

RULE 16

PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Scheduling Conference.

A Scheduling Conference may be ordered by a judge no later than sixty (60) days following the defendant's first appearance after the filing of the complaint. Counsel may be required to file pretrial memoranda for the scheduling conference and shall be fully prepared to discuss, among others:

- (1) jurisdictional issues
- (2) questions concerning joinders of parties or claims
- (3) amendments to the pleadings
- (4) material factual contentions and the applicable rules of law
- (5) framing of stipulations concerning factual admissions and documents with respect to which there will be no discovery so as to avoid unnecessary proof
- (6) the time reasonably required for completion of discovery
- (7) the time estimated for filing and disposition of pending or reasonably anticipated motions
- (8) the desirability of separation of issues and limits on discovery, including issues regarding discovery of electronically stored information
- (9) pending or contemplated related actions
- (10) the need to adopt special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions or unusual evidentiary problems
- (11) the possibility of settlement or pretrial adjudication
- (12) anticipated dates for the pretrial conference and trial

(b) Scheduling Order.

Immediately after the scheduling conference, the judge will enter a Scheduling Order detailing any agreements between the parties, setting time limits to cure any jurisdictional

deficiencies, for joinder, amendments to the pleadings, file motions, and to complete discovery. The Scheduling Order shall also set a date for the pretrial conference, trial, and any other matter. The Court may issue a Scheduling Order without convening an Initial Scheduling Conference.

(c) Certificate of Readiness for Pretrial Conference.

Any party may move to proceed for a pretrial conference provided the motion is accompanied by a certificate of readiness, indicating that:

- (1) the action is at issue as to all parties;
- (2) it has completed all desired depositions, other discovery, and pretrial motions;
- (3) it has met all obligations with respect to depositions, requests for discovery or motions initiated by other parties;
- (4) it is ready for pretrial conference and trial.

(d) Proposed Pretrial Order.

A pretrial conference shall be held not less than fourteen (14) days prior to the scheduled trial date, unless the Court provides otherwise. At least fourteen (14) days prior to the pretrial conference date, counsel for each party shall meet in order to prepare a proposed Pretrial Order, to be filed with the Court at least seven (7) days before the pretrial conference, containing the following information:

- (1) the names, mailing and email addresses, and telephone and facsimile numbers of all attorneys involved in the litigation;
- (2) a brief factual statement of each party's claim or defense, as the case may be, including an itemized statement of any damages claimed;
- (3) a brief statement of the party's contentions with respect to any controverted material facts, contested issues of law, including evidentiary questions, together with supporting authority;
- (4) proposed stipulations concerning facts and documents which are not in substantial dispute;
- (5) the names and addresses of all witnesses the party intends to call at trial, other than those to be used for impeachment and rebuttal; but in the absence of a stipulation, the disclosure of a witness shall not constitute a representation that the witness will be produced or called at trial;

- (6) a list of the documents and items each party intends to offer as evidence at trial, sufficiently describing each document or item for ready identification, identifying those whose admissibility is stipulated or contested, together with supporting authority for the objection:
 - (A) documents and items to be presented by the plaintiff(s) shall be marked as "Exhibit" if stipulated or as "Identification" if not stipulated in numerical order beginning with the number "1";
 - (B) documents and items to be presented by the defendant(s) shall be marked as "Exhibit" if stipulated and as "Identification" if not stipulated in alphabetical order beginning with the letter "A";
 - (C) documents and items to be presented jointly by the parties shall be marked as "Exhibit" in Roman numerals, beginning with Roman Numeral I;
 - (D) documents and items as to which privilege, attorney work-product, or other confidentiality claim is yet to be determined may refer to the document or item in general terms, and present any substantiated claim of privilege or confidentiality to the Court;
- (7) a list of all the trial witnesses (except impeachment or rebuttal witnesses) for each party, including a brief statement of each witness' testimony;
- (8) a list of all the expert witnesses at trial for each party, including a brief and general statement about each;
- (9) a statement by each party about claims or defenses that are deemed waived or abandoned;
- (10) a list of all pending motions;
- (11) an estimate of the number of days required for each party's presentation of its case at trial;
- (12) if one has not already been set by the Court, a suggested date for commencement of trial, including a statement by each party as to potential problems concerning attendance of parties, counsel or essential witnesses, or any other matter pertinent when scheduling the trial;
- (13) whether the parties consent to full jurisdiction by a magistrate judge, including the entry of judgments.

At the pretrial conference, each party shall be prepared to discuss the issues set forth above, to exchange or to agree to exchange medical reports, hospital records, and other documents, to make a representation concerning settlement as set forth in this rule and to discuss fully all aspects of the case. Absent good cause shown, the Court may exclude from evidence at trial documents, items or witnesses not listed or identified as required in this rule. Objections not specified in the pretrial conference shall be deemed waived.

(e) Pretrial Conference.

At the pretrial conference the Court will consider: The proposed Pretrial Order, the pleadings and papers on file, all pending motions and other proceedings, and any other matters referred to in this rule or in Fed. R. Civ. P. 16 which may be applicable.

Unless excused for good cause, each party shall be represented at the pretrial conference by counsel who is to conduct the trial on behalf of each. Counsel shall be required to make a representation to the Court that he or she has made a recommendation to the client with respect to settlement and that the client has acted on the recommendation.

(f) Pretrial Order.

Either at or following the Pretrial Conference, the Court shall enter a final Pretrial Order, which shall recite the action taken at the conference; the order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice.

Unless otherwise ordered, any objections to the final Pretrial Order must be made within fourteen (14) days after receipt by counsel of a copy. Any discussion at the conference relating to settlement shall not be a part of the final Pretrial Order. The final Pretrial Order deadlines will not be effective until after the last settlement conference has been held and it appears that trial is unavoidable. In any case where there is a pending dispositive motion, one item on the final pretrial conference agenda shall be whether the provisions and deadlines of the final Pretrial Order should be stayed until the motion is resolved.

The number of copies of documents to be filed shall be limited. In a jury case, the original set of exhibits is ordinarily sufficient and should not be filed with the clerk before trial. Only an original and one copy of trial briefs, voir dire, jury instructions, etc., are sufficient. In a non-jury case, one extra set for the judge to review in advance of the trial is adequate.

(g) Sanctions.

If a party fails to comply with the requirements of Fed. R. Civ. P. 16 or this rule, the Court may impose such penalties and sanctions as are just, including those set forth in Fed.R.Civ.P. 16(f), 37.

(h)

(i) Special Circumstances or Judge-Specific Requirements.

The Court may provide for a special pretrial procedure in any case when special circumstances warrant. The judge presiding at the final pretrial conference may tailor this rule's requirements and the final Pretrial Order to the individual case and consider whether certain provisions should not be included.

(i) Settlement Conferences.

A judge may direct that a separate settlement conference be held with party representatives present or available telephonically.

(j) Deadlines.

(1) Deadlines Established by the Court. Deadlines established by the Court shall not be changed by agreement between the parties without Court approval.

(2) Discovery Deadlines. A stipulation extending the time within which to respond or object to a discovery request or to take a deposition need not be approved by the Court provided the extended date by which the response is due or on which the deposition is to be taken is prior to the discovery completion date established for the case or at least thirty (30) days prior to the date set for the pretrial conference, whichever is earlier. Any out of court stipulation shall not alter the discovery deadlines set forth in the Scheduling Order. The stipulation shall be in writing. Any request for written discovery under Rules 33, 34 or 36 of the Federal Rules of Civil Procedure must be served with sufficient time to allow the response to be served before the expiration of the discovery period.

(k) Continuances.

No motion for continuance of a scheduling conference, pretrial conference, settlement conference, hearing or trial will be entertained unless the moving attorney first contacts all other counsel of record and certifies at least three (3) alternative dates available to all parties.

RULE 83J

COURT-ANNEXED MEDIATION

(a) In General.

Mediation is a non-binding process whereby parties and counsel meet with a neutral mediator trained to assist them in settling disputes. Although mediators have no power to render a decision or dictate a settlement, mediation is generally recognized as improving communication between disputing parties by assisting them to articulate their interests. Mediators also assist in identifying areas of agreement in order to generate options for a mutually-agreeable resolution.

(b) Eligible Cases; Selection for Mediation.

All civil cases arising under the jurisdiction of this Court are eligible for mediation. A case may be selected for mediation:

- (1) By the Court at its discretion;
- (2) By the Court on the motion of one of the parties; or
- (3) By the stipulation of all parties to a case.

(c) Mediators.

(1) Qualifications. In order to be eligible to serve as a mediator in this district, an applicant must:

- (A) have been a member in good standing of the bar of this Court for a period of at least five (5) years; and,
- (B) have at least five (5) years of experience in the resolution of legal disputes (as an arbitrator, judge, mediator, or similar); and,
- (C) demonstrated professionalism, integrity, and sound judgment throughout his or her careers, as determined by the committee of judges designated pursuant to subsection (c)(3) of this rule.

(2) List. This Court will establish a list of mediators. The list will be comprised of judges, retired judges, and attorneys who, based on their training or experience, are deemed to possess the qualities necessary to perform effectively as mediators.

(3) Applications. The clerk will solicit and receive applications from individuals wishing to serve as mediators, and the Chief Judge will designate a committee of judges

to evaluate each candidate and determine which applicants may be included on the list. The applications shall be submitted in the form approved by the Court and available at the Clerk's office ("Application for Inclusion in List of Mediators"), or at the Court's web site (www.prd.uscourts.gov).

(4) Selection of a Mediator.

- (A) By the Parties.** The Court will promptly notify the parties in writing when a case is referred to mediation. Once notice has been given, the parties will first be given an opportunity to select a mediator from the list maintained by the Court. The parties may select a mediator not on the Court approved list, provided the mediator signs a written agreement to be bound by these local rules. The parties must, within fourteen (14) days of the date of the Court's notice of referral to mediation, notify the Court of the name of the person selected by the parties to serve as mediator and file a written agreement with the selected mediator.
- (B) By the Court.** If the parties fail to agree to a mediator within the fourteen (14) day time period or fail to notify the Court within the fourteen (14) day time period, the Court will select a mediator from the approved list maintained by the Court.
- (C) Potential Conflict of Interest.** If the Court selects the mediator, then it must identify all interested parties to the mediation and determine whether a mediator selected by the Court has any potential conflict of interest.
- (D) Acceptance of Designation.** Upon selection, a mediator shall acknowledge his designation in writing by filing an acknowledgment and declaration in the form approved by the Court and available at the Clerk's office, or at the Court's web site (www.prd.uscourts.gov).

(5) Compensation. A mediator will be compensated at a reasonable rate taking into consideration the qualifications of the mediator and the complexities of the issues in the case. The mediator's fee will be borne equally by the parties unless directed otherwise by the Court. The rate of compensation shall be agreed to in writing by the parties during the fourteen (14) day period parties are given to select a mediator as prescribed in subparagraph (4)(A). Should the parties fail to come to an agreement the Court shall set the level of fees.

(6) Oath. Each individual certified as a mediator of the Court shall take the oath or affirmation prescribed by 28 U.S.C. § 453.

(7) Disqualification. No mediator shall serve in any matter in violation of the standards set forth in Section 455 of Title 28 of The United States Code. If a mediator is concerned that a circumstance covered by Section 455(a) might exist, the mediator shall promptly disclose that circumstance in writing to all counsel to the dispute.

(A) A party who believes that the mediator has a conflict of interest shall bring this concern to the attention of the Court in writing, within fourteen (14) days of learning of the potential conflict or the objection shall be deemed waived.

(B) A party who believes that the mediator has engaged in impermissible misconduct shall bring this concern to the attention of the Court in writing, within fourteen (14) days of learning of the alleged misconduct or the objection shall be deemed waived.

(d) Mediation Order.

Once a mediator has been selected, the Court shall enter a mediation order. The order shall:

(1) Appoint a mediator;

(2) State the rate of compensation of the appointed mediator; and,

(3) Establish a deadline for when mediation must be completed. The deadline shall not exceed six (6) months from the date of the order. Once mediation has commenced, the parties may request the Court for an extension of time beyond the deadline in order to complete the mediation process.

A party may object for good cause to Court ordered mediation by filing a written request for reconsideration, within fourteen (14) days after the Court has issued a mediation order. Mediation processes will be stayed pending a decision on the request for reconsideration unless otherwise ordered by the Court.

(e) Mediation Process.

(1) Scheduling of Mediation Sessions. The mediator shall contact all attorneys to fix the date and place of the first mediation session. The first session must be held within thirty (30) days from the date the mediation order is entered. The mediation shall be held at the office of the mediator or at any other location mutually agreed to by the parties. At the completion of the first session, the mediator may schedule additional mediation sessions at a time and place agreed to by the parties.

(2) Written Submissions to the Mediator. At least seven (7) days before the first mediation session, the parties must submit to the mediator:

- (A) Copies of all relevant pleadings and motions; and
- (B) A Mediation Statement not to exceed ten (10) pages double-spaced (not including exhibits) outlining the key facts and legal issues in the case. The statement will also include each party's position regarding settlement. Mediation statements are not briefs and are not to be filed with the Court. Only the mediator shall have access to the statements.

(3) Attendance at Mediation Sessions. Once the mediation order has been entered, all parties and their respective counsel must attend all mediation sessions and engage in a good-faith effort to resolve the dispute as prescribed by subparagraph (f) of this Rule. If a party is a corporation, governmental institution or a minor, a representative of that party must attend with binding authority to settle the matter.

(4) Separate Caucuses. The mediator may hold separate, private caucuses with any party or counsel.

(5) Expert Advice. The mediator may obtain expert advice concerning technical aspects of a dispute, provided all parties agree and assume the expenses of obtaining such assistance.

(6) Conclusion of Mediation. Mediation shall conclude when:

- (A) A settlement is reached. If the parties reach an agreement, the mediator will prepare a written summary reflecting the agreement. The parties shall sign the agreement and file it with the court;
- (B) The mediator concludes and informs the Court that further efforts would not be useful; or
- (C) One of the parties requests the Court that mediation be terminated. The Court shall grant such a request upon a showing by the requesting party that it has participated in the mediation in good faith and that further sessions are not likely to result in settlement.

(7) At the Court's discretion, proceedings may be stayed pending the conclusion of the mediation process.

(f) Good-Faith Participation.

In all cases designated by the Court for mediation, good-faith participation shall be mandatory for all parties. The failure of any party to participate in good faith shall result in sanctions. In determining good-faith participation, the Court will rely heavily on the recommendation of the mediator.

(g) Confidentiality.

All mediation proceedings conducted pursuant to this Rule shall remain confidential. All written and oral communications made by the parties and the mediator in connection with or during any mediation session are confidential and may not be disclosed for any purpose unrelated to the mediation process. The mediator shall not be called by any party as a witness in any court proceeding related to the subject matter of the mediation unless related to alleged misconduct of the mediator or with respect to the good-faith requirement contained in subparagraph (f) of this Rule. No papers generated or produced by the mediation process will be included in Court files, nor shall the judge or magistrate judge assigned to the case have access to them. Information about what transpires during mediation sessions will not at any time be made known to the Court, except to the extent required to resolve issues of noncompliance with the mediation procedures. Nothing in this section shall be construed to prohibit parties from entering into a written agreement resolving some or all of the case or entering and filing with the Court any procedural or factual stipulations based on suggestions made or agreements reached as a result of the mediation process

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Plaintiffs

v.

Defendant

CIVIL NO.

ORDER

A Settlement Conference is hereby set for **December 16, 2011 at 3:00 p.m.** During the conference, the parties are ordered to have available in-person or by telephone a non-attorney client representative with full settlement authority. In order to facilitate settlement, the plaintiff shall serve a written settlement demand to the defendants by not later than **December 2, 2011**. The defendants shall serve plaintiff with a written response - accepting the demand, rejecting it, or making a counter-offer - by not later than **December 9, 2011**. The parties shall NOT file their settlement demands or counter-offers with the court. Counsel for the parties shall meet in person during the week of **December 12, 2011** to try to reach settlement before the scheduled conference. Motions to continue or reschedule the Settlement Conference will not be considered unless the moving counsel first contacts all other attorneys and certifies at least three proposed alternative days when all parties will be available. Failure to strictly comply with this order, or to negotiate settlement in good faith, may be grounds for sanctions pursuant to Fed. R. Civ. P. 16(f).

IT IS SO ORDERED.

In San Juan, Puerto Rico this 2th day of May, 2011.

S/ Bruce J. McGiverin

BRUCE J. MCGIVERIN
United States Magistrate Judge