

LR 16 - Pretrial Conferences, Scheduling, and Case Management (*See Fed. R. Civ. P. 16*)

LR 16-1 Court Actions On Initial Filing (*See LR 3-5*)

During the case initiation process:

(a) Case Assignment

The case will be randomly assigned to a judge in accordance with the Court's Case Management Plan and assigned a case number.

(b) Consent Forms

The Clerk's Office will issue "Consent to Jurisdiction by a Magistrate Judge and Designation of the Normal Appeal Route" forms and other information packets. (*See "Consent to Jurisdiction by a Magistrate Judge" form.*)

(c) Process

The Clerk's Office will issue summons and other appropriate process. (*See LR 3-5(b).*)

(d) Scheduling Order

The Clerk's Office will issue a scheduling order as appropriate for the case. (*See "Discovery and Pretrial Scheduling Order" form.*)

LR 16-2 Rule 16 Conferences (*See Fed. R. Civ. P. 16*)

Unless otherwise ordered by the Court:

(a) Counsel's Duty to Request Conference

Counsel for plaintiff(s) and for defendant(s), during or promptly after the conference of counsel for discovery planning referred to in LR 26-1, must contact the assigned judge's courtroom deputy and request a Rule 16(b) scheduling and planning conference.

(b) Conference

At the Rule 16(b) scheduling and planning conference, counsel for the parties must have their calendars available and be prepared to discuss any of the issues enumerated in Fed. R. Civ. P. 16(b) and 16(c), including proposed modifications to the schedule outlined in the initial Discovery and Pretrial Scheduling Order issued by the Court at the commencement of the action. Counsel must also be prepared to discuss the possible submission of trial exhibits electronically. (*See LR 5-6(b).*)

(c) Conference Request Made At Any Time

Notwithstanding anything in this or any other local rule, any party may ask for a conference under Fed. R. Civ. P. 16 at any time. This subsection applies to all civil cases, including those categories of cases mentioned in Fed. R. Civ. P. 26(a)(1)(B).

(d) Sample

See sample "[Order Establishing the Trial and Pretrial Conference Dates and Procedures.pdf](#)" for a type of order that may be used for the final pretrial conference held under Fed. R. Civ. P. 16(e). Requirements may vary depending on the nature of the case.

(e) Completion of Discovery Defined

The initial case scheduling order establishes the time for completion of discovery. Unless otherwise directed by the Court, the following discovery related events must be completed by the completion of discovery date:

- (1) All depositions must be taken, including depositions to preserve testimony for trial.
- (2) All interrogatory or other discovery requests must be answered.
- (3) All documents must be produced per request.
- (4) The Court will not require a response to a discovery request that is made with insufficient time for a party to respond before the completion of discovery date.
- (5) Completion of discovery does not include expert depositions taken under Fed. R. Civ. P. 26(b)(4)(A).

LR 16-3 Motions to Change or Extend Court Imposed Deadlines

(a) Motions

Unless provided by LR 16-2(b), objections to any court-imposed deadline must be raised by motion and must:

- (1) Show good cause why the deadlines should be modified.
- (2) Show effective prior use of time.
- (3) Recommend a new date for the deadline in question.
- (4) Show the impact of the proposed extension on other existing deadlines, settings, or schedules.

(b) Stipulations to Extend Deadlines or Schedules (See LR 29)

LR 16-4 ~~Alternate~~ Alternative Dispute Resolution (ADR) (See Fed. R. Civ. P. 16(c)(2)(I))

(a) Scope and Application

Unless otherwise directed by the Court or as provided in subsection (b) below, this rule applies to all civil cases filed in the district court.

(b) Exemptions

The following classes of cases are presumed to be exempt from this rule:

- Habeas Corpus Petitions;
- Prisoner Suits;
- 28 U.S.C. §2255 Claims;
- Social Security Appeals;
- Civil Forfeitures;
- Qui Tam Actions;
- IRS Summons Enforcement Actions;
- Student Loan Collection; and
- Bankruptcy Appeals.

(c) ADR Conference Requirements

Not later than 120 days from the initiation of a lawsuit, counsel for all parties (after conferring with their clients) must confer with all other attorneys of record and all unrepresented parties, to discuss whether the case would benefit from any private or court-sponsored ADR option.

(d) Joint ADR Report

Within 150 days of the initiation of a lawsuit, the parties must file a Joint Alternate Dispute Resolution Report form available on the Court's website at ord.uscourts.gov.

(e) ADR Options - Generally

(1) Private ADR: The parties may agree to any form of ADR, including arranging mediation with a private mediator. The parties are to select and compensate the mediator and, in conjunction with the mediator, agree to the time, place, and duration of the mediation.

(2) ~~Request for a Settlement Judge~~ **Judicial Settlement Conferences:**

(A) Initiation by the Assigned Judge. The assigned judge, ~~on his/her own motion or at the request of a party,~~ may ~~schedule a settlement conference before a judicial officer of this Court.~~ order the parties to participate in a judicial settlement conference with or without the consent of the parties.

(B) Joint Request by the Parties. To request a judicial settlement conference, the parties may either (i) jointly ask the assigned judge to facilitate the assistance of another judge to conduct the settlement conference; or (ii) jointly approach a judge and ask if the judge is willing to conduct the settlement conference. The assigned judge will not conduct the settlement conference unless all the parties in the action jointly initiate a request that the

assigned judge do so. The parties are responsible for scheduling the settlement conference in accordance with the settlement judge's scheduling procedures.

(3) Court-Sponsored Mediation: The assigned judge, on his/her own motion, or upon the motion or request of a party, may ~~refer~~ order any civil case to mediation with a mediator on the Court's list of mediators.

(4) Non-Binding Summary Trial and Other Forms of ADR:

(A) The assigned judge, on his/her own motion or at the request of a party, may assign any civil case for a non-binding summary trial (including a summary jury trial for cases triable to a jury), a mini-trial, an advisory jury proceeding, or an arbitration hearing.

(B) The assigned judge, on his/her own motion or at the request of a party, may assign any civil case for any other ADR process (such as an advisory jury panel consisting of panel members not drawn from the jury pool who volunteer their time to hear case summaries and confer with counsel about settlement).

(f) Court-Sponsored Mediation Procedures

(1) Pro Bono Hours: Mediators on the Court-sponsored panel list agree to conduct mediation without cost to the parties for 4 hours, exclusive of preparation time and travel time to or from the agreed location for the mediation. The mediator and the parties must agree before the mediation on an hourly rate for the mediator if the mediation continues beyond 4 hours.

(2) Selection of a Mediator:

(A) The assigned judge will enter an order directing the parties to select a mediator from the Court's list of mediators, and to work with the mediator to agree to the time, place, and duration of the mediation.

(B) If the parties cannot agree on a mediator within 14 days after entry of the order, each party will submit its list of three acceptable mediators to the assigned judge who will then designate a mediator after consultation with the parties.

(3) Judicial Immunity: During the conduct of Court-sponsored mediation, mediators act as officers of the Court, have judicial immunity, and are subject to the disqualification rule in LR 16-4(k).

(4) Mediation Process: ~~After entry of the order of reference to mediation, t~~ **The parties are** required to provide such information and advice as the mediator requires. The mediator may schedule a preliminary conference before the mediation and may also require the parties to participate in the preliminary conference along with their attorneys.

(5) Participation by Counsel and Parties:

- (A) The responsible attorney for each party must attend the mediation and any additional sessions and must be prepared to discuss in good faith:
- a. All liability issues;
 - b. All damage issues; and
 - c. The position and interests of his or her client relative to settlement.
- (B) Unless excused by the mediator, a person with complete settlement authority for each party must attend the mediation. However, the United States may be represented by the trial attorney.
- (C) Where a party's defense is provided by a liability insurer, a representative of the insurer, unless excused by the mediator, must attend the mediation conference and have full authority to bind the insurer to a settlement. This representative must also have ready telephonic access to another representative of the insurer, unless excused by the mediator, with authority to enter into a settlement up to the policy limits.
- (D) Unless excused from attendance by the mediator, an attorney or party's willful failure to attend the mediation when required must be reported to the Court by the mediator and may result in the imposition of sanctions.

(g) Proceedings Privileged

- (1) ADR proceedings (including all statements made by a party, attorney, or other participant, and any memorandum or written submission provided to the mediator or ADR facilitator), are privileged and, unless otherwise authorized by the Federal Rules of Evidence, will not be reported, recorded, or otherwise placed in evidence; made known to the assigned judge or jury; or construed for any purpose as an admission against interest.
- (2) This privilege applies to ADR proceedings conducted under LR 16-4(e)(1)-(4).
- (3) No party will be bound by anything done or said in mediation unless a settlement is reached, in which event, the agreement on a settlement will be reduced to writing and will be binding on all parties to that agreement. In a dispute between the parties regarding the terms of the settlement, the terms of the settlement as communicated by the mediator and accepted by the parties are not privileged under LR 16-4(g)(1).

(h) Procedures at Conclusion of ADR Proceedings~~Proceedings After Failure to Achieve an ADR Settlement~~

- (1) Private ADR: Not later than seven days following the conclusion of private ADR proceedings, the plaintiff's attorney (or the *pro se* plaintiff) will notify the Court in writing:

(A) Whether settlement (in whole or in part) was achieved; or

(B) Whether settlement could not be achieved and whether any (or all) of the parties believe that further judicial intervention (including the possibility of a settlement judge), will help to resolve the case.

(2) Court-Sponsored Mediation: Not later than seven days following the conclusion of Court-sponsored mediation, the mediator will notify the assigned judge if no settlement is achieved and whether intervention by a settlement judge may help to resolve the matter.

(i) No Stay of Action

Unless ordered by the assigned judge, no stay of an action will take place during ADR. In addition, no scheduled dates for any required submission or proceeding, including trial, will be changed unless otherwise ordered by the assigned judge.

(j) Qualifications and Requirements of Mediators

(1) As a general rule, the parties may select and thereby set the qualifications of a private mediator or mediation service. The mediator is subject to the requirements of LR 16-4(g).

(2) Court-sponsored mediators must submit an agreement to serve, advise the assigned judge in which divisions of this Court they are willing to serve, and agree to perform at least eight hours of volunteer mediation service per year without payment.

(3) Court-sponsored mediators must be members in good standing of the Oregon State Bar who have been admitted to practice before the federal courts for a minimum of five years, or be a retired or senior judge. Disciplinary sanctions may result in the rejection of an application to serve as a Court-sponsored mediator or termination of a Court-sponsored mediator's service.

(4) Court-sponsored mediators must have a minimum of 12 hours of actual mediation experience and submit proof or a certificate of attendance for a minimum of 30 hours of mediation training that includes such competencies as information gathering, effective communication, ethical concerns, the role of a mediator as a neutral third party, control of the mediation process, and problem analysis.

(5) The Clerk will maintain a list of Court-sponsored mediators by division of this Court.

(k) Disqualification of Mediators

Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. §144 and must be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by 28 U.S.C. §455.

(l) ADR Program Administration

(A) An ADR Administrator is responsible for implementing, administering, overseeing, and evaluating the ADR program and procedures covered by LR 16-4.

- (B) The Clerk will make pertinent rules, explanatory materials, and requisite forms available to the parties.

LR 16-5 Proposed Pretrial Order

(a) Filing Requirements

The parties may stipulate, subject to the approval of the Court, or the Court may order, that no pretrial order need be filed. Otherwise, the parties will prepare and sign a proposed pretrial order to be filed with the Court on or before the date ordered by the Court. The proposed order will also be submitted via e-mail per procedures described in LR 5-9(c).

(b) Content Requirements (*See Pretrial Order*)

If there is no court-approved stipulation or order dispensing with the need for a pretrial order, the parties will prepare a proposed order to frame the issues for trial. At a minimum, the pretrial order must contain:

- (1) A concise statement of the nature of the action, including whether trial will be by jury and whether the parties have consented to trial by a magistrate judge.
- (2) A concise statement of each basis for federal jurisdiction and the facts supporting or disputing jurisdiction.
- (3) All agreed facts; with an asterisk (*) by those where relevance is disputed.
- (4) A statement of each claim and defense to that claim with the contentions of the parties. Contentions will not recite the evidence to be offered at trial but will be sufficient to frame the issues presented by each claim and defense.
- (5) Other legal issues not stated under either claims or defenses and designating those appropriate for decision before trial.
- (6) A statement indicating proposed amendments to the pleadings, if any.
- (7) The same format should be used in the order for any counterclaim or cross-claims, followed by any affirmative defenses to each of those claims.

(c) Service and Filing of Proposed Pretrial Order

Unless modified by the Court, the time for service and filing of the proposed pretrial order will be as follows:

- (1) The plaintiff will, at least 30 days before the filing date, prepare and serve on all parties a proposed pretrial order.

- (2) Within 14 days after service of that proposed pretrial order, each other party will serve on all parties the objections, additions, and changes such party believes should be made to the plaintiff's proposed pretrial order.
- (3) All areas of disagreement must be shown in the proposed pretrial order, but the parties will make every effort to resolve such disagreements.
- (4) The proposed pretrial order must be signed by the parties, and the plaintiff must file it with the Court.

(d) Effect of Pretrial Order

The pretrial order amends the pleadings, and it, and any later order of the Court will control the subsequent course of action or proceedings as provided in Fed. R. Civ. P. 16.

Amendment History to LR 16	
June 1, 2002	
LR 16.5	New section (b) added. Original rule re-numbered to (a).
LR 16.7(a)	"preliminary" deleted from first sentence "...preliminary pretrial conference..."
LR 16.7(c)	"preliminary" deleted from first sentence "...preliminary pretrial conference..."
February 10, 2003	
LR 16.5	Commentary added.
June 1, 2006	
Generally	Added references to Appendix of Forms. Updated cross references throughout. Numeric formats modified; i.e. "ten (10)."
LR 16.1(a)	Text from subsection (b) moved to this section with subsequent subsections re-lettered.
LR 16.1(b)	The words "...Consent to Jurisdiction by a U.S. ..." added. The word "consent" stricken.

LR 16.1(d)	The words "...a scheduling order as appropriate for the case..." added. The words "Discovery and Pretrial Scheduling Order" deleted.
LR 16.2	Heading modified.
LR 16.2(a)	The word "request" substituted for "schedule." The phrase beginning with ".." and the assigned judge..." deleted.
LR 16.2(b)	The words "initial court " stricken and replaced with "Rule 16(b) scheduling and planning." The words "discovery, Magistrate Judge consent" stricken and replaced with "of the issues enumerated."
LR 16.2(c)	Commentary deleted.
LR 16.2(d)	Subsection (d) added with subsequent sections re-lettered.
LR 16.3	The word "Imposed" substituted for the word "Established" in the heading.
LR 16.4(h)(1)(b)	The word "including" substituted for the words "to include."
LR 16.4(h)(2)	The words "he or she"" substituted for the word "they."
LR 16.4(j)	The phrase "...provided by the clerk.." stricken. The word "calendar" stricken.
LR 16.6(c)(3)	The word "All" substituted for "If there are." Remainder of sentence modified to make it grammatically correct.
LR 16.6(c)(4)	The word "will" changed to "must" throughout.
LR 16.7	Deleted.
December 1, 2009	
LR 16-2(a) and (b)	The word "shall" changed to "must."
LR 16-2(c), (d), and (e)	Reference to Fed. R. Civ. P. 26(a)(1)(E) changed to 26(a)(1)(B), 16(d) changed to 16(e), and 16(c)(12) changed to 16(c)(2)(I)
LR 16-3	Title changed from "Objections to Court Imposed Deadlines" to "Motions to Change or Extend Court Imposed Deadlines."
LR 16-3(a)	Header "Objections" changed to "Motions."

LR 16-3(b)	Reference deleted to LR 6.
LR 16-4(f)(1)(D)	Ten (10) days changed to fourteen (14) days.
LR 16-6(c)(2)	Fifteen (15) days has been changed to fourteen (14) days.
Generally	Cross-references updated and references to Appendix of Forms deleted.
January 1, 2011	
LR 16-4(b)	Reduced the categories of cases presumed to be exempt from the Alternate Dispute Resolution ("ADR") rules.
LR 16-4(d)	Added the location of the Joint ADR Report form on the Court's website.
LR 16-4(e)	Clarified language in the rules regarding private ADR, the use of settlement judges, and Court-sponsored mediation. Reinforced the assigned judges' powers to refer a civil case to a non-binding summary trial, a mini-trial, an advisory jury proceeding, an arbitration, or any other form of ADR.
LR 16-4(f)	Clarified the procedures for Court-sponsored mediation.
LR 16-4(f)(5)(B)	Added requirement that representatives of the parties and their liability insurers attend the mediation and have settlement authority.
LR 16-4(j)	Changed the reference from "volunteer mediators" to "Court-sponsored mediators." Added the following requirements in order for an applicant to become a Court-sponsored mediator: a minimum of twelve (12) hours of actual mediation experience and submit proof or a certificate of attendance for a minimum of thirty (30) hours of mediation training that includes such competencies as information gathering, effective communication, ethical concerns, the role of a mediator as a neutral third party, control of the mediation process, and problem analysis.
LR 16-4(k)	New section regarding the disqualification of mediators.
LR 16-5	Moved to LR 16-4(e).
LR 16-6	Renumbered LR 16-5.
June 15, 2011	
LR 16-4(k)	Clerical correction per to Standing Order 2001-6: Changed 18 U.S.C. § 144 to 28 U.S.C. § 144.
March 1, 2012	

LR 16-1(b)	Quotation marks added around form title clarified as "Consent to Jurisdiction by a Magistrate Judge and Designation of the Normal Appeal Route" title.
LR 16-4(e)(2)	Addition of sentence, "The assigned judge will not conduct the settlement conference unless all the parties in the action jointly initiate a request that the assigned judge do so."
LR 16-4(g)(1) and (g)(2)	The reference to "trial court" changed to "assigned judge." Removal of words "Unless waived in advance by the parties, or as otherwise authorized by the assigned judge" so that the sentence begins with "This privilege. . ."
LR 16-5(a)	In second sentence, the word "lodged" was changed to "filed." The following new sentence has been added: "The proposed order will also be submitted via e-mail per to procedures described in LR 5-1(g)."
LR 16-5(c)	Title changed from "Service and Lodging of Pretrial Order" to "Service and Filing of Proposed Pretrial Order." In first sentence, the phrase "lodging of the pretrial order" has been changed to "filing of the proposed pretrial order."
LR 16-5(c)(1)	The term "lodging" has been changed to "filing."
LR 16-5(c)(4)	The term "lodge" has been changed to "file."
March 1, 2013	
LR 16-1(a) – (d)	Amended to clarify the Court's actions during the "case initiation process" rather than at the time of the initial case filing as new civil cases are to be electronically filed. Added reference in section (c) to LR 3-5(b) that describes the issuance of summons electronically.
LR 16-4	Cross rule reference in the rule title corrected from Fed. R. Civ. P. 16(c)(2)(I) to Fed. R. Civ. P. 16(c)(2)(i).
LR 16-4(d)	Amended to clean up the Court's Internet address and describe where readers may locate the Joint ADR Report form.
LR 16-4(f)(2)	Rule amended to state that if the parties cannot agree upon a Court-sponsored mediator, each party must submit its list of three acceptable mediators to the assigned judge, who will then designate a mediator.
LR 16-4(j)(3)	Added "Disciplinary sanctions may result in the rejection of an application to serve as a Court-sponsored mediator or termination of a Court-sponsored mediator's service."
LR 16-5(a)	Changed reference to LR 5-1(g) within text of rule to LR 5-1(f).
March 1, 2014	

LR 16-1	In the caption, changed "Upon" to "On."
LR 16-2(b)	Changed caption from "Calendaring" to "Conference" and added new second sentence: "Counsel must also be prepared to discuss the possible submission of trial exhibits electronically. (See LR 5-6(b).)"
LR 16-2(c)	Changed "pursuant to" to "under."
LR 16-2(d)	In the first sentence, changed "pursuant to" to "under," and in the second sentence, changed "upon" to "on."
LR 16-2(e)	In (3), changed "pursuant to" to "per," in (4), changed "prior to" to "before," and in (5), changed "pursuant" to "under."
LR 16-3(a)	Following the section heading "Motions," changed "Except as" to "Unless." In section (4), changed the word "upon" to "on."
LR 16-4(a)	Changed the reference to "paragraph (b) below" to "subsection (b) below."
LR 16-4(c)	Changed "one-hundred twenty (120)" to "120."
LR 16-4(d)	Changed "one-hundred fifty (150)" to "150."
LR 16-4(e)(3)	Changed "upon" to "on."
LR 16-4(f)(1)	Changed "four (4)" to "four" in two instances. In the second sentence, changed "shall" to "must" and replaced "in the event that" with "if."
LR 16-4(f)(2)(B)	Changed "fourteen (14)" to "14" and the word "upon" to "on."
LR 16-4(f)(4)	In the second sentence, changed "prior to" to "before."
LR 16-4(g)(1)	Changed "and/or" to "and." Changed "except as" to "unless."
LR 16-4(g)(2)	Changed "pursuant to" to "under."
LR 16-4(g)(3)	Changed "upon" to "on" in two instances.
LR 16-4(h)(1)	Changed "seven (7)" to "seven."
LR 16-4(h)(2)	Changed "seven (7)" to "seven."
LR 16-4(j)(2)	Changed "eight (8)" to "eight."
LR 16-4(j)(4)	Changed "twelve (12)" to "12" and "thirty (30)" to "30."

LR 16-4(k)	Changed "shall" to "must."
LR 16-5(a)	Updated cross-reference from "LR 5-1(f)" to "LR 5-10(c)." In the last sentence, changed "pursuant to" to "per."
LR 16-5(c)(1)	Changed "thirty (30)" to "30."
LR 16-5(c)(2)	Changed "fourteen (14)" to "14."
March 1, 2016	
LR 16-2(b)	Updated cross-reference from "LR 5-6(b)" to "LR 5-7(b)."
LR 16-5(a)	Updated cross-reference from "LR 5-10(c)" to "LR 5-11(c)."
January 1, 2019	
LR 16-2(b)	Changed "(See LR 5-7(b).)" to "(See LR 5-6(b).)"
LR 16-4(d)	After "ord.uscourts.gov," deleted the comma and the following phrase: "on the For Attorneys page, under Forms for Civil Cases on the Forms menu."
LR 16-5(a)	Updated the cross-reference from "LR 5-11(c)" to "LR 5-10(c)."
January 21, 2020	
LR 16-2(b)	Updated cross-reference from "LR 5-6(b)" to "LR 5-5(b)."
LR 16-5(a)	Updated cross-reference from "LR 5-10(c)" to "LR 5-9(c)."
December 1, 2020	
LR 16-2(b)	Updated cross-reference from "LR 5-5(b)" to "LR 5-6(b)."
<u>June 1, 2023</u>	
<u>LR 16-4</u>	<u>Replaced "Alternate" with "Alternative."</u>
<u>LR 16-4(e)(2)</u>	<u>Replaced "Request for a Settlement Judge" with "Judicial Settlement Conferences."</u>
<u>LR 16-4(e)(2)(A)</u>	<u>Added subsection letter "(A)" and heading "Initiation by the Assigned Judge." Deleted ", on his/her own motion or at the request of the party," and "schedule a settlement conference before a judicial officer of this Court" and inserted "order the parties to participate in a judicial settlement conference with or without the consent of the parties."</u>

<u>LR 16-4(e)(2)(B)</u>	Added subsection letter "(B)" and heading "Joint Request by the Parties." <u>Inserted "To request a judicial settlement conference, the parties may either (i) jointly ask the assigned judge to facilitate the assistance of another judge to conduct the settlement conference; or (ii) jointly approach a judge and ask if the judge is willing to conduct the settlement conference." Inserted "The parties are responsible for scheduling the settlement conference in accordance with the settlement judge's scheduling procedures."</u>
<u>LR 16-4(e)(3)</u>	Replaced "refer" with "order."
<u>LR 16-4(f)(4)</u>	Deleted "After entry of the order of reference to mediation," and capitalized "T" in "the."
<u>LR 16-4(h)</u>	Replaced "Proceedings After Failure to Achieve an ADR Settlement" with " <u>Procedures at Conclusion of ADR Proceedings</u> ".