

Standing Order Governing Civil Bench Trials

This Standing Order sets forth the procedures and requirements for parties' pre-trial submissions in civil bench trials. It also contains information on trial protocols.

When scheduling the trial date, the Court will also set a Pre-Trial Conference date, which triggers the parties' pre-trial submission deadlines, as set forth below. The Court may change the below deadlines and will specify exact submission deadlines in a minute entry before the Pre-Trial Conference. The dates in the minute entry shall govern timing of submission of the documents below.

I. Exchange and Filing of Trial Materials – Plaintiff's Pre-Trial Statement

49 days (7 weeks) before the Pre-Trial Conference, Plaintiff shall e-file Plaintiff's Pre-Trial Statement, comprised of the below items (listed in Section I.a–d) using CM/ECF. To e-file it, select the appropriate CM/ECF event, "Other Filings" and then "Other Documents," and choose the Supplement event. Separately, Plaintiff shall e-mail a Microsoft Word version of Plaintiff's Exhibit Chart and Plaintiff's Deposition Designation Chart to Defendant.

a. Witness List

The party must provide a list of witnesses, including expert witnesses, identifying the following:

- (a) witnesses that the party will call to testify at trial;
- (b) witnesses that the party may call to testify at trial; and
- (c) witnesses whose testimony the party plans to present by deposition or other prior testimony, indicating whether the presentation will be by transcript or video.

For example: "George Washington is Plaintiff's cousin. Washington witnessed the arrest of Plaintiff where Defendants allegedly used excessive force." Or: "John Adams is Defendant's Chief Operating Officer. Adams made promises concerning the timing of payments under the contract at issue in the case."

Witnesses who are not on the lists are **barred** from testifying unless the proponent shows good cause for the failure to disclose the witness.

Additionally, pursuant to Federal Rule of Civil Procedure 32, the party must provide a list of witnesses for which it purports to use deposition testimony at trial in lieu of live testimony. Next to the witness name, the party shall cite to the applicable provision of Rule 32 and provide a brief explanation.

b. Exhibit Chart

The party must submit an exhibit chart of the exhibits the party will definitely use at trial (*including demonstratives, summaries, or other specially prepared exhibits*), which includes the following:

- (a) the exhibit number;
- (b) the date of the document or exhibit, if applicable;
- (c) a concise, neutral description of the exhibit; and
- (d) a concise statement of the exhibit’s relevance.

The chart’s format shall be substantially similar to the example below (landscape orientation is encouraged).

No.	Date	Description	Relevance
P-1	02/15/2006	2005 Performance Review	Proves record of satisfactory job performance.

Do not over-designate exhibits, because the Court will examine exhibits one-by-one in advance of and/or during the Pre-Trial Conference, and plainly inadmissible exhibits will needlessly consume time.¹ In addition to substantive exhibits and Rule 1006 summary exhibits, the chart should also include proposed demonstrative exhibits.

¹There is no need to list every conceivable exhibit that can possibly be used. The parties should submit a list of trial exhibits they definitely intend to introduce. Exhibits not likely to be used need not be listed. If, due to unforeseen circumstances during trial a party wishes to introduce an exhibit not previously listed, notice should be given as soon as possible to the opposing side and to the Court so that any objections can be discussed. Absent abuse of this process, an exhibit will not be deemed inadmissible simply because it was not included on the original exhibit list, provided the exhibit/document was earlier produced to the opposing side during discovery.

c. Deposition Designation Chart

Pursuant to the list provided in Section I.a, if a party proposes to introduce a witness' testimony via a deposition rather than live testimony, then the offering party must provide: (1) the page/line designations of the deposition transcript, (2) a description of the testimony, and (3) relevance of the testimony. These designations should be in a chart format substantially similar to the example below (landscape orientation is encouraged).²

Witness	Page/Line	Description	Relevance
Jane Doe	10:22-11:3	Defendant's counsel questioning Ms. Doe whether John Doe adequately explained how to operate cherry-picking machine.	Causation and damages.

d. Motions *in Limine*

The parties must confer on all motions *in limine* before filing them. If there is no objection to a motion, but the movant wishes to file a motion memorializing the nonobjection, then the motion must state that there is no objection.

Motions *in limine* (not including exhibits) are **limited to a total of 15 pages per side (not per motion)**.

Parties should keep in mind that motions *in limine* are meant to provide a mechanism for the court and parties to resolve particular evidentiary issues prior to trial. A proper motion *in limine* “performs a gatekeeping function and permits the trial judge to eliminate from further consideration evidentiary submissions that clearly ought not be presented to the jury because they clearly would be inadmissible for any purpose.” *Jonasson v. Lutheran Child and Fam. Servs.*, 115 F.3d 436, 440 (7th Cir. 1997). They are particularly useful in streamlining a trial so that extensive argument becomes unnecessary after a jury has been impaneled. *See id.* (“The prudent use of the *in limine* motion sharpens the focus of later trial proceedings and permits the parties to focus their preparation on those matters that will be considered by the jury.”). They also provide economies to the parties such that certain witnesses

²A party does not need to create a Deposition Designation Chart for deposition transcripts/excerpts it plans to use to impeach a witness or to refresh a witness' recollection.

will not be called to testify. Finally, an accurate assessment of the admissible evidence may cause parties to reconsider settlement negotiation positions.

However, motions *in limine* should not be so granular that no rational ruling can be made outside of the context of the trial itself. *See Jonasson*, 115 F.3d at 440 (“Some evidentiary submissions . . . cannot be evaluated accurately or sufficiently by the trial judge in [a pretrial] environment.”). “In these instances it is necessary to defer ruling until during trial, when the trial judge can better estimate its impact on the jury.” *Id.*; *see also Anglin v. Sears, Roebuck & Co.*, 139 F. Supp. 2d 914, 917 (N.D. Ill.), *modified*, 179 F. Supp. 2d 836 (N.D. Ill. 2001) (internal quotation marks and citations omitted) (“[W]hen admissibility determinations are not clear, evidentiary rulings must be deferred until trial so questions of foundation, relevancy, and prejudice can be resolved in their proper context.”).

Moreover, the fact that a motion *in limine* was not filed as to a particular piece of evidence does not operate as a waiver. Counsel is always free to object to evidence at trial for all of the grounds permissible under the Federal Rules of Evidence. *See Moore v. General Motors Corp.*, 684 F. Supp. 220, 220 (S.D. Ind. 1988) (Tinder, J.) (“A ruling on a motion *in limine* is not a final ruling on the admissibility of the evidence which is the subject of the motion. An order on a motion *in limine* has been characterized as an advisory opinion subject to change as events at trial unfold.”). Like any other evidentiary ruling, the Court’s rulings on motions *in limine* are based on the facts and theories of the case as the Court understands them at the time the Court makes its ruling. These rulings do not preclude any party from renewing a request for either admission or exclusion of evidence if the facts as developed at trial make reconsideration appropriate.

II. Exchange and Filing of Trial Materials – Defendant’s Pre-Trial Statement and Objections

42 days (6 weeks) before the Pre-Trial Conference, Defendant shall e-file Defendant’s Pre-Trial Statement and Objections, comprised of the below items (listed in Section II.a–g) using CM/ECF. To e-file it, select the appropriate CM/ECF event, “Other Filings” and then “Other Documents,” and choose the Supplement event. Separately, Defendant shall e-mail a Microsoft Word version of Defendant’s Exhibit Chart and Defendant’s Deposition Designation Chart to Plaintiff.

a. Witness List

See Section I.a.

b. Exhibit Chart

See Section I.b. For Exhibit numbers, Defendant shall use D-1, etc.

c. Deposition Designation Chart

See Section I.c.

d. Objections to Plaintiff's Exhibit Chart

Defendant shall use the Microsoft Word version of Plaintiff's Exhibit Chart, and add a column to the chart listing whether there is an objection to the exhibit, and if so, a concise explanation of the objection, similar to the example below. If Defendant does not have an objection to a specific exhibit, Defendant shall not remove that row from Plaintiff's Exhibit Chart, but instead can leave the objection column for that exhibit row blank.

Defendant shall then e-file Defendant's Objections to Plaintiff's Exhibit Chart as part of Defendant's Pre-Trial Statement and Objections. Separately, Defendant shall e-mail a Microsoft Word version of Defendant's Objections to Plaintiff's Exhibit Chart to Proposed Order Valderrama@ilnd.uscourts.gov.

No.	Date	Description	Relevance	Objection
P-1	02/15/2006	2005 Performance Review	Proves record of satisfactory job performance.	R. 402: relevance; R. 403: confusion - Plaintiff fired in 2011, so probative value of 2005 Performance Review, if any, substantially outweighed by risk of confusing the issues.

A party must limit the objections to only good-faith objections. Frivolous and boilerplate objections will waste time, because in preparation for the Pre-Trial Conference, the Court will review, as much as possible, the exhibits and the objections. If a foundation objection is asserted and the offering party proffers a foundation that the Court believes overcomes the objection, the offering party still must lay the foundation at trial.

Additionally, any substantive exhibit not objected-to shall be deemed admissible, but not admitted, into evidence by this Order. The Court notes that a party must still lay proper foundation for such an exhibit at trial, either via a stipulation or witness testimony (remember, however, that the exhibit must still be referred-to during trial testimony in order for the exhibit to be admitted). **The Court**

encourages the parties to stipulate to the authenticity and/or foundation of exhibits whenever possible. During the trial, for the clarity of the record, a party must still move the exhibit into evidence before publishing it to the Court.

e. Objections to Plaintiff's Deposition Designation Chart

Defendant shall use the Microsoft Word version of Plaintiff's Deposition Designation Chart, and add a column to the chart listing any objections, including a concise basis for the objection, similar to the Exhibit Chart. If Defendant does not have an objection to a specific deposition designation, Defendant shall not remove that row from Plaintiff's Deposition Designation Chart, but instead can leave the objection column for that deposition designation row blank.

Defendant shall then e-file Defendant's Objections to Plaintiff's Deposition Designation Chart as part of Defendant's Pre-Trial Statement and Objections. Separately, Defendant shall e-mail a Microsoft Word version of Defendant's Objections to Plaintiff's Deposition Designation Chart to Proposed Order Valderrama@ilnd.uscourts.gov.

f. Responses to Plaintiff's Motions *in Limine*

Responses (not including exhibits) are **limited to a total of 15 pages per side, not per motion.**

g. Motions *in Limine*

See Section I.d.

III. Exchange and Filing of Materials – Plaintiff's Pre-Trial Objections

35 days (5 weeks) before the Pre-Trial Conference, Plaintiff shall e-file Plaintiff's Pre-Trial Objections, comprised of the below items (listed in Section III.a–d) using CM/ECF. To e-file it, select the appropriate CM/ECF event, "Other Filings" and then "Other Documents," and choose the Supplement event.

a. Objections to Defendant's Exhibit Chart

Plaintiff shall use the Microsoft Word version of Defendant's Exhibit Chart, and add a column to the chart listing any objections, similar to the example in Section II.d. If Plaintiff does not have an objection to a specific exhibit, Plaintiff shall not

remove that row from Defendant's Exhibit Chart, but instead can leave the objection column for that exhibit row blank.

Plaintiff shall then e-file Plaintiff's Objections to Defendant's Exhibit Chart as part of Plaintiff's Pre-Trial Objections. The Court's statements regarding objections in Section II.d apply here as well. Separately, Plaintiff shall e-mail a Microsoft Word version of Plaintiff's Objections to Defendant's Exhibit Chart to Proposed Order Valderrama@ilnd.uscourts.gov.

b. Objections to Defendant's Deposition Designation Chart

Plaintiff shall use the Microsoft Word version of Defendant's Deposition Designation Chart, and add a column to the chart listing any objections, similar to the example in Section II.e. If Plaintiff does not have an objection to a specific deposition designation, Plaintiff shall not remove that row from Defendant's Deposition Designation Chart, but instead can leave the objection column for that deposition designation row blank.

Plaintiff shall then e-file Plaintiff's Objections to Defendant's Deposition Designation Chart as part of Plaintiff's Pre-Trial Objections. Separately, Plaintiff shall e-mail a Microsoft Word version of Plaintiff's Objections to Defendant's Deposition Designation Chart to Proposed Order Valderrama@ilnd.uscourts.gov.

c. Responses to Defendant's Motions *in Limine*

Responses (not including exhibits) are **limited to a total of 15 pages per side, not per motion**.

IV. Final Pre-Trial Memorandum

28 days (4 weeks) before the Pre-Trial Conference, Plaintiff shall e-file the parties' jointly-prepared Pre-Trial Memorandum. Additionally, Plaintiff shall e-mail a Microsoft Word version of the Pre-Trial Memorandum to Proposed Order Valderrama@ilnd.uscourts.gov. The Pre-Trial Memorandum shall contain the following information:

a. Trial Attorneys

A list of the attorneys trying the case, including e-mail addresses, telephone numbers (both office and cell phone numbers), and business addresses. A list of the names of all people who will be sitting at counsel table, including parties, consultants, legal and technical assistants, etc., should also be provided.³

³For virtual trials, this list should contain the names of all people associated with parties who will be videoconferencing into the trial.

b. Jurisdiction

State the jurisdictional basis for each claim. If the parties rely on either diversity jurisdiction or another jurisdictional basis that requires a threshold amount, then state whether the parties agree that the amount in controversy exceeds the amount, and include a concise explanation of how the evidence supports that statement.

c. Case Statement

The parties shall confer and provide a concise agreed statement of the case. The statement must describe the nature of the case; claims, counterclaims, and cross-claims; and defenses raised to those claims. This should be a neutral description of the case.

d. Stipulations and Uncontested Facts

In numbered paragraphs, set forth any stipulations and uncontested facts. No later than 5 business days before the due date of the joint Pre-Trial Memorandum, the parties must serve on each other proposed stipulations. No later than 2 business days before the due date of the joint Pre-Trial Memorandum, the parties must confer in good faith to arrive at as many stipulations and uncontested facts as possible.

e. Contested Facts

In numbered paragraphs, state any contested facts. Include a section of contested facts for each party.

f. Conclusions of Law

In numbered paragraphs, state any conclusions of law which the party believes the Court should enter at the end of trial. Include a section of conclusions of law for each party.

g. Itemization of Damages

If any party is seeking damages, provide an itemization of damages and other relief sought, and provide a concise explanation of the evidentiary basis for each itemization.

h. Signature

The Pre-Trial Memorandum shall be electronically signed by counsel for each party.

V. Exhibits and Deposition Designations – Before Pre-Trial Conference

28 days (4 weeks) before the Pre-Trial Conference, each party shall have delivered to chambers the following:

a. USB Key/Thumb Drive

A USB Key/Thumb Drive with no password protection⁴ containing a .pdf of each of its proposed exhibits and deposition transcripts to which a party has raised an objection. The file name of each exhibit shall be P-1 or D-1, P-2 or D-2, etc.

b. Hard Copies

Three sets of binders containing copies of any proposed exhibits and deposition transcripts to which a party has raised an objection. The exhibits and/or deposition transcripts must be printed double-sided and placed in three-ring binders. Unless the parties agree otherwise, the party that is objecting to an exhibit or deposition transcript is responsible for providing the copy of the objected-to exhibit or deposition transcript.

VI. Pre-Trial Conference

The Court will schedule the Pre-Trial Conference two to three weeks before the commencement of trial. Lead trial counsel for each party must attend the Pre-Trial Conference. The Court will address various topics at this conference, including, but not limited to: rulings on exhibit objections, deposition designation objections, and motions *in limine*; use of demonstratives and timelines; trial logistics; sidebars; trial technology; and breakout rooms.

VII. Exhibits and Deposition Designations – After Pre-Trial Conference

5 days following the Pre-Trial Conference, each party shall have delivered to chambers the following:

⁴If the parties agree a password is necessary, they must send an e-mail to the Court's courtroom deputy, Analeah Charles (Analeah_Charles@ilnd.uscourts.gov) with the password on the same day that the USB/Key Drive is delivered.

a. USB Key/Thumb Drive

A USB Key/Thumb Drive with no password protection⁵ containing a .pdf of each final trial exhibit and final deposition transcript that will be read in place of live testimony. The file name of each exhibit shall be P-1 or D-1, P-2 or D-2, etc. For deposition transcripts, if the Court has sustained an objection, the entire objected-to portion of the transcript should be redacted in its entirety. If the Court has overruled an objection, and that objection is included in the transcript, the parties should remove/redact the objection from the transcript. Objections within designated excerpts of deposition transcripts, which the parties did not object as part of their pre-trial submissions, must also be removed/redacted from the transcripts.

b. Hard Copies

Three sets of binders containing copies of each final trial exhibit and final deposition transcript that will be read in place of live testimony. The exhibits and/or final deposition transcripts must be printed double-sided and placed in three-ring binders. For deposition transcripts, please see above.

c. Impeachment and Refreshing Recollection Exhibits

For any exhibits that a party plans to use at trial to impeach a witness or to refresh a witness' recollection, the party must include such exhibits on the above USB Key/Thumb Drive in a separate folder titled "Impeachment and RR Exhibits." The party must also include in this folder a separate .pdf exhibit chart of these exhibits in a format similar to the primary exhibit chart, with only columns for exhibit number, date, and description. The party should begin numbering these exhibits at least 50 numbers after its last exhibit on its primary exhibit chart.

The party must also provide three sets of separate binders containing such documents in with a cover page titled "Impeachment and RR Exhibits." The party must include at the front of each binder a hard copy of its separate exhibit chart for these exhibits.

The Court assumes that parties will not disclose such exhibits to each other prior to trial. However, to the extent the parties agree, they may do so.

VIII. Additional Pre-Trial Information

a. Opening Statement

Unless both parties agree, no exhibits will be shown during opening statement. If exhibits are agreed-upon and non-argumentative, they may be used in opening

⁵See Note 2 for instructions on what to do if the parties agree that a password is necessary.

statement. Opening statement is **not** argumentative. Time limits may be imposed on lawyers in certain cases, but such time limits will be discussed at the Pre-Trial Conference.

b. Daily Status Hearing / Timeliness

Please be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.

c. Exhibits at Trial

Court time may not be used for marking exhibits. This must be done in advance of trial.

d. Witness Examinations

In order to respect the Court's time, **always** have enough witnesses available so that we make use of the full trial day. The parties should not anticipate a recess between the direct examination and cross-examination of a witness. If the direct examination should end at about the time the court would recess anyway, e.g., lunch time, a recess will be taken. Otherwise, be prepared to commence cross-examination immediately upon conclusion of the direct.

All witness examinations must be conducted from the **podium** unless otherwise allowed by the Court. Even if you speak loudly for us to hear you, the audio-recording system relies on the **microphones** to record what you say, and the recording is necessary for transcript preparation or to resolve a dispute over what a transcript says. Moreover, individuals seated in overflow rooms (if any) cannot hear what is said if attorneys do not speak directly into the microphones.

e. Reading Deposition Testimony in Place of Live Testimony

To the extent a witness is unavailable and the Court has allowed the use of deposition testimony instead of live testimony, or to the extent the parties have stipulated to the use of deposition testimony instead of live testimony, the party introducing that deposition testimony at trial should plan to have a person (whether a member of the trial team or another person) to sit on the stand and read aloud that witness' deposition answers.

f. Objections

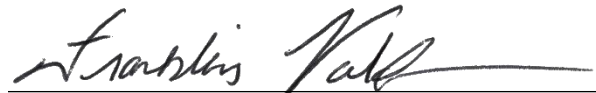
When you object, you must speak directly into the **microphones** at counsel table so that the Court and the witness are on alert that an objection will be made.

Before trial, counsel should instruct their witnesses not to answer a question when the opposing lawyer makes an objection and while an objection is pending. You must state a short, non-argumentative basis for the objection (*e.g.*, relevance, hearsay), and responses must be similarly short and non-argumentative. Ideally, there will be little or no need for a side-bar if objections and responses are succinct.

IX. Post-Trial Briefing

The Court may require post-trial briefing on findings of fact and conclusions of law. The Court will provide further instructions on post-trial briefing at trial.

Dated: March 9, 2022


United States District Judge
Franklin U. Valderrama