

GENERAL INFORMATION

"COST REDUCTION TRIAL TRACK" WITH LIMITED DISCOVERY AND PRETRIAL REQUIREMENTS

[Reference LCvR16.3 Supp. § 10.1 et seq.]

PURPOSE: The primary emphasis of this process is on reducing cost; using it can also help expedite cases. **With agreement of all parties and counsel and approval of the Court, this track offers a trial before a judge or jury but at less expense due to agreement and stipulation limiting or waiving certain customary pretrial, discovery and trial procedures.** It can be used for any case but intended certainly for cases where all the parties want to keep costs down (a medium-sized, less complex case) yet one that needs to have a trial - a final decision by a judge or jury. To maximize goals, the case should be referred and scheduled as early as possible in the litigation process - preferably around initial status/scheduling conference event or as soon thereafter as practicable.

BACKGROUND: As a part of the Court's work with members of our local bar, appointed by the Judges of this Court to the District's Advisory Group under the Civil Justice Reform Act, met and discussed some of the causes of increasing litigation costs - unlimited discovery, arbitrary deadlines, excessive briefing, multiple final trial preparation - and developed this modified litigation track for trials before either a federal district judge or magistrate judge. They determined that, although many cases do and should settle, some cases just need to have a judicial decision but the parties can't afford or don't find justification for unlimited document production, numerous and lengthy depositions, expensive expert reports, or long, costly, time-consuming trials. From these ideas, the concept was developed to litigate in federal court by agreement to schedule most of your own deadlines, waive motion practice, limit the number of motions to compel, limit witnesses, limit the length depositions and consider and possibly agree to minimum and maximum awards for all claims as well as stipulate to waiver of the right to appeal. This process was accepted by the Court in 1998 and is a part of our local court rules.

BENEFITS AND RESPONSIBILITIES: This Court has always been a leader in offering innovative programs and procedures. All of the Judges of this Court have agreed to try this track if selected. The Court believes this process can be extremely helpful for the appropriate case (and client) because, by choosing this abbreviated litigation and trial alternative, both counsel and parties have more control on how to move the case toward trial. By both/all sides agreeing to certain modifications, costs are better controlled. Clients can reach trial as quickly as counsel believe feasible, no later than 9 months. A trial month is certain with a federal district judge and a date certain is possible if consenting to a trial before a magistrate judge. **While this is still experimental and our staff is willing to work with you scheduling your case and in all other respects to keep costs as reasonable as possible for your clients, please understand that once the case is referred, all participants must respond promptly and responsibly to all facets of this procedure. Except for the modifications allowed by this track, all federal rules and local court rules apply.**

THE PROCEDURE:

DEFINITION OF “REFERRAL”: Once counsel and client(s) have discussed, understood and agreed to this trial track, a case is referred to this track when all the following has occurred: (1) An Agreement and Stipulation conforming to Exhibit II of the Supplement to the Local Rules has been signed by all the parties and all counsel and submitted to the Court; and (2) This Agreement has been signed and approved by the assigned judge; and (3) The Agreement is filed. Once referred, relief from referral or withdrawal from the Agreement is discouraged.

HOW CASES ARE REFERRED & SCHEDULED: Referral and scheduling are expected to occur as follows (See LCvR16.3, Supp. §§ 10.2 and 10.3):

Parties should agree at the time of the setting of the initial status and scheduling conference when discussing ADR and settlement options. Counsel can finalize agreement, sign, have their respective clients sign and get the assigned trial judge’s approval and file the required Agreement and Stipulation at or shortly after that conference or as soon as all agree. All deadlines and the trial date should also be by agreement in consultation with the trial judge. Trials under this trial track are intended to be scheduled within nine (9) months.

CONTINUANCES OF SCHEDULED DEADLINES: (LCvR16.3 Supp. §10.3). (1) Counsel may change one or more deadlines upon submission of an Agreed Order with dates that do not effect the trial date. (2) Counsel are allowed 1 agreed trial date continuance, upon verification of the next available trial date, if requested within 10 days of the scheduled trial date. (3) Any other requested continuance, must be by Court Order.

MODIFICATIONS & LIMITATIONS -AGREEMENT AND STIPULATION

OPTIONS - WAIVERS AND LIMITATIONS:

(1) Final Award Options (Supp. § 10.5). The parties may agree on a minimum and maximum award for all claims, and attorneys fees if applicable (high-low concept). The jury is not to be advised of such agreement. This allows a “win-win” result: a plaintiff will receive/win something but a defendant’s exposure will be limited.

(2) Appeal Options (Supp. §10.6). Parties may stipulate that no appeal will be taken.

(3) Jury Options (Supp. § 10.7). Parties may waive a jury trial if one has been previously demanded. If a jury and an appeal have been waived, parties are not required to submit findings of fact and conclusions of law nor will the Court include such in its final judgment.

REQUIREMENTS - WAIVERS OR LIMITATIONS:

(1) Motion Practice Waived (Supp. §10.8). One of the stipulations the counsel and parties must agree to when selecting this track is waiver of the right to file or obtain a ruling on motions to dismiss or a

motion for summary judgment (unless already filed or anticipated for federal jurisdiction issues). However, a motion to modify this waiver may be filed in the event of newly discovered evidence.

(2) Discovery Motions/Disputes Modified (Supp. § 10.9). Only one (1) motion to compel per party is allowed. The “meet and confer requirement” for discovery disputes may be by telephone.

(3) Limitations on Discovery (Supp. § 10.10). (a) The number of all types of discovery requests are specifically limited to a maximum: requests to produce, 15; requests to admit, 15; interrogatories (including sub-parts), 20. These may be modified by written agreement. (b) Guidelines for time and place for responding to document production are set out. (c) Depositions will be taken only of parties, relatives of parties, employees or former employees of parties, witnesses whose trial testimony must be taken by deposition and any witness that will not agree to an interview. Deposition time is limited to 5 hours per witness. (d) Counsel may agree on number and discovery of experts; length of deposition time limited to 7 hours per expert. No required expert reports.

FINAL PRETRIAL, TRIAL REQUIREMENTS AND MODIFICATIONS (Supp. §10.11, §10.12):

(1) Final Pretrial Order to be Submitted on Standard Form. However, rather than include all required information within the Order, it should be attached as a separate document and, if appropriate, in the form needed for trial so no unnecessary or redundant effort (cost) is incurred.

(2) Exhibit Lists. Should be listed in a separate document attached to Final Pretrial Order. Objections 5 days after submissions and shall be in a separate document with grounds and applicable federal rule identified. No brief in support of objections is required but may be submitted at time of filing objections. The Court may request briefs.

(3) Witness Lists. Final list should be attached as an exhibit to Final Pretrial Order - only a concise statement of the areas of witness testimony not a summary of proposed testimony is necessary.

(4) Trial Briefs Not Required. May be filed if desired.

(5) Agreed Joint Statement of the Case shall be submitted as first section of the Final Pretrial Order. This will then be reused to advise the jury about the case at jury selection.

(6) Voir Dire, Jury Instructions, Proposed Findings and Motions in Limine. Each party is to submit these items pursuant to their agreed schedule and in accordance with any notice given at the time of selecting this track. Typically these trial preparation items should be submitted no later than the first day of the trial month unless otherwise ordered. If an appeal is waived in non-jury case, no proposed findings are required.

(7) Trial Modifications. Parties may agree to the number of courtroom hours or the Court may impose them. No Exhibit Books for the jury are required, but one may be required for the judge.

OTHER INFORMATION

ALTERNATIVE DISPUTE RESOLUTION AND SETTLEMENT:

Judicial Settlement Conference Required (Supp. § 10.13). A judge-hosted settlement conference will be scheduled when the trial docket is published pursuant to standard procedure. Other ADR is available by agreement.

ESCAPE CLAUSE (Supp. §10.14): For good cause, a party may seek leave to withdraw from the Agreement, but counsel are encouraged to stay with the jointly selected process to avoid any possibility of delay or redundant efforts.