



## **PREPARATION OF FINAL PRETRIAL ORDER For Civil Cases Before Judge Gilbert**

The parties shall jointly prepare and submit a Final Pretrial Order containing the following components, absent prior modification by the Court. Non-compliance with any of these requirements will subject a party and/or counsel to the imposition of sanctions. An original and one (1) copy of the Final Pretrial Order shall be submitted delivered to Chambers.

### **Contents of the Pretrial Order**

The subjects discussed below should be addressed in separate, tabbed and numbered sections of the Pretrial Order. The Pretrial Order either should be placed in a three-hole binder or clipped at the top left corner of the document, with tabs on the right side.

1. Jurisdiction. A concise statement of the basis for federal subject matter jurisdiction, and if jurisdiction is disputed, the nature and basis of the dispute.
2. Claims. A concise **joint** 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 and the defenses to them. In a jury trial, this statement will be read to the jury during voir dire.
3. Relief sought. An itemization of the damages and other relief sought.
4. Contested Issues. A concise, numbered list of the contested issues of fact and/or law.
5. Witnesses. A list of names and addresses of all witnesses including experts: (a) who will be called; (b) who may be called; (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 Pretrial Order will be precluded from testifying absent a showing of very good cause, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable as rebuttal witnesses) as may be necessary.
  - a. Objections. A statement of any objections to the calling of any witness, including expert witnesses. Objections not made in the 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. Depositions. For each witness whose deposition will be used, the party that intends to call that witness shall submit the witness's deposition transcript with the testimony the party intends to read to the jury highlighted in yellow. The opposing party shall highlight its counter-depositions in pink. Any party that objects to the other party's designations shall submit a list of its objections by page and line number and the basis for the objection. The opposing party shall submit its response to such objections. This can be done in separate documents or in a side-by-side presentation in a Word table or Excel spreadsheet. The basis for an objection and the response shall be stated as succinctly as possible with appropriate citations to evidentiary rules or case law. Objections not made in the pretrial order will be deemed waived absent a showing of good cause. *If the Court will be called upon to rule upon objections, a copy of the deposition is to be provided with the pretrial order.*

6. 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 Pretrial Order will be excluded from evidence. Joint exhibits should be denominated "JX," plaintiff's exhibits, "PX" and defendant's exhibits, "DX." Copies of the exhibits should be included with the Pretrial Order, if practical, or submitted in a separate binder or folder.

a. Objections. A statement of any objections to each exhibit. Objections not made in the Pretrial Order will be deemed waived. The parties should follow a similar format for objections to exhibits as is outlined above for deposition designations.

b. 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.

7. Type and length of trial. A statement of whether the trial will be a bench trial or jury trial, and a realistic estimate of the length of the trial. A typical trial day before Judge Gilbert will begin at 9:30 a.m. and end at 4:30 or 5 p.m., with a break of approximately 60 to 75 minutes for lunch and 15 minute mid-morning and mid-afternoon breaks.

8. Proposed findings and conclusions. For a bench trial, proposed findings of fact and conclusions of law. The parties shall confer about proposed findings of fact and law as to which they agree and submit those to the Court. Each party also shall submit its separate proposed findings of fact and conclusions of law. Proposed findings shall be submitted on a CD formatted in a relatively current version of WordPerfect or Word.

9. Proposed voir dire questions. For a jury trial, proposed voir dire questions. Judge Gilbert often uses a written questionnaire as the initial basis for voir dire. Sample jury questionnaires with general questions used in all cases and questionnaires tailored for particular cases are available on Judge Gilbert's court website or from Chambers. The parties should include any particular voir dire questions they want asked in their the Pretrial Order. If any question proposed by an opposing party is objected to, the objection should be noted in the Pretrial Order.

10. Proposed jury instructions. For a jury trial, proposed jury instructions are to be included both in the written Pretrial Order and on a CD, in WordPerfect or Word format. When there is a Seventh Circuit pattern jury instruction on point, that instruction should be used absent a very good reason for not doing so.

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

b. Disputed instructions. Proposed instructions that are not agreed 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.

11. Stipulations. A listing of any stipulations agreed to by the parties, including stipulations regarding the presentation or admissibility of evidence.

12. Settlement status. A statement summarizing the current status of settlement negotiations and whether the parties believe a pretrial settlement conference would be productive.

13. Trial Briefs. Trial briefs are required as part of the Pretrial Order in bench trials. Ordinarily, Judge Gilbert will not accept trial briefs in a jury trial, unless he has granted a prior motion to file such a brief or ordered the filing of a trial brief *sua sponte*. Any trial briefs shall be limited to 15 pages without leave of court.

### **Motions *in limine***

The Court will set a schedule for the filing of motions *in limine* when it sets dates for the filing of the Pretrial Order. These motions and responses *should not* be bound with the Pretrial Order. They should be filed separately on the CM/ECF system. Two (2) courtesy copies of any motions *in limine* shall be delivered to Chambers in accordance with the Local Rules.

Judge Gilbert discourages the filing of "boilerplate" motions *in limine* or motions that address matters not in dispute. Any motion *in limine* filed by a party must be accompanied by a statement that the party has conferred with the opposing party and has

determined that the matter upon which a ruling is sought is actually in dispute – that is, that the opposing party actually intends to offer the evidence that the movant seeks to exclude. If the meet-and-confer process results in agreement that certain matters are inadmissible, that agreement should be memorialized in a stipulation to be provided to Judge Gilbert in the Pretrial Order (see paragraph 11 above) or at the final pretrial conference.

Absent prior leave of court, each side is limited to a total of five (5) motions *in limine*.

### **Daily / expedited transcript and real-time reporting**

Any requests for daily or other expedited transcripts and real-time reporting must be made at least seven (7) days prior to trial so that an appropriate court reporter can be assigned to the trial.

### **Evidence projection systems**

The Court has a limited number of evidence projection systems which may or may not be available depending on how early a request is made. Any such request should be made to Judge Gilbert's Courtroom Deputy. Parties will be permitted to use their own projection systems, upon reasonable terms, if a request is made in advance of trial.

### **Instructions for compiling final pretrial order**

Plaintiff's counsel has the responsibility to prepare the initial draft of the Pretrial Order and must provide a draft to defendant's counsel no later than twenty-one (21) days before the date the Pretrial Order is due. Defendant's counsel must respond in writing to plaintiff's draft by no later than fourteen (14) days before the 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 Pretrial Order is due to discuss their respective drafts and to reach agreement to the extent possible. Any non-compliance with these requirements will subject a party and/or its counsel to imposition of sanctions.

Following the meet-and-confer process, it is responsibility of plaintiff's counsel, with full cooperation from defendant's counsel, to assemble the Pretrial Order for submission. The Pretrial Order should be submitted filed on the CM/ECF system with a cover page setting for the case caption and the title FINAL PRETRIAL ORDER. The cover page 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 Judge Gilbert's signature.

### **Pretrial conferences**

Often, the Court will hold an initial pretrial conference with lead trial counsel to discuss case theories, trial plan, anticipated motions *in limine* and other pretrial matters. The purpose of this conference is to resolve issues that can be resolved easily and to provide the Court with a better sense of the case particularly when Judge Gilbert was not involved substantially in pretrial discovery or other proceedings.

The Court will set a date for the final pretrial conference at least three weeks before trial. The purpose of this conference is to avoid surprises and to simplify the trial. At the conference, Judge Gilbert will address pending motions *in limine*, objections to witnesses and exhibits, and contested jury instructions, and will discuss trial procedures and scheduling. Lead trial counsel fully prepared and with authority to discuss all aspects of the case must attend. The parties need not attend the pretrial conference unless settlement will be discussed at the conference. The parties, however, are welcome to attend the pretrial conference with their lawyers if they wish to do so.

Date: 7/28/17

ENTER:

Jeffrey T. Gilbert  
United States Magistrate Judge