

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**COMMONWEALTH OF
PENNSYLVANIA ,
Plaintiff,**

CIVIL ACTION

v.

NO. 17-4540

**DONALD J. TRUMP, DONALD J.
WRIGHT, UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, STEVEN T.
MNUCHIN, UNITED STATES
DEPARTMENT OF THE TREASURY,
RENE ALEXANDER ACOSTA AND THE
UNITED STATES DEPARTMENT OF
LABOR,
Defendants.**

NOTICE OF PRELIMINARY PRETRIAL CONFERENCE

The above captioned case is scheduled for a Preliminary Pretrial Conference pursuant to Federal Rule of Civil Procedure 16 (hereinafter the “Rule 16 Conference”) in the United States District Court for the Eastern District of Pennsylvania before the Honorable Wendy Beetlestone. The conference will be held at **4:30 P.M. on Thursday, February 15, 2018**, in Chambers, Room 3809, James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, 19106.

After consultation with counsel for each party, and at least five business days prior to the Conference, counsel shall submit to Chambers the following forms, templates for which are attached to this Notice:

- (1) Judge Beetlestone’s Joint Report of Rule 26(f) Meeting and Proposed Discovery Plan.¹

The parties should commence discovery immediately and should not wait until the Rule

¹ **The Report of Rule 26(f) Meeting and Proposed Discovery Plan should be filed in accordance with the Local Rules of Civil Procedure. (Via ECF)**

16 conference to do so.

The parties shall comply with Judge Beetlestone's Policies and Procedures, which are available at www.paed.uscourts.gov.

Counsel also should come to the Rule 16 Conference prepared to discuss the following issues with the Court:

- (1) What, if any, discovery has transpired in this matter;
- (2) What, if any, settlement discussions have taken place and the current status of negotiations;
- (3) What, if any, motions are pending and their current status; and
- (4) Any other issues pertinent to bring to the Court's attention at that time.

Lead counsel shall attend the Rule 16 Conference. All participants of the Rule 16 Conference shall have entered their appearance prior to the conference.

Very truly yours,

/s/ A. Wilson

A. Wilson

Civil Deputy Clerk to Judge Wendy Beetlestone
(267) 299-7450

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PLAINTIFF(S)

Plaintiff,

v.

DEFENDANT(S)

Defendant.

CIVIL ACTION

NO. ##-####

DRAFT ORDER GOVERNING ELECTRONIC DISCOVERY

AND NOW, this day of ____ day of _____, 20__, in anticipation of the Rule 16 conference, it is **ORDERED** as follows:

1. **Introduction.** Parties are expected to reach agreements co-operatively on how to conduct discovery and should endeavor not to request the Court's assistance in resolving any discovery disputes including disputes over electronic discovery. Prior to the Rule 16 Conference the parties shall comply with paragraphs 2, 3 and 4 below. In the event the parties cannot reach an agreement on how to conduct electronic discovery before the Rule 16 conference, the default standards set forth in paragraphs 5 through 10 shall apply.

2. **Exchange of e-discovery materials.** Prior to the Rule 26(f) conference, the parties shall exchange the following information:

a. a list of the most likely custodians of relevant electronic materials, including a brief description of each person's title and responsibilities;

b. a list of each relevant electronic system that has been in place at all relevant times and a general description of each system, including the nature, scope, character, organization, and formats employed in each system;

c. other pertinent information about their electronic documents and whether those electronic documents are of limited accessibility, that is, those created or used by electronic

media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost;

d. the name of the individual responsible for the party's electronic document retention policies ("the retention coordinator");

e. a general description of the party's electronic document retention policies;

f. the name of the individual who shall serve as the party's "e-discovery liaison;" and,

g. a description 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 issues by the time of the Rule 26(f) conference, the parties shall agree on a date by which this information will be mutually exchanged and provide that date to the Court in their joint Rule 16 conference submission.

3. **E-discovery conference.** The parties shall discuss the parameters of their anticipated e-discovery at the Rule 26(f) conference and shall be prepared to address e-discovery at the Rule 16 conference with the court.

4. **E-discovery liaison.** No later than the date of the Rule 16 Conference, each party shall designate a single individual through whom all e-discovery requests and responses are made ("the e-discovery liaison"). The purpose of the e-discovery liaison is to promote communication and cooperation between the parties regarding e-discovery. Regardless of whether the e-discovery liaison 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; and,
- d. responsible for organizing the party's e-discovery efforts to insure consistency and thoroughness and, generally, to facilitate the e-discovery process.

5. **Search methodology.** If the parties intend to employ an electronic search to locate relevant electronic documents, the parties shall disclose any restrictions as to scope and method which might affect their ability to conduct a complete electronic search of the electronic documents. 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 liaisons, 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. **Timing of e-discovery.** Discovery of electronic documents shall proceed in the following sequenced fashion:

- a. after receiving requests for document production, the parties shall search their documents, other than those identified as limited accessibility electronic documents, and produce responsive electronic documents, all in accordance with Federal Rule of Civil Procedure 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;

c. any requests for information expected to be found in limited accessibility documents must be narrowly focused with a factual basis supporting the request; and,

d. on-site inspections of electronic media under Federal Rule of Civil Procedure 34(b) shall not be permitted, absent exceptional circumstances where good cause and specific need have been demonstrated.

7. **Format.** If the parties cannot agree to the format for document production, electronic documents shall be produced to the requesting party as text searchable image files (*e.g.*, PDF or TIFF) except as follows: files that are not easily converted to image format, such as Excel and Access Files, should be produced in native format. In preparing the image file for production 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, if any party requests production of electronic documents in native format, the parties shall meet and confer to discuss the parameters of any such production. A party seeking production of electronic documents in their native format must demonstrate particularized need for those documents.

8. **Retention.** The parties shall negotiate an agreement that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronic documents. In order to avoid later accusations of spoliation deposition of each party's retention coordinator pursuant to Federal Rule of Civil Procedure 30(b)(6) may be appropriate.

The retention coordinators shall:

a. take steps to ensure that e-mail of identified custodians shall not be permanently deleted in the ordinary course of business and that electronic documents maintained by the individual custodians shall not be altered; and,

b. provide notice as to the criteria used for spam and/or virus filtering of e-mails and attachments; Documents filtered out by such systems shall be deemed non-responsive so long as the criteria underlying the filtering are reasonable.

9. **Privilege.** Electronic documents that contain 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. All copies shall be returned or destroyed by the receiving party.

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

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PLAINTIFF(S)	:	CIVIL ACTION
	:	
v.	:	
	:	
DEFENDANT(S)	:	NO. (##-####)

JOINT REPORT OF RULE 26(F) MEETING AND PROPOSED DISCOVERY PLAN

In accordance with Federal Rule of Civil Procedure 26(f), counsel for the parties conferred on _____, 20__, and submit to Chambers the following report of their meeting for the Court’s consideration:

1. Discussion of Claims, Defenses, and Relevant Issues

The Court takes seriously Rule 26(f)(2)’s mandate that the parties confer and discuss these issues, and the parties should refer to the Rule in addition to this template. Counsel should assume that the Court has read the Complaint and is familiar with its claims. The facts supporting those claims and any defenses are unknown to the Court. Therefore, counsel shall set forth *concisely* the factual background that the parties contend support their claims and defenses.

Counsel should summarize what they believe to be the primary issues, threshold issues, and the issues on which they will need to conduct discovery. Identify what information each party needs in discovery, as well as when and why. Also indicate likely motions and their timing.

2. Initial and Informal Disclosures

Rule 26(a)(1) lays out the requirements for initial disclosures. State counsels’ agreement on timing, form and scope of initial disclosures by specifically identifying not only the information listed in Rule 26(a)(1), but also any additional information the parties agree to disclose informally. Self-executing discovery must not be delayed until the Rule 16 Conference.

3. Formal Discovery

Indicate the nature, sequence, and timing of formal discovery, as well as any need to conduct discovery in phases to prepare for the filing of motions or for settlement discussions. Specifically delineate what discovery will be conducted formally and the parties' plan for timely completing that discovery. Counsel should have discussed whether there is a *need* to exceed the standard number of interrogatory or depositions provided for in the Federal Rules of Civil Procedure and, if so, they should stipulate to that change. Present proposed discovery deadlines.

4. Electronic Discovery

It is expected that the parties will reach an agreement on how to conduct electronic discovery. In the event the parties cannot reach such an agreement before the Rule 16 Conference, and the parties anticipate that electronic discovery may be had, the Court will impose its standard order sent to the parties along with the Notice of Preliminary Pretrial Conference.

5. Expert Witness Disclosures

Indicate agreement on timing and sequence of disclosure of the identity and anticipated testimony of expert witnesses. State whether expert reports will be exchanged simultaneously or whether the exchange will be staggered. Provide a date for completion of expert discovery and for any potential *Daubert* motions.

6. Early Settlement or Resolution

Counsel should discuss "the possibilities for promptly settling or resolving the case." Fed. R. Civ. P. 26(f)(2). They should also familiarize themselves with Local Rule 53.3 before responding. Recite the parties' discussions about early resolution through ADR, arbitration, or motion or otherwise. Explain what steps were taken by counsel to advise the client of alternative

dispute resolution options. Explain any decision not to seek early resolution, what mediation options the parties may consider, and when mediation would be appropriate.

7. Trial Date

Counsel should provide a date at which they expect to be ready for trial. If a date certain is requested, state the reasons. Generally, if requested, a firm trial date will be scheduled.

8. Other

Indicate any discussion or agreement between the parties at the Rule 26(f) Conference on matters not addressed above.

Date: _____

Respectfully Submitted:

/s/
_____ **Counsel for Plaintiff(s)**

/s/
_____ **Counsel for Defendant(s)**