REQUEST FOR COMMENTS

The Supreme Court seeks comments from the bench, the bar, and the public on the proposed amendments to Rule 16 of the Mississippi Rules of Civil Procedure attached as Exhibit A.

On September 15, 2011, the Advisory Committee on Rules moved to amend Rule 16. Its motion, attached as Exhibit B, was posted for comment from May 7 to June 9, 2012, and from March 26 to May 26, 2014.

On March 16, 2015, the Supreme Court sought comments on proposed amendments to Rules 16 and 26 of the Mississippi Rules of Civil Procedure and to Rule 4.04 of the Uniform Rules of Circuit and County Court Practice. Those proposed amendments, attached as Exhibit C, were based, in part, on the Advisory Committee's motion to amend Rule 16. Several comments were filed.

The Court now seeks comments on the proposed amendments to Rule 16 attached as Exhibit A. Except for the highlighted language, the proposed amendments are the same as those submitted by the Advisory Committee in 2011.

Comments must be filed with the Clerk of Appellate Courts at Post Office Box 249, Jackson, MS 39205.

The filing deadline is April 29, 2016.

RULE 16. PRE-TRIAL PROCEDURE

(a) Scheduling Order.

(1) Within 45 days of any defendant being served with the complaint or 45 days after any defendant has appeared, the attorneys of record and any unrepresented party that has appeared in the case, shall confer for the purpose of drafting an Agreed Scheduling Order. The Agreed Scheduling Order shall contain:

(A) A trial date that shall be provided by the court administrator or other court personnel upon request by counsel of record for any party or upon request by an unrepresented party that has appeared in the case. If, in a multi-county district, a trial date cannot be assigned when requested because there has not yet been an order establishing terms of court for the following calendar year, the court administrator or other court personnel shall provide a trial date as soon after October 1 as is reasonably possible.

(B) A deadline by which motions for summary judgment must be filed, which deadline shall be no later than 90 days before the trial date;

(C) A deadline by which motions challenging expert testimony pursuant to M.R.E. 702 must be filed, which deadline shall be no later than 90 days before the trial date;

(~~E~~D) A discovery deadline by which all discovery must be completed, which deadline shall be no later than 30 days before the deadline for filing motions for summary judgment;

(~~F~~E) A deadline by which defendant(s) must serve responses to expert interrogatories, which deadline shall be no later than 75 days before the discovery deadline;

(~~G~~F) A deadline by which plaintiff(s) must serve responses to expert interrogatories, which deadline shall be no later than 120 days before the discovery deadline; and

(~~H~~G) A deadline by which motions to join additional parties and/or amend the pleadings must be served, which deadline shall be no later than 90 days after any defendant has been served with the complaint or has entered an appearance in the case.

Upon agreement of the parties or by order of the Court for good cause shown, the deadlines required by subsections (a)(1)(B) – (~~H~~G) may be modified.

(2) Within 15 days of conferring pursuant to subsection (a)(1), the attorneys of record and any unrepresented parties participating in the conference shall submit an Agreed Scheduling Order to the judge for signature and entry into the record. The attorneys of record and all unrepresented parties participating in the conference are jointly responsible

for arranging the conference, conducting the conference, obtaining a trial date from the court administrator or other court personnel, drafting the Agreed Scheduling Order and submitting the Agreed Scheduling Order to the judge.

(3) The following categories of cases are exempt from the requirements in subsections (a)(1) and (2):

(A) cases the principal purpose of which is to collect on an open account or other liquidated debt;
(B) cases governed by M.R.C.P. 81; and
(C) cases that will be arbitrated and governed by the statutory arbitration provisions found at Miss. Code Ann. §11-15-1 *et. seq.*

If the parties in any case exempted by subsection (a)(3)(A) or (B) above unanimously desire a scheduling order, then an Agreed Scheduling Order may be jointly drafted and submitted to the judge. In a case that is not otherwise exempt from the requirements in subsections (a)(1) and (2), a court may, upon joint motion by all the parties, exempt such case from such requirements.

(b) Pre-trial Conference

(1) In any action the court may on its own motion or on the motion of any party, and shall on the motion of all parties, direct the attorneys for the parties to appear before it at least twenty days before the case is set for trial for a conference to consider and determine:

~~(a)~~ (A) The possibility of settlement of the action;
~~(b)~~ (B) the simplification of the issues;
~~(c)~~ (C) the necessity or desirability of amendments to the pleadings;
~~(d)~~ (D) itemizations of expenses and special damages;
~~(e)~~ (E) the limitation of the number of expert witnesses;
~~(f)~~ (F) the exchange of reports of expert witnesses expected to be called by each party;
~~(g)~~ (G) the exchange of medical reports and hospital records, but only to the extent that such exchange does not abridge the physician-patient privilege;
~~(h)~~ (H) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
~~(i)~~ (I) the imposition of sanctions as authorized by Rule 37;
~~(j)~~ (J) the possibility of obtaining admissions of fact and of documents and other exhibits which will avoid unnecessary proof;
~~(k)~~ (K) in jury cases, proposed instructions, and in non-jury cases, proposed findings of fact and conclusions of law, all of which may be subsequently amended or supplemented as justice may require;
~~(l)~~ (L) such other matters as may aid in the disposition of the action.

(2) The court may enter an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any other matters considered, and limiting issues for trial to those not disposed of by

admissions or agreements of counsel; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

[Amended effective March 1, 1989; April 13, 2000, _____.]

IN THE SUPREME COURT OF MISSISSIPPI

IN RE: THE MISSISSIPPI RULES
OF CIVIL PROCEDURE RULES 89-R-99001

MOTION TO AMEND RULE16
OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE

The Advisory Committee on Rules ("Committee") recommends that the Court adopt amendments to Rule 16 of the Mississippi Rules of Civil Procedure, its comment, and a proposed form. In support thereof, the Committee would show unto the Court the following:

1.

Over the past several years, the Mississippi Supreme Court has referred to the Committee various inquiries and requests from members of the Mississippi Bar asking for consideration of a rule requiring mandatory scheduling orders/trial settings. After due consideration and discussion, the Committee determined that a rule pertaining to scheduling orders and trial settings would be beneficial to both the bench and the bar.

2.

The proposed amendment to Rule 16 is "self-executing"—meaning the lawyers, rather than the judge, is responsible for drafting the scheduling order. To keep a judge's involvement to a minimum, the proposed amendment directs the court administrator to provide attorneys with a trial date and then sets automatic dates for all other deadlines based on the trial date. As the proposed amendment mandates all the deadlines, there is no room for disagreement among the attorneys and, therefore, no need to involve the judge. Once the agreed Scheduling Order is prepared, it is submitted to the Judge for

Exhibit B

MOTION 2011-2568

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signature and entry. The proposed amendment further provides for how the Scheduling Order may be modified.

3.

The proposed amendment applies to all cases other than those specifically exempted—the categories of cases exempted include suits on open accounts or other liquidated debts; M.R.C.P. Rule 81 cases; and cases to be arbitrated which are governed by statute.

4.

The proposed amended Rule 16 is attached hereto as Exhibit A and incorporated herein by reference as though copied at length herein. M.R.C.P. Rule 16 currently requires the court to hold a pretrial conference at the request of all parties and authorizes the court to hold a pretrial conference on its own motion or the motion of any party. After any such conference, the court may enter a pretrial order. The proposed amendment to Rule 16 leaves these provisions intact and the proposed amendment would be inserted as a subsection to Rule 16.

5.

The Committee further proposed an amendment to the Historical Note and the Comment as set forth in Exhibit A hereto.

6.

For the Court's further consideration, the Committee submits a proposed Agreed Scheduling Order form for adoption. A copy of the proposed form is attached as Exhibit B hereto.

7.

The proposed amendment requiring the entry of scheduling orders would further promote the ends of justice and facilitate the just, efficient, and speedy determination of every action.

WHEREFORE, PREMISES CONSIDERED, the Committee respectfully requests that the Court consider the proposed amendment to Rule 16 of the Mississippi Rules of Civil Procedure, its comment and historical note, and the proposed Agreed Scheduling Order form. Further, the Committee requests that should the Court adopt the proposed amendment, the amendment to Rule 16 be effective for any and all cases filed after the adoption of the proposed amendment.

Respectfully submitted, this, the 14th day of September, A.D., 2011.

MISSISSIPPI SUPREME COURT ADVISORY COMMITTEE ON RULES

BY: _____
COLETTE A. OLDMIXON, CHAIR

RULE 16. PRE-TRIAL PROCEDURE

(a) Scheduling Order.

(1) Within 45 days of any defendant being served with the complaint or 45 days after any defendant has appeared, the attorneys of record and any unrepresented party that has appeared in the case, shall confer for the purpose of drafting an Agreed Scheduling Order. The Agreed Scheduling Order shall contain:

(A) A trial date that shall be provided by the court administrator or other court personnel upon request by counsel of record for any party or upon request by an unrepresented party that has appeared in the case. If, in a multi-county district, a trial date cannot be assigned when requested because there has not yet been an order establishing terms of court for the following calendar year, the court administrator or other court personnel shall provide a trial date as soon after October 1 as is reasonably possible.

(B) A deadline by which motions for summary judgment must be filed, which deadline shall be 90 days before the trial date;

(C) A deadline by which motions challenging expert testimony pursuant to M.R.E. 702 must be filed, which deadline shall be 90 days before the trial date;

(E) A discovery deadline by which all discovery must be completed, which deadline shall be 30 days before the deadline for filing motions for summary judgment;

(F) A deadline by which defendant(s) must serve responses to expert interrogatories, which deadline shall be 75 days before the discovery deadline;

(G) A deadline by which plaintiff(s) must serve responses to expert interrogatories, which deadline shall be 120 days before the discovery deadline; and

(H) A deadline by which motions to join additional parties and/or amend the pleadings must be served, which deadline shall be 90 days after any defendant has been served with the complaint or has entered an appearance in the case.

Upon agreement of the parties or by order of the Court for good cause shown, the deadlines required by subsections (a)(1)(B) – (H) may be modified.

(2) Within 15 days of conferring pursuant to subsection (a)(1), the attorneys of record and any unrepresented parties participating in the conference shall submit an Agreed Scheduling Order to the judge for signature and entry into the record. The attorneys of record and all unrepresented parties participating in the conference are jointly responsible for arranging the conference, conducting the conference, obtaining a trial date from the court administrator or other court personnel, drafting the Agreed Scheduling Order and submitting the Agreed Scheduling Order to the judge.

EXHIBIT 1

(3) The following categories of cases are exempt from the requirements in subsections (a)(1) and (2):

(A) cases the principal purpose of which is to collect on an open account or other liquidated debt;
(B) cases governed by M.R.C.P. 81; and
(C) cases that will be arbitrated and governed by the statutory arbitration provisions found at Miss. Code Ann. §11-15-1 *et. seq.*

If the parties in any case exempted by subsection (a)(3)(A) or (B) above unanimously desire a scheduling order, then an Agreed Scheduling Order may be jointly drafted and submitted to the judge. In a case that is not otherwise exempt from the requirements in subsections (a)(1) and (2), a court may, upon joint motion by all the parties, exempt such case from such requirements.

(b) Pre-trial Conference

(1) In any action the court may on its own motion or on the motion of any party, and shall on the motion of all parties, direct the attorneys for the parties to appear before it at least twenty days before the case is set for trial for a conference to consider and determine:

~~(a)~~ (A) The possibility of settlement of the action;
~~(b)~~ (B) the simplification of the issues;
~~(c)~~ (C) the necessity or desirability of amendments to the pleadings;
~~(d)~~ (D) itemizations of expenses and special damages;
~~(e)~~ (E) the limitation of the number of expert witnesses;
~~(f)~~ (F) the exchange of reports of expert witnesses expected to be called by each party;
~~(g)~~ (G) the exchange of medical reports and hospital records, but only to the extent that such exchange does not abridge the physician-patient privilege;
~~(h)~~ (H) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
~~(i)~~ (I) the imposition of sanctions as authorized by Rule 37;
~~(j)~~ (J) the possibility of obtaining admissions of fact and of documents and other exhibits which will avoid unnecessary proof;
~~(k)~~ (K) in jury cases, proposed instructions, and in non-jury cases, proposed findings of fact and conclusions of law, all of which may be subsequently amended or supplemented as justice may require;
~~(l)~~ (L) such other matters as may aid in the disposition of the action.

(2) The court may enter an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any other matters considered, and limiting issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

[Amended effective March 1, 1989; April 13, 2000, _____.]

Advisory Committee Historical Note

Effective _____, Rule 16 was amended so as to require, in most cases, the entry of a scheduling order containing a trial date and other deadlines.
Effective April 13, 2000, Rule 16 was amended to allow the conference to be held pursuant to the court's motion. 753-754 So. 2d. XVII (West Miss. Cas. 2000.)
Effective March 1, 1989, Rule 16 was amended to abrogate provisions for a pretrial calendar. 536-538 So.2d XXI (West Miss. Cas. 1989).

Comment

Rule 16 governs ~~the~~ pretrial conferences and scheduling orders. ~~It provides that such a~~ Pretrial conferences *may* be held on the court's own motion or on the motion of any party and *shall* be held on the motion of all parties. ~~It authorizes the amending or supplementing of proposed jury instructions, or of proposed findings of fact and conclusions of law in non-jury cases, after they have been preliminarily agreed upon in the pretrial conference. Also, it provides that the court *may* enter a pretrial order, and if such order is entered it "shall control the subsequent course of action unless modified."~~ In most cases, a scheduling order setting a trial date and other deadlines is required. M.C.A. § 9-5-3 and M.C.A. § 9-7-3 provide that, with respect to multi-county chancery and circuit court districts, an order be entered by October 1 each year establishing the terms of court for the following calendar year. In the event such an order is not entered, the statutes provide that the court terms will be the same as the previous year. Thus, Rule 16(a)(1)(A) provides that if a trial date cannot be assigned when requested because the terms of court have not yet been set for the next calendar year, a trial shall date shall be assigned as soon after October 1 as is reasonably possible.

[Comment amended April 18, 1995; April 13, 2000, _____.]

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v. Civil Action, File No.

_____

C.D., Defendant(s)

AGREED SCHEDULING ORDER

This Scheduling Order, including the deadlines herein established, can be modified only by order of the court upon a showing of good cause. IT IS HEREBY ORDERED:

1. The action is set for trial commencing on: _____.

2. Motions for joinder of parties or amendments to the pleadings shall be served by: _____.

3. Plaintiff shall serve responses to Defendant's expert interrogatories by: _____.

4. Defendant shall serve responses to Plaintiff's expert interrogatories by: _____.

5. All discovery shall be completed by: _____.

6. Motions for summary judgment and/or motions challenging expert testimony pursuant to M.R.E. 702 shall be filed by: _____.

ORDERED: _____ _____

[date] [signature of Judge]

EXHIBIT 2

RULE 16. PRE-TRIAL PROCEDURE

(a) Scheduling Order.

(1) Within 45 days of all defendants being served with the complaint or 120 days after the complaint is filed, the court shall prepare a scheduling order. The scheduling order shall contain:

(A) A trial date to be set by the court that shall be no less than one year and no more than eighteen months after the date set in subsection (1), above, upon which the court is to prepare the scheduling order, unless all named parties request an earlier trial date;

(B) A deadline by which motions for summary judgment must be filed, which deadline shall be 90 days before the trial date;

(C) A deadline by which all motions challenging another party's expert must be filed, which deadline shall be 90 days before the trial date;

(E) A discovery deadline by which all discovery must be completed, which deadline shall be 120 days before the trial date;

(F) A deadline by which defendant(s) must comply with the expert witness disclosures mandated by Rule 26(4)(A), which deadline shall be 150 days before the trial date; and

(G) A deadline by which plaintiff(s) must comply with the expert witness disclosures mandated by Rule 26(4)(A), which deadline shall be 180 days before the trial date.

Upon motion of the parties and good cause shown or by order of the court, the deadlines required by subsections (a)(1)(B) – (G) may be modified.

(2) Within 15 days of the date set in subsection (1), above, upon which the court shall begin preparing the scheduling order, the judge shall sign the scheduling order for entry into the record.

(3) The following categories of cases are exempt from the requirements in subsections (a)(1) and (2):

(A) cases the principal purpose of which is to collect on an open account or other liquidated debt;
(B) cases governed by M.R.C.P. 81; and
(C) cases that will be arbitrated and governed by the statutory arbitration provisions found at Miss. Code Ann. §11-15-1 *et. seq.*

Exhibit C

If the parties in any case exempted by subsection (a)(3)(A) or (B) above unanimously desire a scheduling order, then an agreed scheduling order may be jointly drafted and submitted to the judge. In a case that is not otherwise exempt from the requirements in subsections (a)(1) and (2), a court may, upon joint motion by all the parties, exempt such case from such requirements.

(b) Pre-trial Conference

(1) In any action the court may on its own motion or on the motion of any party, and shall on the motion of all parties, direct the attorneys for the parties to appear before it at least 20 days before the case is set for trial for a conference to consider and determine:

~~(a)~~ (A) the possibility of settlement of the action;
~~(b)~~ (B) the simplification of the issues;
~~(c)~~ (C) the necessity or desirability of amendments to the pleadings;
~~(d)~~ (D) itemizations of expenses and special damages;
~~(e)~~ (E) the limitation of the number of expert witnesses;
~~(f)~~ (F) the exchange of reports of expert witnesses expected to be called by each party;
~~(g)~~ (G) the exchange of medical reports and hospital records, but only to the extent that such exchange does not abridge the physician-patient privilege;
~~(h)~~ (H) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
~~(i)~~ (I) the imposition of sanctions as authorized by Rule 37;
~~(j)~~ (J) the possibility of obtaining admissions of fact and of documents and other exhibits which will avoid unnecessary proof;
~~(k)~~ (K) in jury cases, proposed instructions, and in non-jury cases, proposed findings of fact and conclusions of law, all of which may be subsequently amended or supplemented as justice may require;
~~(l)~~ (L) such other matters as may aid in the disposition of the action.

(2) The court may enter an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any other matters considered, and limiting issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

[Amended effective March 1, 1989; April 13, 2000, _____.]

Rule 26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the court orders otherwise under subdivisions (c) or (d) of this rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the issues raised by the claims or defenses of any party. The discovery may include the existence, description, nature, custody, condition and location of any books, documents, electronic or magnetic data, or other tangible things; and the identity and location of persons (i) having knowledge of any discoverable matter or (ii) who may be called as witnesses at the trial. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including that party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of that party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. Rule 37(a)(4) applies to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is: (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person

making it and contemporaneously recorded.

(4) ~~Trial Preparations: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:~~

(A) ~~(i) A party may through interrogatories require any other party to~~ Within the time set by scheduling order pursuant to Rule 16(a)(1), each party shall identify each person ~~whom the other party~~ the party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subsection (b)(4)(C) of this rule, concerning fees and expenses, as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(4)(A)(ii) and (b)(4)(B) of this rule, and (ii) with respect to discovery obtained under subsection (b)(4)(A)(ii) of this rule, the court may require, and with respect to discovery obtained under subsection (b)(4)(B) of this rule, the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Electronic Data. To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot-through reasonable efforts-retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court may also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

(c) Discovery Conference. At any time after the commencement of the action, the court may hold a conference on the subject of discovery, and shall do so if requested by any party. The request for discovery conference shall certify that counsel has conferred, or made reasonable effort to confer, with opposing counsel concerning the matters set forth in the request, and shall include:

1. a statement of the issues to be tried;

2. a plan and schedule of discovery;

3. limitations to be placed on discovery, if any; and

4. other proposed orders with respect to discovery.

Any objections or additions to the items contained in the request shall be served and filed no later than ten days after service of the request.

Following the discovery conference, the court shall enter an order fixing the issues; establishing a plan and schedule of discovery; setting limitations upon discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the case.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

The court may impose sanctions for the failure of a party or counsel without good cause to have cooperated in the framing of an appropriate discovery plan by agreement. Upon a showing of good cause, any order entered pursuant to this subdivision may be altered or amended.

(d) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending, or in the case of a deposition the court that issued a subpoena therefor, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed to be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not

be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

(9) the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, oppression or undue burden or expense, including provision for payment of expenses attendant upon such deposition or other discovery device by the party seeking same.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rule 37(a)(4) applies to the award of expenses incurred in relation to the motion.

(e) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(f) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement that party's response with respect to any question directly addressed to (A) the identity and location of persons (i) having knowledge of discoverable matters, or (ii) who may be called as witnesses at the trial, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the testimony.

(2) A party is under a duty seasonably to amend a prior response if that party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Rule 4.04
DISCOVERY DEADLINES AND PRACTICE

~~A. All discovery must be completed within ninety days from service of an answer by the applicable defendant. Additional discovery time may be allowed with leave of court upon written motion setting forth good cause for the extension. Absent special circumstances the court will not allow testimony at trial of an expert witness who was not designated as an expert witness to all attorneys of record at least sixty days before trial.~~

~~B~~A. When responding to discovery requests, interrogatories, requests for production, and requests for admission, the responding party shall, as part of the responses, set forth immediately preceding the response the question or request to which such response is given. Responses shall not be deemed to have been served without compliance to this subdivision.

~~C~~B. No motion to compel shall be heard unless the moving party shall incorporate in the motion a certificate that movant has conferred in good faith with the opposing attorney in an effort to resolve the dispute and has been unable to do so. Motions to compel shall quote verbatim each contested request, the specific objection to the request, the grounds for the objection and the reasons supporting the motion.