

United States District Court
Southern District of Florida
301 N. Miami Avenue
Miami, Florida 33128-7784

Karen - 7/12
Anything we
need to tell
her? 
Nesbitt

Chambers of
Lenore Carrero Nesbitt
District Judge

March 20, 1990

James E. Macklin, Jr.
Deputy Director
Administrative Office of the U.S. Courts
Washington, D.C. 20554

Re: Civil Justice Reform Act of 1990 (S. 2027)

Dear Mr. Macklin:

As a follow up to our telephone conversation, enclosed is the letter and attachments that I sent to Senator Bob Graham. A similar letter was sent to Senator Connie Mack.

I know a great deal more will be said and written about the Act "before its over." Please keep me advised of any critical matters bearing on the progress of the Act.

Best regards,



Lenore C. Nesbitt

LCN:jho
Encl.

12/11/89

Rbt S.
Lawthrop III
RCS
Great! Hearings
Criminal
Trial advocacy.
Criminal Prob
S.F. center Rules
CIV Rules

United States District Court
Southern District of Florida
301 N. Miami Avenue
Miami, Florida 33128-7784

Chambers of
Lenore Carrera Nesbitt
District Judge

March 15, 1990

Honorable Robert Graham
United States Senate
241 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Civil Justice Reform Act of 1990

Dear Senator Graham:

Thank you for your letter of February 16, 1990. The Judges of the Southern District of Florida appreciate the opportunity to comment on this proposed legislation, and they have asked that I respond on behalf of the Court.

Before expressing our thoughts on the specific components of the act, I share a few comments applicable to the legislation as a whole. Many of the proposed procedures are already required and used in this district. The Federal Rules of Civil Procedure, the Local Rules for the District Courts in the Southern District of Florida, and the Administrative Orders issued on a periodic basis not only suggest but require that procedures minimizing delay and expense be followed. Taken together, they provide the mechanism with which to implement a thorough case management system that requires the judge to take an active role in overseeing discovery and in ensuring that pretrial proceedings are carried out in an expeditious and orderly fashion. These existing rules and orders also address both the unique problems posed by complex cases and the necessity in limited instances to depart from the procedures used in most civil actions.

As presently written, the bill focuses on the following three areas:

I. Differentiated Case Management

The proposed act would impose a system of differentiated case management requiring an assessment of the length and complexity of cases filed, as well as the assignment of cases to "appropriate processing tracks." The legislation would mandate the use of an expanded civil cover sheet, and would require the judge to resolve, at a mandatory conference, disputes arising over the assignment of a case to a particular track.

The amount of time necessary to prepare a case for trial

should be resolved initially by a district judge. To impose the requirement that a district court clerk implement a formal two-tiered tracking system and evaluate the probable complexity of cases will serve only to generate disputes between parties as to which track is appropriate for their action. The imposition of a two-tiered tracking requirement therefore not only is unnecessary but also would be counter-productive.

Procedures for identifying complex cases and ensuring their progress are already in effect. Enclosed with this letter are representative scheduling orders and the civil cover sheet used in this district. Together, they provide comprehensive procedures for the expeditious resolution of both complex and simple cases. The cover sheet requires a plaintiff, when filing a complaint, to list every party to the action, to describe the nature of the suit, to estimate the length of trial, and to state whether it is a class action and whether related cases are pending in this district. As for cases transferred from another judge or district, it is the practice in this Court to hold a status conference to determine the nature and procedural posture of the case and to identify any pending motions or other matters that may delay resolution of the action.

In addition, the Federal Rules of Civil Procedure mandate that certain actions be undertaken to insure that civil cases are not unnecessarily delayed. Federal Rule 16(c)(10) allows the participants of any conference to adopt special procedures for managing potentially difficult or protracted actions involving complex issues. More significantly, Federal Rule 16(b) requires the district judge, within 120 days of the filing of the complaint, to issue a scheduling order which sets firm deadlines for the joinder of parties, the completion of discovery, and the filing and hearing of motions. The order used in this district also includes firm dates for a pretrial conference and for trial.

Federal Rule of Civil Procedure 16 has been embodied and elaborated on in our Local Rules. Local Rule 14A requires that, within 90 days of the filing of the complaint, counsel for all parties confer to discuss whether the case is sufficiently complex to warrant the use of procedures provided for in the Manual of Complex Litigation. The attorneys must file a joint report setting forth a detailed schedule of discovery, the likelihood of settlement, an estimate of the time necessary for trial, and any other matter which may help the judge to expeditiously resolve the action. Local Rule 14C requires all attorneys to meet again before the final pretrial conference in order to prepare a joint stipulation setting forth all agreements and all issues that remain to be tried. Further, Local Rule 19 provides detailed requirements for any case sought to be maintained as a class action. As suggested by the act, the Local Rules exempt a small number of simple cases whose resolution would not be expedited by these procedures.

The bill expresses the concern that not all courts have procedures which seek to minimize delay and expense. However, the Judicial Conference Committee charged with developing a set of model local rules has reported that every jurisdiction in the country has promulgated local rules, and that 93 jurisdictions have rules addressing the requirements of Federal Rule 16.

The Judges in this district adhere to these requirements and utilize these procedures. There may be certain instances in which judges do not adhere to their local procedural rules. However, an additional and largely duplicative layer of statutorily required procedures will not change their behavior. Instead, it will burden all judges and force the great majority who do adhere to existing administrative rules to reallocate valuable time towards implementing the proposed new requirements.

II. Increased Court Involvement in Pretrial Procedures

The act contemplates that more active involvement by Article III Judges will expedite the pretrial process, encourage settlement, and limit discovery abuses. The act would require participation by an Article III judge (and not a magistrate) in a mandatory discovery conference at which the judge must explore the propriety of settlement, identify issues in contention, and set deadlines for the completion of discovery, for the filing and resolution of motions, and for additional pretrial conferences and trial. The act would also require that a series of monitoring conferences be held for cases designated as complex, and that procedures be developed for streamlining the discovery process.

Again, existing rules and administrative orders already provide the means by which judges can monitor parties during pretrial litigation and thereby insure that unnecessary delays and expenses are avoided. Most significantly, Federal Rule of Civil Procedure 26(f) states that a court shall hold a discovery conference upon motion of a party, and, following the conference, shall enter an order which establishes a discovery schedule and plan, sets limitations on discovery if necessary, and determines all other matters necessary to properly manage the execution of discovery procedures.

As illustrated by the enclosed scheduling orders, a judge becomes thoroughly involved in the management of a case at its inception, and the benefits of this involvement would not be increased by the act. It is the practice of this Court to strictly adhere to the deadlines set out in its scheduling order. The order explicitly requires that parties seeking a modification of the time schedule file a motion within thirty days of its issuance, and continuances rarely are granted. Indeed, Local

Rule 11 provides that continuances of any hearing, pretrial conference, or trial will be granted only upon a showing of "exceptional circumstances."

Requiring participation in a mandatory discovery conference in all but a limited number of cases is an inefficient use of a judge's time. Procedures already in effect are sufficient to manage the discovery process. As for those parties intent on abusing this process, litigants may petition the Court for relief and for sanctions. Federal Rules of Civil Procedure 11 and 37 provide the Court with a plethora of sanctions should a party fail to cooperate in the discovery process. As for the Court's involvement in early settlement discussions, experience has taught that parties invariably are unwilling to settle cases very early in the litigation process. Counsel require time and some discovery in order to evaluate the nature, strengths, and weaknesses of their cases. The presence of a judge at a settlement conference will not affect these attitudes regarding early settlement.

III. Other Proposals for Reducing Delays and Expenses

In addition to the requirements already discussed, the plan would impose several other specific procedures, such as requiring the preparation of reports listing unresolved motions pending longer than 30 days, developing a program for alternative dispute resolution, and limiting the frequency of discovery motions. Each district court would be required to submit a report explaining how its plan complies with the act.

Existing Local Rules and Administrative Orders address these areas of concern. For example, Local Rule 10.I.7 requires counsel for the party filing a discovery motion to certify to the court that the attorneys have conferred in a good-faith effort to resolve the dispute. To alleviate the problem of overdiscovery, Local Rule 10.I.5 requires leave of court prior to serving more than one set of forty interrogatories.

Further, mechanisms providing for judicial accountability are already in effect. The Administrative Office of the Courts require each court to file reports listing motions which have been pending for longer than 60 and 90 days. The reports detail the type of motion and the reason for the delay. The Administrative Office also requires a report listing all cases pending for more than three years. Judges are concerned, as they should be, that every legal motion is properly resolved, and the thoughtful review and adjudication of a motion takes time. We fail to see how requiring the preparation of yet another list of pending motions will increase judicial accountability.

As is suggested throughout this letter, most of the

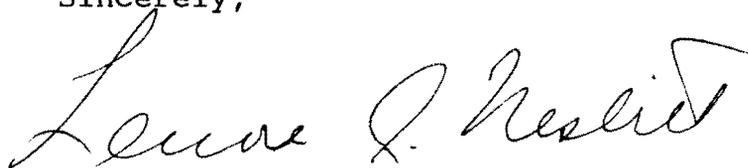
obligations to be imposed upon judges by the proposed legislation are already mandated by existing statutory rules and administrative orders. Civil litigation is time consuming and expensive. Many factors unrelated to case management result in the occasional delayed resolution of some actions. Congress has required certain matters to take precedence. For instance, the Speedy Trial Act mandates that criminal cases be tried within 70 days from the filing of an indictment. As a great deal of a judge's time is spent on criminal matters, this act necessarily results in delays for civil cases. Another example is Federal Rule 65(b), which requires, in certain circumstances, that motions for preliminary injunctions take precedence over all other matters. Finally, the Judges of this district are required to resolve on an expedited basis petitions for writs of habeas corpus in death penalty cases. Delays caused by requirements such as these will not be reduced by this legislation.

The Judges of this district do approve of the bill's suggestion that funds be allocated to promote case management training programs. The problem of unnecessary delay and expense does not result from the lack of rules and regulations, though it may be aggravated by a lack of formal training in case management. The expansion of current judicial education programs to include a new curriculum on management techniques would address this deficiency.

Imposing by statute yet another layer of repetitive and conflicting administrative rules will decrease neither delays nor the resulting costs to litigants. Rather, this act will require judges to reallocate time away from trying cases and resolving pretrial motions, and it will further burden the already overworked Office of the Clerk of Court. As a result, the effect of this bill will be not to insure the "just, speedy, and inexpensive determination" of civil actions, but rather to aggravate delays in the adjudication of cases and to increase the costs of litigation, both to private parties and to government. In our opinion, the act merits neither your co-sponsorship nor your support.

Again, thank you for giving us the opportunity to comment on this proposed legislation. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Lenore C. Nesbitt". The signature is written in dark ink and is positioned above the typed name and title.

Lenore C. Nesbitt
United States District Judge

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

DEFENDANTS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

(d) County where action arose: Dade, Monroe,
Broward, Martin, Palm Beach, St. Lucie,
Indian River, Okeechobee, Highlands

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

IVa. _____ days estimated (for both sides) to try entire case.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT (A)	TORTS (A)	FORFEITURE/PENALTY (B)	BANKRUPTCY (A)	OTHER STATUTES (A)
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS (A) <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY (B) <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 OWB/DWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY (A) <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS (A) <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS (B) <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other *A or B	LABOR (A) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

Check YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. -CIV-NESBITT

Plaintiff,

vs.

ORDER FOR PRETRIAL CONFERENCE
AND ORDER FOR JURY TRIAL

Defendant.
_____ /

This cause is set for Pretrial Conference at _____ .m. on _____, 19__, at the United States Courthouse, 301 N. Miami Avenue, Third Floor, Courtroom 3, Miami, Florida. The parties shall be prepared to argue the merits of any pending motion at the Pretrial Conference.

The Parties shall adhere to the following time schedule:

TIME SCHEDULE

FORTY-FIVE days prior to Pre-trial Conference	All discovery must be completed.
THIRTY days prior to Pretrial Conference	All motions must be filed.
FIFTEEN days prior to Pretrial Conference	Attorneys must meet. Resume of expert(s)' reports must be exchanged.
TEN days prior to Pretrial Conference	JOINT Pretrial Stipulation must be filed.

ANY MOTION SEEKING MODIFICATION OF THE TIME SCHEDULE, INCLUDING THE DATE AND TIME OF THE PRETRIAL CONFERENCE, MUST BE FILED WITHIN THIRTY (30) DAYS FROM ENTRY OF THIS ORDER. THE TIME SCHEDULE REQUIREMENTS OF THIS ORDER MAY NOT BE MODIFIED ABSENT PRIOR ORDER OF THE COURT.

IN THE EVENT THE COURT GRANTS A CONTINUANCE OF THE ORIGINALLY SCHEDULED TRIAL DATE, ALL OTHER DATES, INCLUDING THE PRETRIAL CONFERENCE DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS THE COURT STATES OTHERWISE.

Each attorney and each self-represented party is charged with the duty of complying with this Order for pretrial conference. Failure to comply with the time schedule may result in dismissal or other sanctions. Pretrial stipulations lacking substance will not be accepted. To the extent this Order conflicts with Local Rule 14, this Order supersedes that Rule. Any party causing unilateral pretrial stipulations to be filed will be required to show cause why sanctions should not be imposed.

Exhibits must be pre-marked and exchanged prior to execution of the Pretrial Stipulation. Each exhibit should be marked with a sticker identifying the case number, exhibit number, and party offering the exhibit.

The Pretrial Stipulation must include a numbered list of trial exhibits with objections, if any, to each exhibit, including the basis for objections. The failure of a party to object in the Pretrial Stipulation shall constitute a waiver of any objection including but not limited to authenticity.

YOU ARE HEREBY NOTIFIED that the above-styled cause is set for JURY TRIAL during the two-week period commencing _____, before the Honorable Lenore C. Nesbitt. Counsel shall report to a call of the trial calendar at _____.m. on the aforementioned date for a two-week trial calendar. At this time,

each case will be assigned a number for trial. All cases will remain on the calendar until tried or until further notice is received by counsel from the Court.

The parties must submit joint, stipulated proposed jury instructions and a joint, stipulated proposed verdict form on the Friday preceding the call of the calendar for which this cause is set.

WITH REGARD TO SETTLEMENT: If a case is settled, counsel are directed to inform the Court promptly at (305) 536-4881 and to submit an appropriate Order for Dismissal, pursuant to Fed. R. Civ. P. 41(a)(1). Such an Order must be filed within ten (10) days of notification of the Court.

DONE AND ORDERED at Miami, Dade County, Florida this ____ day of _____, 19 __.

LENORE C. NESBITT
UNITED STATES DISTRICT JUDGE

cc:

3/90

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

Plaintiff(s),

vs.

Defendant(s).

ORDER SETTING SCHEDULING
CONFERENCE PURSUANT TO
Fed. R. Civ. P. 16(b)

The above-styled case is set for a scheduling conference on _____ at _____. This conference will be held at Federal Courthouse Square, Courtroom 4, Fourth Floor, 301 North Miami Avenue, Miami, Florida. The purpose of the conference is to review the Discovery Report and Proposed Order prepared by the parties as required by amended Local Rule 14A (attached). At the time of this conference, a discovery cut-off date will be determined and your case will be placed on a trial calendar. The Court will entertain motions to schedule this conference for an earlier date. It will not, however, grant a continuance without substantial cause. This procedure was not designed to delay discovery until after the scheduling conference. Counsel are urged to begin discovery as promptly as possible after commencement of the suit. The filing of motions to dismiss shall not suspend the obligation to proceed promptly with discovery and to comply with the provisions of this Order.

In addition to the requirements of Local Rule 14A, the Discovery Report shall also set forth:

- (a) the nature of the case
- (b) a recital of facts which are uncontested or which can be stipulated to without discovery
- (c) a recital of the issues as presently known
- (d) a list of any pending motions

The parties shall file with the clerk a copy of the Discovery Report, executed by all parties, and Proposed Order in duplicate by 5:00 p.m. on _____. Failure to comply with these requirements may result in dismissal without prejudice to refile and/or imposition of monetary or other sanctions as authorized by Fed. R. Civ. P. 16(f).

You are reminded that it is the responsibility of plaintiff's(s') counsel or the plaintiff, if pro se, to provide a copy of this Order to counsel for the defendant(s).

DONE AND ORDERED at Miami, Florida, this ____ day of _____.

cc:

UNITED STATES DISTRICT JUDGE

RULE 14. PRETRIAL PROCEDURE IN CIVIL ACTIONS

A. SCHEDULING CONFERENCE AND ORDER. Within twenty (20) days after the filing of an answer by the last answering defendant, or within ninety (90) days after the filing of a complaint (whichever shall first occur) in all civil actions, except those specifically excluded by subpart 9 of this subsection, counsel for the parties (or the party if proceeding pro se) shall meet in person, by telephone, or by other comparable means, for the following purposes:

1. **Documents --** To exchange all documents then reasonably available to a party which are then contemplated to be used in support of the allegations of the pleading filed by the party. Documents later shown to have been reasonably available to a party and not exchanged may be subject to exclusion at time of trial.

2. **Discovery Schedule --** To agree upon a preliminary schedule for all discovery in the matter.

3. **Other Evidence --** To exchange any other evidence then reasonably available to obviate the filing of unnecessary discovery motions.

4. **List of Witnesses --** To exchange a list of witnesses then known to have knowledge of the facts supporting the material allegations of the pleading filed by the party. The parties shall thereafter be under a continuing obligation to advise opposing parties of other witnesses as they become known.

5. **Settlement --** To discuss, in good faith, settlement of the action.

6. **Complicated Case --** To discuss whether the action is sufficiently complicated so that all or part of the procedures of the Manual on Complex Litigation should be used. Counsel may propose to the Court modifications of the procedures in the Manual to facilitate the management of a particular action.

7. **Report and Proposed Order --** Within ten (10) days after the meeting held pursuant to this subsection, those attending are mutually obligated to file a joint Report of Scheduling Meeting setting forth: (a) a detailed schedule of discovery for each party; (b) discussion of the likelihood of settlement; (c) discussion of the likelihood of appearance in the action of additional parties; (d) a preliminary estimate of the time required for trial; and (e) any other information that might be helpful to the Court in setting the case for status or pretrial conference.

In addition, the Report shall be accompanied by a Joint Proposed Scheduling Order incorporating the detailed discovery schedule agreed to by the parties; a limitation on the time to join additional parties and to amend the pleadings; a limitation on the time to file all pretrial motions; any proposed use of the Manual on Complex Litigation; and any other matters which the parties might want jointly to propose.

8. **Notice of Requirement --** Counsel for plaintiff, or plaintiff if proceeding pro se, shall be responsible for giving notice of the requirement of this subsection to each defendant or counsel for each defendant as soon as possible after such defendant's first appearance.

9. **Exempt Actions --** The following types of cases are exempt from the requirements of this subsection: (a) Cases filed in or removed to this Court on or before December 31, 1983; Habeas Corpus cases; (c) Motion to vacate sentence under 28 U.S.C. Section 2255; (d) Social Security cases; (e) Foreclosure matters; (f) Civil Forfeiture actions; (g) IRS Summons enforcement actions; (h) Bankruptcy proceedings, including appeals and adversary proceedings; (k) Student loan cases; (l) VA loan overpayment cases; (m) Naturalization proceedings filed as civil actions; (n) Cases seeking review of administrative agency action; (o) Statutory interpleader actions; (q) Interstate Commerce Act cases (freight charges, railway freight claims, etc.); (r) Labor Management Relations Act and ERISA actions seeking recovery of unpaid employee welfare benefit and pension funds; and (s) any other case expressly exempted by Court order."

10. **Compliance with Pretrial Orders--** Notwithstanding the failure of the parties to conduct the scheduling conference required under this Rule or to submit a proposed scheduling order, or the absence of such a scheduling order entered by the Court, the parties are required to comply with any pretrial orders entered by the Court and the requirements of parts C through K of this Rule, including but not limited to orders setting pretrial conferences and establishing deadlines by which the parties' counsel must meet, prepare and submit pretrial stipulations, complete discovery, exchange reports of expert witnesses, and submit memoranda of law and proposed jury instructions

B. PRETRIAL CONFERENCE MANDATORY. Pretrial conference pursuant to Rule 16(a), Fed.R.Civ.P., shall be held in every civil action unless the court specifically orders otherwise. Each party shall be represented at the pretrial conference and at meetings held pursuant to paragraph C hereof by the attorney who will conduct the trial, except for good cause shown a party may be represented by another attorney who has complete information about the action and is authorized to bind the party.

C. COUNSEL MUST MEET. No later than ten days prior to the date of the pretrial conference, counsel shall meet at a mutually convenient time and place and:

1. Discuss settlement.
2. Prepare a pretrial stipulation in accordance with paragraph D of this rule.
3. Simplify the issues and stipulate to as many facts and issues as possible.
4. Examine all trial exhibits, except the impeachment exhibits need not be revealed
5. Furnish opposing counsel names and addresses of trial witnesses, except that impeachment witnesses need not be revealed.
6. Exchange any additional information as may expedite the trial.

3/90

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

Plaintiff(s),

vs.

SCHEDULING ORDER IN COMPLIANCE
WITH FED. R. CIV. P. 16(b)
AND LOCAL RULE 14A SETTING
PRETRIAL CONFERENCE
AND TRIAL DATES

Defendant(s)

_____/

The Court held a combined scheduling and status conference in
the cause on _____ . Upon consideration _

_____ and the record, it is

ORDERED AND ADJUDGED as follows:

1. This cause is placed on the _____
two-week trial calendar.
2. The call of the calendar will be held at 1:45 p.m. on _____.
3. The pretrial conference will be held at 8:30 a.m. on _____.
4. The pretrial conference, calendar call, and trial will be held at Federal Courthouse Square, 301 North Miami Avenue, Courtroom 4, Miami, Florida 33128-7792.
5. Discovery shall be completed no later than 5 days before the pretrial conference.
6. All pretrial motions shall be filed no later than 10 days before the pretrial conference.
7. Any additional parties shall be joined and any amendments to the pleadings shall be made by _____.
8. Defendant shall file any third party complaints by _____.

9. The parties shall file a joint pretrial stipulation no later than five days before the pretrial conference. Counsel are directed to review and abide by Local Rule 14B.

10. The parties shall exchange resumes of experts' reports no later than 7 days before the pretrial conference.

11. If the case is to be tried before a jury, the parties shall prepare and submit to the court by calendar call, any proposed voir dire questions necessary to elicit information in addition to identity of experience. By the same date, the plaintiff(s) shall prepare and submit in duplicate a complete set of jury instructions. Each jury instruction shall be typed on a separate sheet and must have supporting citation of law. Defendant(s) shall file any special jury instructions in duplicate at such time. Such instructions likewise shall be on a separate sheet with supporting citation of law.

12. If the case is to be tried to the court, the parties shall prepare and submit to the court at calendar call a carefully prepared set of proposed findings of fact and conclusions of law, unslanted and not self-serving, fully supported by the evidence which counsel expects to develop at trial, and fully supported by citations of law.

13. A motion for continuance of the pretrial conference or trial proceedings shall not stay the requirement for filing a joint pretrial stipulation.

14. The pretrial conference and trial will not be continued except upon a showing of exceptional needed.

15. Motions to continue pretrial conference must be filed in writing no later than five days prior to the date of the pretrial conference. Motions to continue trial must be filed in writing no later than five days prior to calendar call.

16. Use of Depositions as Substantive Evidence. If a deposition is to be used as substantive evidence, the party wishing to do so must designate those portions in writing. The designations must be served on opposing counsel at least 10 days prior to the pretrial conference. The adverse party shall serve and file, within three days thereafter, his objections, if any, to the designations, including "any other part which ought in fairness to be considered with the part introduced." See Fed. R. Civ. P. 32(a)(4).

17. At the pretrial conference counsel shall file an exhibit list on forms enclosed and premark all exhibits using arithmetical designations.

18. The parties shall within 30 days file a joint stipulation reciting the dates, names and places of persons presently known whose depositions are to be taken. The first wave of interrogatories and request for production of documents and request for admission shall be served, if not already accomplished, within 20 days.

19. Within 60 days counsel are to meet and file a joint status report reciting any additional facts that are not in dispute.

20. All pretrial motions shall be filed 10 days prior to the scheduled pretrial conference.

21. Depositions of trial experts may be taken without leave of court, upon appropriate notice.

22. All parties shall proceed promptly with all aspects of discovery.

DONE AND ORDERED at Miami, Florida, this ____ day of

_____.

UNITED STATES DISTRICT JUDGE

cc:

3/90

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Plaintiff(s),

vs.

Case No. _____

Defendant(s)

ORDER SETTING PRETRIAL CONFERENCE
AND NOTICE OF TRIAL
(Before Senior Judge C. Clyde Atkins)

_____ /
Pretrial Conference will be held at Federal Courthouse Square,
301 N. Miami Avenue, Courtroom 4, Miami, Florida at _____.
on _____. Trial is scheduled on the two-
week calendar beginning _____. Calendar
call will be held at 1:45 p.m., _____.

A joint pretrial stipulation shall be filed in duplicate FIVE
DAYS prior to the pretrial conference and pending motions do not
eliminate the necessity of timely filing a pretrial stipulation.

NOTICE TO COUNSEL

(1) In a jury case counsel shall prepare and submit to the Court
at calendar call any special proposed voir dire questions necessary
to bring out information in addition to identity of experience.
Plaintiff(s) shall at such time, file in duplicate a complete set
of jury instructions. Each jury instruction shall be typed on a
separate sheet and must have supporting citation of law.
Defendant(s) shall file any special jury instructions in duplicate
at such time. Such instructions likewise shall be on a separate
sheet with supporting citation of law.

(2) In non-jury trials the parties shall prepare and submit to the
Court at the time of the calendar call proposed findings of fact
and conclusions of law, supported by the evidence which counsel
expects to develop at trial, and supported by citations of law.

(3) Each and every attorney is charged with the duty of meeting
in preparation for the pretrial conference, and if the schedule
below is not kept by any party, it is the duty of other counsel to
advise the court by motion seeking sanctions against any party
refusing to meet as directed after request.

(4) A motion for continuance of the pretrial conference or trial
proceedings shall not stay the requirement of filing a pretrial
stipulation.

(5) At the pretrial conference counsel shall file an exhibit list on the forms enclosed and premark all exhibits using arithmetical designations.

- | | |
|------------------------------|---|
| TEN days prior to P-T Conf | - Attorneys must meet. |
| SEVEN days prior to P-T Conf | - Resume of experts' report must be exchanged. |
| FIVE days prior to P-T Conf | - All discovery must be completed. |
| TEN days prior to P-T Conf | - All motions must be filed. |
| FIVE days prior to P-T Conf | - Any memorandum treating any unusual questions of law must be filed (<u>See</u> Local Rule 14I) |
| FIVE days prior to P-T Conf | - Joint Pretrial stipulation must be filed. |

COUNSEL ARE REFERRED TO LOCAL RULE 14D

You are reminded that it is the responsibility of plaintiff(s) counsel or the plaintiff, if pro se, to provide a copy of this Order to counsel for the defendant(s).

cc: