

Rule 16. Pretrial Conferences; Scheduling; Management**16.01 Pretrial Conferences; Objectives**

In any action, the court may in its discretion direct the attorneys for the parties and any self-represented litigants to appear before it for a conference or conferences before trial for such purposes as:

- (a) expediting the disposition of the action;
- (b) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (c) discouraging wasteful pretrial activities;
- (d) improving the quality of the trial through more thorough preparation; and
- (e) facilitating the settlement of the case.

(Amended effective July 1, 2015.)

16.02 Scheduling and Planning

The court may, and upon written request of any party with notice to all parties, shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

- (a) to join other parties and to amend the pleadings;
- (b) to file and hear motions; and
- (c) to complete discovery.

The scheduling order also may include

- (d) provisions for disclosure or discovery of electronically stored information;
- (e) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation materials after production;
- (f) the date or dates for conferences before trial, a final pretrial conference, and trial; and
- (g) any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except by leave of court upon a showing of good cause.

(Amended effective May 21, 2007.)

Advisory Committee Comment - 2007 Amendment

Rule 16 is amended to allow the court to include provision for discovery of electronically stored information. Although this discovery may not require special attention in a pretrial order, in many cases it may be helpful to address this subject separately. The rule also permits the pretrial order to memorialize the court's approval of agreements relating to claims of privilege. The rule specifically contemplates that parties may desire to permit documents to be reviewed or sampled, in order to permit the requesting parties to assess the reasonable need for further production without prejudice to any privilege claims.

16.03 Subjects for Consideration

At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to:

(a) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(b) the necessity or desirability of amendments to the pleadings;

(c) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(d) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Minn. R. Evid. 702 ;

(e) the appropriateness and timing of summary adjudication under Rule 56;

(f) the control and scheduling of discovery, including orders affecting discovery pursuant to Rule 26 and Rules 29 through 37;

(g) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(h) the advisability of referring matters pursuant to Rule 53;

(i) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or rule;

(j) the form and substance of the pretrial order;

(k) the disposition of pending motions;

(l) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(m) an order for a separate trial pursuant to Rule 42.02 with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(n) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50.01 or an involuntary dismissal under Rule 41.02(b);

(o) an order establishing a reasonable limit on the time allowed for presenting evidence;
and

(p) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(Amended effective January 1, 1997; amended effective January 1, 2006.)

Advisory Committee Comment - 1996 Amendment

This change conforms Rule 16.03 to its federal counterpart. The rule is expanded to enumerate many of the functions with which pretrial conferences must deal. Although the courts have inherent power to deal with these matters even in the absence of a rule, it is desirable to have the appropriate subjects for consideration at pretrial conferences expressly provided for by rule. The federal changes expressly provide for discussion of settlement, in part, to remove any confusion over the power of the court to order participation in court-related settlement efforts. See, e.g., G. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648 (7th cir. 1989); Strandell v. Jackson County, Ill. (In re Tobin), 838 F.2d 884 (7th Cir. 1988); Klothe v. Smith, 771 F.2d 667 (2d Cir. 1985); Buss v. Western Airlines, Inc., 738 F.2d 1053 (9th Cir. 1984).

Advisory Committee Comment - 2006 Amendment

Rule 16.03(n) is amended to reflect the new name for motions under Rule 50.01 as amended effective January 1, 2006.

16.04 Final Pretrial Conference

Any final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any self-represented litigants.

(Amended effective July 1, 2015.)

16.05 Pretrial Orders

After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action and shall be modified only to prevent manifest injustice.

16.06 Sanctions

If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the court, upon motion or upon its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37.02(b)(2), (3), (4). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.