

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

12/01/2008

HONORABLE EDDWARD BALLINGER, JR.

CLERK OF THE COURT
R. Tomlinson
Deputy

402 NOW L L C, et al.

LAWRENCE K LYNDE

v.

REGENCY HOUSE ASSOCIATION

BRIAN W MORGAN

ELISE SAADI

TELEPHONIC RULE 16 SCHEDULING CONFERENCE SET

On the Court's own motion,

IT IS ORDERED setting a telephonic Rule 16 Scheduling Conference pursuant to Rule 16(b), Rules of Civil Procedure, for **February 10, 2009 at 9:00 a.m. (15 minutes allotted)** in this division. Counsel for Plaintiff shall initiate the conference call to this division at 602.506.8551. **The parties and counsel shall not be permitted to participate in conferences via cell phones.**

IT IS FURTHER ORDERED counsel for all parties shall personally meet and prepare a Joint Comprehensive Pretrial Memorandum addressing all subjects set out in Rule 16(b), Rules of Civil Procedure. The Joint Comprehensive Pretrial Memorandum shall be submitted to the Court not later than **5:00 p.m., February 3, 2009.**

NOTE: The parties are advised this Division does not set a trial date until completion of mediation either through a Judge pro tem or a private mediator.

JOINT PRETRIAL MEMORANDUM ORDER

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IT IS ORDERED:

All counsel parties are directed to meet personally to discuss all of the matters set forth in Rule 16(b) A.R.C.P. Counsel shall prepare and file with the Court a Joint Pretrial Memorandum, and **prepare a proposed order for Discovery and Disclosure deadlines**. The proposed order shall include details and dates for the following items:

1. An agreed-upon schedule for completion of discovery. As far as can reasonably be anticipated, each party shall set forth the depositions they anticipate taking and the approximate time required for each; any and all medical examinations which may be required of any of the parties; the person or persons to conduct such examinations; all requests for production; and all tangible evidence to be disclosed or exchanged.

2. A date for the final disclosure of expert witnesses, and/or to supplement disclosures made to date.

3. A date or dates for the final disclosure of all non-expert witnesses, and/or to supplement disclosures made to date.

4. The number of additional non-uniform interrogatories requested by each party and the reasons for the requests. Further, counsel shall set forth any written discovery outstanding and a date when it will be complete.

5. An agreement to waive the Rule 38.1 A.R.C.P. time limits or a statement as to how to comply with the limits in light of the positions taken by the parties with respect scheduling of discovery, etc.

6. A proposed completion date for a Mandatory Settlement Conference pursuant to Rule 16.1 A.R.C.P. or for Mediation or Arbitration; and a Certificate of Compliance by counsel and all parties of the provisions of Rule 16(g)(2) A.R.C.P.

7. A discussion of any discovery disputes to date or Rule 26.1 compliance issues.
NOTE: Please reference the Court's policy on discovery disputes set forth below.

8. The position of each counsel on the medium and manner of recording a verbatim record of future proceedings.

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IF THE PARTIES AGREE AS TO THE DATES, THEY NEED ONLY PREPARE THE PROPOSED ORDER AND INCORPORATE IT BY REFERENCE. If counsel are unable to agree on any of the items of the Pretrial Statement, the reasons for their inability to agree shall be set forth in the Pretrial Memorandum and each shall prepare a separate proposed order.

IT IS ORDERED that should any discovery disputes arise, prior to filing discovery motions, counsel shall MEET AND CONFER EITHER FACE TO FACE OR VIA TELEPHONIC CONFERENCE. If counsel are not able to resolve the dispute, either party may request an expedited hearing to resolve the dispute(s), which shall be accompanied by a Rule 37(2)(C) certification and a statement of not more than three pages in length setting forth the problems requiring Court attention.

To aid the parties in their efforts to avoid the need for court intervention in discovery matters, please note this division's "discovery philosophy", which embraces a liberal view as to what is discoverable (while acknowledging the need, at times, for privacy protections). If the Court finds that a discovery request is burdensome, it will undertake to do what counsel should do: determine an equitable method for addressing discovery costs. Other objections, especially those based upon "relevance", are viewed skeptically. Those unable to resolve disputes informally should be aware that monetary or non-monetary consequences may result if the Court concludes a party or counsel are acting other than in a spirit of courteous cooperation.

IT IS FURTHER ORDERED that the following rules shall apply to all depositions conducted in this action unless otherwise ordered by the Court:

- A. No objections shall be made except as follows:
 - i. Object to the form of the question.
 - ii. Object, privileged under the [applicable] privilege.
- B. No speaking objections shall be allowed. If, but only if, the questioner asks for the basis of an objection to the form of the question a brief explanation shall be given.
- C. If a privilege objection is made, the particular question shall not be answered without subsequent court order. [Note: the Court welcomes a call from the deposition so that the matter may be addressed immediately in accordance with the Court's discovery philosophy.] The deposition shall proceed subject to reconvening if the court should later overrule the objection. Fees, costs and other sanctions may be imposed for groundless privilege objections.

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- D. Attorneys shall not interrupt witnesses. Lengthy compound questions shall be avoided.
- E. The length of any deposition shall not exceed four (4) hours (excluding breaks) without the agreement of all counsel or a prior order of the court.
- F. There shall be no attorney-client conferences between the witness and his/her attorney while any question is pending. There shall be no such conferences during the question sessions of the deposition.
- G. Unless agreed by all parties, any commenced deposition shall proceed on a business day until completed unless suspended by any party pursuant to Rule 30(d), Ariz. R. Civ. P.

JOINT PRETRIAL MEMORANDUM AND PROPOSED ORDER

If the parties agree to the dates, they should prepare an Order in the form set forth below, containing the provisions which are applicable to their case. For example, paragraph 1 of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates ("December 5, 2009" is a specific date. "90 days prior to trial" is a date in reference to a trial date and is not a specific date). Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their Pretrial Memorandum and each shall prepare a separate proposed Order.

PROPOSED ORDER LANGUAGE:

The Court has received and reviewed the parties' Joint Pretrial Memorandum and proposed Scheduling Order.

In accordance therewith,

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IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by 5:00 p.m. on _____, 2009. [or]
2. Plaintiffs shall disclose areas of expert testimony by 5:00 p.m. on _____, 2009.
3. Defendants shall disclose areas of expert testimony by 5:00 p.m. on _____, 2009.
4. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by 5:00 p.m. on _____, 2009. [or]
5. Plaintiffs shall disclose the identity and opinions of their expert witnesses by 5:00 p.m. on _____, 2009.
6. Defendants shall disclose the identity and opinions of their expert witnesses by 5:00 p.m. on _____, 2009.
7. Any and all discovery requests shall be served by 5:00 p.m. on _____, 2009.
8. The parties shall disclose all non-expert witnesses by 5:00 p.m. on _____, 2009.
[or]
8. Plaintiffs shall disclose areas of non-expert testimony by 5:00 p.m. on _____, 2009.
9. Defendants shall disclose areas of non-expert testimony by 5:00 p.m. on _____, 2009.
10. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by 5:00 p.m. on _____, 2009.
11. All discovery shall be concluded by 5:00 p.m. on _____, 2009.
12. All dispositive motions shall be filed and served by 5:00 p.m. on _____, 2009.
13. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by 5:00 p.m. on _____, 2009. This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.

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14. Settlement conference (choose one):

The parties shall participate in private mediation by 5:00 p.m. on _____, 2009;

OR

The parties shall participate in a mandatory Settlement Conference and this matter is referred to the court's Alternative Dispute Resolution for the appointment of a judge pro tempore to conduct a settlement conference. Counsel and any "pro per" parties will contact the appointed judge pro tempore to arrange the time and location for the settlement conference. The judge pro tempore is shall conduct a settlement conference not later than _____, 2009. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re: Alternative to ADR must be presented to the Court by 5:00 p.m. on _____, 2009.

15. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.

16. A telephonic status conference is set for _____, 2009 at _____ .m. for the purpose of assigning a trial date if the case has not settled.

17. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

Notices of Settlement

In accordance with the provisions of A.R.C.P. 41(a), to be effective, any Notice of Settlement or Dismissal providing for resolution of one or more pending claims that is filed after service by the opposing party's answer or dispositive motion, must be signed by each affected party (or appropriate counsel) prosecuting or defending against the claim(s) covered by the Notice. Each filed Notice shall state whether it resolves all pending issues in the case and constitutes a representation to the Court that the claims subject to the Notice have been fully resolved with respect to Notice signatories, and that the only further relief to be sought with respect to such claims is entry of an order that each signatory confirms is consistent with the agreement that gave rise to filing of the Notice.