UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Matthew C. McKinnon v. Terry Redden, J. Canterberry, Koen, Salinka, Albright, Lopez

McKinnon · No. 3:21-CV-573 JD · Decided December 3, 2025

SUMMARY

The United States District Court for the Northern District of Indiana denied Matthew C. McKinnon's motion for sanctions under Federal Rule of Civil Procedure 16(f) based on Defendants' ten-day delay in exchanging witness, exhibit, and contention lists. The court concluded that the delay was harmless, caused no unfair prejudice or likely trial disruption, and did not reflect bad faith or willfulness.

CASE DETAILS

COURT	United States District Court for the Northern District of Indiana, South Bend Division
WRITING FOR THE COURT	Jon E. DeGuilio
JURISDICTION	United States District Court for the Northern District of Indiana, South Bend Division
DECIDED	December 3, 2025
DOCKET	3:21-CV-573 JD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for sanctions under Federal Rule of Civil Procedure 16(f) based on Defendants' ten-day delay in exchanging witness, exhibit, and contention lists required by the scheduling order. The court denied the motion.
STANDARD OF REVIEW	The district court exercises broad discretion in determining whether a Rule 26(a) disclosure violation was substantially justified or harmless. The relevant considerations include prejudice or surprise, the ability to cure prejudice, likely trial disruption, and bad faith or willfulness.
PRECEDENTIAL VALUE	unknown
PARTIES	Matthew C. McKinnon v. Terry Redden, J. Canterberry, Koen, Salinka, Albright, Lopez

TOPICS

sanctions civil procedure

PRACTICE AREAS

civil procedure discovery and disclosure sanctions pretrial practice

QUESTIONS PRESENTED

1. Whether Defendants' ten-day violation of the scheduling order and Federal Rules of Civil Procedure 16 and 26 warranted sanctions under Rule 16(f), including exclusion of witnesses and exhibits under Rule 37(c)(1).
2. Whether the late disclosures were substantially justified or harmless under Rule 37(c)(1).

HOLDINGS

1. Sanctions, including exclusion of witnesses and exhibits, were not warranted because Defendants established that their ten-day disclosure violation was harmless.
2. A violation of the scheduling order did not require the requested sanctions where the violation was harmless under Rule 37(c)(1).

KEY QUOTATIONS

> *"Sanctions under Rule 37(c) are automatic and mandatory unless the non-movant can establish that the failure was substantially justified or harmless."*

> *"the following factors should guide the district court's discretion: (1) the prejudice or surprise to the party against whom the evidence is offered; (2) the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the bad faith or willfulness involved in not disclosing the evidence at an earlier date."*

FACTUAL BACKGROUND

Defendants' counsel failed to exchange witness, exhibit, and contention lists by the scheduling-order deadline because counsel confused this case's deadlines with those in another case. The disclosures were provided ten days late, but were delivered to Plaintiff more than three months before trial, and the disclosed witnesses and exhibits were substantially the same as those Defendants had used in support of summary judgment. Plaintiff did not request additional time to prepare the pretrial order, which was submitted as scheduled, and the court found no meaningful prejudice, likely trial disruption, or bad faith.

PROCEDURAL HISTORY

The court entered a scheduling order requiring the parties to exchange their witness, exhibit, and contention lists by October 17, 2025. Defendants' counsel moved for an extension ten days after the deadline, explaining that counsel had confused deadlines in this case with deadlines in another trial; the court granted the extension the same day. Plaintiff then moved for sanctions seeking exclusion of untimely disclosed witnesses and exhibits. The district court denied the motion, finding the violation harmless and not undertaken in bad faith.

DISPOSITION

other

CASES CITED

- DR Distributors v. 21 Century Smoking, 513 F. Supp. 3d 839, 956 (N.D. Ill. 2021)
- David v. Caterpillar, 324 F.3d 851, 857 (7th Cir. 2003)
- Mid-Am. Tablewares, Inc. v. Mogi Trading Co., 100 F.3d 1353, 1363 (7th Cir. 1996)

OPINION

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION MATTHEW C. MCKINNON, Plaintiff, v. Case No. 3:21-CV-573 JD TERRY REDDEN, J CANTERBERRY, KOEN, SALINKA, ALBRIGHT, LOPEZ, Defendants. OPINION AND ORDER On July 9, 2025, the Court issued an order setting this case for trial on February 17, 2026, with the final pretrial conference on December 17, 2025.

(DE 193 at 1.) In the same order, the Court set: • October 17, 2025, as a deadline for the parties to exchange their witness, exhibit, and contentions lists; and • November 17, 2025, as a deadline to submit a proposed pretrial order.

On October 27, 2025, ten days after the disclosures deadline, Defendants' counsel moved to extend this deadline. (DE 206.) Counsel explained that they were simultaneously preparing for another trial, with a final pretrial conference set just two weeks after the final pretrial conference in this case. Counsel stated that they confused the deadlines in the two cases, overlooking the disclosure deadline here.

In the motion, counsel told the Court that, to expedite delivery of the documents to Mr. McKinnon, the documents were simultaneously emailed to the litigation liaison at the Indiana State Prison for delivery to Mr. McKinnon.1 The Court granted Defendants' motion that same day, extending the disclosure deadline.

On November 5, 2025, Mr. McKinnon moved for sanctions against Defendants under Federal Rule of Civil Procedure 16(f) for violating the exchange deadline. Mr. McKinnon asks that the Court prohibit Defendants' counsel from introducing into evidence any exhibits or witnesses that were not timely disclosed. (Pl.'s Mot., DE 210 at 14.) Defendants do not contest that their disclosures were ten days late, but oppose the motion on the grounds that Plaintiff has not shown that he suffered any prejudice or that Defendants' counsel acted in bad faith.

For the reasons stated below, the Court will deny Mr. McKinnon's motion. Consistent with Rule 26(a)(3), the Court ordered the parties to exchange their witness, exhibit, and contentions lists by October 17, 2025. See Fed. R. Civ. P. 26(a)(3) (requiring disclosure of all witnesses and exhibits a party intends or might offer at trial). Rule 16(b)(4) provides that a scheduling order "may be modified only for good cause and with the judge's consent." In turn, Rule 16(f)(1)(C) allows the Court to issues sanctions when a party or its attorney "fails to obey a scheduling or other pretrial order." In addition, Rule 37(c)(1) states that, "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness... at a trial, unless the failure was substantially justified or is harmless." "Sanctions under Rule 37(c) are automatic and mandatory unless the non-movant can establish that the failure was substantially justified or harmless." DR Distributors v. 21 Century Smoking, 513 F. Supp. 3d 839, 956 (N.D.

Ill. 2021) (citing David v. Caterpillar, 324 F.3d 851, 857 (7th Cir. 2003)). In the Seventh Circuit, "'[t]he determination of 1 Counsel also mailed the documents to Mr. McKinnon at the same time. (DE 206 at 1–2.) Mr. McKinnon received the emailed documents on October 28. (Pl.'s Mot., DE 210 at 4.) whether a Rule 26(a) violation is justified or harmless is entrusted to the broad discretion of the district court.'" David, 324 F.3d at, 857 (7th Cir.

2003) (quoting Mid–Am. Tablewares, Inc. v. Mogi Trading Co., 100 F.3d 1353, 1363 (7th Cir. 1996)). "[T]he following factors should guide the district court's discretion: (1) the prejudice or surprise to the party against whom the evidence is offered; (2) the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the bad faith or willfulness involved in not disclosing the evidence at an earlier date." Id. Having considered these factors and the parties' arguments, the Court finds that no sanctions are warranted for Defendants' counsel's ten-day delay in providing witness, exhibit, and contention lists to Mr. McKinnon.

While the Court guards its deadlines earnestly, each of the considerations identified in David favors a conclusion that counsel's failure to submit the materials to Mr. McKinnon in a timely manner was harmless. Starting with the first two factors, the Court finds no unfair prejudice or surprise resulting from counsel's late filing, and whatever prejudice there may have been appears to have been cured.

Apart from informing each side of what is anticipated at trial, the exchange is also designed to facilitate the preparation of the pretrial order. As for the trial, although provided late, the information was given to Mr. McKinnon more than three months before trial, and he has not shown that the tardy disclosure will negatively impact the course of trial.

Moreover, the disclosed exhibits and witnesses are substantially the same as the exhibits and witnesses relied upon by Defendants in support of their motion for summary judgment. Likewise, although the tardy filing may have affected some aspects of preparing for the final pretrial order, Mr. McKinnon has not requested an extension of time, and the final pretrial order has been submitted to the Court as scheduled.

Although Mr. McKinnon claims that he “will be prejudiced [because the late disclosure] prevents [him] from being able to adequately prepare [his] case-in-chief having to address this major mishap” (Pl.’s Mot., DE 210 at 10 (emphasis added)), his argument is misplaced.

In this context, a party suffers prejudice if it has been placed at a disadvantage by the opponent’s violation of the rules controlling pretrial preparation, which he hasn’t shown. In other words, prejudice does not arise merely because a motion for sanctions is filed; if that were the case, David’s analysis would be superfluous. Mr. McKinnon also complains that, during the discovery phase, Defendants asked for extension of time on three occasions.

He seems to believe that these extensions, coupled with the tardy disclosure, have an overall prejudicial effect. But Mr. McKinnon overlooks that the previous requests were timely. (See DE 91, 93, & 98.) In fact, such motions are common in litigation, and the Court sees no prejudicial effect in the earlier filings, whether considered by themselves or together with the belated disclosure.

Nor is there a likelihood that the trial will be disrupted. The delay here is both short and far removed from trial, making disruption unlikely. If any disruption were possible, the appropriate remedy would be a brief continuance, not the outright exclusion of evidence.

Finally, the Court finds no bad faith in counsel’s conduct. Counsel explained the confusion that resulted from defending two cases with similar pretrial deadlines. There appears to be no willfulness in the late filing or an attempt to disadvantage Mr. McKinnon. Once the mistake became apparent, counsel expedited the delivery of the documents to minimize any further delay.

This is not a situation of counsel engaging in strategic maneuvers to undermine Plaintiff’s case against Defendants. In summary, the Court finds that Defendants met their burden of showing that, although their counsel violated the Court’s scheduling order, the violation was harmless.

Accordingly, the Court DENIES Mr. McKinnon’s motion for sanctions (DE 210). SO ORDERED. ENTERED: December 3, 2025 /s/ JON E. DEGUILIO Judge United States District Court