



JUDGE NANCY L. MALDONADO
219 South Dearborn Street
Courtroom 1925
Chambers 1956
Chicago, IL
(312) 435-6060

**Pretrial Procedures and Preparation of Final Pretrial Orders for
Civil Cases Before Judge Maldonado**

A final pretrial conference will be held approximately two weeks before trial, subject to the Court's schedule. The purpose of this conference will be to provide guidance to the parties in their final preparations for trial, to avoid surprises, and to simplify the issues for trial. At the conference, Judge Maldonado 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 with authority to discuss all aspects of the case must attend. The Court will endeavor to cover all pretrial matters in a single hearing, but will continue the conference as necessary depending on the amount and complexity of pretrial matters.

Prior to the final pretrial conference, the parties shall jointly prepare and submit a Proposed Pretrial Order for the Court's consideration that contains the sections and information described below. The Proposed Pretrial Order must be e-mailed to Proposed_Order_Maldonado@ilnd.uscourts.gov in a format compatible with Microsoft Word, with two courtesy copies (in three-ring binders and tabbed) delivered to chambers. The Proposed Pretrial Order must also be filed on the docket by selecting "Other Filings" and then "Other Documents," and choosing the Proposed Pretrial Order event in CM/ECF. The Court will set a firm date for filing the proposed 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 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 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 days before the final pretrial order is due to discuss their respective drafts and to reach agreement to the extent possible. Any

non-compliance with these requirements may subject a party and/or its counsel to imposition of sanctions.

The Court will not accept trial briefs for jury trials without prior leave of Court. For bench trials, the Court may require separate trial briefs on a case-by-case basis.

Motions *in Limine* and *Daubert* Proceedings

The Court will set a separate schedule for the filing of motions *in limine* when it sets dates for the filing of the Pretrial Order. In general, motions *in limine* will be due at the same time as the Proposed Pretrial Order.

The Court discourages the filing of “boilerplate” motions *in limine* or motions that address matters not in dispute. The parties must confer on all motions *in limine* before filing them. If there is no objection to a motion, but the movant wishes to file a motion memorializing the non-objection, then the motion must state that there is no objection.

Absent prior leave of Court, motions *in limine* (not including exhibits) are limited to a total of 25 pages per party (not per motion), and responses (not including exhibits) are likewise limited to a total of 25 pages per party. No replies are to be filed without prior leave of Court.

The above page limitations do not apply to motions challenging the admissibility of Rule 702 expert testimony pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.* Such *Daubert* motions should be filed separately and **as soon as reasonably possible and no later than two (2) months prior to the final pretrial conference.** As with motions *in limine*, the parties are required to meet and confer before the filing of any *Daubert* motion to ensure that the opinions sought to be barred will be offered at trial. Seeking to bar an opinion the other side has no intention of soliciting is a waste of the parties’ and the Court’s time.

The Court, upon request of a party or on its own, may conduct a *Daubert* hearing to allow the parties to examine the challenged expert in open court, in order to develop his or her qualifications and/or testimony for purposes of evaluating admissibility. The Court notes, however, that there is no requirement for *Daubert* hearings, and given the time commitments on the parties, the Court, and the expert witness, the Court encourages the parties to request a hearing only if they believe it is truly necessary to properly address the issues raised in a *Daubert* motion. If a party anticipates the need for a *Daubert* hearing, they are encouraged to notify the Court as soon as possible to ensure adequate time for scheduling the hearing prior to trial.

Contents of Proposed Pretrial Order

1. *Jurisdiction.* State the jurisdictional basis for each claim. If the parties rely on either diversity jurisdiction or another jurisdictional basis that requires a threshold amount, then state whether the parties agree that the amount in controversy exceeds the amount and include a concise explanation of how the evidence supports that statement.

2. *Trial Attorneys.* List all attorneys trying the case, as well as contact information (business address, telephone number, and e-mail address). A list of the names of all people who will be sitting at counsel table, including parties, consultants, legal and technical assistants, etc., should also be provided.

3. *Case Statement.* Provide a concise agreed statement of the case to be read by the Court to the jury pool during jury selection. The statement must describe the nature of the case, claims, and defenses. This is a neutral description of the case, with just enough information to introduce the case to the jury and to ask potential jurors whether they happen to know anything about the case.

4. *Damages Itemization.* Plaintiff (and counter/cross-claimants, if any) shall itemize damages and other relief sought and provide a concise explanation of the evidentiary basis for each itemization.

5. *Trial Length / Number of Jurors.* State the estimated number of trial days, including jury selection and deliberations, premised on six-hour trial-testimony days (the six hours already accounts for lunch and breaks). Propose estimated time limits for: (a) opening statements per side; (b) closing arguments per side (including an initial close and rebuttal for the plaintiff); and (c) the total number of hours of witness examination per side. Also, state the number of jurors that the parties recommend (subject to Federal Rule of Civil Procedure 48(a)).

6. *Stipulations and Uncontested Facts.* In numbered paragraphs, state any stipulations and uncontested facts. No later than 10 business days before the Proposed Pretrial Order's due date, the parties must serve on each other proposed stipulations and uncontested facts. No later than 5 business days before the due date, the parties must confer in good faith to arrive at as many stipulations and uncontested facts as possible.

7. *Witness Description Lists.* Each party shall provide a list of the witnesses, including expert witnesses, divided into (a) witnesses who will be called; and (b) witnesses who might be called.¹ For each witness, provide a very concise (two or three sentences) description of the witness and the witness's role in the case. For example: "John Doe is Plaintiff's cousin. Doe witnessed the arrest of Plaintiff where Defendants allegedly used excessive force." Or: "Jane Doe is Defendant's Chief Operating Officer. Doe made promises concerning the timing of payments under the contract." Witnesses who are not on the lists are barred from testifying unless the proponent shows good cause for the failure to disclose the witness, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable) as may be necessary. The names of witnesses on the lists will be read to the jury during jury selection to ensure that potential jurors do not personally know any witnesses.

¹ For each party's list of witnesses who will be called or who might be called, the parties shall identify any witnesses for whom they propose to present testimony by deposition or other prior testimony. The party should indicate whether the presentation will be made by reading a transcript or playing a video, and should briefly summarize, in one or two sentences, the legal and/or factual basis for presenting the witness's testimony in such a manner, as opposed to presenting their testimony in-person. For example: "Plaintiff intends to present John Doe's testimony by playing video of certain portions of his recorded deposition. Doe lives in London and is outside the subpoena power of the Court."

8. *Deposition Designations.* If a party proposes to introduce a witness’s testimony via a deposition rather than live testimony, then the offering party must serve the page/line designations of the deposition transcript on the opposing party 10 business days in advance of the pretrial order’s due date. The opposing party must serve objections to designations (including a concise basis for the objection, like the Exhibit Chart discussed below) and also state the opposing party’s counter-designations (including counter-designations conditioned on an objection being overruled) 5 business days in advance of the pretrial order’s due date. The parties shall generate a joint chart, in page order, that sets forth the designation, objection, counter-designation if objection overruled, any counter-designations, and any objections to the counter-designations (again, with a concise basis for the objection, like the Exhibit Chart). The parties should include any objected-to portions of the designated deposition testimony in the exhibit binders submitted to the Court per the below instructions.

9. *Exhibits and Exhibit Charts.* The parties must each submit an exhibit chart, one for plaintiff’s exhibits and another for defendant’s exhibits. The charts must state the following: (a) the exhibit number; (b) the date of the document or exhibit, if applicable; (c) a concise, neutral description of the exhibit; (d) a concise statement of the exhibit’s relevance; (e) whether there is an objection to the exhibit’s admission, and if so, a concise explanation of the objection; and (f) a concise response to the objection, if any. The chart’s format shall be substantially similar to the example below (landscape orientation is encouraged).

No.	Date	Description	Relevance	Objection	Response
PX1/DX1	02/15/06	2005 Performance Review	Proves record of satisfactory job performance	R. 402 relevant; R. 403 confusion. Plaintiff fired in 2011.	Past performance is relevant to affirmative def. and will not lead to confusion.

In addition to substantive exhibits and any Rule 1006 summary exhibits, the chart should also include proposed demonstrative exhibits and any exhibits that are likely to be referred to at trial even though not allowed into evidence. For example, deposition transcripts of witnesses likely to be impeached, or documents likely to be used to refresh memory, should be included on the chart (and assigned an exhibit number and description).

Any substantive exhibit not objected to shall be deemed admissible into evidence by this Order (note: for the exhibit to be actually entered into the record for the jury’s consideration, the exhibit still must be referred to during trial testimony or otherwise published to the jury). There is no need to list every conceivable exhibit that can possibly be used, and parties are discouraged from over-designating exhibits, because we will examine exhibits one-by-one during the pretrial conference, and plainly inadmissible exhibits, or exhibits that parties will not likely use, will needlessly consume time. Therefore, the parties should submit a list of trial exhibits they definitely intend to introduce, and exhibits not likely to be used should not be listed. At the same time, the parties must limit objections to only good-faith objections. Frivolous and boilerplate objections will waste time, because in preparation for the pretrial conference, the Court will review, as much

as possible, the exhibits and the objections. The parties shall stipulate to the authenticity of exhibits whenever possible. If a foundation objection is asserted and the offering party proffers a foundation that the Court believes overcomes the objection, the offering party still must lay the foundation at trial.

As noted above, non-objected-to exhibits will be admissible into evidence by operation of this Order, without any need for further foundation testimony (remember, however, that the exhibit must still be referred to during trial testimony or otherwise published to the jury in order for the exhibit to be considered by the jury). During the trial, for clarity for the jury and the record, the offering party must still move the exhibit into evidence before publishing it to the jury. The Court will ask whether there is any “further” objection so any pretrial objection is preserved.

If, due to unforeseen circumstances during trial, a party wishes to introduce an exhibit not previously listed, notice should be given as soon as possible to the opposing side and to the Court so that any objections can be discussed. Absent abuse of this process, an exhibit will not be deemed inadmissible simply because it was not included on the original exhibit list, provided the exhibit/document was produced earlier to the opposing side during discovery.

No later than two weeks prior to the final pretrial conference, the parties must submit to chambers two sets of exhibit binders and a USB flash drive containing copies of all objected-to *substantive* exhibits. Exhibits that will be used only for impeachment purposes or to refresh memories need not be included in the binders.

After the final pretrial conference and rulings on exhibits, no later than five business days before trial, the parties must submit the final trial exhibits on a USB flash drive and provide one paper copy of the exhibits, double-sided in three-ring binders. If the parties anticipate a voluminous number of final trial exhibits (e.g., more than four binders of exhibits), the parties should contact the Court’s courtroom deputy before submitting the binders. The Court wants to avoid the needless copying of hundreds or thousands of documents in multiple boxes where electronic media may suffice.

Note on Presenting Exhibits During Trial: Judge Maldonado’s courtroom has evidence presentation equipment allowing exhibits (including video and audio files) to be projected and displayed to witnesses, the Court, counsel, and the jury. The jurors have screens in the juror box. The Court expects trial counsel to use this system. As early as possible prior to trial (not less than three weeks), counsel should contact Alexander Zeier, the Courtroom Technology Administrator, to schedule a training session. Mr. Zeier can be reached at (312) 435-6045.

10. *Motions in Limine*. As noted above, motions *in limine* will be filed separately. In the Proposed Pretrial Order, each party must provide a list that very briefly summarizes its motions *in limine* and indicates whether they are opposed. For example: Defendant’s Motion *in Limine* No.1 to Bar Reference to Witness A’s Drug Use (Unopposed); Defendant’s Motion *in Limine* No. 2 to Bar Witness B From Trial (Opposed), etc.

11. *Voir Dire Questions and Jury Questionnaire*. Judge Maldonado will always ask routine biographical questions (a typical list is available on her website). Any additional questions

sought by the parties must be listed in the Proposed Pretrial Order, divided into (a) agreed-upon questions and (b) proposed questions to which one party objects. A short basis for any objection should accompany the list. Each side is limited to 12 proposed disputed questions, unless a motion is filed before the pretrial conference that explains good cause for proposing more than the limit.

Additionally, one week prior to the final pretrial conference, the parties shall meet and confer and shall email the courtroom deputy an alphabetized list of the names and entities that may be mentioned at trial that they propose be attached to the jury questionnaire.

12. *Jury Instructions / Verdict Forms.* The parties must meet and confer in order to attempt to agree on as many jury instructions and verdict forms as possible and shall submit a single set of instructions and forms to the Court. Where applicable, the Court uses the Seventh Circuit's Pattern Instructions, bearing in mind that statutory and binding case law govern over the pattern instructions. If the parties wish to modify an applicable Seventh Circuit Pattern Instruction, the party proposing the modification must submit a comparison document to the Court showing the modification to the pattern instruction. If Illinois law provides the applicable standards for a particular claim, the Illinois Pattern Instructions should be used for the substantive elements of the particular cause of action.

The proposed jury instructions must state, on an instruction-by-instruction basis, the following information: (1) the proponent of the instruction, (2) the legal authority for the instruction, and (3) whether there is an objection to the instruction. If an instruction is disputed, the proponent of the instruction should concisely explain the basis for the instruction, if more explanation is required beyond the identified legal authority. If an instruction is disputed, the objecting party must concisely state—on the page immediately following the instruction—the grounds for the objection, as well as any proposed modification or alternative. The same principles apply to proposed verdict forms. Once the instructions are finalized, one of the parties should prepare a table of contents for the instructions.

13. *Signature.* The Proposed Pretrial Order must be signed (electronically) by counsel for each party.

SO ORDERED.



Nancy L. Maldonado
United States District Court Judge

Dated: January 29, 2024