

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:12-CV-20-FL

SHERRYL LYNN JACOBS,)
)
Plaintiff,)
)
v.)
)
ROBESON COUNTY PUBLIC)
LIBRARY, BOARD OF DIRECTORS)
FOR ROBESON COUNTY PUBLIC)
LIBRARY, ROBERT F. FISHER,)
HORACE STACY, GAYLE MCLEAN,)
and TINA MELLEN STEPP THOMAS,)
)
Defendants.)

CASE MANAGEMENT
ORDER

Pursuant to Federal Rule of Civil Procedure 26(f), the parties conferred and developed a joint report and plan for the management of this action, with plaintiff appearing in person and defendants appearing through counsel William Purcell. After reviewing the parties’ joint report and plan, filed May 14, 2012, and considering the issues raised, the court orders the following:

I. Discovery

- A. The parties should have exchanged by **May 14, 2012**, the information required by Federal Rule of Civil Procedure 26(a)(1).
- B. Discovery will be necessary on the following subjects: whether plaintiff is disabled, whether she requested reasonable accommodation, whether defendants failed to make reasonable accommodation, and whether plaintiff’s employment was terminated in violation of the Americans with Disabilities Act.

- C. All discovery shall be commenced or served in time to be completed by **February 15, 2013**.
- D. No party shall serve more than 25 interrogatories, including all discrete subparts, to any other party. Responses are due 30 days after service of those interrogatories.
- E. No party shall serve more than 35 requests for admissions to any other party. Responses are due 30 days after service of those requests for admissions.
- F. There shall be no more than 10 depositions by plaintiff and 10 by defendant.
- G. Each deposition shall be limited to 4 hours, unless otherwise agreed by the parties.
- H. Disclosures required by Federal Rule of Civil Procedure 26(a)(2), including reports from retained experts, shall be served by plaintiff by **December 4, 2012**, and by defendants by **January 19, 2013**. The parties shall serve any objections to such disclosures, other than objections pursuant to Federal Rules of Evidence 702, 703, or 705, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) or similar case law, **within eleven (11) days** after service of the disclosures upon them. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2) has been provided, such as lists of prior testimony and publications). These objections need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, the parties shall confer or make a reasonable effort to confer before filing any motion based on those objections.

- I. Supplementations of disclosures under Federal Rule of Civil Procedure 26(e) shall be served at such times and under such circumstances as required by that rule. In addition, such supplemental disclosures shall be served by **January 6, 2013**. The supplemental disclosures served forty (40) days before the deadline for completion of all discovery must identify the universe of all witnesses and exhibits that probably or even might be used at trial other than solely for impeachment. The rationale for the mandatory supplemental disclosures forty (40) days before the discovery deadline is to put the opposing party in a realistic position to make strategic, tactical, and economic judgments about whether to take a particular deposition (or pursue follow-up “written” discovery) concerning a witness or exhibit disclosed by another party before the time allowed for discovery expires. Counsel and pro se litigants should bear in mind that seldom should anything be included in the final Rule 26(a)(3) pretrial disclosures that has not previously appeared in the initial Rule 26(a)(1) disclosures or a timely Rule 26(e) supplement thereto; otherwise, the witness or exhibit probably will be excluded at trial. See FED. R. CIV. P. 37(c)(1).
- J. To avoid the filing of unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for the briefing or hearing of a motion, or for trial. See FED. R. CIV. P. 29. Nor does this apply to modifying the requirements of Federal Rule of Civil Procedure 26(a)(2) concerning experts’ reports.

II. Motions

- A. Any motion requesting relief shall be accompanied at time of filing with a proposed form of order, stating its requested relief.
- B. Any motion for leave to join additional parties or to otherwise amend the pleadings shall be filed by plaintiff by **May 30, 2012**, and by defendants by **June 15, 2012**.
- C. All other potentially dispositive motions shall be filed by **February 25, 2013**. All motions to exclude testimony of expert witnesses pursuant to Federal Rules of Evidence 702, 703, or 705, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999), or similar case law, shall be filed by the deadline set for dispositive motions.
- D. Any motion to compel discovery shall be filed and served **within 30 days** of the act or omission in discovery complained of, unless the time for filing such a motion is extended for good cause shown. Such motions ordinarily will be referred to a magistrate judge for ruling.
- E. Any motion to continue must conform with the requirements set forth in Local Civil Rule 6.1, and also include a detailed statement as to the reason for the requested continuance or extension of time together with the proposed order. Continuances will be granted only upon showing of good cause, particularly focusing upon the evidence of diligence by the party seeking delay and of prejudice that may result if the continuance is denied.

III. Alternative Dispute Resolution (“ADR”)

- A. A settlement procedure is required in virtually every case, to be conducted before the close of discovery if the case is automatically selected for mediation pursuant to

Local Civil Rule 101.1a(b), or before the final pretrial conference if not automatically selected.

- B. This case has been automatically selected for mediation. Reference is made to Local Civil Rule 101.1 *et. seq.* The parties shall provide joint letter with the court by **January 1, 2013**, identifying the mediator and the date set for mediation.
- C. If at any time a settlement is reached, it shall be reported immediately to this court. The parties shall refer to Local Civil Rule 101.1e for their specific obligations.

IV. Trial and Pretrial Settings

- A. This case is set for a jury trial on the court's docket for that civil term of court beginning **July 22, 2013**, at the United States Courthouse, New Bern, North Carolina. The parties did not offer the anticipated length of trial.
- B. Pursuant to Federal Rule of Civil Procedure 16(e), a final pretrial conference will be scheduled before the undersigned at the United States Courthouse, New Bern, North Carolina at a date and time approximately two weeks in advance of trial pursuant to notice of the clerk of court which shall issue approximately two months prior to the trial term.
- C. At the final pretrial conference the court will:
 - 1. Rule upon any dispute concerning the contents of the final pretrial order. Local Civil Rule 16.1(d)(1).
 - 2. Rule upon any dispute where video depositions are to be used and the parties have been unable to reach agreement on editing. Local Civil Rule 16.1(b)(2).

3. Rule upon motion relating to admissibility of evidence, to the extent possible in advance of trial. Where the evidentiary question or issue can be anticipated before the final pretrial conference, motion contemplated by Local Civil Rule 39.1(a), shall be filed **fourteen (14) days** prior to the final pretrial conference, permitting sufficient time for any written response in advance of conference. Where the question or issue bearing on admissibility of evidence cannot reasonably be contemplated in advance of the final pretrial conference, any motion in limine must be filed not later than **seven days** prior to the start of the trial session. Local Civil Rule 39.1(a).
4. Where trial of a matter involves a bench trial, discuss generally the nature of the parties' anticipated proposed findings of fact and conclusions of law, to discern areas of agreement which may obviate necessity for proof, and those matters in dispute. Proposed findings of fact and conclusions of law are required to be filed after the conference, **seven days** prior to the start of the trial session. Local Civil Rule 52.1. Counsel shall submit an electronic copy of said findings of fact and conclusions of law to chambers, in WordPerfect format, at the following email address:
proposedorders_nced@nced.uscourts.gov. *Pro se* litigants are relieved of any obligation to submit courtesy electronic copy to chambers.
5. Where trial of a matter involves a jury trial, discuss generally the nature of the parties' anticipated proposed jury instructions, to discern areas of agreement and disagreement. Proposed instructions are required to be filed

after the conference, **seven days** prior to the start of the trial session. Local Civil Rule 51.1. Counsel shall submit an electronic copy of said proposed jury instructions to chambers, in WordPerfect format, at the following email address:

proposedorders_nced@nced.uscourts.gov. *Pro se* litigants are relieved of any obligation to submit courtesy electronic copy to chambers.

6. Where trial of a matter involves a jury trial, consider proposed verdict forms required to be submitted by counsel and by any *pro se* litigant to chambers (but not filed), on the same schedule as the parties' pretrial order referenced in paragraph D below, **seven days** prior to the final pretrial conference. Counsel shall also submit an electronic copy of said documents to chambers, in WordPerfect format, at the following email address:

proposedorders_nced@nced.uscourts.gov. *Pro se* litigants are relieved of any obligation to submit courtesy electronic copy to chambers.

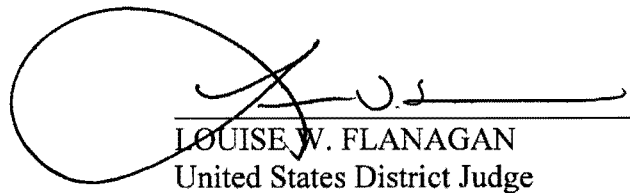
7. Where this conference presents the final opportunity to prevent wasting trial time on pointless or undisputed matters, endeavor to streamline the trial, including but not limited to, where applicable, consideration of: bifurcation; presentation of non-critical testimony by deposition excerpts; stipulations as to the content of testimony; submission at bench trial of witnesses' testimony as narrative written statements, which can be received at trial in lieu of direct testimony subject to objections and cross-examination of witnesses; and qualification of experts by admitted resumes; and

8. Explore once more the opportunities for settlement.
- D. Not later than **seven days** prior to the final pretrial conference, the parties shall submit to chambers (but not file) the parties' proposed pretrial order. Local Civil Rule 16.1(b). This submission shall comply with the form specified in Local Civil Rule 16.1(c). Pursuant to Local Civil Rule 16.1(c)(3) and Federal Rule of Civil Procedure 26(a)(3), objections not disclosed in the pre-trial order are waived unless excused by the court for good cause. The parties shall submit at the beginning of the trial copies of all exhibits. Local Civil Rule 39.1(b).
- E. In jury cases, the court will conduct the examination of jurors. Not later than **seven days** prior to the trial, the parties shall file a list of any voir dire questions counsel desires to ask the jury. Local Civil Rule 47.1(b). Failure to timely file proposed questions will be deemed a waiver of any supplemental inquiry.
- F. In jury cases, a joint statement of the case will be read by the court to the prospective panel of jurors before commencement of voir dire. The parties shall file a joint statement of the case not later than **seven days** prior to the trial. Unless the case is extremely complex, this statement, the purpose of which is to acquaint the jury with the nature of the case and to provide a basis for certain voir dire questions, should not exceed one paragraph.
- G. Counsel and/or party appearing *pro se* intending to use the court's evidence presentation system in the courtroom are required to receive training in the courtroom in advance of initial use. All related documentation appearing on the court's website also should be reviewed, including information concerning formatting of evidentiary

DVDs. Procedures are described for scheduling training in advance, as required, on system use generally, and for verifying compatibility of evidentiary DVDs in advance of presentation at hearing or trial.

This case management order shall not be modified except by leave of court upon a showing of good cause, and all requirements set forth in the court's Local Rules governing pretrial and trial procedures not altered herein shall be strictly observed.

SO ORDERED, this the 6 day of May, 2012.



LOUISE W. FLANAGAN
United States District Judge