

## **JUDGE LEFKOW'S PROCEDURES FOR TRIAL PREPARATION**

All counsel (or pro se parties) are expected to offer their full cooperation and assistance to fulfill both the substance and spirit of this Order. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be that party's duty to advise the court of this fact on notice by appropriate means.

### **I. Schedule**

It is essential that parties adhere to scheduled dates. Because of the scarcity of pretrial conference and trial dates, and in courtesy to other cases, late changes in scheduling are disfavored. **Accordingly, no extensions will be granted without good cause, and no request for extension should be made less than 14 days before the scheduled dates.**

### **II. Final Pretrial Order**

- (A) All instructions contained within the Final Pretrial Order must be followed. The submissions in the pretrial materials will be binding on the parties at trial. If any counsel believes that any of the instructions allow for any part of the Pretrial Order to be deferred until after the submission date, counsel shall file a motion seeking leave of court for such deferral.
- (B) To prepare the pretrial materials required for the Final Pretrial Order, counsel for all parties are directed to meet in order to (1) reach any possible stipulations narrowing the issues of law and fact; (2) identify non-stipulated issues of law and fact; and (3) identify documents that will be offered in evidence.
- (C) Plaintiff has the responsibility to initiate conferences, to prepare the initial draft of pretrial materials, and to ensure that timely completion occurs. Defendant has the responsibility to work cooperatively with opposing counsel to the same end, and where counterclaims or affirmative defenses are pled, the defendant has the initiating responsibility and plaintiff the responding responsibility.

Counsel's meeting shall be held sufficiently in advance of the submission date to permit thorough preparation of the pretrial materials.

- (D) Any motions requiring determination in advance of trial (including, without limitation, motions *in limine*, dispositive motions, partially dispositive motions, and disputes over the admissibility of any evidence at trial upon which the parties desire to present authorities and argument to the court), shall be contained within the pretrial materials. Supporting and opposing memoranda of law must be submitted with the pretrial materials.

### **III. Final Pretrial Conference**

At the Final Pretrial Conference, each party shall be represented by the attorneys who will try the case (unless before the conference the court grants permission otherwise). All attending attorneys will come to the conference with full authority to accomplish the purposes of Fed. R. Civ. P. 16(d). Counsel shall have fully explored the matter with their clients as so to be prepared to settle and all persons necessary to effect a settlement shall be present.

#### **IV. Trial Preparation**

- (A) *Trial Briefs.* If a motion for summary judgement has been briefed covering the issues on trial, no trial briefs need be filed.
- (B) *Exhibit books.* Counsel should provide sufficient copies of exhibit books (in three-ring binders) for all jurors, plus three additional copies to be submitted to the court. Each exhibit should be numbered and tabbed for easy access.
- (B) *Jury Instructions.* For jury trials, the court will insist on strict compliance with Footnote 10 of paragraph 2(i) of the Final Pretrial Order Form 16.1.1. This provision reads as follows:

Agreed instructions shall be presented by the parties whenever possible. Whether agreed or unagreed, each marked copy of an instruction shall indicate the proponent and supporting authority and shall be numbered. All objections to tendered instructions shall be in writing and include citations of authorities. Failure to object may constitute a waiver of any objection. [Emphasis in original.]

It is the duty of the plaintiff's counsel to prepare the first draft of jury instructions, keeping in mind that the parties are expected to agree on all instructions other than those about which there is a genuine, material dispute. All parties must confer in good faith to accomplish this goal.

Counsel shall use the Pattern Civil Jury Instructions for the Seventh Circuit, copies of which are available on the court's website ([www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov)). Devitt & Blackmar, FEDERAL JURY PRACTICE AND INSTRUCTIONS is the preferred source for state law claims. Verdict forms shall be captioned with the case name and number.

If the parties elect to permit jurors to ask questions during the trial, the following jury instruction shall be included with all instructions submitted to the court:

During the trial, written questions by some members of the jury have been submitted to be asked of certain witnesses. Testimony answering a question submitted by a juror should be considered in the same manner as any other evidence in the case. If you submitted a question that was not asked, that is because I determined that under the rules of evidence the answer would not be admissible, just like when I sustained any objection to questions posed by counsel. You should draw no conclusion or inference from my ruling on any question, and you should not speculate about the possible answer to any question that was not asked or to which I sustained an objection.

Sufficient copies of jury instructions should be provided for the entire jury, plus three additional copies for the court.

#### **IV. Documents Promulgated With This Order**

Appended to this Order are guidelines for preparing Proposed Findings of Fact and Conclusions of Law for bench trials. Proposed Findings of Fact and Conclusions of Law are to

be submitted with the pretrial materials unless leave of court has been granted to defer submission.

**GUIDELINES FOR PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- (1) Plaintiff shall first serve and file proposed findings of fact and conclusions of law. Each defendant shall then serve and file answering proposals.
- (2) Plaintiff's proposals shall include (a) a narrative statement of *all facts* proposed to be proved, and (b) a concise statement of plaintiff's legal contentions and the authorities supporting them:
  - (A) Plaintiff's narrative statement of facts shall set forth in simple declarative sentences all the facts relied upon in support of plaintiff's claim for relief. It shall be complete in itself and shall contain no recitation of any witness' testimony or what any defendant stated or admitted in these or other proceedings, and no reference to the pleadings or other documents or schedules as such. It may contain references in parentheses to the names of witnesses, depositions, pleadings, or exhibits or other documents, but no party shall be required to admit or deny the accuracy of such references. It shall, so far as possible, contain no pejoratives, labels or legal conclusions. It shall be so constructed, in consecutively numbered paragraphs (though where appropriate a paragraph may contain more than one sentence), that each of the opposing parties will be able to admit or deny each separate sentence of the statement.
  - (B) Plaintiff's statement of legal contentions shall set forth all such plaintiff's contentions necessary to demonstrate the liability of each defendant to such plaintiff. Such contentions shall be separately, clearly and concisely stated in separately numbered paragraphs. Each paragraph shall be followed by citations of authorities in support thereof.
- (3) Each defendant's answering proposals shall correspond to plaintiff's proposals:
  - (A) Each defendant's factual statement shall admit or deny each separate sentence contained in the narrative statement of fact of each plaintiff, except in instances where a portion of a sentence can be admitted and a portion denied. In those instances, each defendant shall state clearly the portion admitted and the portion denied. Each separate sentence of each defendant's response shall bear the same number as the corresponding sentence in the plaintiff's narrative statement of fact. In a separate portion of each defendant's narrative statement of facts, such defendant shall set forth all affirmative matter of a factual nature relied upon by such defendant, constructed in the same manner as the plaintiff's narrative statement of facts.
  - (B) Each defendant's separate statement of proposed conclusions of law shall respond directly to plaintiff's separate legal contentions and shall contain such additional contentions of the defendant as may be necessary to demonstrate the non-liability or limited liability of the defendant. Each defendant's statement of legal contentions shall be constructed in the same manner as is provided for the similar statement of each plaintiff.