

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-000639

10/22/2014

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT  
T. DeRaddo  
Deputy

COTTONFIELDS COMMUNITY  
ASSOCIATION

TROY B STRATMAN

v.

JAGUAR PREMIUM PROPERTIES L L P

NATHANIEL ROSE

DOUGLAS H ALLSWORTH

**STATUS CONFERENCE SET**

The Court having approved and adopted the parties' proposed deadlines as set forth in the Proposed Scheduling Order,

**IT IS ORDERED** setting a Telephonic Pretrial Status/Scheduling Conference on **April 24, 2015, at 10:00a.m. (15 minutes allotted)** for the purpose of assigning a trial date and a final pretrial management conference date if the case has not settled. Counsel shall have their trial calendars available. Counsel for Plaintiff shall initiate the telephonic conference by first arranging the presence of all other counsel on the conference call and by calling this division at: **(602) 372-5851 promptly** at the scheduled time. **The parties and counsel shall not be permitted to participate in conferences via cell phones or speakerphone.**

The following is intended to supplement the scheduling order that has been adopted or, if no order has yet been submitted, to govern the pretrial matters identified below.

**Discovery Disputes** – Discovery disputes are strongly discouraged. Before filing a written motion to compel, please observe the following procedure.

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If you believe that discovery to which you are entitled has not been provided to you as required by the applicable rules, and you want the court to intervene, you must contact the other party's attorney (or the other party if he/she is self-represented), and then together, telephone the court to ask for a telephonic conference. The Judge assigned to this case, if he is available, will take the call immediately. Otherwise, a later time for a telephone conference will be set. No such request will be considered, however, if made 30 or fewer calendar days before the scheduled trial or evidentiary hearing.

To encourage the resolution of discovery disputes without court intervention, you are urged to consider the risk that comes from not providing discovery responses as required by the applicable rules. Even if court intervention is not requested, should a party fail to provide discovery that the court later decides is relevant, the jury may be told, or the court may assume, that the failure to provide the discovery warrants an adverse inference against the party who refused to provide it. *E.g., Sing v. Gonzales*, 491 F.3d 1019, 1024 (9<sup>th</sup> Cir. 2007) (“When a party has relevant evidence in his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him” (citation omitted)); *see also Pendleton v. Brown*, 25 Ariz. 604, 622, 221 P. 213, 219 (1923) (similar). Further, when a party fails to respond completely to discovery requests that the court concludes are reasonable, the trier of fact is permitted to assume that party is not credible in other ways. *See generally Callender v. Transpacific Hotel Corp.*, 179 Ariz. 557, 562, 880 P.2d 1103, 1108 (App. 1993); *see also Nardella v. Campbell Mach., Inc.*, 525 F.2d 46, 49 (9<sup>th</sup> Cir. 1975) (quoting *Banks v. Chicago Grain Trimmers*, 390 U.S. 459, 467 (1968)). In addition, should a party fail to provide discovery on a matter essential to another party's claim or defense, the party failing to provide the discovery may be precluded from presenting evidence, or that failure may result in the striking of that party's pleadings. (For purposes of this order, “discovery” includes both responses to formal discovery requests and all disclosure required by Ariz. R. Civ. P. 26.1.)

**Dispositive Motions** – Absent leave of court and a showing of good cause, no party may file more than one summary judgment motion. If a motion for summary judgment is filed, all issues must be raised in a single motion (e.g., the single motion may consist of what would otherwise be two or more motions for partial summary judgment). All issues in response to a motion must be raised in a single filing, even if that filing includes a cross-motion. All summary judgment motions and submissions that follow the filing of those motions are expected to comply with the letter and spirit of Ariz. R. Civ. P. 56 and Maricopa Cty. Rs. 2.16, 3.2(f).<sup>1</sup>

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<sup>1</sup> Among other things, this means refraining from devising creative methods to manipulate the page limit by, for example, placing substantive arguments in footnotes, an appendix, or accompanying statement of facts, incorporating by reference substantive arguments that appear in other briefs, or altering the pagination (e.g., placing the number 1 at the bottom of page 2). Those who think that lengthy briefs are indispensable to success may be well-served to remember that “the long brief says the question could go either way and begs that you be rewarded for doing your homework. The short brief says there is an answer to the problem and you have found it.” JAMES W.

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Unless another order in this case establishes an earlier deadline, the deadline for filing a summary judgment motion is 120 days before trial.

**Motions in Limine** – With increasing frequency, motions in limine are being filed with seeming disregard that the granting or denial of the motion turns on whether the admission of evidence reaches the level of reversible error or a mistrial. *See e.g., State v. Ferrari*, 112 Ariz. 324, 327, 541 P.2d 921, 924 (1975) (affirming denials of motions in limine: framing the issue in terms of reversible error); *State v. Pearce*, 22 Ariz. App. 338, 339, 527 P.2d 297, 298 (1975) (affirming grant of motion in limine: same); *State ex rel. Berger v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152, 153 (1972) (framing the issue in terms of a mistrial). Motions in limine should not be granted “except upon a clear showing of non-admissibility.” *State ex rel. Berger*, 108 Ariz. at 397, 499 P.2d at 153 (emphasis added); *accord e.g., Indiana Ins. Co. v. General Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004) (“The court has the power to exclude evidence in limine only when evidence is clearly inadmissible on all potential grounds” (emphasis added)). And, motions in limine should not be used as substitutes for dispositive motions. *E.g., Dunn v. State Farm Mut. Auto. Ins. Co.*, 264 F.R.D. 266, 274 (E.D. Mich. 2009) (“[M]otions in limine are meant to deal with discrete evidentiary issues related to trial, and are not another excuse to file dispositive motions disguised as motions in limine” (citation and internal quotation marks omitted)); *Goldman v. Healthcare Mgt. Sys., Inc.*, 559 F. Supp. 2d 853, 871-72 (W. D. Mich. 2008) (same: collecting cases); *Johnson v. Chiu*, 199 Cal. App. 4<sup>th</sup> 775, 780-81, 131 Cal Rptr. 3d 614, 618 (2011) (“What in limine motions are *not* designed to do is to replace . . . dispositive motions”; “To have the sufficiency of the pleading or the existence of triable issues of material fact decided in the guise of a motion in limine is a perversion of the process” (citations and internal quotation marks omitted)).

**1. Format:** 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 a motion in limine will be granted. *Sperberg v. Good year Tire & Rubber Co.*, 519 F.2d 708, 712 (6<sup>th</sup> Cir. 1975) (“Orders in limine which exclude broad categories of evidence should rarely be employed”). 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

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MCELHANEY, MCELHANEY’S LITIGATION 284 (1995); see also *Fleming v. County of Kane*, 855 F.2d 496, 497 (7<sup>th</sup> Cir. 1988) (page-limit rules “encourage [the parties] to hone their arguments and to eliminate excessive verbiage. [They] induce[] the advocate to write tight prose, which helps his client’s cause. . . . Overly long briefs . . . may actually hurt a party’s case, making it far more likely that meritorious arguments will be lost amid the mass of detail” (citations and internal quotation marks omitted)).

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Ariz. R. Civ. P. 37(c)). If the issue raised by the motion does not rise to the level of a mistrial, the remainder of the motion or response should explain how the moving party will or will not be adversely prejudiced if the motion is denied.<sup>2</sup>

**2. Page Limit:** Neither the motion nor the response may exceed two pages, including the caption. Showing that evidence is “clearly inadmissible” for all purposes should not require more than that.<sup>3</sup>

**3. Multiple Motions:** Two or more motions should be combined as a single omnibus motion. The caption should appear on the first page, and each motion should begin on a new page, following the format and page limit standards above. The same applies to any response opposing such an omnibus motion.

**4. Rule 7.2:** Before any motion or omnibus motion may be filed, the moving party must comply with Ariz. Rule 7.2(a) (i.e., establishing a meet and confer requirement, which may be satisfied by meeting in person or by way of telephone conversations, but not by written means (e.g., e-mail, letter)).

**5. Time for Filing:** All motions in limine that comply with the requirements above shall be filed not later than **30 days before the Final Pretrial Management Conference** and all responses shall be filed not later than **15 days before that Conference**.

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<sup>2</sup> “When a motion in limine is used to enforce the provisions of Rule 26.1, it is effectively a request for sanctions under Rule 37(c), Ariz. R. Civ. P. As such, it must be considered and reviewed using the standards of Rules 26.1 and 37(c) and the cases that have applied them.” *Zimmerman v. Shakman*, 204 Ariz. 231, 235, ¶12, 62 P.3d 976, 980 (App. 2003). Among other things, that requires the Court to consider whether a postponement of the trial is warranted. Thus, a motion that urges the exclusion of evidence based on a failure to comply with Rule 26.1 should explain why any unfair prejudice that may result from allowing the evidence cannot be remedied by a trial continuance.

<sup>3</sup> Evidence that is admissible for one purpose or against one party is not to be excluded merely because it may be inadmissible for another purpose or against another party. *E.g., Steele v. Vanderslice*, 90 Ariz. 277, 287, 367 P.2d 636, 643 (1961) (“Evidence admissible for one purpose is not to be excluded because inadmissible for another purpose”); *Cavanagh v. Ohio Farmers Ins. Co.*, 20 Ariz. App. 38, 44, 509 P.2d 1075, 1081 (1973) (“[E]vidence properly offered against one of multiple parties must ordinarily be admitted, although it would be inadmissible and prejudicial against another party”).