



MAGISTRATE JUDGE SHEILA FINNEGAN
219 South Dearborn Street
Courtroom 2214
Chambers 2206
Chicago, IL 60604
(312) 435-5657

FINAL PRETRIAL ORDER
FOR CONSENT CASES BEFORE MAGISTRATE JUDGE FINNEGAN

Absent prior modification by the Court, the parties shall jointly prepare and submit a Final Pretrial Order. Plaintiff's counsel is responsible for preparing the initial draft of the Final Pretrial Order and must provide a draft to defendant's counsel no later than 21 days before the date on which the Final Pretrial Order is due. Defendant's counsel must respond in writing to plaintiff's draft no later than 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 Final 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 7 days before the Final Pretrial Order is due to discuss their respective drafts and to reach agreement to the extent possible. Non-compliance with these requirements may subject a party and/or its counsel to sanctions.

Following the meet-and-confer process, it is the responsibility of plaintiff's counsel, with full cooperation from defendant's counsel, to assemble the Final Pretrial Order and file it. The parties are also to provide a courtesy copy to the Court (contained in a 3-hole binder) at the Final Pretrial Conference.

The Final Pretrial Order must include the following information:

1. **Jurisdiction:**

A statement of the basis alleged for the Court's jurisdiction and, if jurisdiction is disputed, the nature and basis of the dispute.

2. **Trial Attorneys and Others at Counsel Table:**

A list of the attorneys trying the case, including business and cell phone numbers and email addresses.

A list of the names of all other people who will be sitting at counsel table, including parties, consultants, legal and technical assistants, etc.

3. **Case Statement:**

A concise agreed statement of the case, including the claims, counterclaims and cross-claims. This statement will be read to the jury during *voir dire*.

4. **Relief Sought:**

An itemization of damages and other relief sought.

5. **Stipulations:**

A statement of any stipulations reached by the parties.

6. **Witness Lists:**

Separate lists for plaintiff and defendant providing the names of witnesses, including expert witnesses, divided into the following three categories: (a) witnesses who **will** be called to testify at trial; (b) witnesses who **may** be called to testify at trial; and (c) witnesses whose testimony a party will present by deposition or other prior testimony (indicating whether the presentation will be by reading a transcript or playing a video). The Court will read these lists to the jury during *voir dire*.

For each witness, provide a concise (2 or 3 sentences maximum) description of the witness and the witness's role in the case. 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."

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. If there is an objection to the calling of any witness, this must be noted. Objections not made in the Final Pretrial Order will be deemed waived absent a showing of good cause. If the objection is the subject of a motion *in*

limine, the pretrial order may simply refer to the motion and need not repeat the grounds stated in the motion.

b. Deposition Designation. For each witness whose deposition will be used, provide the following information if the Court will be called upon to rule on objections: (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. *A copy of the deposition (preferably electronic) is to be provided on the same day as the Final Pretrial Order.*

7. **Exhibits:**

A list of all exhibits a party may introduce at trial, as well as any demonstratives, summaries or other specially prepared exhibits that will be used. The list must include the following: (a) the exhibit number or name for each exhibit; (b) the date of the document; (c) a brief description of the document; (d) whether there is an objection to admission of the document and, if so, a concise statement of the basis for the objection (e.g., Rule 402—relevance; Rule 403—undue prejudice or confusion); and (e) a concise statement of the asserted basis of admissibility, if there is an objection. Objections not made in the Final Pretrial Order will be deemed waived absent a showing of good cause.

As part of the Final Pretrial Order, the parties must provide the Court with the objected-to exhibits offered by both sides. If the same objection applies to multiple exhibits, only representative exhibits need be provided.

On the day of trial, each side must provide a binder containing that party's final exhibits. This binder should also include a summary checklist page for the Court to track admission of exhibits during trial. If more than a single binder is needed, the Court's courtroom deputy should be contacted to discuss whether the documents are more easily provided in electronic format, 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.

8. **Proposed Voir Dire Questions:**

Judge Finnegan requires prospective jurors to complete a written questionnaire, samples of which are available on her website and which vary somewhat depending on the issues in the case. Counsel will be given copies of the completed questionnaires before jury selection begins. Judge Finnegan will also pose additional *voir dire* questions in open court that are not suitable for the questionnaire.

In the Final Pretrial Order, the parties may submit proposed questions (a) for the questionnaire, and (b) to be asked verbally in open court. If there is an objection to any proposed question, this must be noted. The parties should assume that the “general” questions typically used on the sample questionnaire will be asked and should not duplicate them in their proposed *voir dire* questions. Rather, the parties should focus their attention on areas of questioning that are specific to the case that they would like included in the questionnaire or asked in open court.

9. **Jury Instructions:**

The parties are directed to confer and agree upon jury instructions to the extent possible. The parties should concentrate their efforts on the substantive jury instructions related to the merits. If the parties wish to modify a 7th Circuit Pattern Jury Instruction, the party proposing the modification must submit a comparison document to the Court showing the modification to the pattern instruction.

Proposed jury instructions in Microsoft Word are to be included both in the written pretrial order and in electronic form (either emailed to the Proposed Order Box or provided on a thumb drive or CD).

a. Agreed Instructions. One set of the parties’ agreed proposed instructions should be submitted together, marked as agreed, and numbered consecutively. Legal support should be noted at the bottom of the page (e.g., a citation to the 7th Circuit pattern instruction).

b. Disputed Instructions. Disputed proposed instructions shall also be numbered, shall identify the proponent of the instruction, and shall include supporting authority and concise reasons supporting the instruction as proposed. Objections to any proposed instructions must be set forth in writing and include supporting authority and reasons. Any proposed modification or alternate instruction should appear on the page immediately following the disputed instruction.

It is the Court’s practice to provide to the jury and read all jury instructions. In addition, before opening statements, the Court will usually read certain key instructions such as the elements instructions and verdict form. Jury instructions may be used and electronically projected during closing arguments

10. **Trial Briefs:**

The Court does not require trial briefs. Any party who wishes to file a trial brief must seek leave of the Court to do so.

Additional Pretrial Information

(1) Jury Selection:

In civil cases, the Court presumptively seats a 9-person jury since there is only space for 9 chairs in the jury box in courtroom 2214. The 9th juror will be designated as an alternate but will deliberate even if no other jurors are lost during the trial.

The entire venire will enter the courtroom and be sworn. The first 9 prospective jurors from the list will be called and seated in the jury box. The Court will then ask the entire venire certain questions that are not on the questionnaire, asking for a show of hands if the question applies to any prospective jurors. Prospective jurors who raise their hands will be identified by name and juror number for later follow up. After this, the prospective jurors in the jury box will each stand and provide basic background information with the Court asking follow-up questions where necessary. When this has been completed, the Court will ask counsel whether they have follow-up questions for any prospective jurors based on answers given in the questionnaires or in open court. These prospective jurors will each be brought to chambers for questioning by counsel. Sensitive questions are always posed in chambers.

Once all questions have been asked, the parties will be asked to make challenges for cause to the 9 prospective jurors seated in the jury box. After the Court rules on those challenges, the parties will submit peremptory challenges in writing simultaneously. Each side is allowed three peremptory challenges, per 28 U.S.C. § 1870, unless otherwise requested and approved by the Court. If the parties challenge the same juror, neither side will be charged for that challenge if there appear to be sufficient remaining proposed jurors to allow this.

Once peremptory challenges have been submitted, the Court and counsel will return to the courtroom and the prospective jurors who were challenged or stricken for cause will be released to return to the jury lounge. The remaining jurors will constitute part of the jury and cannot be stricken with later challenges. (No back-strikes will be allowed.) The empty seats in the jury box (vacated by the released jurors) will then be filled with new potential jurors who will be individually questioned. The parties will then exercise their strikes as to these new potential jurors. This selection process will be repeated until a jury of 9 has been seated.

(2) Evidence Presentation Equipment:

Judge Finnegan's courtroom has evidence presentation equipment allowing documents and video and audio files to be projected and displayed to witnesses, the court, counsel, and the jury. The jurors have separate screens in the jury box. If you intend to use the equipment, you should contact the courtroom deputy to schedule a time to familiarize yourself with how it works. As a backup, however, each party must have a hard copy of all of its exhibits available, in a format that will make it easy to provide them to the jury for its use during deliberations if necessary.

(3) Instructions for Trial Counsel:

Your compliance with the following requests is greatly appreciated.

(i) 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.

(ii) Court time may not be used for marking exhibits. This must be done in advance of the court session.

(iii) Please stand whenever you address the Court. This includes the making of objections.

(iv) Please stand when you question witnesses. (Counsel with physical disabilities will be excused from this requirement.)

(v) If on direct examination you intend to question a witness about a group of documents, avoid delay by having all the documents given to the witness when you start the examination.

(vi) When you object in the presence of the jury, make your objection short and to the point. Do not argue the objection in the presence of the jury, and do not argue with the ruling of the Court in the presence of the jury. Such matters may be raised at the first recess and will not be waived by waiting until the recess.

(vii) Do not ask the Court in the presence of the jury to declare that a witness is qualified as an expert or qualified to express an expert opinion.

(viii) It is not necessary to request leave of Court to approach a witness to show the witness an exhibit.

(ix) Do not ask for a recess before cross-examination. 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.

(x) The Court will consider allowing jurors to submit written questions for witnesses upon completion of their testimony subject to specific procedures to be discussed at the Final Pretrial Conference.

(xi) The Court may permit interim statements if appropriate due to the length of the trial.

(xii) Counsel are not permitted to contact jurors after trial without permission of the Court.

Thank you in advance for your cooperation.

ENTER:

Dated: December 18, 2017

**SHEILA FINNEGAN
United States Magistrate Judge**