

Cheryl R. Zwart
United States Magistrate Judge

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Civil Case Management Practices

Case Conferencing Instructions: Case conferencing instructions will be assigned and filed of record for each case, Unless the court's order states otherwise, the parties shall use the assigned instructions for all telephonic and telephonic/internet conferences held in that case.

Rule 26(f) Reports: Judge Zwart will enter an order setting the deadline for filing the parties' Rule 26(f) Report. This order is typically not entered until all named defendants have been served and all Rule 12 motion practice is complete.

Exceptions apply. Contact Judge Zwart's chambers by email or phone (with all counsel on the call/email or with their permission to call) if one or more of the parties believe the case should proceed immediately. A conference call will then be held or scheduled to discuss the circumstances.

If a party anticipates moving for summary judgment, the parties' proposed summary judgment deadline in the Rule 26(f) Report (and any later motion to continue the case progression deadlines) should be at least 90 days before the final pretrial conference.

Note: The Rule 26(f) Report provides the basis for entering the scheduling order for the entire case, including setting the case for trial before a district judge, or before Judge Zwart on consent. In creating the scheduling order, Judge Zwart relies heavily on the parties' representations in the Report, and she may rely on or reference those representations if any dispute arises thereafter.

Continuances: The parties shall make every effort to meet all deadlines set by the court's rules and the case scheduling order. If deadline changes are necessary:

Joint motions to continue may be requested by telephone or by email (with all counsel on the call/email or with their permission to call), or by filed motion.

Filed motions to continue shall state whether any party objects to the continuance, the length of continuance requested, and whether the requested continuance will impact other case deadlines.

Planning and Status Conferences: To facilitate the efficient and expeditious progression of civil cases, Judge Zwart conducts initial planning conferences, interim status conferences scheduled at the outset of the case, and ad hoc conferences scheduled at the request of a party.

Initial Planning Conferences: For cases assigned to Judge Zwart, Initial Planning Conferences are not held in every case prior to entering a final progression order. They will be held if:

- 1) the parties request a conference in their Rule 26(f) Report;
- 2) the parties cannot complete the report without the court's assistance; or
- 3) upon review of the report, the court believes a conference is needed before a final scheduling order is entered.

Interim Status Conferences: With some limited exceptions (e.g., social security cases, etc.), an interim telephonic status conference is held in every case assigned to Judge Zwart. Judge Zwart's final scheduling order will set this conference, with the date chosen on a case-by-case basis after the court reviews the parties' representations in the Rule 26(f) Report. For example, if the parties state they will be ready to discuss settlement after mandatory disclosures are served and reviewed, the scheduling order will often set a conference call shortly after the mandatory disclosure deadline.

Ad Hoc Status Conferences: Judge Zwart is available for telephonic conferences at a party's sole request or the parties' mutual request. After the parties have thoroughly discussed the issues to be raised, contact Judge Zwart's chambers by telephone or email to set a conference for resolving specific scheduling or discovery issues, to discuss setting the case for mediation or a settlement conference, or to raise any other matters that may impact the prompt and efficient resolution of the lawsuit (e.g., use of court-to-court videoconferencing, pending and related actions in other forums, etc.).

Note: Before contacting chambers, the parties are encouraged to jointly review Judge Zwart's public calendar at <http://www.ned.uscourts.gov/court-calendar>. By doing so, they can propose available dates and times for the telephonic conference and simplify the scheduling process for the court.

Discovery Disputes: Disputes over discovery should not derail the court's case scheduling order. To that end, a discovery motion (to compel, quash, or for a protective order) cannot be filed without first: a) thoroughly discussing the issue with opposing counsel in good faith (NECivR 7.1(i)); and then b) as stated in Judge Zwart's scheduling order, contacting the court to discuss the issue. The failure to first contact the court may result in a summary denial of the discovery motion.

If a conference with Judge Zwart is necessary, Judge Zwart's chambers will ask for an initial brief description (by telephone if all parties are on the phone, or by email copied to all parties) of the issue(s) to be addressed. Depending on the type and extent of issues raised, the court may then require the parties to:

- 1) file a summary, not to exceed ten double-spaced pages in length, which outlines the disputed discovery requests, the objections asserted, and the applicable law.
- 2) jointly complete the [Discovery Disputes Form](#) (posted on the court's website at: http://www.ned.uscourts.gov/internetDocs/jpar/CRZ-Discovery_Disputes-Chart.docx), which succinctly states each party's initial and compromise position as to each disputed discovery request, and email the completed chart to Judge Zwart's chambers.

The filed summary or emailed chart will either be discussed during an internet and/or telephonic conference, or at a hearing in court. Court hearings will be held on the record; internet and telephonic conferences may also be held on the record. The recording will be uploaded to CM/ECF if discovery agreements are reached or rulings are made. This recording provides the basis for appealing any rulings made by Judge Zwart during the conference.

If discovery issues are not resolved during the pre-motion conference, a motion deadline and accelerated briefing schedule will be set at the conclusion of the conference. The court will then rule as soon as possible.

Note: Absent extenuating circumstances, if a formal discovery motion is necessary, the court will not re-draft the disputed discovery requests. The court will simply overrule or sustain the objections to the discovery as written and presented to the court.

Alternative Dispute Resolution: The court favors permitting parties to resolve their disputes through informal settlement discussions, mediation, or settlement conferences. Judge Zwart will routinely remind counsel to explore these avenues during status or discovery conferences.

Mediation: Depending on the circumstances presented and at the parties' request, case progression deadlines may be stayed pending mediation.

Settlement conferences can be set by contacting Judge Zwart's chambers.

- If a district judge will preside over the trial, Judge Zwart will preside over the settlement conference, often with the assistance of Bren Chambers, her career law clerk.
- If the parties have consented to jury trial before Judge Zwart, settlement conferences can be scheduled before Judge Zwart with the advance written consent of all parties.

Absent extenuating circumstances (e.g., an after-hours settlement), any settlement reached will be placed on the court's record at the close of the conference. The recording will be uploaded to CM/ECF and can be filed publicly, under seal, or with restricted access.

Final Pretrial Conferences: The parties' proposed Pretrial Conference Order and Exhibit List(s) must be emailed to zwart@ned.uscourts.gov, in either Word Perfect or Word format on or before the date and time set by court order. To eliminate travel time, and to allow all attorneys and their staff to participate and assist during the conference, absent a request by all counsel to appear

before the court in person, pretrial conferences will be held using internet and telephonic conferencing using the conferencing information assigned to the case.

Consent Cases: With the written consent of all parties, Judge Zwart will rule on case dispositive motions (e.g, to dismiss, for summary judgment, etc.) and will preside over the civil trial. The parties are reminded that in many circumstances, district judges must try criminal cases before civil cases, and Nebraska's criminal caseload per district judge ranks within the top 10 nationwide. By consenting to proceed before Judge Zwart, the parties will receive a set trial date.

Dispositive motions: Judge Zwart will rule on dispositive motions in consent cases within 60 days after the motion is fully submitted. As a reminder, all Nebraska federal judges enforce the local rules regarding summary judgment practice. See NECivR 7.1 and 56.1. If a lawyer fails to comply with those local rules, Judge Zwart will, at a minimum, call that failure to the lawyer's attention in a written order and urge the lawyer to comply in the future.

Trial Practices: Absent an order stating otherwise, trial days begin at 9:00 a.m. and end at or near 4:30 p.m., with an hour for lunch.

Exhibits:

- Exhibits must be pre-marked. Once an exhibit has been received, it is given to the courtroom deputy. Exhibits offered and not received are delivered to the courtroom deputy at the close of trial.
- Before received exhibits are delivered to the jury, counsel shall confer with each other and the courtroom deputy about which exhibits should go to the jury room.
- The parties shall provide a copy of each exhibit to Judge Zwart before trial. While paper copies are acceptable, an electronic copy (disc or flash drive) of all exhibits is preferred.
- Counsel are encouraged to use electronic means (computer, iPad, or ELMO presentation) when displaying exhibits at trial.

Depositions: All depositions to be used at trial (except those which will be used only for impeachment) must be provided to the court before the trial begins. Judge Zwart prefers to rule on deposition objections prior to trial to facilitate advance trial planning and editing of video recordings. But if that is not possible, she will make her rulings as the deposition is being read or played.

Questioning: Judge Zwart does not generally permit re-cross examination. Cross-examination should be limited to the scope of the direct examination, with redirect examination limited to the scope of the cross examination.

Jury conduct: Judge Zwart allows jurors to take notes, but they cannot ask questions during trial.