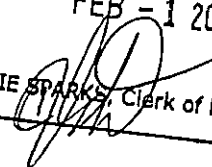


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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	Cause No. CDV-2020-307 Hon. Kathy Seeley PLAINTIFFS' UNOPPOSED MOTION IN LIMINE NO. 1: BRIEF IN SUPPORT OF MOTION RE: MANAGEMENT OF TRIAL TIME
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I. INTRODUCTION

Plaintiffs Rikki Held, *et al.*, by counsel, and pursuant to the Court's Modified Scheduling Order (Doc. 145), entered June 15, 2022, respectfully submit the following brief in support of their motion *in limine* requesting the Court establish procedures to ensure the fair allocation of trial time as between Plaintiffs and Defendants. A ten-day bench trial has been set for Monday, June 12, 2023, through Friday, June 23, 2023 (Doc. 220). The trial will involve numerous expert witnesses on a variety of technical subjects, hybrid expert witnesses from several State agencies, and fact witnesses including the Youth Plaintiffs. Indicative of the time constraints that need to be planned for at trial are the fruits of the recently completed discovery in this case, wherein the parties exchanged over 50,000 pages of agency documents and scientific reports, and completed thirty-six depositions, including fourteen depositions of Plaintiffs' experts, and a combined ten depositions of Defendants' experts, hybrid experts, and employees of the Montana Department of Environmental Quality, the Department of Natural Resources and Conservation, and the Public Service Commission.

Realistically, counsel estimate that the ten-day bench trial will mean approximately sixty hours of trial time in total, or six hours of trial time per day. Plaintiffs request the Court allocate half of the available trial time (thirty hours) to each side for the presentation of their case in chief, cross of the opposing party's witnesses, and rebuttal. Plaintiffs further request the Court implement a simple mechanism for keeping track of the time used by each party, such as a "chess clock" which displays the time for each party independently and separately, with just one party's time running at a time.

II. APPLICABLE STANDARDS

It is hornbook law that, “A trial judge is responsible for management of the trial and is vested with broad discretion to perform that function. It is incumbent upon a trial judge to manage the proceedings in his or her court in order to assure orderly process to all parties.” 88 C.J.S. *Trial* § 107 (1955). In managing the course of a trial, the Montana Rules of Civil Procedure empower the trial judge in “establishing a reasonable limit on the time allowed to present evidence.” M. R. Civ. P. 16(c)(2)(O). Congruent with M. R. Civ. P. 1, the trial court’s authority to manage the course of the trial is intended to facilitate “the just, speedy, and inexpensive disposition of the action.” M. R. Civ. P. 16(c)(2)(Q). As the Third Circuit explained in the context of similar objectives in the federal rules:

Numerous courts have inferred from these provisions a court’s authority to set time limits. *See, e.g., MCI Communications Corp. v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1171 (7th Cir.) (setting a period of time for the trial is “not, *per se*, an abuse of discretion”), *cert. denied*, 464 U.S. 891, 104 S.Ct. 234, 78 L.Ed.2d 226 (1983); *Harris v. Marsh*, 679 F.Supp. 1204, 1235 & n. 42 (E.D.N.C. 1987) (allowing each side a total block of hours for direct and cross examination), *rev’d in part on other grounds*, 914 F.2d 525 (4th Cir.1990), *cert. denied*, 499 U.S. 959, 111 S.Ct. 1580, 113 L.Ed.2d 645 (1991); *United States v. Reaves*, 636 F.Supp. 1575, 1580 (E.D.Ky.1986); *SCM Corp. v. Xerox Corp.*, 77 F.R.D. 10, 13 (D.Conn.1977). We similarly believe that courts have discretion to impose limits on a party’s trial presentation without the necessity of ruling specifically on “each particular item of evidence offered.” *SCM Corp., Id.* at 13.

Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 609 (3d Cir. 1995).

As the Colorado Court of Appeals more recently explained:

The clock trial is a matter of first impression in Colorado. Use of this procedure appears to be increasing. *See* Martha K. Gooding & Ryan E. Lindsey, *Tempus Fugit: Practical Considerations for Trying a Case Against the Clock*, 53 Fed. Law. 42 (Jan. 2006). First, we identify principles that other courts have recognized in determining whether litigants in such trials have been afforded due process. Then we apply those principles to conclude that Maloney’s due process rights were not violated.

Maloney v. Brassfield, 251 P.3d 1097, 1101–02 (Colo. App. 2010). In determining the trial court’s use of a time clock in a seven-day jury trial comported with due process, the *Maloney* Court’s evaluation included: the adequacy of time limits at the outset of the trial and over the course of the trial; whether trial time limits were established with sufficient warning for the parties to plan accordingly; whether the trial court kept the parties informed of their status on the clock; and whether the trial court demonstrated flexibility because unexpected developments could render a previously reasonable time limit inadequate. *Id.* at 1102-05.

III. DISCUSSION

Here, at the time of the pre-trial conference, counsel for the parties agreed that a ten-day bench trial would be adequate to resolve all triable issues. By granting Plaintiffs’ motion now, trial time limits will be established with sufficient warning for the parties to plan accordingly. Moreover, Plaintiffs request the Court implement a simple mechanism for keeping track of the time used by each party, such as a “chess clock” which displays the time for each party independently and separately, with just one party’s time running at a time. In this way, the Court will keep the parties informed on a daily basis of their status “on the clock.” Finally, during the course of trial, there may be unexpected developments that could render a previously reasonable time limit inadequate. Should such a circumstance arise, the Court retains the authority to adjust the time limits accordingly.

IV. CONCLUSION

Realistically, counsel estimates that the ten-day bench trial will mean approximately sixty hours of trial time. Plaintiffs request the Court allocate half of the available trial time (thirty hours) to each side for the presentation of their case in chief, cross of the opposing party’s witnesses, and rebuttal. Plaintiffs further request the Court implement a simple mechanism for keeping track of

the time used by each party, such as a “chess clock” which displays the time for each party independently and separately. Plaintiffs submit their proposal is consistent with the letter and spirit of the Montana Rules of Civil Procedure and comports with requirements of due process. Accordingly, Plaintiffs request their motion be granted.

DATED this 1st day of February, 2023.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered by email to the following on February 1, 2023:

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