

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NATHANIEL W. ELLIBEE,

Plaintiff,

v.

Case No. 03-3463-JAR

AUTUMN L. FOX,

Defendant.

ORDER REGARDING PLANNING AND SCHEDULING

This matter comes before the Court upon defendant's motion for a scheduling conference and/or scheduling order (Doc. 38) and plaintiff's motion for an order providing clarification and guidance on the pretrial process (Doc. 39).

Defendant requests that the court conduct a scheduling conference and/or enter a scheduling order to govern the pretrial and discovery process in this matter. Defendant reports that the issues have been joined, and that the only discovery that has been undertaken in the case is defendant's submission of interrogatories to plaintiff.

Plaintiff's motion requests the court to provide guidance on how it intends the pretrial process in this case to be conducted. Plaintiff also reports that he has received interrogatories from defendant; however, it is not clear for either party's filing whether plaintiff has provided defendant with answers to these interrogatories.

After a review of the parties' motions, the court finds there to be good cause to support each being granted. The court will conduct a scheduling conference as requested by defendant's motion and, thereafter, will enter a scheduling order to govern the procedure for pretrial activities in this matter, which shall provide the guidance and clarification requested by plaintiff's motion. Plaintiff shall not be required to provide answers to defendant's interrogatories prior to the scheduling conference, and the timing of any such answers that are still outstanding will be established during the conference.

Pursuant to Fed. R. Civ. P. 16(b), the court hereby sets this case for a scheduling conference by telephone on **September 28, 2005, at 1:30 p.m.** The court will initiate the telephone conference call. The plaintiff and all attorneys who have entered an appearance in accordance with D. Kan. Rule 5.1(d) shall be available for the telephone conference call at the telephone numbers listed in the pleadings.

Pursuant to Fed. R. Civ. P. 26(f), no later than **September 8, 2005**, the parties, in person and/or through counsel, shall discuss the nature and basis of their claims and defenses, the use of mediation or other methods of alternative dispute resolution and to develop a proposed discovery plan, including discovery of electronic information. Prior to the Rule 26(f) planning conference, counsel shall have conferred with their clients to discuss the case, its pretrial management, and the benefits of mediation or other methods of alternative dispute resolution. Absent exceptional circumstances, the court expects the parties to utilize some form of alternative dispute resolution within ninety days of the scheduling conference. The parties and counsel should select the particular process to be pursued and the person who will conduct the process, *i.e.*, a mediator or other neutral.

Electronic information falls within the definition of "documents" or "data compilations" in Fed. R. Civ. P. 26(a)(1)(B) and Fed. R. Civ. P. 34(a). Prior to the Fed. R. Civ. P. 26(f) conference, counsel

should analyze their clients' information management systems to determine whether discoverable information exists in electronic form. If such information exists, counsel should review and be prepared to adhere to the Electronic Discovery Guidelines posted on the court's website at [www.ksd.uscourts.gov].

By **September 19, 2005**, defendant's counsel shall submit a completed report of parties' planning conference to the undersigned magistrate judge. The report shall follow the Modified Form 35 which is posted on the court's website (www.ksd.uscourts.gov). It shall be submitted electronically in pdf format as an attachment to an Internet e-mail sent to ksd_sebelius_chambers@ksd.uscourts.gov, and **shall not be filed with the Clerk's Office.**

In addition to matters covered in Fed. R. Civ. P. 16(b) and (c), the parties shall be prepared to discuss the following matters at the scheduling conference:

1. The items listed in the report of parties' planning conference.
 2. Whether a limited amount of discovery would enable the parties to present substantive issues for the court's resolution that would narrow the scope of remaining discovery.
 3. Whether potential dispositive motions could be presented for the court's determination at the earliest appropriate opportunity.
 4. Whether any issues should be bifurcated.
 5. All potentially dispositive issues.
 6. Consent to trial before a United States Magistrate Judge, either at this time or as a back-up if the court determines that its schedule is unable to accommodate the scheduled trial date.
- The parties should note that magistrate judges may preside over jury trials. Withholding consent will have no adverse substantive consequences but may delay the trial of the action.

Except when particularly complicated or simple, cases usually are set on a calendar for trial within twelve to fourteen months from the date of filing. Pursuant to D. Kan. Rule 26.1, discovery in civil cases (other than patent infringement and antitrust cases) shall be completed within four months of the date of the scheduling order. The dispositive motion deadline is usually set four to six months before the trial date to allow the court time to consider any such motions before the parties begin their final trial preparation. The final pretrial conference will usually be scheduled approximately two weeks after the close of discovery and approximately two weeks before the dispositive motion deadline.

The court appreciates the cooperation and diligent efforts which will secure a just and speedy determination of the issues in this case. If you have questions, please contact Duston Slinkard by e-mail to ksd_sebelius_chambers@ksd.uscourts.gov or by telephone at (785) 295-2734.

IT IS THEREFORE ORDERED that defendant's motion for a scheduling conference and/or scheduling order (Doc. 38) and plaintiff's motion for an order providing clarification and guidance on the pretrial process (Doc. 39) are hereby **GRANTED**.

IT IS SO ORDERED.

Dated this 15th day of August, 2005, at Topeka, Kansas.

s/K. Gary Sebelius _____
K. Gary Sebelius
U.S. Magistrate Judge