

**Rule 16. PRETRIAL CONFERENCES**

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**(b) Exceptions:**

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**(3) Immunity Defense or Jurisdictional Defense**

- (A)** A motion to compel arbitration, **or a motion asserting** an immunity defense or a jurisdictional defense must be raised by a separate motion as expeditiously as practicable after service of process. A motion asserting lack of jurisdiction must be filed at least seven days before the Case Management Conference or the movant will be deemed to have waived the stay provision of subsection (B).
- (B)** Filing a motion to compel arbitration, **or a motion asserting** an immunity defense or jurisdictional defense ~~motion~~ stays the attorney conference and disclosure requirements and all discovery ~~not related to the issue,~~ pending the court's ruling on the motion, including any appeal. Whether to permit discovery on issues related to a ~~the~~ **motion asserting an immunity defense or jurisdictional defense is a decision and whether to permit any portion of the case to proceed pending resolution of the motion are decisions** committed to the discretion of the court, **upon a motion by any party seeking relief.**
- (C)** At the time the motion to compel arbitration, **or the motion asserting an** immunity defense or jurisdictional defense ~~motion~~ is filed, the moving party must submit to the magistrate judge a proposed order granting the stay.
- (D)** In any case that has been removed from state court, the moving party ~~shall~~ **must**, within fourteen days after the Case Management Conference, file as separate docket items any motions that were filed in state court. The motions will be filed in accordance with L.U.CIV.R.7(b).
- (E)** The plaintiff must promptly notify the magistrate judge of a decision on the motion and must submit a proposed order lifting the stay. Within fourteen days of the order lifting the stay, the parties must confer in accordance with L.U.CIV.R. 26(c), and all other deadlines will be determined accordingly.
- (F)** A case management conference will be scheduled within sixty

days of the order lifting the stay.

**(4) Civil Asset Forfeiture Actions**

- (A)** In civil asset forfeiture actions in which the United States files a motion challenging the claimant's standing, all discovery not relevant to the standing issue will be stayed pending the court's ruling on the standing issue.
- (B)** At the time the motion challenging the claimant's standing is filed, the United States must submit to the magistrate judge a proposed order granting the stay but permitting discovery on the standing issue.
- (C)** The parties must promptly notify the magistrate judge of a decision on the standing issue and must submit a proposed order lifting the stay if it is determined that the claimant has standing.
- (D)** A case management conference will be scheduled within sixty days of the order lifting the stay.

**(c) Submission of Written Proposed Case Management Plan and Scheduling Order.** The magistrate judge may require the parties to submit a proposed case management order no later than fourteen days after the attorney conference. [See Official Form No. 1]. Disagreements with the content of the proposed case management order must be noted on the submitted written plan. Each party must submit to the magistrate judge a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the prospective positions of the parties, including a candid evaluation of the possibilities for settlement.

**(d) Time of Disclosures.** Unless a different time is set by court order or unless a party objects during the attorney conference and states the objection in the proposed case management order, the parties must make the disclosures required by FED. R. CIV. P. 26(a) [L.U.CIV.R. 26.1(a)(1)], no later than fourteen days after the attorney conference, but in no event may they be made later than seven days before the Case Management Conference.

**(e) Case Management Conference.** On the date set by court order, the magistrate judge will hold a case management conference in accordance with FED. R. CIV. P. 16(b) and 26(f).

**(f) Case Management Order**

- (1)** The judicial officer will enter the case management order no more than fourteen calendar days after the case management conference. [Official

Form No. 1].

- (2) The court will not require the parties to reserve a period in excess of three weeks for trial following the trial date.

**(g) Settlement Conference**

- (1) The court may schedule an initial settlement conference in the case management plan and scheduling order or by other order as the interests of justice may dictate.
  - (A) Counsel for any party may request at any time that the judicial officer assigned to the case schedule a settlement conference.
  - (B) The court may order mediation in addition to, or in lieu of, a settlement conference.
  - (C) The parties are required to undertake discovery necessary for meaningful settlement discussions before a settlement conference or mediation.
- (2) Lead counsel for each party, individual parties not represented by legal counsel, and representatives of each corporate party, organization, or similar entity must appear at the conference. If lead counsel has been admitted *pro hac vice*, local counsel must also appear at the conference.
  - (A) The party representative attending the conference must have full settlement authority to bind the party for settlement purposes.
  - (B) If approved in advance by the court, a party or party representative may, in lieu of attending the conference in person, be immediately available by telephone during the entire settlement conference. The court may also order that a representative of any intervening party with full settlement authority also attend the conference in person or be available by telephone.
  - (C) At the request of any party, the court will issue a notification of the settlement conference which the party may then forward to any entity having any type of subrogation lien that would need to be considered during settlement negotiations. The failure of a party to attend a settlement conference, or to have present at the conference a representative with reasonable settlement authority, may result in the assessment of sanctions against the offending party.
- (3) The notice of a settlement conference will set forth the format of the

conference and will include any requirement for information or documents that must be submitted to the court before or at the conference.

- (4) No statement, oral or written, made by any party to the court or counsel(s) opposite during settlement negotiations under this rule will be admissible or used in any fashion in the trial of the case or any related case.
- (5) At least seven days before the settlement conference, each party must submit to the court a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the respective positions of the parties, including the settlement negotiations to date and possible settlement figures. Plaintiff(s) must provide an estimate of damages itemized by category. Counsel must also furnish a good faith estimate of the total expense of carrying the litigation through trial and the appellate processes, if not settled, and must have discussed and must represent to the court that they so discussed these expenses with their clients. The settlement memoranda are not to be exchanged or filed in the record, are to be viewed only by the court, and will be destroyed upon exhaustion of settlement negotiations.

**(h) Cases Excluded from Scheduling and Disclosure Requirements.** Those categories of proceedings appearing in FED. R. CIV. P. 26(a)(1)(B) are exempt from the scheduling and disclosure requirements of these rules.

**(i) Alternative Dispute Resolution Programs.** The courts have adopted a uniform Alternative Dispute Resolution Plan. That plan is appended to these Local Rules.

**(j) Final Pretrial Conferences And Pretrial Orders**

**(1) Cases in Which Conference to be Held; Scheduling; Role of Magistrate Judge.** A final pretrial conference is to be held in all civil actions, subject only to the exceptions hereinafter noted.

**(A)** The judicial officer assigned to try the case will attempt to conduct the pretrial conference. If the judicial officer is unable to schedule the pretrial conference in a timely manner, however, then he or she may direct that the conference be held before another judicial officer. This conference will be scheduled not more than forty-five days prior to trial.

**(B)** Whenever possible, a final pretrial conference will be separately scheduled at a date, place, and hour and for such period of time as the subject matter of the particular civil action may require, but in all events a final pretrial conference will be scheduled in such manner as not to cause undue or inordinate inconvenience to counsel scheduled for final pretrial conferences in other cases.

- (2) **When Conference May be Dispensed With; Pretrial Order Still Required; Contents.** The court recognizes that a formal final pretrial conference may not be needed in all cases. The court, either on its own motion or by request of the parties made not later than fourteen days before the scheduled conference, may determine that a final pretrial conference is unnecessary and excuse the parties from attendance, but in that event the jointly agreed pretrial order must be submitted to the judge before whom the conference was to have been held and all requirements of this rule must be complied with at or before the time and date set for the final pretrial conference, unless the judge fixes another date for submission of the pretrial order. If no formal final pretrial conference is held, counsel must submit to the appropriate judge a jointly agreed final pretrial order [Official Form No. 3] which must set forth:
- (A) Any jurisdictional question.
  - (B) Any questions raised by pending motions, including motions *in limine*.
  - (C) A concise summary of the ultimate facts claimed by plaintiff(s), by defendant(s), and by all other parties.
  - (D) Facts established by pleadings or by stipulations or admissions of counsel.
  - (E) Contested issues of fact.
  - (F) Contested issues of law.
  - (G) Exhibits (except documents for impeachment only) to be offered in evidence by the parties respectively. If counsel cannot in good faith stipulate the authenticity or admissibility of a proposed exhibit, the order must identify the same and state the precise ground of objection.
  - (H) The names of witnesses for all parties, stating who *Will Be Called* in the absence of reasonable notice to opposing counsel to the contrary and who *May Be Called* as a possibility only. Neither rebuttal nor impeachment witnesses need be listed. The witness list must state whether the witness will give fact or expert testimony, or both, whether the witness will testify as to liability or damages, or both, and whether the witness will testify in person or by deposition.
  - (I) Any requested amendments to the pleadings.

- (J) Any additional matters to aid in the disposition of the action.
  - (K) The probable length of the trial.
  - (L) Full name, address, and phone number of all counsel of record for each party.
- (3) **Submission by Magistrate Judge to Trial Judge.** If the pretrial conference is held before a magistrate judge who will not try the case, the magistrate judge will submit the agreed, approved pretrial order to the trial judge, with copies to counsel and to the clerk of court.
- (4) **Duty of Counsel to Confer; Exhibits; Matters to be Considered at Conference; Sanctions.** The following provisions of this rule apply, regardless of whether the pretrial order is entered by stipulation of the parties or following a formal final pretrial conference:
- (A) Counsel must resolve by stipulation all relevant facts that are not in good faith controverted and must exchange with counsel for all other parties true copies of all exhibits proposed to be offered in evidence, other than those to be used for impeachment purposes only, and must stipulate the authenticity of each exhibit proposed to be offered in evidence by any party unless the authenticity of any such exhibit is in good faith controverted.
  - (B) All exhibits are to be pre-marked, and lists briefly describing each are to be exchanged among counsel and presented to the court at the beginning of the trial, in quadruplicate, unless otherwise directed by the court.
  - (C) At any formal final pretrial conference, the judge will confer with counsel regarding proposed stipulations of facts and contested issues of fact and law, and will inquire as to the reasonableness of any party's failure to stipulate or agree as to the authenticity or admissibility of exhibits. If the court determines that any party or his attorney has failed to comply with this rule, such party or his attorney will be subject to appropriate sanctions.
- (5) **Depositions.** Depositions to be introduced in evidence other than for rebuttal or impeachment purposes must be abridged before the pretrial conference or submission of the order, as follows:
- (A) The offering party must designate by line and page the portions of the deposition it plans to offer.
  - (B) The opposing party or parties must designate by line and page any

additional portions of the deposition to be offered and must identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(C) The offering party must thereafter identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(D) Videotaped depositions must be edited before trial as required by the pretrial order.

(6) **Procedure at Final Pretrial Conference.** In addition to the preceding provisions, the following provisions apply to the formulation of a pretrial order by formal conference before the magistrate judge, or in any appropriate case, the district judge.

(A) **Counsel Must Attend; Sanctions.** All scheduled conferences must be attended by counsel of record who will participate in the trial and who have full authority to speak for the party and enter into stipulations and agreements. Counsel must have full authority from their clients with respect to settlement and must be prepared to inform the court regarding the prospects of settlement. The court may require the attendance or availability of the parties, as well as counsel. Should a party or his attorney fail to appear or fail to comply with the directions of this rule, an *ex parte* hearing may be held and a judgment of dismissal or default or other appropriate judgment entered or sanctions imposed.

(B) **Preparation for the Conference.** Counsel must comply with the requirements of subdivisions (j)(4) and (j)(5) of this rule as soon as practicable before the pretrial conference and submit to the court and counsel opposite a proposed pretrial order setting forth his proposals for inclusion in the pretrial order in accordance with subdivision (j)(2) of this rule and any instructions which the court may in its discretion issue.

(C) **Preparation of the Pretrial Order.** After the final pretrial conference has concluded, a pretrial order must be prepared by counsel in conformity with Official Form No. 3 and submitted to the court for entry. Responsibility for preparation of the pretrial order and the deadline for its submission will be fixed by the judicial officer before whom the conference was held. If a magistrate judge has conducted the conference on behalf of a district judge, he or she will require counsel to make such corrections as the magistrate judge deems necessary before transmitting the order to the district judge.

- (D) **Additional Conferences.** After the final pretrial conference has been conducted, the court will not hold an additional pretrial conference except in those exceptional situations in which the judicial officer determines that an additional conference would materially benefit disposition of the action.
- (7) **Effect of Pretrial Order.** The pretrial order controls the subsequent course of the action unless modified by the trial judge at or before the trial, upon oral or written motion, to prevent manifest injustice.
- (8) **Conference Scheduling; Conflicting Settings.** In scheduling all pretrial conferences of any nature, the judge will give due consideration to conflicting settings but not to the mere convenience of counsel. If a scheduling order has been entered in an action, no final pretrial conference will be held until after the discovery deadline has expired. Failure to complete discovery within such deadline is not an excuse for delaying the final pretrial conference nor for securing continuance of a case which has been calendared for trial.
- (9) **Discretion of District Judge.** Notwithstanding any of the provisions of this rule to the contrary, a district judge may, in his or her discretion, in any assigned case, conduct any or all pretrial conferences and may enter or modify a scheduling order.
- (k) **Conflicting Settings And Requests For Continuances.** When the court has set a case for trial, other hearing, or pretrial conference that conflicts with a court appearance of counsel in other courts, the first case having a firm setting will control, whether set by this or some other court, and other courts are expected to yield to the prior firm setting, as this court will do when other cases have prior settings in other courts, consistent with the policy adopted by the State-Federal Judicial Council. When a case has not been reached as scheduled, the court, in resetting the case, will take into account the obligations of counsel on the basis of the first-setting rule. If a conflict develops, it is the absolute duty of counsel to inform the court of the later setting in order that the conflict might be resolved and calendars cleared for other settings. It is essential for counsel and the court or courts involved to resolve potential conflicts at the earliest practical date.