

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases: _____

(2) Previously Adjudicated Related Cases: _____

2. This case is complex because it possesses one (1) or more of the features listed below (please check):

- _____ (1) Unusually large number of parties
- _____ (2) Unusually large number of claims or defenses
- _____ (3) Factual issues are exceptionally complex
- _____ (4) Greater than normal volume of evidence
- _____ (5) Extended discovery period is needed
- _____ (6) Problems locating or preserving evidence
- _____ (7) Pending parallel investigations or action by government
- _____ (8) Multiple use of experts
- _____ (9) Need for discovery outside United States boundaries
- _____ (10) Existence of highly technical issues and proof

3. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff:

Defendant:

4. Jurisdiction:

Is there any question regarding this court's jurisdiction?

___ Yes ___ No

If "yes," please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

5. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

(b) The following persons are improperly joined as parties:

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

(d) The parties shall have a continuing duty to inform the court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary: _____

(b) Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the preliminary report and discovery schedule is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

7. Filing Times For Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY (30) DAYS after the preliminary report and discovery schedule is filed or should have been filed, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

(a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) *Summary Judgment Motions*: within twenty (20) days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) *Other Limited Motions*: Refer to Local Rules 7.2; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) *Motions Objecting to Expert Testimony*: Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted.

8. Initial Disclosures:

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection.

9. Request for Scheduling Conference:

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

10. Discovery Period:

The discovery period commences thirty (30) days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this court are assigned to one of the following three (3) discovery tracks: (a) zero (0)-months discovery period, (b) four (4)-months discovery period, and (c) eight (8)-months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery, please state those reasons in detail below:

11. Settlement Potential:

(a) Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference that was held on _____, 20____, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For plaintiff: Lead counsel (signature): _____

Other participants: _____

For defendant: Lead counsel (signature): _____

Other participants: _____

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

- () A possibility of settlement before discovery.
- () A possibility of settlement after discovery.
- () A possibility of settlement, but a conference with the judge is needed.
- () No possibility of settlement.

(c) Counsel () do or () do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is _____, 20____.

(d) The following specific problems have created a hindrance to settlement of this case.

12. Trial by Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties () do consent to having this case tried before a magistrate judge of this court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this _____ day of _____, 20____.

(b) The parties () do not consent to having this case tried before a magistrate judge of this court.

Counsel for Plaintiff

Counsel for Defendant

SCHEDULING ORDER

Upon review of the information contained in the Preliminary Report and Discovery Schedule form completed and filed by the parties, the court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as stated in the above completed form, except as herein modified:

IT IS SO ORDERED, this _____ day of _____, 20____.

UNITED STATES DISTRICT JUDGE

APPENDIX F

**CIVIL COVER SHEET
SHOWING
ASSIGNMENT OF CATEGORIES
OF CIVIL ACTIONS
TO TRACKS FOR
PURPOSES OF DISCOVERY**

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

DEFENDANT(S)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLTF. CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF | <input type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY) |
| <input type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT | <input type="checkbox"/> 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- | PLF | DEF | PLF | DEF |
|---|----------------------------|---|----------------------------|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| CITIZEN OF THIS STATE | | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| CITIZEN OF ANOTHER STATE | | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | | FOREIGN NATION | |

IV. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- | | | | | | | |
|--|---|--|---|---|---|--|
| <input type="checkbox"/> 1 ORIGINAL PROCEEDING | <input type="checkbox"/> 2 REMOVED FROM STATE COURT | <input type="checkbox"/> 3 REMANDED FROM APPELLATE COURT | <input type="checkbox"/> 4 REINSTATED OR REOPENED | <input type="checkbox"/> 5 TRANSFERRED FROM ANOTHER DISTRICT (SPECIFY DISTRICT) | <input type="checkbox"/> 6 MULTIDISTRICT LITIGATION | <input type="checkbox"/> 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT |
|--|---|--|---|---|---|--|

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

(IF COMPLEX, CHECK REASON BELOW)

- | | |
|---|--|
| <input type="checkbox"/> 1. Unusually large number of parties. | <input type="checkbox"/> 6. Problems locating or preserving evidence |
| <input type="checkbox"/> 2. Unusually large number of claims or defenses. | <input type="checkbox"/> 7. Pending parallel investigations or actions by government |
| <input type="checkbox"/> 3. Factual issues are exceptionally complex | <input type="checkbox"/> 8. Multiple use of experts |
| <input type="checkbox"/> 4. Greater than normal volume of evidence. | <input type="checkbox"/> 9. Need for discovery outside United States boundaries. |
| <input type="checkbox"/> 5. Extended discovery period is needed. | <input type="checkbox"/> 10. Existence of highly technical issues and proof. |

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$ _____ APPLYING IFP _____ MAG. JUDGE (IFP) _____

JUDGE _____ MAG. JUDGE _____ NATURE OF SUIT _____ CAUSE OF ACTION _____
(Referral)

VI. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY

TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL. VETERANS)
 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY

TRACK

- 110 INSURANCE
 120 MARINE
 130 MILLER ACT
 140 NEGOTIABLE INSTRUMENT
 151 MEDICARE ACT
 160 STOCKHOLDERS' SUITS
 190 OTHER CONTRACT
 195 CONTRACT PRODUCT LIABILITY

REAL PROPERTY - "4" MONTHS DISCOVERY

TRACK

- 210 LAND CONDEMNATION
 220 FORECLOSURE
 230 RENT LEASE & EJECTMENT
 240 TORTS TO LAND
 245 TORT PRODUCT LIABILITY
 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS

DISCOVERY TRACK

- 310 AIRPLANE
 315 AIRPLANE PRODUCT LIABILITY
 320 ASSAULT, LIBEL & SLANDER
 330 FEDERAL EMPLOYERS' LIABILITY
 340 MARINE
 345 MARINE PRODUCT LIABILITY
 350 MOTOR VEHICLE
 355 MOTOR VEHICLE PRODUCT LIABILITY
 360 OTHER PERSONAL INJURY
 362 PERSONAL INJURY - MEDICAL MALPRACTICE
 365 PERSONAL INJURY - PRODUCT LIABILITY
 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4"

MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
 371 TRUTH IN LENDING
 380 OTHER PERSONAL PROPERTY DAMAGE
 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY

TRACK

- 422 APPEAL 28 USC 158
 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY

TRACK

- 441 VOTING
 442 EMPLOYMENT
 443 HOUSING/ ACCOMMODATIONS
 444 WELFARE
 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS - "0" MONTHS

DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
 530 HABEAS CORPUS
 535 HABEAS CORPUS DEATH PENALTY
 540 MANDAMUS & OTHER
 550 CIVIL RIGHTS (PRISONER)
 555 PRISON CONDITION(S)

FORFEITURE/PENALTY - "4" MONTHS

DISCOVERY TRACK

- 610 AGRICULTURE
 620 FOOD & DRUG
 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
 630 LIQUOR LAWS
 640 R.R. & TRUCK
 650 AIRLINE REGS.
 660 OCCUPATIONAL SAFETY/HEALTH
 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
 720 LABOR/MGMT. RELATIONS
 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
 740 RAILWAY LABOR ACT
 790 OTHER LABOR LITIGATION
 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS

DISCOVERY TRACK

- 820 COPYRIGHTS
 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS

DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY

TRACK

- 861 HIA (1395ff)
 862 BLACK LUNG (923)
 863 DIWC (405(g))
 863 DIWW (405(g))
 864 SSID TITLE XVI
 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS

DISCOVERY TRACK

- 870 TAXES (U.S. PLAINTIFF OR DEFENDANT)
 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY

TRACK

- 400 STATE REAPPORTIONMENT
 430 BANKS AND BANKING
 450 COMMERCE/ICC RATES/ETC.
 460 DEPORTATION
 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
 810 SELECTIVE SERVICE
 875 CUSTOMER CHALLENGE 12 USC 3410
 891 AGRICULTURAL ACTS
 892 ECONOMIC STABILIZATION ACT
 893 ENVIRONMENTAL MATTERS
 894 ENERGY ALLOCATION ACT
 895 FREEDOM OF INFORMATION ACT
 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
 950 CONSTITUTIONALITY OF STATE STATUTES
 890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY

TRACK

- 410 ANTITRUST
 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS

DISCOVERY TRACK

- ARBITRATION (CONFIRM/VACATE/ORDER/MODIFY)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.2**

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS A CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED CASE(S) IF ANY

JUDGE _____

DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

SIGNATURE OF ATTORNEY OF RECORD

278

DATE

Civil Litigation Management Manual

Sample Form 27

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Plaintiff,

vs.

Case No. 8:

**WILLIAM A. HALTER,
Acting Commissioner of
Social Security,¹**

Defendant.

SCHEDULING ORDER

This is an action seeking review of the determination of the Commissioner of the Social Security Administration. The case is at issue and, in accordance with the provisions of 42 U.S.C. § 405(g), the Commissioner has filed his Answer to the complaint which includes a certified copy of the transcript of the record before the agency. The correct style of the case number is: 8:_____. In deciding an action for judicial review under the Social Security Act, the Court can look no further than the pleadings and transcript of the record before the Agency. No de novo hearing is authorized. It is therefore,

¹ William A. Halter became Acting Commissioner of Social Security on January 22, 2001. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, William A. Halter is substituted, therefore, for Commissioner Kenneth A. Apfel, as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

ORDERED:

1. That Plaintiff is hereby directed to submit a memorandum of law in support of the allegations of the complaint within sixty (60) days of the date of this Order.

2. That the Commissioner is hereby directed to submit a memorandum of law in support of his position within sixty (60) days of the serving of Plaintiff's memorandum.

3. The parties' legal memoranda must set forth the parties' respective contentions as to the issues presented and the grounds for the relief requested. The parties' contentions must be supported by specific reference to the pages of the records relied upon and by appropriate citations to legal authority supporting the parties' respective positions. The issues before the Court shall be deemed limited to those issues properly raised and supported by either party.

4. In the absence of consent to magistrate judge jurisdiction, a Report and Recommendation as to the disposition of the matter will be prepared by the magistrate judge for consideration by the district judge. In the event of consent to magistrate judge jurisdiction, then the magistrate judge will issue a final order.

5. Motion practice under Fed. R. Civ. P. 12(c) (judgment on the pleadings) or Fed. R. Civ. P. 56 (summary judgment) is not appropriate.

So Ordered.

DONE AND ORDERED in chambers at Tampa, Florida, this _____ day of
_____, 20__.

ELIZABETH A. JENKINS
UNITED STATES MAGISTRATE JUDGE

Sample Form 28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

vs.) Civil No.
)
)
William A. Halter,)
Acting Commissioner,)
Social Security Administration,)
)
Defendant.)

ORDER

IT IS ORDERED:

1. Plaintiff shall have until _____ (40 days following filing/receipt of answer & administrative transcript) to file a summary judgment motion and supporting brief.
2. Defendant shall have until _____ (30 days following plaintiff's motion) to respond and file a summary judgment motion.
3. Plaintiff shall have until _____ (15 days following defendant's motion) to respond, if counsel deems it necessary.

Dated: _____

Karen K. Klein
United States Magistrate Judge

Sample Form 29

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Plaintiff,

vs.

Civ. No. /WWD

Defendant.

PROVISIONAL DISCOVERY PLAN

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on

_____ at _____ and was attended by:

_____ for Plaintiff(s)

_____ for Defendant(s)

2. Discovery Plan. The parties jointly propose to the Court the following discovery plan: (*use separate paragraphs or subparagraphs as necessary if parties disagree.*)

Discovery will be needed on the following subjects:

*(brief description of subjects on which
discovery will be needed)*

All discovery commenced in time to be completed by
date _____. Discovery on (*issue for early discovery*) to be
completed by _____.

Maximum of ____ interrogatories by each party to any other
party. (responses due ____ days after service).

Maximum of ____ requests for admission by each party to any
other party. (response due ____ days after service.

Maximum of ____ depositions by Plaintiff(s) and ____ by
Defendant(s)

Each deposition (other than of _____) limited to
maximum of ____ hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff(s) by _____

from Defendant(s) by _____

Supplementation under Rule 26(e) due _____ (set
time(s) or interval(s)).

3. Other Items. (use separate paragraphs or subparagraphs
as necessary if parties disagree.)

The parties request a settlement conference in

_____.

The parties request a pretrial conference in

_____.

Plaintiff(s) should be allowed until _____ to join
additional parties and until _____ to amend the pleadings.

Defendant(s) should be allowed until _____ to join
additional parties and until _____ to amend the pleadings.

All potentially dispositive motions should be filed by

_____.

Plaintiff(s) shall provide the Pretrial Order to
Defendant(s) by _____ and Defendant(s) shall submit to
the Court by _____.

Settlement (is likely) or (is unlikely) or (cannot be
evaluated prior to _____) or (may be enhanced by use of
the following alternative dispute resolution
procedure: _____).

Attorney for Plaintiff

Attorney for Defendant

Sample Form 30

(Rev. 11/5/97)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
)	
Plaintiffs)	
	)	CIVIL ACTION
v.	)	NO. -REK
)	
)	
Defendant)	
_____)	

Memorandum and Order Regarding Discovery
_____, 20____

Discovery disputes have arisen in this case. On the basis of an examination of matters on file, the court is concerned that this may be an instance in which counsel on both sides are taking positions that do not comply with either the letter or the spirit of the Federal Rules of Civil Procedure. An excessive discovery demand, knowingly made, violates Rule 26(g). An inadequate response, knowingly made, violates Rule 26(g), and other rules as well. For example:

(a) Fed. R. Civ. P. 33(a) requires that a party "furnish such information as is available to the party." That you may have an objection to interrogatories as excessively burdensome is not an excuse for your responding with nothing but objections or a motion for a protective order. You must forthwith furnish the information responsive to the interrogatories that is available through reasonable efforts. Failure to do so in this court is regarded as sufficient ground for imposition of sanctions.

(b) Fed. R. Civ. P. 34(b) provides that "[i]f objection is made to part of an item or category, the part shall be specified." It is implicit, if not explicit, that production or allowance of inspection "will be permitted as requested" except as to the part or parts to which stated objections apply. Thus,

the fact that a demand for production is objectionable in part is not an excuse for producing nothing. Failure to produce documents or parts of documents to which no objection applies is in this court regarded as sufficient ground for imposition of sanctions.

(c) Fed. R. Civ. P. 36(a) provides that "when good faith requires that a party ... deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder." Thus, an objection that goes only to some part or parts of requests for admission is not an excuse for failure to respond to all other parts to which the ground of objection is not applicable. Failure to respond accordingly is in this court regarded as sufficient ground for imposition of sanctions.

(d) Fed. R. Civ. P. 26(g) provides that a party's attorney must sign each discovery request, response, or objection. The signature constitutes a certification that to the best of the attorney's knowledge, information, and belief formed after a reasonable inquiry, the discovery request, response, or objection is: "(1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive" Certification in violation of Rule 26(g) is sufficient ground for imposition of sanctions.

The court will not serve, or acquiesce in a magistrate judge's serving, as a mediator for settlement of disputes over discovery in which each party takes unreasonable positions with the purpose of conceding what is plainly due under the rules only when before a judge. If counsel make excessive demands or insufficient responses after this cautionary order by the court, an order may be entered providing for more stringent controls over discovery, including the following:

(1) Having determined that both sides have been unreasonable, the court may impose an appropriate sanction, under Fed. R. Civ. P. 26(g) and 37. An appropriate sanction in this case may include an order in which the court declines to undertake the burdensome task of working out some position that is a reasonable accommodation within the range counsel should have agreed upon; the court may instead determine only which side has been more unreasonable and, as a sanction for misconduct,

enter an order that discovery proceed in accordance with the other side's position.

(2) The court may award attorney fees against a party, or against counsel, to the extent authorized to do so by applicable statutes, rules, and precedents, including those regarding inherent authority.

(3) The court may order that no client be charged for any of the time of counsel on either side spent on the discovery dispute in which counsel on both sides were taking unreasonable positions.

ORDER

For the foregoing reasons, it is ORDERED:

The parties are allowed [a multiple of 7 days] (until _____, 20__) to resolve all outstanding discovery disputes or modify their respective positions to come into compliance with the Federal Rules of Civil Procedure, including Rule 26(g), and other rules relating to discovery. A hearing is scheduled for _____ at _____ m., to be held only if the parties have not succeeded in resolving all discovery disputes.

United States District Judge

Sample Form 31

Items for Possible Inclusion in the Rule 16 Case Management Conference Notice When Significant Electronic Discovery Is Anticipated

**Kenneth J. Withers
Federal Judicial Center**

When a case involves significant electronic discovery, it is important that the judge and lawyers give early attention to the issues that may arise. Enumerated below are suggested items a judge may want to instruct attorneys to consider as they prepare for an early Rule 16 conference. The items can be tailored as necessary for the case.

One problem with listing in a Rule 16 notice the many potential repositories of evidence that a party might have is that the notice itself might trigger a more extensive and expensive discovery effort than the parties might otherwise undertake. On the other hand, the judge supervising discovery does not want to have surprises later in the process when one party assumes all possible sources have been examined and another claims that they were never contemplated by the original discovery plan. Judges may wish to consider on a case-by-case basis whether the situation calls for a detailed Rule 16 notice with lists like those presented here, or for a more general one that will allow the judge to see what the parties have in mind for discovery first.

With those caveats in mind, here are some suggested indicators of when a detailed Rule 16 notice might be most appropriate:

- When the substantive allegations involve computer-generated records, e.g., software development, e-commerce, unlawful Internet trafficking, etc.
- When the authenticity or completeness of computer records is likely to be contested
- When a substantial amount of disclosure or discovery will involve information or records in electronic form, e.g., e-mail, word processing, spreadsheets, and databases
- When one or both parties is an organization that routinely used computers in its day-to-day business operations during the period relevant to the facts of the case

- When one or both parties have converted substantial numbers of potentially relevant records to digital form for management or archival purposes
- When expert witnesses will develop testimony based in large part on computer data and/or modeling, or when either party plans to present a substantial amount of evidence in digital form at trial
- In any potential “big document” case in which costs associated with managing paper discovery could be avoided by encouraging exchange of digital or imaged documents (especially if multiple parties are involved).

1. Preservation of Evidence

- A. What steps have counsel taken to ensure that likely discovery material in their clients’ possession (or in the possession of third parties) will be preserved until the discovery process is complete? If counsel have not yet identified all material that should be disclosed or may be discoverable, what steps have been taken to ensure that material will not be destroyed or changed before counsel’s investigations are complete?

If more specific direction is needed:

- B. Have counsel identified computer records relevant to the subject matter of the action?
- Word processing documents, including drafts or versions not necessarily in paper form
 - Databases or spreadsheets containing relevant information
 - E-mail, voicemail, or other computer-mediated communications
 - Relevant system records, such as logs, Internet use history files, and access records
- C. Have counsel located all such computer records?
- Active computer files on network servers

- Computer files on desktop or local hard drives
 - Backup tapes or disks, wherever located
 - Archival tapes or disks, wherever located
 - Laptop computers, home computers, and other “satellite” locations
 - Media or hardware on which relevant records may have been “deleted” but are recoverable using reasonable efforts
- D. Have counsel made sure all relevant computer records at all relevant locations are secure? For instance, have they
- Suspended all routine electronic document deletion and media recycling
 - Segregated and secured backup and archival media
 - Created “mirror” copies of all active network servers, desktop hard drives, laptops, and similar hardware
- E. Have counsel considered entering into an agreement to preserve evidence?
- F. Does either party plan to seek a preservation order from the court?

2. Disclosure and Preliminary Discovery

- A. Have counsel designated technical point-persons who know about their clients’ computer systems to assist in managing computer records and answering discovery requests?
- B. Have counsel prepared a description of their respective party’s computer systems for exchange? Does either party need to know more before discovery can proceed?

If the judge determines that the parties are unclear as to what they need to know at this stage, the judge may provide further guidance by suggesting that they exchange information on the following points:

- Number, types, and locations of computers currently in use
 - Number, types, and locations of computers no longer in use, but relevant to the facts of the case
 - Operating system and application software currently in use
 - Operating system and application software no longer in use, but relevant to the facts of the case
 - Name and version of network operating system currently in use
 - Names and versions of network operating systems no longer in use, but relevant to the facts of the case
 - File-naming and location-saving conventions
 - Disk or tape labeling conventions
 - Backup and archival disk or tape inventories or schedules
 - Most likely locations of records relevant to the subject matter of the action
 - Backup rotation schedules and archiving procedures, including any backup programs in use at any relevant time
 - Electronic records management policies and procedures
 - Corporate policies regarding employee use of company computers and data
 - Identities of all current and former personnel who had access to network administration, backup, archiving, or other system operations during any relevant time
- C. Do counsel anticipate the need to notice any depositions or propound any interrogatories to obtain further information about the opposing party's computer systems or electronic records management procedures?

- D. Have counsel explored with their clients (in appropriate situations) the procedures and costs involved in:
- Locating and isolating relevant files from e-mail, word processing, and other collections
 - Recovering relevant files generated on outdated or dormant computer systems (so-called “legacy data”)
 - Recovering deleted relevant files from hard drives, backup media, and other sources
- E. Do counsel anticipate the need to conduct an on-site inspection of the opposing party’s computer system?
- Consideration of an agreed-upon protocol
 - Permission to use outside experts
 - Agreement on neutral expert

3. Electronic Document Presentation

- A. Will counsel use computerized litigation support databases to organize and store documents and other discovery material?
- B. Have counsel considered common formats for all electronic document exchange, e.g., TIFF images with OCR-generated text, e-mail in ASCII format?
- C. Have counsel (particularly in multi-party cases) considered a central electronic document repository?
- D. Have counsel considered an attorney-client privilege non-waiver agreement, to avoid the costs associated with intensive privilege screening prior to production?
- E. Do counsel anticipate requesting data in non-routine format, e.g.,
- Printing by respondent of electronic documents not normally in print form

- Creation by respondent of customized database reports
 - Performance by respondent of customized searches or data mining
- F. Have counsel agreed upon cost allocation, e.g.,
- Parties to absorb their own disclosure costs
 - Requesting parties to pay non-routine retrieval and production costs
 - Parties to negotiate data recovery and legacy data restoration costs
- G. Does either party anticipate objecting to the production of computer records or software necessary to manipulate the records based on
- Trade secret restrictions
 - Licensing restrictions
 - Copyright restrictions
 - Statutory or regulatory privacy restrictions

4. TESTIFYING EXPERTS

- A. Will any testifying expert rely on computer data provided by either party, or rely on his or her own data?
- B. Will any testifying expert use custom, proprietary, or publicly available software to process data, generate a report, or make a presentation?
- C. Do counsel anticipate requesting discovery of either the underlying data or the software used by any testifying expert?

5. ANTICIPATING EVIDENTIARY DISPUTES

Ask whether counsel have considered discovery procedures designed to reduce or eliminate questions of authenticity, e.g.,

- Computer discovery supervised by neutral party
- Neutral, secure electronic document repository
- Exchange of read-only disks or CD-ROMs
- Chain-of-custody certifications

confidential settlement statement to the magistrate judge. The settlement statement shall not become a part of the file of the case, but shall be for the exclusive use of the magistrate judge in preparing for and conducting the settlement conference.

The settlement statement shall contain a specific recitation of the facts, a discussion of the strengths and weaknesses of the case, the parties' position on settlement, including a present settlement proposal, and a report on settlement efforts to date. If not already part of the court file, copies of any critical agreements, business records, photographs or other documents or exhibits shall be attached to the settlement statement. The settlement statement should not be lengthy, but should contain enough information to be useful to the magistrate judge in analyzing the factual and legal issues in the case. The parties are directed to be candid in their statements.

The settlement statement shall not be filed with the clerk, but shall be mailed to the magistrate judge at Suite 440, 655 1st Avenue North, Fargo, North Dakota 58102-4952. Copies of the settlement statement shall not be provided to the other parties in the case.

Counsel are directed to confer with their clients in advance of the conference to explore the party's settlement position, and the parties are encouraged to exchange settlement proposals prior to the conference. These steps will enable the conference to progress more expeditiously.

Dated: _____.

Karen K. Klein
United States Magistrate Judge

Sample Form 33

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

	)	CASE NO.:
)	
Plaintiff,)	
)	
v.)	
	)	<u>ORDER</u>
)	
)	
Defendant.)	

The court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that this action is hereby dismissed, without prejudice. The court retains complete jurisdiction to vacate this Order to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

Dated:

Patricia A. Hemann
United States Magistrate Judge

Sample Form 34

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

	)	Case No.
)	
Plaintiff(s),)	
)	
vs.	)	<u>ORDER</u>
)	
)	
Defendant(s).)	

Upon representation of counsel that the above entitled cause of action has been settled between the parties,

IT IS ORDERED that the docket be marked “settled and dismissed with prejudice, each party to pay their own costs.”

Any subsequent order setting forth different terms & conditions relative to the settlement and dismissal of the within action shall supersede the within order.

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

Sample Form 35

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

ORDER

It is ORDERED that effective April 1, 1995 the following special requirements shall prevail for pretrials set before Judge Charles R. Butler, Jr.

1. Counsel shall confer and shall prepare a single proposed Pretrial Order in the form attached, which must be filed with the Clerk of Court by 5:00 p.m. on Wednesday, one week prior to pretrial.

2. Counsel shall make a genuine effort to stipulate as to the following:

A. Jurisdiction.

B. Propriety of parties, correctness of identity of legal entities, necessity for appointment of guardian ad litem, guardian, administrator, etc., and validity of appointment if already made, and correctness of designation of party as partnership, corporation or individual d/b/a trade name.

C. If the above be not agreed to, counsel shall certify the question to the Court for resolution at the conference.

3. Settlement. At the Conference counsel will discuss settlement potential with the Court. The Court expects that counsel will have conferred prior to the pretrial conference and will have engaged in meaningful settlement discussion. Counsel should be prepared to discuss the status of any settlement negotiations, including the last settlement proposal made by you and to you; and also whether any form of Alternate Dispute Resolution would be beneficial to resolving the case prior to trial.

4. The proposed Pretrial Order shall contain:

A. A comprehensive written statement of uncontested facts, in sufficient form that if the Court elects to do so, it can be read to the jury.

B. A written statement of contested facts that will explain to the Court the nature of the parties' disputes. It is not necessary for the parties to set forth every possible variation of every factual dispute involved in the case for fear that they may waive the presentation of some evidence at trial. What the Court is interested in is a concise statement of what fact or facts are in dispute that relate to the legal issues (see C below) that are to be tried in the case.

1. Whenever an alleged breach of contractual obligation is in issue, a statement of the act(s) or omission(s) relied upon by the party or parties asserting such breach.

2. Whenever negligence or wantonness is an issue, a statement of the act(s) or omission(s) relied upon by the party or parties asserting same.

3. Whenever the meaning or interpretation of a contract or other writing is in issue, each party shall separately state all facts and circumstances relied upon which serve to aid in the interpretation.

4. Whenever duress, fraud or mistake is an issue, the facts and circumstances relied upon by the parties as constituting the claimed duress or fraud or mistake (see Federal Rule of Civil Procedure 9(b)) shall be specified with particularity.

5. Whenever a conspiracy is charged the party contending same shall set forth the facts and circumstances relied upon as constituting the conspiracy, listing the names of all conspirators making up the conspiracy, together with a narrative of the testimony of such witnesses in regard to the facts of the conspiracy.

C. The triable issue or issues. State the triable issue or issues in the context of the facts or factual disputes in the case (e.g., whether, if the defendant's vehicle crossed the center line, such constituted negligence; whether, if the defendant failed to deliver the goods by a certain date, this constitutes a breach of the contract; whether the defendant's actions in terminating the plaintiff's employment were racially motivated).

D. Rule 16(d) requires the parties to "formulate a plan for trial, including a program for facilitating the admission of evidence," so that the Court may consider "an order establishing a reasonable limit on the time allowed for presenting evidence" (R.16(c)(15)). Therefore the parties should include in the pretrial order not only an estimate of the number of trial days required, but also a statement of the number of witnesses they reasonably expect to testify on behalf of each party. (See 4(H) below.)

E. A statement indicating whether the case is a jury or non-jury case. If a jury case, whether the jury trial is applicable to all aspects of the case or only to certain issues, which shall be specified. In view of Rule 48 allowing not fewer than six and not more than twelve jurors, the parties are to include a statement of their respective (or collective if they can agree) positions with regard to the number of jurors they request be selected to sit in this case. If the parties are unable to agree, the Court will cause a jury of eight to be selected.

(In jury cases, counsel shall file with the Court, not later than one week prior to the beginning of the civil jury term in which the case is set, copies of all proposed jury instructions and any special questions for voir dire examination of the jury venire, and shall furnish opposing counsel a copy of same. In addition, all motions in limine must be filed with the Court not later than one (1) week prior to the beginning of trial, except with respect to matters which could not have been anticipated by counsel by such time.)

F. A list and description of any legal issues or motions pending or contemplated.

G. If a party desires to offer deposition testimony into evidence at the trial, he shall designate only those relevant portions of same which he wishes read at trial and advise opposing counsel of same. Opposing counsel shall then designate those relevant portions of such deposition which he wishes to offer in evidence. All objections to any such testimony shall be made in writing and submitted with the Joint Pretrial Document so that the Court may consider whether ruling on such objections will either facilitate the conduct of the trial or result in the disposition of certain evidentiary matters that may assist continuing settlement negotiations. The parties should bring to the Court's attention at the pretrial conference whether any specific rulings by the Court will so facilitate the conduct of the trial or ongoing settlement negotiations.

H. Counsel shall list the names and addresses of all witnesses who shall or who they reasonably expect will be called to testify at the trial. It is the desire of the Court that such witness lists be kept to a reasonable minimum and additional witnesses may be added only for good cause shown and on written motion. With respect to expert witnesses, counsel shall furnish the Court and opposing counsel with a curriculum vitae of such experts. When an expert witness is called to the stand, counsel will read to such expert all his qualifications and inquire as to whether same are correct. If correct, the next question will be relative to the merits of the case. In addition, counsel shall furnish the Court and opposing counsel with a brief statement of the opinion or opinions which counsel expects to elicit from such expert. Any objections to an expert's qualifications shall be separately set forth in the Joint Pretrial Document.

I. Whenever damages are claimed and are ascertainable, the parties shall agree as to the amount of the ascertainable damages and shall so state them. If the parties are unable to agree, then the plaintiff shall state with specificity the amount of damages and the category or categories of damages (e.g., doctor and hospital bills \$____, lost wages \$____, pain and suffering \$____). If the damages are agreed upon, then no further testimony will be required to substantiate the amount thereof. The listing of such damages shall not constitute an agreement as to the recoverability of same unless so stated.

J. Each party shall list and furnish counsel for all parties, for copying and inspection, all exhibits which are to be offered in evidence. All exhibits to which there are objections shall be noted and by whom the objection was made, setting forth the nature of the objection and the authority supporting same. Failure to comply shall constitute a waiver of any such objection. All exhibits to which there is no objection shall be deemed admitted. Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the Pretrial Order, with the exception of exhibits to be used solely for the purpose of impeachment. Markers obtained from the Clerk shall be attached to all

exhibits, and such exhibits delivered to the Clerk immediately prior to the commencement of trial.

CAVEAT: Should a party or his counsel fail to appear at the Pretrial Conference and such failure is not otherwise satisfactorily explained to the Court, (a) the cause shall stand dismissed for failure to prosecute, if such failure occurs on the part of the plaintiff; (b) default judgment shall be entered if such failure occurs on the part of the defendant, or (c) the Court may take such other action as it deems appropriate.

The Court is conscious of the fact that where one or more out of town attorneys are involved in a case, travel to Mobile to attend a pretrial conference may be unduly burdensome and expensive to the client. The Court recognizes that there are some types of cases (generally those that are not complex, or involve relatively few issues necessary for resolution) where a meaningful pretrial may be conducted by telephone conference call between the attorneys and the Court. Therefore, the parties are encouraged to discuss among themselves whether they feel they can adequately conduct the conference by telephone, and then to confer with the Court prior to the date set for the pretrial conference to see if it can be agreed to so conduct the conference.

Failure to strictly comply with this Order in the form and under the terms contained herein, unless previously excused, may result in the offending party being found in civil contempt, and such civil contempt shall continue from day to day until compliance with the Order. Failure to comply within a period of five (5) days thereafter, and explanation satisfactory to the Court not having been given and accepted, may result in the cause being dismissed or default judgment being entered, or such other action taken by the Court which it deems under the circumstances to be appropriate.

5. The Pretrial Order shall constitute the final statement of the issues involved, govern the conduct of the trial, and shall constitute the basis for any relief afforded by the Court. However, the Pretrial Order may be amended at any time by the Court or on motion of a party for good cause to avoid manifest injustice.

6. FOR THE PURPOSES OF YOUR PREPARATION OF SUGGESTED PRETRIAL ORDERS, IT IS RECOMMENDED THAT YOU FOLLOW THE FOLLOWING FORMAT:

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

STYLE OF CASE

PRETRIAL ORDER

There is no contest as to the jurisdiction of this Court or as to the correctness of the named defendant(s) or the named plaintiff(s).

I.

AGREED FACTS

(See Paragraph 4A of Pretrial Order)

II.

DISPUTED FACTS

(See Paragraph 4B of Pretrial Order)

IIA.

In contract, fraud, negligence or conspiracy cases, set forth the requirements of Paragraphs 4B(1) (2) (3), and/or (4).

III.

TRIABLE ISSUES

1. (Not to be a restatement of the disputed facts but a catalogue of the legal issues such as negligence, contributory negligence, assumption of risk, etc.)
- 2.
- 3.

IV.

TRIAL TIME

It is estimated that this case will take _____ days to try, exclusive of jury selection time. The plaintiff expects to call ___ witness(es), and the defendant(s) _____.

V.

TYPE OF TRIAL

JURY

NON-JURY

VI.

MOTIONS

State any outstanding motions, etc., as per Paragraph 4F of the Pretrial Order.

VII.

DEPOSITIONS

List those portions of depositions to be used at trial. State any objections. (See Paragraph 4G of the Pretrial Order.)

VIII.

WITNESSES

1. The plaintiff will or may call the following witnesses:

A.

B.

C.

Of the named witnesses, the following will be called as experts:

A. (listing qualifications)

B. (listing qualifications)

Defendant contests the qualifications of

_____. (State reasons)

2. The defendant will or may call the following witnesses:

A.

B.

C.

Of the above named witnesses, the following will be called as experts:

A. (listing qualifications)

B. (listing qualifications)

The plaintiff contests the qualifications of

_____. (State reasons)

IX.

DAMAGES

(See Paragraph 4I of Pretrial Order)

X.

EXHIBITS

Attorneys are to list their exhibits numerically on the attached list with a brief description of each exhibit. Please mark your exhibits to correspond with the exhibit list.

XI.

Attach list of names of attorneys in any firm or copy of the letterhead.

TRIAL DATE

This case is set for trial on

_____.

CHIEF DISTRICT JUDGE

APPROVED:

Attorney for Plaintiff

Attorney for Defendant

Sample Form 36

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

)	
)	
Plaintiff(s),	)	CASE NO.
)	
vs.	)	CJRA TRACK
)	
)	
Defendant(s).	)	JUDGE

FINAL PRE-TRIAL ORDER

This matter is before the Court at a Final Pre-Trial Conference held pursuant to Rule 16, Federal Rules of Civil Procedure.

PLAINTIFF(S) COUNSEL:

(Insert name, address, and telephone number.)

DEFENDANT(S) COUNSEL:

(Insert name, address, and telephone number.)

I. NATURE OF THE CASE

The parties should prepare a brief statement of the nature of the case including the claims of the parties (personal injury, Federal Tort claim, breach of contract, etc.). The principal purpose of this statement is to assist the Court in explaining the case to prospective jurors upon selection of a jury.

II. JURISDICTION

- A. This is an action for:
(State the remedy sought, such as damages, injunctive or declaratory relief.)
- B. The jurisdiction of the Court is not disputed (or is disputed).
 - 1. If not disputed, state the statutory, constitutional or other basis of jurisdiction.
 - 2. If disputed, the basis on which jurisdiction is contested.

(Rev. 3/99)

III. UNCONTROVERTED FACTS

The following facts are not disputed or have been agreed to or stipulated to by the parties:

(This section should contain a comprehensive statement of facts which will become a part of the evidentiary record in the case and which, in jury trials, may be read to the jury.)

IV. AGREED TO ISSUES OF LAW

The parties agree that the following are the issues to be decided by the Court:

V. WITNESSES

- A. List of witnesses the plaintiff expects to call, including experts.
 1. Expert witnesses.
 2. Non-expert witnesses.
- B. List of witnesses defendant expects to call, including experts:
 1. Expert witnesses.
 2. Non-expert witnesses.
- C. If there are any third parties to the action, they should include an identical list of witnesses as that contained in parts A and B above.
- D. Rebuttal Witnesses. Each of the parties may call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

VI. EXHIBITS

The parties shall prepare and append to the Final Pre-trial Order a Pre-trial Exhibit Stipulation, which shall be on a separate schedule.

The Pre-trial Exhibit Stipulation shall contain the style of the case, be entitled "Pre-trial Exhibit Stipulation," shall contain each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including briefly the basis of the objection. All parties shall list their exhibits in numerical order. Where practicable, copies of all exhibits to which there is an objection will be submitted with the stipulation. The burden for timely submission of a complete list is on the plaintiff. Each party is to submit a pre-marked copy of each exhibit for the Court's use at trial.

The list of exhibits shall be substantially in the following form:

(Rev. 3/99)

PRE-TRIAL EXHIBIT STIPULATION

Plaintiff(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>If objection, state grounds</u>
---------------	--------------------	------------------	------------------------------------

Defendant(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>If objection, state grounds</u>
---------------	--------------------	------------------	------------------------------------

VII. DAMAGES

An itemized statement of all damages, including special damages.

VIII. BIFURCATED TRIAL

Indicate whether the parties desire a bifurcated trial, and if so, why.

IX. TRIAL BRIEFS

Trial briefs should be filed with the Court at the Final Pre-Trial Conference on any difficult factual or evidentiary issue and also set forth a party's theory of liability or defense.

X. LIMITATIONS, RESERVATIONS AND OTHER MATTERS

A. **Trial Date.** Trial of this cause is set for the week of _____.

B. **Length of Trial.** The probable length of trial is ____ days. The case will be listed on the trial calendar to be tried when reached.

Mark Appropriate Box: JURY.

NON-JURY. . . .

C. **Number of Jurors.** There shall be a minimum of six jurors.

D. **Jury Voir Dire.** The Court will conduct voir dire. Limited participation by counsel may be permitted. If voir dire questions are to be tendered, they should be submitted with the Final Pre-trial Order.

E. **Motions in Limine.** All motions in limine shall be filed no later than ten (10) days before the final pre-trial conference. Responses, if any, shall be filed within five (5) days thereafter.

(Rev. 3/99)

- F. **Jury Instructions.** All jury instructions of all parties shall be submitted with a completed jury instruction order prepared in compliance with this Court's instructions no later than the first day of trial. In both civil and criminal cases, each instruction submitted to the Court shall be accompanied by a copy and a copy shall be delivered to opposing counsel. The copies shall be numbered and indicate which party suggests them. The original shall be on 8 ½" x 11" plain white paper without any designation or number. Jury instructions should be produced in a word processing program and submitted on diskette or by electronic means as provided by the Court.

IT IS ORDERED that the Final Pre-trial Order may be modified at the trial of the action, or prior thereto, to prevent manifest injustice or for good cause shown. Such modification may be made either on application of counsel for the parties or on motion of the Court.

DATED: _____

DISTRICT JUDGE
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM AND SUBSTANCE:

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

NOTE: Where a third-party defendant is joined pursuant to Rule 14(a) of the Federal Rules of Civil Procedure, the Pre-trial Order may be suitably modified. The initial page may be modified to reflect the joinder. List attorney's name, address, and telephone number.

INSTRUCTIONS FOR PREPARING FINAL PRE-TRIAL ORDER

1. Although primary responsibility for the preparation of the Final Pre-Trial Order lies with the plaintiff's attorney, full cooperation and assistance on the part of the defendant's attorney is expected and required.
2. The parties are directed to stipulate to the authenticity of exhibits and shall indicate in the Final Pre-Trial Order those exhibits to which authenticity has not been stipulated and specific reasons why not.
3. The Final Pre-Trial Order should be filed in duplicate on the date designated as the date of the Final Pre-Trial Conference or as otherwise directed by the Court.
4. Failure to comply with the substance or intent of these instructions may result in appropriate sanctions pursuant to **Federal Rule 16 or 37 and 28 U.S.C. § 1927**, among others.
5. The Court greatly appreciates any and all efforts on the part of counsel to be brief and concise in preparing pretrial memorandums and findings of fact and conclusions of law.

Sample Form 37

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

,
Plaintiff,

No. C SBA

ORDER FOR PRETRIAL PREPARATION

v.

,
Defendant.

_____/

Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure ("FRCP"), IT IS HEREBY ORDERED AS FOLLOWS:

A. DISCOVERY CUT-OFF

All discovery, except for expert discovery, shall be completed and all depositions taken on or before _____. The parties are responsible for scheduling discovery so that motions to resolve discovery disputes can be heard before the above discovery cut-off.

B. EXPERT DESIGNATION AND DISCOVERY

Plaintiff shall designate any experts by _____; defendant by _____; rebuttal disclosure by _____. Any expert not so named may be disallowed as a witness. No expert will be permitted to testify to any opinion, or basis or support for an opinion, that has not been disclosed in response to an appropriate question or interrogatory from the opposing party. Expert discovery shall be completed by _____.

C. MOTION CUT-OFF

All dispositive motions shall be *heard* on or before _____, at 11:30 a.m. The parties must meet and confer *prior* to filing any motion. The movant shall certify to the Court in its moving papers that it has complied with this requirement. Should the parties fail to meet and confer, the Court may decline to entertain the motion.

THIS MOTION DATE IS NOT RESERVED. The parties are advised to contact Judge Armstrong's Deputy Clerk, Lisa Clark, to determine the next available hearing date, particularly in the case of dispositive motion. The parties are advised *not* to wait until 35 days prior to the law and motion cut-off date to file and serve their motion. As the Court's law and motion calendar tends to fill quickly, there is ***no*** guarantee that a hearing date within the law and motion cut-off date will be available.

Pursuant to Civil Local Rule 7-1, 7-2 and 7-3, all civil motions shall be noticed for a hearing not less than thirty-five (35) calendar days after service. The opposition and supporting papers shall be filed not less than twenty-one (21) days before the noticed hearing date. The reply shall be filed not less than fourteen (14) days before the hearing date. Documents not filed in compliance with these time specifications will not be considered by the Court.

The failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute a consent to the granting of the motion.

The parties are not required to file a statement of undisputed facts in connection with a motion for summary judgment. However, if filed only one joint statement of undisputed facts signed by all parties shall be filed. All separate statements will be stricken. If the parties are unable to agree that a fact is undisputed, they should assume that fact is in dispute.

Note that pursuant to Civil L.R. 7-1(b), the Court may, in its discretion, adjudicate motions *without* oral argument.

D. MANDATORY SETTLEMENT CONFERENCES

All parties are ordered to participate in a mandatory settlement conference during the following time period:

E. PRETRIAL CONFERENCE

All Counsel who will try the case shall appear for a pretrial conference in Courtroom 3 on _____ at 11:30 a.m. All counsel shall be fully prepared to discuss all aspects of the trial. Failure to file the requisite pretrial documents in advance of the pretrial conference may result in vacation of the pretrial conference and/or the imposition of sanctions.

F. PRETRIAL PREPARATION DUE

1. Not less than *thirty (30) calendar days* prior to the pretrial conference, Counsel shall meet and confer in good faith in advance of complying with the following pretrial requirements in order to clarify and narrow the issues for trial, arrive at stipulations of facts, simplify and shorten the presentation of proof at trial, and explore possible settlement. In addition, Counsel shall meet and confer regarding anticipated motions in limine, objections to evidence, jury instructions, and any other matter which may require resolution by the Court.

2. The following matters shall be accomplished no later than *twenty-one (21) calendar days* prior to the pretrial conference:

a. Joint Pretrial Statement

Counsel are required to file a pretrial conference statement which complies with Civil L.R. 16-15(b).

b. Trial Briefs

Each party shall serve and file a trial briefs which shall briefly state their party's contentions, the relevant facts expected to be proven at trial, and the law on the issues material to the decision.

c. Findings of Fact

In non-jury cases, each party shall serve and lodge with the Court proposed findings of fact on all material issues and conclusions of law. Findings shall be brief, clear, written in plain English and free of pejorative language, conclusions and argument.

d. Witnesses

Each party shall serve and file with the Court a list of all persons who may be called as witnesses. The list shall include a summary of the substance of each witness' proposed testimony. (Civil L.R. 16-15(4)(A))

e. Designation of Discovery Excerpts

Each party expecting to use discovery excerpts as part of its case in chief shall serve and lodge with the Court a statement identifying (1) by witness and page and line, all deposition testimony and (2) by lodged excerpt, all interrogatory answers and request for admissions to be used as part of its direct case. Each interrogatory answer intended to be offered as an exhibit shall be copied separately and marked as an exhibit. The original of any deposition to be used at trial must be produced at the time of trial. (Civil L.R. 16-15(4)(E))

f. Jury Instructions

The parties shall file a joint set of jury instructions as to those instructions on which the parties have reached agreement. As to any disputed instructions, each party shall separately submit its "proposed" instruction(s) supported by a memorandum setting forth the authority for its use. Responses or objections to any "proposed" jury instruction shall be filed no later than the date of the pretrial conference. All instructions shall be written in plain English which is comprehensible to jurors, concise and free of argument, and shall be organized in a logical fashion so as to aid jury comprehension, and are also to be provided on a 3.5" computer disk. The Court's practice is to utilize, whenever possible, instructions found in the Ninth Circuit Manual of Model Jury Instructions.

g. Jury Voir Dire and Verdict Forms

Each party shall submit proposed questions for jury voir dire and a proposed form of verdict.

h. Exhibits

Each party shall provide every other party one set of all exhibits, charts, schedules, summaries and diagrams and other similar documentary materials to be used at the trial together with a complete list of all such exhibits. The Court requires one original version of exhibits (as described above) for the Clerk and two copies (one for the Bench and one for the witness stand). All such versions of the exhibits, including the originals, should be indexed into a binder for easy and quick reference by all parties. The first page of each binder should have a copy of the exhibit list (see attached) appropriately completed with each exhibit description and its designated number. Plaintiffs shall refer to their exhibits numerically and Defendants shall label theirs alphabetically. Exhibit labels are also attached for your convenience. Exhibits should be brought to Court on the first day of trial.

3. The following matters shall be accomplished no later than *fourteen* (14) *calendar days* prior to the pretrial conference: **Motions in Limine and Objections to Evidence due:**

_____. Each party anticipating making motion(s) in limine and/or objection(s) to any testimony or exhibits expected to be offered shall file and serve a statement briefly identifying each item objected to and the grounds for the objection.

4. Responses to objections to evidence or motions in limine shall be filed and served no less than *seven (7) calendar days* prior to the pretrial conference due:_____.

G. TRIAL DATE

Trial before the Court or Jury will begin on _____, at 8:30 a.m., for an estimated _____ trial days, or as soon thereafter as the Court may designate. The parties are advised that they must be prepared to go to trial on a trailing basis. The trial will take place in Courtroom 3 of the United States Courthouse, 1301 Clay Street, 3rd Floor, Oakland, California 94612. The Court's trial hours are from 8:30 a.m. to 2:00 p.m., with two fifteen-minute breaks, on Monday, Wednesday, Thursday and Friday.

H. TRANSCRIPTS

If transcripts will be requested during or immediately after the trial, arrangements must be made with the Court Reporter Coordinator (Telephone No. 510-637-3534) at least one week before trial commences.

I. STATUS AND DISCOVERY CONFERENCES

Any party desiring to confer with the Court may, upon notice to all other parties, arrange a conference through the courtroom deputy (Telephone No. 510-637-3541). Conferences may be conducted telephonically, upon request (preferably in writing).

J. SANCTIONS

Failure to comply with this order may result in the imposition of sanctions pursuant to FRCP 16(f).

IT IS SO ORDERED.

Dated:

SAUNDRA BROWN ARMSTRONG
United States District Judge

Plaintiff's Exhibit Markers

π PLAINTIFF π

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

Defendant's Exhibit Markers

Δ DEFENDANT Δ

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

π PLAINTIFF π

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

Δ DEFENDANT Δ

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

π PLAINTIFF π

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

Δ DEFENDANT Δ

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

π PLAINTIFF π

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

Δ DEFENDANT Δ

United States District Court
Northern District of California

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

By: _____, Deputy Clerk
Richard W. Wieking, Clerk

Counsel shall meet and confer pursuant to Civ. L.R. 30-3(b) and assign blocks of numbers to the exhibits (i.e., Plaintiff 1 - 199; Defendant 200 - 400.)

Exhibit markers should be placed on the lower right-hand corner of the exhibit. Exhibits should be contained within a binder with each exhibit separated by a tabbed page denoting the exhibit number.

Sample Form 38

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Plaintiff,

vs.

No. CIV

Defendant.

PRETRIAL ORDER

This matter is before the Court pursuant to Fed.R.Civ.P. 16. The parties conferred and submit the following Pretrial Order.

I. APPEARANCES

Attorneys who will try the action:

For Plaintiff(s)

For Defendant(s)

For other parties

II. JURISDICTION AND RELIEF SOUGHT

A. Subject Matter Jurisdiction.

1. Was this action removed or transferred from another forum? ___ Yes ___ No. If

yes, was the action removed or transferred?

___ Removed ___ Transferred _____ Original forum

2. Is subject matter jurisdiction of this Court contested?

___ Uncontested ___ Contested _____ Party contesting

3. Asserted basis for jurisdiction.

___ Federal Question ___ Diversity ___ Other

Statutory Provision(s) Invoked: _____

B. Personal Jurisdiction and Venue.

1. Is personal jurisdiction contested?

___ Uncontested ___ Contested

Identify the party contesting personal jurisdiction and basis for objection:

2. Is venue contested?

___ Uncontested ___ Contested _____ Party contesting

C. Are the proper parties before the Court?

___ Uncontested ___ Contested

If contested, identify each missing party or improper party and the basis for the contention:

D. Identify the affirmative relief sought in this action.

1. Plaintiff seeks:
2. Defendant seeks:
3. Other party seeks:

III. BRIEF DESCRIPTION OF NATURE OF CLAIMS/DEFENSES

A. Plaintiff's claims:

B. Defendant's defenses: *(A defendant claiming entitlement to qualified immunity must set forth with specificity the basis of the defense.)*

C. Claims or defenses of other party(s):

(Where counterclaims or cross-claims exist, also give brief description.)

IV. FACTUAL CONTENTIONS UNDERLYING CLAIMS/DEFENSES

A. Stipulated Factual Contentions.

The parties agree to the following facts listed separately below:

B. Contested Material Facts.

1. Plaintiff's Contentions:
2. Defendant's Contentions:
3. Contentions of Other Party(s):

V. APPLICABLE LAW

A. Do the parties agree which law controls the action?

_____ Yes _____ No

If yes, identify the applicable law. _____

If no, identify the dispute and set forth each party's position regarding the applicable law.

1. Plaintiff
2. Defendant
3. Other party

VI. CONTESTED ISSUES OF LAW

Identify the specific issues of law which are contested.

1. Plaintiff
2. Defendant
3. Other Party

VII. MOTIONS

A. Pending Motions (indicate the date filed):

1. Plaintiff
2. Defendant
3. Other party

B. Motions which may be filed:

1. Plaintiff
2. Defendant
3. Other party

The briefing package must be complete and filed with the Court by _____.

VIII. DISCOVERY

A. Has discovery been completed? _____ Yes _____ No

If no, discovery terminates on _____.

B. Are there any discovery matters of which the Court should be aware?

IX. ANTICIPATED WITNESSES

Each party is under a continuing duty to supplement this list and the description of anticipated testimony. This does not, however, apply to a rebuttal witness. Indicate if the witness will testify in person or by deposition and include a brief description of the anticipated testimony. If the testimony is by deposition, identify the deposition by page number and line number. A witness who has not been identified and whose testimony has not been disclosed may not testify at trial unless good cause is shown.

A. Plaintiff's Witnesses:

1. Plaintiff will call or have available at trial the following witnesses:
2. Plaintiff may call the following witnesses:

B. Defendant's Witnesses:

1. Defendant will call or have available at trial the following witnesses:
2. Defendant may call the following witnesses:

X. TRIAL PREPARATION

A. Exhibits.

The parties must confer over all trial exhibits. This does not apply to rebuttal exhibits that cannot be anticipated before trial. The parties must file an original plus three (3) copies of the parties' "consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible" and a "consolidated exhibit list identifying all exhibits the parties have stipulated to be authentic, but to

which there are other objections" no later than _____ calendar days before trial.

For those exhibits on which a stipulation could not be reached, the offering party must file a separate "contested exhibit list" no later than _____ calendar days before trial. An original plus three (3) copies of each party's contested exhibit list must be filed on the date identified in the preceding paragraph. In addition, two courtesy copies of the contested and uncontested exhibit list must be delivered to the judge's chambers.

All exhibits must be marked before trial. Exhibits must be marked numerically and identify the party offering the exhibit. The identification number or letter will remain the same whether the exhibit is admitted or not.

B. Witness Lists.

An original and three (3) copies of a party's witness list must be filed with the Clerk and served on all parties by _____. Indicate whether the witness is testifying by deposition or in person. Objections to use of deposition testimony are due within fourteen (14) calendar days of service of the witness list. The objecting party must highlight those portions of the requested deposition testimony to which the party objects. Plaintiff must use a yellow highlighter and defendant must use a blue highlighter. The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing at least _____ calendar days before trial.

C. Voir Dire.

1. If allowed, do the parties wish to participate in *voir dire*?

Plaintiff _____ Yes _____ No

Defendant _____ Yes _____ No

Other Party _____ Yes _____ No

2. Each party wishing to participate in *voir dire* must serve on all parties and file with the Clerk, a pleading entitled "Proposed Voir Dire Questions." The pleading must identify the specific areas about which the party wishes to inquire and must set forth proposed *voir dire* questions. This request must be filed at least _____ calendar days prior to jury selection.

D. Jury Instructions and Verdict.

1. In General. The parties must confer about proposed jury instructions. The Court will prepare and provide the parties with a Court-proposed set of general "stock" instructions that will be given. The stock instructions are available from the Clerk. The instructions that the parties must submit to the Court will be those which set forth the elements and definitions of the claims or charges, and the elements and any definitions of any defenses.

2. Sources for Instructions. If pattern instructions are followed by the judge, the judge will indicate at the pretrial conference his or her preference for the source of instruction.

3. Submission of Proposed Instructions. The parties must submit one mutually approved set of jury instructions no later than _____ calendar days before trial. For those instructions the parties were unable to agree upon, each party must submit its own proposed instructions at the same time as submission of the mutually agreed instructions.

4. Form of Instructions.

a. Submit sets of double-spaced instructions as follows:

___ set(s) of originals without citations and headed "Instruction No. ___"; and

___ set(s) with citations and numbered accordingly (Fig 1), one of which will be filed.

- b.** If available, also submit a hard 3.5 diskette of all instructions in a format compatible with Word Perfect 5.1.
- c.** Submit no more than one instruction to a page.
- d.** All deviations from pattern instructions must be identified as "modified" in the citation and the modification must be highlighted in the body of the instruction.
- e.** Submit a cover sheet on all sets of instructions.

5. Deadlines for Submitting Instructions.

- a.** Instructions and diskette shall be filed _____ calendar days before trial.
- b.** Supplemental unanticipated jury instructions may be submitted at trial.

E. Statement of Case.

The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection. The statement must be submitted to the Court _____ days before jury selection.

F. Submissions for Bench Trials.

- 1.** The parties must submit one mutually approved set of proposed findings of fact and conclusions of law no later than _____ calendar days before trial. For those findings of fact and conclusions of law the parties were unable to agree upon, each party must submit its own proposed findings of fact and conclusions of law at the same time as submission of the mutually approved set.
- 2.** If available, submit a hard 3.5 diskette on Word Perfect 5.1 format of the findings of fact and conclusions of law.

XI. OTHER MATTERS

A. Settlement Possibilities.

1. The possibility of settlement in this case is considered:

_____ Poor _____ Fair _____ Good _____ Excellent _____ Unknown

2. Do the parties have a settlement conference set with the assigned Magistrate Judge?

_____ Yes _____ No If yes, when? _____

If a settlement conference has already been held, indicate approximate date.

Would a follow-up settlement conference be beneficial? _____ Yes _____ No

3. Does either party wish to explore any alternatives for dispute resolution such as mediation or a summary jury trial? If yes, please identify. _____ If no, explain why not. _____

B. Length of Trial and Trial Setting.

1. This action is a _____ Bench trial _____ Jury Trial _____ Both

2. The case is set for trial on _____. If there is no setting, the parties estimate they will be ready for trial by _____.

3. The estimated length of trial is _____ day(s).

XII. EXCEPTIONS

XIII. MODIFICATIONS-INTERPRETATION

The Pretrial Order when entered will control the course of trial and may only be amended *sua sponte* by the Court or by consent of the parties and Court approval. The pleadings will be deemed

merged herein.

The foregoing proposed Pretrial Order (prior to execution by the Court) is hereby approved this _____ day of _____, 20 _____.

Attorney for Plaintiff
Address: _____

Attorney for Defendant
Address: _____

Attorney for other parties (if any)
Address: _____

Dated: _____

UNITED STATES DISTRICT JUDGE

Sample Form 39

UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF IOWA

ORDER SETTING JURY TRIAL, FINAL PRETRIAL CONFERENCE, AND
REQUIREMENTS FOR THE PROPOSED FINAL PRETRIAL ORDER

IT IS ORDERED:¹

I. TRIAL DATE: This case has been placed on the calendar of United States Magistrate Judge Paul A. Zoss for a jury trial scheduled to commence [in the first floor district courtroom of the Federal Courthouse in Sioux City,][in the third floor courtroom in the Federal Building and Post Office in Fort Dodge,] Iowa, beginning on [date].

II. CONTINUANCE OF TRIAL OR FINAL PRETRIAL CONFERENCE DATES: Unless requested within **fourteen days** after the date of this order, no continuance of the trial date will be granted except upon written application and for good cause.

III. FINAL PRETRIAL CONFERENCE: A final pretrial conference (“FPTC”) is scheduled before Judge Zoss on [date], at [time]. [approximately three weeks before trial.] The FPTC will be held in person at the U.S. Courthouse in Sioux City, Iowa, unless the parties agree in advance to a telephonic FPTC and so notify Judge Zoss at least **two court days** before the FPTC. The court will initiate the conference call. The parties must advise the court of the contact numbers for each party and counsel who will participate in a telephonic FPTC at least **one court day** before the FPTC.

IV. FINAL PRETRIAL ORDER: Before the FPTC, pro se parties and counsel for represented parties all must agree upon, prepare, and sign a proposed Final Pretrial Order prepared for Judge Zoss’s signature in the format attached to this order. All parties are jointly responsible for the preparation of the proposed Final Pretrial Order. A copy of the proposed order must be received by Judge Zoss (via mail, facsimile, e-mail,² or hand-delivery, but not filed) at least two court days before the FPTC.

V. WITNESS AND EXHIBIT LISTS: Witness and exhibit lists must be exchanged by the parties (but not filed) at least **twenty-one days** before the FPTC. Exhibit lists must be attached to, and witness lists must be included as part of, the proposed Final Pretrial Order in accordance with the instructions in

¹ This Order was revised on April 17, 2000, and the parties are alerted to the fact that their duties and responsibilities with respect to the matters contained herein may have changed from prior trial setting orders.

² paul_zoss@iand.uscourts.gov

the attached form order. The parties are not required to list rebuttal witnesses or impeachment exhibits.

VI. EXHIBITS: Copies of all exhibits as to which there may be objections must be brought to the FPTC. If an exhibit is not brought to the FPTC and an objection to the exhibit is asserted at the FPTC, the exhibit may be excluded from evidence for noncompliance with this order. Exhibits must be prepared for trial in accordance with the following instructions:

A. Marking of Exhibits. All exhibits must be marked by the parties before trial. The plaintiff(s) should use numbers and the defendant(s) should use letters, unless prior approval is obtained from the trial judge for a different exhibit identification scheme. (For example, the parties may want to obtain approval to utilize a sequential numbering system related to the numbering of exhibits as they were numbered in discovery.) Exhibits also must be marked with the case number. **All exhibits longer than one page must contain page numbers at the bottom of each page.**

B. Elimination of Duplicates. The parties should compare the exhibits and eliminate duplicates. If more than one party wants to offer the same exhibit, then it should be marked with a number and listed as a joint exhibit on the exhibit list of the plaintiff(s).

C. Listing of Exhibits and Objections. Exhibits must be listed separately, unless leave of court is granted for a group exhibit. If a party objects to parts of an exhibit but not to other parts, the offering party must prepare separate versions of the exhibit, one that includes the parts to which objections are being asserted and the other that redacts those parts.

D. Copies for the Court. Before trial, each party must supply the trial judge with a copy of all exhibits to be used at trial. The court's copies of exhibits should be placed in a ringed binder with a copy of the exhibit list at the front and with each exhibit tabbed. The parties must supply the Clerk of Court with a second set of exhibits, also tabbed and in a ringed binder, to be used as the original trial exhibits in the official records of the court.

VII. PRETRIAL SUBMISSIONS: A telephonic *preliminary* pretrial conference will be held on [date], at [time]. [*approximately three months before trial.*] Judge Zoss will initiate the conference call. During this conference, Judge Zoss will discuss the nature of the case and the status of trial preparations with counsel and any unrepresented parties. If the case is not complex and presents only routine issues, Judge Zoss may order informal, simplified pretrial submissions. Otherwise, the following procedures shall apply:

A. Trial Briefs. If the trial of the case will involve significant issues not adequately addressed by the parties in connection with dispositive motions or other pretrial motions, the parties must prepare trial briefs addressing such issues. Before the FPTC, the parties must serve copies of their trial briefs on all other parties, and file an original and two copies with the Clerk of Court.

B. Other Pretrial Submissions. At or before the FPTC, the parties must deliver to Judge Zoss's chambers, but not file, the following: (1) a joint proposed jury statement, (2) joint proposed jury instructions, (3) requested voir dire questions, (4) proposed verdict forms, (5) any requested special interrogatories, and (6) a copy of all of these items on a 3.5" computer disk in any version of Word or WordPerfect.

The joint proposed jury statement, the joint requested jury instructions, and any requested voir dire questions must be prepared and submitted in accordance with the following instructions:

(1) **Jury Statement:** The joint proposed jury statement will be read to the jury panel before voir dire. The statement must set forth briefly and simply, in a noncontentious manner, the background of the case and the claims and defenses being asserted. The parties should make every effort to agree upon the language for the statement. To the extent the parties cannot agree, they should use the following format: "Plaintiff contends . . . ; Defendant contends"

(2) **Jury Instructions:** Jury instructions must be prepared and submitted in accordance with the following directions:

(a) At least **two weeks** before the FPTC, the parties must serve on each other (but not file) proposed jury instructions. Counsel for the defendant(s) must provide a computer disk containing proposed instructions to counsel for the plaintiff(s). Proposed jury instructions should only include proposed preliminary jury instructions to the extent the standard preliminary jury instructions used by the court would be inadequate or inappropriate in this case.

(b) At least **one week** before the FPTC, counsel for the parties must consult, either personally or by telephone,

and attempt to work out any differences in their proposed jury instructions.

(c) Counsel for the plaintiff(s) must organize the proposed jury instructions into one document, prefaced by a table of contents. Instructions proposed by opposing parties on the same subject matter must be grouped together. For example, if Instruction No. 10 is a proposed marshaling instruction and each party proposes a different marshaling instruction, then Instruction No. 10A should be the marshaling instruction proffered by the plaintiff(s) and Instruction No. 10B should be the marshaling instruction proffered by the defendant(s).

(d) Each instruction should treat a single subject, and should be numbered individually, on a separate sheet of paper, and double-spaced. At the bottom of each instruction, the party proposing the instruction must cite the decisions, statutes, regulations, or other authorities supporting the proposed instruction.

(e) The following information must be stated at the bottom of each proposed jury instruction: (i) the party offering the instruction; (ii) whether the opposing party objects to the proposed instruction; and if there is an objection, whether the objection is to (A) the language of the instruction, (B) the giving of the instruction, or (C) both. If a party is objecting to the language of a proposed instruction, the objectionable language must be identified. Objections must be supported by citations to applicable authorities.

(f) Pattern instructions need not be reproduced, but may be requested by reference to the publication, page number, and instruction number. Any modification to a pattern instruction should be disclosed as follows: additions should be underscored and deletions should be set forth by striking out the language sought to be deleted or setting out the deletions in parentheses.

(g) Instructions not requested as set forth above shall be deemed waived unless the subject of the instruction is one arising in the course of trial which reasonably could

not have been anticipated before trial from the pleadings, discovery, or nature of the case.

(h) The court will use preliminary jury instructions, which will be read to the jury before opening statements. A copy of Judge Zoss's standard preliminary jury instructions may be requested from the judge's office or found on the court's web site at www.iand.uscourts.gov (under "Downloads"). About **five court days** before trial, the parties will receive proposed preliminary jury instructions from the court. Any objections to the proposed preliminary jury instructions must be served, filed, and delivered to Judge Zoss's chambers no later than **two court days** before trial. Failure to file timely objections to the preliminary jury instructions will constitute a waiver of the right to make objections.

(3) **Requested Voir Dire Questions:** The parties may request that the trial judge ask voir dire questions specific to this case. In addition, the parties will be permitted to conduct voir dire in the manner set out in the attached voir dire instructions.

VIII. RESTRICTIONS ON WITNESSES:

A. Exclusion of Witnesses. A witness who may testify at the trial or at an evidentiary hearing shall not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial or hearing until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or unless the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial or hearing until after the witness has completed his or her testimony at the trial or evidentiary hearing, unless the court orders otherwise.

B. Restrictions on Communications with Witnesses. Unless the court orders otherwise, after the commencement of the trial or an evidentiary hearing and until the conclusion of the trial or hearing, a witness who may testify at the trial or hearing is prohibited from communicating with anyone about what has occurred in the courtroom during the trial or hearing. If the witness does testify at the trial or hearing, after the witness is tendered for cross-examination and until the

conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

C. Duties of Counsel. Any attorney who may call a witness to testify at the trial or evidentiary hearing must, before the trial or hearing, advise the witness of these restrictions.

D. Parties. These restrictions do not apply to the parties.

IX. TESTIMONY BY DEPOSITION: With respect to any witness who will appear by deposition, at least **three weeks** before trial, the party intending to offer the witness must serve on the opposing parties a written designation, by page and line number, of those portions of the deposition the offering party intends to have read into evidence. At least **two weeks** before trial, an opposing party must serve on the offering party any objections to the designated testimony and a counter-designation, by page and line number, of any additional portions of the deposition which the opposing party intends to have read into evidence. At least **one week** before trial, the party offering the witness must serve upon the opposing parties any objections to the designated testimony and a written designation, by page and line number, of any additional portions of the deposition the offering party intends to have read into evidence. At least **two court days** before trial, the parties must consult, either personally or by telephone, and attempt to work out any objections to the proposed deposition testimony.

The party intending to offer the deposition testimony must notify the trial judge at least **twenty-four hours** before the deposition is to be read to the jury so that the judge may review any objections, listen to any further arguments, and make any necessary rulings outside the presence of the jury. The court will rule on problems and objections before the deposition is read into evidence so there can be a "clean read" of deposition testimony at trial. The court also will expect the parties to edit any video deposition accordingly.

All references in the deposition to exhibit numbers or letters must be changed to correspond to the exhibit designation for trial. The parties are not to file depositions with the Clerk of Court.

X. MOTIONS IN LIMINE: The parties should notify the court of any novel, unusual, or complex legal, factual, or procedural issues reasonably anticipated to arise at trial by motion in limine or by motion under Federal Rule of Evidence 104(a) served and filed at least **two weeks** before trial. Resistances to

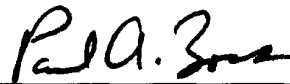
such motions must be served and filed within **one week** after service of the motion, but in any event, at least **two court days** before trial.

XI. SETTLEMENT CONFERENCE: Any party desiring a settlement conference should contact Judge Zoss in Sioux City, Iowa, 712/233-3921, at the earliest opportunity. Such contact may be *ex parte* for the sole purpose of requesting a settlement conference. A settlement conference will be scheduled with a judge who will not be involved in trying the case.

XII. SETTLEMENT DEADLINE: The court hereby imposes a settlement deadline of **5:00 p.m., three court days** before the first scheduled day of trial. If the case is settled after that date, the court may enter an order to show cause why costs should not be imposed on the party or parties causing the delay in settlement.

IT IS SO ORDERED.

DATED _____.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

[INSERT PARTIES AND CASE NUMBER]

**FINAL PRETRIAL
ORDER
[PROPOSED]**

[NOTE: Instructions for preparing this form appear in brackets and should not be reproduced in the proposed Final Pretrial order. All material not appearing in brackets should be reproduced in the proposed Final Pretrial Order.]

This final pretrial order was entered after a final pretrial conference held on [date]. The court expects the parties to comply fully with this order. **[Full compliance with the order will assist the parties in preparation for trial, shorten the length of trial, and improve the quality of the trial. Full compliance with this order also will help “secure the just, speedy, and inexpensive determination” of the case. Fed. R. Civ. P. 1.]**

The following counsel, who will try the case, appeared at the conference:

1. For plaintiff(s):
Name(s)
Street Number, Street Name and/or Box Number
City, State and Zip Code
Phone Number [include area code]
Facsimile Number [include area code]
E-mail address [if available]

2. For defendant(s):
Name(s)
Street Number, Street Name and/or Box Number
City, State and Zip Code
Phone Number [include area code]
Facsimile Number [include area code]
E-mail address [if available]

I. STIPULATION OF FACTS: The parties agree that the following facts are true and undisputed:[The parties are to recite all material facts as to which there is no dispute. Special consideration should be given to such things, for example, as life and work expectancy, medical and hospital bills, funeral expenses, cause of death, lost wages, back pay, the economic value of fringe benefits, and property damage. The parties should stipulate to an undisputed fact even if the legal relevance of the stipulated fact is questioned by one or more party, but in such instances the stipulated fact should be followed by an identification of the objecting party and the objection (e.g. “Plaintiff objects to relevance.”)]

- A.
- B.

II. EXHIBIT LIST: The parties' exhibit lists are attached to this Order.[The parties are to attach to this order exhibit lists that list all exhibits (except for impeachment exhibits) each party intends to offer into evidence at trial. The exhibit lists are to be prepared in the following format.

Plaintiff(s) Exhibits	Objections (Cite Fed. R. Evid.)	Category A, B, C	Offered	Admit/Not Admitted (A) - (NA)
1. <i>[describe exhibit]</i>				*
2. <i>[describe exhibit]</i>				

Defendant(s) Exhibits	Objections (Cite Fed. R. Evid.)	Category A, B, C	Offered	Admit/Not Admitted (A) - (NA)
A. <i>[describe exhibit]</i>				*
B. <i>[describe exhibit]</i>				

* This column is for use by the trial judge at trial. Nothing should be entered in this column by the parties.

The following categories are to be used for objections to exhibits:

- A. **Category A.** These exhibits already will be in evidence at the commencement of the trial, and will be available for use by any party at any stage of the proceedings without further offer, proof, or objection.
- B. **Category B.** These exhibits are objected to on grounds **other than** foundation, identification, or authenticity. This category should be used for objections such as hearsay or relevance.
- C. **Category C.** These exhibits are objected to on grounds of foundation, identification, or authenticity. This category **should not** be used for other grounds, such as hearsay or relevance.

All exhibits are to be made available to opposing counsel for inspection at least **twenty-one days** before the date of the FPTC. Failure to provide an exhibit for inspection constitutes a valid ground for objection to the exhibit, and should be noted on the exhibit list.

Copies of all exhibits as to which there may be objections must be brought to the FPTC. If an exhibit is not brought to the FPTC and an objection is asserted to the exhibit at the FPTC, the exhibit may be excluded from evidence by the court. Any exhibit not listed on the attached exhibit list is subject to exclusion at trial. The court may deem any objection not stated on the attached exhibit list as waived.]

III. WITNESS LIST: The parties intend to call the following witnesses at trial:[Each party must prepare a witness list that includes all witnesses (except for rebuttal witnesses) whom the party intends to call to testify at trial. The parties are to exchange their separate witness lists at least **twenty-one days** before the date of the FPTC. The witness lists are to be included in the following format. A witness testifying by deposition must be listed in the witness list with a designation that the testimony will be by deposition.]

- A. **Plaintiff(s) witnesses** [list name, **substance of testimony**, whether any party objects to the witness, and the nature of and grounds for any objection]:
 - 1.
 - 2.
- B. **Defendant(s) witnesses** [list name, **substance of testimony**, whether any party objects to the witness, and the nature of and grounds for any objection]:
 - 1.
 - 2.

All parties are free to call any witness listed by an opposing party. A party listing a witness guarantees his or her presence at trial unless it is indicated otherwise on the witness list. ***Any objection to the offer of testimony from a witness on the witness list is waived if it is not stated on this list.***

IV. RESTRICTIONS ON WITNESSES: A witness who may testify at the trial shall not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial until after the witness has completed his or her testimony, unless the court orders otherwise.

Unless the court orders otherwise, after the commencement of trial and until its conclusion, a witness who may testify at the trial is prohibited from communicating with anyone about what has occurred in the courtroom during the trial. If the witness does testify at the trial, after the witness is tendered for cross-examination and until the conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

These prohibitions do not apply to the parties. Any attorney who may call a witness to testify at trial must, before the trial, advise the witness of these restrictions.

V. EVIDENTIARY AND OTHER LEGAL ISSUES:

A. Plaintiff(s) Issues:

- 1.
- 2.

B. Defendant(s) Issues:

- 1.
- 2.

[The parties must list all unusual evidentiary and legal issues which are likely to arise at trial, including such things as disputes concerning the admissibility of evidence or testimony under the Federal Rules of Evidence; the elements of a cause of action; whether recovery is barred as a matter of law by a particular defense; disputes concerning the measure, elements, or recovery of damages; and whether the Statute of Frauds or the Parol Evidence Rule will be raised. The

purpose of this listing of issues is to advise the court in advance of issues and problems that might arise at trial.]

IT IS SO ORDERED.

DATED this ____ day of _____, 20____.

**PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Sample Form 40

NOTE: Form revised as of 01/02/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
_____ DIVISION

Plaintiff,)
) Case No.:
vs.)
)
Defendants.)

ORDER FOR FINAL PRETRIAL CONFERENCE

IT IS ORDERED:

A final pretrial conference will be held before this court at the Quentin N. Burdick U.S. Courthouse, 655 1st Avenue North, Suite 440, Fargo, North Dakota on _____.

The conference shall be attended by lead counsel for each party, with authorization to bind the party on all matters addressed at the conference.

Prior to the date of the final pretrial conference, counsel shall confer in person or by telephone (not just in writing) for the purpose of preparing a joint Final Pretrial Statement and examining and marking exhibits as indicated in this Order. **The proposed Final Pretrial Statement must be received by the court 24 hours in advance of the Final Pretrial conference either by U.S. Mail or Facsimile transmission.**

Final Pretrial Statement and Stipulations: Counsel will jointly prepare for submission to the court at the pretrial conference or 14 days prior to trial, whichever is earlier, a Final Pretrial Statement in substantially the same form as the attached sample. Rule 26(a)(3) disclosures shall be incorporated in the Final Pretrial Statement.

Counsel are not required to stipulate or waive anything. They are required to confer in advance of the conference and prepare and sign a joint final pretrial statement covering the matters set out in this order for pretrial. The joint final pretrial statement, including exhibit list, preservation of objections to exhibits, and designation of deposition testimony must be submitted to the court at the final pretrial conference, or 14 days before trial, whichever is earlier. If counsel are able to stipulate uncontested facts and stipulate admissibility of exhibits or at least waiver of foundation for exhibits, it will expedite the trial of the case.

The Final Pretrial Statement must be complete and signed by all counsel, signifying acceptance, and upon approval of the court, with such additions as are necessary, will be signed by the court as an order reflecting the final pretrial conference.

Exhibits: Counsel are directed to complete the physical marking and numbering of all papers and objects expected to be introduced as exhibits. The exhibits are to be marked with an exhibit sticker. All exhibits in the case are to be numbered consecutively using a “P” for plaintiff and “D” for defendant (**for example P1-P20, D31-D40, leaving a sufficient gap for unanticipated or rebuttal exhibits**), and listed in the form of the attached sample (including horizontal and vertical lines as indicated). Counsel will retain the exhibits in their possession but shall submit the list as an attachment to the Final Pretrial Statement. Counsel must disclose and list all exhibits relating to an issue on which their client has the burden of proof or the burden of going forward with the evidence. Each listed exhibit shall be designated as “will offer” or “may offer.”

Documents to be used solely for rebuttal purposes need not be numbered or listed until identified at trial.

Failure to list an exhibit required by this order to be listed or to disclose such exhibit to adverse counsel will result, except upon a showing of good cause, in the nonadmissibility of the exhibit into evidence at the trial. Each party shall make its exhibits available for inspection by other parties prior to the pretrial conference.

For each listed exhibit, counsel shall determine whether they will stipulate to admissibility for all purposes or at least waive foundation for the opposing party's exhibits. The court strongly encourages such agreement and expects counsel to at least waive foundation, unless there is a strong, specific objection to a particular exhibit. Any stipulation to admissibility or waiver of foundation shall be indicated in the appropriate column on the exhibit list.

The nonoffering party shall list in the final pretrial statement any objections of that party to admissibility of exhibits listed by the offering party. Objections not so preserved (other than objections under Federal Rules of Evidence 402 and 403) shall be deemed waived unless excused by the court for good cause shown. See Fed. R. Civ. P. 26(a)(3). Timely submission of the pretrial statement will comply with the deadline in Rule 26(a)(3).

Expert Reports: Copies of expert reports prepared in accordance with Rule 26(a)(2)(B) by those experts the parties anticipate calling as witnesses at trial shall be submitted to the court as an attachment to the Final Pretrial Statement.

Failure to file the report(s) required by this order may result in the exclusion of the expert's testimony, except upon a showing of good cause. The disclosure of the report(s) shall otherwise be made by the parties in accordance with the scheduling order of the court.

Depositions: The offering party shall designate in the pretrial statement those portions of any depositions which will be presented at trial, and the manner in which each of those depositions was recorded. A transcript of the pertinent portions of any deposition not stenographically recorded shall accompany the designation. Timely submission of the pretrial statement will comply with the deadline in Rule 26(a)(3).

The other parties shall have until 7 days before trial to designate additional portions of any deposition appearing on the offering party's list.

Any party who objects to admissibility of deposition testimony to be offered shall have until 4 days prior to trial to file a list of objections it intends to preserve. All other objections will be deemed waived. Counsel shall then confer prior to commencement of the trial to edit the depositions.

As to any deposition which may be used only if the need arises (other than solely for impeachment purposes), the offering party shall notify the court and other parties at least 48 hours in advance that it will be offering the deposition at trial, and identify the portions to be offered. The other parties shall then have 24 hours to identify additional portions and to preserve any objections to admissibility of the deposition testimony. Objections not specifically preserved will be deemed waived. Counsel shall then confer prior to the offering of the deposition to edit the testimony.

Jury Instructions: In jury cases, an agreed upon set of jury instructions and verdict form shall be submitted to the court seven days prior to trial. The original shall be filed with the clerk and two copies sent to the trial judge along with a computer disk version, if possible, in WordPerfect 6.1 or 8.0 format. A party requesting an instruction upon which counsel cannot agree should submit that instruction, along with a statement of authority to the court. There is reserved to counsel the right to supplement requests for instructions during the course of the trial, or at the conclusion of the evidence, on matters

that cannot reasonably be anticipated.

Trial Memorandum: Counsel for the respective parties shall file a trial memorandum with proof of service upon opposing counsel with the clerk, for presentment to the court, at least five (5) days before the commencement of trial. The trial memorandum shall contain: A general statement of the case, citation of the authority upon which the party relies on unresolved legal issues, a general statement of the evidence to be offered, and a statement of any evidentiary or procedural problem expected to arise, with citations of authority.

Motions in Limine: Motions in limine shall be filed at least thirty (30) days prior to trial unless otherwise instructed by the court.

Failure to Appear/Comply: Failure of counsel to appear at any scheduled final pretrial conference, or otherwise to comply with the provisions of this order, may result in dismissal or default, as may be appropriate.

Dated: _____

Karen K. Klein
United States Magistrate Judge

2. Fact Witnesses:

- A. Plaintiffs—All witnesses, other than experts, to be called to testify by plaintiff(s), except those who may be called for rebuttal purposes only, are: (Designate in manner set out below)

<u>Name of Witness Address/Tel. No.</u>	<u>Will Call/ May Call</u>	<u>Indicate if by Written/Video Deposition or Videoconference</u>
---	--------------------------------	---

- B. Defendants—All witnesses, other than experts, to be called to testify by defendant(s), except those listed in the preceding paragraph as expected to be called by the plaintiff(s) and except those who may be called for rebuttal purposes only, are: (Designate in manner set out above)

(If there are other parties, a similar list is to be made for each.)

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except rebuttal.

3. Expert Witnesses:

- A. Plaintiff(s)—The expert witnesses to be called by plaintiff (s) are: (Designate in manner set out below)

<u>Name & Address</u>	<u>Field of Expertise</u>	<u>Issues</u>	<u>Indicate if by Written/Video Deposition or Videoconference</u>
---------------------------	-------------------------------	---------------	---

- B. Defendant(s)—The expert witnesses to be called by defendant(s) are: (Designate in manner set out above)

NOTE: Expert reports prepared in accordance with Rule 26(a)(2)(B) by those experts the parties anticipate calling as a witness at trial shall be submitted to the court as an attachment to the Final Pretrial Statement.

4. Depositions: Plaintiff hereby designates the following deposition testimony that will be offered at trial:

<u>Name of Witness</u>	<u>Deposition pages & lines</u>
------------------------	-------------------------------------

Defendant hereby designates the following deposition testimony that will be offered at trial:

Name of Witness

Deposition pages & lines

5. Discovery Materials: All specific answers to written interrogatories or responses to requests for admissions which are expected to be offered in evidence by the plaintiff, except for impeachment or rebuttal purposes only, are: (Specifically designate answers to interrogatories and responses to requests for admissions by answer or response number).

All answers to written interrogatories or responses to requests for admissions which are expected to be offered in evidence by the defendant, except for impeachment or rebuttal purposes only, are: (Specifically designate in the manner set out above).

(If there are other parties, a designation should be made by each.)

(Discovery materials to be offered in evidence shall not be filed prior to commencement of trial. The clerk will file the materials as they are offered in evidence. At the conclusion of trial, discovery material which has been received in evidence may be withdrawn.)

6. Uncontroverted Facts: The parties agree that the following may be accepted as established facts for purposes of this case only:

7. Issues to be Determined at Trial: The issues remaining to be determined at trial are: (separately & specifically list each genuinely controverted issue on the merits).

8. Other Issues for the Court's Attention: Other matters requiring the court's attention prior to or during trial are: (List legal and procedural issues to which the court should be alerted).

9. The parties do/do not agree to waive exclusion of witnesses from the courtroom pending completion of their testimony.

10. Length & type of trial: Counsel estimate the trial will consume not less than ____ day(s), nor more than ____ days. Trial will be (jury/nonjury).

(Signatures of all counsel, signifying acceptance).

ORDER

The foregoing Final Pretrial Statement is adopted as the order of the court with the following modifications:

Dated: _____

Karen K. Klein
United States Magistrate Judge

Sample Form 41

Civil Jury Trial Order/Courtroom Instructions

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

	)	CASE NO.
)	
)	
PLAINTIFF,	)	JUDGE PETER C. ECONOMUS
)	
v.)	
)	
	)	TRIAL ORDER
)	
)	
DEFENDANT.)	

This case is set for jury trial on _____. The parties and their counsel shall report to the Court's chambers no later than 8:30 a.m. on the first day of trial.

The dispositive motion deadline is _____.

The Final Pretrial is scheduled for _____ at _____. 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.

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. 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 pretrial.

e. EXHIBITS

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.

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.

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 or fax.

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.

IT IS SO ORDERED.

PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE

Sample Form 42

JURY QUESTIONNAIRE

To be completed by jurors called to the courtroom of Judge Vaughn Walker, U.S. Dist. Ct., N.D. Calif. PLEASE PRINT YOUR ANSWERS.

PROPOSED TRIAL DATES: _____

ARE YOU AVAILABLE DURING THIS TIME? ____ YES ____ NO. IF NO,
WHY NOT? _____

YOUR NAME: _____

BIRTHDATE: _____ BIRTHPLACE: _____

EDUCATION: ____ HIGH SCHOOL ____ COLLEGE ____ GRADUATE SCHOOL
DEGREES _____

AREAS OF STUDY _____

SPOUSE: _____

SPOUSE'S OCCUPATION: _____

CHILDREN: _____

MILITARY SERVICE (Branch, Rank, Years of Service): _____

CURRENT JOB (Position, Dates or Length of Service, Duties)

PRIOR JOB (Position, Dates or Length of Service, Duties)

REGULARLY READ THESE NEWSPAPERS OR PERIODICALS: _____

ACTIVE IN THESE ORGANIZATIONS: _____

HOBBIES OR RECREATIONS: _____

PRIOR JURY DUTY: ____ YES ____ NO. IF YES, WHEN, WHERE AND TYPE

OF TRIAL _____

Sample Form 43

HONORABLE NAPOLEON A. JONES, JR.
U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF CALIFORNIA
JURY QUESTIONNAIRE-CIVIL

1. What is your business or occupation?
2. What is the business or occupation of your spouse if you are now married, or, your significant other?
 - (A) If you are divorced or if your spouse is deceased, what was his or her business or occupation during the marriage or during his or her lifetime?
3. Of whom does your family consist?
 - (A) If adult children, what is their business or occupations, and that of their spouse or cohabitating significant other, if any?
4. In what area of San Diego or Imperial County do you reside?
(Do not state your home address)
5. What prior jury experience have you had?
 - (A) How many civil cases have you tried? Did any of these cases go to the jury, and did you reach a verdict? (Answer **yes** or **no** as to whether or not you reached a verdict, **do not** state what the verdict was)
 - (B) How many criminal cases have you served on as a juror? What was the charge or charges filed against the defendant?
6. Have you, or any relative or close friend ever been a party or a witness in any lawsuit?
7. Do you have any acquaintances, friends, or relatives who are or have been involved in law-enforcement work such as:
 - (A) police officers
 - (B) agents of the FBI
 - (C) lawyers
 - (D) U.S. Attorneys
 - (E) judges
 - (F) probation officers
 - (G) immigration officers
 - (H) or other similar occupations?
8. Do you know of any reason why you cannot serve on this case and render a completely fair and impartial decision based solely upon the evidence received here in the courtroom during the course of the trial and the law of the United States of America as I shall state to you?

Sample Form 44

UNITED STATES DISTRICT COURT (Rev. 5/99)
DISTRICT OF MASSACHUSETTS

_____)	
Plaintiff(s))	NO.
)	
v.)	
)	
Defendant(s))	
_____)	

**Stipulation and Order for
Tailored Jury Trial**
_____, 20__

IMPORTANT DATES

FINAL PRETRIAL CONFERENCE DATE. _____ m., _____,
20__ (FPTC DATE).

TRIAL DATE. _____ m., _____, 20__ (TRIAL DATE). If the trial date has not been fixed by an earlier order, the court usually determines the TRIAL DATE during the Final Pretrial Conference and sets the trial for a Monday within 14 to 28 DAYS from the FPTC date.

OTHER IMPORTANT DATES. If blanks are not filled in, these dates are fixed at the bracketed time before or after the TRIAL DATE.

[TWO WEEKS] before the TRIAL DATE/ _____, 20__
If Part VI applies, see VI.7, VI.9.

[ONE WEEK] before the TRIAL DATE/ _____, 20__
If Part VI applies, see VI.8.

[TWO COURT DAYS] before the TRIAL DATE/ _____, 20__
See III.A.1, IV.A.2, IV.B.1, V.A.2 If Part VI applies, see VI.8.

TWO COURT DAYS before EACH DAY OF TRIAL
See V.B.1

BEFORE TRIAL COMMENCES

See V.B.1

DAILY DURING TRIAL

See V.B.5, V.F.1

I. Statement of Aim

The aim of this Stipulation and Order is to create a set of procedures tailored to fit the distinctive characteristics of this case and "to secure the just, speedy, and inexpensive determination of [this] action," Fed. R. Civ. P. 1. The parties and the court intend

- (a) that "the mode and order of interrogating witnesses and presenting evidence" be such as will "(1) make the interrogation and presentation effective for the ascertainment of truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment," Fed. R. Evid. 611(a),
- (b) that "interim summations" by counsel be allowed from time to time as the presentation of evidence proceeds, in order to promote jury understanding of the evidence and the contentions of the parties, and
- (c) that, with the consent of the parties or upon motion and hearing under Fed. R. Civ. P. 42(b), the court may order phasing of the trial "in furtherance of convenience" or when "conducive to expedition and economy," *id.*, and may receive a separate verdict on one or more separate issues before other issues are tried to the same jury.

II. Stipulations

1. Recognizing the right of each party to insist that "the testimony of witnesses must be taken orally in open court," Fed. R. Civ. P. 43(a), the parties waive this right to the extent stated in this Stipulation and Order and agree that in this case direct

examination of each witness will be presented by affidavit, unless as to a particular witness an exception is allowed by the court under the provisions of this Stipulation and Order.

2. The parties agree that the time allowed to each party, for proceedings within each of the categories listed, will be as stated in this paragraph, subject to any modification ordered by the court upon a showing of good cause. Within each of the three categories of time allowances, a party may allocate the allowed time as it sees fit.

	<u>Plaintiff(s)</u>	<u>Group One Defendant(s)</u>	<u>Group Two Defendant(s) (If Any)</u>
A. Total for Opening Statements and All Summations (including Interim Summations)	___ hours	___ hours	___ hours
B. Total for Examination and Cross-Examination of All Witnesses	___ hours	___ hours	___ hours
C. Total for Making and Arguing Motions and Objections Orally	___ hours	___ hours	___ hours
SUM	___ hours	___ hours	___ hours

TOTAL FOR THE CASE _____ hours
(exclusive of time for the court's instructions to the jury, which may be given in part as the case proceeds, as "interim instructions").

[Do the parties wish to propose any other stipulations? The parties may wish to consider agreeing upon a time-limited trial—see Part VI below—and upon shorter time limits than the court would otherwise impose.

Paragraphs 3-5, below, are examples of other terms the parties may consider.]

3. At any time more than 30 days before the trial begins either party may serve upon another party [or parties] [and file with the clerk] an offer of judgment. If within 10 days after the service of the offer a party upon whom the offer is served accepts by written notice served on the offeror, the clerk will enter judgment accordingly. An offer not accepted within this time is no longer open, and evidence of an offer not accepted is not admissible at trial. If the offer is not accepted and the judgment finally entered is not more favorable to the offeree, the offeree will be liable to the offeror for stipulated damages for the costs of trial, in the sum of _____ thousand dollars, which shall be included in the final judgment as an addition to or offset of the amount otherwise due (or as a net amount due if the offset exceeds the amount of a judgment otherwise to be entered against the offeror).

4. A jury of [8] will be selected. No alternates will be selected. The parties stipulate that if the court finds it necessary to excuse one or more jurors for cause after trial has commenced, the trial may proceed through deliberations to verdict as long as at least 5 qualified jurors remain.

5. If the deliberating jury consists of 5 persons, the verdict must be unanimous; if 6, a 5-1 verdict will be accepted; if 7, a 6-1 verdict; if 8, a 6-2 verdict.

III. Order Regulating Trial

A. Jury Selection

1. At least 2 court days before trial commences, counsel jointly (or each separately) must file for use by the court during voir dire a list identifying parties, lawyers, and witnesses. The lists must be over-inclusive rather than under-inclusive in case of any doubt, in order to avoid risks of loss of jurors during trial because of acquaintance with a person whose possible relationship to the case was not made known during voir dire.

2. [If para. II.4 is included in the Stipulations and defendants are separated into Group One and Group Two.] The plaintiff group will have 3 peremptory challenges and each of the two defendant groups will have 2 peremptory challenges. A panel of 15 will be seated and questioned by the court (including any voir dire questions proposed by the parties, either in advance or during voir dire, and found acceptable by the court). Whenever a panel member is excused for cause, another person will be called by the clerk to fill the vacant seat, and the voir dire will proceed. At the conclusion of voir dire, after 15 not subject to challenge for cause are seated, the court will invite each of the 15 panel members to speak about his or her personal background and experience (including such things as occupation, marital status, spouse occupation (if any), children, hobbies, reading interests). The parties will then deliver to the clerk in writing, simultaneously,

their peremptory challenges. The first 8, in order of seating, who are not challenged will be the jury.

IV. Proposed Jury Instructions

A. Preliminary Interim Instructions

1. Before testimony begins, the court will instruct the jury on the functions and roles of the jury and of counsel in the case, and on the jury's obligations to decide the case solely on the evidence presented, to refrain from discussing the case (with each other or anyone else), and to avoid contact with the parties and with published or broadcast accounts of the trial.

2. The court may also give preliminary instructions on the law applicable to the claims and defenses in the case. The court will advise the parties of its tentative decision on this matter before opening statements, and will offer the parties an opportunity to be heard. Any requests for preliminary instructions must be filed with the court at least 2 court days before trial commences.

3. The court may give interim instructions upon a determination of a need to do so to aid jury understanding. Requests by the parties for such instructions are invited, and the parties are encouraged to propose the content of requested instructions in written drafts.

B. Final Jury Instructions

1. The court will give the final charge orally and ordinarily expects to deliver a copy to the jury in writing. It will consist of the following components: (a) general instructions to guide the jury throughout its deliberations; (b) special interrogatories requesting the jury's findings on specific questions of fact and explanatory instructions on the law bearing specially upon the questions submitted in the special interrogatories; and (c) limiting instructions, including instructions as to evidence received against less than all the parties in the action. No general verdict will be requested. The court does not give, along with interrogatories, the type of instructions that are needed when the jury is to return a general verdict.

1(a). General Instructions: A draft of the court's proposed general instructions will be distributed on or before _____. Any objections or proposed amendments must be served and filed within ____ court days thereafter.

1(b). Special Interrogatories and Explanatory Instructions on the Law: Initial requests for special interrogatories and explanatory instructions on the law must be filed on or before _____.

2. **Limiting Instructions:** Limiting instructions may include instructions as to evidence received for a limited purpose or purposes, or against less than all the parties in the action. If the occasion for a limiting instruction can be anticipated, parties will be expected to have their requests prepared in advance in writing. If any evidence is received for a limited purpose, a party seeking the benefit of a limiting instruction in the court's final instructions will have the burden of assuring that a copy of the court's oral instruction is delivered to the Clerk for inclusion in the final charge, and in the case of documentary evidence, for attachment to the exhibit. A form that may be used with exhibits is attached to this order as "Exhibit A."

C. **Jury Deliberation:** All jurors selected and not excused for cause at any time after selection will deliberate and the verdict must be unanimous, unless the parties have stipulated otherwise with the approval of the court.

V. Procedure at Trial

A. Opening Statements

1. Opening statement by the plaintiff(s) will occur before any evidence is presented in the presence of the jury.

2. Opening statement by each defendant will occur immediately after plaintiffs' opening statement, unless one or more defendants have elected otherwise by notice filed and served at least two days before trial commences.

3. In a lengthy trial, the court may allow Interim Statements from time to time to allow counsel to clarify issues for the jury.

B. Evidence

1. Each party must give advance notice to the court and the other parties, before jury selection, of the identity of all witnesses whose testimony (by affidavit, by deposition, or by oral testimony in trial) it may offer during trial. At least two court days before it seeks to use the testimony of any witness, or on shorter notice for good cause shown, each party must advise the court and all other parties of its intent to use the testimony of the witness on the specified day. Except for good cause shown, no party will be allowed to use the testimony of a witness other than the witnesses already listed on the filings with the court before trial commences. Except for good cause shown, no party may introduce during direct examination documentary evidence other than those exhibits already listed with the court and furnished to the other parties before trial commences. These provisions with regard to documentary evidence do not apply to cross-examination.

2. Absent a showing of good cause, the court will not exercise its discretion under Fed. R. Evid. 611(b) to allow the subject matter of the cross-examination to extend beyond the subject matter of the direct examination and matters, admissible in evidence, affecting the credibility of the witness. A showing of good cause will also be required if the subject matter of the redirect is to be allowed to extend beyond matters covered on cross-examination. That a witness has come from a distance or will be unavailable later in the trial may be found to constitute good cause to allow a party to treat him or her as its witness during what would otherwise be cross-examination, and to extend the examination beyond the scope of direct.

3. Use of Depositions at Trial:

Except for good cause shown no deposition testimony may be introduced as direct examination, or during oral direct examination, other than those pages or portions thereof noted in previous filings with the court. This limitation does not apply to the use of deposition testimony in cross-examination.

4. Stipulations may be read at any time, unless otherwise ordered in a particular instance upon a showing of good cause.

5. At least one-half hour before commencement of trial each day, counsel must furnish the court reporter with a copy of any document from which counsel intends to read that day, except depositions to be read by two people in question and answer form. Documents to be used during cross-examination are excepted.

6. Whenever a single person is reading deposition testimony, in order to enable jurors and the reporter to understand clearly, the reader will say "Question" before each question is read and "Answer" before each answer is read.

7. All documents or other non-testimonial evidence that will be admitted at least in part without objection are to be pre-marked as numbered exhibits. To effect the pre-marking and to avoid duplicative numbering, each of the parties will assign consecutive numbers to these documents, as follows: Plaintiff(s), 1-500; Group One Defendant(s), 501-999; Group Two Defendant(s), 1001-1,500. The term "Exhibits" is to be used only for documents or objects that are to be received without objection or have been received in evidence by court order over objection.

The term "Marked Items" will be used for documents and other items (for identification as they are referred to in the proceedings) that are not Exhibits. A lettering system must be used by each of the parties to pre-mark, as Marked Items (for identification), each piece of non-testimonial evidence it will offer to which objection has been made by the party against whom the document is sought to be admitted. The clerk will supply the parties with stickers to be used in pre-marking documents and other non-testimonial evidence, either as Exhibits or as Marked Items (for identification).

C. Objections, Motions to Strike, and Conferences Out of the Hearing of the Jury

1. Counsel have the court's permission at all times to interrupt proceedings merely to object or move to strike. Counsel need not state the ground(s) of objection unless the court asks for the ground(s), but (unless the court orders otherwise in a specific instance) counsel may without invitation by the court state the ground(s) merely by reference to a Rule designated by number, among the Federal Rules of Evidence. Also, unless otherwise ordered (as may be done, for example, when the court interrupts to sustain an objection because valid grounds are obvious), counsel may state the grounds in customary legal jargon (e.g., "hearsay," "irrelevant," "lack of essential foundation"). Counsel are not to go beyond a bare statement of the ground(s) in one of these ways; supporting or opposing arguments will not be stated in the hearing of the jury without the court's permission.

2. Offers of proof ordinarily will be received only after the jury has been excused for a recess or for the day.

3. Conferences out of the hearing of the jury will be held to a minimum. They will never occur at the beginning of a court day unless that timing is unavoidable. When the court has directed jurors to be present at a designated hour, counsel asking for a conference out of the hearing of the jury at that hour will be required to show good cause why the need should not have been anticipated so the jury could have been released early the preceding day and why the conference cannot be deferred until the end of the current day, or at least until the next recess.

4. Short conferences out of the hearing of the jury may be held at the side bar farthest from the jury box. The jury will be sent to the jury room if a more extended conference out of their hearing is required. The jury will be instructed to interrupt and tell the court immediately if any of the conversation at a side-bar conference is loud enough for any of them to hear.

D. Rules of Proof

1. The objection of interrogating counsel to an answer that is nonresponsive will usually be sustained. Objections by other counsel solely on the ground that an answer is nonresponsive will usually be overruled. Sustaining such an objection is likely to lead to a new question that elicits exactly the same information as was stated in the struck answer, and time is wasted. Of course, if some other valid ground of objection is added, a statement that the answer was nonresponsive may be needed and appropriate to explain why no objection was made to the question.

2. The court ordinarily will not instruct a witness to "answer YES or NO" to (1) a multiple question, (2) a question that requires the witness to make or accept an inference or characterization rather than merely acknowledging or denying an observable fact, or (3) a question that is argumentative in form or in substance.

3. Questions framed to have more impact as arguments than as requests for testimony that the witness is competent to give are out of bounds. They will be excluded on objection and may be excluded on the court's initiative, without objection.

4. Ordinarily, questions asking one witness to comment on the credibility of another are out of bounds. A lawyer who wishes to ask such a question must make a request out of the presence of the jury for leave to do so.

[Do counsel wish to propose other Rules of Proof for this trial?]

E. Schedule

1. The court will aim for conducting this trial __ a.m. to __ p.m. Monday-Friday.

2. This case will not be in trial on the following days: [Holidays and other days specially committed].

F. Sequestration of Witnesses

A person who is expected to testify as a witness in this civil action must not be present in the courtroom during the presentation of evidence (or have access to a transcript or summary of that evidence) except as follows:

1. Professional persons engaged by a party or its counsel for the purpose of offering testimony as witnesses having specialized knowledge or experience may be present whenever evidence is being received, unless otherwise ordered.

2. One representative of each party, designated by counsel to the court in advance of the trial as that party's representative, may be present throughout the trial.

3. A person who has testified and who is not expected to testify again for any party may be present in the courtroom after his or her testimony has been completed, but that person must not state or

summarize his or her own testimony or the testimony of others to prospective witnesses.

4. Counsel must not state or summarize the testimony of others to any prospective witness (other than one within paragraph 1) and must not permit a prospective witness (other than one within paragraph 1) to read transcripts or summaries of previous testimony of other witnesses.

G. Miscellaneous Matters

1. Documents filed in court during trial: A party filing a document in court rather than in the Clerk's Office must file, with the original, a copy of the first page. Each document will be given a docket number by the clerk.

2. All discovery is concluded.

3. Jurors will be permitted to take notes. Instructions will be given in the form of Exhibit B.

4. Drafts (not final) of interrogatories to the jury and the Charge will be distributed soon after requests of counsel have been filed (in accordance with Part IV-B above) and have been considered by the court. A final conference on the verdict and the charge will occur promptly after the evidence is closed and before arguments begin. The court expects that extensive consultation will have occurred previously and that this conference will be brief. Any requests or objections made to preserve a contention for appeal must, of course, be made after the charge has been given and before the jury commences deliberations.

VI. Time Limits

These provisions regarding Time Limits apply only if the court specifically so orders. The other provisions of this Order Regulating Jury Trial ordinarily assure a trial of reasonable length. The court expects to invoke Part VI only if finding it likely that the trial would be longer than [5] court days without these provisions.

1. Time limits provide an incentive to make the best possible use of the limited time allowed. The limits that the court may order, absent agreement, will not be as stringent as those the parties might agree would serve their mutual interests in achieving a shorter, less expensive, and better quality trial. The court encourages the parties to agree on limits before the procedures described immediately below are implemented.

2. Absent agreement of the parties to time limits that are approved by the court, the court will order a presumptive limit of a specified number of hours for this trial, to be allocated equally between opposing parties (or groups of aligned parties) unless otherwise ordered for good cause.

3. A request for added time will be allowed only for good cause. An explicit purpose of this provision is to create an incentive for using time exclusively on issues material to disposition on the merits.

4. In determining whether to allow a motion of any party for an increased allotment of time, the court will take into account (a) whether or not that party has used the time from commencement of trial forward in a reasonable and proper way, in compliance with all orders regulating the trial, (b) the party's proffer with respect to the way in which the added time requested would be used and why it is essential to fair trial, (c) any other facts the party may wish to present in support of the motion, if determined by the court to be material, and (d) any opposing submission. The court will be receptive to motions for reducing or increasing allotted time to assure that allotments are fair among the parties and adequate for developing the evidence. Any party that makes only proper use of its time throughout the trial is assured that an extension will be allowed if more time is needed to present all its material and admissible evidence adequately.

5. Presumptive allotments of time to a party will be stated as a total number of hours available to that party, rather than allocations of times for particular witnesses or proceedings. Thus, each party will be free, without a showing of good cause, to allocate time as that party chooses among different uses—opening statement, direct and cross-examination of various witnesses, closing argument, objections, and motions—as long as the party's total allotment is not exceeded.

6. Time taken to argue objections will be charged against the time allocation of the party against whom the court rules, and will be allocated between parties if the court rules partly for and partly against the objecting party.

7. Not less than [TWO] WEEKS before the TRIAL DATE, each party (or group of aligned parties) must serve on the opposing party (or group of aligned parties) and file its NOTICE OF DIRECT EXAMINATION (1) listing its witnesses and an estimate of the time to be used in direct examination of each witness, (2) listing the precise pages and lines of any deposition testimony to be offered during the case in chief, with time estimates for reading that testimony into evidence, (3) affidavits of any expert witnesses whose depositions have not been taken, fairly summarizing the substance of their expected testimony, fully disclosing every opinion to be expressed, and estimating the time of direct examination, and (4) listing all the exhibits it intends to offer and an estimate of time, if any, to be used in publishing each exhibit to the jury. If the expected content of direct examination and exhibits has not previously been disclosed, the

NOTICE must include a fair summary of the content of each direct examination and each exhibit.

8. Not less than [ONE] WEEK before the TRIAL DATE, each party (or group of parties) must serve and file its NOTICE OF CROSS-EXAMINATION estimating time to be used in cross-examination of each of the opposing party's listed witnesses. If any party, after seeing an opposing party's NOTICE OF DIRECT EXAMINATION, proposes to call additional witnesses or offer additional exhibits, it must, when serving and filing its NOTICE OF CROSS-EXAMINATION, also serve and file a SUPPLEMENTAL NOTICE of DIRECT EXAMINATION, including time estimates. An opposing party's SUPPLEMENTAL NOTICE OF CROSS-EXAMINATION must be filed not later than TWO COURT DAYS BEFORE THE TRIAL DATE.

9. The parties are encouraged to confer and agree upon witness and exhibit lists and time limits for direct and cross-examination, and to file a stipulation not less than TWO WEEKS before the TRIAL DATE in lieu of the separate submissions otherwise required by paragraphs 7 and 8.

Part VI, Time Limits,

_____ does apply to this case.

_____ does not apply to this case.

Date Ordered: _____

United States District Judge

EXHIBIT A

EXHIBIT MARKING SLIP

The attached document or object is Exhibit No. ____.

Instructions to the Jury:

You may consider this document or object as evidence only with respect to any party whose name is checked below. You may not consider this document or object as evidence with respect to any party whose name is not checked. If any limited purpose is set forth below then you may consider this document or object for that limited purpose only. If no limited purpose is set forth below, then you may consider this document or object for all purposes.

Party

Plaintiff(s)

Group One Defendant(s)

Group Two Defendant(s)

Limited Purpose

EXHIBIT B

INSTRUCTIONS TO JURORS ON NOTE-TAKING

Members of the Jury:

You have the permission of the court to take notes during the evidence, the summations of attorneys at the conclusion of the evidence, and during my instructions to you on the law.

In many courts—probably in most—jurors are not permitted to take notes. The reasons are concerned with fear that taking notes may cause the jury, as a whole, to be less effective in serving as a completely fair and impartial factfinder. Because of the potential usefulness of taking notes, you will be permitted to take notes in this trial. For the purpose, however, of protecting against the possible disadvantages that have led many courts to order that notes not be taken, I am instructing you to observe the following limitations:

1. Note-taking is permitted, not required. Each of you may take notes. No one is required to take notes.
2. Take notes sparingly. Do not try to summarize all of the testimony. Notes are for the purpose of refreshing memory. They are particularly helpful when dealing with measurements, times, distances, identities, and relationships.
3. Be brief. Over-indulgence in note-taking may be distracting. You, the jurors, must pass on the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in passing on his or her credibility. Note-taking must not distract you from that task. If you wish to make a note, you need not sacrifice the opportunity to make important observations. You may make your note after having made an observation itself.
4. Your notes are for your own private use only. Do not use your notes, or any other juror's notes, as authority to persuade fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. Notes are valuable as a stimulant to your memory. They are personal memory aids, as are the notes of the judge and the notes of the lawyers. Each of us, including each of you, might make an error in observing, and might make a mistake in recording what we have seen or heard. You are not, therefore, to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

5. Do not take your notes away from court. At the end of each day, please place your notes in the envelope provided to you. A court officer will be directed to take the envelopes to a safe place and return them at the beginning of the next session on this case, unopened. At the conclusion of the case, after you have used your notes in deliberations, a court officer will collect and destroy them, to protect the secrecy of your deliberations.

United States District Judge

Sample Form 45

**UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF IOWA**

JUDGE PAUL A. ZOSS'S VOIR DIRE

The following are Judge Zoss's jury selection procedures.

1. Approximately twenty-five randomly-selected potential jurors will be notified to appear at the courthouse at 8:30 a.m. on the first day of trial. About a week before trial, the attorneys will receive from the Clerk of Court a list of the potential jurors, together with copies of their jury questionnaires. The attorneys also will receive a list of the first fourteen potential jurors in the order in which they were randomly drawn. The court will be provided with a separate list of all of the potential jurors in the order in which they were randomly drawn.
2. The first fourteen preselected potential jurors will be seated in order in the jury box, and will be the potential jurors first considered for impanelment on the jury.
3. At 9:00 a.m., the Clerk of Court will open court.
4. Judge Zoss will greet the jury, counsel, and the parties; announce the name of the case to be tried; and ask counsel if they are ready to proceed.
5. The Clerk of Court will swear in the entire jury panel.
6. Judge Zoss will make some introductory remarks to the jury about the jury selection process.
7. Judge Zoss will ask the entire jury panel if they are aware of any circumstance that might prevent their service on the jury, and may excuse anyone for whom he believes jury service would be an undue burden.
8. Judge Zoss will make some brief opening remarks, and will read a statement of the case.
9. Judge Zoss will introduce the courtroom staff. He then will ask the attorneys to identify themselves, the members of their firm, their clients, and the witnesses they expect to call at trial.

10. Judge Zoss will engage the potential jurors in the jury box in an extensive voir dire, which will include individual questioning of each potential juror concerning his or her family and employment, and also may include questions for the panel requested by a party who has filed a timely pretrial request for voir dire.

11. After Judge Zoss has completed his questions, each side will be permitted to conduct up to one-half hour of jury voir dire. A request for additional time for attorney voir dire because of the complexity or unusual nature of a case, or in multi-party cases, should be made at the final pretrial conference.

12. The parties will be permitted to challenge any potential juror for cause. These challenges may be made at the side-bar. If a potential juror is excused for cause, he or she will be replaced by the next potential juror on the jury list, who then will undergo the same questioning as the other potential jurors. There will be fourteen potential jurors remaining in the jury box at the conclusion of voir dire.

13. The Clerk of Court will give counsel for the plaintiff(s) a list of the names of the potential jurors. Counsel for the plaintiff(s) is to draw a line through one of the names, note in the margin, "Plaintiff's first peremptory challenge," and then state aloud, "Exercised." The Clerk of Court then will take the list and hand it to counsel for the defendant(s), who is to draw a line through one of the names, note in the margin, "Defendant's first peremptory challenge," and then announce aloud, "Exercised." This procedure will be repeated until each side has exercised three peremptory challenges and eight jurors remain in the jury box.

14. The names of the eight remaining jurors will be announced by the Clerk of Court. Those persons will be placed in the jury box and will constitute the jury in the case. The rest of the panel will be excused.

15. The Clerk of Court will swear in the jury.

16. THERE ARE NO ALTERNATE JURORS. ANY VERDICT MUST BE UNANIMOUS. During trial, if any of the eight jurors has to be excused from jury service for any reason, the case can be decided by as few as six jurors.

17. Upon stipulation of the parties, the verdict can be less than unanimous or decided by fewer than six jurors, or both.

18. Upon the request of any party, Judge Zoss will consider modifying jury selection procedures in a particular case. Such modifications include, but are not limited to, a twelve-person jury or an increase in the number of peremptory challenges.

Sample Form 46

Civil Jury Trial Checklist

NOTE: Roll will have been taken, and the appropriate number of prospective jurors will have been seated in “the box” in front of the bar.

1. Call case. Are the parties present and ready?

2. The entire jury panel will please stand and be sworn for examination on voir dire.

3. Ladies and gentlemen, the court will now ask you questions to determine whether you can sit as fair and impartial jurors in this case. I hope you understand that these questions are not intended to embarrass you or to pry into your personal affairs. If your answer to a question is “yes,” please raise your hand so that additional questions can be asked. If the answer to a question is “no,” you need do nothing; we will assume by your silence that your answer is no. Those jurors who have not been seated in “the box” should listen closely to these questions, because you may be seated in “the box” if other prospective jurors are excused. If in response to any question you would feel more comfortable responding to the court at the bench, please let me know.

4. The case which will be tried today is entitled _____ vs. _____. The plaintiff claims _____ which occurred on _____ at _____. The defendant denies any responsibility for the damages claimed by plaintiff.

a. Have any of you ever seen or heard anything about this case from any source whatsoever? (I take it by your silence that none of you have.)

b. The plaintiff is seated at counsel table. Mr./Ms. _____, will you please stand. Do any of you know the plaintiff? Plaintiff is represented by _____. Mr./Ms. _____ is a member of the firm of _____. Do any of you know Mr./Ms. _____ or any member of their firm on a social or professional basis? (Or introduce the attorney and let him introduce his client.)

c. The defendant is seated at the other counsel table. Mr./Ms. _____, will you please stand? Do any of you know the defendant? Defendant is represented by Mr./Ms. _____. Mr./Ms. _____ is a member of the firm of _____. Do any of you know Mr./Ms. _____ or any member of their firm on a social or professional basis?

d. I am going to read a list of witnesses who may be called during this trial. Please raise your hand if you know any of these persons (read list).

e. I have briefly described the nature of this case. Have you, any members of your family or close friends ever been involved in a (insert appropriate facts). When did the accident take place? Who was driving? Who was hurt? How badly? Was any claim made for injuries? Was there litigation? Do you feel that this accident might have some bearing on your judgment if you were chosen as a juror in this trial?

f. The plaintiff claims the following injuries: _____. Have you, any member of your family or close friends ever sustained similar injuries?

g. Have any of you, any member of your family or close friend ever been a plaintiff or a defendant, or a witness in any lawsuit other than a domestic relations or a probate proceeding?

h. Do any of you have strong feelings either for or against a party who brings a personal injury suit?

i. Do any of you not drive a car?

j. Is there anything which has occurred to any of you or are there any facts which you think we should know about which might have a bearing on your judgment in this case?

k. Do all of you understand that this is a civil case which is to be decided by the relative weight of evidence on each side? And that this is different from a criminal case where the government has to prove its case beyond a reasonable doubt?

l. Do all of you understand that you are to wait until all the evidence has been presented and you have been instructed as to the law which is to be applied before making up your minds as to any fact or issue in this case?

m. (If you were either the plaintiff or the defendant, would you be willing to have six jurors with the same frame of mind that you now have sit in judgment in your case?)

n. This case is expected to take ___ days. Would the length of the trial create an undue hardship for any of you?

o. Do any of you have any other reasons whatever, such as a physical defect, a health problem or home problems which might interfere with your serving as fair and impartial jurors in this case?

p. Pose questions submitted by counsel.

5. Ladies and gentlemen, on the easel you will see a number of questions. (See jury questions at end of checklist.) Starting with _____, please stand and answer the questions. The last question asks you about your service on prior juries. With respect to civil cases, please indicate the nature of the subject matter involved in each of the civil juries you have been on.

Do counsel have any additional questions to be presented to panel? **Do counsel pass the panel?**

6. (After the court has finished voir dire) Those jurors who have not been called forward and seated in “the box” are excused subject to call by the jury clerk. Thank you for assisting us in this selection process.

7. Ladies and gentlemen, we will now take a 15 minute recess while counsel are selecting those of you who will serve as jurors on this case. I admonish you not to discuss this case among yourselves or with anyone else during the entire course of the trial. NOTE: Any *Batson* challenge should be asserted at this time so that, if necessary, corrective action can be taken before seating the jury.

8. (After recess) The record may show the presence of the defendant and the presence of the jury panel of ___ with roll call waived. The clerk will please read the names of the jurors selected to try this case. As your name is called, please come forward and be seated as directed by the bailiff.

9. Those members of the jury panel who were not selected as trial jurors are excused subject to call by the jury clerk. Thank you for assisting in this jury selection process.

10. Will those who have been chosen as jurors in this case please stand and be sworn.

11. Admonition and instructions to jury prior to the commencement of a civil case.

Admonitions and General Instructions to Jury Prior to
Commencement of Civil Case

Ladies and gentlemen, you have been sworn as the jury to try this case. I take this opportunity to explain to you your function and duties, the role of the court, and the part the lawyers will play in the trial.

You and I are to be the judges in this case. You are the judges of the facts. I will decide all questions of law that arise during the trial. At the conclusion of the trial, I will instruct you on the law governing this case.

You must not discuss this case among yourselves or with anyone else during the course of the trial. You are not to permit anyone to talk about the case within your hearing. You are to avoid visiting the scene of any incidents referred to in the trial.

You must not form any opinion regarding any fact or issue in the case until you have received the entire evidence, have heard arguments of counsel, have been instructed as to the law of the case, and have retired to the jury room.

In order that you decide this case only upon the evidence presented, I direct you not to read, listen to, or observe any newspaper, radio or television account of the trial while it is in progress.

You must avoid even the *appearance* of any improper conduct. In this regard, I caution you not to talk with any of the parties, lawyers, or witnesses in the case at any time during the trial, even upon matters

unconnected with the case. Should anyone approach you about the case in any manner, report it promptly to me or to one of the bailiffs.

From time to time I will be asked to rule on the admissibility of evidence or the propriety of questions asked of witnesses. You are not to be concerned with the reasons for the court's rulings. You must not attempt to draw any inference in favor of either side, because the rulings will simply be based upon the law.

In our adversary system, it is the duty of the lawyers to present their client's case in its most favorable light. You must remember, however, that arguments and comments of counsel are not evidence in the case and must not be treated by you as evidence.

You will be the sole judges of the credibility of witnesses and the weight to be given to the testimony of each of them. You may consider each witness's ability and opportunity to observe, their manner while testifying and any interest they may have in the case.

You will be permitted to take notes during the trial—for your use only—don't be too detailed. The court will maintain custody of the notes during recesses and they will be destroyed after the trial has concluded.

You are not permitted to ask questions of witnesses. However, if you have a question relating to any significant matter, write it out and give it to the bailiff so that it may be brought to the court's attention.

(Include if appropriate) If any of you from out of town have any questions concerning accommodations, transportation or other arrangements, please see the bailiff during the recess.

On our staff we have a bailiff. If you need anything, the bailiff will assist you.

At this time, I would like to introduce the court staff to you.

Making a verbatim record of the trial proceedings is our court reporter _____.

Swearing in all witnesses, keeping the exhibits in order and entering all minutes relating to the trial is our courtroom deputy clerk _____.

Finally, to assist in the smooth function of this trial is my law clerk and courtroom bailiff _____.

12. Rule of Exclusion of Witnesses. Will all the witnesses please come forward and give your names to the clerk. (Note: more dignity is given to the oath if each witness is sworn individually just before he testifies. This procedure is recommended.)

To Witnesses: Ladies and gentlemen, the rule of exclusion of witnesses has been invoked in this case. This means that you are to remain outside the courtroom during the entire progress of this trial except when you are called to the witness stand. You are not to discuss your testimony with anyone except counsel and then, only when no one else is present, until after the trial has been completed. You may now leave the courtroom until you are called by the bailiff to testify.

13. Opening statements of counsel.

14. Short Admonition to Jury. Ladies and gentlemen, we will now take a short recess. Please remember the admonition given to you by the court about not discussing this case or forming any conclusions until after all of the evidence is in. You are to be back in the jury box at _____.

Admonition at Noon and Evening Recess. Ladies and gentlemen, we are now going to take the noon (evening) recess. Please remember the admonition given to you by the court about not discussing any aspect of this case with anyone. You are not to make up your mind as to any fact or issue until all the evidence has been presented and the case is finally submitted to you. You are to avoid visiting the scene of any incident that may have been referred to in the evidence. I instruct you not to read, listen to, or observe any newspaper, radio or television account of this trial while it is in progress. Please be back in the jury box at _____. (The audience will remain seated while the jurors retire from the courtroom.)

15. (After each recess) The record may reflect the presence of the jury with roll call waived.

16. Presentation of evidence.

17. Settlement of instructions—permit counsel to make record in absence of jury. (See Fed. R. Civ. P. 51)
18. Arguments of counsel.
19. Instruct the jury. (NOTE: Consider instructing jury before counsel present closing arguments.)
20. Do counsel have any additions or corrections to the instructions.
21. Designate by lot, then dismiss and thank alternate juror.
22. The clerk will please swear the bailiffs.
23. The bailiffs will conduct you to the jury room. Ladies and gentlemen, if you have any questions during your deliberations which pertain to the evidence, the instructions or the verdicts, please write them out and give them to the bailiff. You need not write out requests for coffee, phone calls or for care of your car. (Give anticipated time for meal, if appropriate.) The jury will now retire to deliberate.
24. (After jury returns) Ladies and gentlemen, have you reached a verdict? (Foreman hands verdict to bailiff, who gives it to the court. The court reads it and hands it to the clerk.) The clerk will please read and record the verdict.
25. Does either counsel wish to have the jury polled?
26. Ladies and gentlemen, thank you for your services in this case. I am proud of the fact that citizens such as yourselves are willing to serve on juries. The jury is dismissed.

Release Jurors
From Admonitions

Sample Form 47

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

Judge Vaughn R. Walker

Guidelines for Preparation of Jury Instructions

The purpose of jury instructions is to inform jurors of the legal principles they must apply in deciding the case. It is essential, therefore, that instructions be written and organized so that they will be understood by the jurors. To this end counsel are requested to follow these guidelines in preparing jury instructions.

The court has prepared standard procedural instructions for civil and criminal cases which can be found in the Ninth Circuit Manual of Model Jury Instructions. Counsel may request revisions, additions or deletions in the standard instructions appropriate for the case. There will ordinarily be no need, however, to submit procedural instructions.

Substantive instructions should be submitted as directed by the order for pretrial preparation. Counsel may submit both preliminary instructions and instructions to be given at the close of the case. Verbatim copies of Devitt & Blackmar or other pattern instructions will ordinarily not be accepted. Instructions should be drafted for the particular case. This means that their text will be confined to what the jury needs to decide that case.

Instructions should be organized so as to state, first, the essential elements of the offense, claim or defense, followed by explanation or clarification of each element as needed in light of the facts of the case. Commonly, the explanation will give the jury the relevant factors to be considered.

The instructions as a whole should be organized into a logical sequence conforming to the analytical approach the jury should take to the case. It is well to explain this organization to the jury in the instructions and to provide transitional statements.

If the instructions cover controversial points of law, those should be discussed, with citation of authorities, in a brief accompanying memorandum.

In drafting instructions, counsel should follow these guidelines:

1. Instructions should be an accurate statement of the law;
2. Instructions should be as brief and concise as practicable;
3. Instructions should be understandable to the average juror;
4. Instructions should be neutral, unslanted and free of argument.

Counsel should avoid submitting formula instructions, statements of abstract principles of law (even if taken from appellate opinions), lengthy recitations of the parties' contentions, additional cautionary instructions (unless clearly required), and instructions on permissible or prohibited inferences (this will normally be left to closing argument).

Sample Form 48

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Judge Sterling Johnson, Jr.

CHAMBERS
(718) 260-2460
Courtroom Deputy Clerk
August Marziliano
(718) 260-2465

Memorandum To Counsel - By The Hon. Sterling Johnson, Jr.

Re: Expectations And Requirements For Trials

1. Trial sessions will begin promptly.
2. Counsel should be prepared with witnesses to proceed continuously to the end of trial without interruption.
3. Applications: If counsel has any applications to make before testimony begins at any trial session, (s)he should alert his or her adversary and notify the courtroom deputy clerk well before the judge takes the bench.
4. All counsel shall remain seated and attentive while a witness is being sworn.
5. Counsel will question all witnesses from behind the lectern and should approach a witness only with permission of the court.
6. Objections: a) Counsel should rise when making objections or addressing the Court. b) In making objections, counsel should initially state that (s)he objects and the broad ground for the objection, e.g., leading, argumentative, irrelevant, etc. If argument is needed, the Court will request it or, if the significance of the objection is not clear, the counsel should ask for a side bar conference. There should be no argument on objections before the jury.

7. Learned Treatises: In all cases in which counsel intends to read statements from "learned treatises" to the jury pursuant to Fed. R. Evid. 803(18), the following procedure should be followed:
- a. Copies of any statements to be used shall be marked and designated in the same manner as exhibits in the Pretrial Order. At trial the court shall be provided with an extra copy of each statement to be read to the jury.
 - b. Before reading the statement, counsel will indicate to the Court, out of the jury's hearing, how the statement has been established as a reliable authority.

These requirements do not apply to impeachment on cross-examination by textbook or treatise material acknowledged by the expert witness to be a reliable authority.

8. Documentary Exhibits: All documents to be offered in evidence which contain multiple pages shall be paginated by proposing counsel in advance of trial. Where it is anticipated that a witness will refer to documentary evidence in the course of his or her direct testimony, proposing counsel is strongly advised to have copies of the document available for opposing counsel, each juror and the court.

Dated: Brooklyn, New York
_____, 20__

Sterling Johnson, Jr.
United States District Judge

Sample Form 49

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

Judge Vaughn R. Walker

Procedure for Presentation of Direct Testimony by Written Statement

In bench trials the court expects counsel to prepare and exchange a narrative written statement for each witness whose direct testimony will involve considerable expository matter but no significant issues of credibility. These witness statements shall be used at trial in accordance with the following procedure.

Form of statement. For each witness whose direct testimony will be presented in statement form, counsel shall prepare a statement setting forth in declaratory form all of the facts to which that witness will testify. The facts shall be stated in narrative form, not by question and answer. The statement shall contain all of that witness's direct testimony so that a person reading it will know all of the relevant facts to which the witness would testify. It shall not be sworn or notarized.

Use of statements. At the trial, each witness whose direct testimony has previously been submitted in statement form shall take the stand and under oath shall adopt the statement as true and correct. The party offering that witness shall then offer the statement as an exhibit, subject to appropriate objections by the opposing party on which the court will then rule.

The witness will then be allowed to supplement his/her statement by any additional live direct testimony considered necessary by counsel.

Thereafter cross-examination shall proceed in the ordinary course, followed by redirect, etc.

Exceptions to use of statements. Statements will be required of the parties and other witnesses under their control, such as employees, contractors, experts, associates, etc. They are not to be used for adverse parties or for persons whose attendance is compelled by subpoena.

Exhibits. Documents to be offered as exhibits shall not be attached to witness statements but shall be pre-marked and exchanged along with other proposed exhibits in the usual fashion.

Schedule for exchange of statements. Ordinarily, witness statements will be exchanged one week in advance of the pretrial conference. The court will set dates for the serving and filing of witness statements in connection with the pretrial schedule.

Sample Form 51

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE: UNITED STATES MAGISTRATE JUDGES

ORDER OF GENERAL REFERENCE

Pursuant to 28 U.S.C. § 636(a) and (b), the following cases are hereby ORDERED referred to those United States Magistrate Judges who are authorized to perform in any such case any and all functions authorized for full-time United States Magistrate Judges by Local Rule 26 of the United States District Court for the Southern District of Alabama as now effective or hereinafter amended. In each such case, the Magistrate Judges shall proceed in accordance with Rule 72, FED.R.CIV.P. In the event the parties in any such case consent to proceed to trial and judgment before the Magistrate Judges pursuant to 28 U.S.C. § 636(c), the Magistrate Judge is hereby AUTHORIZED to proceed in such cases in accordance with the applicable statutes, Rules 73, 74, 75 and 76, FED.R.CIV.P., and Local Rule 26. The referred categories of cases are:

1. All appeals from decisions of the Secretary of Health and Human Services regarding Social Security benefits including applications for attorney's fees after a successful appeal.
2. All misdemeanor cases unless or until the person charged with the misdemeanor elects to be tried before a Judge of this Court, pursuant to 18 U.S.C. § 3401(b).
3. All prisoner cases filed pursuant to 42 U.S.C. § 1983.
4. All prisoner cases filed pursuant to 28 U.S.C. § 2254, except those cases where the petitioner was sentenced to death.
5. All procedural or discovery motions or other pretrial matters in a civil or criminal case, other than the motions which are specified in 28 U.S.C. § 636(b)(1)(A) and motions for extension of discovery deadlines.
6. All procedural or discovery motions or other pretrial matters in a civil case pending before Senior Judge Virgil Pittman.

7. Any motion or request for the Court to enter an order to withdraw registry funds in the following proceedings:
- a. Civil cases disposed of by a Magistrate Judge pursuant to 28 U.S.C. § 636(c);
 - b. Misdemeanor and petty offense cases disposed of by a Magistrate Judge pursuant to 18 U.S.C. § 3401; 28 U.S.C. § 636(a)(3);
 - c. Bail release proceedings in which a Magistrate Judge has ordered bail money to be deposited into court pursuant to 18 U.S.C. § 3141, et seq; 28 U.S.C. § 636(a)(2);
and
 - d. Pretrial matters referred to the Magistrate Judge for determination pursuant to 28 U.S.C. § 636(b)(1)(A).

In each of the above-described cases, this order shall act as a reference to the Magistrate Judges and no further order of reference need be prepared or docketed by the Clerk. The Clerk shall advise the parties in each such case of this General Order of Reference, the identity of the Magistrate Judge assigned, and of their right to consent to final disposition by the Magistrate Judges under 28 U.S.C. § 636(c).

IT IS SO ORDERED, this 27th day of September, 1991.

<s>

ALEX T. HOWARD
CHIEF UNITED STATES DISTRICT JUDGE

<s>

CHARLES R. BUTLER, JR.
UNITED STATES DISTRICT JUDGE

<s>

RICHARD W. VOLLMER, JR.
UNITED STATES DISTRICT JUDGE

<s>

DANIEL H. THOMAS
SENIOR UNITED STATES DISTRICT JUDGE

<s>

VIRGIL PITTMAN
SENIOR UNITED STATES DISTRICT JUDGE

<s>
WILLIAM BREVARD HAND
SENIOR UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of Mississippi

NOTICE, CONSENT, AND ORDER OF REFERENCE
EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

Plaintiff

v.

CASE NUMBER:

Defendant

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. § 636(c), and FED. R. CIV. P. 73, you are hereby notified that a United States Magistrate Judge of the Northern District of Mississippi is available to conduct any or all proceedings in this case, including a jury or non-jury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States Court of Appeals for the Fifth Circuit in the same manner as an appeal from any other judgment of a district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), and FED. R. CIV. P. 73, the parties in this case hereby voluntarily consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Table with 3 columns: Signatures, Party Represented, Date. It contains four rows of horizontal lines for input.

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to the Honorable _____, United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c), FED. R. CIV. P. 73, and the foregoing consent of the parties.

DATE

UNITED STATES DISTRICT JUDGE

NOTE: RETURN THIS FORM TO THE CLERK OF COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

Sample Form 53

NAME, ADDRESS & TELEPHONE NUMBER
OF ATTORNEY(S) FOR PLAINTIFF OR
DEFENDANT IF PLAINTIFF IS PRO PER

ATTORNEYS FOR:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER CV _____

PLAINTIFF(S),

v.

CONSENT TO PROCEED BEFORE A UNITED STATES
MAGISTRATE JUDGE AND DESIGNATION

DEFENDANT(S).

I. CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. §636(c), ALL parties to the above-captioned civil matter hereby waive their right to proceed before a Judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case (including the trial) and order the entry of final judgment.

II. DESIGNATION/ASSIGNMENT OF A UNITED STATES MAGISTRATE JUDGE

The parties may stipulate to the designation of a specific Magistrate Judge to conduct all further proceedings unless a particular Magistrate Judge has already been assigned to the case under General Order 194, in which event it shall remain with that Magistrate Judge.

The parties hereby stipulate to the designation of Magistrate Judge _____ to conduct any and all further proceedings in this case.

III. APPELLATE REVIEW

Any appeal from a judgment of the Magistrate Judge shall be taken to the United States Court of Appeals in the same manner as an appeal from any other judgment of the District Court in accordance with 28 U.S.C. §636(c)(3).

IV. NOTICE TO COURT REGARDING DATE OF FILING

Pursuant to General Order 194, if the consent is filed after the date of the pretrial conference, it will require the approval of the District Court Judge.

(See Reverse)

The parties hereby notify the Court that the consent to proceed before a United States Magistrate Judge is submitted for filing: **(check one)**

Prior to the date of the pretrial conference. Therefore, the approval of the District Court Judge is not required.

After the date of the pretrial conference. Therefore, the approval of the District Court Judge is required.

ALL parties hereby consent to proceed before a United States Magistrate Judge for all further proceedings and stipulate to the designation/assignment of a United States Magistrate Judge and consent to any appellate review by the United States Court of Appeals. DO NOT SUBMIT AN INCOMPLETE FORM, ALL parties must consent before the case may proceed before a United States Magistrate Judge. Use additional sheets if necessary to list all parties.

<u>Name of Counsel OR Party if Pro Per</u>	<u>Signature</u>	<u>Counsel for (Name Parties)</u>
_____	_____	_____
	<i>Date</i>	
_____	_____	_____
	<i>Date</i>	
_____	_____	_____
	<i>Date</i>	
_____	_____	_____
	<i>Date</i>	

TO BE USED ONLY IF THE CONSENT IS SUBMITTED AFTER THE DATE OF PRETRIAL CONFERENCE

WHEREAS, the consent to proceed before a United States Magistrate Judge was submitted for filing after the date of the pretrial conference:

The consent of the parties to proceed before a United States Magistrate Judge to conduct all further proceedings IS HEREBY APPROVED.

The consent of the parties to proceed before a United States Magistrate Judge to conduct all further proceedings IS HEREBY DENIED.

DATE

UNITED STATES DISTRICT JUDGE

NOTICE TO COUNSEL FROM CLERK:

This case has been reassigned to United States Magistrate Judge _____.

On all documents subsequently filed in this case, please substitute the initials _____ after the case number in place of the initials of the prior judge so that the case number will read _____.

This is very important because documents are routed to the assigned Magistrate Judge by means of the initials.