



MAGISTRATE JUDGE HEATHER K. MCSHAIN
219 South Dearborn Street
Courtroom 1700
Chambers 1756
Chicago, IL
(312) 435-3039

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

A final pretrial conference will be held approximately one to two weeks before trial. The purpose of this conference will be to avoid surprises and to simplify the trial. At the conference, Judge McShain 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.

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_McShain@ilnd.uscourts.gov in Word or WordPerfect format, with two courtesy copies 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 date for filing the proposed pretrial order.

Judge McShain does not require trial briefs in jury trials. Parties who wish to file a trial brief must seek leave of Court to do so.

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. 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 15 pages per party (not per motion), and responses (not including exhibits) are likewise limited to a total of 15 pages per party. These 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, preferably well in advance of the final pretrial conference and the deadline for motions *in limine*.

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).

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 account 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; (b) witnesses whose testimony will be presented by deposition or other prior testimony (indicating whether the presentation will be by reading a transcript or playing a video); and (c) witnesses who might be called or whose testimony might be presented. For each witness, provide a very concise (2 or 3 sentences) 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.” Witnesses who are not on the lists are barred from testifying unless the proponent shows good cause for the failure to disclose the witness. 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.

8. *Exhibits and Exhibit Charts.* The parties must submit an exhibit chart, one each for Plaintiff’s exhibits and 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; and (e) whether there is an objection to the exhibit’s admission, and if so, a concise explanation of the objection. The chart’s format shall be substantially similar to the example below (landscape orientation is encouraged).

No.	Date	Description	Relevance	Objection
1	02/15/06	2005 Performance Review	Proves record of satisfactory job performance	R. 402 relevant; R. 403 confusion. Plaintiff fired in 2011.

In addition to substantive exhibits and 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). Do not over-designate exhibits, because we will examine exhibits one-by-one during the pretrial conference, and plainly inadmissible exhibits will needlessly consume time. By the same token, the parties must limit the objections to only good-faith objections. Frivolous and boilerplate objections will waste time, because in preparation for the pre-trial 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). But during the trial, for the jury's sake and for the clarity of the record, 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.

No later than one week prior to the final pretrial conference, the parties must submit to chambers 2 sets of exhibit binders containing copies of all objected-to substantive exhibits. Exhibits that will be used for impeachment purposes only need not be included in the binders.

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.

9. *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) 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.

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.* Judge McShain 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 10 proposed disputed questions, unless a motion is filed before the pretrial conference that explains good cause for proposing more than the limit.

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. Where applicable, the Court generally prefers the Seventh Circuit's Pattern Instructions. The proposed jury instructions must state, on an instruction-by-instruction basis, the following information: the proponent of the instruction, the legal authority for the instruction, and 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. Moreover, 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.

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

SO ORDERED.



Heather K. McShain
United States Magistrate Judge

Dated: October 5, 2022