

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
)  
Judge Stark Cases Reassigned )  
To VAC Docket )  
)  
)

STANDING ORDER No. 2022-3

In anticipation of the upcoming judicial vacancy, NOW THEREFORE, at  
Wilmington on this 16th day of March in 2022, it is HEREBY ORDERED that:

1. In any VAC case previously assigned to Judge Stark, the parties shall, within 14 days of the assignment to the VAC, notify the Court that they (1) have reached an agreement to consent to the handling of the case by a Magistrate Judge to be selected by the Court, (2) have reached an agreement to consent to the handling of the case by a Magistrate Judge of the parties' choosing, or (3) have been unable to agree to consent to the handling of the case by a Magistrate Judge. In no instance should any party attempt to inform the Court which party or parties declined to consent; the Court needs to know only whether the parties have unanimously agreed to option (1) or (2) above or not (option (3) above).
2. If the parties do not consent to having a Magistrate Judge handle the case (option (3) above), the Court will endeavor to assign the case to a Visiting

Judge. Such assignment may occur at any time before trial and may be made to any Article III judge, whether or not that judge has previously served or been announced as a Visiting Judge.

3. If the parties do not consent to having a Magistrate Judge handle the case (option (3) above), the following procedures shall govern the case:

- a. The case will be referred to a Magistrate Judge **solely** to (1) adjudicate discovery (including fact and expert discovery) and protective order disputes; (2) issue or modify a scheduling order; (3) review stipulated orders and pro hac vice motions; and (4) review requests for mediation by a Magistrate Judge in cases other than patent and securities cases.
- b. The parties shall cooperate in good faith to move the case forward. To that end, if a Rule 26(f) conference has yet to occur, then within seven days of filing the notice that the parties would not consent to a Magistrate Judge, the parties shall hold a Rule 26(f) conference and commence discovery.
- c. If no scheduling order is in place at the time the case is reassigned to VAC, the parties shall file a proposed scheduling order within 30 days of the Rule 26(f) conference. In such

cases, the Magistrate Judge who conducts the Rule 16 conference will set and the parties will comply with deadlines for the completion of discovery and the filing and briefing of motions and, in patent cases, claim construction. Dates for motion and claim construction hearings and argument, the pretrial conference, and trial will not be set until an Article III judge is assigned to the case. The scheduling of (i) any motions hearing at which argument would be heard on a motion other than a motion relating to discovery or to a protective order, (ii) a claim construction hearing, (iii) a pretrial conference, or (iv) trial is not within the scope of the referral to the assigned Magistrate Judge. Thus, the scheduling order shall include dates for filing briefing for such proceedings but shall not include dates for such proceedings.

- d. If a scheduling order is in place at the time of reassignment to VAC, the scheduling order shall be amended to vacate (i) the dates for any motions hearing, (ii) the dates of any claim construction hearing, and (iii) the referral of the case to a Magistrate Judge for the purposes of alternative dispute

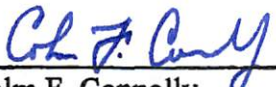
resolution or for any other purpose. All other dates and deadlines—including deadlines for the filing of a pretrial order, case dispositive motions, Daubert motions, and claim construction briefing, as well as the date of the pretrial conference and trial—and limitations on discovery (e.g., deposition hours, start of expert discovery) shall remain in effect.

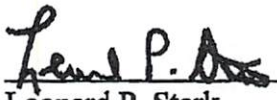
- e. Disputes arising from the Rule 26(f) conference and disputes concerning the scheduling order shall not prevent the case, including discovery, from progressing. Resolution of such disputes is within the scope of the referral to the assigned Magistrate Judge.
- f. Disputes regarding the terms of a protective order shall not prevent the case, including discovery, from progressing. (See Local Rule 26.1.) Resolution of such disputes is within the scope of the referral to the assigned Magistrate Judge.
- g. The filing of a motion shall not be grounds to prevent the case, including discovery, from progressing. Absent any specific

provision in the case's scheduling order, briefing shall proceed according to the Local Rules.

- h. Emergency motions will be reviewed by the District Judge who is acting as the Court's duty judge on the date the motion is filed or the date a party contends the motion has become an emergency. The duty judge has discretion to treat the motion as an emergency and assign the case to an Article III judge or to treat the motion as a nonemergency and allow the case to remain pending in the VAC docket.

FOR THE COURT:

  
Colm F. Connolly  
Chief Judge

  
Leonard P. Stark  
Judge

  
Richard G. Andrews  
Judge

  
Maryellen Noreika  
Judge