

STANDING ORDER ESTABLISHING PRETRIAL PROCEDURE
UNITED STATES DISTRICT JUDGE VIRGINIA EMERSON HOPKINS

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1. Introduction

This pretrial procedure is intended to secure a just, speedy, and inexpensive determination

of the issues. **If the procedures described below do not appear calculated to achieve these ends in this case, counsel should seek an immediate conference with me and opposing counsel so that alternative possibilities which will secure a speedier, less expensive and more just determination of the issues may be discussed.** Similarly, as I learn how to do things better, this Order will be modified. Failure of either party to comply with the substance or the spirit of this Standing Order may result in dismissal of the action, default or other sanctions appropriate under Fed. R. Civ. P. 16 or 37, 28 U.S.C. 1927 or any other applicable provisions. Parties should also be aware that there may be variances in the forms and procedures used in any particular case. Accordingly, parties should contact my courtroom deputy, Yolonda Berry at (205) 278-1722 for a copy of any Order that may have modified these procedures. Ms. Berry, not my law clerks, should be the contact for information the parties wish to obtain and to transmit information about the case to me. In contacting Ms. Berry or anyone on my staff, counsel should be cognizant that there is a thin and sometimes blurred line between a procedural or status inquiry or a request for direction, on the one hand, and an ex parte communication on the merits of the matter.

2. Initial and Final Pretrial Conferences

In cases subject to this Standing Order, the court will enter the Order attached as Exhibit 1. Exhibit 1 is intended to provide a succinct case management framework and counsel should read it carefully and send a copy to their client(s). Exhibit 1 will ordinarily address all matters discussed in this paragraph, the following will apply only if an Exhibit 1 Order is not issued.

If not already set by Exhibit 1, then within 30 days after the appearance of defendant(s) or within 60 days after the complaint has been filed, whichever first occurs (other than prisoner *pro se* or cases excepted by separate Order), the court will usually set a Fed.R.Civ.P. 16 Initial Pretrial Conference. At the conference, counsel should be fully prepared and have authority to discuss any questions regarding the case, including questions raised by the pleadings, jurisdiction, venue, pending motions, motions contemplated to be filed, the contemplated joinder of additional parties, the probable length of time needed for discovery and the possibility of settlement of the case. Counsel will have the opportunity to discuss any problems confronting them, including the need for time in which to prepare for trial.

3. Procedures for Complex or Protracted Discovery

If at any time from the time the case is filed forward, it appears that complex or protracted discovery will be sought, (such as antitrust actions, cases seeking class action status, cases with multiple plaintiffs or defendants, or any action where multiple thousands of documents may be sought by either side), the court may:

- (a) determine that the Manual on Complex Litigation 2d be used as a guide for procedures to be followed in the case, or

(b) determine that discovery should proceed by phases, or

(c) require that the parties develop a joint written discovery plan under Fed.R.Civ.P. 26(f).

If the court elects to proceed with phased discovery, the first phase will address information necessary to evaluate the case, lay the foundation for a motion to dismiss or transfer, and explore settlement. At the end of the first phase, the court may require the parties to develop a joint written discovery plan under Fed.R.Civ.P. 26(f) and this Standing Order. If the court requires parties to develop a discovery plan, such plan shall be as specific as possible concerning dates, time, and places discovery will be sought and as to the names of persons whose depositions will be taken. It shall also specify the parties' proposed discovery closing date. Once approved by the court, the plan may be amended only for good cause. Where the parties are unable to agree on a joint discovery plan, each shall submit a plan to the court. After reviewing the separate plans, the court may take such action as it deems appropriate to develop the plan. Where appropriate, the court may also set deadlines for filing and a time framework for the disposition of motions.

4. Discovery Closing Date.

Exhibit 1 will set a discovery closing date. Except to the extent specified by the court on motion of either party for good cause shown, discovery must be completed before the discovery closing date. Failure to proceed promptly with discovery is not "good cause". Discovery requested before the discovery closing date, but not scheduled for completion before the discovery closing date, does not comply with this order.

5. Discovery and other Non Dispositive Motions

a. Prior to filing a motion to compel discovery, attorneys are required to confer with each other to discuss the discovery dispute and attempt to resolve it. Experience has shown that an exchange of letters is often insufficient; meet face to face with the disputed Interrogatory or Request for Production or Objection in front of you. If this fails, I recommend that you promptly pursue discovery issues by motion. Once everyone understands there is no discourtesy intended, resolution of discovery issues will quicken.

b. Objections must be filed within 15 days of receipt of discovery despite the fact that there is a 30 day response time to discovery. Many lawyers ignore this rule. Objections are deemed waived if not filed in writing within 15 days. Lengthy "boilerplate" discovery requests with pages of definitions, and form objections are disfavored. Ask case specific questions and make case specific objections.

c. Remember to document by letter any attempt you have made to resolve the discovery dispute prior to filing the motion. The Magistrate Judge or I will require some evidence that you

complied with the rules.

d. Because of their frequency, and because discovery can take on a life of its own, the following is offered to the litigants about discovery and discovery motions:

The court will not serve, and will not ask a Magistrate Judge to serve, as a mediator for settlement of disputes over discovery in which each party takes unreasonable positions with the purposes of conceding what is plainly due under the rules only when “caught” or when before a Judge. If counsel make excessive demands or insufficient responses after this cautionary Order by the court, an Order may be entered providing for more stringent controls over discovery, including the following:

(1) Having determined that both sides have been unreasonable, the court may impose an appropriate sanction under Fed.R.Civ.P. 26(g) and 37. An appropriate sanction in this case may include an Order in which the court declines to undertake the burdensome task of working out some position that is a reasonable accommodation within the range counsel should have agreed upon; the court may instead determine only which side has been more unreasonable and, as a sanction for misconduct, enter an Order that discovery proceed in accordance with the other side’s position.

(2) The court may award attorney fees against a party, or against counsel, to the extent authorized to do so by applicable statutes, rules, and precedents, including those regarding inherent authority.

(3) The court may order that no client be charged for any of the time counsel on either side spent on the discovery dispute in which counsel on both sides were taking unreasonable positions.

Finally, the court reserves the right to assess some or all of the above relief or sanctions on one party, or that party’s counsel, when circumstances warrant.

6. Summary Judgment Motions

Each side may file motions with up to 30 pages of memoranda or briefs in support of a motion, but do not feel compelled to submit a 30 page opening, opposition, or reply brief. Keep it simple. Good writing is brief and to the point. If you do not write well, ask someone who does to assist. A succinct brief outlining your argument and citing the judge to the top four or five cases (if there really are that many) is sufficient. Effective “briefs” are usually less than twenty (20) pages.

The court may issue a separate summary judgment motion procedures Order where appropriate. Otherwise, the parties are to follow F. R.Civ.P. 56.

7. Hearings on Motions

Prior to filing any motion, other than an *ex parte* motion or a motion which is unopposed, the moving party is responsible for obtaining a motions-docket hearing date from Ms. Berry at (205) 278-1722. The movant must file and serve the notice of hearing along with the motion and a certificate of service. The notice of hearing must advise non-movants that any response is to be filed and served no later than 5 business days prior to the hearing date. If the motion is for summary judgment, the notice of hearing must inform the non-movant that affidavits may be filed and served “prior to the day of hearing.” F.R.Civ.P.56(c).

Non-dispositive motions and the corresponding notice of hearing must be filed and served at least 10 business days prior to the hearing date. Dispositive motions and the corresponding notice of hearing must be filed and served at least 15 business days prior to the hearing date.

Parties are advised that hearing dates will be provided to movants with the objective of ensuring that the motion is heard within a reasonably short period of time (30 days after the filing of non-dispositive motions; 60 days in the case of dispositive motions).

Failure on the part of a movant to adhere to the foregoing requirements may result in an order denying the motion for want of prosecution.

8. Chambers Copies

The parties are required to provide the Court with a copy of all pleadings that they file. The copy is NOT to be submitted directly to chambers. Rather, the copy must accompany the original pleading submitted to the Clerk for filing. The words “chambers copy,” “courtesy copy,” or “judge’s copy,” are to be stamped or clearly written by the filing party on the first page of the copy.

A chambers copy is not required for evidentiary submissions, or for pleadings filed before the filing party received this Standing Order.

9. Settlement

A fellow Judge has said:

All parties should give early consideration to the possibility of settlement in order to avoid unnecessary costs and fees. The court suggests that the attorneys for all parties make an early analysis of the case along with their clients and be prepared to discuss settlement at

an early date. The court has noted that parties often exacerbate costs merely because the parties and their attorneys become enamored of litigation and fail to consider resolution. Often the parties incur significant costs to “discover” evidence which is readily accessible. Often cases are settled near trial date with no more substantial information than would have been available early on upon slight investigation.

I agree. Many cases settle. Counsel and the parties are directed to undertake a good faith effort to settle that includes a thorough exploration of the prospects of settlement before undertaking the extensive labor of preparing the Order provided for in the next paragraph. The court may require that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference. If the parties wish the court to participate in a settlement conference, counsel should ask the Courtroom Deputy (Yolonda Berry) to schedule such conference. In a case where the trial will be conducted without a jury, my method of proceeding is to ask a Magistrate Judge or, in exceptional cases another District Judge, to preside. In either event, if the case does not settle, the presiding Judge/Magistrate Judge will be requested NOT to inform me of any of the settlement discussions, or why the case didn’t settle. If the case has not been settled, settlement possibilities should continue to be explored throughout the period before trial. If the case is settled, counsel shall notify the Courtroom Deputy promptly by telephone, and follow up with a Stipulation of Dismissal reciting that the action has been settled. Upon receipt of notice that the case has been settled, an Order will be issued reciting settlement and dismissing the action as settled.

10. Proposed Order - Final Pretrial Conference

Exhibit 1 will schedule a final Pretrial Conference date and time. No later than ten (10) days prior to the Final Pretrial Conference (Conference):

(a) Counsel for all parties are directed to meet in order to

- (1) reach agreement on any possible stipulations narrowing the issues of law and fact,
- (2) deal with non-stipulated issues in the manner stated in this section and
- (3) exchange copies of documents that will be offered in evidence at the trial. (See Exhibit 1 for treatment of the Exhibits at the Final Pretrial Conference).

The court directs that counsel meet in person (face-to-face). It shall be the duty of counsel for plaintiff to initiate that meeting and the duty of other counsel to respond to plaintiff's counsel and to offer their full cooperation and assistance to fulfill both the substance and spirit of this standing

order. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be his or her duty to advise the court forthwith by letter. Only the inability to meet and cooperate shall be stated, along with the names, addresses and telephone numbers of the other counsel contacted.

(b) Counsel must consider the following matters during their conference:

- (1) Jurisdiction (if any question exists in this respect, it must be identified in the Order);
- (2) Propriety of parties; correctness of identity of legal entities; necessity for appointment of guardian, administrator, executor or other fiduciary, and validity of appointment if already made; correctness of designation of party as partnership, corporation or individual d/b/a trade name; and
- (3) Questions of misjoinder or nonjoinder of parties.

Absent compelling reason(s) not to do so, the Court will grant the appropriate Motion(s) curing any deficiencies in (b)(1) - (3).

(c) Counsel's meeting shall include counsel for each party providing all other counsel with a statement (Statement) of the issues the party will offer evidence to support. The Statement will

- (1) eliminate any issues that appear in the pleadings about which there is no controversy, and
- (2) include all issues of law as well as ultimate issues of fact from the standpoint of that party.

(d) It is the obligation of counsel for plaintiff to prepare from the Statement a draft Order for submission to opposing counsel. Included in plaintiff's obligation for preparation of the Order is submission of it to opposing counsel in ample time for revision and timely filing. Full cooperation and assistance of all other counsel are required for proper preparation of the Order to fulfill both the substance and spirit of this Standing Order. All counsel will jointly submit the original and one copy of the final draft of the Order to chambers two (2) days prior to the Final Pretrial Conference; a diskette containing the final draft Order in WordPerfect format shall also be delivered to chambers at the same time.

(e) All instructions and footnotes contained within the Final Pretrial Order form promulgated with this Standing Order must be followed. They will be binding on the parties at trial in the same manner as though repeated in the Order.

(f) Any pending motions requiring determination in advance of trial and which are not already under submission or set for argument or otherwise disposed of under sections 5. and 6. of this Order (including, without limitation, motions in limine, disputes over specific jury instructions or the

admissibility of any evidence at trial upon which the parties desire to present authorities and argument to the court over and above the objection required by Exhibit 1) shall be specifically called to the court's attention not later than the date of submission of the Order.

11. Final Pretrial Conference

At the Conference each party shall be represented by the attorneys who will try the case (unless before the conference the court grants permission for other counsel to attend in their place). All attending attorneys will familiarize themselves with the pretrial rules and will come to the Conference with full authority to accomplish the purposes of F.R.Civ.P. 16 (including simplifying the issues, expediting the trial and saving expense to litigants). Counsel shall be prepared to discuss settlement possibilities at the Conference without the necessity of obtaining confirmatory authorization from their clients. If a party represented by counsel desires to be present at the Conference, that party's counsel must notify the adverse parties at least one week in advance of the conference. If a party is not going to be present at the Conference, that party's counsel shall use their best efforts to provide that the client can be contacted if necessary. Where counsel represents a governmental body, the court may for good cause shown authorize that counsel to attend the Conference even if unable to enter into settlement without consultation with the governmental body client.

12. Extensions of Time: Initial or Final Pretrial Conference; Trial

The parties and the public have a compelling interest in the prompt resolution of litigation. Continuance and extensions of time frustrate that interest. Experience has shown that much if not all of the work in litigation is done in the last 2 - 3 months before discovery cutoff, which is often shortly before trial, and much of the time invested beforehand is not particularly productive for counsel, their clients and the court. For these reasons, it is essential that parties adhere to the scheduled dates in Exhibit 1 and the Initial and Final Pretrial Orders. The scarcity of Conference dates, work demands on court personnel and courtesy to counsel in other cases means no late changes in scheduling. Accordingly, no extensions of the Initial or Final Pretrial Conference dates will be granted without good cause, and then only if an alternative date close to the original date is available. Ordinarily no request for extension will be considered unless made more than 14 days before the scheduled Conference. Over-scheduling by trial counsel or the failure to have backup counsel prepared to attend the conference or try the case where more than one attorney has entered an appearance for a party will not constitute good cause. Trial dates will **not** be continued absent compelling reasons shown and only when no alternative means or mechanisms exist to solve the problem. Trial dates are firm, and counsel schedule conflicts, witness schedule conflicts, expert schedule conflicts or the like will not justify a continuance of the trial date.

13. Action Following Final Pretrial Conference

At the conclusion of the Conference the court will enter an appropriate order reflecting the

action taken, and the issues remaining in the case will be tried in the time frame set forth in Exhibit 1 (4 - 8 weeks later).

14. Documents Promulgated with the Standing Order

Appended to this Standing Order are the following:

- A. Exhibit 1;
- B. A form of pretrial memorandum to be attached to the completed final pretrial order in personal injury cases ;
- C. A form of pretrial memorandum to be attached to the completed final pretrial order in employment discrimination cases;
- D. Guidelines for preparing proposed findings of fact and conclusions of law; and;
- E. Guidelines For Avoiding and Resolving Discovery Disputes.

The forms are available from the Courtroom Deputy. Their completion should be self-explanatory. The parties are also directed to read and follow any material posted on Judge Hopkins' web page, which can be accessed through the home page of the District Court, <http://www.alnd.uscourts.gov>.