

## Standing Order Governing Civil Bench Trials

This Standing Order sets forth the procedures and requirements for parties' pre-trial submissions in civil bench trials. It also contains information on trial protocols.

When scheduling the trial date, the Court will also set a Pre-Trial Conference date, which triggers the parties' pre-trial submission deadlines, as set forth below. The Court may change the below deadlines and will specify exact submission deadlines in a minute entry before the Pre-Trial Conference. The dates in the minute entry shall govern timing of submission of the documents below.

### I. Exchange and Filing of Trial Materials – Plaintiff's Pre-Trial Statement

**49 days (7 weeks) before the Pre-Trial Conference**, Plaintiff shall e-file Plaintiff's Pre-Trial Statement, comprised of the below items (listed in Section I.a–d) using CM/ECF. To e-file it, select the appropriate CM/ECF event, "Other Filings" and then "Other Documents," and choose the Supplement event. Separately, Plaintiff shall e-mail a Microsoft Word version of Plaintiff's Exhibit Chart and Plaintiff's Deposition Designation Chart to Defendant.

#### a. Witness List

The party must provide a list of witnesses, including expert witnesses, identifying the following:

- (a) witnesses that the party will call to testify at trial;
- (b) witnesses that the party may call to testify at trial; and
- (c) witnesses whose testimony the party plans to present by deposition or other prior testimony, indicating whether the presentation will be by transcript or video.

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 at issue in the case."

Witnesses who are not on the lists are **barred** from testifying unless the proponent shows good cause for the failure to disclose the witness.

**b. Exhibit Chart**

The party must submit an exhibit chart of the exhibits the party will definitely use at trial (*including demonstratives, summaries, or other specially prepared exhibits*), which includes the following:

- (a) the exhibit number;
- (b) the date of the document or exhibit, if applicable;
- (c) a concise, neutral description of the exhibit; and
- (d) a concise statement of the exhibit’s relevance.

The chart’s format shall be substantially similar to the example below (landscape orientation is encouraged).

<b>No.</b>	<b>Date</b>	<b>Description</b>	<b>Relevance</b>
P-1	02/15/2006	2005 Performance Review	Proves record of satisfactory job performance.

Do not over-designate exhibits, because the Court will examine exhibits one-by-one during the Pre-Trial Conference, and plainly inadmissible exhibits will needlessly consume time.<sup>1</sup> 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).

**c. Deposition Designation Chart**

If a party proposes to introduce a witness’ testimony via a deposition rather than live testimony, then the offering party must provide the page/line designations of the deposition transcript. These designations should be in the same chart format

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<sup>1</sup>There is no need to list every conceivable exhibit that can possibly be used. The parties should submit a list of trial exhibits they definitely intend to introduce. Exhibits not likely to be used need not be listed. 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 earlier produced to the opposing side during discovery.

as the Exhibit Chart. Other than for the purposes of impeachment or to refresh recollection, deposition transcripts may only be used for unavailable witnesses or if the parties stipulate to using deposition transcripts instead of live witness testimony.

#### **d. Motions *in Limine***

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 nonobjection, then the motion must state that there is no objection.

Motions *in limine* (not including exhibits) are **limited to a total of 15 pages per side (not per motion)**.

Parties should keep in mind that motions *in limine* are meant to provide a mechanism for the court and parties to resolve particular evidentiary issues prior to trial. A proper motion *in limine* “performs a gatekeeping function and permits the trial judge to eliminate from further consideration evidentiary submissions that clearly ought not be presented to the jury because they clearly would be inadmissible for any purpose.” *Jonasson v. Lutheran Child and Fam. Servs.*, 115 F.3d 436, 440 (7th Cir. 1997). They are particularly useful in streamlining a trial so that extensive argument becomes unnecessary after a jury has been impaneled. *See id.* (“The prudent use of the *in limine* motion sharpens the focus of later trial proceedings and permits the parties to focus their preparation on those matters that will be considered by the jury.”). They also provide economies to the parties such that certain witnesses will not be called to testify. Finally, an accurate assessment of the admissible evidence may cause parties to reconsider settlement negotiation positions.

However, motions *in limine* should not be so granular that no rational ruling can be made outside of the context of the trial itself. *See Jonasson*, 115 F.3d at 440 (“Some evidentiary submissions . . . cannot be evaluated accurately or sufficiently by the trial judge in [a pretrial] environment.”). “In these instances it is necessary to defer ruling until during trial, when the trial judge can better estimate its impact on the jury.” *Id.*; *see also Fletcher v. Conway*, 1991 WL 24460, at \*1 (N.D. Ill. Feb. 21, 1991) (“Careful exercise of [the court’s discretion in determining the admissibility of evidence] is usually best left to trial, when the court is in a position to evaluate the proffered evidence within context.”).

Moreover, the fact that a motion *in limine* was not filed as to a particular piece of evidence does not operate as a waiver. Counsel is always free to object to evidence at trial for all of the grounds permissible under the Federal Rules of Evidence. *See Moore v. General Motors Corp.*, 684 F. Supp. 220, 220 (S.D. Ind. 1988) (Tinder, J.) (“A ruling on a motion *in limine* is not a final ruling on the admissibility of the evidence which is the subject of the motion. An order on a motion *in limine* has been characterized as an advisory opinion subject to change as events at trial unfold.”).

Like any other evidentiary ruling, the Court’s rulings on motions *in limine* are based on the facts and theories of the case as the Court understands them at the time the Court makes its ruling. These rulings do not preclude any party from renewing a request for either admission or exclusion of evidence if the facts as developed at trial make reconsideration appropriate.

**II. Exchange and Filing of Trial Materials – Defendant’s Pre-Trial Statement and Objections**

**42 days (6 weeks) before the Pre-Trial Conference**, Defendant shall e-file Defendant’s Pre-Trial Statement and Objections, comprised of the below items (listed in Section II.a–g) using CM/ECF. To e-file it, select the appropriate CM/ECF event, “Other Filings” and then “Other Documents,” and choose the Supplement event. Separately, Defendant shall e-mail a Microsoft Word version of Defendant’s Exhibit Chart and Defendant’s Deposition Designation Chart to Plaintiff.

**a. Witness List**

See Section I.a.

**b. Exhibit Chart**

See Section I.b. For Exhibit numbers, Defendant shall use D-1, etc.

**c. Deposition Designation Chart**

See Section I.c.

**d. Objections to Plaintiff’s Exhibit Chart**

Defendant shall use the Microsoft Word version of Plaintiff’s Exhibit Chart, and add a column to the chart listing whether there is an objection to the exhibit, and if so, a concise explanation of the objection, similar to the example below. Defendant shall then e-file Defendant’s Objections to Plaintiff’s Exhibit Chart as part of Defendant’s Pre-Trial Statement and Objections. Separately, Defendant shall e-mail a Microsoft Word version of Defendant’s Objections to Plaintiff’s Exhibit Chart to [Proposed Order Valderrama@ilnd.uscourts.gov](mailto:Proposed Order Valderrama@ilnd.uscourts.gov).

<b>No.</b>	<b>Date</b>	<b>Description</b>	<b>Relevance</b>	<b>Objection</b>
P-1	02/15/2006	2005 Performance Review	Proves record of satisfactory job performance.	R. 402: relevance; R. 403: confusion. Plaintiff fired in 2011.

Any substantive exhibit not objected-to shall be deemed admissible into evidence by this Order. A party 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 in order for the exhibit to be considered by the Court). During the trial, for the clarity of the record, a party must still move the exhibit into evidence before publishing it to the Court. The Court will ask whether there is any “further” objection, so any pretrial objection is preserved.

**e. Objections to Plaintiff’s Deposition Designation Chart**

Defendant shall use the Microsoft Word version of Plaintiff’s Deposition Designation Chart, and add a column to the chart listing any objections, including a concise basis for the objection, similar to the Exhibit Chart. Defendant shall then e-file Defendant’s Objections to Plaintiff’s Deposition Designation Chart as part of Defendant’s Pre-Trial Statement and Objections. Separately, Defendant shall e-mail a Microsoft Word version of Defendant’s Objections to Plaintiff’s Deposition Designation Chart to [Proposed Order Valderrama@ilnd.uscourts.gov](mailto:Proposed Order Valderrama@ilnd.uscourts.gov).

**f. Responses to Plaintiff’s Motions *in Limine***

Responses (not including exhibits) are **limited to a total of 15 pages per side, not per motion.**

**g. Motions *in Limine***

*See* Section I.d.

**III. Exchange and Filing of Materials – Plaintiff’s Pre-Trial Objections**

**35 days (5 weeks) before the Pre-Trial Conference,** Plaintiff shall e-file Plaintiff’s Pre-Trial Objections, comprised of the below items (listed in Section III.a–d) using CM/ECF. To e-file it, select the appropriate CM/ECF event, “Other Filings” and then “Other Documents,” and choose the Supplement event.

**a. Objections to Defendant’s Exhibit Chart**

Plaintiff shall use the Microsoft Word version of Defendant’s Exhibit Chart, and add a column to the chart listing any objections, similar to the example in Section II.d. Plaintiff shall then e-file Plaintiff’s Objections to Defendant’s Exhibit Chart as part of Plaintiff’s Pre-Trial Objections. The Court’s statements regarding objections in Section II.d apply here as well. Separately, Plaintiff shall e-mail a Microsoft Word version of Plaintiff’s Objections to Defendant’s Exhibit Chart to [Proposed Order Valderrama@ilnd.uscourts.gov](mailto:Proposed Order Valderrama@ilnd.uscourts.gov).

**b. Objections to Defendant’s Deposition Designation Chart**

Plaintiff shall use the Microsoft Word version of Defendant’s Deposition Designation Chart, and add a column to the chart listing any objections, similar to the example in Section II.e. Plaintiff shall then e-file Plaintiff’s Objections to Defendant’s Deposition Designation Chart as part of Plaintiff’s Pre-Trial Objections. Separately, Plaintiff shall e-mail a Microsoft Word version of Plaintiff’s Objections to Defendant’s Deposition Designation Chart to [Proposed Order Valderrama@ilnd.uscourts.gov](mailto:Proposed Order Valderrama@ilnd.uscourts.gov).

**c. Responses to Defendant’s Motions *in Limine***

Responses (not including exhibits) are **limited to a total of 15 pages per side, not per motion**.

**IV. Final Pre-Trial Memorandum**

**28 days (4 weeks) before the Pre-Trial Conference**, Plaintiff shall e-file the parties’ jointly-prepared Pre-Trial Memorandum. Additionally, Plaintiff shall e-mail a Microsoft Word version of the Pre-Trial Memorandum to [Proposed Order Valderrama@ilnd.uscourts.gov](mailto:Proposed Order Valderrama@ilnd.uscourts.gov). The Pre-Trial Memorandum shall contain the following information:

**a. Trial Attorneys**

A list of the attorneys trying the case, including e-mail addresses, telephone numbers, and business addresses. 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.<sup>2</sup>

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<sup>2</sup>For virtual trials, this list should contain the names of all people associated with parties who will be videoconferencing into the trial.

**b. 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.

**c. Case Statement**

Provide a concise agreed statement of the case. The statement must describe the nature of the case; claims, counterclaims, and cross-claims; and defenses raised to those claims. This should be a neutral description of the case.

**d. Stipulations and Uncontested Facts**

In numbered paragraphs, state any stipulations and uncontested facts.

**e. Contested Facts**

In numbered paragraphs, state any contested facts. Include a section of contested facts for each party.

**f. Conclusions of Law**

In numbered paragraphs, state any conclusions of law which the party believes the Court should enter at the end of trial. Include a section of conclusions of law for each party.

**g. Itemization of Damages**

If any party is seeking damages, provide an itemization of damages and other relief sought, and provide a concise explanation of the evidentiary basis for each itemization.

**h. Signature**

The Pre-Trial Memorandum shall be electronically signed by counsel for each party.

**V. Exhibits and Deposition Designations – Before Pre-Trial Conference**

**28 days (4 weeks) before the Pre-Trial Conference**, each party shall have delivered to chambers the following:

**a. USB Key/Thumb Drive**

A USB Key/Thumb Drive with no password protection<sup>3</sup> containing a .pdf of each of its proposed exhibits and deposition transcripts to which a party has raised an objection. The file name of each exhibit shall be P-1 or D-1, P-2 or D-2, etc.

**b. Hard Copies**

Three sets of binders containing copies of any proposed exhibits and deposition transcripts to which a party has raised an objection. The exhibits and/or deposition transcripts must be printed double-sided and placed in three-ring binders. Unless the parties agree otherwise, the party that is objecting to an exhibit or deposition transcript is responsible for providing the copy of the objected-to exhibit or deposition transcript.

**VI. Pre-Trial Conference**

The Court will schedule the Pre-Trial Conference two to three weeks before the commencement of trial. Lead trial counsel for each party must attend the Pre-Trial Conference. The Court will address various topics at this conference, including, but not limited to: rulings on exhibit objections, deposition designation objections, and motions *in limine*; use of demonstratives and timelines; trial logistics; sidebars; trial technology; breakout rooms.

**VII. Exhibits and Deposition Designations – After Pre-Trial Conference**

**5 days following the Pre-Trial Conference**, each party shall have delivered to chambers the following:

**a. USB Key/Thumb Drive**

A USB Key/Thumb Drive with no password protection<sup>4</sup> containing a .pdf of each final trial exhibit and final deposition transcript that will be read in place of live testimony. The file name of each exhibit shall be P-1 or D-1, P-2 or D-2, etc.

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<sup>3</sup>If the parties agree a password is necessary, they must send an email to the Court's courtroom deputy, Analeah Charles ([Analeah.Charles@ndil.uscourts.gov](mailto:Analeah.Charles@ndil.uscourts.gov)) with the password on the same day that the USB/Key Drive is delivered.

<sup>4</sup>See Note 2 for instructions on what to do if the parties agree that a password is necessary.

## **b. Hard Copies**

Three sets of binders containing copies of each final trial exhibit and final deposition transcript that will be read in place of live testimony. The exhibits and/or final deposition transcripts must be printed double-sided and placed in three-ring binders.

## **VIII. Additional Pre-Trial Information**

### **a. Opening Statement**

Unless both parties agree, no exhibits will be shown during opening statement. If exhibits are agreed-upon and non-argumentative, they may be used in opening statement. Opening statement is **not** argumentative.

### **b. Daily Status Hearing / Timeliness**

Please be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.

### **c. Exhibits at Trial**

Court time may not be used for marking exhibits. This must be done in advance of trial.

### **d. Witness Examinations**

In order to respect the Court's time, ***always*** have enough witnesses available so that we make use of the full trial day. Do not ask for a recess before cross-examination. If the direct examination should end at about the time the court would recess anyway, e.g., lunch time, a recess will be taken. Otherwise, be prepared to commence cross-examination immediately upon conclusion of the direct.

All witness examinations must be conducted from the **podium** unless otherwise allowed by the Court. The only alternative site is the end of the jury box, but you must speak loudly enough for the witness, judge, and court reporter to easily hear you, and speak **into the microphone** at the end of the jury box so that the audio-recording system can record you.

### **e. Reading Deposition Testimony in Place of Live Testimony**

To the extent a witness is unavailable and the Court has allowed the use of deposition testimony instead of live testimony, or to the extent the parties have

stipulated to the use of deposition testimony instead of live testimony, the party introducing that deposition testimony at trial should plan to have a person (whether a member of the trial team or another person) to sit on the stand and read aloud that witness' deposition answers.

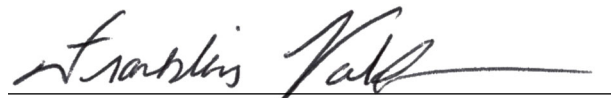
**f. Objections**

When you object, you must stand so that the Court and the witness are on alert that an objection will be made. Before trial, counsel should instruct their witnesses not to answer a question when they see the opposing lawyer stand and while an objection is pending. You must state a short, non-argumentative basis for the objection (*e.g.*, relevance, hearsay), and responses must be similarly short and non-argumentative. Ideally, there will be little or no need for a side-bar if objections and responses are succinct.

**IX. Post-Trial Briefing**

The Court may require post-trial briefing on findings of fact and conclusions of law. The Court will provide further instructions on post-trial briefing at trial.

Dated: September 2, 2021

  
United States District Judge  
Franklin U. Valderrama