

# Civil Trial Practice

## A. TRIAL DATE

The Court sets a date certain for the trial at the initial Scheduling Conference after consultation with counsel. Attorneys must bring their schedules to the conference to avoid conflicts.

If issues arise regarding the date set for trial, the Court is available to conduct a status conference, either by telephone or in person, by contacting the case manager.

## B. JOINT FINAL PRETRIAL ORDER

The Joint Final Pretrial Order must be submitted electronically through CM/ECF on or before the date set by the scheduling order. Counsel is directed to consult and comply with [Local Rule 16.2](#) governing the Joint Final Pretrial Order. The proposed Final Pretrial Order shall strictly comply with the requirements of [Local Rule 16.2](#). If plaintiffs do not convene a conference or initiate the process of completing the Joint Final Pretrial Order, or if defendants fail to respond, either party may file a Notice of Failure to Complete the Joint Final Pretrial Order on or after the date the Order is due to be filed along with their submissions for the Order. The Notice must indicate that the party filing the Notice attempted to communicate with the other parties prior to filing the Notice.

## C. FINAL PRETRIAL CONFERENCE ATTENDANCE

The following persons shall personally attend the final pretrial conference:

- i) Trial counsel for each party;
- ii) All parties who are natural persons;
- iii) A representative on behalf of any other party who has full settlement authority for the party;
- iv) A representative of any insurance carrier that has undertaken the prosecution or defense of the case and has contractually reserved to itself the ability to settle the action.

Representatives must possess full authority to engage in settlement discussions and to agree upon a full and final settlement.

If a governmental entity is a party, then agency counsel or another person with settlement authority must attend along with counsel for the government, unless counsel for the government has settlement authority and has requested leave of the Court to attend without a client representative.

## D. EXHIBITS

The following instructions are in addition to the requirements of Local Rule 16.2(b)(9) governing the list of exhibits to be provided with the Proposed Joint Final Pretrial Order.

- 1. Objections Based on Authenticity and Foundation:** Failure to identify objections based on authenticity and foundation will result in waiver of those objections at trial.
- 2. Custody and Record of Admitted Exhibits:** Counsel are required to maintain a record of all admitted exhibits during trial. Counsel for each party must keep custody of that party's admitted exhibits during trial. Exceptions will be made for exhibits that may pose a threat or danger if transported to and from the Court, or exhibits that are delicate and otherwise unable to be moved without risk. In those instances, with advance warning, the Court will make arrangement to ensure the integrity of the evidence.

**3. Preparing Exhibits for Jury Deliberation:** Originals of all exhibits admitted at trial should be ready to be turned over to the jury at the beginning of jury deliberations.

**4. Filing Exhibits:** It is the responsibility of the parties to ensure that the record is complete.

**5. Numbering Exhibits:** The parties will consecutively number exhibits to be used at trial. Plaintiff's exhibits will be designated beginning with "P-1." Defendant's exhibits will be designated beginning with "D-1."

**6. Filing Exhibits:** It is the responsibility of the parties to ensure that the record is complete.

## **E. JURY INSTRUCTIONS**

The parties must meet and confer prior to trial to discuss jury instructions. The parties must submit directly to the Court a single set of all stipulated proposed jury instructions and a verdict form no later than the date established in the Scheduling Order. The parties must also submit any instructions they cannot agree on by the same date. All such instructions are to be submitted in either Microsoft Word or WordPerfect, and each instruction shall contain references to authority. The Court has its own standard introductory and concluding instructions.

## **F. JURY SELECTION**

Voir dire will be conducted by the Court with follow-up questions permitted by counsel. Counsel should submit proposed voir dire questions in writing at least five days in advance of the trial. Jurors will be excused without disclosing which side excused them.

## **G. NOTE TAKING & JUROR QUESTIONS**

Jurors may be permitted to take notes during trial. The Court instructs the jury in advance on this issue.

## **H. PROPER USE OF JURY TIME**

Although counsel is expected to raise foreseeable evidentiary issues by motions in limine before trial, if evidentiary problems arise during trial, counsel should raise them before or after the trial day, or during a break, to avoid jury down time while such problems are solved. Speaking objections are prohibited.

## **Courtesy Copy Policy**

A courtesy copy of all motions and briefs over ten pages must be sent to the chambers via first class mail the same day the document is e-filed, or hand-delivered the next business day after the document is e-filed. The courtesy copy should consist of the actual e-filed document and contain the electronic file stamp on the top of each page. Please submit courtesy copies three-hole punched, printed double-sided (if possible), and with all exhibits identified using tabs.

# Discovery in Civil Cases

## A. EXCLUSIONS

These discovery rules do not apply to the following types of actions: ERISA or other action for review on an administrative record; petition for habeas corpus; prisoner civil case where prisoner is unrepresented; an action to enforce or quash an administrative summons or subpoena; an action by the United States to recover benefit payments or student loans; and, an action to enforce an arbitration award.

## B. EFFICIENT DISCOVERY

Parties are required to conduct a Rule 26(f) discovery conference and submit a discovery plan and/or case summary no later than three business days prior to the initial scheduling conference. It is expected that all parties and all counsel will conduct discovery in a cooperative way, consistent with Fed. R. Civ. P. 1: "To secure the just, speedy, and inexpensive determination of every action."

The disclosure requirements of Rule 26(a)(1) generally will be required by the Court 14 days after the case management and scheduling conference. Dates for disclosure of expert information contemplated by Rule 26(a)(2) will be established at the case management and scheduling conference.

## C. FIRM DISCOVERY CUTOFF

The Court has a standing Scheduling Order that is entered in each case following the initial scheduling conference, which sets the discovery cutoff date. Sufficient time must be given to answer interrogatories and complete depositions and all other discovery by the discovery cutoff. Counsel may agree, in writing, to hold depositions or accept responses to written discovery after the discovery cutoff without involvement of the Court.

The discovery deadline may be extended only by filing a motion or stipulation with the Court and then only if the extension of time does not change the motion cutoff, final pretrial conference, or trial dates.

Extensions or adjournments of all other dates will only be considered upon the timely filing of a written motion for good cause shown. Filing a motion does not change discovery deadlines.

## D. DISCOVERY DISPUTES

[Local Rule 37.1](#) requires the parties to attempt to narrow their disagreements in regard to discovery. The Court expects counsel to make every effort to comply with this Local Rule, to confer with one another and to resolve discovery matters themselves.

Once counsel have conferred and made every effort to reach an agreement, the Court is available by telephone, on short notice, in order to resolve remaining discovery disputes expeditiously and without the need for motion practice.

**In order to facilitate this process, parties are required to contact the Court prior to filing any discovery motions. Discovery motions filed without leave of Court will be stricken.**

Discovery motions unable to be resolved in the manner described above will generally be referred to a Magistrate Judge. Once a motion has been referred, all communication regarding that motion should be directed to the Magistrate Judge. Improper delays or uncooperativeness in discovery may result in assessments of costs.

## **E. MODEL PROTECTIVE ORDER**

The Court has prepared a model protective order to assist parties who require confidentiality in discovery. Parties are not required to use this order, but the Court strongly prefers if they do. [Model Protective Order](#)

## Motion Practice

The Court requires compliance with [Local Rule 7.1\(a\)](#) regarding seeking concurrence in all motions.

The Case Manager will send out a notice of the hearing date. The Court will consider ex parte applications to file a brief longer than 25 pages based on the complexity of the case and the number of issues to be covered. Page limits are rarely extended more than five pages for responses and two pages for replies.

[Local Rule 7.1\(d\)](#) governs the briefing schedules for all motions. Attorneys who do not respond to motions in a timely fashion may not be permitted to argue before the Court during oral argument. The Court will accept reply briefs if filed pursuant to [Local Rule 7.1](#). Sur-replies are not permitted unless new law has emerged since the response was filed.

No party may file more than one motion for summary judgment without obtaining leave of the Court.

## **Proposed Orders**

Proposed orders may not be submitted to the Court on the stationery or letterhead of any party or their counsel. Any proposed order so submitted will not be accepted, and the submitting party will be required to refile a properly formatted order.

# Temporary Restraining Orders and Preliminary Injunctions

If necessary, the Court will set a time schedule for briefing related to requests for temporary restraining orders and preliminary injunctions which is less than prescribed by [Local Rule 7.1](#). In addition to the requirements of Fed.R.Civ.P. 65 and [Local Rule 65.1](#), the Court requires that all applicants for a temporary restraining order attempt to notify the opposing party so that the Court has an opportunity to hear both sides unless the moving party can demonstrate good cause for failing to give notice to the opposing party. If practicable, the Court will schedule a conference before hearing any request for a temporary restraining order or preliminary injunction. Parties must notify the case manager by telephone upon filing an application for a temporary restraining order or preliminary injunction so that appropriate scheduling issues can be discussed.



