

Sample Form 41

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

	)	CASE NO.:
	)	
PLAINTIFF,	)	JUDGE ECONOMUS
	)	
v.	)	
	)	TRIAL ORDER
	)	
DEFENDANTS.	)	

This case is set for jury trial on February 12, 2008. The parties and their counsel shall report to the chambers at 8:30 a.m. on the first day of trial.

The Final Pretrial is scheduled for January 29, 2008 at 1:30 p.m. Lead trial counsel for all parties shall be present and prepared with full authority to discuss settlement of the case. All parties shall attend in person unless counsel has requested and received prior approval from the Court for a party to attend telephonically. Parties attending telephonically must be readily available at all times during the conference.

SCHEDULE

1. The following shall be accomplished **SEVEN (7) DAYS PRIOR TO THE FINAL PRETRIAL CONFERENCE:**

**a. PRETRIAL STATEMENT**

Each party shall submit a pretrial statement setting forth the following:

1. the cognizable claims and defenses;
2. the applicable law with specific citations to all statutes and case law to support each claim and defense;
3. the status of settlement negotiations; and
4. the estimated length of trial.

**b. JOINT STATEMENT OF CONTESTED AND UNCONTESTED FACTS**

**1. Plaintiffs' Proposed Facts:** Plaintiff(s) shall submit a narrative statement listing all facts proposed to be proved by them at trial in support of their claim(s) as to liability and damages. A failure to set forth specific facts in support of a claim pursuant to this order shall constitute a waiver of such claim.

**2. Defendants' Response and Proposed Facts:** Defendant(s) shall submit a statement:

(a) indicating separately as to each statement of fact whether they contest or do not contest it;

(b) stating all additional facts proposed to be proved by them at trial in opposition to, or in defense against, the plaintiffs' claim; and

(c) stating all facts proposed to be proved by them at trial in support of their counterclaim(s), cross claim(s), or third party claim(s) IF applicable.

**3. Narration of Proposed Facts:** In stating facts proposed to be proved, counsel shall do so in brief, simple, declarative, self-contained, consecutively numbered sentences, avoiding all "color words," labels, argumentative language and legal conclusions. If a fact is to be offered against fewer than all parties, counsel shall

indicate the parties against which the fact will (or will not) be offered. [The facts to be set forth include not only ultimate facts, but also all subsidiary and supporting facts except those offered solely for impeachment purposes.]

To the extent feasible, counsel with similar interests are expected to coordinate their efforts and express a joint position with respect to the facts they propose to prove. Each party may, however, list additional proposed facts relating to positions unique to it.

For each proposed fact, the parties shall, at the time of proposing to prove that fact, list the witnesses (including expert witnesses), documents and any depositions and answers to interrogatories or requests for admissions that they will offer to prove that fact. In their response, parties shall, (1) if they object to any such proposed fact or proposed proof, state precisely the grounds and the rule of evidence relied on for their objection and, (2) if they will contest the accuracy of the proposed fact, similarly list the witnesses, documents, depositions, interrogatories or admissions that they will offer to controvert that fact. Objections to the admissibility of a proposed fact (either as irrelevant or on other grounds) may not be used to avoid indicating whether or not the party contests the truth of that fact. Except for good cause shown, a party will be precluded at trial from offering any evidence on any fact not disclosed and from making any objection not so disclosed other than purely for impeachment purposes.

The uncontested facts shall be taken at the trial as either an admission under Fed. R. Civ. P. 36 or a stipulation without the need for independent proof. A COMPREHENSIVE STATEMENT OF ADMITTED OR STIPULATED FACTS SHALL BE FILED SEPARATELY AND MADE PART OF THE RECORD. To the extent relevant to a resolution of contested issues and otherwise admissible, these facts may be read to the jury. Independent proof of uncontested facts will be allowed only if incidental to the presentation of evidence on contested facts or if such proof will better enable the jury to resolve contested facts.

**4. Sanctions:** Unjustified refusal to admit a proposed fact or to limit the extent of disagreement with a proposed fact shall be subject to sanctions under Fed. R. Civ. P. 37(c). Excessive listing of proposed facts [or of the evidence to be submitted in

support of or denial of such facts] imposing undue burdens on opposing parties shall be subject to sanctions under Fed. R. Civ. P. 16(f).

**c. WITNESSES**

Each party shall provide opposing counsel and the Court with a list of all witnesses to be called at trial, including potential rebuttal witnesses. A summary of the testimony to be offered by each witness shall be included in the JOINT STATEMENT OF CONTESTED AND UNCONTESTED FACTS. No witness will be permitted to testify at trial if his or her name is not provided to opposing counsel at this time, unless the Court determines that the witness is needed to offer rebuttal testimony which could not have been reasonably anticipated prior to trial or that exceptional circumstances warrant amendment of one or both of the witness lists.

Expert witnesses will be bound by the opinions expressed in their reports prepared in accordance with Fed. R. of Civ. P. 26(2)(B) and will not be permitted to offer new matters at trial.

**d. DEPOSITION TESTIMONY**

Whenever depositions (videotape or written) are to be used at trial, opposing counsel shall submit an index of objections to counsel offering the testimony along with a statement as to the basis of the objection and reference to the specific rule of evidence upon which

counsel relies. The proponent shall respond with a statement giving the reasons for admissibility.

Counsel shall consult in an effort to resolve any objections raised. Where objections have been raised and not resolved, those objections shall be noted in the margin of the index. The Court will make every effort to rule on the objections at the final pre trial.

e. **EXHIBITS, CHARTS, SUMMARIES AND OTHER DEMONSTRATIVE EVIDENCE**

The parties shall exchange and file an index of exhibits along with a brief description of such exhibits in accordance with LR 39.1. If a party against whom an exhibit is being offered objects to the same, the procedure set forth in subsection d. above applies. Exhibits which have not been provided as required by this paragraph will not be received at trial.

On the first day of trial, it shall be the responsibility of the parties to distribute two sets of exhibits to the Court and one set of exhibits to the Court Reporter.

2. **MOTIONS IN LIMINE**

All legal issues of importance, including evidentiary ones, which have not been previously resolved shall be raised by written motion on or before **THREE (3) DAYS PRIOR TO THE FINAL PRETRIAL CONFERENCE**. Responses shall be filed

twenty-four (24) hours before the Final Pretrial Conference.

If the qualifications of an expert witness are being challenged, the Court will conduct a Daubert hearing before trial. The Court expects counsel to submit thorough briefs and/or a voir dire of the expert's testimony so that the Court has sufficient evidence to perform its gatekeeping function of ensuring the expert's testimony is reliable and relevant.

**The Court will not hold bench or chamber conferences during trial to consider legal issues including evidentiary rulings that could have been raised before trial without a showing that counsel could not, by the exercise of due diligence, have anticipated them in advance of trial.**

In all cases, Pretrial Statements and Motions *in Limine* are to be exchanged with opposing counsel by hand delivery, fax or e-mail.

3. The following shall be accomplished **THREE (3) DAYS PRIOR TO TRIAL**:

a. **PRELIMINARY STATEMENTS**

Counsel shall prepare a joint statement in simple terms describing the nature of the case including the claims and defenses of the parties to be read by the Court during jury orientation and voir dire. This statement will be used to set the context of the trial for the jury.

b. **TRIAL BRIEFS**

Each party shall serve and file a trial brief on all significant

disputed issues of law, setting forth briefly the party's position and the supporting arguments and authorities.

**c. VOIR DIRE**

The Court will conduct the initial voir dire of prospective jurors. Counsel will be permitted a reasonable time to conduct supplemental voir dire following the questioning by the Court.

Proposed questions by counsel are to be submitted to the Court for review and approval. Counsel will be permitted to ask questions approved by the Court only, unless it develops during voir dire that additional questions on a particular point are necessary to insure impartiality of the jury.

**d. JURY INSTRUCTIONS**

Counsel shall file proposed jury instructions, verdict forms and interrogatories to the jury that are drafted to fit the facts of this case. Counsel should confer regarding their respective proposals in an effort to reach an agreement regarding as many jury instructions as possible. A joint submission shall be made indicating (1) agreed instructions; (2) instructions proposed by plaintiffs, but opposed by defendants; and (3) instructions proposed by defendants, but opposed by plaintiffs. Objecting counsel must state in writing specific objections citing authorities and any alternative instruction counsel considers more

appropriate.

During trial or at the close of all evidence, the parties may submit supplemental requests for instructions on matters not anticipated prior to trial.

Counsel may provide the agreed-upon jury instructions to the Court in writing and on a 5.25" or 3.5" computer diskette. The diskette should be formatted for an IBM compatible computer. The Court is equipped with WordPerfect 6.1 for Windows. When submitting the disk to the Court, to avoid accidental erasure, counsel are advised to alert the security guards and avoid the x-ray machine.

#### 4. CONTINUANCES

No party shall be granted a continuance of a trial or hearing without a written motion from the party or counsel stating the reason for the continuance, endorsed in writing by all moving parties and their lead counsel of record, and showing the consent of all other counsel or, if objected to, with the movant's certification of efforts to obtain such consent.

The Court will not consider any motion for a continuance due to a conflict of trial assignment dates unless a copy of the conflicting assignment is attached. The motion shall be filed within fifteen (15) days of counsel becoming aware of the conflict and not less than thirty (30) days prior to trial.

#### 5. COURTROOM CONDUCT AND PROCEDURE



a. The Trial shall be conducted from 9:00 a.m. to 4:00 p.m., Monday through Friday.

b. When appearing in this Court, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following:

1. Stand as Court is opened, recessed or adjourned.
2. Stand when the jury enters or retires from the courtroom.
3. Stand when addressing the Court. When making an objection, state the legal basis only. If a response is necessary, be brief, without making a speech. If it is **critical** to the case that counsel be heard in more detail, a bench conference may be called to explain the basis for an objection. Otherwise, bench conferences will not be permitted.
4. Stand at the lectern while examining any witness; except that counsel may approach the witness for purposes of handling or tendering exhibits.
5. Stand at the lectern while making opening statements or closing arguments.
6. Address all remarks to the Court, not to opposing counsel.
7. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
8. Refer to all persons, including witnesses, other counsel and the parties by their surnames and not by their first or given names.
9. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.
10. Prior to testifying, counsel shall place before the witness all exhibits to which he or she will testify; and, at the same time,

copies of said exhibits shall be handed to opposing counsel.

11. Diagrams or exhibits should be drawn or marked by the witness before taking the stand.

12. Any witness testifying at the time of recess or adjournment must be back on the witness stand when the Court reconvenes. If a new witness is to be called, he/she must be standing in front of the witness box ready to be sworn.

13. In examining a witness, counsel shall not repeat or echo the answer given by the witness.

14. Gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

One copy of all filings set forth in this Order shall be delivered to Chambers at the time of filing with the Clerk even if the case is being electronically filed.

THE COURT HEREBY ORDERS THAT ALL DOCUMENTS, NOTICES AND ORDERS IN THIS MATTER BE FILED ELECTRONICALLY, EXCEPT AS PROVIDED FOR IN THE ELECTRONIC FILING POLICIES AND PROCEDURES MANUAL. IF IT HAS NOT ALREADY BEEN DONE, COUNSEL ARE REQUIRED TO REGISTER FOR ELECTRONIC FILING AS SOON AS POSSIBLE. THE REGISTRATION FORM AND ELECTRONIC FILING POLICIES AND PROCEDURES MANUAL ARE AVAILABLE AT: [http://www.ohnd.uscourts.gov/Electronic Filing/electronic\\_filing.html](http://www.ohnd.uscourts.gov/Electronic_Filing/electronic_filing.html). THE CLERK'S OFFICE HAS ESTABLISHED AN ELECTRONIC FILING HELP DESK AT 1-800-355-8498 TO ANSWER QUESTIONS AND PROVIDE ASSISTANCE SHOULD DIFFICULTIES ARISE.

IT IS THE RESPONSIBILITY OF COUNSEL TO TURN ON THEIR E-MAIL AND  
CHECK THEIR MAILBOXES ON A REGULAR BASIS

**IT IS SO ORDERED.**

s/Peter C. Economus -

**PETER C. ECONOMUS**

**UNITED STATES DISTRICT JUDGE**