

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-004037

02/07/2019

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
P. Culp
Deputy

KENNETH SMITH, et al.

PATRICK R MACQUEEN

v.

SKY HAWK DRIVE HOMEOWNERS
ASSOCIATION INC

AUGUSTUS H SHAW IV

JUDGE J. SMITH

MINUTE ENTRY

Pursuant to the parties' Scheduling Order granted by the Court,

IT IS ORDERED vacating the **Telephonic Trial Scheduling Conference** for the purpose of assigning a trial date on July 8, 2019 at 8:45 a.m. and resetting same for **July 30, 2019 at 10:00 a.m.** (15 minutes allotted) in this division, before:

HONORABLE JAMES D. SMITH
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 W. JEFFERSON
8TH FLOOR, COURTROOM 814
PHOENIX, AZ 85003
602-372-5945

Counsel/parties shall have their trial calendars available for the conference.

Counsel shall consider the following in advising the Court how many days are necessary for trial. Trial is held from 9:30 a.m. to 4:30 p.m., Mondays through Thursdays.

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Each trial day is budgeted to be 4.5 hours of actual in court time, exclusive of breaks and bench conferences. The Court reserves for itself 4.5 hours for its portion of voir dire, reading preliminary and final jury instructions, and for jury deliberations. The parties will split the remaining time for each party's portion of voir dire, opening statements, witness examinations, and closing arguments. The Court uses a timer to keep track of your time.

NOTE: Counsel for the Plaintiff is to initiate the telephonic conference by first arranging the presence of all other counsel or self-represented parties on the conference call and by calling this division's at **(602) 372-5945** at the scheduled time.

PRETRIAL ORDERS

The Court having been assigned to this case, the parties shall make note of the pretrial orders identified below. To the extent that the orders are inconsistent with any order that has been entered in this matter, including any scheduling order, this minute entry controls and the inconsistent language in any such previous order is vacated.

Discovery Disputes:

If a discovery dispute needs judicial intervention, the parties must first meet and confer telephonically, if not in person. Counsel (or a self-represented litigant) must together call my judicial assistant (602-372-5945) and obtain a date and time for a telephonic conference. My JA will try to set a time within the next five judicial days. You must file a statement of the issue and your position, not to exceed three pages (1.5 pages per side). If a written discovery request is involved, such as an interrogatory or request for production, provide the discovery request and response. [This differs from Rule 26(d)(2).] Email this submission to my JA at least two judicial days before the conference (fierrom@superiorcourt.maricopa.gov).

Motion Practice:

Do **not** combine requests for relief. (Responses, replies, cross motions, etc., must be filed separately).

A proposed order/judgment must be attached as a Word doc. using the proper turbo court code. All stipulations, joint scheduling reports, unopposed motions, etc., **MUST** contain a proposed order. If your system is not allowing you to attach a Word order, you must email a copy to this division's judicial assistant at fierrom@superiorcourt.maricopa.gov.

ALL motions are held for a briefing period. If you need a determination sooner than a normal briefing period would allow, please do the following: 1. Speak with opposing counsel to

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determine if they object. If they do not object, file a stipulation. 2. E-file the motion and email the filed document in Word format to the judicial assistant and opposing counsel. 3. Indicate that you are asking for a shortened briefing schedule and when you need a ruling. 4. The Court will review your request and email all parties with a briefing schedule if necessary.

If the parties have agreed to an extension of time for filing responses/replies, email my judicial assistant regarding the agreement. Otherwise, the Court may assume that no responses/replies will be filed and rule without the benefit of the response/reply.

Unless another order in this case establishes an earlier deadline, the deadline for filing a summary judgment motion is approximately **150 days before trial**. No modification, including a stipulated modification, of this deadline will be honored absent a motion explaining why the 150-day deadline is impractical in the circumstances.

Motions in Limine:

Ruling on a motion *in limine* turns on whether the admission of evidence reaches the level of reversible error or a mistrial. Motions *in limine* are not granted “except upon a clear showing of non-admissibility.” Do not file motions titled as “*in limine*” that are really late-filed motions for summary judgment. *Each side is limited to five motions in limine without leave of Court to file more.*

1. Page Limit and Format: Neither the motion *in limine* nor the response may exceed **five pages**, including the caption. Motions *in limine* must be consecutively numbered in the caption identifying the party filing it and the subject of the motion (*e.g.*, “Defendant’s Motion in *Limine* No. 1 Re: Insurance Agreement”) and address one discrete subject per motion. Do not respond to more than one motion in *limine* in each response.

Any motion *in limine* or response to such a motion should begin with a simple declarative sentence that identifies the evidence that is the subject of the motion, with the understanding that the broader the scope of the evidence to be excluded, the less likely it is that the Court will grant a motion *in limine*. The remainder of the motion or response should then explain why a mistrial or reversible error would or would not result if the motion is denied, with citations to authority that have reached the same conclusion in the same or similar circumstances (this also applies to motions *in limine* based on any failure to disclose, keeping in mind that nondisclosure implicates Arizona Rule of Civil Procedure 37(c)). If the motion is unable to explain why its denial would result in a mistrial or reversible error, the remainder should then demonstrate persuasively what efficiency, economy, or other benefit is to be gained by granting the motion.

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2. Rule 7.2: File motions *in limine* in accordance with Arizona Rule of Civil Procedure 7.2. Before filing any motion *in limine*, the parties must meet and confer to attempt to resolve the issues. Motions *in limine* must include a certification that counsel conferred **at least telephonically, if not in person.**

3. Deadlines: The deadline for motions *in limine* is **30 days** before the final pretrial management conference. Responses are due **15 days** after service, and no replies should be filed unless requested.

4. Under Advisement: Although motions *in limine* will be considered as quickly as the court's schedule permits, they will not be taken under advisement any sooner than 15 days before the start of the trial, regardless of when they are filed. If the parties believe that a ruling on such a motion early in the case will facilitate settlement, they should notify this division (by telephone at **(602) 372-5945** or e-mail to the judicial assistant) and every effort will be made to decide the issue as soon as time allows.

Daubert Motions:

The deadline for any motion brought for a Daubert hearing or brought under Arizona Rule of Evidence 702 is the same as the dispositive motion deadline. Failure to file such a motion by this date shall constitute a waiver of (1) any objection that the expert is not qualified to render expert testimony, and/or (2) any objection that any opinion of the expert should be excluded under Arizona Rule of Evidence 702.

Disclosure Motions:

All motions to exclude/strike untimely- or improperly-disclosed information or arguments are due (1) 14 days after the final supplemental disclosure deadline or (2) 14 days after that untimely or improper disclosure, whichever is later. *See* Ariz. R. Civ. P. 37(c). You must meet and confer before filing such motions. Ariz. R. Civ. P. 26(i). The purpose is to try to resolve the scope of the disclosure to eliminate the possible dispute. Counsel must cooperate in scheduling that meet and confer telephone call or meeting.

Motions for Summary Judgment:

Follow Arizona Rule of Civil Procedure 5.2(B)(1)(b), which requires 13 point font in text and footnotes. The Court rarely grants motions to exceed page limits as well. Separate statements of fact under Arizona Rule of Civil Procedure 56(c)(3) cannot exceed 15 pages, excluding exhibits.

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The Court presumptively limits each party to one motion for summary judgment. That party must include all arguments regarding summary judgment regarding a claim or defense (or part of a claim or defense) in that motion. If a party believes that he/she/it cannot address all issues in the 17-page limit, then he/she/it must seek leave to file an oversize brief before filing the motion for summary judgment.

The parties must exchange letters of two pages or fewer at least 30 days before filing a motion for summary judgment. Those letters will describe any anticipated motions for summary judgment and responses, identifying the issues and claims on which a party will seek summary judgment. The purpose is to narrow issues, focus briefing, and perhaps eliminate the need for separate statements of fact. If a party does not anticipate filing such a motion, then he/she/it will send correspondence noting that fact.

The Court prohibits “cross-motions” or “counter-motions” for summary judgment. [See above regarding the prohibition on combining requests for relief.] If a party believes that he/she/it is entitled to judgment as a matter of law, then he/she/it must file a motion for summary judgment on the claim or defense (or part of a claim or defense) by the dispositive motion deadline. Raising the request for relief in a response to the opponent’s motion is an untimely motion for summary judgment. Although this order appears under the heading of motions for summary judgment, it applies equally to other motions (*e.g.*, do not file a “cross-motion” to compel in response to your opponent’s motion for protective order).

Miscellaneous Issues:

All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for up to three hours and \$280 for any hearing in excess of three hours. This fee does not include preparation of transcripts.

Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$30.00 charge. If a CD is requested, please obtain a form from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.**

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Requests for interpreters, court reporters or video conference must be made at least two weeks prior to your hearing date.

Oral Argument/Trial time will be divided between Plaintiff and Defendant.

If you are not familiar with this division's electronic equipment, please make an appointment with this division's bailiff at least one week prior to your hearing.

If you ever email this division, you must copy all parties involved in the case.

All inquiries regarding exhibit procedures should be directed to this division's courtroom clerk, Pamela Culp, 602-372-1153.

My judicial profile on the Court's web site includes additional information.