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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE 16**
11 **OF THE ARIZONA RULES OF**
12 **CIVIL PROCEDURE**

Supreme Court No. R-24-

PETITION

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby petitions the Court to amend Rule 16 of the
15 Arizona Rules of Civil Procedure regarding the scheduling and management of
16 actions. The proposed revisions will not significantly alter the substance of the
17 current rule, but they will:

- 18 • provide clarity on the applicability of Rule 16(b) and (c);
- 19 • provide procedures for the parties in compulsory arbitration cases if
20 they disagree as to the appropriate discovery tier; and
- 21 • alleviate administrative burden on trial courts by striking the word
22 “proposed” from Forms 11(b), 12(b), 13(b), and 14(b).

1 The State Bar believes the proposed amendments will reorganize the rule in a
2 minimally invasive way to bring some needed clarity to the rule and associated
3 Forms.
4

5 Appendix A is a blackline of the proposed amendments to Rule 16 and Forms
6 11(b), 12(b), 13(b), and 14(b). Appendix B is a clean version.

7 **I. BACKGROUND.**
8

9 This Petition originated when a member of the State Bar contacted the State
10 Bar’s Committee on Civil Practice and Procedure and requested it consider an
11 amendment to clarify the applicability of Rule 16(c)(8) to Rules 16(b) and 16(c).
12 The member suggested that it is confusing to have the applicability of Rule 16(c)
13 addressed within a subsection to Rule 16(c) itself. The Committee formed a
14 subcommittee to consider this concern and whether any other clarifications should
15 be made to Rule 16. During the work of the subcommittee, another query came in
16 from the same member of the State Bar about striking the word “proposed” from the
17 Forms associated with Rule 16. This suggestion came in response to an observation
18 from a judge that the submission of proposed orders that include the word
19 “proposed” in the caption results in the need for trial courts to modify every such
20 order to delete the word “proposed” before issuance.
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II. THE PROPOSED AMENDMENTS TO RULE 16 AND ITS FORMS.

a. Rule 16(c)(8)(A)

Rule 16(c)(8)(A) addresses the applicability of Rule 16(b) (about the required early meeting and tiering) and 16(c) (about the joint report and proposed scheduling order) to actions subject to compulsory arbitration. Rule 16(c)(8)(B) addresses the applicability of Rules 16(b) and 16(c) to actions seeking certain types of relief, such as change of name, enforcement of judgment, restoration of civil rights, etc.

The State Bar found there was merit to relocating Rule 16(c)(8)(A) and (B) for two reasons. First, as urged by the member of the State Bar who originated this suggestion, the inclusion of exceptions to the applicability of Rule 16(c) within Rule 16(c) itself has confused some practitioners. Second, the applicability of Rule 16(b) may be overlooked in its current location at the end of a separate and lengthy subsection 16(c). The State Bar member had suggested relocating these two subsections into a new Rule 16(d) and renumbering the subsequential subsections of Rule 16. The State Bar decided instead that the optimal place for these subsections would be in new subsections at the end of Rule 16. The proposed changes thus move current Rule 16(c)(8)(A) to proposed Rule 16(l) and moves current Rule 16(c)(8)(B) to proposed Rule 16(k). This placement at the end of Rule 16's existing subsections – rather than relocating the provisions to a new Rule 16(d) – avoids causing a cascade

1 of Rule subsection renumbering and also avoids requiring numerous court forms to
2 be updated with new references.

3
4 **b. Rules 16(b) and 16(c)**

5 In order to prevent these proposed Rule 16(k) and 16(l) subsections from
6 being overlooked at the end of Rule 16, the State Bar proposes adding a brief preface
7 to Rules 16(b) and 16(c): “Except as provided in Rule 16(k)” is added to Rule
8 16(b)(1) and “Except as provided in Rule 16(k) and (l)” is added to Rule 16(c)(1).
9 These prefaces will alert practitioners to the fact that applicability of those rules is
10 discussed later in Rule 16 and will direct them to the specific subsections.

11
12 **c. Rule 16(c)(1)**

13 The State Bar proposes rearranging the first sentence of Rule 16(c)(1) for
14 clarity. With the addition of the proposed preface to Rule 16(c)(1), the previous
15 preface becomes ambiguous in its current position. Simply relocating the phrase “no
16 later than 14 days after the Early Meeting” to the end of the first sentence restores
17 clarity to the sentence.

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20 **d. Rule 16(k)**

21 Because this draft moves current Rule 16(c)(8)(B) to Rule 16(k) the actions
22 listed are enumerated with numbers (1) through (13), rather than lowercase Roman
23 numerals (i) through (xiii). The text of this section is otherwise unchanged.

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1 **e. Rule 16(l)**

2 The State Bar proposes adding a sentence to proposed Rule 16(l) to require
3 the parties in compulsory arbitration to use the procedures in Rule 16(c)(6)(B) if
4 they disagree as to the appropriate discovery tier. Current Rule 16(c)(8)(A) states
5 that the requirements of Rule 16(c) do not apply to actions subject to compulsory
6 arbitration. However, in examining Rule 16, the State Bar considered that the
7 procedures in Rule 16(c)(6)(B) should be used by parties in compulsory arbitration
8 if there is a discovery tier dispute. Proposed Rule 16(l) addresses this with the
9 addition of a single sentence at its end: “The parties must use the procedures set forth
10 in Rule 16(c)(6)(B) if they disagree as to the appropriate tier.”
11
12

13 **f. Forms 11(b), 12(b), 13(b), 14(b)**

14 During the course of the Committee’s work, a suggestion came in to strike the
15 word “proposed” from the title and caption of Forms 11(b), 12(b), 13(b), and 14(b).
16 When practitioners use the current forms, trial courts must spend time editing
17 proposed orders to delete the word “proposed” from the caption. This is a repetitive
18 and needless administrative burden, especially when the orders might otherwise
19 require no other edits before issuance. The State Bar believes that deleting the word
20 “proposed” from the titles and captions of the forms will not cause confusion with
21 actual issued orders because the proposed orders will be lodged and will not bear the
22 judge’s signature until actually issued. Indeed, some practitioners already take it
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1 upon themselves to delete the word “proposed” from their proposed orders, which
2 alleviates the administrative burden and has not caused confusion. Accordingly,
3 revising the forms as proposed would help resolve the inconsistency among
4 practitioners and reduce unnecessary administrative burden. For the sake of
5 consistency, this draft proposes changing references to the “Proposed Scheduling
6 Order” to “Scheduling Order” in the heading of Rule 16(c) and “proposed
7 Scheduling Order” in the text of Rule 16(c)(1), 16(c)(2), 16(c)(3), 16(c)(4), 16(c)(7),
8 and 16(h)(1)(E).
9

11 CONCLUSION

12 The State Bar believes the proposed amendments to Rule 16 will improve
13 the structure of the rule, provide clarity as to the applicability of Rules 16(b) and
14 (c), and reduce administrative burden on the judiciary. The State Bar of Arizona
15 respectfully requests that the Court amend Rule 16 as set forth in the attached
16 Appendices.
17
18

19 RESPECTFULLY SUBMITTED this 10th day of January, 2024.

21 

22 Lisa M. Panahi
23 General Counsel
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25

Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this 10th day of January, 2024.

by: PSeguin

Appendix A

(Please note: deletions are reflected by ~~striketrough~~ and additions are reflected by underline.)

Rule 16. Scheduling and Management of Actions

(a) [No change.]

(b) Required Early Meeting About Expected Course of Case, Tiering.

(1) *Timing; Purpose.* Except as provided in Rule 16(k), Aat the earliest practicable time, but no later than 30 days after a party files an answer or files a motion directed at the complaint, or 120 days after the action commences--whichever occurs first--that party and the plaintiff must meet and confer about the anticipated course of their case, including the tier to which it should be assigned under Rule 26.2 and the subjects set forth in Rule 16(b)(2) and (c). The parties must discuss whether and how they can agree to streamline and limit claims and affirmative defenses to be asserted, discovery to be taken, and motions to be brought. The purpose of the conference is to plan cooperatively for the case, and to facilitate the case's placement in one of three tiers discovery. The attorneys of record and all unrepresented parties who have appeared in the action are jointly responsible for arranging and participating in the Early Meeting.

(2) [No change.]

(c) Filing of Joint Report and ~~Proposed~~ Scheduling Order.

(1) *Timing.* Except as provided in Rule 16(k) and (l) No later than 14 days after the Early Meeting, the parties must file a Joint Report and a ~~P~~proposed Scheduling Order no later than 14 days after the Early Meeting. The attorneys of record and all unrepresented parties who have appeared in the action are jointly responsible for attempting in good faith to agree on a ~~P~~proposed Scheduling Order, and for filing the Joint Report and the ~~P~~proposed Scheduling Order with the court. The court must issue a Scheduling Order as soon as practicable either after receiving the parties' Joint Report and ~~P~~proposed Scheduling Order or after holding a Scheduling Conference.

(2) *Content of Joint Report.* The Joint Report must state--to the extent practicable--the parties' positions on the subjects set forth in Rule 16(b)(2) and (c)(3) and must attach a proposed Scheduling Order. The parties are not required to describe their Early Meeting in the Joint Report, but may do so. Any summary must describe the case with respect to the characteristics in Rule 26.2(b) and (c) to be used in assigning cases to a discovery tier, and must set forth any agreements the parties have reached

to streamline the case. In the Joint Report, the parties are not permitted to discuss or criticize the rejection of proposed agreements or to argue that the other party has taken unreasonable positions. Unless ordered by the court, a summary must not exceed 4 pages of text, which length must be split evenly between separate statements of the parties if they do not agree on the summary's contents. The Joint Report must certify that the parties conferred in good faith, either in person or by telephone as required by Rule 7.1(h), regarding the subjects set forth in Rule 16(b)(2) and (c)(3).

(3) *Content of ~~Proposed~~ Scheduling Order.* The proposed Scheduling Order must state the discovery tier to which the case is assigned, and must specify deadlines for the following by calendar date, month, and year:

- (A) serving initial disclosures under Rule 26.1 if they have not already been served;
- (B) identifying areas of expert testimony;
- (C) identifying and disclosing expert witnesses and their opinions under Rule 26.1(d);
- (D) propounding written discovery;
- (E) disclosing nonexpert witnesses;
- (F) completing depositions;
- (G) completing all discovery other than depositions;
- (H) final supplementation of Rule 26.1 disclosures;
- (I) unless the court orders otherwise for good cause, a deadline for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced, but in no event later than 60 days after the date discovery is set to complete consistent with the discovery tier to which the case is assigned under Rule 26.2(f);
- (J) filing dispositive motions;
- (K) a proposed trial date; and
- (L) the anticipated number of days for trial.

(4) *Dates Certain.* The Scheduling Order must include calendar deadlines specifying the month, date, and year for each of the items included in the ~~P~~proposed Scheduling Order, consistent with the discovery tier to which the case is assigned under Rule 26.2(f). The Scheduling Order must also set either: (A) a trial date; or (B) a date for

a Trial-Setting Conference under Rule 16(e) at which a trial date may be set. Absent leave of court, no trial may be set unless the parties certify that they engaged in a settlement conference or private mediation, or that they will do so by a date certain approved by the court. The Scheduling Order also may address other appropriate matters.

(5) – (6) [No change.]

(7) *Forms*. The parties must file the Joint Report and the ~~P~~proposed Scheduling Order using the forms approved by the Supreme Court and set forth in Rule 84, Forms 11 through 13. They must use Forms 11(a) and (b) for Tier 1 cases, Forms 12(a) and (b) for Tier 2 cases, and Forms 13(a) and (b) for Tier 3 cases. The form of proposed Scheduling Order filed should *not* include the word “proposed” in the title.

~~(8) *Applicability*. The requirements of Rule 16(b) and (c) apply to all civil actions except:~~

~~(A) the requirements of Rule 16(b) apply to actions subject to compulsory arbitration under Rule 72(b), but the requirements of Rule 16(c) do not. In actions subject to compulsory arbitration, no later than 14 days after the Early Meeting, the parties must file a Report of Early Meeting stating the date(s) on which the Early Meeting occurred, and containing either a proposed stipulation to a discovery tier, or the parties' positions regarding the appropriate discovery tier. The Report of Early Meeting must attach a good faith consultation certificate under Rule 7.1(h); and~~

~~(B) the requirements of Rule 16(b) and (c) do not apply to actions seeking the following relief:~~

- ~~(i) change of name;~~
- ~~(ii) forcible entry and detainer;~~
- ~~(iii) enforcement, domestication, transcript, or renewal of a judgment;~~
- ~~(iv) an order pertaining to a subpoena sought under Rule 45.1(e)(2);~~
- ~~(v) restoration of civil rights;~~
- ~~(vi) injunction against harassment or workplace harassment;~~
- ~~(vii) delayed birth certificate;~~
- ~~(viii) amendment of birth certificate or marriage license;~~
- ~~(ix) civil forfeiture;~~

- ~~(x) distribution of excess proceeds;~~
- ~~(xi) review of a decision of an agency or a court of limited jurisdiction;~~
- ~~(xii) declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2; and~~
- ~~(xiii) petitions under Rule 45.2(e).~~

(d) – (g) [No change.]

(h) Sanctions.

(1) *Generally.* Except on a showing of good cause, the court--on motion or on its own--must enter such orders as are just, including, among others, any of the orders in Rule 37(b)(2)(A)(ii) through (vii), if a party or attorney:

(A) fails to obey a scheduling or pretrial order or fails to meet the deadlines set in the order;

(B) fails to appear at a Scheduling Conference, Trial-Setting Conference, or Trial Management Conference;

(C) is substantially unprepared to participate in a Scheduling Conference, Trial-Setting Conference, or Trial Management Conference;

(D) fails to participate in good faith in a Scheduling Conference, Trial-Setting Conference, or Trial Management Conference; or

(E) fails to participate in good faith in the preparation of a Joint Report and Proposed Scheduling Order or a Joint Pretrial Statement.

(2) [No change.]

(3) [No change.]

(i) – (j) [No change.]

(k) Applicability. The requirements of Rule 16(b) and (c) do not apply to actions seeking the following relief:

(1) change of name;

(2) forcible entry and detainer;

(3) enforcement, domestication, transcript, or renewal of a judgment;

(4) an order pertaining to a subpoena sought under Rule 45.1(e)(2);

(5) restoration of civil rights;

- (6) injunction against harassment or workplace harassment;
- (7) delayed birth certificate;
- (8) amendment of birth certificate or marriage license;
- (9) civil forfeiture;
- (10) distribution of excess proceeds;
- (11) review of a decision of an agency or a court of limited jurisdiction;
- (12) declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2; and
- (13) petitions under Rule 45.2(e).

(l) Compulsory Arbitration. The requirements of Rule 16(b) apply to actions subject to compulsory arbitration under Rule 72(b), but the requirements of Rule 16(c) do not. In actions subject to compulsory arbitration, no later than 14 days after the Early Meeting, the parties must file a Report of Early Meeting stating the date(s) on which the Early Meeting occurred, and containing either a proposed stipulation to a discovery tier, or the parties' positions regarding the appropriate discovery tier. The Report of Early Meeting must attach a good faith consultation certificate under Rule 7.1(h). The parties must use the procedures set forth in Rule 16(c)(6)(B) if they disagree as to the appropriate tier.

16 A.R.S. Rules of Civil Procedure, Form 11(b)
Form 11(b). ~~Proposed~~ Scheduling Order: Tier 1 Case

Currentness

In the Superior Court of Arizona
_____ County

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Plaintiffs

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Case number

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v

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~~Proposed~~ Scheduling Order

)

(Tier 1 case)

Defendants

)

)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

This case is assigned to discovery Tier 1, pursuant to Rule 26.2.

1. Initial disclosure: The parties have provided their initial disclosure statements, or will provide them no later than _____.

2. Witness disclosure: The parties will disclose lay witnesses by _____. The parties will identify any expert witnesses and the experts' areas of testimony, and will simultaneously disclose the opinions of those expert witnesses, by _____. (Alternative: Plaintiff will disclose an expert's identity, area of testimony, and opinions by _____, and Defendant will disclose an expert's identity, area of testimony, and opinions by _____.) The parties will simultaneously disclose the experts' rebuttal opinions.

3. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial if not disclosed in a timely manner, except for good cause shown or upon a written or an on-the-record agreement of the parties.

4. Discovery deadlines: Tier 1 cases are permitted 120 days in which to complete discovery. The time to complete discovery runs from the date of the Early Meeting. The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

5. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall

personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

6. Dispositive motions and trial: The parties shall file all dispositive motions by _____. The parties propose a trial date of no later than _____, and anticipate the number of days for trial to be _____ days.

7. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Participants shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other attorneys and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

8. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

9. Further orders: The court further orders as follows:

_____.

Date

Judge of the Superior Court

16 A.R.S. Rules of Civil Procedure, Form 12(b)
Form 12(b). ~~Proposed~~ Scheduling Order: Tier 2 Case

Currentness

In the Superior Court of Arizona
_____ County

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Plaintiffs

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Case number

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v

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~~Proposed~~ Scheduling Order

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Defendants

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(Tier 2 case)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

This case is assigned to discovery Tier 2, pursuant to Rule 26.2.

1. Initial disclosure: The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. Expert witness disclosure: The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. Lay (non-expert) witness disclosure: The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: Tier 2 cases are permitted 180 days in which to complete discovery. The time to complete discovery runs from the date of the Early Meeting. The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____.

(“Complete discovery” includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. *Settlement conference or private mediation:* [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. *Dispositive motions and trial:* The parties shall file all dispositive motions by _____. The parties propose a trial date of no later than _____, and anticipate the number of days for trial to be _____ days.

8. *Trial setting conference:* On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division’s telephone number] at the scheduled time.

9. *Firm dates:* No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court’s consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

10. Further orders: The court further orders as follows:

Date

Judge of the Superior Court

16 A.R.S. Rules of Civil Procedure, Form 13(b)
Form 13(b). ~~Proposed~~ Scheduling Order: Tier 3 Case

Currentness

In the Superior Court of Arizona
_____ County

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Plaintiffs

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Case number

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v

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~~Proposed~~ Scheduling Order

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(Tier 3 case)

Defendants

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)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

This case is assigned to discovery Tier 3, pursuant to Rule 26.2.

1. Initial disclosure: The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. Expert witness disclosure: The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. Lay (non-expert) witness disclosure: The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: Tier 3 cases are permitted 240 days in which to complete discovery. The time to complete discovery runs from the date of the Early Meeting. The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. Dispositive motions and trial: The parties shall file all dispositive motions by _____. The parties propose a trial date of no later than ____, and anticipate the number of days for trial to be ____ days.

8. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

9. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

10. Further orders: The court further orders as follows:

Date

Judge of the Superior Court

16 A.R.S. Rules of Civil Procedure, Form 14(b)

Form 14(b). ~~Proposed~~ Scheduling Order: Commercial Case

Currentness

In the Superior Court of Arizona
_____ County

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Plaintiffs

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Case number

)

v

)

~~Proposed~~ Scheduling Order

)

(Commercial case)

Defendants

)

)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

1. Initial disclosure: The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. Expert witness disclosure: The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. Lay (non-expert) witness disclosure: The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue

a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. Dispositive motions: The parties shall file all dispositive motions by _____.

8. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

9. Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

10. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

11. Further orders: The court further orders as follows:

.....

Date

Judge of the Superior Court

Appendix B

Rule 16. Scheduling and Management of Actions

(a) [No change.]

(b) Required Early Meeting About Expected Course of Case, Tiering.

(1) *Timing; Purpose.* Except as provided in Rule 16(k), at the earliest practicable time, but no later than 30 days after a party files an answer or files a motion directed at the complaint, or 120 days after the action commences--whichever occurs first--that party and the plaintiff must meet and confer about the anticipated course of their case, including the tier to which it should be assigned under Rule 26.2 and the subjects set forth in Rule 16(b)(2) and (c). The parties must discuss whether and how they can agree to streamline and limit claims and affirmative defenses to be asserted, discovery to be taken, and motions to be brought. The purpose of the conference is to plan cooperatively for the case, and to facilitate the case's placement in one of three tiers discovery. The attorneys of record and all unrepresented parties who have appeared in the action are jointly responsible for arranging and participating in the Early Meeting.

(2) [No change.]

(c) Filing of Joint Report and Scheduling Order.

(1) *Timing.* Except as provided in Rule 16(k) and (l), the parties must file a Joint Report and a proposed Scheduling Order no later than 14 days after the Early Meeting. The attorneys of record and all unrepresented parties who have appeared in the action are jointly responsible for attempting in good faith to agree on a proposed Scheduling Order, and for filing the Joint Report and the proposed Scheduling Order with the court. The court must issue a Scheduling Order as soon as practicable either after receiving the parties' Joint Report and proposed Scheduling Order or after holding a Scheduling Conference.

(2) [No change.]

(3) *Content of Scheduling Order.* The proposed Scheduling Order must state the discovery tier to which the case is assigned, and must specify deadlines for the following by calendar date, month, and year:

(A) serving initial disclosures under Rule 26.1 if they have not already been served;

(B) identifying areas of expert testimony;

(C) identifying and disclosing expert witnesses and their opinions under Rule 26.1(d);

(D) propounding written discovery;

(E) disclosing nonexpert witnesses;

(F) completing depositions;

(G) completing all discovery other than depositions;

(H) final supplementation of Rule 26.1 disclosures;

(I) unless the court orders otherwise for good cause, a deadline for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced, but in no event later than 60 days after the date discovery is set to complete consistent with the discovery tier to which the case is assigned under Rule 26.2(f);

(J) filing dispositive motions;

(K) a proposed trial date; and

(L) the anticipated number of days for trial.

(4) *Dates Certain*. The Scheduling Order must include calendar deadlines specifying the month, date, and year for each of the items included in the proposed Scheduling Order, consistent with the discovery tier to which the case is assigned under Rule 26.2(f). The Scheduling Order must also set either: (A) a trial date; or (B) a date for a Trial-Setting Conference under Rule 16(e) at which a trial date may be set. Absent leave of court, no trial may be set unless the parties certify that they engaged in a settlement conference or private mediation, or that they will do so by a date certain approved by the court. The Scheduling Order also may address other appropriate matters.

(5) – (6) [No change.]

(7) *Forms*. The parties must file the Joint Report and the proposed Scheduling Order using the forms approved by the Supreme Court and set forth in Rule 84, Forms 11 through 13. They must use Forms 11(a) and (b) for Tier 1 cases, Forms 12(a) and (b) for Tier 2 cases, and Forms 13(a) and (b) for Tier 3 cases. The form of proposed Scheduling Order filed should *not* include the word “proposed” in the title.

(d) – (g) [No change.]

(h) Sanctions.

(1) *Generally*. Except on a showing of good cause, the court--on motion or on its own--must enter such orders as are just, including, among others, any of the orders in Rule 37(b)(2)(A)(ii) through (vii), if a party or attorney:

(A) fails to obey a scheduling or pretrial order or fails to meet the deadlines set in the order;

(B) fails to appear at a Scheduling Conference, Trial-Setting Conference, or Trial Management Conference;

(C) is substantially unprepared to participate in a Scheduling Conference, Trial-Setting Conference, or Trial Management Conference;

(D) fails to participate in good faith in a Scheduling Conference, Trial-Setting Conference, or Trial Management Conference; or

(E) fails to participate in good faith in the preparation of a Joint Report and proposed Scheduling Order or a Joint Pretrial Statement.

(2) *Award of Expenses*. Unless the court finds the conduct substantially justified or that other circumstances make an award of expenses unjust, the court must--in addition to or in place of any other sanction--require the party, the attorney representing the party, or both, to pay:

(A) another party's reasonable expenses, including attorney's fees, incurred as a result of the conduct;

(B) an assessment to the clerk; or

(C) both.

(3) *Trial Date*. The fact that a trial date has not been set does not preclude sanctions under this rule, including the sanction of excluding from evidence untimely disclosed information.

(i) – (j) [No change.]

(k) Applicability. The requirements of Rule 16(b) and (c) do not apply to actions seeking the following relief:

(1) change of name;

(2) forcible entry and detainer;

(3) enforcement, domestication, transcript, or renewal of a judgment;

(4) an order pertaining to a subpoena sought under Rule 45.1(e)(2);

- (5) restoration of civil rights;
- (6) injunction against harassment or workplace harassment;
- (7) delayed birth certificate;
- (8) amendment of birth certificate or marriage license;
- (9) civil forfeiture;
- (10) distribution of excess proceeds;
- (11) review of a decision of an agency or a court of limited jurisdiction;
- (12) declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2; and
- (13) petitions under Rule 45.2(e).

(I) Compulsory Arbitration. The requirements of Rule 16(b) apply to actions subject to compulsory arbitration under Rule 72(b), but the requirements of Rule 16(c) do not. In actions subject to compulsory arbitration, no later than 14 days after the Early Meeting, the parties must file a Report of Early Meeting stating the date(s) on which the Early Meeting occurred, and containing either a proposed stipulation to a discovery tier, or the parties' positions regarding the appropriate discovery tier. The Report of Early Meeting must attach a good faith consultation certificate under Rule 7.1(h). The parties must use the procedures set forth in Rule 16(c)(6)(B) if they disagree as to the appropriate tier.

16 A.R.S. Rules of Civil Procedure, Form 11(b)

Form 11(b). Scheduling Order: Tier 1 Case

Currentness

In the Superior Court of Arizona

_____ County

)

Plaintiffs

)

Case number

)

v

)

Scheduling Order

)

(Tier 1 case)

Defendants

)

)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

This case is assigned to discovery Tier 1, pursuant to Rule 26.2.

1. Initial disclosure: The parties have provided their initial disclosure statements, or will provide them no later than _____.

2. Witness disclosure: The parties will disclose lay witnesses by _____. The parties will identify any expert witnesses and the experts' areas of testimony, and will simultaneously disclose the opinions of those expert witnesses, by _____. (Alternative: Plaintiff will disclose an expert's identity, area of testimony, and opinions by _____, and Defendant will disclose an expert's identity, area of testimony, and opinions by _____.) The parties will simultaneously disclose the experts' rebuttal opinions.

3. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial if not disclosed in a timely manner, except for good cause shown or upon a written or an on-the-record agreement of the parties.

4. Discovery deadlines: Tier 1 cases are permitted 120 days in which to complete discovery. The time to complete discovery runs from the date of the Early Meeting. The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

5. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall

personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

6. Dispositive motions and trial: The parties shall file all dispositive motions by _____. The parties propose a trial date of no later than _____, and anticipate the number of days for trial to be _____ days.

7. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Participants shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other attorneys and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

8. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

9. Further orders: The court further orders as follows:

_____.

Date

Judge of the Superior Court

16 A.R.S. Rules of Civil Procedure, Form 12(b)

Form 12(b). Scheduling Order: Tier 2 Case

Currentness

In the Superior Court of Arizona

_____ County

)

Plaintiffs

)

Case number

)

v

)

Scheduling Order

)

Defendants

)

)

(Tier 2 case)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

This case is assigned to discovery Tier 2, pursuant to Rule 26.2.

1. Initial disclosure: The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. Expert witness disclosure: The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. Lay (non-expert) witness disclosure: The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: Tier 2 cases are permitted 180 days in which to complete discovery. The time to complete discovery runs from the date of the Early Meeting. The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____.

(“Complete discovery” includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. *Settlement conference or private mediation:* [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. *Dispositive motions and trial:* The parties shall file all dispositive motions by _____. The parties propose a trial date of no later than _____, and anticipate the number of days for trial to be _____ days.

8. *Trial setting conference:* On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division’s telephone number] at the scheduled time.

9. *Firm dates:* No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court’s consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

10. Further orders: The court further orders as follows:

Date

Judge of the Superior Court

16 A.R.S. Rules of Civil Procedure, Form 13(b)

Form 13(b). Scheduling Order: Tier 3 Case

Currentness

In the Superior Court of Arizona

_____ County

)

Plaintiffs

)

Case number

)

v

)

Scheduling Order

)

(Tier 3 case)

Defendants

)

)

Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

This case is assigned to discovery Tier 3, pursuant to Rule 26.2.

1. Initial disclosure: The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. Expert witness disclosure: The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. Lay (non-expert) witness disclosure: The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: Tier 3 cases are permitted 240 days in which to complete discovery. The time to complete discovery runs from the date of the Early Meeting. The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. Dispositive motions and trial: The parties shall file all dispositive motions by _____. The parties propose a trial date of no later than ____, and anticipate the number of days for trial to be ____ days.

8. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

9. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

10. Further orders: The court further orders as follows:

Date

Judge of the Superior Court

16 A.R.S. Rules of Civil Procedure, Form 14(b)
Form 14(b). Scheduling Order: Commercial Case

Currentness

In the Superior Court of Arizona
_____ County

)

Plaintiffs) Case number

)

v) **Scheduling Order**

) *(Commercial case)*

Defendants)

) Assigned to:

Upon consideration of the parties' Joint Report, the court orders as follows:

1. Initial disclosure: The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. Expert witness disclosure: The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. Lay (non-expert) witness disclosure: The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue

a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. Dispositive motions: The parties shall file all dispositive motions by _____.

8. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

9. Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

10. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

11. Further orders: The court further orders as follows:

.....

Date

Judge of the Superior Court