UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LCvR 16.1

SCHEDULING AND CONTINUANCES

(a) SCHEDULING.

All hearings, conferences and trials shall be scheduled by the judge to whom the case is assigned, except that matters referred to a magistrate judge shall be scheduled by the magistrate judge. Each party is responsible for arranging a conference among the parties to plan discovery in accordance with Fed. R. Civ. P. 26(f).

(b) CONTINUANCES.

No application for a continuance of a hearing, conference or trial shall be made unless notice of the application has been given to all other parties. An application for a continuance shall be ruled upon by the judge or magistrate judge before whom the hearing, conference or trial is to be held.

(c) NOTICE.

The Clerk shall give notice to counsel of every matter set by the Court, unless the matter is scheduled orally in open court in the presence of counsel for all parties, in which case further notice is not required. All scheduling orders pursuant to Fed. R. Civ. P. 16(b) must be in writing.

LCvR 16.2

AVOIDANCE AND RESOLUTION OF CONFLICTS IN ENGAGEMENTS OF COUNSEL AMONG THE COURTS IN THE DISTRICT OF COLUMBIA

The following provisions, which implement the "Procedure for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia circuit, the District Court for the District of Columbia, The District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, shall apply to matters scheduled in this Court:

(a) PRIORITY TO BE ACCORDED APPELLATE COURTS.

Trial proceedings in this Court will yield, and, if under way, will be held in abeyance, during argument by trial counsel in an appellate court.

(b) PRIORITIES IN TRIAL COURTS.

Actual trials of civil or criminal cases in this Court or in the Superior Court will be accorded priority over any nontrial matters in either court. For the purpose of this Rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section (c) of this Rule, counsel should have more than one trial set on one day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(4) The judges of this court insofar as practical will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this Court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) RESPONSIBILITIES OF COUNSEL.

It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave three open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for, or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance notify by telephone the judge's courtroom deputy of that fact, the reason therefore and the nature and duration of the conflicting engagements.

(5) If an attorney has a criminal felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any date thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than one other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This Court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.

LCvR 16.3

DUTY TO CONFER

(a) TIME FOR CONFERENCE.

Counsel (including any nonprisoner *pro se* party) must confer in accordance with this Rule and Fed. R. Civ. P. 26(f) at least 21 days before a scheduling conference is held or a scheduling order is due under Fed. R. Civ. P. 16(b) to:

(1) Discuss the matters set forth in LCvR 16.3(c).

(2) Make or arrange for disclosures required by Fed. R. Civ. P. 26(a)(1); and

(3) Develop a discovery plan that indicates the parties' views and proposals.

If necessary to comply with its expedited schedule for Rule 16(b) conferences, a Court may require the conference between the parties to occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Fed. R. Civ. P. 16(b).

(b) EXEMPTED CASES

The requirements of this Rule and of Fed. R. Civ. P. 16(b) and 26(f) shall not apply in cases in which no answer has yet been filed and in cases in which a significant number of named defendants have not yet answered. In addition, such requirements shall not apply in the following categories of proceedings exempted from initial disclosure:

(1) an action for review on an administrative record;

(2) A forfeiture action in rem arising from a federal statute;

(3) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(4) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(5) an action to enforce or quash an administrative summons or subpoena;

(6) an action by the United States to recover benefit payments;

(7) an action by the United States to collect on a student loan

guaranteed by the United States;

(8) a proceeding ancillary to proceedings in another court;

(9) an action to enforce an arbitration award; and

(10) FOIA actions.

(c) MATTERS TO BE DISCUSSED BY THE PARTIES.

At the conference required by this Rule, the parties must confer to discuss the following matters:

(1) Whether the case is likely to be disposed of by dispositive motion; and whether, if a dispositive motion has already been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

(2) The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

(3) Whether the case should be assigned to a magistrate judge for all purposes, including trial.

(4) Whether there is a realistic possibility of settling the case.

(5) Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures (or some other form of ADR); what related steps should be taken to facilitate such ADR; and whether counsel have discussed ADR and their response to this provision with their clients. In assessing the above, counsel shall consider:

(i) the client's goals in bringing or defending the litigation;

(ii) whether settlement talks have already occurred and, if so, why they did not produce an agreement

(iii) the point during the litigation when ADR would be most appropriate, with special consideration given to:

(aa) whether ADR should take place after the informal exchange or production through discovery of specific items of information; and

(bb) whether ADR should take place before or after the judicial resolution of key legal issues;

(iv) whether the parties would benefit from a neutral evaluation of their case, which could include suggestions regarding the focus of discovery, the legal merits of the claim, an assessment of damages and/or the potential settlement value of the case; and

(v) whether cost savings or any other practical advantages would flow from a stay of discovery or of other pre-trial proceedings while an ADR process is pending.

(6) Whether the case can be resolved by summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

(7) Whether the parties should stipulate to dispense with the initial disclosures required by Fed. R. Civ. P. 26(a)(1), and if not, what if any changes should be made in the scope, form or timing of those disclosures.

(8) The anticipated extent of discovery, how long discovery should take, what limits should be placed on discovery; whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

(9) Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.

(10) Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502.

(11) Whether the requirement of exchange of expert witness reports and information pursuant to Fed. R. Civ. P. 26(a)(2), should be modified, and whether and when depositions of experts should occur.

(12) In class actions, appropriate procedures for dealing with Rule 23, Fed .R. Civ. P. proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or an evidentiary hearing on the motion and a proposed date for decision.

(13) Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

(14) The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).

(15) Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

(16) Such other matters that the parties believe may be appropriate for inclusion in a scheduling order.

(d) REPORT TO THE COURT AND PROPOSED ORDER.

Not later than 14 days following the conference required by this Rule, the attorneys of record and all unrepresented parties that have appeared in the case shall submit to the Court a written report outlining the discovery plan and including a succinct statement of all agreements reached with respect to any of the 16 matters set forth in paragraph (c), a description of the positions of each party on any matters as to which they disagree, and a

proposed scheduling order. The report shall be submitted jointly, but the parties may submit alternative proposed orders that reflect any disagreements. The plaintiff shall have the duty to ensure timely filing of the report. If, by the time the report is due, any defendant has not responded to the plaintiff's proposed report or declines to join in the report, the plaintiff shall certify in the report that efforts were made to secure that defendant's participation.

If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may require the written report outlining the discovery plan be filed fewer than 14 days after the conference between the parties, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference as per Fed. R. Civ. P. 26(f).

COMMENT TO LCvR 16.3(b): *Fed. R. Civ. P. 26(f) removes the authority to exempt cases by local rule from the discovery conference requirement. The same categories of proceedings are exempted from the conference requirement that are exempted from the initial disclosure requirement. Accordingly, LCvR 16.3(b) lists the proceedings exempted under LCvR 26.2(a) and Fed. R. Civ. P. 26(a)(1)(B), and removes the cases previously exempted by local rule (viz., proceedings involving a nonprisoner pro se plaintiff in which a dispositive motion is filed before the deadline for the meeting expires). Although the first nine enumerated exempt categories of cases were intended to be exclusive and are considered actions that are brought in most, if not all of the Federal District Courts, we have included Freedom of Information Act actions to this list, as item number (10) because they are actions that typically do not require discovery or actions in which an initial disclosure requirement would not make sense. A significant portion of the nation's FOIA actions are pending in this Court.*

LCvR 16.4

SCHEDULING ORDERS

(a) SCHEDULING CONFERENCE AND ORDER.

After receiving the report of the parties pursuant to LCvR 16.3(d) of these Rules, the Court will hold a scheduling conference unless it determines, on the basis of the report, that a conference is unnecessary. At or after the scheduling conference, or after receiving the report of the parties where no scheduling conference is held, the Court will issue a scheduling order governing future proceedings in accordance with Fed. R. Civ. P. 16(b). The Scheduling Order will include the limits if any on the number of interrogatories, the

number and duration of depositions, and the use of other forms of discovery. The Court may modify the scheduling order at any time upon a showing of good cause. Objections made to the discovery plan during the Rule 26(f) conference are to be ruled on by the Court in the scheduling conference or order. In its ruling on the objection, the Court must determine what disclosures if any are to be made and set the time for disclosure.

LCvR 16.5

PRETRIAL STATEMENTS

(a) GENERAL.

(1) In any case scheduled for trial or evidentiary hearing the Court may order a final Pretrial Conference before the Court or a magistrate judge. Trial counsel for each party must be present at the final Pretrial Conference unless the Court authorizes otherwise.

(2) Not less than 14 days prior to the final Pretrial Conference, each party shall file and serve on every other party a Pretrial Statement, in the form prescribed by subparagraph (b) of this Rule. Amendments to a party's Pretrial Statement shall be permitted for excusable neglect until entry by the Court or magistrate judge of a final Pretrial Order.

(3) As soon as practicable following the final Pretrial Conference the Court or magistrate judge shall enter a final Pretrial Order which shall govern the trial of the case. The final Pretrial Order may incorporate, in whole or part, the parties'

Pretrial Statements. Objections to the final Pretrial Order shall be promptly made, and shall be determined by the Court before trial. Thereafter no departures from the final Pretrial Order shall be permitted except to prevent manifest injustice.

(b) PRETRIAL STATEMENTS.

(1) A party's Pretrial Statement shall contain the following:

(i) a statement of the case;

(ii) a statement of claims made by the party;

(iii) a statement of defenses raised by the parties;

(iv) a schedule of witnesses to be called by the party;

(v) a list of exhibits to be offered in evidence by the party;

(vi) a designation of depositions, or portions thereof, to be offered in evidence by the party;

(vii) an itemization of damages the party seeks to recover; and

(viii) a request for other relief sought by the party.

(2) The statement of the case shall set forth a brief description of the nature of the case, the identities of the parties, and the basis of the Court's jurisdiction.

(3) The statement of claims shall set forth each claim a party has against any other party (including counter-, cross-, and third-party claims), and the party or parties against whom the claim is made.

(4) The statement of defenses shall set forth each defense a party interposes to a claim asserted against it by any other party, including defenses raised by way of general denial, without regard to which party has the burden of persuasion.

(5) The schedule of witnesses shall set forth the full names and addresses of all witnesses the party may call if not earlier called by another party, separately identifying those whom the party expects to present and those whom the party may call if the need arises including rebuttal witnesses. The schedule shall also set forth a brief description of the testimony to be elicited from the witness; and an estimate of the time the party will take in eliciting such testimony. Expert witnesses shall be designated by an asterisk. A party need not list any witness who will be called solely for impeachment purposes.

No objection shall be entertained to a witness or to testimony on the ground that the witness or testimony was disclosed for the first time in a party's Pretrial Statement, unless the party objecting has unsuccessfully sought to learn the identity of the witness or the substance of the testimony by discovery, and the Court or magistrate judge finds the information to have been wrongfully withheld.

(6) The list of exhibits shall set forth a description of each exhibit the party may offer in evidence (other than those created at trial), separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Exhibits shall be listed by title and date. Exhibits will be presumed to be authentic unless objection to their authenticity is made at or before the final Pretrial Conference and the objection is sustained.

(7) The designation of depositions shall identify each deposition or portion thereof (by page and line numbers) the party intends to offer in evidence. Any cross- designation sought by any other party pursuant to Rule 106, Federal Rules of Evidence, must be made at or before the final Pretrial Conference.

(8) The itemization of damages shall set forth separately each element of damages, and the monetary amount thereof, the party claims to be entitled to recover of any other party, including prejudgment interest, punitive damages and attorneys' fees. No monetary amount need be set forth for elements of intangible damage (e.g., pain and suffering, mental anguish, or loss of consortium).

(9) The request for other relief shall set forth all relief, other than judgment for a sum of money, the party claims to be entitled to receive against any other party.

(c) EXEMPTED CASES.

The following categories of actions are exempt from this Rule:

(1) Actions brought pursuant to the Freedom of Information Act;

(2) Petitions for writ of habeas corpus brought by a petitioner incarcerated in the District of Columbia;

(3) Motions filed pursuant to 28 U.S.C. section 2255;

(4) All other petitions brought by prisoners incarcerated in federal facilities, in the District of Columbia;

(5) Appeals from bankruptcy decisions;

(6) All actions brought by the United States to collect student loans or other debts owed to the United States Government;

(7) Actions involving the review of Social Security benefit denials;

(8) All applications for attorneys' fees and costs;

(9) Multi-district litigation;

(10) Condemnation proceedings;

(11) Forfeiture actions by the United States;

(12) Appeals from a decision by a United States Magistrate Judge; and

(13) Motions to quash or enforce administrative subpoenas.

(d) ORDERS AFFECTING CONTENT OF PRETRIAL STATEMENTS.

Nothing in this Rule shall preclude the Court in a particular case from entering an order requiring the parties to submit, in addition to the foregoing contents of pretrial statements, the following:

(1) Stipulations of fact agreed upon or proposed by the parties;

(2) A trial brief incorporating a concise statement of law supporting the party's claims or defenses, and addressing any unusual issues of fact or evidence not already submitted to the Court;

(3) In jury cases, proposed voir dire questions, jury instructions and verdict forms;

(4) In nonjury cases, proposed findings of fact and conclusions of law; and

(5) A joint pretrial statement.

(e) OBJECTIONS TO DEPOSITIONS AND EXHIBITS.

The statement of objections to the use of depositions and to the admissibility of exhibits required by Fed. R. Civ. P. 26(a)(3) shall be filed at or before the pretrial conference.

(f) COMPLIANCE WITH FEDERAL RULES OF CIVIL PROCEDURE.

Compliance with the requirements of this Rule shall constitute full compliance with Fed. R. Civ. P. 26(a)(3) and (4). Those rules shall apply, however, in cases exempted from this Rule.

COMMENT TO LCvR 16.5: *Categories of cases exempted from this Rule are not exempted from the scheduling order provisions of Fed. R. Civ. P. 16(b), and LCvR 16.3 of these Rules except as otherwise provided by these Rules.*

LCvR 16.6

STIPULATIONS

A stipulation need not be considered by the Court unless it is in writing and signed by the parties thereto or their attorneys, or stenographically recorded in court or during a deposition.

LCvR 26.2

DISCOVERY

(c) DURATION OF DEPOSITIONS.

A deposition is limited to one day of seven hours, however, the Court may authorize or the parties may agree to different limits on the length of a deposition. The Court must allow additional time consistent with Fed. R. Civ. P. 26(b)(1) and (2), if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance impedes or delays the examination. If the Court finds that the fair examination of the deponent has been frustrated by any impediment or delay, it may impose an appropriate sanction upon the persons responsible, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.