

PLEASE READ CAREFULLY.
Lead counsel is personally responsible
for complying with this Order.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

_____ ,	)	CASE NO. _____
)	
)	
PLAINTIFF,	)	JUDGE _____
)	
vs.	)	MAGISTRATE JUDGE
	)	KATHLEEN B. BURKE
)	
_____ ,)	
)	
	)	CASE MANAGEMENT
	)	CONFERENCE
DEFENDANTS.	)	SCHEDULING ORDER

DATE OF HEARING: at
LEAD COUNSEL, PARTIES AND PERSONS WITH SETTLEMENT AUTHORITY
MUST BE PRESENT

I. CASE MANAGEMENT CONFERENCE

All counsel and parties will take notice that the above-entitled action has been set for a Case Management Conference (“CMC”) on at , United States Courthouse, 2 South Main Street, Akron, Ohio. Participants should report directly to Chambers 480.

This Court requires the attendance of all parties and lead counsel. “Parties” means either the named individuals or, in the case of a corporation or similar legal entity, that person who is most familiar with the facts of the case. “Parties” does not mean in-house counsel.

The Court believes that the CMC is of extraordinary importance and expects counsel to be prepared with the factual predicate from the standpoint of counsel's client. The Court will specifically tailor the Case Management Plan to the particular case based on the information supplied at the CMC by counsel and parties. In addition, during the CMC, the Court will seriously explore settlement possibilities, with an eye toward resolving the case as early as possible. Therefore, persons with actual settlement authority are also required to attend the CMC.

The agenda for the CMC is set forth in Rule 16.3(b)(2) of the Local Rules of the United States District Court for the Northern District of Ohio ("LR"). In addition, in most instances, the Court expects to set a trial date and a final pre-trial conference date at the CMC.

II. APPLICABLE RULES

This case is governed by both the Local Rules of the United States District Court for the Northern District of Ohio and the Federal Rules of Civil Procedure. All counsel and unrepresented parties therefore shall familiarize themselves with the Local and Federal Rules.

III. CONSENT TO JURISDICTION OF MAGISTRATE JUDGE

Magistrate Judge Kathleen B. Burke has been assigned to assist in this case. The parties are encouraged to discuss and consider consenting to the jurisdiction of the Magistrate Judge. *See* Attachment 2. A form reflecting the parties' consent, if any, to the Magistrate Judge's jurisdiction is provided with this Order.

IV. TRACK ASSIGNMENT

This case is subject to the provisions of Differentiated Case Management (“DCM”), as set forth in the Local Rules. The Court will evaluate this case in accordance with LR 16.2(a)(1) and assign it to one of the case management tracks described in LR 16.2(a)(2). Each of the tracks (expedited, standard, complex, mass tort and administrative) has its own set of guidelines and timelines governing discovery, motion practice and trial.

Pursuant to LR 16.3(a), the Court reserves determination of track assignment until further discussion at the CMC.

V. ELECTRONIC FILING

All attorneys are required to file electronically pursuant to modifications to the local civil and criminal rules. The Court’s electronic filing policy/procedure is available on the court’s web site (www.ohnd.uscourts.gov) along with registration forms, training materials and tutorials.

VI. PREPARATION FOR THE CMC

The Planning Meeting; Report of the Planning Meeting

The agenda for the CMC is set forth in Local Rule 16.3(b)(2). Pursuant to LR 16.3(b)(3) and Fed. R. Civ. P. 26(f), counsel for all parties are jointly responsible for participating in a planning meeting well in advance of the CMC in an effort to agree in good faith upon the items listed in the agenda, including a track assignment and discovery schedule. This conference is called the “Planning Meeting.” Counsel for plaintiff shall schedule and make arrangements for the planning meeting in consultation with counsel for the other parties.

In addition to reviewing the agenda items listed in Local Rule 16.3(b)(2) at the Planning Meeting, counsel must determine whether there will be discovery of electronically stored information, or E-discovery. If counsel anticipate E-discovery, they must decide upon a method for conducting such discovery or they must agree to abide by the default standard set forth in Appendix K to the Local Rules (Attachment 3).

A report of the planning meeting shall be jointly signed and filed with the Court not less than three (3) business days before the CMC. The report shall be in a form substantially similar to Attachment 1 to this Order. Counsel shall jointly report the results of the Planning Meeting to the Court by filling in the form and adding information about E-discovery (if applicable). After counsel sign the Report, Plaintiff's counsel shall file the Report and email a copy of it to Chambers no later than **3 days prior to CMC**. The Chambers email address is Burke_Chambers@ohnd.uscourts.gov.

The Court also requires Plaintiff(s) to make a demand upon Defendant(s) with a written description and monetary breakdown of the damages claimed, and Defendant(s) to respond with a counteroffer – all well before the CMC. Counsel shall email to Chambers separately from the Report of the Planning Meeting a report regarding the demand and counteroffer, which may be marked “Confidential” if counsel so choose. Plaintiff's counsel shall be responsible for emailing said report to Chambers no later than **3 days prior to CMC**. *See also* Section IX. regarding itemization of attorney fees.

VII. DISCOVERY/DISCLOSURE

A. Applicable Rules

Discovery shall be guided by LR 26.1, as well as all applicable Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). Prior to the CMC, the parties may undertake such formal or informal discovery as mutually agreed. Absent such mutual agreement, no discovery shall begin prior to the CMC with the exception of the Initial Disclosures required by Rule 26(a) of the Federal Rules of Civil Procedure (discussed in Section VII.B below) and such discovery as is necessary and appropriate to support or defend against any challenge to jurisdiction or claim for emergency, temporary or preliminary relief.

In the event of a discovery dispute, parties are required to comply with Local Rule 37.1. As required by Local Rule 37.1, parties shall not bring discovery disputes to the Court without having made “sincere, good faith efforts to resolve such disputes.” The Court interprets this as requiring the parties to communicate by telephone or in person in an effort to resolve a discovery dispute, although they may also communicate in writing, before bringing the dispute to the Court.

The parties shall determine whether there will be discovery of electronically stored information (ESI) [e-discovery]. If the parties anticipate any e-discovery, they must decide on a method for conducting such discovery or they must agree to abide by the default standard set forth in Appendix K to the Local Civil Rules.

B. Mandatory Disclosures

Fed. R. Civ. P. 26(a) mandates a series of required *Initial Disclosures* in advance of discovery requests. Only certain categories of proceedings, outlined in Rule 26(a)(1)(B), are exempt from these *Initial Disclosures*. If a party wishes to object to the requirement of initial disclosures, it must do so as part of the planning meeting report described above in Section VI.

The following requirements regarding disclosure will apply in this case:

- 1. This is an ERISA case (Employee Retirement Income Security Act of 1974) solely involving review of an administrative record and, as such, is not subject to disclosures. *See* Fed. R. Civ. P. 26(a)(1)(B)(i). Counsel shall instead familiarize themselves with the procedure set forth in *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609, 619 (6th Cir. 1998) (Gilman, J., concurring). This is the procedure that will be followed in all ERISA matters.
- 2. The disclosures mandated by Fed. R. Civ. P. 26(a) will all apply as set forth in that Rule.
 - a. Absent a showing of good cause, by **21 days prior to CMC**, the plaintiff must serve on opposing parties the initial disclosures required by Fed. R. Civ. P. 26(a)(1).
 - b. Absent a showing of good cause, by **14 days prior to CMC**, all other parties must serve on opposing parties the initial disclosures required by Fed. R. Civ. P. 26(a)(1).

C. Filing of Discovery Materials

Unless otherwise ordered by the Court, discovery materials, including but not limited to *Initial Disclosures* required by Fed. R. Civ. P. 26(a)(1), shall not be filed in this matter. Deposition excerpts or relevant portions of other discovery materials offered in support of or in opposition to a motion are to be filed with the party's memorandum of law and attached as properly identified exhibits thereto. Where deposition excerpts have been attached in support of or in opposition to a *dispositive* motion (e.g., a motion to dismiss or for summary judgment), the entire deposition transcript must also be separately, and simultaneously, filed. Such deposition transcript must be filed electronically and must be in text-searchable PDF format.

D. Depositions

The Judges of the Northern District of Ohio have adopted LR 30.1, which governs the taking of depositions. Counsel are expected to comply with the rule in its entirety.

VIII. MOTIONS AND OTHER FILINGS

Motion practice shall be guided by LR 7.1, as well as all applicable Federal Rules of Civil Procedure. Additionally, in the event that the exhibits and appendices associated with the motion and supporting brief exceed 50 pages in length, a courtesy copy shall be provided to Chambers within one (1) business day of filing.

All documents filed in this action, whether electronically or by other means, shall be presented in the following form: all margins shall be at least one inch; the main text of all documents shall be at least 12-point, double-spaced non-condensed type (“non-condensed type” referring either to Times New Roman type or to another type that has no more than 80 characters to a line of text); footnotes and block quotations may be single-spaced; and footnotes may be in a different-size font, no smaller than a 10-point single-spaced type font. Compliance with the foregoing requirements will be judged in comparison with the Court’s own WordPerfect and Microsoft Word generated documents. Both paper documents and electronically-filed documents when printed out will be held to this standard. Nonconforming documents may be stricken, in the Court’s discretion.

IX. ATTORNEY FEES ITEMIZATION

In all cases in which it is anticipated that a party or parties will seek attorney fees pursuant to statutory or case-law authority, such party shall serve on opposing counsel and e-mail the Court at Burke_Chambers@ohnd.uscourts.gov three (3) days before the CMC a

preliminary estimate and/or budget of the amount of fees and expenses expected to be the subject of any such claim. The estimate shall include, but not be limited to, the following:

ATTORNEY FEES

Preliminary Investigation and Filing Complaint \$ _____
 Procedural Motions Practice \$ _____
 Discovery \$ _____
 Dispositive Motions Practice \$ _____
 Settlement Negotiations \$ _____
 Trial \$ _____

TOTAL FEES \$ _____

COSTS

Depositions \$ _____
 Experts \$ _____
 Witness Fees \$ _____
 Other \$ _____

TOTAL COSTS \$ _____

X. RESOLUTION BEFORE CMC

If this case is resolved before the CMC, the parties shall submit a stipulation of settlement and dismissal, or otherwise notify the Court that such a stipulation is in process by contacting the Court’s Courtroom Deputy Clerk at 330-252-6170.

IT IS SO ORDERED.

Dated: _____

s/Kathleen B. Burke

KATHLEEN B. BURKE
U.S. MAGISTRATE JUDGE

ATTACHMENT 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

	)	CASE NO. _____
)	
PLAINTIFFS,	)	JUDGE _____
)	
vs.	)	MAGISTRATE JUDGE
	)	KATHLEEN B. BURKE
)	
)	
	)	REPORT OF PARTIES' PLANNING
	)	MEETING UNDER FED. R. CIV. P.
DEFENDANTS.	)	26(f) AND LR 16.3(b)(3)

1. Pursuant to Fed. R. Civ. P. 26(f) and LR 16.3(b)(3), a meeting was held on _____, 20____, at _____ and

was attended by:

_____ counsel for plaintiff(s) _____

_____ counsel for plaintiff(s) _____

_____ counsel for defendant(s) _____

_____ counsel for defendant(s) _____

2. The parties recommend the following track:

___ Expedited ___ Standard ___ Administrative

___ Complex ___ Mass Tort

THIS DISCOVERY PLAN MUST BE FILED BEFORE THE CMC AS DIRECTED IN THE CMC
SCHEDULING ORDER.

3. This case is suitable for one or more of the following Alternative Dispute Resolution (“ADR”) mechanisms:

____ Early Neutral Evaluation

____ Summary Jury Trial

____ Mediation

____ Summary Bench Trial

____ Arbitration

____ Case not suitable for ADR

4. The parties ____do/____do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

5. Initial Disclosures: (check one)

____ a) Plaintiff made initial disclosures on _____ and all other parties made initial disclosures on _____.

Objections to initial disclosures under Fed. R. Civ. P. 26(a)(1) ____are/____ are not made. If there are objections, they are specified along with the identity of the objecting party in an appendix to this Discovery Plan. The objecting party requests that the Court rule with respect to these disclosures at the Case Management Conference.

____ b) This is an ERISA case and does not require initial disclosures. See ¶ 6 for suggested briefing schedule.

6. Subsequent proceedings (for ERISA cases):

a) Defendant shall file the entire administrative record by _____.

b) Plaintiff shall file the opening brief contemplated by *Wilkins v. Baptist*

Healthcare System, Inc., 150 F.3d 609, 619 (6th Cir. 1998) (Gilman, J., concurring)

by _____.

c) Defendant shall respond by _____.

d) Plaintiff shall reply by _____.

e) There shall be no discovery in this case except as set forth in *Wilkins*.

7. Subsequent proceedings (for non-ERISA cases):

a) Recommended Discovery Plan: Describe the subjects on which discovery is to be sought and the nature and extent of discovery, including any limitation on the number of interrogatories, the number and/or length of depositions, and/or the number of requests for admission.

b) Recommended Electronic Discovery Plan (indicate one):

i) The parties agree that there will be no discovery of electronically stored information ____; OR

ii) The parties have agreed to a method for conducting discovery of electronically-stored information ____; OR

iii) The parties have agreed to follow the default standard for discovery of electronically-stored information (Appx. K to N.D. Ohio Local Rules) ____.

- c) Non-Expert discovery cut-off date: _____
- d) Recommended deadline for amending the pleadings and/or adding additional parties: _____
- e) Expert report due date for party with burden of proof: _____
- f) Rebuttal expert report due date: _____
- g) Expert Discovery cut-off date: _____

8. Recommended Dispositive Motion Plan:

(Note: Parties are expected to comply with the requirements of recently amended Rule 56 when filing motions for summary judgment)

- a) Dispositive motion due date: _____
- b) Opposition to dispositive motion due date: _____
- c) Replies in support of dispositive motion due date: _____

9. Other matters for the attention of the Court:

Attorney for Plaintiff _____

Attorney for Plaintiff(s) _____

Attorney for Defendant(s) _____

Attorney for Defendant(s) _____

Objections, if any, to initial disclosures are appended.



SOLOMON OLIVER, JR.
CHIEF JUDGE

Attachment 2
UNITED STATES DISTRICT COURT

Northern District of Ohio
801 West Superior Avenue
Cleveland, OH 44113-1834

(216) 357-7171
(216) 357-7176 FAX

Dear Litigant,

The United States District Court for the Northern District of Ohio provides litigants with several options to assist them to achieve a fair and speedy resolution of their disputes. One important option is the opportunity to consent to the trial jurisdiction of the experienced magistrate judge assigned to your case.

A magistrate judge may conduct any or all proceedings, including trial, in a jury or nonjury civil matter and order the entry of judgment upon the consent of the parties (28 U.S.C. §636(c)). Because they do not hear criminal felony matters, magistrate judges can often establish civil trial dates sooner, and adhere to those dates more firmly, than Article III judges whose civil dockets are often interrupted by the requirements of the criminal Speedy Trial Act.

The Court encourages litigants to consent to the trial jurisdiction of the magistrate judge assigned to their case. The magistrate judge can help litigants proceed with the case at a pace agreeable to the parties and may have more flexibility in scheduling. Consent to the magistrate judge need not add any additional steps to the litigation process. Appeals upon judgments in a case disposed of by a magistrate judge on consent of the parties must be taken directly to the United States Court of Appeals for the Sixth Circuit (Local Rule 73.2).

Litigants give consent to the trial jurisdiction of a specific magistrate judge, not to magistrate judges in general (Local Rule 73.1 (b)). Where the litigants have consented to the trial jurisdiction of a magistrate judge and that magistrate judge is no longer able to work on the case, the case will be returned to the assigned Article III Judge and the parties may consent or refuse to consent to the trial jurisdiction of any magistrate judge subsequently assigned to the case. Litigants who wish to consent to the trial jurisdiction of the magistrate judge assigned to their case should complete the enclosed Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference form. Please note that the form requires all parties to signify their consent.

Sincerely,

A handwritten signature in cursive script that reads "Solomon Oliver, Jr.".

Solomon Oliver, Jr.
Chief Judge

attachments



United States Magistrate Judges

*Their Function
And Purpose
In Our
Federal Courts*



A Publication of Federal Magistrate Judges Association

Understanding the Function and Purpose of United States Magistrate Judges.

The backbone of an independent federal judiciary is life-tenured judges appointed under Article III of the Constitution. In America's federal trial courts, justice is administered by life-tenured District Judges, and by judges who serve fixed-terms: United States Magistrate Judges and United States Bankruptcy Judges.

This brochure illuminates the function and purpose of United States Magistrate Judges who are independent judges serving federal district courts in an adjunct capacity by dealing with cases, or parts of cases, assigned to them by district judges.

Title and Manner of Addressing a United States Magistrate Judge.

- ***The official title of these judges is "United States Magistrate Judge."***
- ***A United States Magistrate Judge should be addressed, orally and in writing, as "Judge _____," to be consistent with the position's judicial role and official title as prescribed by law.***
- ***Although some state courts have a judicial officer called a "magistrate," that title as applied to a United States Magistrate Judge is obsolete. To address these judges simply as "Magistrate" is akin to improperly addressing a Lieutenant Colonel as "Lieutenant," or a Bankruptcy Judge as "Bankruptcy."***

Answers to Some Commonly Asked Questions.

Q: What are the standards for selecting a federal magistrate judge?

- A:** To be appointed as a magistrate judge, an individual must:
- have been a member in good standing of the bar of the highest court of a State, District, Territory, or Commonwealth of the United States for at least five years;
 - be determined by the appointing district court to be competent to perform the duties of the office;
 - be unrelated to a judge of the appointing court; and
 - be selected pursuant to standards promulgated by the Judicial Conference of the United States.

Q: What's the difference between a district court judge and a "magistrate judge's court"?

- A:** There is no "magistrate court." Both district and magistrate judges preside in United States District courts created under Article III of the Constitution.

Q: What's the difference between district and magistrate judges?

- A:** District judges are life-tenured judges nominated by the President and confirmed by the Senate. Magistrate judges are fixed-term judges appointed by district judges for eight-year renewable terms via a merit selection process.

Q: How do civil litigants request trial before magistrate judges?

- A:** All parties must consent in writing and the case must be officially transferred by the district judge. Forms are available from the clerk of court.

Q: Are a party's rights affected when litigants consent to have a magistrate judge hear a case?

- A:** Consenting to jurisdiction of a magistrate judge does not eliminate substantive or procedural rights litigants would otherwise have before a district judge. For example, parties retain their right to have a jury trial.

Q: Do magistrate judges handle many civil jury cases?

- A:** Yes. In 1999, magistrate judges conducted approximately 21 percent of the civil jury trials in United States district courts. When all parties consent, magistrate judges may conduct trials and enter judgments in civil cases of any type or size.

Q: Do magistrate judges handle many criminal cases?

- A:** Yes. With consent of defendants, magistrate judges may preside in Class A misdemeanor cases, including conducting jury trials. In 1999, magistrate judges terminated 10,733 Class A misdemeanor cases. Although magistrate judges do not preside at felony trials, They may also conduct preliminary and post-conviction proceedings in felony cases. Magistrate judges may conduct trials that dispose of all petty offense cases with the defendant's consent.

The Role of Magistrate Judges.

United States Magistrate Judges are generalist judges with a broad range of responsibilities. While their duties may vary with the specific needs of each district court, Magistrate Judges handle a wide array of federal civil and criminal cases nation wide.

A sampling of the judicial functions performed by Magistrate Judges demonstrates the potential breadth of their authority:

- Presiding at civil jury trials by consent of the parties and entering judgments;
- Presiding at criminal misdemeanor jury trials by consent of the parties and imposing sentences;
- Pretrial case management in complex civil cases;
- Conducting preliminary proceedings in all criminal cases;
- Conducting settlement conferences;
- Hearing and determining pretrial motions;
- Hearing and recommending disposition of summary judgment and other case dispositive motions;
- Reviewing prisoner suits collaterally attacking convictions or complaining of conditions of confinement; and
- Issuing arrest and search warrants.

A Historic Overview.

The United States magistrate judge system evolved from the United States commissioner system established in 1793. In 1965, Congress conducted an exhaustive examination of the commissioner system. Witnesses overwhelmingly favored overhauling the system and enhancing the commissioner position.

The Federal Magistrates Act of 1968 created the position named United States magistrate to denote the break with the commissioner system. The Act increased the criminal trial jurisdiction of these new judicial officers over that of commissioners, and also authorized the new officers to assist judges of district courts in handling a wide range of proceedings in civil and criminal cases.

In 1976, 1979 and 2000, further amendments were enacted which specifically:

- *Authorized magistrate judges to try any civil case upon consent of the parties and to order the entry of final judgment;*
- *Expanded trial jurisdiction of magistrate judges to all federal misdemeanors;*
- *Required that magistrate judges be selected and appointed in accordance with regulations promulgated by the Judicial Conference of the United States;*
- *Expanded magistrate judges' civil and criminal contempt authority;*
- *Gave magistrate judges plenary authority in Class B and C misdemeanor cases without the consent of the defendant; and*
- *Gave magistrate judges authority to sentence juvenile defendants to terms of imprisonment in misdemeanor cases.*

**UNITED STATES DISTRICT COURT
Northern District of Ohio**

Plaintiff

v.

Defendant

CONSENT TO EXERCISE OF JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE
AND ORDER OF REFERENCE

Case Number:

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c) and Fed. R. Civ. P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

Signatures

Party Represented

Date

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ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to _____ United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S. C. 636(c), Fed.R.Civ.P. 73 and the foregoing consent of the parties.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ***ONLY IF*** ALL PARTIES HAVE CONSENTED ***ON THIS FORM*** TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

**UNITED STATES DISTRICT COURT
Northern District of Ohio**

NOTICE & ORDER

Pursuant to 28 U.S.C. §636(c)(1) and LR 73.1, a Magistrate Judge of the Northern District of Ohio may, upon consent of all parties to an action, and entry of an order of reference by the Judge, exercise trial jurisdiction in civil actions, both jury and non-jury, and enter final judgment therein.

If all parties to this action consent and an order of reference is entered, the case will be assigned to a Magistrate Judge pursuant to LR 73.1. If all parties do not consent, or if an order of reference is not entered, the action will remain with the Judge to whom it is assigned. The decision of counsel on this matter of consent is entirely voluntary. Your response is joint, and disclosure of individual decisions is not required.

Pursuant to Local Civil Rule 73.1, Recusal, Resignation or Death of Magistrate Judge, where the parties have consented of the transfer of a civil case to a Magistrate Judge under section (a) above, if the Magistrate Judge thereafter recuses, resigns or dies, the case shall be returned to the District Court Judge. The Clerk shall immediately assign another Magistrate Judge by the random draw and notify the parties of such new assignment. Within ten (10) days after such notification by the Clerk, the parties shall indicate their consent, or lack thereof, to transferring the case to the newly-assigned Magistrate Judge under 28 U.S.C. §636(c). If the parties do not consent to the transfer, the case shall remain with the District Court Judge.

At the time the last appearance of counsel is made on behalf of the named defendant, the parties are to communicate with each other on this matter. ***It is the responsibility of plaintiff's counsel to initiate such consultation. The response is to be returned within ten (10) days of the last appearance.*** The response must contain the signatures of all counsel.

Pursuant to 28 U.S.C. §636(c)(3) all appeals relating to magistrate consent cases must be heard only in the court of appeals.

Please file the proposed consent electronically using the civil event "Notice". Parties representing themselves should sign and send form to the Clerk's Office. If an order of reference is entered by the Court, you will be advised by the Clerk as to which Magistrate Judge the has been assigned for further proceedings.

**Gerri M. Smith,
Clerk of Court**

(See form on the reverse side)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DEFAULT STANDARD FOR DISCOVERY OF
ELECTRONICALLY STORED INFORMATION (“E-DISCOVERY”)

1. Introduction. The court expects the parties to cooperatively reach agreement on how to conduct e-discovery. In the event that such agreement has not been reached by the time of the Fed. R. Civ. P. 16 scheduling conference, the following default standards shall apply until such time, if ever, the parties reach agreement and conduct e-discovery on a consensual basis.

2. Discovery conference. Parties shall discuss the parameters of their anticipated e-discovery at the Fed. R. Civ. P. 26(f) conference, as well as at the Fed. R. Civ. P. 16 scheduling conference with the court, consistent with the concerns outlined below.

Prior to the Rule 26(f) conference, the parties shall exchange the following information:

- a. A list of the most likely custodians of relevant electronically stored information (“identified custodians”), including a brief description of each person’s title and responsibilities (see ¶ 7).
- b. A list of each relevant electronic system that has been in place at all relevant times¹ and a general description of each system, including the nature, scope, character, organization, and formats employed in each system. The parties should also include other pertinent information about their electronically stored information and whether that electronically stored information is of limited accessibility. Electronically stored information of limited accessibility may include those created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost.
- c. The name of the individual designated by a party as being most knowledgeable regarding that party’s electronic document retention policies (“the retention coordinator”), as well as a general description of the party’s electronic document

¹ For instance, in a patent case, the relevant times for a patent holder may not only be the time of the alleged infringement, but may also be the date the patent(s) issued or the effective filing date of each patent in suit.

retention policies for the systems identified above (see ¶ 6).

- d. The name of the individual who shall serve as that party's "e-discovery coordinator" (see ¶ 3).
- e. Provide notice of any problems reasonably anticipated to arise in connection with e-discovery.

To the extent that the state of the pleadings does not permit a meaningful discussion of the above by the time of the Rule 26(f) conference, the parties shall either agree on a date by which this information will be mutually exchanged or submit the issue for resolution by the court at the Rule 16 scheduling conference.

3. E-discovery coordinator. In order to promote communication and cooperation between the parties, each party to a case shall designate a single individual through which all e-discovery requests and responses are coordinated ("the e-discovery coordinator"). Regardless of whether the e-discovery coordinator is an attorney (in-house or outside counsel), a third party consultant, or an employee of the party, he or she must be:

- a. Familiar with the party's electronic systems and capabilities in order to explain these systems and answer relevant questions.
- b. Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues.
- c. Prepared to participate in e-discovery dispute resolutions.

The Court notes that, at all times, the attorneys of record shall be responsible for responding to e-discovery requests. However, the e-discovery coordinators shall be responsible for organizing each party's e-discovery efforts to insure consistency and thoroughness and, generally, to facilitate the e-discovery process. The ultimate responsibility for complying with e-discovery requests rests on the parties. Fed. R. Civ. P. 37(f).

4. Timing of e-discovery. Discovery of relevant electronically stored information shall proceed in a sequenced fashion.

- a. After receiving requests for document production, the parties shall search their documents, other than those identified as limited accessibility electronically stored information, and produce relevant responsive electronically stored information in accordance with Fed. R. Civ. P. 26(b)(2).

- b. Electronic searches of documents identified as of limited accessibility shall not be conducted until the initial electronic document search has been completed. Requests for information expected to be found in limited accessibility documents must be narrowly focused with some basis in fact supporting the request.
- c. On-site inspections of electronic media under Fed. R. Civ. P. 34(b) shall not be permitted absent exceptional circumstances, where good cause and specific need have been demonstrated.

5. Search methodology. If the parties intend to employ an electronic search to locate relevant electronically stored information, the parties shall disclose any restrictions as to scope and method which might affect their ability to conduct a complete electronic search of the electronically stored information. The parties shall reach agreement as to the method of searching, and the words, terms, and phrases to be searched with the assistance of the respective e-discovery coordinators, who are charged with familiarity with the parties' respective systems. The parties also shall reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize the expense, the parties may consider limiting the scope of the electronic search (*e.g.*, time frames, fields, document types).

6. Format. If, during the course of the Rule 26(f) conference, the parties cannot agree to the format for document production, electronically stored information shall be produced to the requesting party as image files (*e.g.*, PDF or TIFF). When the image file is produced, the producing party must preserve the integrity of the electronic document's contents, *i.e.*, the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate particularized need for production of electronically stored information in their native format.

7. Retention. Within the first thirty (30) days of discovery, the parties should work toward an agreement (akin to the standard protective order) that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronically stored information. In order to avoid later accusations of spoliation, a Fed. R. Civ. P. 30(b)(6) deposition of each party's retention coordinator may be appropriate.

The retention coordinators shall:

- a. Take steps to ensure that relevant e-mail of identified custodians shall not be permanently deleted in the ordinary course of business and that relevant electronically stored information maintained by the individual custodians shall not be altered.
- b. Provide notice as to the criteria used for spam and/or virus filtering of e-mail and attachments; e-mails and attachments filtered out by such systems shall be deemed non-responsive so long as the criteria underlying the filtering are reasonable.

Within seven (7) days of identifying the relevant document custodians, the retention coordinators shall implement the above procedures and each party's counsel shall file a statement of compliance as such with the court.

8. Privilege. Electronically stored information that contains privileged information or attorney-work product shall be immediately returned if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production within thirty (30) days of such. In all other circumstances, Fed. R. Civ. P. 26(b)(5)(B) shall apply.

9. Costs. Generally, the costs of discovery shall be borne by each party. However, the court will apportion the costs of electronic discovery upon a showing of good cause.