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Rule 26(f) Conferences in the Central District

The FRCP and Local rules of the Central District requires that the conference of parties held at the outset of litigation cover numerous topics, to be followed up by a report to the Court concerning discovery for filing and initial disclosures which are served but not filed. The requirements tend to be buried in the [Federal Rules](#) and the [Local Rules](#) and the following attempts to extract and bring together the pertinent portions of those rules. You should make sure that the rules are up to date - this summary may not be. L.R. refers to [Local Rules](#). In addition, each judge may have their own separate requirements for both the meeting and report to the Court which should also be included in practice.

L.R. 26-1 Conference of Parties; Report . At the conference of parties held pursuant to F.R.Civ.P. 26(f), the parties shall discuss the following matters in addition to those noted in F.R.Civ.P. 26(f):

- (a) Complex Cases. The complexity of the case, and whether all or part of the procedures of the Manual For Complex Litigation (current edition) should be utilized. Counsel may propose to the Court modifications of the procedures in the Manual to facilitate the management of a particular action.
- (b) Motion Schedule. The dispositive or partially dispositive motions which are likely to be made, and a cutoff date by which all such motions shall be made.
- (c) Settlement. The likelihood of settlement, whether settlement discussions have taken place or are scheduled, and which mandatory settlement procedure should be utilized under L.R. 16-14.

L.R. 16-14.4 Suggested Settlement Procedures

SETTLEMENT PROCEDURE NO. 1 - The parties shall appear before the district judge or magistrate judge assigned to the case for such settlement proceedings as the judge may conduct or direct.

SETTLEMENT PROCEDURE NO. 2 - The parties shall appear before an attorney selected from the Attorney Settlement Officer Panel or before an attorney appointed by the trial judge for settlement proceedings.

SETTLEMENT PROCEDURE NO. 3 - The parties shall participate in a non-judicial dispute resolution proceeding.

- (d) Trial Estimate. A preliminary estimate of the time required for trial.
- (e) Additional Parties. The likelihood of appearance of additional parties.
- (f) Expert Witnesses. The proposed timing of disclosures under F.R.Civ.P. 26(a)(2).

26(a)(2)

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

In their written report required by F.R.Civ.P. 26(f), the parties shall include their views and proposals on the matters listed in this local rule.

FRCP 26(f) Meeting of Parties; Planning for Discovery.

Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E) or when otherwise ordered, the parties must, as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan that indicates the parties' views and proposals concerning:

- (1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;
- (2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;
- (3) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and
- (4) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

FRCP Rule 26(c) (e) Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition, after being sealed, be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

FRCP Rule 16(b)

(b) Scheduling and Planning.

Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

- (1) to join other parties and to amend the pleadings;
- (2) to file motions; and
- (3) to complete discovery.

The scheduling order may also include

- (4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;
- (5) the date or dates for conferences before trial, a final pretrial conference, and trial; and
- (6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable 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. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge.

FRCP Rule 16(c)

(c) Subjects for Consideration at Pretrial Conferences.

At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence;
- (5) the appropriateness and timing of summary adjudication under Rule 56;
- (6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 27 through 37;
- (7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
- (8) the advisability of referring matters to a magistrate judge or master;
- (9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;
- (10) the form and substance of the pretrial order;
- (11) the disposition of pending motions;
- (12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;
- (14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);
- (15) an order establishing a reasonable limit on the time allowed for presenting evidence; and
- (16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representatives be present or reasonably available by telephone in order to consider possible settlement of the dispute.

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. A court may order that the parties or attorneys attend the conference in person. If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule (i) require that the conference between the parties occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b), and (ii) require that the written report outlining the discovery plan be filed fewer than 14 days after the conference between the parties, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

FRCP 26(a)(1) Initial Disclosures

(1) Initial Disclosures.

Except in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

- (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;
- (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;
- (C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.
- (E) The following categories of proceedings are exempt from initial disclosure under Rule 26(a)(1):
 - (i) an action for review on an administrative record;
 - (ii) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
 - (iii) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;
 - (iv) an action to enforce or quash an administrative summons or subpoena;
 - (v) an action by the United States to recover benefit payments;
 - (vi) an action by the United States to collect on a student loan guaranteed by the United States;
 - (vii) a proceeding ancillary to proceedings in other courts; and
 - (viii) an action to enforce an arbitration award.

These disclosures must be made at or within 14 days after the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan. In ruling on the objection, the court must determine what disclosures - if any - are to be made, and set the time for disclosure. Any party first served or otherwise joined after the Rule 26(f) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

FRCP 26(g) Signing of Disclosures

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

- (1) Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.
- (2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:
 - (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
 - (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

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