules of Civil Procedure, as amended, the Court is required to set a schedule for discovery and the filing of motions. Accordingly, it is ORDERED by this Court as follows:

1. Any motions to amend and add parties shall be filed no later than SIXTY (60) DAYS from the date of this Order.

2. All discovery shall be completed on or before NINETY (90) DAYS from the date of this Order.

3. Any dispositive motions, e.g., motions to dismiss and for summary judgment, shall be filed no later than SIXTY (60) DAYS from the date of this Order.

4. No later than SIXTY (60) DAYS from the date of this Order, the parties shall exchange the names and addresses of all witnesses whom they expect to offer at trial.

[Note that because this order is not a local rule, judges may vary from its basic form if they deem it necessary.]

(a) On or before SIXTY (60) DAYS from the date of this Order, each party must provide all other parties with the substance of the testimony of any expert witness whom a party expects to call at trial.

(b) On or before SIXTY (60) DAYS from the date of this Order, the parties shall identify any part of a deposition that a party expects to use at trial. Adverse parties shall, within ONE WEEK thereafter, identify any responsive parts of depositions expected to be used. Except to the extent written notice to the contrary is given no later than ONE WEEK prior to the scheduled trial date, each party shall be deemed to have agreed that one of the conditions for admissibility under Rule 32, Federal Rules of Civil Procedure, is satisfied with respect to any such deposition and that there is no objection to the testimony so designated. Unless specifically agreed between the parties or allowed by the Court for good cause shown, the parties shall be precluded from calling a witness or using any part of a deposition not so listed.

5. The parties shall, on or before TWO WEEKS prior to the scheduled trial date, furnish opposing counsel for copying and inspection all exhibits or tangible evidence to be used at the trial, and proffering counsel shall have such evidence marked for identification prior to trial. Unless specifically agreed between the parties or allowed by the Court for good

cause shown, the parties shall be precluded from offering such evidence not so furnished and identified. Except to the extent written notice to the contrary is given no later than ONE WEEK prior to the scheduled trial date, the evidence shall be deemed genuine and admissible in evidence.

6. The parties shall, no later than ONE WEEK prior to the scheduled trial date, file a joint, concise statement of stipulated facts.

7. On or before FIVE (5) DAYS prior to the scheduled trial date, the parties shall file with the Court any requested voir dire questions which they may desire the Court to ask.

8. On or before FIVE (5) DAYS prior to the scheduled trial date, the parties shall file with the Court any proposed jury instructions which they desire the Court to give.

9. A pretrial hearing of this cause is tentatively scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_, Alabama.

If any party has any objection to these deadlines, the party should inform the Court within FOURTEEN (14) DAYS from the date of this Order; otherwise, the Court will assume that the deadlines are agreeable to all parties.

Unless this Order be hereafter modified by Order of the Court, the provisions hereinabove set out are binding on the parties.

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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UNITED STATES DISTRICT JUDGE



[DISTRICT OF ALASKA]

AMENDED

RULE 9

PRE-TRIAL PROCEDURE

(A) - - - - (no changes)

(B) Scheduling Conference and Order in Civil Cases.

Scheduling conferences may be set by the judge upon the motion of any party or upon the court's own motion. The court shall direct in its order for scheduling conference the subject matter to be discussed and the manner in which the conference shall be conducted. The court shall enter a scheduling order in every case except for those categories of actions exempted by subsection (C) below.

(C) Exception to Mandatory Scheduling Orders.

Scheduling orders shall not be mandatory in the following categories of cases:

- (i) IRS enforcement actions;
- (ii) Eminent domain proceedings;
- (iii) forfeitures;
- (iv) habeas corpus petitions;
- (v) Freedom of Information Act actions;
- (iv) actions to enforce out-of-state judgments;
- (vii) those proceedings referred to the magistrate under Local Magistrate Rules (9) & (11);

(viii) action by the United States for the collection of debts;

(ix) cases determined to be exceptionally complex;

(x) cases in which no service upon defendant(s) has been effected within 120 days of filing of the complaint.

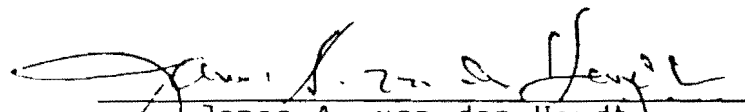
(xi) other cases in which court review of the file indicates the burden of a scheduling order would exceed the administrative efficiencies to be gained.

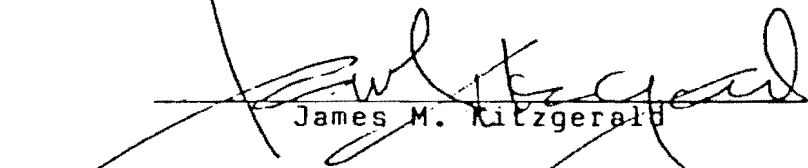
(D) Settlement Conference. Any party may move for a settlement conference at any time. The court may set a settlement conference upon its own motion at any time.

(E) Pretrial Conferences. Any party may move for a pretrial conference if required to expedite the progress of the case. The court, of its own motion, may set a pretrial conference at any time.

(F) Final Pretrial Conferences. Final Pretrial conferences may be held as close to the time of trial as reasonable under the circumstances.

DATED at Anchorage, Alaska, this 22nd day of November, 1983.

  
James A. von der Heydt  
Chief Judge

  
James M. Kitzgerald



**FILED**

DEC -- 1983

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By DS Deputy

IN THE MATTER OF )  
 )  
AMENDING LOCAL RULES )  
\_\_\_\_\_ )

ORDER

IT IS ORDERED that General Rule 9 of this Court be,  
and it hereby is, amended as follows:

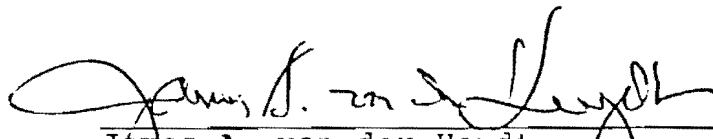
Subparagraph (xi) is redesignated as subparagraph (xii).

Subparagraph (xi) will read as follows:

(xi) those cases filed in locations in the  
District other than Anchorage in which travel by the  
Court to those locations within the time limit set  
is not feasible or possible;

DATED at Anchorage, Alaska this 7 day of December

1983.

  
\_\_\_\_\_  
James A. von der Heydt  
Chief Judge, United States District Court



- (a) all actions in which one of the parties appears pro se and is incarcerated;
- (b) all actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;
- (c) prize proceedings, actions for forfeitures and seizures, for condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;
- (d) proceedings in bankruptcy, for admission to citizenship or to cancel or revoke citizenship.
- (e) proceedings for habeas corpus or in the nature thereof, whether addressed to federal or state custody;

- (f) proceedings to compel arbitration or to confirm or set aside arbitration awards;
- (g) proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;
- (h) proceedings to compel the giving of testimony or production of documents in this District in connection with discovery, or testimony de bene esse, or for perpetuation of testimony, for use in a matter pending or contemplated in a U.S. District Court of another District;
- (i) proceedings for the temporary enforcement of orders of the National Labor Relations Board;
- (j) civil actions for recovery of erroneously paid educational assistance.

Dated: September 12, 1983

James L. Letchum  
Chief Judge  
Walter K. Steplik  
Judge

Murray M. Schwartz  
Judge  
Robert M. Mink  
Judge

[Renumber current Rules 1-9(f)(g) and (h) to Rules 1-9(g)(h) and (i).]

**RULE 1-15**  
**PRETRIAL**

(Note: All of Rule 1-15(e) is new.)

(e) EXEMPTIONS FROM SCHEDULING AND PLANNING ORDER

The following categories of actions are exempt from the requirement in Rule 16(b) of the Federal Rules of Civil Procedure that a scheduling and planning order be entered:

- (1) Actions brought pursuant to the Freedom of Information Act;
- (2) Petitions for writ of habeas corpus brought by a petitioner incarcerated in the District of Columbia or in Lorton Reformatory;
- (3) Motions filed pursuant to 28 U.S.C. § 2255;
- (4) All other petitions brought by prisoners incarcerated in federal facilities, in the District of Columbia, or in Lorton Reformatory;
- (5) Appeals from bankruptcy decisions;
- (6) All actions brought by the United States to collect student loans and all other debts owed to the United States government;
- (7) Actions involving the review of Social Security benefit denials;

- (8) All applications for attorneys' fees and costs;
- (9) Multi-district litigation;
- (10) Condemnation proceedings;
- (11) Forfeiture actions by the United States;
- (12) Appeals from a decision by a United States Magistrate; and
- (13) Motions to quash or enforce administrative subpoenas.

[Rule 2.4, prior to being amended, was entitled Pretrial Procedure.]

7. Rule 2.4 is stricken and the following substituted in lieu thereof:

.1 MANDATORY SCHEDULING CONFERENCE FRCP 16(b):

.11 Within fourteen (14) days after the date provided for answer under FRCP 12(a), but in no event, later than eighty (80) days after the filing of the complaint, whichever comes first, except in those actions exempted by paragraph 2.4.12, counsel for the parties shall confer and file with the Clerk a report containing a proposed schedule for the disposition of the action. The report shall include the following:

.111 An estimate of the time needed to complete discovery including a statement as to the methods of discovery contemplated and a list of witnesses with knowledge of the facts of the lawsuit presently available to the parties.

.112 A statement as to whether expert witnesses

[continued]

will be retained by either party, and if so the general area of their testimony and an estimate of the date they will be retained and prepared for deposition.

.113 A statement of whether either party contemplates adding additional parties or amending pleadings and if so, an estimate of the date by which this can be completed.

.114 A statement as to whether either party contemplates filing any pre-trial motions that may be dispositive of all or part of the litigation.

.115 A statement by counsel as to the estimated length of trial.

.116 A statement by counsel as to the status of settlement and whether an early settlement conference would be useful.

.117 Any other matters which counsel or the parties believe should be brought to the attention of the court that will aid in realistically developing a schedule of deadlines for the disposition of the litigation.

.12 A proposed schedule report as required in paragraph .11 shall be submitted in all civil actions, except where plaintiff is pro se, social security disability review cases, habeas corpus petitions, actions under 42 USC Section 1983 filed by persons confined in penal institutions, actions to collect student loans, civil forfeitures, actions seeking review of administrative actions, or any other class of cases designated by order of the court. Plaintiff's counsel shall have the responsibility for initiating the conference and preparation and submission of the scheduling report. All other counsel shall have a duty to cooperate in good faith to insure that the report is timely filed. The report shall be filed after consultation with counsel for all parties and while it need not be signed by all counsel shall contain a statement that all counsel concur in the report.

.13 If it appears from the report that the case will be ready for trial within one year of the date of filing, a Judge or Magistrate may issue the scheduling order required by FRCP 16(b) without a further conference.

.14 If no report is submitted or the report indicates that the case will not be ready for trial within one year from the date of filing the Magistrate shall



forthwith set the matter for a scheduling conference. Said conference may be in person or by telephone at the Magistrate's discretion. If the parties request or in the judgment of the District Judge and Magistrate the case appears to be complex, the above conference may be set before the District Judge to whom the case has been assigned.

- .15 After the scheduling conference, but in no event later than one hundred-twenty (120) days after filing of the action, the Judge or Magistrate shall issue the scheduling order required by FRCP 16(b).
- .16 The deadlines established by the scheduling order may be extended by the Judge or Magistrate only upon written motion and a showing of good cause.
- .17 The Clerk shall notify the parties of the requirement of this rule by handing or mailing a copy of the rule to plaintiff or his representative at the time an action is filed and as to other parties by attaching copies of the rule to the complaint and summons, when served.
- .18 All full-time Magistrates are authorized to make all orders necessary to enforce this rule.

.2 FINAL PRE-TRIAL CONFERENCE:

- .21 Final Pre-Trial Conference: Upon expiration of the discovery deadline set in accordance with the above, the presiding Judge or Magistrate may order a final pre-trial conference to be held at a convenient time and place with reasonable notice thereof mailed by the Clerk to counsel for all parties by certified mail, return receipt requested.
- .22 All parties must be represented at the final pre-trial conference by counsel familiar with the facts, who have full authority to act on behalf of their clients and who will participate in the trial. An attorney who will participate in the trial must attend for each party.

.3 NORTHERN DISTRICT - FINAL PRE-TRIAL CONFERENCE:

.31 Prior to said conference, counsel for all parties shall meet, prepare and sign a proposed order in the form supplied by the Clerk (standard pre-trial order #2) and submit the same to the court at least three (3) days prior to the time of the conference unless otherwise ordered. Plaintiff's counsel shall have the responsibility for the initiation of the meeting to prepare the proposed final pre-trial order. All counsel shall have a duty to see that the purpose of the final pre-trial conference is fulfilled. In the

absence of agreement, the meeting of attorneys will be held in the office of 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.

.4 SOUTHERN DISTRICT - FINAL PRE-TRIAL CONFERENCE:

41 A final pre-trial conference shall be held in every case approximately ten (10) to fifteen (15) days before the scheduled trial date. The Clerk shall attach an addendum to each order for final pre-trial conference which shall contain a complete listing of all items to be filed and discussed at the final pre-trial conference.

NOTICE

Reproduced on the reverse side of this NOTICE are Local Rule 13, Dismissal of Actions for Lack of Prosecution, and Federal Rules of Civil Procedure 16(b), Scheduling and Planning. These rules may affect this action and should be carefully reviewed.

DISMISSAL OF ACTIONS FOR LACK OF PROSECUTION - The Court shall control compliance with time deadlines. Voluntary extensions of time between attorneys shall not be recognized unless and until they are approved by the Court.

SCHEDULING ORDER - A Scheduling Order under Federal Rules of Civil Procedure 16(b) shall be entered by the Court in this action during the period from 90 to 120 days from the date of filing of the Complaint or earlier if all parties have entered an appearance. If you feel that this case is of an unusual nature and would require extra time for completion of the events set forth in 16(b)(1), (2) and (3), a request to that effect, supported by the reasons for the request, should be filed promptly.

C. LEE DUPUIS, CLERK

## LOCAL RULE 13 - DISMISSAL OF ACTIONS FOR LACK OF PROSECUTION

(a) A civil action may be dismissed by the Court for lack of prosecution as follows:

- (1) Where no service of process has been made within ninety (90) days after filing of the complaint;
- (2) Where no responsive pleadings have been filed or no default has been entered within sixty (60) days after service of process;
- (3) Where a case has been pending six (6) months without proceedings being taken within such period.

(b) Dismissal under this Rule shall be without prejudice unless delay has resulted in prejudice to an opposing party. The order of dismissal shall allow reinstatement of the action within thirty (30) days for good cause shown.

## FEDERAL RULES OF CIVIL PROCEDURE 16

(b) SCHEDULING AND PLANNING. Except in categories of actions exempted by District Court rule as in appropriate, the Judge, or a Magistrate, when authorized by District Court rule, shall, 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 and hear motions; and
- (3) to complete discovery

The Scheduling order also may include

- (4) the date or dates for conferences before trial, and final pretrial conference and trial; and
- (5) any other matter appropriate in the circumstances of the case.

The Order shall issue as soon as practicable, but in no event, more than 120 days after filing of the complaint. A Schedule shall not be modified except by leave of the Judge or a Magistrate when authorized by District Court rule upon a showing of good cause.

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ORDER

The following procedures shall govern the conduct of Preliminary Pre-trial Conferences before the United States Magistrate.

Preliminary Pre-trial Conference

(a) General

A preliminary pre-trial conference may be held in all civil actions no less than 30 days after issue has been joined. The Clerk shall notify counsel of the time and place thereof by mailing to them a written notice or "Preliminary Pre-trial Conference List."

(b) Preparation for Preliminary Pre-trial Conferences

At the preliminary pre-trial conference, counsel shall be prepared: (1) to present a brief statement of the Court's jurisdiction or lack thereof; (2) to indicate whether jury trial is sought or resisted; (3) to state whether the pleadings are complete and whether all appropriate parties have been joined and served; (4) to state what discovery is contemplated and to propose a discovery schedule; (5) to formulate and simplify the legal issues in the case, eliminating frivolous claims or defenses, and identify which issues could usefully be resolved by motion and argument in advance of trial; (6) to propose a schedule for briefing and arguing any such motions; (7) to identify any need for special procedures to manage potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and (8) to report on the specific progress of settlement discussions to date.

Counsel shall present the information prescribed in clauses (1) through (7) in a preliminary pre-trial memorandum which shall be served on opposing counsel and submitted to the Court in duplicate no later than seven (7) days prior to the preliminary pre-trial conference. The preliminary pre-trial memorandum normally need not exceed three pages in length.

(c) Conduct of Preliminary Pre-trial Conference

The Court will consider at the preliminary pre-trial conference the pleadings and papers then on file; all motions and other proceedings then pending; and any other matters referred to in this Order or in Fed. R. Civ. P. 16 which may be applicable.

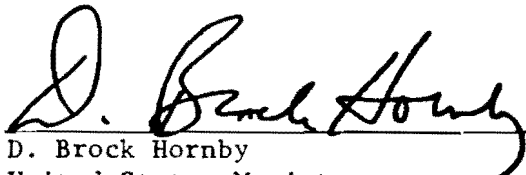
Unless excused for good cause, each party shall be represented at the preliminary pre-trial conference by counsel who shall be thoroughly familiar with this Order and with his case. Counsel shall also come to the conference with full authorization from their clients with respect to settlement.

(d) Preliminary Pre-Trial Order

Either at or following the preliminary pre-trial conference, the Court shall make a preliminary pre-trial order, which shall recite the action taken at the conference, and such order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice. Unless otherwise ordered, any objections to the preliminary pre-trial order must be made within ten (10) days after receipt by counsel of a copy thereof. Any discussion at the conference relating to settlement shall not be a part of the preliminary pre-trial order.

(3) Non-Compliance

If a party fails to comply with the requirements of this Order, the Court may impose the penalties and sanctions provided for under Local Rule 21(f) governing Pre-trial Proceedings in Civil Actions.

  
D. Brock Hornby  
United States Magistrate

Dated: *November 7, 1983*

[Below is local rule 21(f), referred to in the above order.]

(f) Non-Compliance

If a party fails to comply with the requirements of this rule, the Court may impose such penalties and sanctions as the circumstances warrant, which may include the dismissal of the action, the default of a party, or the exclusion of evidence at the trial.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

IN RE:

LOCAL RULE AMENDMENTS

:  
:  
:  
:  
:

MISCELLANEOUS NO. 642

ORDER

Local Rules 25C, 35, 80, 81, and 82 are amended as set forth below effective August 1, 1983.

Local Rule 25C is repealed and the following is adopted in its stead.

25C.

INVESTMENT OF REGISTRY FUNDS

Funds deposited in the Registry of the Court will be placed in an interest bearing account, unless some other specific medium of investment requested by a party is approved by the Court. Sums exceeding \$100,000.00 in any one case will be divided among depositories, to insure full F.D.I.C. coverage, unless such sums are invested in bonds, notes or securities guaranteed as to principal and interest by the United States Government.

In the event the Clerk is not present for service of the order required by F. R. Civ. P. 67, said service shall be made upon the Chief Deputy Clerk or the Finance Clerk, only.

35.

PRETRIAL PROCEDURES

(A) Unless otherwise ordered by the Court, no scheduling order will be required in the following categories of cases which are deemed inappropriate for such an order pursuant to Rule 16(b), F.R.Civ.P.:

1. Prisoner habeas corpus petitions.
2. Prisoner civil rights cases.

3. Collection cases brought by the United States.
4. Land condemnation cases.
5. United States condemnation and forfeiture cases against vehicles, vessels, contaminated foods, drugs, cosmetics and the like.
6. Administrative appeals brought against the Secretary of the Department of Health and Human Services.
7. Foreclosure actions.
8. Petitions brought by the United States to enforce a summons of the Internal Revenue Service.
9. Appeals from rulings of a bankruptcy judge.
10. Appeals from judgments of United States Magistrates.
11. Suits to quash subpoenas.

[(A)] (B) In any action in which a scheduling order has been entered, the Court [may in its discretion] shall direct the attorneys for the parties to appear before it for a pretrial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure. Unless [otherwise ordered,] a case has been referred to a United States Magistrate for such purpose, all pretrial conferences shall be held before a judge in open court or in chambers and an official court reporter may be present. At least one of the attorneys for each of the parties, who will actually participate in the trial shall appear at and conduct the pretrial conference. Each attorney shall be familiar with all aspects of his case before the pretrial conference, and if necessary, shall obtain prior authority from his client to enter into stipulations and to make admissions with reference to as many facts and issues as practicable. If an attorney for a party fails to appear at a pretrial conference, or otherwise fails to abide by the requirements of this rule, the judge may take such action, including the imposition[s] of sanctions[,] pursuant to Rule 16(f), F.R.Civ.P., as he may deem appropriate.

[(B)] (C) Counsel may be notified of a pretrial conference by scheduling order or by such other notice as the Court may direct[;]. S[s]uch order or notice need be furnished only to Maryland counsel unless a judge shall otherwise order. The [notice shall direct that] plaintiff's attorney shall file in the chambers of the judge not later than five (5) days before the conference, a proposed pretrial order signed by the



Order dated July 12, 1983 (cont'd)

attorneys for all parties in the event they can agree. The proposed pretrial order shall be drafted by the attorney for the plaintiff and submitted to all other parties in the case for review, revisions, and execution. If counsel are unable to agree upon any particular provision of the proposed pretrial order, counsel for each party shall instead submit by that date a draft of his proposal for said provision with the proposed pretrial order. The proposed pretrial order shall contain at least the following:

1. A brief statement of facts that each plaintiff proposes to prove in support of a claim[.], together with a listing of the separate legal theories relied upon in support of each claim.

2. A brief statement of facts that each defendant proposes to prove or rely upon as a defense thereto[.], together with a listing of the separate legal theories relied upon in support of each affirmative defense.

3. Similar statements as to any counterclaim, crossclaim, or third-party claim.

4. Any amendments required of the pleadings.

5. Any issue in the pleadings that is to be abandoned.

6. Stipulations of fact or, if unable to agree, a statement of matters on which any party requests an admission.

7. The details of the damages claimed or any other relief sought as of the date of the pretrial conference.

8. A listing of the documents and records to be offered in evidence by each side at the trial, other than those expected to be used solely for impeachment, indicating which documents the parties agree may be offered in evidence without the usual authentication.

9. A listing for each party of the names and specialties of experts the party proposes to call as witnesses.

10. Any other pretrial relief which an attorney will request or the Court shall direct.

The [notice shall further state that the] attorneys are required to complete prior to the date of the pretrial conference all discovery provided for in Rules 26-37 of the Federal Rules of Civil Procedure.

[(C)] (D) The matter of settlement may be discussed at the pretrial conference. The discussion shall be on or off the Court record as the Court shall direct and shall not be mentioned in the proposed pretrial order, at the trial or in any motion or arguments or be considered with relation to any issue in the case.

[(D)] (E) The judge [may] shall enter a pretrial order which recites the action taken at the conference[,]. [the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of attorneys; and s] Such order when entered shall control the subsequent course of action, unless modified at the trial to prevent manifest injustice.

The title of Local Rule 80 is amended as follows:

80.

[AUTHORITY OF] UNITED STATES MAGISTRATES

(The substance of the rule is unchanged.)

81.

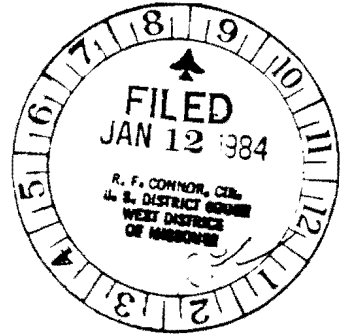
TRIAL OF CIVIL CASES BEFORE MAGISTRATES BY CONSENT

The judges of the District Court may, by order, designate magistrates from time to time to exercise the authority to hear and determine civil cases granted under 28 U.S.C. § 636(c); provided, however, that any such magistrate must meet such statutory and regulatory prerequisites for the exercise of §636(c) jurisdiction as may be provided from time to time. Magistrates designated pursuant hereto may try any civil case in which all parties have consented to trial by a magistrate, and which has been referred to a magistrate by a District Judge. [The Court may, on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.]

Cases referred to magistrates pursuant to 28 U.S.C. §636(c) shall be randomly assigned among the magistrates.

Upon the filing of any civil case, the Clerk of Court shall notify the parties of their right to consent to the exercise of a magistrate's civil jurisdiction pursuant to 28 U.S.C. §636(c). The form and content of the notice and of any consent form shall be as [adopted by the Court.] provided in Forms 33 and 34, Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
EN BANC



ORDER AMENDING LOCAL RULE 15

For good cause shown, the United States District Court en banc for the Western District of Missouri does hereby unanimously

ORDER that Rule 15 of the Rules of Procedure of the United States District Court for the Western District of Missouri, previously adopted on July 20, 1982, effective January 1, 1983 be, and it is hereby, amended this 12th day of January, 1984, to be effective January 16, 1984, as set forth in the attachment hereto.

Russell G. Clark, Chief District Judge  
at the direction of the Court en banc

Kansas City, Missouri

January 12, 1984

## LOCAL RULE 15

### CIVIL CASES — SCHEDULING ORDER — DISCOVERY

#### A. General Principles

Unless otherwise ordered, this Local Rule is applicable to all civil cases pending in this district, except for the cases exempted by Local Rule 15B. Counsel are responsible for completing pretrial discovery in the shortest time reasonably possible with the least expense and without the necessity of judicial intervention.

Rule 16(b), Federal Rules of Civil Procedure, requires that a scheduling order shall be entered in every case, except those specifically exempted, limiting the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery. A scheduling order must be entered within 120 days after filing of the complaint unless service is accomplished at a time which makes entry of a scheduling order within 120 days unrealistic. Counsel should have the initial responsibility for suggesting reasonable dates for the scheduling order.

Upon completion of discovery, post discovery pretrial procedures will be scheduled (Local Rule 17) and the case will be set for trial on the next joint civil jury trial docket (Local Rule 18) or will be given a special trial setting. Post discovery pretrial procedures and the trial setting will be coordinated whenever possible.

#### B. Actions Exempt From These Procedures

The following categories of actions are exempted from compliance with these procedures unless otherwise directed by the Court:

(1) Any action commenced by a plaintiff without an attorney unless an attorney enters an appearance for plaintiff within 120 days after the complaint is filed.

(2) Any action filed by or on behalf of a convicted prisoner, a pretrial detainee, or any other person confined in a municipal, state, or federal institution challenging the validity or the conditions of confinement.

(3) Any action challenging the validity of a criminal conviction or sentence.

(4) Any action coming to this court on the record from another court or an administrative agency, e.g., bankruptcy and social security appeals.

### C. Discovery Shall Commence Immediately

Discovery should commence at the earliest time permitted by the Federal Rules of Civil Procedure. Counsel who fail to investigate their cases and who fail to commence discovery at the earliest possible time may have difficulty in participating intelligently in fashioning the scheduling order required by Rule 16(b), Federal Rules of Civil Procedure.

### D. Filing of Motions Does Not Automatically Stay Discovery

Absent an order of the Court to the contrary, the filing of a motion, including a discovery motion, a motion for summary judgment, or a motion to dismiss, does not excuse counsel from complying with this rule and any scheduling order entered in the case.

### E. Plaintiff's Counsel Shall Take Lead in Preparation of Proposed Scheduling Order

After consultation with all counsel, counsel for plaintiff is responsible for preparing a draft of the proposed scheduling order contemplated by this rule. The draft prepared by plaintiff's counsel shall be presented to counsel for all other parties for additions and modifications. Counsel should fully and openly communicate with each other so that a joint proposed scheduling order is submitted. If all counsel do not agree on a proposed scheduling order, separate proposed scheduling orders should not be filed. Disagreements concerning a proposed scheduling order, if unresolved by the good faith efforts of counsel, should be stated in the proposed scheduling order.

### F. Sanctions for Failing to Cooperate in Preparing a Proposed Scheduling Order

The failure of a party or a party's counsel to participate in good faith in the framing of the proposed scheduling order contemplated by this rule and Rule 16(b) may result in the imposition of appropriate sanctions. See Rules 16(f) and 37(g), Federal Rules of Civil Procedure.

### G. Content of the Proposed Scheduling Order

Within 100 days after the complaint is filed, the parties shall file a proposed scheduling order which shall:

- (1) Propose a date limiting joinder of parties;
- (2) Propose a date limiting the filing of motions to amend the pleadings (It is suggested that counsel consider in most cases a date approximately 180 days after the filing of the complaint.);

(3) Propose a date limiting the filing and hearing of motions (It is suggested that counsel in most cases consider proposing that (a) all discovery motions be filed on or before the date proposed for the completion of discovery; and (b) subject to the provisions of Rule 12(h)(2), Federal Rules of Civil Procedure, all dispositive motions be filed within 30 days after the date proposed for the completion of discovery.);

(4) Propose a plan for the completion of all pretrial discovery, including the date by which all pretrial discovery shall be completed. (Counsel should not propose a date for the completion of discovery which is known to be without any reasonable basis.) See Rules 15H and I.

#### H. Plan for Completion of Discovery

The proposed plan for completing all discovery authorized by the Federal Rules of Civil Procedure shall include (1) the date by which all discovery will be completed, (2) the facts, such as the complexity of the issues, which counsel considered in arriving at the proposed deadline for the completion of all discovery; (3) the status of all pretrial discovery initiated to date; and (4) a description of all pretrial discovery each party intends to initiate prior to the close of discovery. The information furnished pursuant to (2), (3), and (4) should be sufficiently detailed to inform the Court why the period of time proposed for completing discovery is believed necessary. The specificity of the information furnished pursuant to (2) and (4) must increase in direct relation to the extent to which the deadline for completion of discovery exceeds 180 days after the complaint is filed. In other words, the longer the time proposed for discovery, the greater detail counsel must furnish in support of the request. Consideration should be given to proposing dates prior to the close of all discovery for the completion of specific phases of discovery. Counsel should keep in mind the general principles governing discovery set forth in the Federal Rules of Civil Procedure and Local Rule 15A. (See Form A, Section IV.)

#### I. Preliminary Plan for Completion of Discovery

The Court recognizes that in some cases it may be impossible for the parties to prepare a realistic plan for the completion of discovery within 100 days after the complaint is filed. If the parties believe that it is impossible to propose a date for completion of discovery which has a reasonable basis, the parties should consider proposing a preliminary plan for the completion of discovery which will conform to Local Rule 15H rather than proposing a date for completion of all discovery, except a date should be proposed by which a plan will be filed fully complying with Local Rule 15H. Counsel proposing a preliminary plan must explain in detail why a deadline for completion of all discovery cannot be proposed. Only in extraordinary situations and upon a showing of good cause will a preliminary plan be approved.

## J. Discovery Conference

If requested prior to or at the time a proposed scheduling order is filed, or if ordered by the Court on its own motion after reviewing a proposed scheduling order, a discovery conference pursuant to Rule 26(f), Federal Rules of Civil Procedure, will be held before entering a scheduling order.

## K. Interrogatories

No party shall serve on any other party more than twenty (20) interrogatories in the aggregate without leave of Court or consent of opposing counsel. Subparagraphs of any interrogatory shall relate directly to the subject matter of the interrogatory and shall not exceed two in number. After compliance with Local Rule 15M, any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if attached thereto is the written consent of counsel for the party to which the interrogatories are directed.

## L. The Form of Answers and Responses to Certain Discovery Requests

The party answering interrogatories, or responding to requests to admit, produce, or inspect shall set forth each question or request immediately before the answer or response.

## M. Discovery Motions

Unless otherwise ordered, the Court will not entertain any discovery motion unless counsel for the moving party has conferred, or has made reasonable effort to confer, with opposing counsel concerning the matter prior to the filing of the motion. Counsel for the moving party shall certify compliance with this rule in any discovery motion. See Crown Center Redevelopment Corp. v. Westinghouse Electric, 82 F.R.D. 108 (W.D.Mo. 1979).

## N. Extension of Deadlines Fixed in Scheduling Order

A deadline established by a scheduling order will be extended only upon a good cause finding by the Court. In the absence of disabling circumstances, the deadline for completion of all discovery will not be extended unless there has been active discovery. Delayed discovery will not justify an extension of discovery deadlines. A motion to extend any deadline in a scheduling order must demonstrate a specific need for the requested extension, and should be accompanied by a detailed proposed amendment to the previously entered scheduling order. The date for completion of discovery will be extended only if the remaining discovery is specifically described and scheduled, e.g., the names of each remaining deponent and the date, time and place of each remaining deposition.

FORM A

[CAPTION]

PROPOSED SCHEDULING ORDER

Directions

Before commencing work on a proposed scheduling order, counsel are urged to read Rule 16(b), Federal Rules of Civil Procedure, and Local Rule 15.

Counsel for each party should participate in good faith in attempting to reach an agreed upon proposed scheduling order.

If agreement is impossible, separate proposed scheduling orders should not be filed. Any disputes concerning a proposed scheduling order must be set forth in the proposed scheduling order.

Sections I, II, III, and IV must be completed and submitted on or before the 100th day after the complaint was filed.

I.

Any motion to join additional parties will be filed on or before \_\_\_\_\_.

This date is proposed because (state reasons why this date is appropriate for this case):

II.

Any motion to amend the pleadings will be filed on or before \_\_\_\_\_.

This date is proposed because (state reasons why this date is appropriate for this case):

III.

All other motions will be filed on or before \_\_\_\_\_ (It may be advisable to propose different dates for different types of motions. See Local Rule 15G(3).)

This date (dates) is (are) proposed because (state reasons why this date (these dates) is (are) appropriate for this case):



IV.

[READ LOCAL RULES 15H AND 15I BEFORE COMPLETING]

1. All pretrial discovery authorized by the Federal Rules of Civil Procedure will be completed on or before \_\_\_\_\_.

2. The following facts were considered by counsel in arriving at the date proposed in paragraph 1 above:

3. The following discovery has already been initiated and its current status is:

4. On or before the date proposed in paragraph 1 above, each party intends to initiate and complete the discovery listed below the name of each party. (Note: It is not sufficient to state only "depositions" without stating who a party plans to depose. Additional depositions may be scheduled before the close of discovery if new witnesses are disclosed.)

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Attorney(s) for  
Plaintiff(s)

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Attorney(s) for  
Defendant(s)

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

_____	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. _____
	)	
_____	)	
	)	
Defendant.	)	

NOTICE OF PRETRIAL PROCEDURES PURSUANT TO LOCAL RULE 15

Local Rule 15 establishes procedures for complying with Rule 16(b), Federal Rules of Civil Procedure. Counsel should study Rule 15 before attempting to process cases in this Court. A copy of Local Rule 15 may be obtained from the Clerk's office or may be found in all editions of the Missouri Rules of Court published by West Publishing Company for 1985 and thereafter.

Pursuant to Local Rule 15, it is hereby ORDERED that:

1. Discovery shall commence immediately.
2. A proposed scheduling order shall be filed on or before \_\_\_\_\_. A copy of Form A attached to Local Rule 15 is attached for the convenience of counsel. Careful and immediate attention should be given to the directions in this Form to ensure complete and timely compliance with Rule 16(b) and Local Rule 15.
3. Plaintiff's counsel must take the lead in the preparation of a proposed scheduling order. The failure of a party or its counsel to participate in good faith in the framing of a scheduling order may result in the imposition of sanctions. Local Rule 15F and Rules 16(f) and 37(g), Federal Rules of Civil Procedure.
4. Counsel are reminded that:
  - (a) The filing of motions does not postpone discovery automatically (Rule 15D).
  - (b) Extensions of discovery deadlines are governed by Rule 15N.
  - (c) The number and form of interrogatories are governed by Rule 15K.

(d) The form of answers to certain discovery requests is provided in Rule 15L.

(e) All discovery motions must be accompanied by the certificate provided in Rule 15M.

R. F. Connor  
Clerk of the Court

By \_\_\_\_\_  
Deputy Clerk

Form B

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

_____	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. _____
	)	
_____	)	
	)	
Defendant.	)	

REMINDER OF DUE DATE FOR RULE 15 PROPOSED SCHEDULING ORDER

Counsel are reminded that the parties are required to file their proposed Local Rule 15 scheduling order on or before \_\_\_\_\_, 198\_\_.

Please review the Notice of Pretrial Procedures pursuant to Local Rule 15 previously mailed to you and make certain that a proposed scheduling order complying with Local Rule 15 is filed timely. See Form A attached to Local Rule 15 for guidance on the form of the proposed scheduling order.

By order of the Court en banc  
R. F. Connor, Clerk of the Court

By \_\_\_\_\_  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

_____	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. _____
	)	
_____	)	
	)	
Defendant.	)	

ORDER REQUIRING CERTIFICATION OF COMPLETION OF DISCOVERY

The files and records in the above-entitled cause show that \_\_\_\_\_, 198 \_\_, was the date established by a scheduling order for the completion of all discovery in this case.

Within ten days from the date of this notice, counsel for each party shall file and serve on all counsel a certificate that all discovery has been completed and that this case is ready for further processing under Local Rules 16, 17, and 18.

IT IS SO ORDERED.

By order of the Court en banc  
R. F. Connor, Clerk of the Court

By \_\_\_\_\_  
Deputy Clerk

FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

AUG 23 1983

At 8:30. \_\_\_\_\_ JM  
ALLYN Z. LITE

IN THE MATTER OF :  
THE GENERAL RULES OF THE COURT :  
: ORDER  
:  
:

It is on this 17<sup>th</sup> day of August 1983 ORDERED  
that General Rule 40A(14) shall be and hereby is amended as  
follows:

- (14) Exercise general supervision of the civil and criminal calendars of the court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges. As part of the magistrate's general supervision of the civil calendar, the magistrate shall conduct scheduling conferences in accordance with Rule 16 of the Federal Rules of Civil Procedure (as amended August 1, 1983), at which scheduling orders will be entered, in all civil cases except the following:
- (a) all actions in which one of the parties appears pro se and is incarcerated;
  - (b) all actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;
  - (c) prize proceedings, actions for forfeitures and seizures, for condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;
  - (d) proceedings in bankruptcy, for admission to citizenship or to cancel or revoke citizenship;

- (e) proceedings for habeas corpus or in the nature thereof, whether addressed to federal or state custody;
- (f) proceedings to compel arbitration or to confirm or set aside arbitration awards;
- (g) proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;
- (h) proceedings to compel the giving of testimony or production of documents in this District in connection with discovery, or testimony de bene esse, or for perpetuation of testimony, for use in a matter pending or contemplated in a U.S. District Court of another District.
- (i) proceedings for the temporary enforcement of orders of the National Labor Relations Board.
- (j) proceedings instituted for prosecution in a summary manner in the Superior Court of New Jersey and removed to this court on diversity only.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line that extends to the right.

---

CLARKSON S. FISHER  
Chief Judge  
For the Court



RULE 24

PRETRIAL CONFERENCES  
AND PRETRIAL ORDER

a. Pretrial Conference. A pretrial conference shall be held when ordered by the Court, and at the discretion of the Court when requested by any party.

[continued]

b. Counsel. Counsel who will try the case will attend the pretrial conference. Unless otherwise directed by the Court, counsel for plaintiff will draft a proposed pretrial order in keeping with the action taken at the conference. The order will be substantially in accordance with the approved form of pretrial order. Copies of a pretrial check list and approved form of pretrial order are available at the Clerk's office.

c. Proposed Pretrial Order. The proposed pretrial order drafted by Plaintiff's counsel shall be submitted to counsel for other parties for their approving signature and, if approved, submitted to the Court within ten days from the date of the pretrial conference or at such time as the Court or the U.S. Magistrate shall order.

d. Cooperation of Counsel. All counsel have reciprocal duties to cooperate in submitting promptly a proper pretrial order for the approval of the Court in accordance with the above procedure.

e. Effect of Pretrial Order and Amendment. The pretrial order entered by the Court shall control the subsequent course of the action. The pretrial order shall not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

f. Magistrate. The Court may designate a full-time U.S. Magistrate to hold an initial and/or a pretrial conference in any case. Such Magistrate shall conduct scheduling conferences in accordance with Rule 16 of the Federal Rules of Civil Procedure (as amended August 1, 1983), at which scheduling, orders will be entered in all civil cases except the following:

(1) All actions in which one of the parties appears pro se and is incarcerated;

(2) All actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

(3) Prize proceedings, actions for forfeitures and seizures, for condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;

(4) Proceedings in bankruptcy, for admission to citizenship or to cancel or revoke citizenship;

(5) Proceedings to compel arbitration or to confirm or set aside arbitration awards;

(6) Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

(7) Proceedings to compel the giving of testimony or production of documents in this District in connection with discovery, or testimony de bene esse, or for perpetuation of testimony, for use in a matter pending or contemplated in a U. S. District Court of another district;

(8) Proceedings for the temporary enforcement of orders of the National Labor Relations Board;

(9) Proceedings instituted for prosecution in a summary manner in the district courts of the State of New Mexico and removed to this court on diversity only;

(10) Proceedings requesting injunctive or other emergency relief;

(11) Proceedings involving complaints by inmates pursuant to 42 U.S.C. 1983;

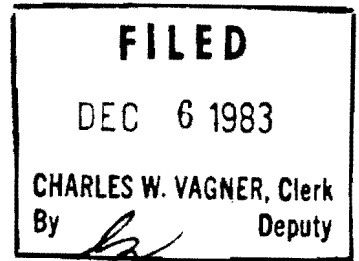
(12) Proceedings involving the collection for Veterans Administration student loans;

(13) Proceedings involving water rights matters;

(14) Proceedings involving the collection of monies owed to appropriated and non-appropriated fund activities at military installations;

(15) Proceedings under the Freedom of Information Act.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS



O R D E R

In order to comply with Rule 16(b) of the Federal Rules of Civil Procedure, as amended August 1, 1983,

IT IS HEREBY ORDERED that Rule 300-6 of the Local Rules for the Western District of Texas be amended to read as follows:

**Rule 300-6. Pre-Trial.**

(a) The form set out in Appendix "B" shall be an acceptable form for the scheduling order required under Rule 16(b) of the Federal Rules of Civil Procedure unless a judge orders a modification or substitution. The scheduling order will, after filing, control the course of the case and may not be amended without consent of the judge.

(b) The following types of cases will be exempted from the scheduling order requirement of Rule 16(b):

(1) Social Security cases filed under 42 U.S.C. § 405(g);

(2) Applications for writs of habeas corpus under 28 U.S.C. § 2254;

(3) Motions to vacate sentence under 28 U.S.C. § 2255;

(4) Civil forfeiture cases;

(5) IRS summons cases;

(6) Bankruptcy matters;

(7) Land condemnation cases;

(8) Naturalization proceedings filed as civil cases;

(9) Interpleader cases;

(10) Cases under 42 U.S.C. § 1983 filed by prisoners proceeding pro se;

(11) VA overpayment cases;

(12) Student loan cases;

(13) Out-of-district subpoena cases; and

(14) Any other case where the judge finds that the ends of justice would not be served by using the scheduling order procedure of Rule 16(b).


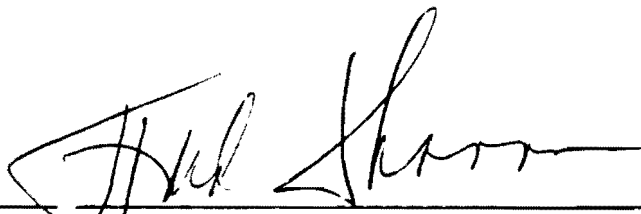
(c) Counsel shall mark all exhibits before trial. Exhibits for plaintiffs and intervenors shall be marked numerically. Those for the defendant and their party defendants shall be marked alphabetically. A list of exhibits intended to be offered at trial (except those offered solely for impeachment or rebuttal) shall be filed with the clerk's office prior to jury selection. All portions of depositions to be offered at trial shall be designated prior to jury selection and opposing counsel notified.

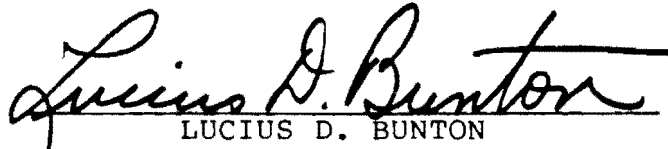

(d) Interrogatories under Rule 33, Federal Rules of Civil Procedure, and the answers thereto, requests for production or inspection under Rule 34, Fed.R.Civ.P., and requests for admissions under Rule 36, Fed.R.Civ.P., and the responses thereto, shall be served upon other counsel or parties, but shall not be filed with the Court. If relief is sought under Rule 26(c), Fed.R.Civ.P., or Rule 37, Fed.R.Civ.P., concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Court contemporaneously with the motion filed under Rule 26(c) or Rule 37, Fed.R.Civ.P. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed with the Clerk at the outset of the trial insofar as their use reasonably can be anticipated.

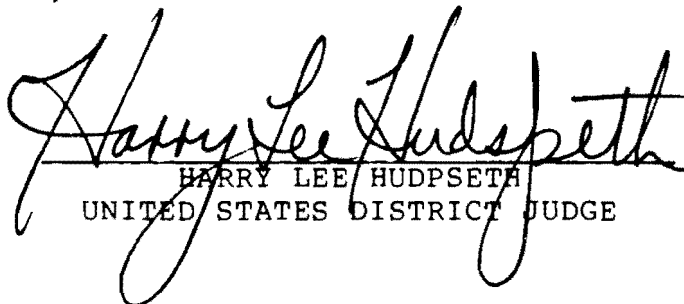
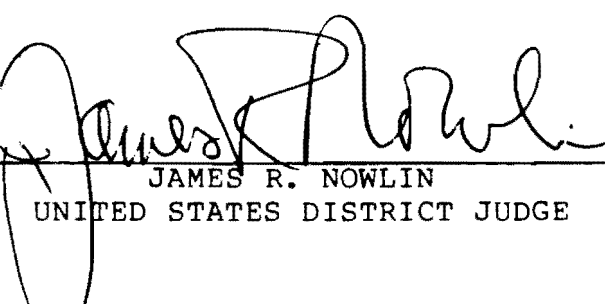
(e) Unless otherwise ordered, the Court will not entertain any motion under Rule 37, Fed.R. Civ.P., unless counsel for the moving party has conferred or has made reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule with any motion filed under Rule 37, Fed. R.Civ.P.

(f) Each party that chooses to submit written interrogatories pursuant to Rule 26, Fed.R.Civ.P., will be initially limited to propounding twenty questions to each adverse party. Each separate paragraph within a question and each sub-part contained within a question which calls for a response shall be counted as a separate question. Requests for admissions made pursuant to Rule 36, Fed.R. Civ.P., will be limited to ten requests, which shall in like manner include all separate paragraphs and sub-parts contained within a numbered request. The Court may permit further interrogatories or requests to be filed upon a showing of good cause.

SIGNED and ENTERED this 5th day of ~~October~~<sup>December</sup>, 1983.

	
WILLIAM S. SESSIONS CHIEF JUDGE	FRED SHANNON UNITED STATES DISTRICT JUDGE

	
LUCIUS D. BUNTON UNITED STATES DISTRICT JUDGE	H. F. GARCIA UNITED STATES DISTRICT JUDGE

	
HARRY LEE HUDSPETH UNITED STATES DISTRICT JUDGE	JAMES R. NOWLIN UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

§

§

§

NO. \_\_\_\_\_

§

SCHEDULING ORDER

Issue having been joined herein, it is Ordered pursuant to Rule 16, F.R.Civ.P. and Local Rule 300-6, that:

1. Joining of other parties and the amending of the pleadings shall be on or before \_\_\_\_\_ unless an extension is granted on good cause shown.

2. Filing of all motions shall be on or before \_\_\_\_\_ unless an extension is granted on good cause shown.

3. Discovery shall be completed by the parties on or before \_\_\_\_\_ unless an extension is granted on good cause shown.

4. A conference of attorneys shall be held on or before \_\_\_\_\_ unless an extension is granted on good cause shown.

5. That counsel for the parties submit their proposed agreed pre-trial order to the Court on or before \_\_\_\_\_ unless an extension is granted on good cause shown. The proposed order shall supply information required by Local Rule 300-6 and the pre-trial order check list (Form PT-1), which is enclosed.

6. In the event counsel are unable to agree on the form of a proposed agreed pre-trial order, then counsel for each party is directed to submit his version of an approximate pre-trial order within ten (10) days after the expiration of the date set in paragraph 5. Such version shall cover, in addition to the matters contemplated in paragraph 5 of this order, the following:

(a) A list of other facts or exhibits which it is felt opposing counsel should stipulate to, but which he refuses to do.

(b) Any stipulations, rules, witness lists, requirements with respect to trial briefs, or other appropriate matters which counsel feels should be included.

7. The Court may impose sanctions under Rule 16(f), F.R.Civ.P., if counsel do not make timely submissions under paragraphs 5 and 6 of this order.

8. After the Court has received a proposed pre-trial order, a date will be set for a pre-trial conference for the purpose of entering a pre-trial order to govern the trial of the case. In this connection:



(a) The attorneys who will try any case will familiarize themselves with pre-trial rules and come to the conference with full authority to accomplish the purpose of Rule 16 by simplifying the issues, expediting the trial, and saving expenses. See Rule 16, Federal Rules of Civil Procedure; 3 Moore's Federal Practice, paragraphs 16.01 and 16.21; 1A Barron & Holtzoff, Federal Practice and Procedure, Sections 471-473; 23 Federal Rules Decisions, pp. 129-138; 28 Federal Rules Decisions, pp. 37, et seq.

(b) The Court shall be advised at the conference as to the propriety of parties and correctness of identity of legal entities; necessity for or validity of appointment of guardian ad litem, guardian, administrator or executor, and letters thereof introduced; whether party is correctly designated as partnership, corporation, or individual under trade name; questions of misjoinder or non-joinder of parties, if any.

(c) The Court shall further be advised as to laws involved; State or Federal statutes and regulations of State and Federal regulatory bodies; foreign laws; and conflict of law questions, if any.

9. Should the parties conduct discovery by deposition upon oral examination pursuant to Rule 30, Fed. R. Civ. P., exhibits used during the course of depositions shall be identified and marked with the same numbers or letters as they shall bear when introduced at trial. Plaintiff's exhibits should be identified with numbers (e.g., P-1, P-2, etc.); defendant's exhibits should be identified with letters (e.g., D-A, D-B, etc.). An exhibit should be identified only once and should bear that identification for all depositions and for trial.

10. Each party that chooses to submit written interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure will be initially limited to propounding twenty (20) questions to each adverse party.

In determining whether this requirement has been met, each separate paragraph within a question and each sub-part contained within a question which calls for a separate response shall be counted as a separate question.

Requests for Admissions made pursuant to Rule 36, Fed. R. Civ. P., will be limited to ten (10) Requests which shall in a like manner include all separate paragraphs and sub-parts contained within a numbered Request.

Upon completion of depositions and upon application for leave of Court to file further interrogatories or Requests, the Court may permit further Interrogatories or Requests to be filed, upon a showing of good cause.

11. Absent prior permission of the Court, no party shall file any brief or legal memorandum in excess of twenty pages in length.

12. The Clerk will furnish a copy of this order to counsel of record by United States mail.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, -19\_\_\_\_.

\_\_\_\_\_  
United States District Judge

**RULE 12**

**PRETRIAL CONFERENCES — DOCKET CALL**

(1) Matters involving habeas corpus petitions, motions to vacate sentences, forfeitures, reviews from administrative agencies, and such other cases as may be determined by the active resident judge senior in point of service, are not applicable to this rule, but the judge may, in his discretion, follow the procedure outlined herein in any case.

(2) Where the defendant is in default and there has been no appearance in his behalf, the procedure outlined herein shall not be applicable, but the judge may, in his discretion, direct the party not in default to appear for the purpose of noting a default, the entry of a default judgment, and for scheduling a date for trial on the issue of damages if required by law. If the party not in default fails to take action to prosecute his claim, after reasonable notice to appear or take such action, the judge may dismiss the action for failure to prosecute.

(3) In all other civil cases, as promptly as possible after suit has been filed, the resident judge of each division or his parajudicial personnel shall schedule an initial pretrial conference, docket call or take such other action as will enable the judge to enter an order fixing:

(a) The cutoff dates for the respective parties to complete the processes of all discovery;

(b) The cutoff dates for the respective parties to complete the taking of all de bene esse depositions;

(c) The date for a final pretrial conference with the court.

(4) The resident judge may, in his discretion, include in such order or by any supplemental order the trial date and such other provisions as he deems appropriate to assist in expediting the trial or other disposition of the case, and may specify the requirements of any final pretrial conference order which shall be presented to the judge for entry at the time of the final pretrial conference. While the primary obligation of preparing

the final pretrial conference order rests upon counsel for plaintiff, all counsel are requested to meet at least seven days in advance of the conference with the Court in order to discuss and prepare such order, and the court may require such meeting of counsel by its order.

(5) The parties and their counsel are bound by the dates specified in said order and no extensions or continuances thereof shall be granted in the absence of a showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery shall not constitute good cause for an extension or continuance.

[WESTERN DISTRICT OF WASHINGTON]

AO 72  
(Rev. 8/82)

FILED  
LODGED  
RECEIVED

OCT 27 1983

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
BY

In Re:

Amendment to  
Local Civil Rule CR 16

GENERAL ORDER

Local Civil Rule CR 16 is amended in its entirety to read as  
set forth in the attachment to this order. This amendment shall  
be effective May 1, 1984.

DATED this 27 day of October, 1983.

*Walter T. McGreen*  
Chief United States District Judge

*Louise S. Tanner*  
United States District Judge

*Jack E. Tanner*  
United States District Judge

*Barbara J. Lottman*  
United States District Judge

*J. H. C. C.*  
United States District Judge

Attachment to General Order, amending  
Local Civil Rule CR 16, effective May 1, 1984

CR 16

PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) LODGING DATE FOR PROPOSED PRETRIAL ORDER

In each case, the court shall set a deadline for counsel for all parties to lodge a proposed pretrial order ("lodging date"). Counsel shall receive at least 120 days' notice of the lodging date.

(b) COMPLETION OF DISCOVERY

Not later than 75 days prior to the lodging date, unless otherwise ordered by the court, all counsel shall exhaust the discovery procedures provided for in Rules 26 through 37, Federal Rules of Civil Procedure. Interrogatories, requests for admissions or production etc. must be served sufficiently early that all responses are due before this deadline. Any motion to compel discovery shall also be filed and served on or before this deadline.

(c) DISPOSITIVE MOTIONS

Not later than 75 days prior to the lodging date, counsel shall file all motions to dismiss, motions for summary judgment, or other dispositive motions, together with supporting papers.

(d) PLAINTIFF'S PRETRIAL STATEMENT

Not later than 30 days prior to the lodging date, counsel for plaintiff(s) shall serve upon counsel for all other parties a brief statement as to:

- (1) Federal jurisdiction;
- (2) Relevant facts about which plaintiff asserts there is no dispute and which plaintiff is prepared to admit;

(3) Plaintiff's factual contentions, which shall be stated in a summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth in Local Rule CR 16(k)(2);

(4) Issues of law;

(5) The names and addresses of all witnesses who might be called by plaintiff, and the general nature of the expected testimony of each. As to each witness, plaintiff shall indicate "will testify" or "possible witness only." Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(6) A list of all exhibits which will be offered by plaintiff at the time of trial, except exhibits to be used for impeachment only. The exhibits shall be numbered in the manner set forth in Local Rule CR 16(k)(3).

(e) DEFENDANT'S PRETRIAL STATEMENT

Not later than 20 days prior to the lodging date, each defense counsel shall serve upon counsel for all other parties a brief statement as to:

(1) Objections, additions or changes which defendant believes should be made to plaintiff's statement on federal jurisdiction and admitted facts;

(2) Facts which defendant for good and substantial reason is not prepared to admit but which defendant does not intend to contest;

(3) Objections as to the form of plaintiff's factual contentions;

(4) Defendant's factual contentions, which shall be stated in a summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below, in Local Rule 16(k)(2).

(5) Objections, additions or changes which defendant believes should be made to plaintiff's statement of issues of law;

(6) The names and addresses of all witnesses who might be called by defendant and the general nature of the expected testimony of each. As to each witness, defendant shall indicate, "will testify" or "possible witness only." Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(7) A list of all exhibits which will be offered by defendant at the time of trial, and which have not already been listed by plaintiff; but excluding exhibits to be used for impeachment only. The exhibits shall be numbered in the manner set forth in Local Rule CR 16(k)(3).

No party is required to list any exhibit which is listed by another party.

(f) REVIEW OF EXHIBITS

Prior to the conference of attorneys, counsel for each party should review every exhibit to be offered by any other party, and shall determine whether and on what basis counsel intends to object to the introduction of each into evidence. Counsel designating an exhibit for listing in the pre-trial order shall promptly make that exhibit available for inspection and copying upon request by counsel for any other party. Prior to the conference of attorneys, counsel for each party shall furnish counsel for each other party a list identifying the proposed exhibits to which there is no objection, and setting forth the grounds for any objections to the admissibility of all other exhibits listed by any party.

(g) CONFERENCE OF ATTORNEYS

Not later than ten days prior to the lodging date, there shall be a conference of attorneys for the purpose of accomplishing the requirements of this rule. It shall be the duty of counsel for the plaintiff to arrange for the conference. The attorney principally responsible for trying the case on behalf of each party shall attend the conference. Each attorney shall be completely familiar with all aspects of the case in advance of the conference, and be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible, and to discuss the possibility of settlement. At the conference, counsel shall cooperate in developing a proposed pretrial order which can be signed by counsel for all parties. Except in land condemnation cases, the order shall, insofar as possible, be in the form set forth below in CR 16(k)(1). Plaintiff's factual contentions may be set forth on separate pages from defendant's contentions. Similarly, the parties' witness lists may be on separate pages. Counsel shall assemble a single pretrial order, properly paginated.

(h) LODGING OF PRETRIAL ORDER.

An agreed proposed pretrial order, bearing the signatures of counsel for each party, shall be lodged with the Clerk on or before the lodging date. A copy of the proposed pretrial order should be delivered to the Clerk at the same time, for forwarding



to the District Judge or Magistrate before whom the case is pending, and shall be marked with his or her name in the upper right-hand corner. The copy shall reflect that the original was signed by counsel for all parties.

(i) FINAL PRETRIAL CONFERENCE

The court may, in its discretion, schedule a final pretrial conference. Counsel who will have principal responsibility for trying the case for each party shall attend, together with any party proceeding pro se. At the final pretrial conference, the court may consider:

- (1) The sufficiency of the proposed pretrial order;
- (2) Any matters which may be presented relative to parties, process, pleading or proof, with a view to simplifying the issues and bringing about a just, speedy and inexpensive determination of the case;
- (3) In jury cases, whether the parties desire to stipulate that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury;
- (4) Requirements with respect to trial briefs;
- (5) Requirements with respect to requests for instruction and suggested questions to be asked by the court on voir dire in cases to be tried by jury;
- (6) The number of expert witnesses to be permitted to testify on any one subject;
- (7) The possibility of settlement; but nothing with respect thereto shall be incorporated in the pretrial order, and any discussion with respect to settlement shall be entirely without prejudice, and may not be referred to during the trial of the case or in any arguments or motions.

(j) OTHER GENERAL PROVISIONS

- (1) In order to accomplish effective pretrial procedures and to avoid wasting the time of court and counsel, the provisions of this rule will be strictly enforced. Sanctions and penalties for failure to comply are set forth in GR 3 and in the Federal Rules of Civil Procedure;
- (2) The Court may, by order in a specific case, modify any of the procedures or deadlines set forth in this rule;
- (3) A party proceeding without counsel shall comply in all respects with obligations imposed upon "counsel" under this rule.

(k) FORM OF PRETRIAL ORDER

(1) The following form of pretrial order shall be used, insofar as possible, in the trial of all cases except those involving land condemnation:

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT \_\_\_\_\_

_____	)	
	)	
Plaintiff,	)	
	)	No. _____
vs.	)	
	)	
_____	)	PRETRIAL ORDER
	)	
Defendant.	)	
_____	)	

JURISDICTION

Jurisdiction is vested in this Court by virtue of:  
(State the facts and cite the statutes whereby jurisdiction of the case is vested in this Court.)

ADMITTED FACTS

The following facts are admitted by the parties:  
(Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

FACTS NOT ADMITTED BUT NOT CONTESTED

Plaintiff alleges the following facts, which defendant is not prepared to admit but does not contest: (List 1, 2, 3, etc.)

Defendant alleges the following facts, which plaintiff is not prepared to admit but does not contest: (List 1, 2, 3, etc.)

#### FACTUAL CONTENTIONS

The plaintiff contends as follows: (List 1, 2, 3, etc.)

The defendant contends as follows: (List 1, 2, 3, etc.)

(State contentions in summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below in CR 16(k)(2)).

#### ISSUES OF LAW

The following are the issues of law to be determined by the Court: (List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the Court, such as "Is the plaintiff entitled to recover?" will not be accepted.)

#### EXPERT WITNESSES

- (a) Each party shall be limited to ..... expert witness(es) on the issues of .....
- (b) The name(s) and address(es) of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:
  - (1) On behalf of plaintiff:
  - (2) On behalf of defendant:

#### OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

- (a) On behalf of plaintiff:
- (b) On behalf of defendant: (As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named).

EXHIBITS

- (a) The exhibits listed below may be received in evidence without objection:

Plaintiff's Exhibits

1. Photo of port side of ship. (Examples)
2. Photo of crane motor.
3. Photo of crane.

Defendant's Exhibits

- A-1. Weather report. (Examples)
- A-2. Log book.
- A-3. X-ray of plaintiff's foot.
- A-4. X-ray of wrist.

- (b) The authenticity of the exhibits listed below is admitted. Admissibility is denied, however, for the reasons set forth in respect to each exhibit:

Plaintiff's Exhibits

4. Inventory report. (Examples)  
Reason-Hearsay and not within the exception stated in F.R.E. 803(6).

Defendant's Exhibits

- A-5. Photograph. (Examples)  
Reason-Unduly prejudicial, F.R.E. 403.

- (c) The authenticity of the exhibits listed below is denied. It is also contended that the exhibits are inadmissible for the additional reasons set forth in respect to each exhibit.

Plaintiff's Exhibits

5. Accountant's report. (Examples)  
Reason-Hearsay, prepared for litigation.

Defendant's Exhibits

- A-6. Ship's log.  
Reason-Not the original record, hence not the best evidence.

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See CR 16(k)(3) for further explanation of numbering of exhibits).

ACTION BY THE COURT

(a) This case is scheduled for trial (before a jury) (without a jury) on \_\_\_\_\_ 19\_\_ at \_\_\_\_\_.

(b) Trial briefs shall be submitted to the Court on or before .....

(c) (Omit this sub-paragraph in non-jury case). Jury instructions requested by either party shall be submitted to the Court on or before ..... Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before .....

(d) (Insert any other ruling made by the Court at or before pretrial conference.)

This order has been approved by the parties as evidenced by the signatures of their counsel. Upon entry of this order, the pleadings pass out of the case. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this \_\_\_\_\_ day of [insert month], 19[insert year].

\_\_\_\_\_  
United States District Judge/Magistrate

FORM APPROVED

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

(2) Contentions as to Disputed Facts. Statements of contentions as to disputed facts should be brief and generally worded. The purpose of this section of the order is to apprise the court and the other parties of the general position of each party on major fact issues. Lengthly recitals of evidentiary detail are of little assistance, and serve only to impose unnecessary burdens upon the lawyer drafting them.

For example:

- Proper: 1. Correspondence between the parties in November and December, 1982 established the price, quantity and time of delivery of the goods.
- Improper: 1. On November 3, plaintiff wrote to defendant, stating ..... (etc.).
2. On November 7, 1982, defendant responded ..... (etc.).
3. On November 12, 1982, plaintiff replied ..... (etc.).
- Proper: 1. Defendant was negligent in that: (a) the stabilizer on the aircraft was defectively designed; and (b) the airline was not given proper instructions as to maintenance and inspection of the stabilizer.
- Improper: 1. The stabilizer on the aircraft was 117 inches in length and ..... (etc.).
2. Accepted industry standards provide that stabilizers must be ..... (etc.).
3. At an air speed of 570 mph, a stabilizer ..... (etc.).
4. Defendant distributed service bulletins on the stabilizer on ..... (etc.).
- Proper: 1. Plaintiff's discharge was due to unsatisfactory performance of her job and insubordination to her supervisors. It was unrelated to her sex.
- Improper: 1. Plaintiff made an error in balancing accounts on July 5, 1980, resulting in cost of \$7,300 to defendant.
2. Defendant attempted to provide plaintiff training and counselling about this incident, but she refused.
3. On August 13, 1980, plaintiff again ..... (etc.).
4. Plaintiff told Mr. Wilson on June 15, 1980 that she refused to ..... (etc.).

(3) Numbering of Exhibits. The pretrial order identifies each exhibit with a number. This becomes the number for the exhibit at the trial, and appears on the exhibit tag. Plaintiff's exhibits are to be numbered 1, 2, 3, etc. All defendant's exhibits are to be numbered A-1, A-2, A-3, etc. In the pretrial

order, the exhibits are grouped according to whether there are objections to their admissibility. For example, the order might list, under "Exhibits which may be received in evidence without objection," plaintiff's exhibits 1, 3, 7, 8, and 11, and defendant's exhibits A-2, A-3, A-5, A-8, and A-9. Other exhibits would be listed in other categories. See the "Exhibits" section of the form order in Rule 16(k)(1), supra.

(4) A form of pretrial order to be used in land condemnation cases may be obtained from the Clerk of the Court.





IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF:

Implementation of Procedures

Mandated by Amendment to

Rule 16(b), Federal Rules

of Civil Procedure

O R D E R

Effective August 1, 1983, Rule 16(b) of the Federal Rules of Civil Procedure was amended to require that except in categories of actions exempted by district court rule as inappropriate, the judge, or when authorized by district court rule, a magistrate, consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 120 days after filing of the complaint, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery. <sup>1</sup>

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<sup>1</sup> Discovery shall be deemed completed within a time limit set therefor if, within that period of time, the request for discovery is filed and the time permitted by the Federal Rules of Civil Procedure to respond thereto expires.

The amendment contains other provisions, but the purpose of this order is to implement these mandatory procedures by establishing an exempt category of cases and a method for consulting with the attorneys and any unrepresented parties prior to issuing the scheduling order required by the rule.

It is recognized in the rule that certain categories of cases should be exempted from its application. Although experience may show that there should be additions to or deletions from the list of categories of cases excluded from the rule's application, the Court has initially determined that it is inappropriate to apply the amended Rule 16(b) to the following types of cases, which are hereby exempted from its application:

- (1) Cases filed in this court or removed to this court before December 1, 1983;
- (2) Habeas corpus cases;
- (3) Employment discrimination cases;
- (4) Review of administrative rulings;
- (5) Social security cases;
- (6) Bankruptcy proceedings;
- (7) Cases in which all plaintiffs are unrepresented by an attorney;
- (8) Condemnation cases;
- (9) Claims for relief within the admiralty and maritime jurisdiction as set forth in Rule 9(h) of the Federal Rules of Civil Procedure and the Supplemental Rules for Certain Admiralty and Maritime Claims.

The provisions of this order shall apply to all other civil actions filed in this court or removed to this court after December 1, 1983.

The first requirement of Rule 16(b) is that the judge or his designee consult with the attorneys and all unrepresented parties in cases covered by the rule. The Court has determined that the consultation required by the rule shall be by the judge to whom the case is assigned or, in those cases referred to a full-time magistrate under 28 U.S.C. § 636(c), by the magistrate. It is recognized, however, that the judge to whom the case is assigned may not always be available for such consultation, and a judge may in his discretion designate a full-time magistrate to perform this duty in any case.

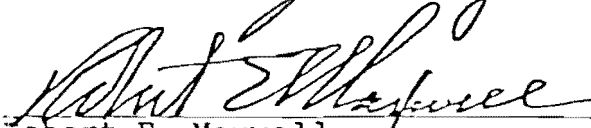
The rule provides that the consultation may be by a scheduling conference, telephone, mail, or other suitable means.

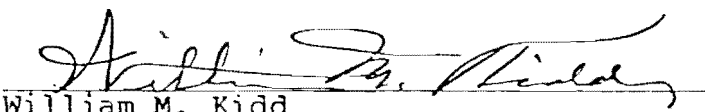
The Court has determined that the preferable means of consultation is a scheduling conference. In those cases in which a scheduling conference will be held, counsel and any party not represented by counsel will be notified by the Court of the date and time of the conference, which will normally be not less than sixty nor more than ninety days after the commencement of the action. When a scheduling conference is held, it is to be attended by the parties, and in the case of parties represented by counsel, by one of the attorneys who would participate at trial. The subjects to be discussed at the

conference will include those matters set forth in Rule 16(b)(1), (2), and (3), and may include those matters set forth in Rule 16(b)(4) and (5) and Rule 16(c).<sup>2</sup>

In those cases in which the Court determines that a scheduling conference will not be held, counsel and any party not represented by counsel will be so notified, and they will be required to submit a proposed scheduling order including the matters set forth in Rule 16(b)(1), (2) and (3) within a time fixed by the Court.

DATED: January 11<sup>th</sup>, 1987

  
Robert E. Maxwell  
United States District Judge

  
William M. Kidd  
United States District Judge

<sup>2</sup>Notwithstanding the fact that the scheduling consultation occurs early in the litigation, in many cases settlement may be facilitated by discussion of the same at this point. See Advisory Committee Note, Rule 16(c)(7).









**Federal Judicial Center**

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