

REFERENCE:

LR 1.9 (1)(3)

(Rule Number/Section)

Scott M. McNair

Phoenix, Arizona

FILED	LODGED
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MAY 03 2004	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	J DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SCOTT M. MCNAIR
Plaintiff,

V.

County of Maricopa, Kenneth Medlin, Terry
Peterson, and Jennipher Ramsey
Defendants,

CASE No. CIV-03-2119-PHX -ROS

**PLAINTIFF'S PROPOSED RULE 16
SCHEDULING ORDER**

Assigned to the Hon. Roslyn O. Silver

1. Pursuant to the terms of the Case Management Plan and the representations made by the parties at the Rule 16 Scheduling Conference, all parties shall comply with the deadlines established in this Order.

A. The Federal Rules of Civil Procedure as amended and made effective December 1, 2002 by the Supreme Court of the United States shall apply to all proceedings concerning this case.

B. All Initial Disclosures as defined in FRCP 26(a)(1), if not already disclosed prior to the Scheduling Conference, shall be made no later than five (5) days after the date of the entry of this Order, or in the alternative, no later than MAY 18, 2004.

C. To satisfy the requirements of FRCP 26(a)(1), the parties shall file with the Clerk of the Court a Notice of Initial Disclosure, rather than copies of the actual disclosures.

D. Procedural motions including Motions to Amend the Complaint or Answer, and Motions to Join Additional Parties shall be filed no later than April 30 2005. All Motions to Amend shall attach a copy of the proposed complaint or answer.

E. The Plaintiff(s) shall disclose the identity of all persons who may be used at trial to present

1 evidence under Federal Rules of Evidence (FRE) 701, 702, 703, 704, and 705 no later than DECEMBER
2 1, 2004.

3 The Defendant(s) shall disclose the identity of all persons who may be used at trial to present
4 evidence under FRE 701, 702, 703, 704, or 705 no later than DECEMBER 1, 2004. No deposition of any
5 expert witness shall occur before the disclosures concerning expert witnesses mandated by this Order
6 have been made.

7 The disclosures of the identities of all persons who may be used at trial to present evidence under
8 FRE 701,702, 703, 704, or 705 shall also include all of the disclosures required by FRCP 26(a)(2)(B) if
9 the witness is either (1) retained or specifically employed to provide expert testimony in the case, or (2) is
10 an agent or employee of the party offering the testimony whose duties regularly involve giving expert
11 testimony¹.

12 F. All discovery, including answers to interrogatories, production of documents, depositions and
13 requests to admit shall be completed by MARCH 1, 2005.

14 G. The parties shall finally supplement all discovery, including material changes in expert witness
15 opinions and material disclosures, pursuant to FRCP 26(a)(3), of all exhibits to be used and all witnesses
16 to be called at trial, on or before MAY 1, 2005².

17 H. Discovery by interrogatory shall be governed by the national uniform requirements set forth in
18 FRCP 33.

19 I. Depositions shall be limited by the national uniform requirements set forth in Rules 30, 31, and
20 32 of the FRCP.

21 J. Motions on discovery matters are strongly discouraged. Parties are directed to Local Rule 1.10(j),
22 which prohibits filing discovery motions unless parties have first met to resolve any discovery difficulties.
23 If the parties cannot reach a resolution, they are directed to jointly arrange with the Court a conference
24 call to resolve the matter orally in court in lieu of filing a formal motion. Once the call is made, the Court

¹The parties are on notice that this Order requires disclosure different than that required by FRCP 26(a)(2).

²The parties are on notice that this order supercedes the "30 days before trial" disclosure deadline contained in FRCP 26(a)(3). Therefore, failure to timely supplement pursuant to Rule 26(e), including attempts to include witnesses and exhibits in the Proposed Final Pretrial Order or at trial that were not previously disclosed in a timely manner may result in the exclusion of such evidence at trial or the imposition of other sanctions including dismissal and the imposition of default pursuant to FRCP 37, the Local Rules of the District Court, and the inherent power of the Court.

1 will provide further directions concerning preparations for the conference call.

2 K. This Order contemplates that each party will conduct discovery to permit completion within the
3 deadline. Any discovery which results in insufficient time to undertake necessary additional discovery
4 and which requires an extension of the discovery deadline will be met with disfavor, will only be granted
5 for good cause or only to prevent manifest injustice pursuant to FRCP 16(b) and (e), and may result in
6 denial of an extension, exclusion of evidence, or the imposition of other serious sanctions pursuant to
7 FRCP 37(b),(c),(d).

8 L. All dispositive motions shall be filed no later than JUNE 30, 2005.

9 Unless permitted by Order of the Court, only one dispositive motion is allowed to be filed by each
10 party.

11 M. All parties are specifically admonished that pursuant to Local Rule 1.10(i), "[i]f a motion does not
12 conform in all substantial respects with the requirements fo this Rule, or **if the opposing party does not**
13 **serve and file the required answering memoranda, or if counsel for any party fails to appear at the**
14 **time and place for oral argument, such non-compliance may be deemed a consent to the denial or**
15 **granting of the motion and the Court may dispose of the motion summarily."**

16 N. The parties shall keep the Court apprized of settlement negotiations and the progress of
17 discovery. A joint letter to the Court concerning the status of settlement discussions (containing no
18 specific settlement terms or offers) and the progress of discovery shall be submitted by DECEMBER
19 1,2004 and labeled 'FIRST NOTICE OF DISCOVERY AND SETTLEMENT,' and then every FOUR
20 (4) months thereafter. If settlement is reached the parties shall file a Notice of Settlement with the Clerk
21 of the Court with a copy to Judge Silver's Chambers.

22 O. **A Joint Proposed Pretrial Order and all Motions in Limine** shall be lodged and filed by
23 AUGUST 31, 2005. If dispositive motions have been filed, the Joint Proposed Pretrial Order and Motions
24 in Limine shall be due either on the above date or 30 days following resolution of the Motions, whichever
25 is later. The content of the Joint Proposed Pretrial Order shall include, but not be limited to, that
26 prescribed in the Form of Joint Proposed Pretrial Order. Statements made shall not be in the form of a
27 question, but should be a concise narrative statement of each party's contention regarding each
28 uncontested and contested issue. Responses to Motions in Limine are due 15 days after the Motions are

1 filed, and no Replies are permitted unless specifically ordered by the Court.

2 P. If the case will be tried to the Court, rather than to a jury, in addition to filing a **Joint Proposed**
3 **Pretrial Order**, each party shall also submit **Proposed Findings of Fact and Conclusions of Law** on the
4 same date the Joint Proposed Pretrial Order is due.

5 Q. The attorneys who will be trying the case for all the parties shall appear at the **Final Pretrial**
6 **Conference**, that will be scheduled reasonably promptly after the filing of the Joint Proposed Pretrial
7 Order, and the attorneys appearing at the conference shall be prepared to address the merits of all issues
8 raised in the Joint Proposed Pretrial Order and fully briefed Motions in Limine. Unless one has already
9 been established the Court will establish a firm trial date at the **Pretrial Conference**, and will issue the
10 **Final Pretrial Order** with any additional instructions for trial preparation.

11 R. The parties shall file with the **Joint Proposed Pretrial Order** the following:

12 (1) A joint stipulated Statement of the Case to be read to the jury and included in the jury
13 questionnaire. If the parties have any disagreement about the statement, the party proposing the
14 statement will set it forth in the joint pleading and the party objecting shall set forth the reason for the
15 objection below the statement and offer an alternative statement.

16 (2) A joint stipulated set of voir dire questions to be added to the Court's standard questionnaire
17 and/or to be given by the Court. The parties are to designate whether the proposed questions are to be
18 added to the questionnaire or are to be asked by the Court orally in court. The voir dire questions shall
19 be drafted in a neutral manner. If the parties have any disagreements about a particular question, the
20 party proposing the question shall set it forth in the joint pleading and the party objecting shall set
21 forth the reason for their objection below the question and offer alternative questions.

22 (3) Joint stipulated jury instructions. The instructions shall be accompanied by citations to legal
23 authority. If the parties have any disagreement about particular instructions, the party proposing the
24 instruction will set it forth in the joint pleading and the party objecting shall set forth the reason for
25 the objection and offer an alternate instruction.

26 (4) A joint stipulated form of verdict. If the parties have any disagreement about the form of
27 verdict, the party proposing the form will set it forth in the joint pleading and the party objecting shall
28 set forth the reason for the objection and offer an alternative form of verdict.

1 (5) A Trial Memorandum of Law for each party. The memorandum shall be brief but must
2 address all questions of law, including evidentiary issues that the party anticipates will arise at trial.

3 (6) Motions in Limine in anticipation of the evidentiary issues to be raised at the trial. Responses
4 are due within fifteen days and no Replies are allowed unless ordered by the Court.

5 (7) Any other final pretrial matters required pursuant to FRCP 26(a)(3) are due in accordance
6 with this Order prior to the preparation and submission of the **Joint Proposed Pretrial Order**.

7 (8) The parties shall submit their proposed voir dire questionnaire and questions, statement of the
8 case, jury instructions, and form of verdict on a 1.44K high density IBM-PC compatible computer
9 disk in WordPerfect 9.0 format in addition to other written materials filed with the Clerk of the Court.

10 This Court views compliance with the provisions of this Order as critical to its case management
11 responsibilities and the responsibilities of the parties under FRCP 1.

12
13 DATED this _____ day of _____ 2004.

14
15 _____
16 Roslyn O. Silver
17 United States District Judge

18 ORIGINAL of the foregoing LODGED this _____ day of _____ 2004.

19 Honorable Roslyn O. Silver
20 United States District Court' District of Arizona
21 Sandra Day O'Connor U.S. Courthouse
22 401 W. Washington Street, Suite 130
23 Phoenix, AZ 85003-2118

24 COPY of the forgoing MAILED to:

25 Office of the Maricopa County Attorney
26 Attn: Dan Brenden
27 222 North Central Avenue, Suite 1100
28 Phoenix, Arizona 85004
(Counsel for Defendants)

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(Plaintiff, Pro-Per)