

LCR 39.2

INDIVIDUALIZED TRIAL PROGRAM

The court encourages parties to consider agreeing to an individualized trial. The Individualized Trial Program is meant to offer an abbreviated, efficient and cost-effective litigation and trial alternative. Subject to the approval of the assigned judge, the following procedures shall govern. “Individualized Trial” means a consensual, binding trial before a jury or before a judge with limited discovery and limited rights to appeal. Recognizing that individualized trial procedures are most efficient when tailored to the specific needs of a case, the parties may propose modifications to this rule, subject to the approval of the judge.

(a) Procedure to Request Individualized Trial

The parties shall file a written agreement, using the court form titled “Agreement for Individualized Trial and Request for Approval” available from the Clerk’s Office and on the court’s website. Neither the agreement nor its existence shall be disclosed to the jury. The time schedule for individualized procedures and trial shall begin on the date the agreement is approved by the court.

(b) Termination of Agreement

The agreement may be terminated by the court upon a showing that one or more parties have not participated in good faith with the provisions of this rule or that previously undisclosed facts have been discovered that make it inappropriate to use the individualized trial procedure.

(c) Applicable Rules

The provisions of the Individualized Trial Agreement, as approved by the court, shall supersede and govern over any inconsistencies or conflicts that arise between it and the Federal Rules of Civil Procedure or the Local Rules of this court. Otherwise, all Federal Rules of Civil Procedure, Rules of Evidence, and Local Rules of this court shall apply.

(d) Initial Disclosures

If initial disclosures have not been exchanged, or if they are not yet due, the disclosures required by Fed. R. Civ. P. 26(a)(1)(A) shall be exchanged within seven (7) days after the agreement is approved by the court.

(e) Individualized Trial Conference

Immediately upon the filing of the agreement, plaintiff shall contact the courtroom deputy for the assigned judge and request an initial individualized trial conference. The conference shall occur no later than thirty (30) days after the filing of the agreement unless otherwise ordered by the court. Upon request of any party, the court may permit counsel to appear by telephone. In addition to or instead of the individualized trial conference, the judge may require the parties to submit a joint status report.

(f) Joint Individualized Trial Statement

The parties must file a Joint Individualized Trial Statement seven (7) days before the individualized trial conference addressing all of the following topics, unless they have already addressed these topics in their Joint Status Report or unless otherwise ordered by the court:

- (1) the date the Individualized Trial Agreement was approved by the court;
- (2) all prior and pending motions, their current status, and any anticipated motions;
- (3) whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26;
- (4) discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, and a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f);
- (5) whether the parties wish to engage in any form of ADR, and if so, what form;
- (6) whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.
- (7) issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
- (8) proposed dates for designation of experts, discovery cutoff, hearing of motions permitted by this rule, pretrial conference, and trial;
- (9) whether the case will be tried to a jury or to the court; and
- (10) any other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

(g) Case Management Order

The court shall issue a case management order following the conference. Unless otherwise ordered by the court, the order shall require the parties to exchange the documents described in Fed. R. Civ. P. 26(a)(3) no later than fifteen (15) days before the pretrial conference and shall require the parties to complete all discovery no later than ninety 90 days after the individualized trial conference. The court will attempt to resolve all motions to dismiss and pleading issues at the individualized trial conference. The court may determine the extent, if any, that previous case management orders on matters subject to the individualized rules shall supersede or be combined with any previous orders.

(h) Pretrial Conference

The pretrial conference shall be held no later than one hundred fifty (150) days after the agreement is approved by the court.

(i) Discovery

Unless otherwise ordered by the court or by agreement of the parties, discovery shall be limited to ten (10) interrogatories per party, ten (10) document requests, ten (10) requests for admission, and fifteen (15) hours of depositions, per party. The parties may agree or the court may order that the time for response to written discovery be shortened. Deposition time limits are inclusive of fact witnesses and expert witnesses.

(j) Expert Witnesses

No party shall call more than one expert witness to testify, unless permitted by the court or by agreement of the parties.

(k) Pretrial Motions

Except for dispositive motions, all pretrial motions must use the individualized procedure set forth in LCR 37.

(l) Trial Date

Unless otherwise ordered, trial shall be held no later than six months after the agreement is approved by the court.

(m) Trial

Jury trial will be before seven jurors and may proceed before a six-person jury if a juror is unable to serve through conclusion of trial and deliberations. The court shall conduct all voir dire and shall determine time limits for opening statements and closing argument. Each side shall have three hours to present evidence, not including time for opening statement and time for closing argument. In multi-party trials, plaintiffs shall divide the three hours among themselves, and defendants shall divide the three hours among themselves. If the parties cannot agree to a division of trial time, the judge shall order a division.

(n) Post-trial Motions

- (1) Post-trial motions shall be limited to determination of costs and attorney's fees, correcting a judgment for clerical error, conforming the verdict to the agreement, enforcement of judgment and motions for a new trial.
- (2) Within ten (10) court days after notice of entry of a verdict, a party may file with the clerk and serve on each adverse party a notice of intention to move for a new

trial on any of the grounds specified in subsection (n)(3) of this rule. The notice shall be deemed to be a motion for a new trial.

- (3) Grounds for motions for a new trial shall be limited to: (1) judicial misconduct that materially affected the substantial rights of a party; (2) misconduct of the jury; or (3) corruption, fraud, or other undue means employed in the proceedings of the court or jury.

(o) Judgment

Judgment shall be entered within 30 days after a bench trial, except as ordered by the court for good cause.

(p) Appeal

Before filing an appeal, a party shall make a motion for a new trial pursuant to subsection (n) of these procedures. If the motion for a new trial is denied, the party may appeal the judgment and seek a new trial only on grounds specified in subsection (n)(3). All other grounds for appeal shall be waived and are not permitted, unless the parties agree otherwise.