

LOCAL RULES

United States District Court for the Southern District of Florida

Revised April 2007

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RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS

A. Differentiated Case Management in Civil Actions.

1. *Definition.* "Differentiated Case Management" is a system for managing cases based on the complexity of each case and the requirement for judicial involvement. Civil cases having similar characteristics are identified, grouped and assigned to designated tracks. Each track

employs a case management plan tailored to the general requirements of similarly situated cases.

2. *Case Management Tracks*. There shall be three case management tracks, as follows:

(a) Expedited—a relatively non-complex case requiring only one to three days of trial may be assigned to an expedited track in which discovery shall be completed within the period of ninety to 179 days from the date of the Scheduling Order.

(b) Standard Track—a case requiring three to ten days of trial may be assigned to a standard track in which discovery shall be completed within 180 to 269 days from the date of the Scheduling Order.

(c) Complex Track—an unusually complex case requiring over ten days of trial may be assigned to the complex track in which discovery shall be completed within 270 to 365 days from the date of the Scheduling Order.

3. *Evaluation and Assignment of Cases*. The following factors shall be considered in evaluating and assigning cases to a particular track: the complexity of the case, number of parties, number of expert witnesses, volume of evidence, problems locating or preserving evidence, time estimated by the parties for discovery and time reasonably required for trial, among other factors. The majority of civil cases will be assigned to a standard track.

4. The parties shall recommend to the Court in their proposed Scheduling Order filed pursuant to Local Rule 16.1.B, to which particular track the case should be assigned.

B. Scheduling Conference and Order.

1. *Party Conference*. Except in categories of proceedings exempted from initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(E), or when otherwise ordered, counsel for the parties (or the party, if proceeding pro se), as soon as practicable and in any event at least twenty-one days before a scheduling conference is held or a scheduling order is due under Federal Rule of Civil Procedure 16(b), *must* meet in person, by telephone, or by other comparable means, for the purposes prescribed by Federal Rule of Civil Procedure 26(f).

2. *Conference Report*. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for submitting to the Court, within fourteen days of the conference, a written report outlining the discovery plan and discussing:

(a) the likelihood of settlement;

(b) the likelihood of appearance in the action of additional parties;

(c) proposed limits on the time:

- (i) to join other parties and to amend the pleadings;
 - (ii) to file and hear motions; and
 - (iii) to complete discovery.
- (d) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;
- (e) the necessity or desirability of amendments to the pleadings;
- (f) the possibility of obtaining admissions of fact and of documents, electronically stored information or things which will avoid unnecessary proof, stipulations regarding authenticity of documents, electronically stored information or things, and the need for advance rulings from the Court on admissibility of evidence;
- (g) suggestions for the avoidance of unnecessary proof and of cumulative evidence;
- (h) suggestions on the advisability of referring matters to a Magistrate Judge or master;
- (i) a preliminary estimate of the time required for trial;
- (j) requested date or dates for conferences before trial, a final pretrial conference, and trial; and
- (k) any other information that might be helpful to the Court in setting the case for status or pretrial conference.

3. *Joint Proposed Scheduling Order.* The Report shall be accompanied by a Joint Proposed Scheduling Order which shall contain the following information:

- (a) Assignment of the case to a particular track pursuant to Local Rule 16.1.A above;
- (b) The detailed discovery schedule agreed to by the parties including provisions for disclosure or discovery of electronically stored information;
- (c) Any agreements the parties reach for asserting claims of privilege or protection of trial preparation material after production;
- (d) A limitation of the time to join additional parties and to amend the pleadings;
- (e) A space for insertion of a date certain for filing all pretrial motions;

- (f) A space for insertion of a date certain for resolution of all pretrial motions by the Court;
- (g) Any proposed use of the Manual on Complex Litigation and any other need for rule variations, such as on deposition length or number of depositions;
- (h) A space for insertion of a date certain for the date of pretrial conference (if one is to be held); and
- (i) A space for insertion of the date certain for trial.

In all civil cases (except those expressly exempted below) the Court shall enter a Scheduling Order as soon as practicable but in any event within ninety days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. It is within the discretion of each Judge to decide whether to hold a scheduling conference with the parties prior to entering the Scheduling Order.

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

5. *Exempt Actions.* The categories of proceedings exempted from initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(E) are exempt from the requirements of this subsection. The Court shall have the discretion to enter a Scheduling Order or hold a Scheduling Conference in any case even if such case is within an exempt category.

6. *Compliance With Pretrial Orders.* Regardless of whether the action is exempt pursuant to Federal Rule of Civil Procedure 26(a)(1)(E), the parties are required to comply with any pretrial orders by the Court and the requirements of this Local 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.

C. Pretrial Conference Mandatory. A pretrial conference pursuant to Federal Rule of Civil Procedure 16(a), 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 D 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.

D. Pretrial Disclosures and Meeting of Counsel. Unless otherwise directed by the Court, at least thirty days before trial each party must provide to the other party and promptly file with the Court the information prescribed by Federal Rule of Civil Procedure 26(a)(3) no later than ten days

prior to the date of the pretrial conference, or if no pretrial conference is held, ten days prior to the call of the calendar, counsel shall meet at a mutually convenient time and place and:

1. Discuss settlement.
2. Prepare a pretrial stipulation in accordance with paragraph E of this Local Rule.
3. Simplify the issues and stipulate to as many facts and issues as possible.
4. Examine all trial exhibits, except that impeachment exhibits need not be revealed.
5. Exchange any additional information as may expedite the trial.

E. Pretrial Stipulation Must Be Filed. It shall be the duty of counsel to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than five days prior to the pretrial conference, or if no pretrial conference is held, five days prior to the call of the calendar. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

1. A short concise statement of the case by each party in the action.
2. The basis of federal jurisdiction.
3. The pleadings raising the issues.
4. A list of all undisposed of motions or other matters requiring action by the Court.
5. A concise statement of uncontested facts which will require no proof at trial, with reservations, if any.
6. A statement in reasonable detail of issues of fact which remain to be litigated at trial. By way of example, reasonable details of issues of fact would include: (a) As to negligence or contributory negligence, the specific acts or omissions relied upon; (b) As to damages, the precise nature and extent of damages claimed; (c) As to unseaworthiness or unsafe condition of a vessel or its equipment, the material facts and circumstances relied upon; (d) As to breach of contract, the specific acts or omissions relied upon.
7. A concise statement of issues of law on which there is agreement.
8. A concise statement of issues of law which remain for determination by the Court.
9. Each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including the basis of all objections to each document, electronically stored information and thing. The list of exhibits shall be on separate schedules

attached to the stipulation, should identify those which the party expects to offer and those which the party may offer if the need arises, and should identify concisely the basis for objection. In noting the basis for objections, the following codes should be used:

A—Authenticity

I—Contains inadmissible matter (mentions insurance, prior conviction, etc.)

R—Relevancy

H—Hearsay

UP—Unduly prejudicial-probative value outweighed by undue prejudice

P—Privileged

Counsel may agree on any other abbreviations for objections, and shall identify such codes in the exhibit listing them.

10. Each party's numbered list of trial witnesses, with their addresses, separately identifying those whom the party expects to present and those whom the party may call if the need arises. Witnesses whose testimony is expected to be presented by means of a deposition shall be so designated. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.

11. Estimated trial time.

12. Where attorney's fees may be awarded to the prevailing party, an estimate of each party as to the maximum amount properly allowable.

F. Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree. If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations not later than five days prior to the pretrial conference, or if no pretrial conference is held, five days prior to the call of the calendar, with a statement of reasons no agreement was reached thereon.

G. Record of Pretrial Conference Is Part of Trial Record. Upon the conclusion of the final pretrial conference, the Court will enter further orders as may be appropriate. Thereafter the pretrial stipulation as so modified will control the course of the trial, and may be thereafter amended by the Court only to prevent manifest injustice. The record made upon the pretrial conference shall be deemed a part of the trial record; provided, however, any statement made concerning possible compromise settlement of any claim shall not be a part of the trial record, unless consented to by all parties appearing.

H. Discovery Proceedings. All discovery proceedings must be completed no later than ten days

prior to the date of the pretrial conference, or if no pretrial conference is held, ten days prior to the call of the calendar, unless further time is allowed by order of the Court for good cause shown.

I. Newly Discovered Evidence or Witnesses. If new evidence or witnesses are discovered after the pretrial conference, the party desiring their use shall immediately furnish complete details thereof and the reason for late discovery to the Court and to opposing counsel. Use may be allowed by the Court in furtherance of the ends of justice.

J. Memoranda of Law. Counsel shall serve and file memoranda treating any unusual questions of law, including motions in limine, no later than five days prior to the pretrial conference, or if no pretrial conference is held, five days prior to the call of the calendar.

K. Exchange Expert Witness Summaries/Reports. Where expert opinion evidence is to be offered at trial, summaries of the expert's anticipated testimony or written expert reports (including lists of the expert's qualifications to be offered at trial, publications and writings, style of case and name of court and Judge in cases in which the expert has previously testified and the subject of that expert testimony, the substance of the facts and all opinions to which the expert is expected to testify, and a summary of the grounds for each opinion) shall be exchanged by the parties no later than ninety days prior to the pretrial conference, or if no pretrial conference is held, ninety days prior to the call of the calendar; provided, however, that if the expert opinion evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party's expert, then the expert summary or report for such evidence shall be served no later than thirty days after the expert summary or report is served by the other party.

L. Proposed Jury Instructions or Proposed Findings of Facts and Conclusions of Law. At the close of the evidence or at an earlier reasonable time that the Court directs, counsel may submit proposed jury instructions or, where appropriate, proposed findings of fact and conclusions of law to the Court, with copies to all other counsel. At the close of the evidence, a party may file additional instructions covering matters occurring at the trial that could not reasonably be anticipated; and, with the Court's permission, file untimely requests for instructions on any issue.

M. Penalty for Failure to Comply. Failure to comply with the requirements of this Local Rule will subject the party or counsel to appropriate penalties, including but not limited to dismissal of the cause, or the striking of defenses and entry of judgment.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2001; April 15, 2004; April 15, 2007.

Authority

(1993) Former Local Rule 17. Changes have been made in recognition of the fact that the call of the calendar is a benchmark for deadlines if no pretrial conference is held; the need for more specificity in expert resumes; and some modifications were needed to pretrial stipulation rule. All counsel now share responsibility to prepare a pretrial stipulation. Codes are provided for the customary objections to exhibits.

Comments

(1993) Sections A and B.7 added in accordance with recommendation of the Civil Justice Advisory Group.

(1994)[K.] This Local Rule is based in part on the disclosure requirements of Federal Rule of Civil Procedure 26(a)(2), as amended, effective December 1, 1993, and in part on superseded Federal Rule of Civil Procedure 26(b)(4) concerning expert interrogatories.

(1996)[B.1.] In order to avoid uncertainty as to which documents, electronically stored information or things were produced at a scheduling conference, this Local Rule is amended to require that a party producing documents, electronically stored information or things at the conference either uniquely stamp the materials produced or provide a particularized list of what is being produced.

(1996)[K.] The change is intended to make the timing of disclosing expert witness information consistent with that prescribed by Federal Rule of Civil Procedure 26(a)(2)(c), to delete the language referring to an expert "resume" as being superfluous, and to make clear the expert witness information to be disclosed may be either a summary prepared by counsel or a report prepared by the expert (both of which are required to provide the information specified).

(1997)[B.] Letters rogatory and registrations of foreign judgment made exempt from scheduling requirements as unnecessary.

(1998) Local Rule 16.1.B.6 is modified to make clear that, at the time of the scheduling conference, counsel should discuss whether there is a need to modify any standard procedure, not just whether the Manual for Complex Litigation should be used. Local Rule 16.1.B.7(f) is modified to make clear that the Joint Proposed Scheduling Order should contain any joint or unilateral requests to exceed deposition limitations in length and number, as well as any other proposed variations from these Local Rules or the Federal Rules of Civil Procedure that are not specifically addressed in other paragraphs of this Local Rule.

(2001) Local Rules 16.1.B, D and E amended to conform with the December 2000 amendments to Federal Rule of Civil Procedure 26.

(2004) Local Rule 16.1.B.2 is amended, in conjunction with the amendment of the last sentence in Local Rule 7.1.C.2, to emphasize the need to discuss at the scheduling conference of parties and/or counsel the number and timing of motions for summary judgment or partial summary judgment, and have the Scheduling Order address these issues. Local Rule 16.1.L is amended to conform to the December 2003 amendment to Federal Rule of Civil Procedure 51.