

Rule 16. Pretrial Conferences; Pretrial Status Conferences; Scheduling; Management

(a) **APPLICABILITY.** With the exception of cases assigned to a magistrate judge under Rule 40-III, or unless otherwise ordered by the judge to whom the case is assigned, the provisions of this rule apply to all civil actions and to both small claims and landlord and tenant actions certified to the Civil Actions Branch for jury trial.

(b) **INITIAL SCHEDULING AND SETTLEMENT CONFERENCE.**

(1) *In General.* In every case assigned to a specific calendar or a specific judge, the court must hold an initial scheduling and settlement conference as soon as practicable after the complaint is filed.

(2) *Praecepte in Lieu of Appearance.* No attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than 7 calendar days prior to the scheduling conference date consenting to the entry by the court of a track I or track II scheduling order outside their presence.

(A) *Praecipe Requirements.* The praecipe must certify that:

(i) the case is at issue;

(ii) all parties are represented by counsel;

(iii) there are no pending motions; and

(iv) all counsel have discussed the provisions of Rule 16(b)(4)(B) and (C) and do not foresee any issue requiring court intervention.

(B) *Filing the Praecipe; Courtesy Copy.* The praecipe must be accompanied by an addressed envelope or mailing label for each attorney and a courtesy copy must be delivered to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the court's electronic filing program.

(3) *Scheduling Order; In General.* At the conference, the judge will ascertain the status of the case, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge will place the case on one of several alternative time tracks and will enter a scheduling conference order which will set dates for future events in the case.

(4) *Contents of the Order.* The scheduling order may:

(A) modify the extent of discovery;

(B) provide for discovery or preservation of electronically stored information;

(C) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements on the effects of disclosure reached under Rule 26(b)(5)(C);

(D) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(E) set dates for pretrial conferences and for trial; and

(F) include other appropriate matters.

(5) *Scheduling Order; Deadlines.* Where applicable, the order will specify dates for the following events:

(A) *Discovery Requests; Depositions.*

(i) No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served less than 30 days before the date set for the end of discovery.

(ii) Party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum must be noticed not less than 5 days before the date scheduled for the deposition and no deposition may be noticed to take place after the date set for the conclusion of discovery.

(B) *Exchange Lists of Fact Witnesses.* On or before this date, each party must file and serve a listing, by name and address, of all fact witnesses known to that party, including experts who participated in, and will testify about, pertinent events. No witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before this date or the calling party can establish that it did not learn of the witness until after this date.

(C) *Proponent's Rule 26(a)(2)(B) Report.* By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any proponent of an issue who will offer an expert opinion on such an issue.

(D) *Opponent's Rule 26(a)(2)(B) Report.* By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(E) *Close of Discovery.* After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause.

(F) *Filing Motions.* All motions must be filed by this date, except as provided in Rule 16(b)(5)(E) and (d). The order will also specify a date by which dispositive motions will be decided.

(G) *Alternative Dispute Resolution.* The order will set out a time period in which mediation or other alternative dispute resolution proceedings will be held.

(H) *Final Pretrial and Settlement Conference.* The order will specify a time period in which the final pretrial and settlement conference will be held.

(I) *Optional Deadlines.* The scheduling conference order may also set dates for the joinder of other parties and amendment of pleadings, the completion of certain discovery, the filing of particular motions and legal memoranda, and any other matters appropriate in the circumstances of the case.

(6) *Obligations of Parties.* All counsel and all parties must take the necessary steps to complete discovery and prepare for trial within the time limits established by the scheduling order.

(7) *Modification.*

(A) *By Leave of Court.* The scheduling order may not be modified except by leave of court on a showing of good cause. A party seeking a modification of the scheduling order must provide the court with a copy of the existing scheduling order and a detailed discovery plan, which lists the specific methods of discovery to be conducted, the persons or materials to be examined, and the date or dates within which all further discovery must be completed.

(B) *By Stipulation.* Stipulations between counsel will not be effective to change any deadlines in the order without court approval, provided, however, that any date in the scheduling order except for the date of court proceedings (e.g., status hearings, ex

parte proofs, ADR sessions, pretrials and trials) may be extended once for up to 14 days on the filing and delivery to the assigned judge of a praecipe showing that all parties who have appeared in the action consent to the extension. Any motion to further modify a date so extended must recite that the date in question was previously extended by consent and must specify the length of that extension.

(c) MEETING 4 WEEKS PRIOR TO PRETRIAL CONFERENCE.

(1) *Attendance*. Not less than 4 weeks prior to the pretrial conference, at least one of the attorneys who will conduct the trial for each of the parties, and any unrepresented parties, must meet in person. If such persons are unable to agree on a date, time, and place for the meeting, the parties must notify the judge by phone in advance that they will meet at 9:00 a.m. in the judge's courtroom or such other place to be designated by the judge on the day which is 4 weeks prior to the date of the pretrial conference.

(2) *Matters for Consideration*. The participants in the meeting must spend sufficient time together to discuss the case thoroughly and must make a good faith effort to reach agreement on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence;

(E) identifying witnesses and documents;

(F) referring matters to a magistrate judge or master;

(G) settling the case or using alternative dispute resolution procedures to resolve the dispute;

(H) determining the form and content of the pretrial order;

(I) disposing of pending motions;

(J) 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

(K) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(3) *Exhibits*.

(A) *Documentary Exhibits*. At this meeting, each party must provide to all other parties copies of all documentary exhibits which that party may offer at trial; affixed to each exhibit must be a numbered exhibit sticker and the exhibits must be identified, by exhibit number, on an index provided with the exhibits.

(B) *Non-Documentary Exhibits*. Each party also must make all non-documentary exhibits available for examination by other parties at or before this meeting.

(d) 3 WEEKS PRIOR TO PRETRIAL CONFERENCE. Three weeks prior to the pretrial conference, each party must file with the court, serve on all other parties, and deliver to the assigned judge in accordance with the provisions of Rule 5(d) any motion in limine, motion to bifurcate, or other motion respecting the conduct of the trial, which a party wishes to have the court consider.

(e) ONE WEEK PRIOR TO PRETRIAL CONFERENCE.

(1) *Joint Pretrial Statement.* One week prior to the pretrial conference, the parties must file with the court and deliver to the assigned judge in accordance with the provisions of Rule 5(d) a joint pretrial statement, which must include a certification of the date and place of the meeting held pursuant to Rule 16(c), must be in a form prescribed by the court, and must also include the following items:

(A) a list of any proposed voir dire questions;

(B) a list, by number, of those proposed instructions contained in the Standardized Civil Jury Instructions for the District of Columbia;

(C) the complete text of any proposed jury instruction not found in the Standardized Civil Jury Instructions for the District of Columbia;

(D) any proposed verdict form, including any special interrogatories to be answered by the jury; and

(E) any objections and suggestions for alternative language that a party may have to the voir dire questions, jury instructions, or verdict form submitted by any other party.

(2) *Objections to Exhibits.* Objections, if any, by a party to the exhibits submitted by any other party also must be made at this time as part of the joint pretrial statement. A party raising an objection to an exhibit of another party must attach to the statement of objection a copy of the exhibit to which the objection is made. The court will not consider any objection or alternative language that is filed beyond the time frames prescribed by this rule unless the party making the objection or suggestion can establish that the objection or suggestion could not, for reasons beyond that party's control, be timely filed.

(3) *Unlisted Witnesses or Exhibits.* Except for plaintiff's rebuttal case or for impeachment purposes, no party may offer at trial the testimony of any witness not listed in the pretrial statement of the parties, nor any exhibit not served as required by this rule, without leave of court.

(f) PRETRIAL AND SETTLEMENT CONFERENCE.

(1) *Attendance.* The lead counsel who will conduct the trial for each of the represented parties, and, unless excused by the judge for good cause, all parties must attend the pretrial and settlement conference.

(2) *Exhibits.* All counsel and unrepresented parties must bring to the conference their trial exhibits, copies of which were served on other parties pursuant to Rule 16(c)(3). If any party proposes to offer more than 15 exhibits at trial, that party's exhibits must be arranged as follows:

(A) *Nonjury Trials.* In nonjury trials, the original exhibits, with numbered exhibit stickers affixed, must be placed in a looseleaf, three-ring notebook with tabbed divider pages. At the front of the notebook must be an Exhibit Summary Form (copies of which are available in the clerk's office) describing each exhibit by number.

(B) *Jury Trials.* In jury trials, the notebook must contain copies of all the exhibits; the original exhibits, with stickers affixed, must be placed in a folder, in numerical order, along with the original Exhibit Summary Form.

(3) *Conference Details.* The conference will generally be held by the judge who will preside at trial and will not be recorded unless the judge orders otherwise. If settlement of the case cannot be achieved within a reasonable time, the judge will discuss with those attending the conference the pretrial filings of the parties as may be pertinent and will set a trial date for the case.

(g) PRETRIAL ORDER.

(1) *Content of the Order.* After the pretrial conference, the court must issue an order reciting the action taken. Insofar as possible, the court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. Exhibits, the authenticity of which is not genuinely in dispute, will be deemed authentic and the offering party will not be required to authenticate these exhibits at trial. The pretrial order may set limits with respect to the time for voir dire, opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party. The pretrial order controls the course of the action unless the court modifies it.

(2) *Modification.* The pretrial order may be modified at the discretion of the court for good cause and must be modified if necessary to prevent manifest injustice.

(h) COMMENCEMENT OF TRIAL. On any date for which the case has been set for trial, the parties and their counsel must be prepared to commence the trial on that date or on any of the 2 succeeding court days in the event that their case must trail another trial on the judge's calendar.

(i) OTHER SCHEDULING OR STATUS CONFERENCES. In addition to the initial scheduling and settlement conference and the pretrial and settlement conference, the court may in its discretion order the attorneys for the parties and any unrepresented parties to appear before it for other conferences for such purposes as:

- (1) expediting the disposition of the action;
- (2) establishing continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation;
- (5) facilitating the settlement of the case; and
- (6) addressing any other matters appropriate in the circumstances of the case.

(j) AUTHORITY OF COUNSEL; ATTENDANCE OF PARTIES, PRINCIPALS, AND PERSONS WITH SETTLEMENT AUTHORITY. At least one of the attorneys for each party participating in any conference before trial, or in the meeting described in Rule 16(c), must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions. Unless excused by the judge for good cause, all parties and any person not a party whose authority may be needed to settle the case must attend any pretrial conference conducted pursuant to Rule 16(f) and any alternative dispute resolution session ordered by the court.

(k) CONTINUANCES.

(1) *By Court Order.* No trial or conference provided for in this rule may be continued except by order of the judge on a showing of specific and sufficient reasons why the applicant cannot attend or proceed with the trial or conference as scheduled or, for a conference, will not be able by the scheduled date to report to the court the information required by this rule. An application to continue the trial must include a certificate or affidavit by the party or party's attorney indicating that all other parties were given reasonable notice of the applicant's intent to make the application.

(2) *Timing of Application.* Except for applications based on circumstances arising later, application for a continuance must be made to the judge not less than 30 days before the trial or conference sought to be continued.

(3) *When Effective.* Until an order granting a continuance is docketed, the case will remain set for the trial or conference on the original date.

(J) SANCTIONS.

(1) *In General.* On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or a party's attorney:

(A) fails to appear at a scheduling or pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the court must order the party, its attorney, or both, to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

COMMENT TO 2017 AMENDMENTS

The 2015 amendments to *Federal Rule of Civil Procedure* 16(b)(1)(B) and (b)(2) are inconsistent with Superior Court practice and have not been incorporated into this rule. However, the Superior Court rule incorporates the 2015 federal amendments related to the content of the scheduling order with one alteration—the reference to *Federal Rule of Evidence* 502 was replaced with a reference to new Superior Court Rule 26(b)(5)(C). Rule 26(b)(5)(C) contains the relevant language from *Federal Rule of Evidence* 502(d) and (e). Thus, this provision is intended to operate in the same manner as its federal counterpart.

Section (k) has been amended to address the continuance of a trial. The provisions related to trial continuances were formerly found in Rule 40-I.

COMMENT

This rule differs substantially from *Federal Rule of Civil Procedure* 16, and reflects procedures instituted by the Superior Court to reduce delay in civil litigation.

Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the court.

Section (c) provides for a meeting four weeks before the pretrial conference at which counsel and any unrepresented parties must endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held in the judge's courtroom or another

location designated by the judge. This section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made three weeks before the pretrial conference, and section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

Subsection (e)(3) provides that, except by leave of court, the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores, Inc.*, 629 A.2d 31 (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This rule does not preclude the judge to whom a case is assigned from modifying particular requirements of sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) retains the requirement for the entry of a pretrial order which controls the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses that may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the court may schedule other conferences beyond those called for by sections (b) and (f). It is expected that additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Unless excused by the judge for good cause, parties and any person whose authority may be needed to settle the case must attend any pretrial and settlement conference and any alternative dispute resolution session.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising later, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the rule by the date of the conference.

Section (l), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f)*.