Lisa M. Panahi, Bar No. 023421
Acting General Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
(602) 340-7236

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	Supreme Court No. R-17-
PETITION TO AMEND RULES 16, 16.1, 26.2, 38 AND 38.1 OF THE ARIZONA RULES OF CIVIL PROCEDURE	**PETITION**

Pursuant to Rule of the Supreme Court of Arizona 28(A), the State Bar of Arizona petitions the Court to Amend the Arizona Rules of Civil Procedure 16, 16.1, 26.2, 38 and 38.1. The text of the proposed amendments appears in the attachments to this Petition.

INTRODUCTION

Beginning in the mid-1980's, Arizona witnessed a proliferation of civil rules designed to address problems with the litigation of civil cases on an *ad hoc* basis. Several sets of uniform rules of practice were adopted during this time, including the *Uniform Rules of Practice for Medical Malpractice Cases*, which went into effect in 1990. Many of the uniform rules ultimately proved to be confusing and inconsistent

with the *Arizona Rules of Civil Procedure*. In response to these concerns, the State Bar of Arizona's Civil Practice and Procedure Committee proposed consolidating the various uniform rules with the *Arizona Rules of Civil Procedure*. In 2000, the uniform rules, including the *Uniform Rules of Practice for Medical Malpractice Cases*, were either integrated into the *Arizona Rules of Civil Procedure*, integrated into the *Rules of the Arizona Supreme Court*, or abrogated as being duplicative or outmoded. In the course of that process, procedural rules related primarily to case management for medical malpractice cases were kept separate from those rules applicable to all other cases.

With the continued evolution of Arizona's civil practices and procedures, whatever need there may have been in the past for special rules related solely to medical malpractice cases has diminished. Indeed, there are now few substantive differences between the procedural rules governing medical malpractice cases and those governing all other cases. More importantly, there seems to be little, if any, practical or substantive need for separate sets of rules.

Therefore, consistent with the consolidation of civil rules that became effective in December 2000, the State Bar of Arizona recommends the further consolidation of primarily case management rules to eliminate what has become an anachronistic and unnecessary distinction between medical malpractice cases and all other types of cases.

PROPOSED AMENDMENTS

Rule 16

Rule 16 describes the procedures parties must follow to obtain a scheduling order governing the expected progress of a case. While the procedures under Rule 16(e) applicable to medical malpractice cases differ from those under Rules 16(b)-(d) governing all other cases, for the most part, they address the same issues and achieve the same result. However, the State Bar believes the more recently thought out procedures described in Rules 16(b)-(d) are more sensible and give a court and parties more flexibility to effectively manage the various nuances of each case. Accordingly, the State Bar recommends Rule 16(e) be abrogated and its provisions integrated into Rules 16(b)-(d).

Rule 16.1

Under Rule 16.1, settlement conferences are mandatory in medical malpractice cases and permissive in all other cases. Since the 2000 amendments, however, pre-trial alternative dispute resolution proceedings, including formal attempts at settlement, have become the norm for all cases, not just medical malpractice cases. The State Bar's proposed amendments to Rule 16.1 would eliminate the differences in settlement conference procedures between medical malpractice cases and all other cases, but it would retain its permissive nature.

The State Bar does not believe this streamlining of the rules will have any discernable effect on settlements in medical malpractice cases given the current culture and requirement of most courts that the parties participate in formal pre-trial settlement proceedings. It also restores a court's discretion to manage private settlement attempts in medical malpractice cases in the way it best sees fit in the rare instance where a forced settlement attempt might not make sense, as it now does in all other cases.

The proposed amendments to Rule 16.1(b) and (c) also restore a court's discretion to manage the settlement conferences it conducts, recognizing that, like a private mediator, a court is in the best position to determine the procedures that would be most effective in promoting the resolution of cases it attempts to settle.

Rule 26.2

Rule 26.2, governing the early exchange of medical records in medical malpractice cases, is one rule specifically governing medical malpractice cases that should be left largely intact. However, the State Bar believes it should be amended so that an answer or motion filed by any defendant, rather than all defendants, triggers the obligation to exchange records between the plaintiff and that answering or moving defendant. This insures the exchange of medical records is not impeded or delayed by the failure of a defendant to answer or respond to the complaint.

The State Bar also believes the requirement of simultaneous disclosure of standard of care and causation experts set forth in Rule 16(e)(2) is another rule unique to medical malpractice cases that should not be integrated into the rules governing all other cases. However, it should be moved to Rule 26.2(b) so practitioners can find those rules specific to medical malpractice cases in one place. While the State Bar questions whether the timing of expert disclosures in medical malpractice cases should be different from all other cases, it felt that consideration of the current disclosure requirements went beyond the scope of the consolidation recommended in this Petition.

Rule 38

Rule 38(b)(2) was only recently added to correct an oversight in a previous rules amendment. Rule 38(b)(2) created a presumption of a jury trial in medical malpractice cases from which the parties could opt out rather than requiring a party to request a jury trial as a party must under Rule 38(b)(1). While a request for jury trial is made by a defendant in virtually every medical malpractice case, the proposed consolidation of the rules corrects the problem Rule 38(b)(2) was meant to address. Since there is no longer a technical reason to deviate from the previous practice in medical malpractice cases, the State Bar recommends consolidating Rules 38(b)(1) and (2) into a single Rule 38(b) that reestablishes the former practice of requiring a demand for jury trial in all cases.

Rule 38.1

Rule 38.1(d) governs the dismissal of inactive cases. The State Bar recommends it be amended to apply the dismissal calendar procedures to all cases, thus eliminating the special procedures that apply to medical malpractice cases.

CONCLUSION

These proposed changes largely conform the procedures governing medical malpractice cases to those governing all other cases, eliminating superfluous rules, and simplifying procedures by bringing them up to date with current practice. The State Bar of Arizona respectfully requests that the Court adopt the proposed changes.

RESPECTFULLY SUBMITTED this 4th day of January, 2017.

Lisa M. Panahi
Acting General Counsel

Electronic copy filed with the
Clerk of the Arizona Supreme Court
this 10th day of January, 2017.
by:

APPENDIX A

Rule 16. Scheduling and Management of Actions

(b) Joint Report and Proposed Scheduling Order.

(1) ***Applicability.*** This Rule 16(b) applies to all civil actions except:

~~**(A)** medical malpractice actions;~~

(A~~B~~) actions subject to compulsory arbitration under Rule 72(b);

(B~~C~~) actions designated complex under Rule 8(h); and

(C~~D~~) 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; and

(xii) declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2.

(2) ***Conference of the Parties.*** No later than 60 days after any defendant has filed an answer to the complaint or 180 days after the action commences—whichever occurs first—the parties must confer regarding the subjects set forth in Rule 16(d).

(3) ***Filing of Joint Report and Proposed Scheduling Order.*** No later than 14 days after the parties confer under Rule 16(b)(2), they must file a Joint Report and a Proposed Scheduling Order with the court stating—to the extent practicable—their positions on the subjects set forth in Rule 16(d) and proposing a Scheduling Order that specifies 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(a)(6);

(D) propounding written discovery;

(E) disclosing non-expert witnesses;

(F) completing depositions;

(G) completing all discovery other than depositions;

(H) final supplementation of Rule 26.1 disclosures;

(I) holding a Rule 16.1 settlement conference or private mediation;

(J) filing dispositive motions;

(K) a proposed trial date; and

(L) the anticipated number of days for trial.

(4) ***Requirements of Joint Report and Proposed Scheduling Order.*** Unless the court orders otherwise for good cause, the parties' Proposed Scheduling Order must set the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced. The Joint Report must certify that the parties conferred regarding the subjects set forth in Rule 16(d). The attorneys of record and all unrepresented parties that have appeared in the action are jointly responsible for arranging and participating in the conference, 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.

(5) ***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.

(A) *Expedited.* The parties must use Forms 11(a) and (b) (Expedited Case) when all of the following factors apply:

(i) every party, except any defaulted parties, has filed an answer;

(ii) there are no third-party claims;

(iii) the parties intend to have no more than one expert per side; and

(iv) each party intends to call no more than 4 lay witnesses at trial.

(B) *Standard.* The parties must use Forms 12(a) and (b) (Standard Case) if the action is ineligible for management as an Expedited Case or Complex Case.

(C) *Complex.* The parties must use Forms 13(a) and (b) (Complex Case) if the factors enumerated in Rule 8(h)(2) apply, regardless of whether the court has designated the action as complex.

(6) ***Case Designation.*** On any party's request, the court may designate an action as expedited, standard, or complex. The court should endeavor to conduct trial in expedited actions within 12 months after the action commenced.

(c) Scheduling Orders.

(1) ***Timing.*** The court must issue a Scheduling Order as soon as practicable either after receiving the parties' Joint Report and Proposed Scheduling Order under Rule 16(b) or after holding a Scheduling Conference.

(2) ***Contents.*** The Scheduling Order must include calendar deadlines specifying the month, date, and year for each of the items included in the Proposed Scheduling Order submitted under Rule 16(b). The Scheduling Order must also set either: (A) a trial date; or (B) a date for a Trial-Setting Conference under Rule 16(f) 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 direct that a party must request a conference with the court before filing a discovery or disclosure motion. It also may address other appropriate matters.

(3) ***Modification of Dates Established by Scheduling Order.*** The parties may modify the dates established in a Scheduling Order that govern court filings or hearings only by court order for good cause. Once a trial date is set, the parties may modify that date only under Rule 38.1.

(d) Scheduling Conferences ~~in Non-Medical Malpractice Actions~~. ~~Except in medical malpractice actions, on~~ At a party's written request the court must—or on its own the court may—set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) determine what additional disclosures, discovery and related activities will be undertaken and establish a schedule for those activities;

(2) discuss which form of Joint Report and Scheduling Order is appropriate under Rule 16(b)(3);

(3) determine whether the court should enter orders addressing one or more of the following:

(A) setting forth any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced and, if appropriate, the sharing or shifting of costs incurred by the parties in producing the information;

(B) setting forth any measures the parties must take to preserve discoverable documents or electronically stored information; and

(C) adopting any agreements the parties reach for asserting claims of privilege or of protection for work-product materials after production;

(4) determine a schedule for disclosing expert witnesses and whether the parties should be required to provide signed reports from retained or specially employed experts

setting forth a complete statement of all opinions, the basis and reasons for the opinions, and the facts or data considered by the expert in forming the opinions;

(5) determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D);

(6) determine a date for disclosing non-expert witnesses and the order of their disclosure;

(7) determine a deadline for filing dispositive motions;

(8) resolve any discovery disputes;

(9) eliminate non-meritorious claims or defenses;

(10) permit amendment of the pleadings;

(11) assist in identifying those issues of fact that are still contested;

(12) obtain stipulations for the foundation or admissibility of evidence;

(13) determine the desirability of special procedures for managing the action;

(14) consider alternative dispute resolution and determine a deadline for the parties to participate in a settlement conference or private mediation;

(15) determine whether any time limits or procedures set forth in these rules or local rules should be modified or suspended;

(16) determine whether the parties have complied with Rule 26.1;

(17) determine a date for filing the Joint Pretrial Statement required by Rule 16(g);

(18) set a trial date and determine the anticipated number of days needed for trial;

(19) discuss any time limits on trial proceedings, juror notebooks, brief pre-voir dire opening statements, and preliminary jury instructions, and the effective management of documents and exhibits;

(20) determine how a verbatim record of future proceedings in the action will be made; and

(21) discuss other matters and enter other orders ~~that~~ the court deems appropriate.

~~**(c) Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Actions.** This Rule 16(e) applies in medical malpractice actions. Within 5 days after receiving answers or motions from all served defendants, a plaintiff must notify the court so that it can set a Comprehensive Pretrial Conference. Within 60 days after receiving the notice, the court must conduct a Comprehensive Pretrial Conference. At that conference, the court and the parties must:~~

~~**(1)** determine the additional disclosures, discovery, and related activities to be undertaken and a schedule for those activities. The schedule must include the depositions to be taken, any medical examination that a defendant desires to be~~

~~made of a plaintiff, and the additional documents, electronically stored information, and other materials to be exchanged. Except on the parties' stipulation or on motion showing good cause, only those depositions specifically authorized in the conference may be taken. On any defendant's request, the court must require an authorization to allow the parties to obtain copies of records previously produced under Rule 26.2(a)(2) or records ordered to be produced by the court. If records are obtained under such authorization, the party obtaining the records must furnish — at its sole expense — complete copies to all other parties;~~

~~**(2)** determine a schedule for disclosing standard of care and causation expert witnesses. Unless good cause is shown, such disclosure must be simultaneous and be made within 30 to 90 days after the Comprehensive Pretrial Conference, depending on the number and complexity of the issues. Unless good cause is shown, no motion for summary judgment based on the lack of expert testimony may be filed until after the date set for the simultaneous disclosure of expert witnesses;~~

~~**(3)** determine the order of and dates for disclosing all other expert and nonexpert witnesses. The deadlines for disclosing all witnesses, expert and nonexpert, must be at least 45 days before the close of discovery. Unless extraordinary circumstances are shown, the court must preclude any untimely disclosed witness from testifying at trial;~~

~~**(4)** determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D);~~

~~**(5)** determine whether additional nonuniform interrogatories and/or requests for admission or production are necessary and, if so, the number permitted;~~

~~**(6)** resolve any discovery disputes;~~

~~**(7)** discuss alternative dispute resolution, including mediation, and binding and nonbinding arbitration;~~

~~**(8)** assure compliance with A.R.S. § 12-570;~~

~~**(9)** set a date for a mandatory settlement conference;~~

~~**(10)** set a date for filing the Joint Pretrial Statement required by Rule 16(g);~~

~~**(11)** set a trial date and determine the anticipated number of days needed for trial;~~

~~**(12)** determine how a verbatim record of future proceedings in the action will be made; and~~

~~**(13)** discuss other matters and enter other orders that the court deems appropriate.~~

Rule 16.1. Settlement Conferences

(a) Generally. At a~~ny~~ party's request or on its own, a court may ~~hold~~ require the parties to participate in one or more pretrial settlement conferences, unless the action is a lower

court appeal or is subject to compulsory arbitration under Rule 72. ~~A pretrial settlement conference must be held in a medical malpractice action.~~

~~**(b) Deadlines and Scheduling.**~~

~~**(1)** ***Timing.***~~

~~**(A)** In a medical malpractice action, the court must schedule and conduct a settlement conference no earlier than 4 months after the Rule 16(e) conference and no later than 30 days before trial.~~

~~**(B)** In all other actions, the Scheduling Order sets the deadline for a settlement conference, unless the court orders otherwise.~~

~~**(2)** ***Scheduling and Planning.*** The order setting a settlement conference should include the date, time, and place of the conference, the deadline by which settlement conference memoranda must be submitted, and other matters the court deems appropriate. An order setting a settlement conference may not be modified except by court order for good cause.~~

(b~~c~~) Memoranda in Settlement Conferences ~~Memoranda~~ Conducted by the Court.

(1) ***Requirement and Timing.*** If a settlement conference is conducted by the court, ~~E~~each party must submit, but not file, a settlement conference memorandum to the court ~~at least~~no later than 5 days before the settlement conference. Unless the court orders otherwise, settlement conference memoranda must be served on every other party.

~~**(2)** ***Method of Submission.***~~

~~**(A)** In a medical malpractice action, a settlement conference memorandum must be filed and served on all other parties participating in the conference.~~

~~**(B)** In all other actions, a settlement conference memorandum must not be filed. Instead, it must be delivered under seal to the judge assigned to the action. Unless the court orders otherwise, the memorandum does not need to be served on the other parties.~~

(2~~3~~) ***Contents.*** ~~Each~~A settlement conference memorandum must provide:

(A) a general description of the claims, defenses, and issues in the action, and the party's position on each claim, defense, and issue;

(B) a general description of the evidence ~~that that~~ the party anticipates presenting at trial;

(C) a summary of any settlement negotiations that have already occurred;

(D) the party's assessment of the likely outcome if the action proceeds to trial; and

(E) any other information that might be helpful in settling the action.

Rule 26.2. Exchange of Medical Records and ~~Discovery Limits~~ Timing of Expert Disclosure in Medical Malpractice Actions

(a) Exchange of Medical Records.

(1) *By Plaintiffs.* Within 5 days after a ~~plaintiff notifies the court under Rule 16(e) that all served~~ defendant~~s~~ has~~ve either~~ filed an answer~~ed~~ or ~~filed~~ a motion~~s~~ in response to the complaint, the plaintiff must serve on that defendant~~s~~ copies of all of the plaintiff's available medical records relevant to the condition that is the subject matter of the action.

(2) *By Defendants.* Within 10 days after the plaintiff serves medical records under Rule 26.2(a)(1), ~~each~~a defendant must serve on the plaintiff copies of all of the plaintiff's available medical records relevant to the condition that is the subject matter of the action.

(3) *~~By Request~~Limitations.* ~~In place of serving copies of the above-described medical records, counsel may before the deadline for service of the records inquire of opposing counsel concerning the~~The parties may agree to limit the records ~~that opposing counsel wishes~~required to be produced under this rule~~and may then serve by the deadline copies of only those records specifically requested~~.

(b) Timing of Expert Disclosure. The parties must disclose the identities and opinions of standard of care and causation experts simultaneously, unless the parties agree or the court orders otherwise for good cause.

~~(b) Discovery Limits Before Comprehensive Pretrial Conference.~~

~~(1) *Generally.*~~ ~~Unless the parties agree or the court orders otherwise for good cause, the parties are limited to the following discovery before the Comprehensive Pretrial Conference under Rule 16(e) is held:~~

~~(A)~~ ~~service of the uniform interrogatories set forth in Rule 84, Form 4;~~

~~(B)~~ ~~service of 10 additional nonuniform interrogatories under Rule 33, with any subpart to a nonuniform interrogatory counting as a separate interrogatory;~~

~~(C)~~ ~~service of a request for production of documents under Rule 34, limited to the following items:~~

~~(i)~~ ~~a party's wage information if relevant;~~

~~(ii)~~ ~~written or recorded statements by any party or witness, including reports or statements of experts;~~

~~(iii)~~ ~~any exhibits the party intends to use at trial; and~~

~~(iv)~~ ~~incident reports; and~~

~~(D)~~ ~~depositions of the parties and any known liability experts.~~

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~~**(2) *Stipulations for Additional Discovery.*** A party may not unreasonably withhold a stipulation for additional discovery under Rule 26.2(b)(1). A party or counsel who unreasonably withholds a stipulation for additional discovery is subject to sanctions under Rule 26(f).~~

Rule 38. Right to a Jury Trial; Demand; Waiver

(a) Right Preserved. The right of trial by jury is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may obtain a jury trial ~~as follows:~~

> ~~**(1) Non-Medical Malpractice Actions.** In all actions other than a medical malpractice action, a party may obtain a jury trial~~ by filing and serving a written demand at anytime after the action is commenced, but no later than the date on which the court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b) ~~are~~is filed, whichever occurs first. The demand may not be combined with any other motion or pleading filed with the court.
>
> ~~**(2) Medical Malpractice Actions.** In a medical malpractice action, no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing a written stipulation, signed by all parties, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading.~~

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may—within 10 days after the demand is served or within a shorter time ordered by the court—serve a demand for jury trial on any other or all factual issues triable by jury.

(d) Waiver; Withdrawal. Except as provided in Rule 38(b)(2), a party waives a jury trial unless its demand is properly filed and served. A properly filed and served demand may be withdrawn only if all parties consent.

Rule 38.1. Setting Civil Actions for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar

(d) Dismissal Calendar.

(1) ***Placing an Action on the Dismissal Calendar.*** The clerk or court administrator must place a civil action on the Dismissal Calendar if 270 days have passed since the action was commenced, and:

(A) in an action other than ~~a medical malpractice action or~~an action assigned to arbitration, the parties have not filed a Joint Report and a Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b);

~~**(B)** in a medical malpractice action, the court has not set a date for a Comprehensive Pretrial Conference under Rule 16(e) and the parties have not filed a proposed scheduling order;~~ or

(B~~C~~) in an action~~s~~ assigned to arbitration, the arbitrator has not filed a notice of decision under Rule 76.

(2) ***Dismissal.*** If an action remains on the Dismissal Calendar for 60 days, the court must dismiss it without prejudice and enter an appropriate order regarding any bond or other posted security, unless, before the 60-day period expires:

(A) the parties file a Joint Report and a Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b);

~~**(B)** in a medical malpractice action, the court sets a date for a Comprehensive Pretrial Conference under Rule 16(e) or the parties file a proposed scheduling order;~~

(B~~C~~) in an action assigned to arbitration, the arbitrator files a notice of decision under Rule 76; or

(C~~D~~) the court, on motion showing good cause, orders the action to be continued on the Dismissal Calendar for a specified period of time without being dismissed.

(3) ***Notification.*** The clerk or court administrator, whoever is designated by the presiding superior court judge in the county, must promptly notify counsel in writing when an action is placed on the Dismissal Calendar, but they are not required to provide further notice before the court dismisses an action under Rule 38.1(d)(2).

APPENDIX B

Rule 16. Scheduling and Management of Actions

(b) Joint Report and Proposed Scheduling Order.

(1) ***Applicability.*** This Rule 16(b) applies to all civil actions except:

(A) actions subject to compulsory arbitration under Rule 72(b);

(B) actions designated complex under Rule 8(h); and

(C) 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);

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(xii) declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2.

(2) ***Conference of the Parties.*** No later than 60 days after any defendant has filed an answer to the complaint or 180 days after the action commences—whichever occurs first—the parties must confer regarding the subjects set forth in Rule 16(d).

(3) ***Filing of Joint Report and Proposed Scheduling Order.*** No later than 14 days after the parties confer under Rule 16(b)(2), they must file a Joint Report and a Proposed Scheduling Order with the court stating—to the extent practicable—their positions on the subjects set forth in Rule 16(d) and proposing a Scheduling Order that specifies 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(a)(6);

(D) propounding written discovery;

(E) disclosing non-expert witnesses;

(F) completing depositions;

(G) completing all discovery other than depositions;

(H) final supplementation of Rule 26.1 disclosures;

(I) holding a Rule 16.1 settlement conference or private mediation;

(J) filing dispositive motions;

(K) a proposed trial date; and

(L) the anticipated number of days for trial.

(4) ***Requirements of Joint Report and Proposed Scheduling Order.*** Unless the court orders otherwise for good cause, the parties' Proposed Scheduling Order must set the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced. The Joint Report must certify that the parties conferred regarding the subjects set forth in Rule 16(d). The attorneys of record and all unrepresented parties that have appeared in the action are jointly responsible for arranging and participating in the conference, 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.

(5) ***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.

(A) *Expedited.* The parties must use Forms 11(a) and (b) (Expedited Case) when all of the following factors apply:

(i) every party, except any defaulted parties, has filed an answer;

(ii) there are no third-party claims;

(iii) the parties intend to have no more than one expert per side; and

(iv) each party intends to call no more than 4 lay witnesses at trial.

(B) *Standard.* The parties must use Forms 12(a) and (b) (Standard Case) if the action is ineligible for management as an Expedited Case or Complex Case.

(C) *Complex.* The parties must use Forms 13(a) and (b) (Complex Case) if the factors enumerated in Rule 8(h)(2) apply, regardless of whether the court has designated the action as complex.

(6) ***Case Designation.*** On any party's request, the court may designate an action as expedited, standard, or complex. The court should endeavor to conduct trial in expedited actions within 12 months after the action commenced.

(c) Scheduling Orders.

(1) ***Timing.*** The court must issue a Scheduling Order as soon as practicable either after receiving the parties' Joint Report and Proposed Scheduling Order under Rule 16(b) or after holding a Scheduling Conference.

(2) ***Contents.*** The Scheduling Order must include calendar deadlines specifying the month, date, and year for each of the items included in the Proposed Scheduling Order submitted under Rule 16(b). The Scheduling Order must also set either: (A) a trial date; or (B) a date for a Trial-Setting Conference under Rule 16(f) 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 direct that a party must request a conference with the court before filing a discovery or disclosure motion. It also may address other appropriate matters.

(3) ***Modification of Dates Established by Scheduling Order.*** The parties may modify the dates established in a Scheduling Order that govern court filings or hearings only by court order for good cause. Once a trial date is set, the parties may modify that date only under Rule 38.1.

(d) Scheduling Conferences. At a party's written request the court must—or on its own the court may—set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) determine what additional disclosures, discovery and related activities will be undertaken and establish a schedule for those activities;

(2) discuss which form of Joint Report and Scheduling Order is appropriate under Rule 16(b)(3);

(3) determine whether the court should enter orders addressing one or more of the following:

(A) setting forth any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced and, if appropriate, the sharing or shifting of costs incurred by the parties in producing the information;

(B) setting forth any measures the parties must take to preserve discoverable documents or electronically stored information; and

(C) adopting any agreements the parties reach for asserting claims of privilege or of protection for work-product materials after production;

(4) determine a schedule for disclosing expert witnesses and whether the parties should be required to provide signed reports from retained or specially employed experts setting forth a complete statement of all opinions, the basis and reasons for the opinions, and the facts or data considered by the expert in forming the opinions;

(5) determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D);

(6) determine a date for disclosing non-expert witnesses and the order of their disclosure;

(7) determine a deadline for filing dispositive motions;

(8) resolve any discovery disputes;

(9) eliminate non-meritorious claims or defenses;

(10) permit amendment of the pleadings;

(11) assist in identifying those issues of fact that are still contested;

(12) obtain stipulations for the foundation or admissibility of evidence;

(13) determine the desirability of special procedures for managing the action;

(14) consider alternative dispute resolution and determine a deadline for the parties to participate in a settlement conference or private mediation;

(15) determine whether any time limits or procedures set forth in these rules or local rules should be modified or suspended;

(16) determine whether the parties have complied with Rule 26.1;

(17) determine a date for filing the Joint Pretrial Statement required by Rule 16(g);

(18) set a trial date and determine the anticipated number of days needed for trial;

(19) discuss any time limits on trial proceedings, juror notebooks, brief pre-voir dire opening statements, and preliminary jury instructions, and the effective management of documents and exhibits;

(20) determine how a verbatim record of future proceedings in the action will be made; and

(21) discuss other matters and enter other orders the court deems appropriate.

Rule 16.1. Settlement Conferences

(a) Generally. At a party's request or on its own, a court may require the parties to participate in one or more pretrial settlement conferences, unless the action is a lower court appeal or is subject to compulsory arbitration under Rule 72.

(b) Memoranda in Settlement Conferences Conducted by the Court.

(1) ***Requirement and Timing.*** If a settlement conference is conducted by the court, each party must submit, but not file, a settlement conference memorandum to the court no later than 5 days before the settlement conference. Unless the court orders otherwise, settlement conference memoranda must be served on every other party.

(2) ***Contents.*** A settlement conference memorandum must provide:

(A) a general description of the claims, defenses, and issues in the action, and the party's position on each claim, defense, and issue;

(B) a general description of the evidence the party anticipates presenting at trial;

(C) a summary of any settlement negotiations that have already occurred;

(D) the party's assessment of the likely outcome if the action proceeds to trial; and

(E) any other information that might be helpful in settling the action.

Rule 26.2. Exchange of Medical Records and Timing of Expert Disclosure in Medical Malpractice Actions

(a) Exchange of Medical Records.

(1) ***By Plaintiffs.*** Within 5 days after a defendant has filed an answer or a motion in response to the complaint, the plaintiff must serve on that defendant copies of all of the plaintiff's available medical records relevant to the condition that is the subject matter of the action.

(2) ***By Defendants.*** Within 10 days after the plaintiff serves medical records under Rule 26.2(a)(1), a defendant must serve on the plaintiff copies of all of the plaintiff's available medical records relevant to the condition that is the subject matter of the action.

(3) ***Limitations.*** The parties may agree to limit the records required to be produced under this rule.

(b) Timing of Expert Disclosure. The parties must disclose the identities and opinions of standard of care and causation experts simultaneously, unless the parties agree or the court orders otherwise for good cause.

Rule 38. Right to a Jury Trial; Demand; Waiver

(a) Right Preserved. The right of trial by jury is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may obtain a jury trial by filing and serving a written demand at anytime after the action is commenced, but no later than the date on which the court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b) is filed, whichever occurs first. The demand may not be combined with any other motion or pleading filed with the court.

(c) Specifying Issues. In its demand, a party may specify the issues it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may—within 10 days after the demand is served or within a shorter time ordered by the court—serve a demand for jury trial on any other or all factual issues triable by jury.

(d) Waiver; Withdrawal. Except as provided in Rule 38(b)(2), a party waives a jury trial unless its demand is properly filed and served. A properly filed and served demand may be withdrawn only if all parties consent.

Rule 38.1. Setting Civil Actions for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar

(d) Dismissal Calendar.

(1) ***Placing an Action on the Dismissal Calendar.*** The clerk or court administrator must place a civil action on the Dismissal Calendar if 270 days have passed since the action was commenced, and:

(A) in an action other than an action assigned to arbitration, the parties have not filed a Joint Report and a Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b); or

(B) in an action assigned to arbitration, the arbitrator has not filed a notice of decision under Rule 76.

(2) ***Dismissal.*** If an action remains on the Dismissal Calendar for 60 days, the court must dismiss it without prejudice and enter an appropriate order regarding any bond or other posted security, unless, before the 60-day period expires:

(A) the parties file a Joint Report and a Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b);

(B) in an action assigned to arbitration, the arbitrator files a notice of decision under Rule 76; or

(C) the court, on motion showing good cause, orders the action to be continued on the Dismissal Calendar for a specified period of time without being dismissed.

(3) ***Notification.*** The clerk or court administrator, whoever is designated by the presiding superior court judge in the county, must promptly notify counsel in writing when an action is placed on the Dismissal Calendar, but they are not required to provide further notice before the court dismisses an action under Rule 38.1(d)(2).