

(Revised 11/14/00)

**PREPARATION OF FINAL PRETRIAL ORDER
for civil cases before Judge Kennelly**

The parties shall jointly prepare and submit, on the date set by the Court, a Final Pretrial Order containing the following, absent prior modification by the Court:

1. Jurisdiction. A concise statement of subject matter jurisdiction, and if jurisdiction is disputed, the nature and basis of the dispute.

2. Claims. A concise statement (1 or 2 short paragraphs) of the claim(s) of the plaintiff(s), defense(s) of defendant(s), and all counterclaims and cross claims. In a jury trial, this statement will be read to the jury during voir dire.

3. Relief sought. An itemization of damages and other relief sought.

4. Witnesses. A list of names and addresses of all witnesses: (a) who will be called; (b) who may be called; and (c) whose deposition will be used. In a jury trial, this list will be read to the jury during voir dire. Any witness not listed in the final pretrial order will be precluded from testifying absent a showing of good cause, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable) as may be necessary.
 - a. Objections. A statement of any objections to the calling of any witness. Objections not made in the final pretrial order will be deemed waived absent a showing of good cause.

 - b. Expert witnesses. A statement of the subject(s) of each expert witness' expertise, and a statement of any objections to the calling or qualifications of the witness (*Daubert* objections must be noted in the final pretrial order but should be set forth in a separate motion *in limine*). Objections not made in the final pretrial order will be deemed waived absent a showing of good cause.

 - c. Depositions. For each witness whose deposition will be used, a chart containing the following information: (a) a listing, by page and line, of the testimony that each side seeks to present; (b) a concise statement of objections to any testimony and the basis for the objection; and (c) a concise statement of the asserted basis of admissibility. Objections not made in the final pretrial order will be deemed waived absent a showing of good cause.

7. Exhibits. A schedule of all exhibits a party may introduce at trial, as well as any demonstrative exhibits or evidence, identified by trial exhibit number, with a brief description of each exhibit. Any exhibit not listed in the final pretrial order will be excluded from evidence absent a showing of good cause.
 - a. Objections. A statement of any objections to each exhibit. Objections not made in

the final pretrial order will be deemed waived absent a showing of good cause.

b. Copies for Court. A bench book of each party's exhibits is to be delivered to the Court at the start of trial.

c. Exhibits to be displayed to jury. If an exhibit is to be displayed to the jury, the party intending to display the exhibit must make sufficient copies for all jurors or must use an enlargement or projection of the exhibit.

8. Type and length of trial. A statement of whether the trial will be a bench trial or a jury trial, and a realistic estimate of the length of the trial.

9. Settlement history. A statement briefly summarizing the history and current status of settlement negotiations.

10. Proposed findings and conclusions. For a bench trial, proposed findings of fact and conclusions of law. Each party shall submit a diskette formatted in a relatively current version of WordPerfect or Word containing its proposed findings and conclusions.

11. Proposed voir dire questions. For a jury trial, proposed voir dire questions. Judge Kennelly has his own set of general voir dire questions, which can be obtained from chambers or the Court's homepage. These questions need not be duplicated in the final pretrial order. The parties are to submit any proposed objections, modifications, and additions to these general questions, as well as any proposed voir dire questions specific to the case.

12. Proposed jury instructions. For a jury trial, proposed jury instructions. Judge Kennelly has a set a general jury instructions which are available on the Court's homepage. In diversity cases where Illinois law provides the rule of decision, the use of IPI instructions as to issues of substantive law is required.

a. Agreed instructions. The parties are directed to meet and agree on jury instructions to the extent possible, prior to the submission of the jury instructions to the Court. Agreed proposed instructions should be marked as such and shall be numbered consecutively.

b. Disputed instructions. Unagreed proposed instructions shall be numbered, shall identify the proponent of the instruction, and shall include supporting authority. Objections to any proposed instructions must be set forth in writing and shall include supporting authority.

c. Diskette. The parties shall submit a single diskette formatted in a relatively current version of WordPerfect or Word containing: (i) agreed instructions; (ii) plaintiff's separate instructions; and (iii) defendant's separate instructions.

Other items to be submitted prior to final pretrial conference

Any motions *in limine* must be filed and served no later than fourteen (14) days before the final pretrial conference; any responses must be filed and served no later than seven (7) days before the final pretrial conference. These motions and responses *should not* be bound with the final pretrial order.

Trial briefs are not expected by the Court and will not be accepted absent prior leave of Court.

Any requests for daily or other expedited transcripts must be made directly to Judge Kennelly's court reporter at least seven (7) days prior to trial.

Instructions for compiling final pretrial order

Plaintiff's counsel has the responsibility to prepare the initial draft of the final pretrial order and must provide a draft to defendant's counsel no later than twenty-one (21) days before the date the final pretrial order is due. Defendant's counsel must respond in writing to plaintiff's draft by no later than fourteen (14) days before the final pretrial order is due, including any objections, changes, and additions to plaintiff's draft, as well as defendant's portions of the draft pretrial order (e.g., defendant's witness list, exhibit list, and objections to exhibits and deposition testimony listed by plaintiff). The parties must meet and confer by no later than seven (7) days before the final pretrial order is due to discuss their respective drafts and to reach agreement to the extent possible. It is then the responsibility of plaintiff's counsel, with full cooperation from defendant's counsel, to assemble the final pretrial order for filing.

The final pretrial order should be submitted to the Court with a cover document setting forth the case caption and the title FINAL PRETRIAL ORDER. The cover document must: (a) recite that each of the foregoing categories of materials is included; (b) must state that "This Order will control the course of the trial and may not be amended except by consent of the parties, or by order of the Court to prevent manifest injustice"; and (c) must be signed by counsel for each of the parties and contain a space for the Court's signature.

Final pretrial conference

A final pretrial conference will be held approximately one to two weeks before trial. The purpose of this conference will be to avoid surprises and to simplify the trial. The Court will address pending motions *in limine*, objections to witnesses and exhibits, and contested jury instructions, and it will discuss trial procedures and scheduling. Trial counsel fully prepared and with authority to discuss all aspects of the case must attend.

ENTER:

Matthew F. Kennelly
United States District Judge