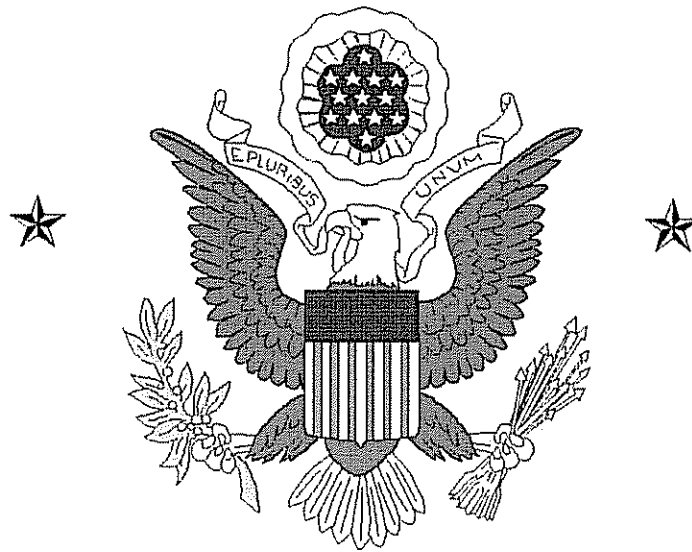


UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA



LOCAL RULES OF PROCEDURE
effective August 1, 2006

LR Civ P 16.1. Scheduling Conferences

- (a) Convening of scheduling conferences; removed and transferred actions

Except in actions exempted by paragraph (g) of this rule or as otherwise ordered, a judicial officer shall convene a scheduling conference as soon as practicable, but in any event within 80 days after the appearance of a defendant and within 110 days after the complaint has been served on a defendant.

By entry of an Order and Notice, a judicial officer shall establish the date, time, and place of the scheduling conference, and inform the parties of their right to consent to proceed before a magistrate judge under FR Civ P 73(b). As soon as practicable, but in no event later than 5 business days after the appearance of a defendant, the clerk shall transmit a notice of the conference to all counsel then of record and to each then unrepresented party for whom an address is available from the record. The notice shall also establish the date by which a meeting of the parties must be held pursuant to FR Civ P 26(f) and paragraph (b) of this rule, and the date by which a written report on the meeting of the parties must be submitted to the court pursuant to FR Civ P 26(f) and paragraph (c) of this rule.

In a case removed or transferred to this court, a judicial officer shall convene a scheduling conference as soon as practicable, but in no event later than 60 days after removal or transfer. The notice required under this paragraph shall be transmitted to all parties or their

attorneys no later than 5 business days after the case is removed or transferred.

(b) Obligation of the parties to meet

The parties shall, as soon as practicable and in any event at least 21 days before the date set for the scheduling conference, meet in person or by telephone to discuss and report on all FR Civ P 16 and 26(f) matters, and to:

- (1) consider, consistent with paragraph (d) of this rule, whether the case is complex and appropriate for monitoring in an individualized and case-specific manner through one or more case-management conferences, and, if it is, to propose for the court's consideration 3 alternative dates and times for the first conference;
- (2) agree, if they can, upon the disputed facts that have been alleged with particularity in the pleadings;
- (3) consider consenting to trial by a magistrate judge; and
- (4) consider alternative dispute resolution processes such as the one in LR Civ P 16.6.

Counsel and all unrepresented parties who have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, agreeing on matters to be considered at the scheduling conference, and considering a prompt settlement or resolution of the case.

(c) Written report on the meeting of the parties; cancellation of scheduling conference

Counsel and all unrepresented parties who were present or represented at the meeting are jointly responsible for submitting to the court, no later than 14 days before the date set for the scheduling conference, a written report on their meeting. The written report submitted by the parties shall follow a form available from the clerk and on the court's web site.

In the report on the meeting, any matters on which the parties differ shall be set forth separately and explained. The parties' proposed

pretrial schedule and plan of discovery and disclosures shall advise the court of their best estimates of the time needed to accomplish specified pretrial steps.

The parties' report on their meeting shall be considered by the judicial officer as advisory only. If, after the date fixed for filing the written report, the judicial officer determines that the scheduling conference is not necessary, it may be cancelled and the scheduling order may be entered.

(d) Conduct of scheduling conferences

Except in a case in which a scheduling conference has been cancelled pursuant to paragraph (c) of this rule, a judicial officer shall convene a scheduling conference, which may be held by telephone, within the mandatory time frame specified in paragraph (a) of this rule regardless of whether the parties have met pursuant to paragraph (b) of this rule or filed a written report pursuant to paragraph (c) of this rule.

At the scheduling conference, the judicial officer shall consider any written report submitted by the parties and discuss with them time limits and other matters they were obligated to consider in their meeting and that may be addressed in the scheduling order.

At or following the scheduling conference if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, the judicial officer shall determine whether the case is complex or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judicial officer shall consider assigning in the scheduling order any case so categorized to a case-management conference or series of conferences under LR Civ P 16.2. If the case is so assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited to establishing time limits and addressing other matters that should not await the first case-management conference. The factors to be considered by the judicial officer in determining whether the case is complex include:

- (1) the complexity of the issues, the number of parties, the difficulty of the legal questions and the uniqueness of proof problems;
- (2) the amount of time reasonably needed by the parties and their attorneys to prepare the case for trial;

- (3) the judicial and other resources required and available for the preparation and disposition of the case;
- (4) whether the case belongs to those categories of cases that involve little or no discovery,
 - (i) ordinarily require little or no additional judicial intervention, or
 - (ii) generally fall into identifiable and easily managed patterns;
- (5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay; and
- (6) whether the public interest requires that the case receive more intense judicial attention.

(e) Scheduling orders

Following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant, the judicial officer shall enter a scheduling order pursuant to FR Civ P 16(b).

(f) Modification of scheduling order

- (1) Time limits in the scheduling order for the joinder of other parties, amendment of pleadings, filing of motions, and completion of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for good cause by order.
- (2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly with the clerk, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).

- (3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the court.

(g) Categories of actions exempted

In addition to those actions and proceedings identified in FR Civ P 81 to which the Federal Rules of Civil Procedure do not apply, the following categories of actions are exempted from the requirements of FR Civ P 16(b), 26(a)(1)-(4) and 26(f), and of the Local Rules of Civil Procedure relating thereto unless otherwise ordered:

- (1) habeas corpus cases and motions attacking a federal sentence;
- (2) procedures and hearings involving recalcitrant witnesses before federal courts or grand juries pursuant to 28 U.S.C. § 1826;
- (3) actions for injunctive relief;
- (4) review of administrative rulings;
- (5) Social Security cases;
- (6) prisoner petitions pursuant to 42 U.S.C. § 1983 and "Bivens-type" actions in which plaintiff is unrepresented by counsel;
- (7) condemnation actions;
- (8) bankruptcy proceedings appealed to this court;
- (9) collection and forfeiture cases in which the United States is plaintiff and the defendant is unrepresented by counsel;
- (10) Freedom of Information Act proceedings;

- (11) certain cases involving the assertion of a right under the Constitution of the United States or a federal statute, if good cause for exemption is shown;
- (12) post-judgment enforcement proceedings and debtor examinations;
- (13) enforcement or vacation of arbitration awards;
- (14) civil forfeiture actions;
- (15) student loan collection cases;
- (16) actions which present purely legal issues, require no resolution of factual issues, and which may be submitted on the pleadings, motions and memoranda of law; and
- (17) such other categories of actions as may be exempted by standing order.