

Rule 16.3 Track Assignment and Case Management Conference

(a) Notice of Track Recommendation and Case Management Conference.

(1) The Court may issue a track recommendation to the parties in advance of the Case Management Conference, or may reserve such determination for the Case Management Conference. If the notice of Case Management Conference does not contain a track recommendation, counsel must confer to determine whether they can agree to a track recommendation, which shall be subject to the Judicial Officer's approval at the Case Management Conference. The track recommendation shall be made in accordance with the factors identified in Local Rule 16.2(b).

(2) In any action in which the defendant (or all defendants in any action with multiple defendants) is in default of answer, no track recommendation will be made and no Case Management Conference held so long as such default continues. In such a case the plaintiff shall go forward and seek default judgment within ninety (90) days of perfection of service (or of sending of a request for a waiver of service under Fed. R. Civ. P. 4(d)), or show cause why the action should not be dismissed for want of prosecution. If such default occurs and the party/parties in default is/are thereafter granted leave to plead, issuance of a track recommendation and scheduling of the Case Management Conference shall proceed in accordance herewith, based upon the date set for the filing of the responsive pleading.

(b) Case Management Conference.

(1) The Judicial Officer shall conduct the Case Management Conference. Lead counsel of record must participate in the Conference and parties must attend unless, upon motion with good cause shown or upon its own motion, the Judicial Officer allows the parties to be available for telephonic communication. Counsel, upon good cause shown, may seek leave to participate by telephone.

(2) The agenda for the Conference shall include:

- (A) Determination of track assignment;
- (B) Determination of whether the case is suitable for reference to an ADR program;
- (C) Determination of whether the parties consent to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. § 636(c);
- (D) Disclosure of information that may be subject to discovery, including key documents and witness identification;
- (E) Determination of the type and extent of discovery, including the discovery of electronically stored information. If the parties

have not agreed on how to conduct electronic discovery, the default standard for discovery of electronically stored information attached as Appendix K shall apply;

(F) Determination of a whether an order is necessary to protect confidential information. A form protective order is attached as Appendix L;

(G) Setting of a discovery cut-off date;

(H) Setting of a deadline for joining other parties and amending the pleadings;

(I) Setting of deadline for filing motions; and

(J) Setting the date of the Status Conference.

(3) Except in categories of proceedings exempted from initial disclosure under Fed. R. Civ. P. 26(a)(1)(E), the parties must confer before the Fed. R. Civ. P. 16(b) conference. In addition to discussing the items identified in Fed. R. Civ. P. 26(f), counsel for all parties are directed to engage in meaningful discussions regarding any track recommendation issued by the Court and each of the other agenda items established by the Court. This discussion shall also be generally guided by the provisions of Fed. R. Civ. P. 26(f). The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference. The parties must submit a report on their discussion at least seven days before the Fed. R. Civ. P. 16(b) conference. The Court shall provide forms to counsel for all parties for indicating the parties' positions regarding all such agenda items when it issues its track recommendation.

(4) At the conclusion of the Case Management Conference, the Judicial Officer shall prepare, file, and issue to the parties an order containing the Case Management Plan governing the litigation.

(c) Notification of Complex Litigation.

(1) Definitions.

(A) As used in this Rule, "Complex Litigation" has one or more of the following characteristics:

(i) it is related to one or more other cases;

(ii) it arises under the antitrust laws of the United States;

(iii) it involves more than five (5) real parties in interest;

(iv) it presents unusual or complex issues of fact;

(v) it involves problems which merit increased judicial supervision or special case management procedures.

(B) As used in this Rule, a "case" includes an action or a proceeding.

(C) As used in this Rule, a case is "related" to one or more other cases if:

(i) they involve the same parties and are based on the same or similar claims;

(ii) they involve the same property, transaction or event or the same series of transactions or events; or

(iii) they involve substantially the same facts.

(2) Notice Identifying Complex Litigation. An attorney who represents a party in Complex Litigation, as defined above, must, with the filing of the complaint, answer, motion, or other pleading, serve and file a statement which briefly describes the nature of the case, identifies by title and case number all other related case(s) filed in this and any other jurisdiction (federal or state) and identifies, where known, counsel for all other parties in the action who have not yet entered an appearance.

(3) Manual For Complex Litigation. Counsel for each of the parties receiving notice of a Case Management Conference must become familiar with the principles and suggestions contained in the most recent edition of the Manual for Complex Litigation.

(4) Case Management Conference. (See subsection (b)). In preparation for the Case Management Conference, at least seven (7) days prior to the date of the conference counsel for each party must file and serve a proposed agenda of the matters to be discussed at the conference. At the Case Management Conference, counsel for each party must be prepared to discuss preliminary views on the nature and dimensions of the litigation, the principal issues presented, the nature and extent of contemplated discovery, and the major procedural and substantive problems likely to be encountered in the management of the case. Coordination or consolidation with related litigation should be considered. Counsel should be prepared to suggest procedures and timetables for the efficient management of the case.

(5) Determination By Order Whether Case to be Treated as Complex Litigation. At the conclusion of the Case Management Conference, the Court shall prepare, file, and issue an order containing the Case Management Plan

which shall set forth whether the case thereafter shall be treated as Complex Litigation pursuant to orders entered by the Court consistent with the principles and suggestions contained in MCL 2d. An order under this subdivision may be conditional and may be altered and amended as the litigation progresses.

(6) Subsequent Proceedings.

(A) Once the Court has determined by order that an action shall be treated as Complex Litigation, thereafter the Court shall take such actions and enter such orders as the Court deems appropriate for the just, expeditious and inexpensive resolution of the litigation. Measures should be taken to facilitate communication and coordination among counsel and with the Court.

(B) Throughout the pendency of a case which has been determined to be treated as Complex Litigation, counsel for the parties are encouraged to submit suggestions and plans designed to clarify, narrow and resolve the issues and to move the case as efficiently and expeditiously as possible to a fair resolution.

(d) Status Conference. The parties, each of whom will have settlement authority, and lead counsel of record must participate in the Status Conference. The parties must participate in person unless, upon motion with good cause shown or upon its own motion, the Judicial Officer allows the parties to be available for telephonic communication. Counsel, upon good cause shown, may seek leave to participate by telephone. When the United States of America or any officer or agency thereof is a party, the federal attorney responsible for the case shall be deemed the authorized representative for the purpose of the Status Conference. At the Status Conference the Judicial Officer will:

- (1) review and address:
 - (A) settlement and ADR possibilities;
 - (B) any request for revision of track assignment and/or of the discovery cut-off or motion deadlines; and
 - (C) any special problems which may exist in the case;
- (2) assign a Final Pretrial Conference date, if appropriate; and
- (3) discuss setting a firm trial date.

If, for any reason, the assigned Judicial Officer is unable to hear the case within one week of its assigned trial date, the case shall be referred to the Chief Judge for

reassignment to any available District Judge or, upon consent of the parties, Magistrate Judge for prompt trial.

(e) **Final Pretrial Conference.** A Final Pretrial Conference, if any, may be scheduled by the Judicial Officer at the Status Conference. The parties and lead counsel of record must be present at the conference. When the United States of America or any officer or agency thereof is a party, the federal attorney responsible for the case shall be deemed the authorized representative for the purpose of the Final Pretrial Conference. The Final Pretrial Conference shall be scheduled as close to the time of trial as reasonable under the circumstances. The Judicial Officer may, in the Judicial Officer's discretion, order the submission of pretrial memoranda.

(f) **Video and Telephone Conferences.** The use of telephone conference calls and, where appropriate, video conferencing for pretrial and status conferences is encouraged. The Court, upon motion by counsel or its own instance, may order pretrial and status conferences to be conducted by telephone conference calls. In addition, upon motion by any party and upon such terms as the Court may direct, the Court may enter an order in appropriate cases providing for the conduct of pretrial and status conferences by video conference equipment.

Last revised 8/9/21. See Historical Notes for full revision history.