

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

GENERAL ORDER NO. Day 12-01

effective as of February 2, 2012

**PRETRIAL AND TRIAL PROCEDURES**

This General Order replaces General Order No. 1, as adopted February 1, 2003. On and after the effective date of this Order, all counsel of record are charged with knowledge of the procedures and requirements contained herein.

This Order is effective February 2, 2012, for all purposes for cases pending on that date on the dockets of Judges Rose, Black, Rice, Ovington, Newman, and Merz, to the extent practicable.

**s/Thomas M. Rose**

United States District Judge

**s/Timothy S. Black**

United States District Judge

**s/Walter Herbert Rice**

United States District Judge

**s/Sharon L. Ovington**

United States Magistrate Judge

**s/Michael J. Newman**

United States Magistrate Judge

**s/Michael R. Merz**

United States Magistrate Judge

## **PRACTICE IN THE UNITED STATES DISTRICT COURT IN DAYTON**

This General Order is adopted under Fed. R. Civ. P. 83(b) and governs practice before the United States Judges at Dayton, supplementing the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the Local Rules of this Court.<sup>1</sup> All attorneys who enter appearances in cases in this Court are charged with knowledge of this Order and obliged to follow it.

### **Table of Contents**

1. Case Management Matters
  1. Fed. R. Civ. P. 26(f) Conference and Report and Mandatory Disclosures
    1. Fed. R. Civ. P. 26(f) Case Management Conference of the Parties
    2. Fed. R. Civ. P. 26(f) Report
    3. Mandatory Disclosure
  2. Preliminary Pretrial or Scheduling Conference
    1. Status of Settlement Negotiations
    2. Scheduling of Case Management Dates
    3. Scheduling Motion Practice
    4. Additional Conferences
  3. Magistrate Judge Practice
    1. Assignment
    2. Consent Reference
    3. Varieties of Consent Reference
    4. Pretrial Management Referral
  4. Out-of-District Counsel
  5. *Pro Se* Cases
2. Discovery and Motion Practice
  1. Discovery
    1. Planning
    2. Discovery Cut-off
    3. Discovery Disputes

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<sup>1</sup>This Court's Local Patent Rules supersede this Order in patent cases, to the extent those rules are incompatible with this Order.

3. Trial Practice
  1. Joint Proposed Final Pretrial Order
  2. Preparation of Exhibits
    1. Exhibits
    2. Depositions
  3. Trial Briefs
  4. Motions in limine and during trial
  5. Proposed Findings of Fact & Conclusions of Law
  6. Proposed Jury Instructions
  7. Courtroom Practice
    1. Counsel Tables
    2. Court Sessions
    3. Qualification of the Jury
    4. Peremptory Challenges
    5. Size of the Jury
    6. Interrogation by Counsel
    7. Qualifying Expert Witnesses
    8. Jury Charge Conference
4. Civility and Professionalism
5. Limiting Personal Information in Court Records

Appendix 1: Form of Preliminary Pretrial (Scheduling) Order

Appendix 2: Form of Final Pretrial Order

Appendix 3: Form of Rule 26 (f) Report

## Case Management

### 1. Fed. R. Civ. P. 26(f) Conference and Report; Mandatory Disclosure<sup>2</sup>

#### 1. Fed. R. Civ. P. 26(f) Case Management Conference

Either before or immediately upon receipt of notice of the preliminary pretrial conference, all counsel and *pro se* litigants shall agree on a date for the conference required by Fed. R. Civ. P. 26(f). Plaintiff's counsel shall initiate scheduling of this conference. If the plaintiff is proceeding *pro se*, counsel for the first-named defendant shall initiate the scheduling of this conference.

#### 2. Fed. R. Civ. P. 26(f) Report

The parties shall file the written report required by Fed. R. Civ. P. 26(f) not later than seven days before the preliminary pretrial conference. The report must be substantially in the form annexed hereto and include the parties' views and propose

(1) what changes should be made in the timing, form, or requirement for disclosures under Fed. R. Civ. P. 26(a), including a statement as to when those disclosures were or will be made;

(2) the subjects on which discovery will be needed, when the discovery cut-off should be set, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under Fed. R. Civ. P. 16(b), 16(c), 26(c) or Fed. R. Evid. 502.

#### 3. Mandatory Disclosure

Unless otherwise agreed in the Fed. R. Civ. P. 26(f) report, the parties shall make the disclosures required by Fed. R. Civ. P. 26(a)(1) not later fourteen days after the parties' case management conference.

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<sup>2</sup>Under Fed. R. Civ. P. 26(a)(1)(B), the following categories of cases are exempt from the requirements for a discovery conference, a discovery plan, and mandatory disclosure: (i) an action for review on an administrative record (*e.g.*, Social Security benefits and certain ERISA cases), (ii) a forfeiture action in rem arising from a federal statute (iii) a petition for habeas corpus or other challenge to a criminal conviction, (iv) a *pro se* prisoner action, (v) an action to enforce or quash an administrative summons or subpoena, (vi) an action by the United States to recover benefit payments, (vii) a government student loan case, (viii) a proceeding ancillary to actions in other courts, and (viii) an action to enforce an arbitration award.

## **2. Preliminary Pretrial or Scheduling Conference**

The Court will schedule a preliminary pretrial or scheduling conference under Fed. R. Civ. P. 16 to occur within sixty days of the date when all counsel are identified. This conference will be conducted in person or by telephone as noted in the pretrial notice. The conference will deal with the following matters, wherever applicable:

### **1. The Status of Settlement Negotiations**

If no negotiations have taken place, the Court will set a date for plaintiff's counsel to serve a settlement demand upon opposing counsel. Various means of alternative dispute resolution will be discussed with regard to their applicability to the case. Counsel are encouraged to contact the Court at any time if counsel feels the Court can assist in facilitating settlement.

### **2. Scheduling Case Management Dates**

The Court will review the joint Fed. R. Civ. P. 26(f) Report and will typically set the following dates as called for in the attached form of Preliminary Pretrial Conference Order:

1. Last date for filing motions directed to the pleadings (*e.g.*, motions under Fed. R. Civ. P. 12(b) or (c), motions to remand).

If the parties agree to conduct limited discovery directed to a potentially dispositive motion prior to general discovery, that agreement and the scope of the limited discovery must be embodied in the Fed. R. Civ. P. 26(f) report.

2. Last date for moving to amend the pleadings, including adding parties.
3. Date for identifying lay witnesses
4. Date(s) for identifying primary expert witnesses and
  1. furnishing copies of the expert reports of those required to prepare a report under Fed. R. Civ. P. 26(a)(2)(B); and
  2. disclosing the information required by Fed. R. Civ. P. 26(a)(2)(C) for experts not required to prepare a report.
5. Date(s) for identifying rebuttal expert witnesses and furnishing

required reports of the information required by Fed. R. Civ. P. 26(a)(2)(C).

The purpose of witness lists and expert reports and disclosures is to permit the opposing party to determine if deposing the expert is necessary and to prepare for that deposition.

Lists of witnesses are to be final lists of those intended to be called at trial, not preliminary lists of those who may have relevant information. The purpose of this filing of witness lists is to permit timely completion of discovery. Supplementation of the lists after filing will be only upon a showing of good cause, i.e., that the identity of the witness and/or the need for the witness's testimony could not have been previously determined upon the exercise of due diligence by counsel.

Rebuttal witnesses, the need for whose testimony can reasonably be anticipated prior to trial, shall also be identified in the original list.

Expert witnesses who are not timely identified or who do not furnish timely and complete reports or disclosures will not be permitted to testify. Neither will experts be permitted to testify to opinions or other matter not disclosed in their reports.

6. Deadline for the completion of discovery

The discovery cut-off date will generally be five to eight months prior to trial to allow adequate time for briefing and deciding summary judgment motions.

7. Deadline for filing summary judgment motions

8. Date for filing the joint proposed final pretrial order. A copy of the proposed order in Word ® or WordPerfect ® format must also be emailed to the trial judge's chambers at his or her address in the format [lastname\\_chambers@ohsd.uscourts.gov](mailto:lastname_chambers@ohsd.uscourts.gov).

9. Date for exchange of trial exhibits

10. Date, place, time, and mode of conducting final pretrial conference

The final pretrial conference will be held within seven to thirty days of the trial date. Unless otherwise ordered, the attorneys who will try the case must attend the final pretrial conference in person.

11. Date for trial.

### **3. Scheduling Motion Practice**

The Court will discuss any then-pending and expected motions, and set a briefing schedule and set a hearing date, if necessary.

### **4. Additional Conferences**

If, in the Court's opinion, additional conferences are necessary for monitoring settlement negotiations or discovery, or for the Court to receive an adequate status report on the pretrial stages of the case, the Court will schedule those conferences. In addition, counsel for any party may at any time request an additional pretrial or settlement conference. In all cases which will be tried to the Bench, every effort will be made to have settlement conferences conducted by a different judicial officer from the trier of fact.

At the conclusion of the Preliminary Pretrial Conference, the Court will prepare and file a Preliminary Pretrial Conference Order (Scheduling Order) typically covering the areas suggested in the form attached hereto and available on the Court's website.

### **3. Magistrate Judge Practice**

This Court's plan for the utilization of magistrate judges is generally set forth in the General Order of Assignment and Reference, available on the Court's website.

#### **1. Assignment**

All civil cases are, upon filing, assigned by the Clerk to a district judge and a magistrate judge. This assignment does not act as a reference to the magistrate judge, but, rather, designates the magistrate judge to whom any reference will be made, at the discretion of the assigned district judge. (Some categories of cases

are referred automatically, *e.g.*, Social Security appeals, *pro se* and habeas corpus litigation)

## 2. Consent Reference

All magistrate judges at Dayton are authorized to exercise plenary jurisdiction over civil cases upon unanimous consent of the parties. The Fed. R. Civ. P. 26(f) conference provides counsel with an occasion to discuss this possibility early in the case and the Court's Rule 26(f) report form provides a place to indicate whether or not there is unanimous consent. It is important that the giving or withholding of consent be "blind" so that the Court and Clerk's personnel do not know which parties consented and which did not. Consent usually has the advantage of flexibility in setting trial dates because the magistrate judges' calendars are less crowded and less likely to be disrupted by Speedy Trial Act priority required for felony criminal trials.

## 3. Varieties of Consent Reference:

1. **Full consent.** If the parties agree, the entire case will be transferred to the assigned magistrate judge for all purposes including trial (jury or non-jury) and with any appeal being to the Sixth Circuit.
2. **Contingent consent:** In order to guarantee that a case is tried on the trial date set in the scheduling order, parties may consent to referral to the assigned magistrate judge for trial if the district judge becomes unavailable.
3. **Consent for a particular matter:** Parties can also unanimously consent to have the assigned magistrate judge decide one or more pretrial dispositive motions (*e.g.*, motions to dismiss, motions for summary judgment), as opposed to merely recommending a decision.

## 4. Pretrial Management Referral

The Court's plan for civil case management provides that ordinarily civil cases will be referred to the assigned magistrate judge after the preliminary pretrial conference for pre-trial management until the discovery cut-off. After referral, the magistrate judge will decide all non-dispositive motions (discovery disputes, requests for protective orders, motions to extend time, *etc.*) and make recommendations on all dispositive motions (*e.g.*, motions to dismiss, for remand, for judgment on the pleadings).

## **5. Mediation Referral**

In addition to other referrals, civil cases may be referred to a magistrate judge to conduct mediation in accordance with S. D. Ohio Civ. R. 16.3. If the case has been referred to a magistrate judge for pre-trial management, a mediation referral will be made to a different magistrate judge to avoid compromising mediation confidentiality.

## **4. Out-of-District Counsel**

All parties not appearing *in propria persona* are required to be represented by an attorney at law who is a permanent member of the bar of this Court in good standing and designated as “trial attorney” in accordance with S. D. Ohio Civ. R. 83.4. Only one attorney for each party may be designated as the trial attorney and that attorney must sign all papers filed on behalf of that party and participate in all conferences, hearings, and the trial in the case.

Attorneys who are not permanent members of the bar of this Court may obtain admission *pro hac vice* as provided in S. D. Ohio Civ. R. 83.3(e). In the discretion of the Court, attorneys admitted *pro hac vice* may, on motion, also be designated as the “trial attorney” for a party. Trial attorneys thus designated must obtain as local counsel a member of the permanent bar of this Court who shall participate in all proceedings and be completely familiar with the litigation unless excused by the Court. Court designation of *pro hac vice* counsel as “trial attorney” may be withdrawn for failure to obtain local co-counsel.

## **5. Pro se Cases**

Cases in which one or more parties appear without counsel are referred to the magistrate judge for all pretrial purposes, including a recommendation to the district judge on any motions for summary judgment. Documents useful to *pro se* litigants are collected at the tab marked “*Pro Se* Litigants” on the Court’s website ([www.ohsd.uscourts.gov](http://www.ohsd.uscourts.gov))

## **Discovery and Motion Practice**

### **1. Discovery**

#### **1. Planning**

Counsel are strongly encouraged to plan for the sequence and timely completion of discovery in the case. Lack of planning appears to be the most frequent cause of requests for extensions of discovery and consequent disruption of the Court's trial calendar. In appropriate cases, the Court may require the parties to file a formal discovery plan.

Planning is particularly necessary with respect to electronically stored information ("ESI") because the complexity and volume of this material. Counsel must become familiar with their clients' systems for storage and retrieval of ESI and should be prepared at the time of the Fed. R. Civ. P. 26(f) conference to discuss relevant issues with opposing counsel, including litigation holds, methods of searching, difficulties of access to archival material and associated costs, agreed "clawback" provisions for inadvertently disclosed privileged material, and so forth. Agreements or disputes should be reflected in the Rule 26(f) report so that the Court can make appropriate orders.

#### **2. Discovery Cut-off**

The discovery cut-off deadline includes any depositions for presentation at trial in lieu of appearance. The deadline requires completion of requested discovery, not its initiation. For example, interrogatories and requests for production must be served sufficiently in advance of the discovery cut-off that the responding party will have the full amount of time to respond provided by the Federal Rules of Civil Procedure.

Parties who undertake to extend discovery beyond the cut-off date do so at the risk the Court may not permit its completion prior to trial. There will be no supervision or intervention by the Court, such as a ruling on a Fed. R. Civ. P. 37 motion to compel discovery or related request for sanctions, after the discovery cut-off date, without a showing of extreme circumstances. No trial setting will be vacated due to the failure to complete essential pretrial discovery, except under the most unusual of circumstances.

### 3. **Discovery Disputes**

Counsel have an obligation to exhaust among themselves all extrajudicial means for resolving discovery disputes. When they have done so without success, they are encouraged to request a discovery conference with the Court in lieu of immediately filing a motion for protective order or to compel. If the case has been referred to a magistrate judge for pretrial management, the request must be made to that magistrate judge. See S. D. Ohio Civ. R. 37.1 and 37.2.

## 2. **Motion Practice**

### 1. **Scheduling of motions**

All motions will be submitted for decision on the filed papers unless the motion requires by law a noticed hearing or the Court has granted a hearing on motion or *sua sponte*. Motions will be submitted on the schedule set in S. D. Ohio Civ. R. 7.2 unless otherwise ordered.

Leave of Court is required for the filing of any motion beyond the time set in the preliminary pretrial conference (scheduling) order.

### 2. **Length of Memoranda**

Memoranda in support of or in opposition to any motion shall not exceed twenty pages without first obtaining leave of Court (which in Judge Rose's cases must be requested at least three working days in advance of the deadline for filing the document). The request must include a proposed page length and the reasons for exceeding the usual page limit. If leave of Court is granted, counsel must also comply with the table of contents and summary requirements of S. D. Ohio Civ. R. 7.2(a)(3).

### 3. **Style**

1. **Authority:** The Court's preferences for citations of authority are in S. D. Ohio Civ. R. 7.2(b).
2. **Footnotes:** Citations to authority should be in the body of the text, rather than in footnotes.

3. **Size of text:** The text for the body of memoranda must be in at least twelve point type.
4. **Record references:** References to prior filings in the record should be to the Court's docket number ("Doc. No. \_\_\_\_"). Page references should be to the page identification number (PageID \_\_\_\_ ) which is added electronically to each page of a document filed with the Court.
5. **Other stylistic choices:** For other stylistic choices, counsel are advised to follow the Uniform System of Citation (the "Bluebook").

#### 4. **Motions for Extension of Time or Continuance**

As required by S. D. Ohio Civ. R. 7.3, any motion for any extension of time must be accompanied by a representation that the moving party has consulted with opposing counsel and a statement of opposing counsel's reaction (*e.g.*, consent, cannot consent but will not oppose, will file an opposition within the time provided by S. D. Ohio Civ. R. 7.2). Motions which do not evidence contact with opposing counsel will be denied or stricken.

Motions which require extensive modification of the scheduling order must

1. Allow sufficient time for briefing and decision of any re-scheduled summary judgment motions before trial.
2. Be jointly made if possible.
3. Be in the form of an amended Fed. R. Civ. P. 26(f) report, covering all issues and dates which must be changed from the original.

Although most civil cases are referred to the magistrate judges for pretrial management, the magistrate judges do not have authority to modify summary judgment deadlines or trial dates without case-by-case approval of the assigned district judge.

### **Trial Practice**

#### 1. **Joint Proposed Final Pretrial Order**

The date for filing the joint proposed final pretrial order will generally be five to seven days prior to the final pretrial conference. It shall be prepared in the form annexed to this General Order and is available on the Court's website. A copy of the

proposed order in Word ® or WordPerfect ® format must also be emailed to the trial judge's chambers at his or her address in the format [lastname\\_chambers@ohsd.uscourts.gov](mailto:lastname_chambers@ohsd.uscourts.gov).

**Absent agreement of counsel or court order**, the following procedures shall be used for the preparation of the joint proposed final pretrial order:

1. Counsel for plaintiff(s) must deliver to defendant(s) counsel, not later than fifteen working days before the proposed order is required to be filed, a first draft of the joint proposed final pretrial order (without the material which is within the knowledge of defendants, such as lists of witnesses, exhibits, *etc.*)
2. Counsel for defendant(s) must add all of the materials necessary to complete a second draft of the joint proposed final pretrial order, clearly delineating the text which has been changed and added, and deliver this second draft to plaintiff's counsel at least ten working days before the order is to be filed.
3. Upon delivery of the second draft, counsel shall confer to agree upon a date, time, and place for a meeting to resolve differences and complete the final drafting of the joint proposed final pretrial order. Such meeting shall be at least five working days before the proposed order is to be filed.
4. Upon agreement on a draft, plaintiff's counsel shall file the joint proposed final pretrial order unless the parties otherwise agree.

The joint proposed final pretrial order must be jointly prepared. If the parties fail to file and email to chambers a joint proposed final pretrial order, the final pretrial conference will likely be canceled, the trial will likely be continued, and counsel will be subject to sanctions, including possible dismissal for failure to prosecute. The instructions in the attached form of Final Pretrial Order have the force of Court Order.

At the conclusion of the final pretrial conference, the Court will approve the joint proposed final pretrial order, with any additions or deletions, and file it as a court order.

All attorneys who will participate in trying the case are required to be present if the conference is held in person or available by phone if the conference is conducted by telephone, unless previously excused by the Court. No attorney who has not participated in the final pretrial conference may participate in the trial without Court permission.

## **2. Preparation of Trial Materials**

### **1. Exhibits**

Counsel for each of the parties will assemble all documents, photographs, or other materials expected to be used at trial. Copies of such documents must be physically furnished to opposing counsel not later than seventy-two hours prior to the final pretrial conference unless a different time is prescribed in the preliminary pretrial conference order. Any deviation from this procedure requires Court permission in advance.

It is not necessary to bring exhibits to the final pretrial conference or to file them. Counsel are required to list all exhibits in the joint proposed final pretrial order. Unless otherwise ordered, each counsel must deposit two complete sets of his or her exhibits with the Courtroom Deputy Clerk, not later 4:00 p.m. on the third working day prior to trial (*e.g.*, by Wednesday when trial is scheduled for the following Monday). In a non-jury case, a third set of exhibits, for the use of the Court's law clerk, must be so deposited.

All exhibits will be assembled in 3-ring binders, sufficiently large to permit easy access during trial. They shall be marked as listed in the joint proposed final pretrial order, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (*e.g.* as applied by a BATES-numbering machine). All exhibits will be sequentially numbered with Arabic numerals as follows: Joint exhibits will be designated JX \_\_\_; plaintiff exhibits will be designated PX \_\_\_\_; and defendant exhibits will be designated DX \_\_\_\_\_. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

If any sketches, models, diagrams, *etc.*, of any kind will be used during trial or in argument, they must be exhibited to opposing counsel not later than the final pretrial conference.

Exhibits deposited with the Courtroom Deputy Clerk and appropriately marked may be used by any party at trial.

No exhibit may be displayed to the jury, without consent of the opposing party and court approval, unless it has been admitted in evidence. The admissibility of all exhibits referred to during trial and offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it. There is no requirement that counsel object to any exhibit at the final pretrial conference.

## **2. Depositions**

Counsel will specify in the joint proposed final pretrial order those portions of any deposition which will be read or played at trial in lieu of live testimony. The deposition itself must be filed with the Clerk not later than the date of the final pretrial conference. Opposing counsel will note objections to any portion of the deposition in advance of the trial, and the Court will rule on the objections either prior to the commencement of the trial or, at the latest, prior to the reading or playing of the deposition in open court.

Video presentations must include a method for cutting off either sound or the entire picture from the jury in situations where the Court must rule on objections to testimony. In addition to the video record itself, a typewritten transcript must be provided to the Court and opposing counsel as an aid in following the videotape presentation and in ruling upon any objections.

Any deposition to be used solely for impeachment must be filed with the Clerk prior to the final pretrial conference.

## **3. Trial Briefs**

Trial briefs, if desired by counsel or ordered by the Court, must be filed and served not later than one week prior to the commencement of trial. All briefs shall comply with S. D. Ohio Civ. R. 5.1, with citations and references conforming to S. D. Ohio Civ. R. 7.2(b) and the style requirements for memoranda set forth in this General Order. Counsel should use their trial briefs to instruct the Court in advance of trial in any area of law upon which counsel will rely at trial. Therefore, the briefs should contain arguments, with citations to legal authority, in support of any evidentiary or other legal questions which may reasonably be anticipated to arise at trial.

## **4. Motions *in Limine* or During Trial**

Unless otherwise ordered, all motions in limine, directed to the presentation of

evidence at trial, must be filed not later than ten days prior to the final pretrial conference.

All written motions which counsel intend to argue during trial must be filed and emailed to the trial judge's chambers email address (lastname\_chambers@ohsd.uscourts.gov) before presentation to the Court.

## **5. Proposed Findings of Fact and Conclusions of Law**

Proposed findings of fact and conclusions of law, trial briefs, and post-trial briefs shall be filed if and as ordered by the trial judge.

## **6. Proposed Jury Instructions**

Proposed jury instructions and verdict forms must be filed not later than one week prior to the commencement of trial. As filed, they shall be formatted so that each instruction can be printed on a separate 8.5" x 11" sheet of paper identified as "Plaintiff(s) (Defendant(s)) Requested Instruction No. \_\_\_\_." Each instruction must contain a citation of authority upon which counsel relies. The Court uses as sources for its instructions O'Malley, Grenig, and Lee's FEDERAL JURY PRACTICE AND INSTRUCTIONS; OHIO JURY INSTRUCTIONS; the Sixth Circuit Pattern Jury Instructions; and instructions given in prior cases of a similar nature which are kept on file. Samples of jury instructions previously given by the Court in similar cases are available upon request.

Judge Rose requires the parties to submit an agreed statement of the case not later than one week before trial.

## **7. Courtroom Practice**

Conduct of counsel during the trial of cases will be governed by the following instructions:

### **1. Counsel Tables**

The plaintiff in all civil cases and the United States Government in criminal cases will occupy the counsel table nearest the jury. Defendants in both civil and criminal cases will occupy the counsel table furthest from the jury.

### **2. Court Sessions**

Trials will usually start at 9 a.m. The morning session will continue until approximately noon. There will be a morning recess of approximately fifteen minutes at approximately 10:30 a.m. The afternoon session will start one hour after the end of the morning session unless otherwise announced. The afternoon session will usually end at approximately 4:30 p.m. There will be a fifteen minute recess at approximately 3 p.m. It is expected that the parties and all counsel will be available at least 15-20 minutes prior to the beginning of the morning and afternoon sessions.

### **3. Qualification of Jury**

Generally speaking, the general *voir dire* examination will be conducted by the Court, with all prospective jurors being questioned, following which counsel for the respective parties may question the prospective jurors on matters peculiarly applicable to the nature of and the issues presented in the case at trial. In addition, counsel may, in non-repetitious fashion, further explore any matters on which the Court has questioned or may explore any information in the individual jury questionnaires. The Court retains discretion to limit counsels' inquiry. Counsel must address questions to the entire panel of prospective jurors. An individual juror may be questioned if such juror responds affirmatively to questions put to the entire panel, if counsel is following up on or further exploring a question asked or an area discussed by the Court, or if necessary to inquire into a matter disclosed by a prospective juror in that individual's jury questionnaire. Challenges for cause shall be directed to the entire panel and shall be exercised outside the hearing of the jury.

### **4. Peremptory Challenges**

1. Peremptory challenges will be exercised outside of the presence of the jury, alternately, with the plaintiff or the Government exercising the first challenge. Any prospective juror on the panel may be so challenged. In a civil case, each side is entitled to three peremptory challenges. If either party "passes," that party will have thereby "used" one challenge.
2. At the conclusion of the peremptory challenges, the Courtroom Deputy Clerk will announce the composition of the jury.
3. Challenges to the manner in which an opposing party has exercised peremptory challenges (*e.g.* a *Batson* argument that said challenges are racially discriminatory) shall be made before the jury is sworn and before the extra venire persons are excused; otherwise, they are waived. Counsel should

consult with the individual presiding judicial officer at the final pretrial conference as to that judge's preference in the manner of qualifying the jury and exercising peremptory challenges.

**5. Size of the Jury**

The judges will seat a jury of eight in civil cases with a requirement of unanimity, unless otherwise ordered in the final pretrial order.

**6. Courtroom Demeanor**

Counsel should consult with the individual presiding judge at the final pretrial conference as to that judge's preference as to requesting permission to approach a witness.

Since all evidence will have been previously deposited with the Courtroom Deputy Clerk, counsel will request the Clerk to hand specific documents to the witness. Documents intended for impeachment purposes which are not admitted into evidence will be handed to the Courtroom Deputy Clerk for suitable marking and then handed by the clerk to the witness.

Counsel are to address any comments to the Court and not to opposing counsel.

Counsel are not to argue objections in the hearing of the jury.

**7. Qualifying Expert Witnesses**

The Court will allow each counsel to qualify his or her own expert witnesses.

**8. Jury Charge Conference:**

The Court will hold a conference with counsel, in Chambers and on the record, prior to the final argument in jury cases for the following purposes:

1. Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court. Counsels' attention is directed to Fed. R. Civ. P. 51.
2. The Court will determine the length of the summations to the jury.

## **Civility and Professionalism**

The Court expects counsel to behave civilly and in a professional manner both toward the Court and toward each other in all aspects of this litigation. Any violation of this expectation, whether occurring in open Court, in the Judge's Chambers, in the taking of depositions, or otherwise and elsewhere, may be cause for sanctions. Counsel are referred to the Introductory Statement on Civility in the Southern District of Ohio Local Rules.

## **Limiting Personal Information in Court Records**

The judiciary's privacy policy restricts publication of certain personal data in documents filed with the Court. Therefore, in documents filed with the Court, counsel must (1) limit Social Security and financial account numbers to the last four digits, (2) use only initials for the names of minors, (3) limit dates of birth to the year, and (4) in criminal cases, limit home addresses to city and state. Counsel must not elicit the omitted information when examining witnesses in open court. If the omitted information is mentioned in open court, please ask to have it stricken or to have the transcript redacted before filing. The Court has authority to enforce the privacy policy on its own motion.

**Appendix 1: Form of Preliminary Pretrial Conference Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

Plaintiff(s)

vs.

Case Number: \_\_\_\_\_

District Judge \_\_\_\_\_

Defendant(s).

**PRELIMINARY PRETRIAL CONFERENCE ORDER**

A preliminary pretrial conference was held (by telephone) in this case at \_\_\_\_ on \_\_\_\_.

\_\_\_\_\_ appeared on behalf of Plaintiff(s); \_\_\_\_\_ appeared on behalf of Defendant(s).

**PERTINENT SETTINGS**

1. Settlement demand by Plaintiff upon Defendant to be made by: \_\_\_\_\_

2. "Cut-off" date for filing of motions directed to pleadings  
(including motions to amend, to add parties, or to dismiss): \_\_\_\_\_

Following this date, amendment to pleadings and motions  
directed to pleadings may be made only  
upon leave of Court, with notice to opposing counsel.

3. Date for disclosures required by Fed. R. Civ. P. 26(a)(1) \_\_\_\_\_

4. Date for filing identification of lay witnesses with synopsis of their  
testimony \_\_\_\_\_

5. Dates for filing identification of expert witnesses,  
together with a copy of the expert's report under Fed. R. Civ. P.  
26(a)(2)(B) or disclosure under Fed. R. Civ. P. 26(a)(2)(C):

Plaintiff(s) primary experts to Defendant(s): \_\_\_\_\_

Defendant(s) primary experts to Plaintiff(s): \_\_\_\_\_

6. Dates for filing identification of rebuttal experts:  
 Plaintiff(s) rebuttal experts to Defendant(s): \_\_\_\_\_  
 Defendant(s) rebuttal experts to Plaintiff(s): \_\_\_\_\_
7. Requests for admissions: \_\_\_\_\_
8. "Cut-off" deadline for discovery \_\_\_\_\_
9. "Cut-off" date for filing of motions not directed to pleadings (including motions for summary judgment): \_\_\_\_\_
10. Joint Final Pretrial Order by parties to be filed no later than: \_\_\_\_\_
11. Trial exhibits to be exchanged by: \_\_\_\_\_
12. Final Pretrial Conference to be held:  
 In Chambers on: \_\_\_\_\_  
 By Telephone Conference Call on: \_\_\_\_\_
13. Trial on the merits,  
 before the Court, beginning: \_\_\_\_\_  
 to a Jury, beginning: \_\_\_\_\_
14. Further status conference set for: \_\_\_\_\_
15. The Law Clerk assigned to this case is: \_\_\_\_\_

ALL discovery must be concluded, as opposed to simply being requested, by the discovery deadline. For example, interrogatories, which have a thirty day response time, must be served on the opposing party in sufficient time to allow that party to respond prior to the discovery deadline. In the absence of extraordinary cause, the Court will not extend the discovery deadline if doing so would adversely impact the trial date or the summary judgment filing deadline.

**Referral to United States Magistrate Judge**

Pursuant to 28 U.S.C. § 636(b)(1)(A), (B) and (C) and §636(b)(3), the above-captioned matter is hereby referred to the assigned United States Magistrate Judge from the date of this Order until the discovery deadline set herein or hereafter extended. At that time, the District Judge will resume management of the case through resolution or trial. The Magistrate judge to whom the case is

referred is hereby authorized to perform any and all functions authorized for full-time United States magistrate judges by statute except that, unless specifically ordered, the following motions are not referred, regardless of when they may be filed: (1) motions for temporary restraining order or preliminary injunction; (2) motions for summary judgment, including *Markman* hearings in patent cases; (3) motions for class certification; and (4) motions in limine relating to the admission of evidence at trial.

Appendix 2. Form of Final Pretrial Order

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

Plaintiff(s)

vs.

Case Number: \_\_\_\_\_

District Judge \_\_\_\_\_

Defendant(s).

**FINAL PRETRIAL ORDER**

(A proposed final pretrial order following this form must be jointly prepared and filed not later than the date set forth in the Preliminary Pretrial Conference Order.)

This action came before the Court at a final pretrial conference held on \_\_\_\_\_  
at \_\_\_ a.m./p.m., pursuant to Rule 16, Federal Rules of Civil Procedure.

**I. APPEARANCES:**

For Plaintiff(s):

For Defendant(s):

**II. NATURE OF ACTION AND JURISDICTION:**

A. This is an action for

B. The jurisdiction of the Court is invoked under Title \_\_\_\_\_ United States Code,  
Section \_\_\_\_\_.

C. The subject matter jurisdiction of the Court (is) (is not) disputed. [If disputed,  
state by which party and on what basis.]

**III. TRIAL INFORMATION:**

A. The estimated length of trial is \_\_\_\_\_ days.

B. Trial to \_\_\_\_\_ has been set for \_\_\_\_\_.

#### **IV. AGREED STATEMENTS AND LISTS:**

##### **A. General Nature of the Claims of the Parties:**

(1) PLAINTIFF CLAIMS: (suggested type of simple language)

"Plaintiff asserts in Count 1 a right of recovery for defendants' negligence as follows:

"Plaintiff asserts in Count 2 a right of recovery for defendants' wanton and willful misconduct as follows:

"Plaintiff asserts in Count 3 a right to punitive damages and attorney fees for the following reasons:

(2) DEFENDANT CLAIMS: (suggested type of simple language)

Defendant denies liability as asserted in Counts \_\_\_\_ for the following reasons:

Defendant as an affirmative defense asserts:

(3) ALL OTHER PARTIES' CLAIMS

##### **B. Uncontroverted Facts**

Suggested Language:

"The following facts are established by admissions in the pleadings or by stipulations of counsel (set forth and number uncontroverted or uncontested facts.)

##### **C. Issues of Fact and Law**

Suggested Language:

(1) "CONTESTED ISSUES OF FACT: The contested issues of fact remaining for decision are: (list)"

(2) "CONTESTED ISSUES OF LAW: The contested issues of law in addition to those implicit in the foregoing issues of fact, are: (set forth)

OR: There are no special issues of law reserved other than those implicit in the foregoing issues of fact."

If the parties are unable to agree on what the contested issues of fact or law are, their respective contentions as to what the issues are shall be set forth separately and clearly labeled.

##### **D. Witnesses**

Suggested Language:

(1) "Plaintiff will call or will have available for testimony at trial those witnesses listed in Appendix A hereof."

(2) "Defendant will call or will have available for testimony at trial those Witnesses listed on Appendix B hereof."

(3) \_\_\_\_\_ will call or will have available for testimony at trial those witnessed listed on Appendix C hereof."

(4) "The parties reserve the right to call rebuttal witnesses whose testimony could not reasonably be anticipated without prior notice to opposing counsel."

#### **INSTRUCTIONS:**

(1) A brief one or two sentence synopsis of the witnesses' testimony must be given -- i.e., "Will testify to pain and suffering," "Will testify to lost profits, *etc.*"

(2) Leave to call additional witnesses may be granted by the Court in unusual situations on motion with names, addresses, and an offer of proof of such witness' testimony within twenty-four hours after the need to call such witness becomes known.

(3) The witnesses need not be called in the order listed, but the witnesses to be called on the succeeding day shall be disclosed to opposing counsel not later than the end of trial each day, unless otherwise ordered.

#### **E. Expert Witnesses**

Suggested Language:

"Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed and reports furnished to the other side:

Plaintiff (a) Defendant(s)

#### **F. Exhibits**

The parties will offer as exhibits those items listed herein and numbered with Arabic numerals as follows:

(1) Joint Exhibits -- Appendix D (marked "JX \_\_\_\_")

(2) Plaintiff Exhibits Appendix E (marked "PX \_\_\_\_")

(3) Defendant Exhibits Appendix F (marked "DX\_\_\_\_")

(4) Third-Party Exhibits -- appendix G (use Arabic numerals prefixed by initial of party.

#### **INSTRUCTIONS:**

The above exhibits will be deposited with the Court's Deputy Clerk not later than 4:00 p.m. on the third working day prior to trial.

See General Order Number One section on preparation of exhibits.

#### **G. Depositions**

Suggested Language:

"Testimony of the following witnesses will be offered by deposition (read or videorecorded)"; OR

"No testimony will be offered by deposition"

**INSTRUCTIONS:**

See General Order Number One section on depositions

**H. Discovery**

Suggested Language:

"Discovery has been completed" OR

"The following provisions have been made for discovery."

See General Order Number One section on discovery

**I. Pending Motions**

Suggested Language:

"The following motions are pending at this time" OR

"There are no pending motions at this time."

**J. Miscellaneous orders**

INSTRUCTIONS: Set forth any orders not properly includable elsewhere.

**V. MODIFICATION**

Suggested Language:

"This final pretrial order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel, or on motion of the Court."

**VI. SETTLEMENT EFFORTS**

Suggested Language:

"The parties have made a good faith effort to negotiate a settlement," or otherwise described the status of settlement negotiations.

**VII. TRIAL TO A JURY**

PROPOSED INSTRUCTIONS ---

Suggested Language:

"The parties have submitted proposed jury instructions as required by General Order Number One."

See General Order Number One section on jury instruction.

Counsel for Plaintiff(s)

Counsel for Defendant(s)

Approved following Final Pretrial Conference:

or

\_\_\_\_\_  
United States District Judge  
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

Plaintiff(s)

vs.

Case Number: \_\_\_\_\_

District Judge \_\_\_\_\_

Defendant(s).

**RULE 26(f) REPORT OF THE PARTIES**

1. Pursuant to Fed. R. Civ. P. 26(f), the parties met on \_\_\_\_\_. The meeting was attended by:

_____	counsel for plaintiff(s)	_____
_____	counsel for plaintiff(s)	_____
_____	counsel for plaintiff(s)	_____
_____	counsel for defendant(s)	_____
_____	counsel for defendant(s)	_____
_____	counsel for defendant(s)	_____
_____	counsel for defendant(s)	_____

2. The parties:

\_\_\_ have provided the pre-discovery disclosures required by Rule 26(a)(1), including a medical package (if applicable).

\_\_\_ will exchange such disclosures by \_\_\_\_\_

\_\_\_ are exempt from disclosure under Rule 26(a)(1)(B).

3. The parties:

\_\_\_ unanimously consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

\_\_\_ do not unanimously consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

\_\_\_ unanimously give contingent consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c), for trial purposes only in the event that the assigned District Judge is unavailable on the date set for trial (e.g., because of other trial settings, civil or criminal).

4. Recommended cut-off date for filing of motions directed to the pleadings: \_\_\_\_\_
5. Recommended cut-off date for filing any motion to amend the pleadings or to add additional parties: \_\_\_\_\_
6. Recommended discovery plan:
  1. Describe the subjects on which discovery is to be sought and the nature, extent and scope of discovery that each party needs to: (1) make a settlement evaluation, (2) prepare for case dispositive motions and (3) prepare for trial:
  2. What changes should be made, if any, in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the local rules of this Court, including the limitations to interrogatories/requests for admissions and the limitation of ten depositions, each lasting no more than one day consisting of seven hours?
  3. Additional recommended limitations on discovery
7. Recommended date for disclosure of lay witnesses: \_\_\_\_\_
8. Describe the areas in which expert testimony is expected and indicate whether each expert has been or will be specifically retained within the meaning of Fed. R. Civ. P. 26(a)(2).  
  
 Recommended date for making primary expert designations:
  1. Plaintiff(s): \_\_\_\_\_
  2. Defendant(s) \_\_\_\_\_
 Recommended date for making rebuttal expert designations:
  1. Plaintiff(s): \_\_\_\_\_
  2. Defendant(s) \_\_\_\_\_
9. Recommended date for requests for admission
10. Recommended discovery cut-off date: \_\_\_\_\_
11. Recommended dispositive motion date: \_\_\_\_\_
12. Recommended date for a status conference (if any):
13. Suggestions as to type and timing of efforts at Alternative Dispute Resolution.
14. Recommended date for a final pretrial conference. \_\_\_\_\_

15. Has a settlement demand been made? \_\_\_\_\_ A response?

Date by which a settlement demand can be made: \_\_\_\_\_

Date by which a response can be made: \_\_\_\_\_

16. Other matters pertinent to scheduling or management of this litigation:

To be signed by the counsel for all parties and individually by any parties proceeding pro se.

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