

Sample Form 36

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

)	
)	
Plaintiff(s),)	CASE NO.
)	
vs.)	CJRA TRACK
)	
)	
Defendant(s).)	JUDGE

FINAL PRE-TRIAL ORDER

This matter is before the Court at a Final Pre-Trial Conference held pursuant to Rule 16, Federal Rules of Civil Procedure.

PLAINTIFF(S) COUNSEL:

(Insert name, address, and telephone number.)

DEFENDANT(S) COUNSEL:

(Insert name, address, and telephone number.)

I. NATURE OF THE CASE

The parties should prepare a brief statement of the nature of the case including the claims of the parties (personal injury, Federal Tort claim, breach of contract, etc.). The principal purpose of this statement is to assist the Court in explaining the case to prospective jurors upon selection of a jury.

II. JURISDICTION

- A. This is an action for:
(State the remedy sought, such as damages, injunctive or declaratory relief.)
- B. The jurisdiction of the Court is not disputed (or is disputed).
 - 1. If not disputed, state the statutory, constitutional or other basis of jurisdiction.
 - 2. If disputed, the basis on which jurisdiction is contested.

(Rev. 3/99)

III. UNCONTROVERTED FACTS

The following facts are not disputed or have been agreed to or stipulated to by the parties:

(This section should contain a comprehensive statement of facts which will become a part of the evidentiary record in the case and which, in jury trials, may be read to the jury.)

IV. AGREED TO ISSUES OF LAW

The parties agree that the following are the issues to be decided by the Court:

V. WITNESSES

- A. List of witnesses the plaintiff expects to call, including experts.
 1. Expert witnesses.
 2. Non-expert witnesses.
- B. List of witnesses defendant expects to call, including experts:
 1. Expert witnesses.
 2. Non-expert witnesses.
- C. If there are any third parties to the action, they should include an identical list of witnesses as that contained in parts A and B above.
- D. Rebuttal Witnesses. Each of the parties may call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

VI. EXHIBITS

The parties shall prepare and append to the Final Pre-trial Order a Pre-trial Exhibit Stipulation, which shall be on a separate schedule.

The Pre-trial Exhibit Stipulation shall contain the style of the case, be entitled "Pre-trial Exhibit Stipulation," shall contain each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including briefly the basis of the objection. All parties shall list their exhibits in numerical order. Where practicable, copies of all exhibits to which there is an objection will be submitted with the stipulation. The burden for timely submission of a complete list is on the plaintiff. Each party is to submit a pre-marked copy of each exhibit for the Court's use at trial.

The list of exhibits shall be substantially in the following form:

(Rev. 3/99)

PRE-TRIAL EXHIBIT STIPULATION

Plaintiff(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>If objection, state grounds</u>
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Defendant(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>If objection, state grounds</u>
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VII. DAMAGES

An itemized statement of all damages, including special damages.

VIII. BIFURCATED TRIAL

Indicate whether the parties desire a bifurcated trial, and if so, why.

IX. TRIAL BRIEFS

Trial briefs should be filed with the Court at the Final Pre-Trial Conference on any difficult factual or evidentiary issue and also set forth a party's theory of liability or defense.

X. LIMITATIONS, RESERVATIONS AND OTHER MATTERS

A. **Trial Date.** Trial of this cause is set for the week of _____.

B. **Length of Trial.** The probable length of trial is ____ days. The case will be listed on the trial calendar to be tried when reached.

Mark Appropriate Box: JURY

NON-JURY

C. **Number of Jurors.** There shall be a minimum of six jurors.

D. **Jury Voir Dire.** The Court will conduct voir dire. Limited participation by counsel may be permitted. If voir dire questions are to be tendered, they should be submitted with the Final Pre-trial Order.

E. **Motions in Limine.** All motions in limine shall be filed no later than ten (10) days before the final pre-trial conference. Responses, if any, shall be filed within five (5) days thereafter.

(Rev. 3/99)

- F. **Jury Instructions.** All jury instructions of all parties shall be submitted with a completed jury instruction order prepared in compliance with this Court's instructions no later than the first day of trial. In both civil and criminal cases, each instruction submitted to the Court shall be accompanied by a copy and a copy shall be delivered to opposing counsel. The copies shall be numbered and indicate which party suggests them. The original shall be on 8 ½" x 11" plain white paper without any designation or number. Jury instructions should be produced in a word processing program and submitted on diskette or by electronic means as provided by the Court.

IT IS ORDERED that the Final Pre-trial Order may be modified at the trial of the action, or prior thereto, to prevent manifest injustice or for good cause shown. Such modification may be made either on application of counsel for the parties or on motion of the Court.

DATED: _____

DISTRICT JUDGE
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM AND SUBSTANCE:

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

NOTE: Where a third-party defendant is joined pursuant to Rule 14(a) of the Federal Rules of Civil Procedure, the Pre-trial Order may be suitably modified. The initial page may be modified to reflect the joinder. List attorney's name, address, and telephone number.

INSTRUCTIONS FOR PREPARING FINAL PRE-TRIAL ORDER

1. Although primary responsibility for the preparation of the Final Pre-Trial Order lies with the plaintiff's attorney, full cooperation and assistance on the part of the defendant's attorney is expected and required.
2. The parties are directed to stipulate to the authenticity of exhibits and shall indicate in the Final Pre-Trial Order those exhibits to which authenticity has not been stipulated and specific reasons why not.
3. The Final Pre-Trial Order should be filed in duplicate on the date designated as the date of the Final Pre-Trial Conference or as otherwise directed by the Court.
4. Failure to comply with the substance or intent of these instructions may result in appropriate sanctions pursuant to **Federal Rule 16 or 37 and 28 U.S.C. § 1927**, among others.
5. The Court greatly appreciates any and all efforts on the part of counsel to be brief and concise in preparing pretrial memorandums and findings of fact and conclusions of law.

(Rev. 3/99)

Sample Form 38

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Plaintiff,

vs.

No. CIV

Defendant.

PRETRIAL ORDER

This matter is before the Court pursuant to Fed.R.Civ.P. 16. The parties conferred and submit the following Pretrial Order.

I. APPEARANCES

Attorneys who will try the action:

For Plaintiff(s)

For Defendant(s)

For other parties

II. JURISDICTION AND RELIEF SOUGHT

A. Subject Matter Jurisdiction.

1. Was this action removed or transferred from another forum? ___ Yes ___ No. If

yes, was the action removed or transferred?

___ Removed ___ Transferred _____ Original forum

2. Is subject matter jurisdiction of this Court contested?

___ Uncontested ___ Contested _____ Party contesting

3. Asserted basis for jurisdiction.

___ Federal Question ___ Diversity ___ Other

Statutory Provision(s) Invoked: _____

B. Personal Jurisdiction and Venue.

1. Is personal jurisdiction contested?

___ Uncontested ___ Contested

Identify the party contesting personal jurisdiction and basis for objection:

2. Is venue contested?

___ Uncontested ___ Contested _____ Party contesting

C. Are the proper parties before the Court?

___ Uncontested ___ Contested

If contested, identify each missing party or improper party and the basis for the contention:

D. Identify the affirmative relief sought in this action.

1. Plaintiff seeks:
2. Defendant seeks:
3. Other party seeks:

III. BRIEF DESCRIPTION OF NATURE OF CLAIMS/DEFENSES

A. Plaintiff's claims:

B. Defendant's defenses: *(A defendant claiming entitlement to qualified immunity must set forth with specificity the basis of the defense.)*

C. Claims or defenses of other party(s):

(Where counterclaims or cross-claims exist, also give brief description.)

IV. FACTUAL CONTENTIONS UNDERLYING CLAIMS/DEFENSES

A. Stipulated Factual Contentions.

The parties agree to the following facts listed separately below:

B. Contested Material Facts.

1. Plaintiff's Contentions:
2. Defendant's Contentions:
3. Contentions of Other Party(s):

V. APPLICABLE LAW

A. Do the parties agree which law controls the action?

_____ Yes _____ No

If yes, identify the applicable law. _____

If no, identify the dispute and set forth each party's position regarding the applicable law.

1. Plaintiff
2. Defendant
3. Other party

VI. CONTESTED ISSUES OF LAW

Identify the specific issues of law which are contested.

1. Plaintiff
2. Defendant
3. Other Party

VII. MOTIONS

A. Pending Motions (indicate the date filed):

1. Plaintiff
2. Defendant
3. Other party

B. Motions which may be filed:

1. Plaintiff
2. Defendant
3. Other party

The briefing package must be complete and filed with the Court by _____.

VIII. DISCOVERY

A. Has discovery been completed? Yes No

If no, discovery terminates on _____.

B. Are there any discovery matters of which the Court should be aware?

IX. ANTICIPATED WITNESSES

Each party is under a continuing duty to supplement this list and the description of anticipated testimony. This does not, however, apply to a rebuttal witness. Indicate if the witness will testify in person or by deposition and include a brief description of the anticipated testimony. If the testimony is by deposition, identify the deposition by page number and line number. A witness who has not been identified and whose testimony has not been disclosed may not testify at trial unless good cause is shown.

A. Plaintiff's Witnesses:

1. Plaintiff will call or have available at trial the following witnesses:
2. Plaintiff may call the following witnesses:

B. Defendant's Witnesses:

1. Defendant will call or have available at trial the following witnesses:
2. Defendant may call the following witnesses:

X. TRIAL PREPARATION

A. Exhibits.

The parties must confer over all trial exhibits. This does not apply to rebuttal exhibits that cannot be anticipated before trial. The parties must file an original plus three (3) copies of the parties' "consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible" and a "consolidated exhibit list identifying all exhibits the parties have stipulated to be authentic, but to

which there are other objections" no later than _____ calendar days before trial.

For those exhibits on which a stipulation could not be reached, the offering party must file a separate "contested exhibit list" no later than _____ calendar days before trial. An original plus three (3) copies of each party's contested exhibit list must be filed on the date identified in the preceding paragraph. In addition, two courtesy copies of the contested and uncontested exhibit list must be delivered to the judge's chambers.

All exhibits must be marked before trial. Exhibits must be marked numerically and identify the party offering the exhibit. The identification number or letter will remain the same whether the exhibit is admitted or not.

B. Witness Lists.

An original and three (3) copies of a party's witness list must be filed with the Clerk and served on all parties by _____. Indicate whether the witness is testifying by deposition or in person. Objections to use of deposition testimony are due within fourteen (14) calendar days of service of the witness list. The objecting party must highlight those portions of the requested deposition testimony to which the party objects. Plaintiff must use a yellow highlighter and defendant must use a blue highlighter. The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing at least _____ calendar days before trial.

C. Voir Dire.

1. If allowed, do the parties wish to participate in *voir dire*?

Plaintiff _____ Yes _____ No

Defendant _____ Yes _____ No

Other Party _____ Yes _____ No

2. Each party wishing to participate in *voir dire* must serve on all parties and file with the Clerk, a pleading entitled "Proposed Voir Dire Questions." The pleading must identify the specific areas about which the party wishes to inquire and must set forth proposed *voir dire* questions. This request must be filed at least _____ calendar days prior to jury selection.

D. Jury Instructions and Verdict.

1. In General. The parties must confer about proposed jury instructions. The Court will prepare and provide the parties with a Court-proposed set of general "stock" instructions that will be given. The stock instructions are available from the Clerk. The instructions that the parties must submit to the Court will be those which set forth the elements and definitions of the claims or charges, and the elements and any definitions of any defenses.

2. Sources for Instructions. If pattern instructions are followed by the judge, the judge will indicate at the pretrial conference his or her preference for the source of instruction.

3. Submission of Proposed Instructions. The parties must submit one mutually approved set of jury instructions no later than _____ calendar days before trial. For those instructions the parties were unable to agree upon, each party must submit its own proposed instructions at the same time as submission of the mutually agreed instructions.

4. Form of Instructions.

a. Submit sets of double-spaced instructions as follows:

____ set(s) of originals without citations and headed "Instruction No. ____"; and

___ set(s) with citations and numbered accordingly (Fig 1), one of which will be filed.

- b. If available, also submit a hard 3.5 diskette of all instructions in a format compatible with Word Perfect 5.1.
- c. Submit no more than one instruction to a page.
- d. All deviations from pattern instructions must be identified as "modified" in the citation and the modification must be highlighted in the body of the instruction.
- e. Submit a cover sheet on all sets of instructions.

5. Deadlines for Submitting Instructions.

- a. Instructions and diskette shall be filed _____ calendar days before trial.
- b. Supplemental unanticipated jury instructions may be submitted at trial.

E. Statement of Case.

The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection. The statement must be submitted to the Court _____ days before jury selection.

F. Submissions for Bench Trials.

1. The parties must submit one mutually approved set of proposed findings of fact and conclusions of law no later than _____ calendar days before trial. For those findings of fact and conclusions of law the parties were unable to agree upon, each party must submit its own proposed findings of fact and conclusions of law at the same time as submission of the mutually approved set.
2. If available, submit a hard 3.5 diskette on Word Perfect 5.1 format of the findings of fact and conclusions of law.

XI. OTHER MATTERS

A. Settlement Possibilities.

1. The possibility of settlement in this case is considered:

_____ Poor _____ Fair _____ Good _____ Excellent _____ Unknown

2. Do the parties have a settlement conference set with the assigned Magistrate Judge?

_____ Yes _____ No If yes, when? _____

If a settlement conference has already been held, indicate approximate date.

Would a follow-up settlement conference be beneficial? _____ Yes _____ No

3. Does either party wish to explore any alternatives for dispute resolution such as mediation or a summary jury trial? If yes, please identify. _____ If no, explain

why not. _____

B. Length of Trial and Trial Setting.

1. This action is a _____ Bench trial _____ Jury Trial _____ Both

2. The case is set for trial on _____. If there is no setting, the parties estimate they will be ready for trial by _____.

3. The estimated length of trial is _____ day(s).

XII. EXCEPTIONS

XIII. MODIFICATIONS-INTERPRETATION

The Pretrial Order when entered will control the course of trial and may only be amended *sua sponte* by the Court or by consent of the parties and Court approval. The pleadings will be deemed

merged herein.

The foregoing proposed Pretrial Order (prior to execution by the Court) is hereby approved
this _____ day of _____, 20 ____.

Attorney for Plaintiff
Address: _____

Attorney for Defendant
Address: _____

Attorney for other parties (if any)
Address: _____

Dated: _____

UNITED STATES DISTRICT JUDGE

Sample Form 40

NOTE: Form revised as of 01/02/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
_____ DIVISION

Plaintiff,)
)
) Case No.:
vs.)
)
)
Defendants.)

ORDER FOR FINAL PRETRIAL CONFERENCE

IT IS ORDERED:

A final pretrial conference will be held before this court at the Quentin N. Burdick U.S. Courthouse, 655 1st Avenue North, Suite 440, Fargo, North Dakota on _____.

The conference shall be attended by lead counsel for each party, with authorization to bind the party on all matters addressed at the conference.

Prior to the date of the final pretrial conference, counsel shall confer in person or by telephone (not just in writing) for the purpose of preparing a joint Final Pretrial Statement and examining and marking exhibits as indicated in this Order. **The proposed Final Pretrial Statement must be received by the court 24 hours in advance of the Final Pretrial conference either by U.S. Mail or Facsimile transmission.**

Final Pretrial Statement and Stipulations: Counsel will jointly prepare for submission to the court at the pretrial conference or 14 days prior to trial, whichever is earlier, a Final Pretrial Statement in substantially the same form as the attached sample. Rule 26(a)(3) disclosures shall be incorporated in the Final Pretrial Statement.

Counsel are not required to stipulate or waive anything. They are required to confer in advance of the conference and prepare and sign a joint final pretrial statement covering the matters set out in this order for pretrial. The joint final pretrial statement, including exhibit list, preservation of objections to exhibits, and designation of deposition testimony must be submitted to the court at the final pretrial conference, or 14 days before trial, whichever is earlier. If counsel are able to stipulate uncontested facts and stipulate admissibility of exhibits or at least waiver of foundation for exhibits, it will expedite the trial of the case.

The Final Pretrial Statement must be complete and signed by all counsel, signifying acceptance, and upon approval of the court, with such additions as are necessary, will be signed by the court as an order reflecting the final pretrial conference.

Exhibits: Counsel are directed to complete the physical marking and numbering of all papers and objects expected to be introduced as exhibits. The exhibits are to be marked with an exhibit sticker. All exhibits in the case are to be numbered consecutively using a “P” for plaintiff and “D” for defendant (**for example P1-P20, D31-D40, leaving a sufficient gap for unanticipated or rebuttal exhibits**), and listed in the form of the attached sample (including horizontal and vertical lines as indicated). Counsel will retain the exhibits in their possession but shall submit the list as an attachment to the Final Pretrial Statement. Counsel must disclose and list all exhibits relating to an issue on which their client has the burden of proof or the burden of going forward with the evidence. Each listed exhibit shall be designated as “will offer” or “may offer.”

Documents to be used solely for rebuttal purposes need not be numbered or listed until identified at trial.

Failure to list an exhibit required by this order to be listed or to disclose such exhibit to adverse counsel will result, except upon a showing of good cause, in the nonadmissibility of the exhibit into evidence at the trial. Each party shall make its exhibits available for inspection by other parties prior to the pretrial conference.

For each listed exhibit, counsel shall determine whether they will stipulate to admissibility for all purposes or at least waive foundation for the opposing party's exhibits. The court strongly encourages such agreement and expects counsel to at least waive foundation, unless there is a strong, specific objection to a particular exhibit. Any stipulation to admissibility or waiver of foundation shall be indicated in the appropriate column on the exhibit list.

The nonoffering party shall list in the final pretrial statement any objections of that party to admissibility of exhibits listed by the offering party. Objections not so preserved (other than objections under Federal Rules of Evidence 402 and 403) shall be deemed waived unless excused by the court for good cause shown. See Fed. R. Civ. P. 26(a)(3). Timely submission of the pretrial statement will comply with the deadline in Rule 26(a)(3).

Expert Reports: Copies of expert reports prepared in accordance with Rule 26(a)(2)(B) by those experts the parties anticipate calling as witnesses at trial shall be submitted to the court as an attachment to the Final Pretrial Statement.

Failure to file the report(s) required by this order may result in the exclusion of the expert's testimony, except upon a showing of good cause. The disclosure of the report(s) shall otherwise be made by the parties in accordance with the scheduling order of the court.

Depositions: The offering party shall designate in the pretrial statement those portions of any depositions which will be presented at trial, and the manner in which each of those depositions was recorded. A transcript of the pertinent portions of any deposition not stenographically recorded shall accompany the designation. Timely submission of the pretrial statement will comply with the deadline in Rule 26(a)(3).

The other parties shall have until 7 days before trial to designate additional portions of any deposition appearing on the offering party's list.

Any party who objects to admissibility of deposition testimony to be offered shall have until 4 days prior to trial to file a list of objections it intends to preserve. All other objections will be deemed waived. Counsel shall then confer prior to commencement of the trial to edit the depositions.

As to any deposition which may be used only if the need arises (other than solely for impeachment purposes), the offering party shall notify the court and other parties at least 48 hours in advance that it will be offering the deposition at trial, and identify the portions to be offered. The other parties shall then have 24 hours to identify additional portions and to preserve any objections to admissibility of the deposition testimony. Objections not specifically preserved will be deemed waived. Counsel shall then confer prior to the offering of the deposition to edit the testimony.

Jury Instructions: In jury cases, an agreed upon set of jury instructions and verdict form shall be submitted to the court seven days prior to trial. The original shall be filed with the clerk and two copies sent to the trial judge along with a computer disk version, if possible, in WordPerfect 6.1 or 8.0 format. A party requesting an instruction upon which counsel cannot agree should submit that instruction, along with a statement of authority to the court. There is reserved to counsel the right to supplement requests for instructions during the course of the trial, or at the conclusion of the evidence, on matters

that cannot reasonably be anticipated.

Trial Memorandum: Counsel for the respective parties shall file a trial memorandum with proof of service upon opposing counsel with the clerk, for presentment to the court, at least five (5) days before the commencement of trial. The trial memorandum shall contain: A general statement of the case, citation of the authority upon which the party relies on unresolved legal issues, a general statement of the evidence to be offered, and a statement of any evidentiary or procedural problem expected to arise, with citations of authority.

Motions in Limine: Motions in limine shall be filed at least thirty (30) days prior to trial unless otherwise instructed by the court.

Failure to Appear/Comply: Failure of counsel to appear at any scheduled final pretrial conference, or otherwise to comply with the provisions of this order, may result in dismissal or default, as may be appropriate.

Dated: _____

Karen K. Klein
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
_____ DIVISION

)	
)	
)	
Caption of Case)	Civil No. _____
)	
)	
)	

FINAL PRETRIAL STATEMENT

A final pretrial conference was held on the _____ day of _____,
20__.

Appearing for the parties as counsel were: (List the counsel who will attend the final pretrial conference).

1. Exhibit List: A list of the exhibits to be offered by the parties is attached to this statement, including a “will offer” or “may offer” designation.

The list indicates which exhibits the parties stipulate be received in evidence and available for use at trial for all purposes (unless otherwise indicated below), and for which exhibits the parties (though not stipulating to admissibility) have agreed to waive foundation.

Plaintiff specifically objects to the following exhibits listed by defendant(s):

<u>Exhibit No.</u>	<u>Ground(s) of Objection</u>
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Defendant specifically objects to the following exhibits listed by plaintiff(s):

<u>Exhibit No.</u>	<u>Ground(s) of Objection</u>
--------------------	-------------------------------

2. Fact Witnesses:

- A. Plaintiffs—All witnesses, other than experts, to be called to testify by plaintiff(s), except those who may be called for rebuttal purposes only, are: (Designate in manner set out below)

<u>Name of Witness Address/Tel. No.</u>	<u>Will Call/ May Call</u>	<u>Indicate if by Written/Video Deposition or Videoconference</u>
---	--------------------------------	---

- B. Defendants—All witnesses, other than experts, to be called to testify by defendant(s), except those listed in the preceding paragraph as expected to be called by the plaintiff(s) and except those who may be called for rebuttal purposes only, are: (Designate in manner set out above)

(If there are other parties, a similar list is to be made for each.)

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except rebuttal.

3. Expert Witnesses:

- A. Plaintiff(s)—The expert witnesses to be called by plaintiff (s) are: (Designate in manner set out below)

<u>Name & Address</u>	<u>Field of Expertise</u>	<u>Issues</u>	<u>Indicate if by Written/Video Deposition or Videoconference</u>
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- B. Defendant(s)—The expert witnesses to be called by defendant(s) are: (Designate in manner set out above)

NOTE: Expert reports prepared in accordance with Rule 26(a)(2)(B) by those experts the parties anticipate calling as a witness at trial shall be submitted to the court as an attachment to the Final Pretrial Statement.

4. Depositions: Plaintiff hereby designates the following deposition testimony that will be offered at trial:

<u>Name of Witness</u>	<u>Deposition pages & lines</u>
------------------------	-------------------------------------

Defendant hereby designates the following deposition testimony that will be offered at trial:

Name of Witness

Deposition pages & lines

5. Discovery Materials: All specific answers to written interrogatories or responses to requests for admissions which are expected to be offered in evidence by the plaintiff, except for impeachment or rebuttal purposes only, are: (Specifically designate answers to interrogatories and responses to requests for admissions by answer or response number).

All answers to written interrogatories or responses to requests for admissions which are expected to be offered in evidence by the defendant, except for impeachment or rebuttal purposes only, are: (Specifically designate in the manner set out above).

(If there are other parties, a designation should be made by each.)

(Discovery materials to be offered in evidence shall not be filed prior to commencement of trial. The clerk will file the materials as they are offered in evidence. At the conclusion of trial, discovery material which has been received in evidence may be withdrawn.)

6. Uncontroverted Facts: The parties agree that the following may be accepted as established facts for purposes of this case only:

7. Issues to be Determined at Trial: The issues remaining to be determined at trial are: (separately & specifically list each genuinely controverted issue on the merits).

8. Other Issues for the Court's Attention: Other matters requiring the court's attention prior to or during trial are: (List legal and procedural issues to which the court should be alerted).

9. The parties do/do not agree to waive exclusion of witnesses from the courtroom pending completion of their testimony.

10. Length & type of trial: Counsel estimate the trial will consume not less than ____ day(s), nor more than ____ days. Trial will be (jury/nonjury).

(Signatures of all counsel, signifying acceptance).

ORDER

The foregoing Final Pretrial Statement is adopted as the order of the court with the following modifications:

Dated: _____

Karen K. Klein
United States Magistrate Judge

Sample Form 41

Civil Jury Trial Order/Courtroom Instructions

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

)	CASE NO.
)	
)	
PLAINTIFF,)	JUDGE PETER C. ECONOMUS
)	
v.)	
)	
)	TRIAL ORDER
)	
)	
DEFENDANT.)	

This case is set for jury trial on _____. The parties and their counsel shall report to the Court’s chambers no later than 8:30 a.m. on the first day of trial.

The dispositive motion deadline is _____.

The Final Pretrial is scheduled for _____ at _____. Lead trial counsel for all parties shall be present and prepared with full authority to discuss settlement of the case. All parties shall attend in person unless counsel has requested and received prior approval from the Court for a party to attend telephonically. Parties attending telephonically must be readily available at all times during the conference.

SCHEDULE

1. The following shall be accomplished **SEVEN (7) DAYS PRIOR TO THE FINAL PRETRIAL CONFERENCE**:

a. PRETRIAL STATEMENT

Each party shall submit a pretrial statement setting forth the following:

1. the cognizable claims and defenses;
2. the applicable law with specific citations to all statutes and case law to support each claim and defense;
3. the status of settlement negotiations; and
4. the estimated length of trial.

b. JOINT STATEMENT OF CONTESTED AND UNCONTESTED FACTS

1. Plaintiffs' Proposed Facts: Plaintiff(s) shall submit a narrative statement listing all facts proposed to be proved by them at trial in support of their claim(s) as to liability and damages.

2. Defendants' Response and Proposed Facts: Defendant(s) shall submit a statement:

(a) indicating separately as to each statement of fact whether they contest or do not contest it;

(b) stating all additional facts proposed to be proved by them at trial in opposition to, or in defense against, the plaintiffs' claim; and

(c) stating all facts proposed to be proved by them at trial in support of their counterclaim(s), cross claim(s), or third party claim(s) IF applicable.

3. Narration of Proposed Facts: In stating facts proposed to be proved, counsel shall do so in brief, simple, declarative, self-contained, consecutively numbered sentences, avoiding all "color words," labels, argumentative language and legal conclusions. If a fact is to be offered against fewer than all parties, counsel shall indicate the parties against which the fact will (or will not) be offered. [The facts to be set forth include not only ultimate facts, but also all subsidiary and supporting facts except those offered solely for impeachment purposes.]

To the extent feasible, counsel with similar interests are expected to coordinate their efforts and express a joint position with respect to the facts they propose to prove. Each party may, however, list additional proposed facts relating to positions unique to it.

For each proposed fact, the parties shall, at the time of proposing to prove that fact, list the witnesses (including expert witnesses), documents and any depositions and answers to interrogatories or requests for admissions that they will offer to prove that fact. In their response, parties shall, (1) if they object to any such proposed fact or proposed proof, state precisely the grounds and the rule of evidence relied on for their objection and, (2) if they will contest the accuracy of the proposed fact, similarly list the witnesses, documents, depositions, interrogatories or admissions that they will offer to controvert that fact. Objections to the admissibility of a proposed fact (either as irrelevant or on other grounds) may not be used to avoid indicating whether or not the party contests the truth of that fact. Except for good cause shown, a party will be precluded at trial from offering any evidence on any fact not disclosed and from making any objection not so disclosed other than purely for impeachment purposes.

The uncontested facts shall be taken at the trial as either an admission under Fed. R. Civ. P. 36 or a stipulation without the need for independent proof. A COMPREHENSIVE STATEMENT OF ADMITTED OR STIPULATED FACTS SHALL BE FILED SEPARATELY AND MADE PART OF THE RECORD. To the extent relevant to a resolution of contested issues and otherwise admissible, these facts may be read to the jury. Independent proof of uncontested facts will be allowed only if incidental to the presentation of evidence on contested facts or if such proof will better enable the jury to resolve contested facts.

4. Sanctions: Unjustified refusal to admit a proposed fact or to limit the extent of disagreement with a proposed fact shall be subject to sanctions under Fed. R. Civ. P. 37(c). Excessive listing of proposed facts [or of the evidence to be submitted in support of or denial of such facts] imposing undue burdens on opposing parties shall be subject to sanctions under Fed. R. Civ. P. 16(f).

c. WITNESSES

Each party shall provide opposing counsel and the Court with a list of all witnesses to be called at trial, including potential rebuttal witnesses. A summary of

the testimony to be offered by each witness shall be included in the JOINT STATEMENT OF CONTESTED AND UNCONTESTED FACTS. No witness will be permitted to testify at trial if his or her name is not provided to opposing counsel at this time, unless the Court determines that the witness is needed to offer rebuttal testimony which could not have been reasonably anticipated prior to trial or that exceptional circumstances warrant amendment of one or both of the witness lists. Expert witnesses will be bound by the opinions expressed in their reports prepared in accordance with Fed. R. Civ. P. 26(2)(B) and will not be permitted to offer new matters at trial.

d. DEPOSITION TESTIMONY

Whenever depositions (videotape or written) are to be used at trial, opposing counsel shall submit an index of objections to counsel offering the testimony along with a statement as to the basis of the objection and reference to the specific rule of evidence upon which counsel relies. The proponent shall respond with a statement giving the reasons for admissibility.

Counsel shall consult in an effort to resolve any objections raised. Where objections have been raised and not resolved, those objections shall be noted in the margin of the index. The Court will make every effort to rule on the objections at the final pretrial.

e. EXHIBITS

The parties shall exchange and file an index of exhibits along with a brief

description of such exhibits in accordance with LR 39.1. If a party against whom an exhibit is being offered objects to the same, the procedure set forth in subsection d. above applies. Exhibits which have not been provided as required by this paragraph will not be received at trial.

2. MOTIONS IN LIMINE

All legal issues of importance, including evidentiary ones, which have not been previously resolved shall be raised by written motion on or before **THREE (3) DAYS PRIOR TO THE FINAL PRETRIAL CONFERENCE**. Responses shall be filed twenty-four (24) hours before the Final Pretrial Conference.

The Court will not hold bench or chamber conferences during trial to consider legal issues including evidentiary rulings that could have been raised before trial without a showing that counsel could not, by the exercise of due diligence, have anticipated them in advance of trial.

In all cases, Pretrial Statements and Motions *in Limine* are to be exchanged with opposing counsel by hand delivery or fax.

3. The following shall be accomplished **THREE (3) DAYS PRIOR TO TRIAL:**

a. PRELIMINARY STATEMENTS

Counsel shall prepare a joint statement in simple terms describing the nature of the case including the claims and defenses of the parties to be read by the Court during jury orientation and voir dire. This statement will be used to set the context

of the trial for the jury.

b. TRIAL BRIEFS

Each party shall serve and file a trial brief on all significant disputed issues of law, setting forth briefly the party's position and the supporting arguments and authorities.

c. VOIR DIRE

The Court will conduct the initial voir dire of prospective jurors. Counsel will be permitted a reasonable time to conduct supplemental voir dire following the questioning by the Court.

Proposed questions by counsel are to be submitted to the Court for review and approval. Counsel will be permitted to ask questions approved by the Court only, unless it develops during voir dire that additional questions on a particular point are necessary to insure impartiality of the jury.

d. JURY INSTRUCTIONS

Counsel shall file proposed jury instructions, verdict forms and interrogatories to the jury that are drafted to fit the facts of this case. Counsel should confer regarding their respective proposals in an effort to reach an agreement regarding as many jury instructions as possible. A joint submission shall be made indicating (1) agreed instructions; (2) instructions proposed by plaintiffs, but opposed by defendants; and (3) instructions proposed by defendants, but opposed by plaintiffs. Objecting counsel must state in writing specific objections citing authorities and any alternative instruction counsel considers more appropriate.

During trial or at the close of all evidence, the parties may submit supplemental requests for instructions on matters not anticipated prior to trial.

Counsel may provide the agreed-upon jury instructions to the Court in writing and on a 5.25" or 3.5" computer diskette. The diskette should be formatted for an IBM compatible computer. The Court is equipped with WordPerfect 6.1 for Windows. When submitting the disk to the Court, to avoid accidental erasure, counsel are advised to alert the security guards and avoid the x-ray machine.

4. CONTINUANCES

No party shall be granted a continuance of a trial or hearing without a written motion from the party or counsel stating the reason for the continuance, endorsed in writing by all moving parties and their lead counsel of record, and showing the consent of all other counsel or, if objected to, with the movant's certification of efforts to obtain such consent.

The Court will not consider any motion for a continuance due to a conflict of trial assignment dates unless a copy of the conflicting assignment is attached. The motion shall be filed within fifteen (15) days of counsel becoming aware of the conflict and not less than thirty (30) days prior to trial.

5. COURTROOM CONDUCT AND PROCEDURE

- a. The Trial shall be conducted from 9:00 a.m. to 4:00 p.m., Monday through Friday.
- b. When appearing in this Court, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following:
 1. Stand as Court is opened, recessed or adjourned.
 2. Stand when the jury enters or retires from the courtroom.

3. Stand when addressing the Court. When making an objection, state the legal basis only. If a response is necessary, be brief, without making a speech. If it is **critical** to the case that counsel be heard in more detail, a bench conference may be called to explain the basis for an objection. Otherwise, bench conferences will not be permitted.
4. Stand at the lectern while examining any witness; except that counsel may approach the witness for purposes of handling or tendering exhibits.
5. Stand at the lectern while making opening statements or closing arguments.
6. Address all remarks to the Court, not to opposing counsel.
7. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
8. Refer to all persons, including witnesses, other counsel and the parties by their surnames and not by their first or given names.
9. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.
10. Prior to testifying, counsel shall place before the witness all exhibits to which he or she will testify; and, at the same time, copies of said exhibits shall be handed to opposing counsel.
11. Diagrams or exhibits should be drawn or marked by the witness before taking the stand.
12. Any witness testifying at the time of recess or adjournment must be back on the witness stand when the Court reconvenes. If a new witness is to be called, he/she must be standing in front of the witness box ready to be sworn.
13. In examining a witness, counsel shall not repeat or echo the answer given by the witness.
14. Gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

One copy of all filings set forth in this Order shall be delivered to Chambers at the time of filing with the Clerk.

IT IS SO ORDERED.

PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE