

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANDARD MANAGEMENT TRACK

**ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 16
(as amended December 1, 1993), LOCAL CIVIL RULES 16.1 AND 16.2
and THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
(effective December 31, 1991, as Amended January 12, 2001)**

Rule 16(b) of the Federal Rules of Civil Procedure, as amended December 1, 1993, requires the court, except in categories of actions exempted by district court rule, to consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail or other suitable means, and with in 120 days take appropriate action with respect to:

- a. joining other parties and amending the pleadings (see Local Rule 14.1);
- b. filing and hearing motions;
- c. completing discovery;
- d. modifying the time for disclosure under Rules 26(a) and 26(e)(1) and the extent of discovery to be permitted;
- e. setting the date or dates for conferences before trial, a final pretrial conference and trial;
and
- f. any other matters appropriate in the circumstances of the case.

The purpose of this Order is to implement these mandatory procedures by establishing a method for consulting with all attorneys and any unrepresented parties prior to issuing the scheduling order required by the Rule.

Counsel will be expected to have complied with Fed.R.Civ.P. 26(f), as amended December 1, 2000. There will be a Fed.R.Civ.P. 16 conference scheduled within 60 days after a responsive pleading has been filed. This conference will be in Chambers or by telephone upon request of the parties to the Deputy Clerk (267-299-7549). The purpose of the conference will be to:

- i. expedite the disposition of the action;
- ii. establish early and continuing control so that the case will not be protracted because of lack of management;
- iii. discourage wasteful pretrial activities;
- iv. improve the quality of the trial through more thorough preparation; and

- v. facilitate settlement of the case. (Rule 16(c) permits the court to require a party or its representative to be present or reasonably available by telephone to consider possible settlement.)

The participants at any pretrial conference are on notice that the court may take action with respect to the:

1. formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
2. necessity or desirability of amendments to the pleadings;
3. possibility of obtaining admissions of fact and of documents to avoid unnecessary proof and cumulative evidence, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
4. completion of discovery;
5. identification of witnesses and documents;
6. need and schedule for filing and exchanging pretrial memoranda, and the date or dates for further conferences;
7. advisability of referring matters to a magistrate or master;
8. possibility of settlement or the use of extrajudicial procedures to resolve the dispute;
9. form and substance of the pretrial order;
10. disposition of pending motions;
11. 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; and
12. matters that may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to bind that party regarding all matters identified above and all reasonably related matters.

The Order following the preliminary pretrial conference will specify whether the pretrial memorandum form provided in Local Rule 16.1(c) or 16.1(d) should be followed. In addition, all exhibits listed in proposed final pretrial memoranda are to have been provided to opposing counsel if not received from opposing counsel in discovery. Exhibits should be numbered for use at trial. It is helpful to list any stipulated facts to avoid the necessity of proof at trial.

Counsel are required to identify witnesses in their final pretrial memoranda and as to each witness listed therein make the disclosure required by Fed.R.Civ.P. 26(a)(2). Testimony will be limited at trial to the information disclosed.

A final pretrial conference will be held as close to the time of trial as possible, and unless specially listed, the case will be deemed ready for trial at any time thereafter. Parties to the conference will formulate a plan for trial, including a program for facilitating the admission of evidence, for approval by the judge. The final pretrial conference shall be attended by trial counsel and by any unrepresented parties. Upon notice of the court in the final pretrial conference order, representatives of the parties with authority to bind them in settlement discussions shall be present or, with prior permission of the court, be available by telephone during the settlement conference. To accommodate this requirement, conference dates will be rescheduled once by the Deputy Clerk on request for good cause shown.

An Order will be entered reciting the action taken at a pretrial conference. This Order will control the subsequent course of the action unless modified by a subsequent Order. The Order following a final pretrial conference will be modified only to prevent manifest injustice.

If a party or party's attorney fails to obey a scheduling pretrial Order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or 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 her own initiative, may impose sanctions as provided by 28 U.S.C. § 1927, the Federal Rules of Civil Procedure and the Local Rules of this court. The judge may require the party or the attorney representing the party or both to pay the reasonable expenses, including attorneys' fees, incurred by opposing counsel because of any noncompliance with the rules, unless the judge finds that noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

The schedule will not be modified except upon a showing of good cause, by leave of the judge, or the magistrate judge to whom a request may be referred.

IT IS SO ORDERED, this 1st day of March, 2001.

/s/ Norma L. Shapiro

J.