

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STEVEN WAYNE FISH, et al.,

Plaintiffs,

v.

Case No. 16-2105-JAR

KRIS KOBACH,

Defendant.

AMENDED SCHEDULING ORDER

Following up on the October 28, 2016 order (ECF [doc. 254](#)) entered by the presiding U.S. District Judge, Julie A. Robinson, which allowed an additional 90 days to complete certain discovery, the undersigned U.S. Magistrate Judge, James P. O'Hara, conducted a telephone scheduling and discovery conference on November 3, 2016. The plaintiffs, Steven Wayne Fish, Donna Bucci, Charles Stricker, Thomas J. Boynton, and Douglas Hutchinson, on behalf of themselves and all others similarly situated, along with their organizational co-plaintiff, The League of Women Voters of Kansas, appeared through counsel, Dale E. Ho, R. Orion Danjuma, Stephen D. Bonney, Angela M. Liu, and Sophia Lin Lakin. The only remaining defendant, Kansas Secretary of State Kris W. Kobach (in his official capacity), appeared in person and through counsel, Garrett R. Roe and Bethany J. Lee.

The court now enters this amended scheduling order, summarized in the table that follows:

SUMMARY OF DEADLINES AND SETTINGS	
Event	Deadline/Setting
All discovery completed	April 26, 2017
Experts disclosed by defendant	January 30, 2017
Experts disclosed by plaintiffs	March 15, 2017
Rebuttal experts (if any) disclosed	April 5, 2017
All potentially dispositive motions (e.g., summary judgment)	July 7, 2017
Motions challenging admissibility of expert testimony	concurrent with response to opponent's summary-judgment motion
Proposed pretrial order due	May 5, 2017
Pretrial conference	May 12, 2017, at 10:30 a.m.
Trial	March 6, 2018, at 9:30 a.m.

1. Discovery.

a. The undersigned judge's order governing discovery dated March 8, 2016 (ECF [doc. 30](#)), the original scheduling order dated March 24, 2016 (ECF [doc. 49](#)), the protective order dated March 29, 2016 (ECF [doc. 55](#)), and Judge Robinson's order dated October 28, 2016 (ECF [doc. 254](#)), are all incorporated herein by reference.

b. All discovery as contemplated and limited by Judge Robinson's recent order, including but not limited to experts' depositions, must be commenced or served in time to be completed by **April 26, 2017**. However, as discussed and agreed during the conference, while such discovery mainly will be confined to additional expert disclosures (see below), discovery may be conducted by both plaintiffs and defendant with regard to *both* aspects of the two-part analysis described in footnote 14 on page 50 the Tenth

Circuit's October 19, 2016 decision affirming Judge Robinson's grant of a preliminary injunction.

c. Disclosures required by Fed. R. Civ. P. 26(a)(2), including *final*, signed reports from retained experts (as discussed at length during the conference), must be served by defendant by **January 30, 2017**, and by plaintiffs by **March 15, 2017**; disclosures and reports by any rebuttal experts (which defendant believes unlikely at this juncture) must in any event be served by **April 5, 2017**. These disclosures must be accompanied by at least three proposed full-day expert deposition settings in the ensuing three weeks. The parties must serve any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law), within 2 business days after service of the disclosures. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2)(B) has been provided) and need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, counsel must confer or make a reasonable effort to confer consistent with D. Kan. Rule 37.2 before filing any motion based on those objections.

2. Motions.

a. All potentially dispositive motions (e.g., motions for summary judgment), must be filed by **July 7, 2017**. The court plans to decide dispositive motions, to the extent

they are timely filed and briefed without any extensions, approximately 60 days before trial.

b. All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed concurrent with response to the opponent's summary-judgment motion.

3. Pretrial Conference, Trial, and Other Matters.

a. Pursuant to Fed. R. Civ. P. 16(e), a pretrial conference in this case is scheduled for **May 12, 2017, at 10:30 a.m.**, in the U.S. Courthouse, Courtroom 223, in **Kansas City**, Kansas; the pretrial conference may be conducted by telephone if the judge determines that the proposed pretrial order is in the appropriate format and that there are no other problems requiring counsel to appear in person. Unless otherwise notified, the undersigned U.S. Magistrate Judge will conduct the conference. No later than **May 5, 2017**, counsel must submit the parties' proposed pretrial order (formatted in Word or WordPerfect) as an attachment to an e-mail sent to *ksd_ohara_chambers@ksd.uscourts.gov*. The proposed pretrial order must not be filed with the Clerk's Office. It must be in the form available on the court's website:

<http://www.ksd.uscourts.gov/flex/?fc=9&term=5062>

The parties must affix their signatures to the proposed pretrial order according to the procedures governing multiple signatures set forth in paragraphs II(C) of the

Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases.

b. The parties expect trial to last 2-4 days. This case will be tried by the court sitting without a jury. The case will be tried in **Kansas City**, Kansas, beginning on **March 6, 2018, at 9:30 a.m.** This is a “No. 1” trial setting, subject only to Judge Robinson’s criminal cases with Speedy Trial Act requirements. In any event, during the month preceding the trial setting, counsel should stay in contact with Judge Robinson’s courtroom deputy to determine the day on which trial actually will begin. This trial setting may be changed only by order of Judge Robinson. The parties and counsel are advised that any future request for extension of deadlines that includes a request to extend the dispositive motion deadline will likely result in a new (i.e., later) trial date.

This amended scheduling order will not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated November 3, 2016, at Kansas City, Kansas.

s/ James P. O’Hara
James P. O’Hara
U.S. Magistrate Judge