

RULE 16. Postassignment Conferences; Scheduling; Management

(a) Postassignment Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear for a conference or conferences for such purpose as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the action will not be protracted because of lack of management;
- (3) discouraging wasteful activities;
- (4) improving the quality of the proceedings for the final disposition of the action through more thorough preparation; and
- (5) facilitating the settlement of the action.

(b) Scheduling and Planning. Except as provided in Rule 56.2 or when the judge to whom the action is assigned finds that a scheduling order will not aid in the disposition of the action and enters an order to that effect, together with a statement of reasons and facts upon which the order is based, the judge shall, 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 and hear motions; and
- (3) to complete discovery.

The scheduling order also may include

- (4) modifications of the times for disclosures under Rule 26(a) and 26(e)(1) and of the extent of discovery to be permitted;
- (5) provisions for disclosure or discovery of electronically stored information;

(6) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;

(7) the date or dates for conferences before submission of the action for final disposition, a final postassignment conference, and trial or submission of a dispositive motion; and

(8) any other matters appropriate in the circumstances of the action.

The scheduling order, or the order that a scheduling order will not aid in the disposition of the action, shall issue as soon as practicable but in no event more than 90 days after the action is assigned. A schedule shall not be modified except by leave of the judge upon a showing of good cause.

(c) Subjects to be Discussed at Postassignment Conferences. The participants at any conference under this rule may consider and take 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 disclosure and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging briefs, and the date and dates for further conferences and for submission of the action for final disposition;

(8) the advisability of referring matters to a master;

(9) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(10) the form and substance of scheduling or postassignment conference 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;

(16) access to confidential or privileged information, including business proprietary information, contained in an administrative record, which is the subject of the action; and

(17) such other matters as may aid in the disposition of the action.

At least one of the attorneys participating in any postassignment conference 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 representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final Postassignment Conference. Any final postassignment conference shall be held as close to the time of submission of the action for final disposition as reasonable under the circumstances. The participants at any such conference shall formulate a plan for submission of the action for final disposition. At least one of the attorneys on behalf of each of the parties and any unrepresented parties shall participate in the conference.

(e) Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final postassignment conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or postassignment conference order, or if no appearance is made on behalf of a party at a scheduling or postassignment conference, or if a party or a party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing or both to pay the reasonable expense incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that order circumstances make an award of expenses unjust.

PRACTICE COMMENT: The attorneys for the parties and any unrepresented parties are expected to consult prior to a postassignment conference. The consultations should pertain to such matters as: access to the confidential portions of the administrative record, if any; the definition of the issues; whether discovery is necessary or permissible; and, the establishment of a proposed discovery schedule, if it is agreed that discovery will be conducted.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008.)