

JUDGE RAYMOND DEARIE PREPARES TO CONSULT WITH THE ARCHIVES

In his last act before today's election, Special Master Raymond Dearie issued the following order:

SCHEDULING ORDER

1. Pursuant to Paragraph 3 of the Order Appointing Special Master, ECF 91, the undersigned intends to contact the National Archives and Records Administration regarding its practices and guidance documents concerning the categorization of materials under the Presidential Records Act. Any party seeking to be heard in connection with this consultation may submit a letter of no more than three pages by November 10, 2022.

2. An in-person status conference in this matter is scheduled for Thursday, December 1, 2022, at 10:30AM. The undersigned anticipates that this conference will be an opportunity for the parties to elaborate upon their respective positions in advance of the Report and Recommendation to be filed by December 16, 2022.

Signed by Special Master Raymond J. Dearie on 11/7/2022. (Entered: 11/07/2022)

I've added the new dates to the timeline below.

The December 1 status conference, which has attracted the most attention, is scheduled for such time as Dearie will have had a chance to review the two sides' disputes. More importantly, it comes after the 11th Circuit will have this issue fully briefed – and could well have decided to stop the entire process. It will also come after most results of the election will have been decided. It will be public, so Trump will have to make his bid to claw back all the documents he stole before the press.

The notice that he will consult NARA is a bit more interesting. As Dearie notes, this was specifically permitted in Judge Aileen Cannon's order of appointment. At the first status hearing, Dearie said he would alert Trump before making such consultation. This order serves primarily to tell Trump that this is his chance – while his team is writing their 11th Circuit response and drawing up their general document – to weigh in. But nothing will prevent Dearie from making this consultation.

Dearie knows a good deal about what NARA will say, because the Presidential Records Act is clear. Any document Trump saw as President is a Presidential record. Most of Trump's claims so far are without merit, even ignoring that the documents were seized with a valid warrant and have evidentiary value.

But the order will ensure that Trump makes a three-page argument about how he is above the PRA. And it'll provide another authority on which Dearie can rely to rule that Trump cannot convert government documents to his personal property by the mere act of stealing them.

Update: Tweaked timeline.

Timeline

October 13: DOJ provides materials to Trump

By October 14: DOJ provides notice of completion that Trump has received all seized documents

On or before October 14: DOJ revised deadline to 11th Circuit

October 18: Phone Special Master conference

October 20: Deadline for disputes about Executive Privilege and Presidential Records Act on filtered material

October 24: Date Trump unilaterally declares his deadline to comply with Dearie's order

October 25: Trump rethinks and submits his version of disputes

October 26: Both sides agree to brief general issues; Dearie resolves the remaining privilege issues and accepts briefing dates

November 2 (21 days after notice of completion): Trump provides designations for all materials to DOJ

November 7: Dearie reveals he will consult with NARA

November 8: Election Day; Principal briefs due to Dearie

November 10, 2022: Trump revised deadline to 11th Circuit; deadline to complain about consultation with NARA

November 12 (10 days after November 2): Both sides provide disputes to Dearie; response

briefs to Dearie

November 17: DOJ revised reply to 11th Circuit

December 1: Status conference

December 16: Dearie provides recommendations to Cannon