



Scheduling Orders
The Good, the Bad, and
the Ugly

- ▶ JUDGE MARY WAGNER
- ▶ CHANCELLOR JERII BRYANT
- ▶ SENIOR JUDGE VANESSA JACKSON
- ▶ SENIOR JUDGE DON ASH



Not Always needed
but sometimes a
must to Avoid :



What is your Jurisdiction's
Procedure to move cases
?

- ▶ Docket calls
- ▶ Jury calls
- ▶ Status Conferences
- ▶ Dismissal dockets



Tn Rules of Civil Procedure 16.02

- 1) In any action, the court may in its discretion, or upon motion of any party, conduct a conference with the attorneys for the parties and any unrepresented parties, in person or by telephone, mail or other suitable means, and thereafter enter a scheduling order that limits the time:
- ▶ A) to join other parties and to amend the pleadings;
 - ▶ B) to file and hear motions; and
 - ▶ C) to complete discovery

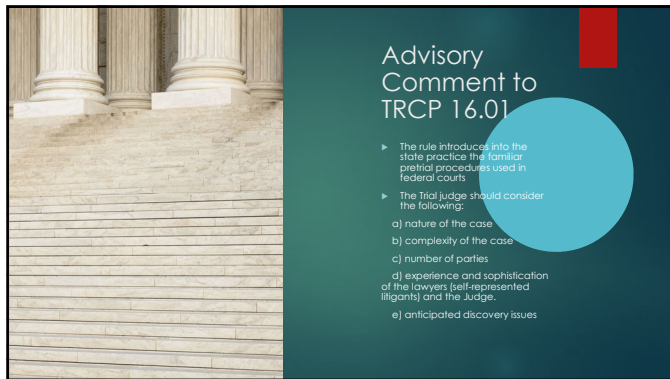


Rule Continued

- ▶ (2) The scheduling order may include :
 - ▶ (A) the date or dates for conferences before trial, a final pretrial conference, and trial;
 - ▶ (B) provisions for the discovery of electronically-stored information
 - ▶ (C) any agreements parties reach for asserting claims of privilege or of protections as to trial-preparation material after production, or in reference to electronically stored information; and
 - ▶ (D) any other matters appropriate in the circumstances of the case.

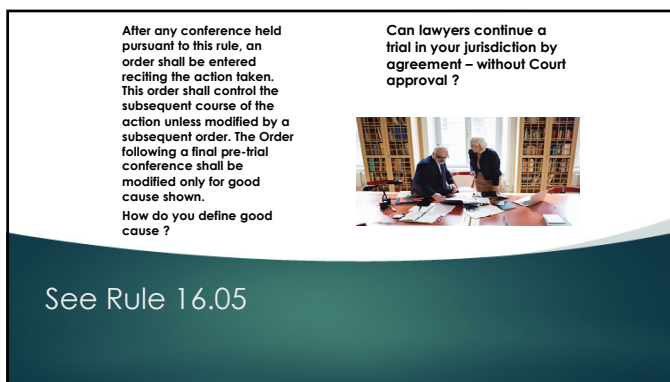
Cont.

- ▶ (3) In deciding the content of any scheduling order, the court shall give consideration to minimizing the time jurors are directly involved in the trial of deliberations. A Schedule once ordered shall not be modified except by leave of the Judge (You must agree) upon showing for good cause.



Advisory Comment to TRCP 16.01

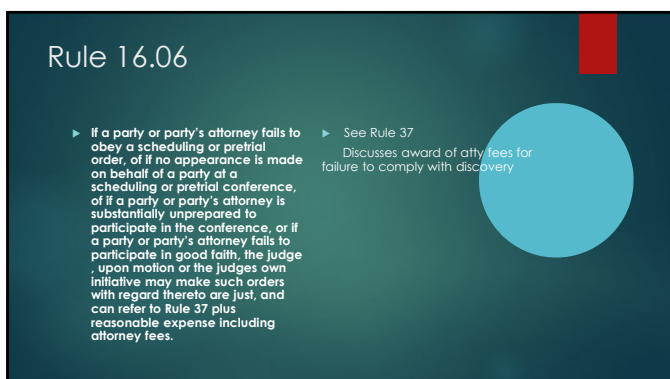
- ▶ The rule introduces into the state practice the familiar pretrial procedures used in federal courts
- ▶ The Trial Judge should consider the following:
 - a) nature of the case
 - b) complexity of the case
 - c) number of parties
 - d) experience and sophistication of the lawyers (self-represented litigants) and the Judge.
 - e) anticipated discovery issues



After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The Order following a final pre-trial conference shall be modified only for good cause shown.
How do you define good cause ?

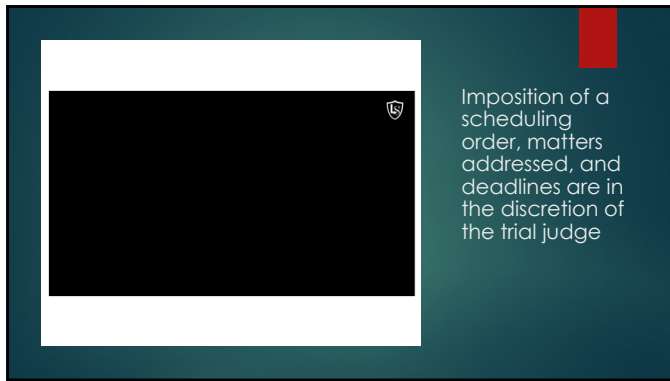
Can lawyers continue a trial in your jurisdiction by agreement – without Court approval ?

See Rule 16.05



Rule 16.06

- ▶ If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative may make such orders with regard thereto are just, and can refer to Rule 37 plus reasonable expense including attorney fees.
- ▶ See Rule 37
Discusses award of atty fees for failure to comply with discovery



Imposition of a scheduling order, matters addressed, and deadlines are in the discretion of the trial judge

Suggestions for your S/O !!

Deadline to amend the pleadings	Expert witness deposition deadline
Deadline for completion of discovery	Medical deposition deadline
Dates for adding other parties or asserting fault of others	Proof deposition deadline
Discovery of electronically-stored information	Deadline for filing dispositive motions
Limits on duplicate discovery	Dates for mediation, pretrial conferences and trial
Expert witness disclosure deadline	Identification of witnesses and exhibits
Try to include date certain – avoid "fourteen days after an event".	Motions in limine
	Submission of proposed jury instructions


Is the Juice worth the Squeeze ?





Ariel Taylor v. Coca Cola Bottling
2020- 03 -0716

- ▶ Court entered a Scheduling order on March 22, 2023
- ▶ Provision all experts disclosed before May 5 – Defendant did not disclose in a timely fashion
- ▶ Expert never disclosed before trial
- ▶ No extension was requested prior to the deadline
- ▶ Expert excluded



The Scheduling Order was not meant to be inflexible

- ▶ See Pegues v. Illinois Central Railroad Company, 288 S.W. 3rd 350 (2008)
- ▶ COA said trial court abused its discretion when court dismissed P claim on basis of failure to comply with a discovery deadline to produce experts for depositions.

McInturff v. Neesman (1998) 986 SW 2nd 11



- ▶ Defendants (who requested a jury trial) were ordered to prepare and file a full and complete jury charge to be given to the jury covering all issues.
- ▶ At the time of the pre-trial conference, the Defendant had not furnished the court with the previously ordered jury instructions.
- ▶ The Chancellor struck the request for a jury trial. About 29 days before the scheduled trial the Defendant filed the requested jury trial. The matter was heard without a jury.
- ▶ COA said Judge abused his discretion but harmless error since Defendant did not file a transcript.

Ehsani vs. Ehsani, M2022- 01819- COA-R3-CV (2024)

- ▶ Case involves discovery sanctions
- ▶ Wife files a motion to strike Husband's pleadings, for default, and for atty fees
- ▶ Court granted the motion
- ▶ Court's Order said motion granted under Tn Rule of Civil Procedure 37.02
- ▶ No other considerations are discussed or details given

▶ **Practice Tip**
**CONSIDER MAKING
FINDINGS OF FACT
AND CONCLUSIONS
OF LAW WHEN
GRANTING
SANCTIONS !!**



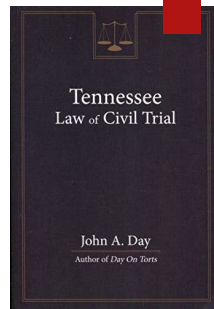
Don't Be a
Dictator – Be a
Facilitator to
arrive at a Just
and Timely
Result !

Let's Review
some sample
orders !

INCLUDED IN YOUR
MATERIALS !!!

Special thanks to
John Day

For the information
regarding scheduling
orders in his excellent book
– there is now a second
edition !!!!!



Thank You !!!!!