

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**LOCAL RULE 16.2**

**CONTENT OF JOINT PRETRIAL ORDER**

**A. JOINT FINAL PRETRIAL ORDER**

A Joint Final Pretrial Order shall be furnished in every civil case one week prior to the time set for the final pretrial conference, unless otherwise ordered. Counsel for plaintiff(s) shall assume responsibility for convening a conference for all parties to confer and collaborate in formulating a concise Joint Final Pretrial Order which is to be compiled by counsel for plaintiffs, approved and signed by counsel for all parties, and submitted by counsel for plaintiffs to the Court for approval of the Court and, when signed and filed in the Clerk's Office, becomes an Order of the Court, superseding the pleadings and governing the course of trial unless modified by further Order provided, however, that the pretrial order shall not constitute a vehicle for adding claims or defenses. An original and one copy is to be submitted to the chambers of the assigned Judge. The Order will not be filed in the Clerk's Office until it has been signed by the Judge.

**B. CONTENT OF ORDER**

The Joint Final pretrial Order shall contain, under numbered and captioned headings, the following:

- 1.) Jurisdiction. The parties shall state the basis for Federal Court jurisdiction and whether jurisdiction is contested by any parties.
- 2.) Plaintiffs' Claims. A statement of the claim or claims of plaintiffs including legal theories.
- 3.) Defendants' Claims. A statement of the defenses or claims of defendants, or third parties, including legal theories.
- 4.) Stipulation of Facts. The parties shall state, in separately numbered paragraphs, all uncontested facts.
- 5.) Issues of Fact to be Litigated.
- 6.) Issues of Law to be Litigated.
- 7.) Evidence Problems Likely to Arise at Trial. Include objections to exhibits. All motions in limine of which counsel should reasonably be aware shall be listed in the Joint Final Pretrial Order.

- 8.) Witnesses. Each party shall list the names of all witnesses, identifying which are experts, that it will call (in the absence of reasonable notice to the contrary, to opposing counsel) and those witnesses it may call. No witness shall be listed who has not been included on any witness list submitted pursuant to a prior order of the Court. Only listed witnesses will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be reasonably anticipated before trial or except for good cause shown.
- 9.) Depositions. The parties shall list the names of all witnesses whose deposition testimony is reasonably expected to be offered as evidence. Nothing in this subsection shall preclude the taking of de bene esse deposition for use at trial, subject to the admonition included in paragraph 12(a) of this Court's Scheduling Order.
- 10.) Exhibits. The parties shall number and list, with a short identifying description, each exhibit they intend to introduce at trial. Only listed exhibits will be considered for admission at trial, except for rebuttal exhibits which could not be reasonably anticipated before trial or except for good cause shown. An Exhibit book shall be provided for the Court. Absent an objection sustained by the Court, counsel may provide copies of exhibits to jurors.
- 11.) Damages. Plaintiffs shall itemize all claimed damages, shall specify those damages which can be calculated from objective data, and the parties shall stipulate to those damages which are not in dispute.
- 12.) Trial.
  - A. Time for plaintiff's proofs.
  - B. Time for defendant's proofs.
  - C. Indicate whether it is a jury or non-jury trial.
  - D. If a jury trial, do you stipulate to less than a unanimous verdict?
  - E. If a jury trial, do you stipulate to a verdict of less than six but not less than five if jurors must be excused during the course of trial.
- 13.) Settlement. Counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date thereof, and indicate the current status of negotiations as well as any plans for further discussions. Please indicate if one or all parties believe the Court can be of assistance in facilitating settlement.
- 14.) Failure of Counsel to Cooperate. Failure of counsel to cooperate in the preparation or submission of, or to strictly comply with, the Joint Final Pretrial

Order, may result in dismissal of claims, default judgment, refusal to let witnesses testify or to admit exhibits, assessment of costs and expenses, including attorney fees, or other appropriate sanctions.

- 15.) Filing of Trial Briefs, Findings and Jury Instructions. The Joint Final Pretrial Order shall further provide that trial briefs, proposed findings of fact and conclusions of law (in non-jury cases) or requests for instructions in jury cases shall be filed no later than the last business day prior to trial. (See Scheduling Order for further requirements with respect to Jury Instructions and Findings.)
- 16.) Juror Costs Attributable to Parties. Each party shall also acknowledge that the Court may assess juror expenses under LR 38.3.
- 17.) Additional Requirements. The Judge, in an appropriate case, may add additional requirements to the Joint Final Pretrial Order, or may suspend application of this Rule, in whole or in part.