

Revised July 21, 2008

**STANDING ORDER ON PREPARATION OF FINAL PRETRIAL ORDER
FOR CIVIL CASES BEFORE JUDGE DOW**

Absent prior modification by the Court, the parties in every civil action that is scheduled to proceed to trial 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 twenty-one 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 fourteen 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 seven 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 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 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." The document also must be signed by counsel for each party and must contain a space for the judge's signature.

The Final Pretrial Order must contain the following information:

1. Jurisdiction. The parties must provide a concise statement of the basis for federal subject matter jurisdiction. In diversity cases or other cases requiring a jurisdictional amount in controversy, the Order shall contain either a stipulation that the required jurisdictional amount is involved or a brief written statement citing evidence supporting the claim that such a sum reasonably could be awarded. If jurisdiction is disputed, please state the nature of and basis for the dispute.

2. Claims. A concise statement (one or two paragraphs) of the claim(s) of the plaintiff(s), defense(s) of the defendant(s), and all counterclaims or 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. In personal injury and employment discrimination cases, it may be useful to consult Local Rule 16.1.2 and Local Rule 16.1.3 respectively in itemizing damages estimates.

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 at trial. In a jury trial, the names on the 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. Each party must provide a statement of any objections to the calling of any witnesses, including expert witnesses. 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. Depositions. For each witness whose deposition will be used at trial, 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. **If there are objections, a copy of the deposition (preferably in small-type format) must be provided with the Final Pretrial Order.**

c. Experts. Stipulations or statements setting forth the qualifications of each expert witness in such form that the statement can be read to the jury at the time the expert witness takes the stand. The subject matter of each expert's testimony shall be specified. Only one expert will be permitted to testify on each subject for each party absent good cause. Any motions concerning expert qualifications, methodologies, and related matters within Rule 702, Rule 703, and Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993), and its progeny, must be filed at least sixty days prior to trial or ten days prior to the expert discovery cutoff date, whichever is earlier.

5. Exhibits. The parties shall provide a schedule of all exhibits that the parties may introduce at trial, including a list of the subject matters of 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. Cumulative documents shall be omitted. Duplicate exhibits shall not be listed by different parties, but may be offered as joint exhibits. **All parties shall stipulate to the authenticity of exhibits whenever possible and shall identify any exhibits as to which authenticity remains in dispute and the specific reasons for any party's refusal to stipulate.**

a. Exhibits as to which there is no objection. Exhibits as to which there is no objection will be received in evidence, without any need for further foundation testimony. However, in jury trials, exhibits to which no explicit reference has been made in testimony or otherwise are not published to the jury prior to the close of evidence or in argument are not in evidence.

b. Objections. Each party must provide a statement of any objection to each exhibit. Objections not made in the Final Pretrial Order will be deemed waived absent a showing of good cause. **If there are objections, a copy of the proposed exhibit must be provided with the Final Pretrial Order.**

c. Copies for counsel and the Court: A bench book of joint exhibits and each party's separate exhibits is to be delivered to the Court and made available to all counsel no later than two business days before the start of trial.

d. Exhibits to be displayed to the 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. The use of exhibit books for jurors may be discussed at the Final Pretrial Conference.

6. Type and length of trial. The parties must provide a statement of whether the trial will be a bench trial or jury trial and a realistic estimate of the expected length of the trial. A typical trial day before Judge Dow will begin between 9:30 and 10:00 a.m. and will end no later than 4:30 p.m., with a break of approximately 60 to 75 minutes for lunch. Jury trials typically will begin on Mondays. Because Judge Dow does not have a scheduled status/motion call on Mondays, jury selection will begin at 9:00 a.m. For further information on trial procedures, please consult the "Trials" section on Judge Dow's web page.

7. Proposed findings and conclusions. For a bench trial, each party shall submit with the Final Pretrial Order a hard copy and a disk (in Word or Word Perfect) containing its proposed findings of fact and conclusions of law.

8. Proposed voir dire questions. For a jury trial, the parties shall submit proposed voir dire questions. Judge Dow uses a written questionnaire, a copy of which is posted on his web page, as the basis for general questioning of prospective jurors in voir dire. The parties should assume that those general questions will be asked and need not duplicate them in the Final Pretrial Order. The parties are requested to focus their attention on areas of questioning that are specific to their case. If any party objects to voir dire questions proposed by another party, the basis for the objection should be noted in the Final Pretrial Order.

9. Proposed jury instructions, verdict forms, and special interrogatories. For a jury trial, proposed jury instructions, verdict forms, and any special interrogatories are to be included in the Final Pretrial Order, both in hard copy and on a disk (in Word or Word Perfect).

a. Agreed instructions. The parties are directed to confer and agree upon jury instructions, verdict forms, and any special interrogatories to the extent possible, prior to the submission of the Final Pretrial Order. Agreed proposed instructions should be marked as such and numbered consecutively.

b. Disputed instructions. Proposed instructions as to which there is no agreement shall be numbered, shall identify the proponent of the instruction, and shall include supporting authority. Objections must be set forth in writing and shall include the basis for the objection and supporting authority.

c. Pattern instructions. In diversity and other cases in which Illinois law provides the rule of decision, use of Illinois Pattern Instructions as to all issues of substantive law is required. As to all other issues, and as to all issues of substantive law where Illinois law does not control, the following pattern jury instructions shall be used in the order listed – that is, an instruction from (ii) shall be used only if no such instruction exists in (i):

- i. the Seventh Circuit pattern jury instructions;
- ii. any pattern jury instructions published by a federal court.

d. Final Instructions. At the time of trial, an unmarked original set of instructions, verdict forms, and any special interrogatories shall be submitted to the Court on 8½” x 11” sheets to be sent to the jury room after being read to the jury. Supplemental requests for instructions during the course of the trial or at the conclusion of the evidence generally will not be granted except as to those matters that cannot reasonably be anticipated at the time of presentation of the initial set of instructions.

10. Trial briefs. Trial briefs of no more than 15 pages may be submitted with the Final Pretrial Order.

11. Discovery. The parties shall include a statement that all discovery is complete, including the depositions of expert witnesses (unless the Court has previously ordered otherwise). In the event that discovery has not been completed, the parties shall state what discovery needs to be completed by each party. Absent good cause, no further discovery shall be permitted.

12. Motions in limine. Unless otherwise scheduled by the Court, any motions in limine must be filed and served no later than the date on which the Final Pretrial Order is due. Responses to motions in limine must be filed and served no later than seven days after the motions are filed. Any replies in support of motions in limine will be accepted only with leave of Court. Motions in limine and responses should not be bound with the Final Pretrial Order.

a. Meet-and-confer on motions in limine. 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 intends to offer the evidence that the movant seeks to exclude, or actually opposes admission of the evidence that the movant seeks to include. If the meet-and-confer process results in agreement that certain matters are admissible or inadmissible, that agreement may be memorialized in a stipulation to be provided to Judge Dow with the Final Pretrial Order or at the Final Pretrial Conference.

b. Combined Filings. Separate motions in limine and responses may be combined in a single filing.

13. Transcripts. Any requests for daily or other expedited transcripts must be made directly to Judge Dow's Court Reporter, Lois LaCorte (312/435-5558), at least seven days prior to trial.

14. Evidence projection systems. The Court has a limited number of evidence projection systems which may or may not be available. Parties who would like access to evidence projection systems are advised to make a request as early as possible to Judge Dow's Courtroom Deputy, Terry Kinney (312/435-5668). Parties will be permitted to use their own evidence projection systems, upon reasonable terms, if a request is made in advance of trial.

15. Final Pretrial Conference. A Final Pretrial Conference will be held approximately two to four weeks before trial. The purpose of this conference will be to avoid surprises and to simplify the trial. At the conference, Judge Dow will address any motions in limine that remain pending, objections to witnesses and exhibits, contested jury instructions, trial procedures, and scheduling matters. Lead trial counsel fully prepared and with authority to discuss all aspects of the case must attend.

Dated: July 21, 2008

ENTER:

Robert M. Dow, Jr.
United States District Judge