



MAGISTRATE JUDGE SIDNEY I. SCHENKIER

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**PREPARATION OF FINAL PRETRIAL ORDER
AND OTHER TRIAL MATERIALS FOR CONSENT
CASES BEFORE MAGISTRATE JUDGE SCHENKIER**

THE FINAL PRETRIAL ORDER. In consent cases, the Court will require the parties to jointly prepare and submit a final pretrial order in open court. In each particular case, the Court will set the date on which the final pretrial order is to be filed. The final pretrial order (including the Court's courtesy copy) must be appropriately tabbed, and must include the following items:

1. **Jurisdiction.** A statement of the basis alleged for the Court's jurisdiction and, if jurisdiction is disputed, the nature and basis of the dispute.
2. **Case Statement.** A concise joint statement of the case, which includes the names of the parties and the attorneys who will be representing them at trial; the nature of the case; the claims, counterclaims and cross-claims; and the defenses raised to those claims. In a jury case, this statement will be read to the jury during *voir dire*.
3. **Stipulations.** A statement of any stipulations reached by the parties.
4. **Witness Lists.** Separate lists for plaintiff and defendant providing the names and addresses of witnesses, including experts, divided into the following three categories: (a) witnesses who *will* be called to testify at trial; (b) witnesses who *may* be called to testify at trial; and (c) witnesses whose testimony will be presented by deposition or other prior testimony (indicating whether the presentation will be by transcript or video). In a jury case, these lists will be read to the jury during *voir dire*.

All expert witnesses who will or may be called must be included on the witness list. No more than one expert will be permitted to testify on a subject for any party. In the event that any party identifies more than one expert witness, a brief statement of the topic of each expert's testimony must be provided.

All objections to the calling of any witnesses, and the reasons for the objections, must be stated in the pretrial order. For witnesses who will be presented by deposition or other prior testimony, the pretrial order must include for each such witness a chart containing the following information: (a) the testimony that each side seeks to present, by page and line; (b) a concise statement of objections to any testimony and the basis for the objections; and (c) a concise statement of the asserted basis of admissibility.

5. **Exhibit Lists.** Lists of the trial exhibits (including demonstratives, summaries or other specially prepared exhibits), which are to be prepared in the following manner:

A list of any joint exhibits, which states: (a) the exhibit number for the document (preceded by “JX”); (b) the date of the document; and (c) a brief description of the document.

Separate lists of plaintiff’s and defendant’s exhibits, which each state: (a) the exhibit number of the document (preceded by “PX” for plaintiff’s exhibits and “DX” for defendant’s exhibits); (b) the date of the document; (c) a brief description of the document; (d) whether there is an objection to admission of the document and, if so, a concise statement of the basis for the objection (*e.g.*, Rule 402 - relevance; Rule 403 - undue prejudice or confusion); and (e) a concise statement of the asserted basis of admissibility.

6. **Estimate of Trial Time.** A statement of whether the case will be a bench trial or jury trial, and a realistic estimate – *in number of hours* – of the length of the trial.
7. **Damage Itemization.** An itemization of damages and other relief sought.
8. **Motions In Limine.** A list of the titles of all proposed motions *in limine*. Before listing any motions *in limine* in the final pretrial order, the parties shall meet and confer in order to ensure that they list only those motions that are in dispute. No motions *in limine* shall be filed with the final pretrial order. At the pretrial conference, the Court will hear argument on the proposed motions and decide which ones warrant briefing.

It is the responsibility of plaintiff’s counsel to prepare the initial draft of the items set forth in Nos. 1-8, above. Plaintiff’s counsel must provide a draft of these materials to defendant’s counsel by no later than twenty-one (21) calendar days before the date the final pretrial order is due to be filed. Defendant’s counsel must respond in writing to the draft by no later than fourteen (14) calendar days before the final pretrial order is due. That response must include any objections, changes or additions proposed to the materials in Nos. 1-3, and 6-7; any objections to the witness lists or the designations of prior testimony, as well as the defendant’s list of witnesses (live or by prior testimony) (*see* No. 4); any objections to the plaintiff’s exhibits, as well as defendant’s list of exhibits (*see* No. 5); and any motions *in limine* defendant proposes to file (*see* No. 8). The parties are required to meet and confer by no later than seven (7) calendar days before the final pretrial order is due to discuss their respective drafts, and should attempt to reach agreement to the maximum extent possible. It is then the responsibility of the plaintiff’s counsel – with full cooperation from defendant’s counsel – to assemble the version of the pretrial

order to be filed. These scheduling dates for the exchange of drafts and personal consultation are designed to minimize disputes between the parties and to ensure the timely filing of the final pretrial order. ***These dates may be varied only by written agreement of the parties or by order of the Court.***

The above-referenced materials must be submitted with a cover document setting forth the case caption and the title FINAL PRETRIAL ORDER. The cover document must: (a) recite that each of the foregoing categories of materials is included, (b) 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) provide spaces for the signature of counsel for each of the parties and the Court.

OTHER MATERIALS TO BE FILED BEFORE TRIAL.

- I. ***Proposed Findings and Conclusions.*** In a bench trial, proposed findings of fact and conclusions of law are not to be included in the final pretrial order, but are to be separately filed (with courtesy copies delivered to chambers) fourteen (14) calendar days before trial.

- II. ***Proposed Voir Dire and Instructions.*** In a jury trial, proposed *voir dire* questions and jury instructions are not to be included in the final pretrial order, but are to be separately filed with courtesy copies delivered to chambers. ***The courtesy copy delivered to chambers must be placed in a three-ring binder that contains both the proposed voir dire questions and proposed jury instructions.*** The proposed *voir dire* and jury instructions are to be prepared and submitted according to the following schedule:

Proposed Voir Dire. The Court’s standard *voir dire* questions can be obtained from the website or from the courtroom deputy. The parties must exchange any proposed variations or additions to these *voir dire* questions no later than fourteen (14) calendar days before trial. Within four (4) calendar days thereafter, the parties must meet and confer to attempt to resolve any disagreements about the questions. By no later than seven (7) calendar days before trial, the parties must file a joint document that includes (a) each party’s proposed *voir dire* questions, and (b) each party’s objections, if any, to the *voir dire* questions proposed by other parties. ***The Court’s courtesy copy of the proposed voir dire questions are to be placed under the first tab in the notebook submitted to the Court.***

Jury Instructions. Absent an order of the Court setting a different schedule, by no later than twenty-one (21) calendar days before trial, plaintiff’s counsel must serve on defendant’s counsel a set of proposed jury instructions. By no later than fourteen (14) calendar days before trial, defendant’s counsel must serve on plaintiff’s counsel a document setting forth: (a) which of plaintiff’s proposed instructions are agreed, (b) which of plaintiff’s proposed instructions are disputed (and the basis for any dispute), and (c) any modified or additional instructions proposed by defendant’s counsel. By no later than ten (10) calendar days before trial, plaintiff’s counsel and defendant’s counsel must meet and confer to attempt to resolve any disagreements about instructions. By no later

than seven (7) calendar days before trial, the parties must file a joint document setting forth all agreed and proposed jury instructions as follows:

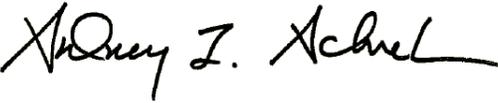
- The Court uses standard preliminary instructions in all civil cases, which are available on this website. The parties' joint document shall set forth any objections to the standard instructions, or any requests for different or additional preliminary instructions. The joint document must set forth all proposed preliminary instructions. ***The Court's courtesy copy of these proposed preliminary instructions should be placed under the second tab in the notebook provided to the Court.***
- The joint document must set forth all instructions that the parties propose to be given at the close of trial, arranged in the order that the parties proposed they be given. The Court uses certain standard instructions, which are available on this website. ***The Court's courtesy copy of these proposed final instructions should be placed under the third tab in the notebook provided to the Court.*** Please keep in mind that the Court uses certain standard instructions at the close of the case. Any objections to those standard instructions and any requests for variation to those instructions should be set forth in this portion of the submission.
- Each proposed instruction must be identified at the top of the page by number, and must indicate the proponent of the instruction and whether the instruction is agreed or disputed (e.g., "Agreed Plaintiff's Proposed Preliminary Instruction No. ___"; "Defendant's Disputed Proposed Final Instruction No. ___"). The bottom of each instruction must identify the legal authority supporting that instruction. If an instruction is disputed, the grounds for the objection (and any proposed modification or alternate instruction) must be concisely stated on the page immediately following the disputed instruction; on the next immediate page, the party proposing the instruction may state concisely the reasons supporting the instruction as proposed.

These dates for exchange of drafts and personal consultation regarding voir dire and jury instructions may be varied only by written agreement of the parties or by Court order.

III. **Trial Briefs.** Trial briefs are not required in either bench or jury trials. Any party who wishes to file a trial brief must seek leave of the Court to do so.

THE FINAL PRETRIAL CONFERENCE. A final pretrial conference will be held approximately one week before trial. At the pretrial conference, the Court will address pending motions *in limine*, objections to exhibits, and objections to designations of depositions or other prior testimony. At that time, the Court also will discuss with the parties trial procedures and scheduling. The purpose of this conference is to avoid surprises and simplify the trial. ***Trial counsel fully prepared and with authority to discuss all aspects of the case must attend.***

ENTER:

A handwritten signature in black ink, appearing to read "Sidney I. Schenkier". The signature is written in a cursive style with a long horizontal flourish at the end.

SIDNEY I. SCHENKIER
United States Magistrate Judge

Dated: January 5, 2015