

STANDING ORDER REGARDING PROCEDURES IN CIVIL CASES

**MATTHEW W. McFARLAND
UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

This Standing Order is adopted under Fed. R. Civ. P. 83(b) and governs practice before District Judge Matthew W. McFarland, supplementing the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the Local Rules of this Court. All attorneys who enter appearances in cases in this Court are charged with knowledge of this Order and are obliged to follow it.

I.	CASE MANAGEMENT PROCEDURES.....	2
	A. Rule 26(f) Conference and Discovery Plan.....	2
	B. Preliminary Pretrial Conference.....	3
	C. Magistrate Judge Practice	4
	D. Counsel Not Admitted in the Southern District.....	6
II.	DISCOVERY.....	6
	A. No Discovery Motions	6
	B. Deadlines	7
	C. Protective Orders	7
III.	MOTIONS.....	7
	A. All Motions	7
	B. Motions for Summary Judgment	8
	C. Motions to Seal	10
IV.	FINAL PRETRIAL CONFERENCE.....	11
V.	TRIAL ASSIGNMENTS	11
VI.	TRIAL PROCEDURES	12
	A. Counsel Tables	12
	B. Court Sessions.....	12
	C. Courtroom Equipment	13
	D. Courtroom Decorum	13
	E. Voir Dire Examination.....	13
	F. Challenges for Cause.....	14
	G. Peremptory Challenges.....	14
	H. Jury Instructions & Verdict Form.....	14
	I. Examination of Witnesses	15
	J. Doctors and Other Professional Witnesses.....	16
	K. Objections.....	17
	L. Exhibits.....	17
	M. Depositions.....	19
	N. Trial Briefs.....	19

O. Findings of Fact and Conclusions of Law	19
P. Motions in Limine	20
Q. No Motions During Trial	20
R. Stipulations.....	20
S. Summary of Trial Deadlines	21

I. CASE MANAGEMENT PROCEDURES

A. Rule 26(f) Conference and Discovery Plan; Initial Disclosures¹

1. Fed. R. Civ. P. 26(f) Conference

As soon as all counsel are identified, but in any event no later than receipt of notice of the Preliminary Pretrial Conference, all counsel must agree on a date for the discovery planning conference required under Fed. R. Civ. P. 26(f).

2. Discovery Plan

Following the Rule 26(f) conference, but no later than seven (7) days before the Preliminary Pretrial Conference, the parties must file the discovery plan required under Fed. R. Civ. P. 26(f)(3). They shall use the required Joint Discovery Plan form on the Court’s website under Judge McFarland’s Standing Orders.

3. Initial Disclosures

Unless otherwise agreed in the discovery plan, the parties shall make the initial disclosures required under Fed. R. Civ. P. 26(a)(1) within fourteen days after the Rule 26(f) conference.

¹ 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 any other proceeding to challenge a criminal conviction or sentence; (iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision; (v) an action to enforce or quash an administrative summons or subpoena; (vi) an action by the United States to recover benefit payments; (vii) an action by the United States to collect on a student loan guaranteed by the United States; (viii) a proceeding ancillary to a proceeding in another court; and (ix) an action to enforce an arbitration award.

B. Preliminary Pretrial Conference

The Court will schedule a Preliminary Pretrial Conference under Fed. R. Civ. P. 16 to occur within thirty (30) days of the date when all defendants have filed an answer to the complaint or the Court has ruled on all motions directed to the pleadings. Generally, this conference will be conducted by telephone, unless otherwise noted in the pretrial notice. The conference will deal with the following matters, wherever applicable:

1. Status of Settlement Negotiations

The Court will discuss various means of alternative dispute resolution that may be applicable to the case. Counsel are encouraged to contact the Court at any time if it can assist in facilitating settlement.

Judge McFarland does not personally conduct settlement conferences in his assigned cases. Civil cases are referred to a Magistrate Judge to conduct a mediation in accordance with S. D. Ohio Civ. R. 16.3.

2. Scheduling Case Management Dates

The Court will review the Joint Discovery Plan filed by the parties and set the following dates:

- a. Deadline for filing motions directed to the pleadings (*e.g.*, motions under Fed. R. Civ. P. 12(b) or (c), motions to remand)
- b. Last date for moving to amend the pleadings, including adding parties
- c. Deadline for the completion of discovery
- d. Date(s) for identifying primary expert witnesses; furnishing copies of the expert reports required under Fed. R. Civ. P. 26(a)(2)(B); and disclosing the information required by Fed. R. Civ. P. 26(a)(2)(C) for experts not required to prepare a report
- e. Date(s) for identifying rebuttal expert witnesses and furnishing reports required under Fed. R. Civ. P. 26(a)(2)(C)
- f. Deadline for filing dispositive motions, *e.g.*, motions for summary judgment
- g. Date for trial (Generally, the Court will set the case for a Final Pretrial Conference approximately one (1) month before trial)

3. Protective Orders

The parties should review Sixth Circuit's directives set forth in *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016) and its progeny, as well as S.D. Ohio Civ. R. 5.2.1 (regarding the procedure for requesting leave to file documents under seal), before submitting a proposed protective order for the Court's consideration.

4. Motion Practice

The Court will discuss any pending or expected motions, including the briefing schedule for such motions and whether the parties request a hearing on any motion.

5. Additional Conferences

The Court may schedule additional status conferences for the purpose of, for example, monitoring discovery or efforts to resolve the case through alternative dispute resolution.

6. Calendar Order

At the conclusion of the Preliminary Pretrial Conference, the Court will prepare and file a Calendar Order substantially in the form attached hereto and available on the Court's website.

Deadlines set forth in the Calendar Order and in any other Order are firm deadlines. The parties are expected to meet all deadlines, unless they have sought and obtained leave to continue a deadline to a later date.

The Court may impose sanctions, including monetary sanctions, for failure to meet its deadlines.

C. Magistrate Judge Practice

1. General Order of Assignment and Reference CIN 14-01

Under the General Order of Assignment and Reference CIN 14-01, all civil and miscellaneous cases filed at the Cincinnati seat of court are randomly assigned upon filing to one of the resident District Judges and one of the resident Magistrate Judges. This assignment does not constitute a reference to the assigned Magistrate Judge for any purpose, but merely selects the Magistrate Judge to whom referrals in the case, if any, shall be made.

Pursuant to 28 U.S.C. § 636(b), certain categories of cases filed at the Cincinnati seat of court are referred upon filing to the Magistrate Judge to whom the case has been assigned. Such cases include, for example, all cases filed by persons proceeding *pro se*, appeals from decisions of the Commissioner of Social Security, and all prisoner cases filed pursuant to 28 U.S.C. § 2254 or 42 U.S.C. § 1983. A complete list of the types of cases that are automatically referred to the assigned Magistrate Judge is contained in the General Order of Assignment and Reference CIN 14-01, which is available on the Court's website.

2. Consent Reference

All Magistrate Judge in Cincinnati are authorized to exercise plenary jurisdiction over civil cases upon unanimous consent of the parties. The Rule 26(f) conference provides counsel an opportunity to discuss this possibility early in the case and the Court's Joint Discovery Plan form provides a place to indicate whether there is unanimous consent to the jurisdiction of the Magistrate Judge.

There are three varieties of consent reference:

- a. **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.
- b. **Contingent Consent.** In order to guarantee that a case is tried on the trial date set in the Calendar Order, parties may consent to referral to the assigned Magistrate Judge for trial if the District Judge becomes unavailable.
- c. **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.

3. Pretrial Management Referral

In some cases, the Court may refer a civil case 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).

The Magistrate Judge will not make recommendations on motions for summary judgment, whether they are filed before or after the discovery cut-off.

4. Mediation Referral

As mentioned, 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.

D. Counsel Not Admitted in the Southern District

All parties not appearing pro se must be represented by an attorney who is a permanent member of the bar of this Court in good standing and designated as “trial attorney” under 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 Court’s discretion, attorneys admitted pro hac vice may, on motion, 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.

An order granting admission pro hac vice is conditioned upon counsel’s registration and participation in the Court’s electronic filing system.

II. DISCOVERY

A. No Discovery Motions

The Court does not allow parties to file motions regarding discovery disputes (e.g., motions to compel or motions for protective order), unless and until their counsel have completed the following procedure:

Counsel first must attempt to resolve disputes by extrajudicial means (as required by S.D. Ohio Civ. R. 37.1). This Court defines “extrajudicial means” as requiring counsel to try to resolve the matter both in writing and telephonically.

If counsel cannot resolve the dispute between themselves, then they may contact the Court's Courtroom Deputy, Kellie Fields, by either phone (513- 564-7650) or email at McFarland_Chambers@ohsd.uscourts.gov and a telephone conference with all counsel and the Court will be scheduled as soon as possible.

B. Deadlines

The deadline for discovery will be set in the Court's Calendar Order. Discovery requests must be made at such time that responses thereto are due before the discovery deadline. For example, if the time for response to a discovery request under the appropriate rule is thirty days, the discovery request must be made at least thirty days before the discovery deadline.

Counsel, by agreement, may continue discovery beyond the deadline. In that case, no supervision of or intervention in the continued discovery will be made by the Court unless there is a showing of extreme prejudice. No dispositive motion deadline or trial setting will be vacated as a result of information acquired during continued discovery by agreement of the parties.

C. Protective Orders

If the parties seek Court approval of a stipulated protective order to govern discovery, they must email a copy of the proposed order in Word format McFarland_Chambers@ohsd.uscourts.gov. When drafting a proposed protective order, the parties must adhere to the directives set forth in *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016) and its progeny and the Court's procedure for sealing documents. **No motion need be filed.** If you have any questions regarding the procedure for submitting a protective order, please call Judge McFarland's senior law clerk, Pete Snow, at (513) 564-7654.

III. MOTIONS

A. All Motions

1. Hearings

Other than motions required by law to be set for a hearing, with notice given to all counsel, and motions upon which a specific request for a hearing has been made and granted by the Court, all motions shall be submitted without oral argument based on the parties' memoranda, unless otherwise ordered. Counsel can request oral argument, and the Court will use its discretion in setting a hearing.

2. Courtesy Copies

The Court requires counsel to submit a hard copy to Chambers of any dispositive motions, oppositions, and replies thereto. All copies submitted to the Court must include the CM/ECF electronic heading with the document number and the PageID number. These submissions also must contain all related attachments, each with the CM/ECF electronic heading.

3. Westlaw and Lexis

Counsel should use Westlaw citations, when available, for all unreported opinions. If using Lexis or another legal database, counsel must attach all unreported opinions to the motion.

4. Page Limitations and Formatting

BRIEFS AND/OR MEMORANDA IN SUPPORT OF OR IN OPPOSITION TO ANY MOTION IN THIS COURT SHALL NOT EXCEED TWENTY (20) PAGES WITHOUT FIRST OBTAINING LEAVE OF COURT. A motion for leave must set forth the number of pages sought and the reasons why additional pages are required. The Court will strike any motion that exceeds the page limit.

If leave of Court is granted, counsel must include: (1) a table of contents indicating the main sections of the memorandum, the arguments made in each section, and the pages on which each section and subsection may be found; and (2) a succinct, clear, and accurate summary not to exceed five pages of the principal arguments made and citations to the primary authorities relied upon in the memorandum. All briefs and memoranda shall comply with the formal requirements of S.D. Ohio Civ. R. 7.2.

In the spirit of compliance with the rules, all briefs and memoranda shall comport with the following: (1) one-inch margins top, bottom, left and right; (2) main body of text a minimum of 12-point font and footnotes in 10-point font; and (3) citations in main body of text and not in footnotes.

B. Motions for Summary Judgment

1. Movant's Statement of Proposed Undisputed Facts

Counsel must attach to the initial brief in support of a motion for summary judgment a document entitled "Proposed Undisputed Facts" that sets forth in separately numbered paragraphs a concise statement of each material fact as

to which the moving party contends there is no genuine issue to be tried. Each Proposed Undisputed Fact must be supported by a specific citation or citations to: (1) the affidavit or declaration of a witness competent to testify as to the facts at trial; (2) a deposition; and/or (3) other evidence, including documentary evidence, that would be admissible at trial. All citations to documents and exhibits previously filed with the Court must include the CM/ECF document number and, where applicable, pinpoint citations using the PageID number. The supporting evidence, unless already filed with the Court, shall be filed and served with the statement of Proposed Undisputed Facts.

2. Opponent's Response to Movant's Proposed Undisputed Facts and Statement of Proposed Disputed Issues of Material Fact

Counsel must attach to every brief in opposition to a motion for summary judgment a document entitled "Response to Proposed Undisputed Facts" that states, in separately numbered paragraphs corresponding to the paragraphs contained in the moving party's statement of Proposed Undisputed Facts, whether each of the facts asserted by the moving party is admitted or denied. If denied, the denial must be supported with a citation to contrary evidence that would be admissible at trial, and such evidence, unless already filed with the Court, must be filed and served with the Response to Proposed Undisputed Facts. All citations to documents and exhibits previously filed with the Court must include the CM/ECF document number and, where applicable, pinpoint citations using the PageID number.

The Response must also include, in a separate section entitled "Proposed Disputed Issues of Material Fact," a list of each issue of material fact the Opponent contends must be tried. The Proposed Disputed Issues of Material Fact must be supported with citations to evidence as set forth above.

3. Motions Filed Against Pro Se Litigants

Any represented party moving for summary judgment against a party proceeding pro se shall file and serve, in a separate document, the Notice form attached as Appendix C to this Order. If the pro se party is not a plaintiff, or if the case is tried to the Court rather than to a jury, the movant may modify the Notice as appropriate. The movant shall attach to the Notice form copies of this Order and Fed. R. Civ. P. 56.

4. Exhibits, Depositions and Citations to the Record

If a party intends to cite to deposition testimony or exhibits in a dispositive motion, the party must file the deposition transcript and its exhibits: (a) in their entirety, (b) as separate documents (the transcript should be filed as the principal document), and (c) prior to the filing of the dispositive motion. For good cause shown, the Court may permit a party to file only a portion of a deposition transcript.

All citations to a deposition transcript should include the transcript's CM/ECF document number and, where applicable, pinpoint citations using the PageID number, which are generated after a document is filed on CM/ECF. For example, a citation might read, "O'Leary Dep., Doc. #28 at PageID 134."

If any document relied upon in a motion has already been filed in the Court's docket, the document should not be filed as an exhibit to the motion. Rather, counsel should cite to the document by its CM/ECF document number and PageID number.

If any document is filed for the first time as an attachment to a memorandum in support of or in opposition to a motion for summary judgment, the filing party must clearly state within the first citation to the document that it is attached and its exhibit number.

C. Motions to Seal

1. Leave of Court Required

Unless permitted by statute, parties may not file documents under seal without obtaining leave of Court upon motion and for good cause shown. *See* S.D. Ohio Civ. R. 5.2.1(a). Parties should evaluate their exhibits prior to motion deadlines and communicate with opposing counsel to determine if they need to seek leave of Court to file any exhibits under seal. Any request to seal a document must comply with *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016) and its progeny.

2. Procedure

A motion for leave to file a document under seal must be filed, setting forth the particularized reasons such document should be sealed. Counsel must provide a hard copy of the document for in-camera review to Chambers the same day the motion is filed. A motion to seal should be supported by a

proposed order granting the motion emailed to McFarland_Chambers@ohsd.uscourts.gov.

If the motion for leave to file a document under seal is granted, the party should verify with the Court the filing procedure to be used. Typically, the Court follows the following procedure: If the sealed document is being filed in support of a dispositive motion, the entire set of exhibits, including any unsealed documents, should be filed under seal. A second complete set of redacted documents should be filed with all attachments.

IV. FINAL PRETRIAL CONFERENCE

Approximately thirty (30) days before trial, the Court will hold a Final Pretrial Conference.

In preparation for the Final Pretrial Conference, counsel for each of the parties must assemble all the exhibits that they plan to use at trial and make them available (either the originals or copies) to opposing counsel.

At least seven (7) days before the Final Pretrial Conference, counsel shall email to McFarland_Chambers@ohsd.uscourts.gov the following documents:

- 1) A jointly prepared Final Pretrial Order in the form set forth in Appendix A, and
- 2) A brief joint statement of facts to be read to the jury in the Final Pretrial Order.

All trial counsel must be present at the Final Pretrial Conference. Attorneys must bring the party, principal, or agent with full settlement authority to the Final Pretrial Conference.

If the parties agree to submit the entire case on cross motions for summary judgment, the Final Pretrial Conference and trial dates may be vacated.

V. TRIAL ASSIGNMENTS

Multiple cases will be scheduled for trial during each setting. Criminal cases may also be scheduled and will take precedence under the Speedy Trial Act, 18 U.S.C. § 3161, et seq. As to civil cases, the Court will determine which case shall proceed. If your case does not proceed, it will be rescheduled. If your case settles, you must immediately notify the Court.

NOTE: Should a case settle after 12:00 PM on the business day immediately preceding the trial date, the Court may assess against either or both parties the costs of summoning a jury. A case will be considered settled for the purposes of this provision when notice thereof is given to the Court. A hearing may be held before such costs are assessed, if requested by the parties.

If, for any reason, counsel wish to have their case advanced for trial to the earliest available date, they may contact the Courtroom Deputy to be placed on a “standby” list. Should any trial setting be vacated by a settlement or continuance of other trials, counsel would be contacted to determine whether they wish to utilize the newly available time slot.

VI. TRIAL PROCEDURES

The following procedures govern all in-court appearances before Judge McFarland. Unless otherwise specified, all such proceedings shall take place in Courtroom Four (Room 842) on the Eighth Floor of the Potter Stewart United States Courthouse.

A. Counsel Tables

The parties will occupy the counsel table designated by the Courtroom Deputy before the opening of the first session of the trial.

B. Court Sessions

Trial hours are generally Monday through Friday, from 9:00 a.m. to 12:00 PM and 1:00 PM to 4:30 PM. The Court will take at least one 15-minute break during both the morning and afternoon sessions.

The parties and all counsel shall be present at counsel tables at all sessions before the jury is brought into the courtroom and will remain at counsel tables until after the jury leaves the courtroom at the end of all sessions. The parties and counsel will stand upon the entrance and exit of the jury.

Counsel and the parties shall be present in the courtroom one-half hour before Court convenes every day (generally 8:30 AM). The purpose of this requirement is to resolve any problems that the Court or parties expect may arise during trial. If counsel need to bring anything to the Court’s attention, they should contact the Courtroom Deputy or law clerk so that the Court can resolve the matter before the jury is brought into the courtroom.

Counsel should also be readily available for conferences during recesses. Please keep the Courtroom Deputy informed as to how to contact you in case the Court needs to find you quickly.

C. Courtroom Equipment

Counsel who intend to make an audio, video or other presentation involving technology must notify the Courtroom Deputy at least three business days before a scheduled hearing and at the Final Pretrial Conference prior to a trial. Counsel are responsible for operating any audiovisual devices that they wish to use. Counsel who are unfamiliar with how to operate the equipment should contact the Courtroom Deputy to schedule a tutorial.

D. Courtroom Decorum

Counsel must stand when addressing the Court for any reason.

Counsel must address all comments to the Court. Colloquy or argument between opposing counsel is not permitted.

Do not ask the court reporter to mark testimony. All requests for re-reading of questions or answers shall be addressed to the Court.

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

Voir dire examination, opening statements, and closing arguments will be conducted from the lectern facing the jury.

E. Voir Dire Examination

The whole panel of prospective jurors (i.e., those in the jury box and those seated in the rear of the courtroom) will be examined in one continuous examination.

Counsel will be provided with a list of the prospective jurors one week prior to the commencement of trial. Background information regarding the prospective jurors is contained in their completed juror questionnaire forms on file in the Clerk's Office. Counsel can contact the Jury Commissioner the week before trial at 513-564-7522 to obtain the juror questionnaire forms.

In most cases, eight (8) jurors will be seated in the jury box and all will deliberate. Under Fed. R. Civ. P. 48, unless the parties stipulate otherwise, the verdict shall be unanimous and by a jury of at least six (6) members. The Court generally assigns four (4) peremptory challenges to each side.

The Court will conduct a preliminary voir dire examination (see Appendix B) and counsel may supplement the Court's examination, but they may not repeat a question in the same or any other form already put to the panel by the Court.

Counsel must address their questions to the whole panel in general and may not question an individual juror unless it develops from a question put to the whole panel and the answer of a specific juror justifies further inquiry. In addition, counsel may inquire regarding any omission in a juror's answer to the juror questionnaire or regarding information contained in the juror questionnaire.

F. Challenges for Cause

The entire panel will be subject to challenge for cause (i.e., jurors seated in the jury box and in the rear of the courtroom). Challenges for cause will be exercised outside of the presence of the jury (either in a conference room or at sidebar).

G. Peremptory Challenges

Following challenges for cause, the parties will exercise their peremptory challenges alternately with the plaintiff exercising the first challenge. If either party passes, the challenge will be counted as used. Peremptory challenges will be exercised outside the presence of the jury (either in a conference room or at sidebar). Any prospective juror on the panel may be so challenged. Challenges to the way an opposing party has exercised peremptory challenges (e.g., a *Batson* argument that a party's challenges are racially discriminatory) shall be made before the jury is sworn and before the extra venire persons are excused; otherwise, they are waived. At the conclusion of the peremptory challenges, the Courtroom Deputy will announce the composition of the jury, which shall be the first eight (8) prospective jurors remaining on the list.

H. Jury Instructions & Verdict Form

Counsel are required to provide jury instructions to the Court only on the issues of the law applicable to the claims made and on damages. Counsel also shall provide proposed juror interrogatories and verdict forms. Boilerplate instructions on issues such as burden of proof, etc., need not be submitted.

Twenty-one (21) days before trial, counsel shall electronically file proposed instructions and interrogatories and email the instructions in Microsoft Word format to McFarland_Chambers@ohsd.uscourts.gov. Supplemental requests for instructions during the trial or at the conclusion of the evidence will be granted solely as to those matters that cannot be reasonably anticipated at the time of

presentation of the initial set of instructions. Agreed instructions, however, may be filed at any time.

Whether agreed or not agreed, each instruction should be on a separate page identified as “Plaintiff’s (Defendant’s or Joint) Requested Instruction No. ” and include citations of authority (including the page number for the specific legal proposition for which you are citing the case) in footnotes at the bottom of each instruction. Counsel must submit an index of their proposed instructions.

In diversity and other cases where Ohio law provides the rules of decision, use of Ohio Jury Instructions (“OJI”) as to all issues of substantive law is generally preferred.

Counsel should ensure that substantive instruction from OJI comports with current Ohio law. To the extent that the case is governed by state law other than Ohio law, parties may use an analogous state law treatise and provide the Court with copies of the relevant portions therefrom.

As to all matters governed by federal law, counsel should use Supreme Court caselaw, Sixth Circuit caselaw, Federal Jury Practice and Instruction by O’Malley, Grenig & Lee; or Pattern Jury Instructions published by a federal court. (Counsel must make substantive instructions on federal questions conform to Sixth Circuit caselaw.

Fourteen (14) days before trial, counsel shall file objections to proposed instructions/interrogatories/verdict forms. All objections shall include citation to authority (including the page number for the specific legal proposition for which you are citing the case). Failure to assert any foreseeable objection at this time may constitute waiver of that objection.

I. Examination of Witnesses

Counsel shall conduct their examination from the lectern.

When a party has more than one attorney, only one attorney may conduct the direct or cross-examination of a given witness.

Since all evidence will have been provided to the Courtroom Deputy before trial, counsel must request that the Courtroom Deputy hand a specific document to the witness. Documents intended for impeachment purposes that are not admitted into evidence will be handed to the Courtroom Deputy for suitable marking and then handed by the Courtroom Deputy to the witness.

If permission to approach a witness is granted for the purpose of working with an exhibit, counsel should resume the examination from the lectern when finished with the exhibit.

The Court generally permits the parties to qualify their opinion (expert) witnesses at trial. Opposing counsel may voir dire any such witness if his or her expertise is questioned.

The judiciary's privacy policy restricts the publication of certain personal data in documents filed with the Court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. (For criminal cases, also limit home addresses to city and state.) However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy by following the procedures set forth in the Judicial Conference policy on electronic availability of transcripts of court proceedings, or the court may do so on its own motion. The policy is located at www.ohsd.uscourts.gov (Forms - Electronic Availability of Transcripts).

J. Doctors and Other Professional Witnesses

It is the Court's position that treating physicians are not opinion (expert) witnesses to the extent that they are called as fact witnesses. If, however, a treating physician gives a prognosis, then he will be deemed an opinion witness.

The Court will attempt to cooperate with doctors and other professional witnesses and will, to the extent practicable, accommodate their schedules by permitting them to testify out of order. Counsel should try to anticipate any such difficulty and reach an agreement, wherever possible, to achieve a minimum of disruption to both the trial and the witnesses' schedules.

Irreconcilable conflicts shall be brought to the attention of the Court as soon as counsel become aware of the problem.

K. Objections

Counsel must stand when making an objection and must make the objection directly and only to the Court.

When objecting, state only that you are objecting and, if requested by the Court, state the grounds. Objections shall not be used for the purpose of making speeches, repeating testimony, or attempting to guide a witness or influence the jury.

Argument upon an objection will not be heard unless permitted by the Court. Either counsel may request a bench conference.

L. Exhibits

COUNSEL ARE REQUIRED TO LIST ALL EXHIBITS IN THE FINAL PRETRIAL ORDER. The Court will not permit the introduction of any exhibit not listed in the Final Pretrial Order, unless a party shows good cause for its introduction or it is to be used solely for impeachment.

The following procedure will be followed: All exhibits will be assembled, marked, and placed in 3-ring binders. An index to the exhibits shall be in the front of each binder. If the parties have agreed upon joint exhibits, the parties shall submit a joint exhibit binder consistent with these instructions. Exhibits shall be marked as listed in the Joint Proposed Final Pretrial Order, with each exhibit bearing an exhibit sticker and with the same exhibit designation on a tab extended beyond the binder on the right-hand side. 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 identified with Arabic numbers. Plaintiff's exhibits will be identified in the range 1-999 (e.g., PX-1) and Defendant's exhibits will be identified in the range 1,001-1,999 (e.g., DX-1001). Joint exhibits will be identified in the 2,001-2,999 range (e.g., JX-2001).

If any party's exhibits exceed the range provided, that party must immediately notify both the Court and opposing counsel so a new range may be designated.

Joint exhibits are encouraged. If the parties have not submitted joint exhibits, then they must prepare jointly a cross referenced index of plaintiff's and defendant's exhibits that are the same. This index is due seven (7) days before trial.

Exhibit lists must be in the form set forth in the example attached to the Final Pretrial Order form.

Each counsel will deposit an original and two (2) copies of complete sets of his or her exhibits and all joint exhibits with the Court's Case Manager, not later than the close of business three (3) business days prior to trial. In certain cases, the Court may also request a copy of exhibits in electronic form, also with an index. Counsel also shall provide a complete set of exhibits to opposing counsel.

If any sketches, models, diagrams, etc. will be used during trial or in argument, they must be exhibited to opposing counsel not later than one business day before trial. Demonstrative evidence prepared solely for the purpose of final argument shall be displayed to opposing counsel at the earliest possible time, but in no event later than one-half hour before the commencement of the arguments.

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

Each party should offer its exhibits into evidence as they are sought to be used at trial. An exhibit to be examined or displayed to the jury must be offered and admitted before examination or display. The admissibility of all exhibits referred to during trial and offered by the parties will be ruled upon by the Court at the time that they are identified. Either side may offer any marked exhibit regardless of which party marked it.

A visualizer is available in the courtroom to project documents. If you are not familiar with how to operate the visualizer, please contact the Courtroom Deputy to schedule a tutorial before trial. Placing a document on the visualizer publishes it to the jury. Accordingly, counsel should not place any document on the visualizer unless (a) it has been admitted into evidence, or (b) the Court has granted permission and the parties have agreed that it may be published.

Counsel are not required to object to any exhibit at the Final Pretrial Conference. Before trial, however, counsel must confer regarding their proposed exhibits, reach an agreement regarding which exhibits are admissible, and attempt to resolve their objections to all other exhibits.

If counsel takes an exhibit from the Courtroom Deputy, that counsel is responsible for safekeeping the exhibit and returning it to the Courtroom Deputy at the end of the trial session.

In formulating a question regarding an exhibit, counsel must specify the exhibit number or designation so that the record will be clear.

Exhibits that are produced for the first time at trial, as in the case of exhibits used for impeachment, must be tendered to the Courtroom Deputy for marking and then copies provided to opposing counsel, the Court and the Court's law clerk.

The use of visual aids by all counsel is highly encouraged and recommended by the Court.

M. Depositions

Deposition transcripts must be filed electronically if a party reasonably anticipates use of such transcripts at trial. *See* S.D. Ohio Civ. R. 5.4(b).

Counsel must submit to each other their deposition designations at least fourteen (14) days before trial. Counsel will confer and attempt to resolve objections by agreement. If any objections remain, counsel must jointly prepare a list of objections identifying the page number and line(s) of the deposition where the objection will be found and state in one sentence the grounds for the objection. This procedure applies to both written and video recorded depositions. Visually recorded depositions that contain objections must be accompanied by a full or, if agreed, partial transcript. The jointly prepared deposition designations and list of objections (including the grounds for the objections) must be filed with the Court no later than seven (7) days before trial. Counsel are responsible for editing any video recorded testimony consistent with the Court's ruling on any objections.

N. Trial Briefs

Trial briefs are optional. If you decide to file a trial brief, it may be filed anytime before trial. All briefs must comply with S.D. Ohio Civ. R. 5.1, with citations and references conforming to S.D. Ohio Civ. R. 7.2(b). Counsel should use trial briefs to identify and explain the legal authorities (e.g., procedural or evidentiary rules, statutes and caselaw) upon which they will rely at trial. Briefs therefore should contain arguments, with citations to legal authority, in support of any evidentiary or other legal question that counsel reasonably anticipates arising at trial.

O. Findings of Fact and Conclusions of Law

In a trial to the Court, the parties shall file Proposed Findings of Fact and Conclusions of Law that the parties believe are necessary to be made to support a favorable judgment. These shall be filed fourteen days before trial.

P. Motions in Limine

Motions in limine must be filed and served no later than fourteen (14) days before trial. Responses to the motion(s) must be filed seven (7) days before trial.

Any motion in limine addressed to the admissibility of expert testimony under *Daubert*, if not included in a previously filed motion for summary judgment, must be filed at least forty-two (42) days before the Final Pretrial Conference. Responses to such motions must be filed no later than thirty-five (35) days before the Final Pretrial Conference. No replies are permitted without leave of Court.

In all cases, trial motions and motions in limine are to be exchanged with opposing counsel by hand delivery, facsimile, or email.

Q. No Motions During Trial

The Court does not permit motions to be filed during trial. The parties first must attempt to resolve any issue that arises during trial among themselves. If that effort is not successful, counsel must alert the Court and be prepared to orally present their respective arguments. The Court will hear argument on the issue before or after the conclusion of testimony that day.

R. Stipulations

Stipulations submitted to the Court must be titled "Stipulations" and signed by all counsel and all parties proceeding pro se. Stipulations may be filed at any time before or during trial.

[SEE NEXT PAGE FOR SUMMARY OF TRIAL DEADLINES]

S. Summary of Trial Deadlines

Jury Instructions/Interrogatories/Verdict Forms	21 days before trial
Objections to Jury Instructions/Interrogatories/ Verdict Forms	14 days before trial
Proposed Findings of Fact and Conclusions of Law (Bench Trial Only)	14 days before trial
Joint Deposition Designations and Objections	14 days before trial
Motions in Limine	14 days before trial
Responses to Motions in Limine	7 days before trial
Final Pretrial Order	7 days before FPT Conference
Index cross-referencing any identical exhibits offered by both plaintiff and defendant	7 days before trial
List of Agreed Admissible Exhibits	3 business days before trial
Exhibits	3 business days before trial
Witness Lists	3 business days before trial

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: /s/ Matthew W. McFarland
JUDGE MATTHEW W. McFARLAND

APPENDIX A
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

[PLAINTIFF NAME],	:	Case No. 1:[__]-cv-[____]
	:	
Plaintiff(s),	:	Judge Matthew W. McFarland
	:	
v.	:	
	:	
[DEFENDANT NAME],	:	
	:	
Defendant(s).	:	
	:	

FINAL PRETRIAL ORDER
[REQUIRED FORM]

This case came before the Court at a Final Pretrial Conference held on _____, 20__, at ____ AM/PM pursuant to Fed. R. Civ. P. 16.

I. APPEARANCES

For Plaintiff:

For Defendant:

II. NATURE OF ACTION AND JURISDICTION

This is an action for _____.

The Court has jurisdiction over this case under Title __, United States Code, Section __.

The Court's jurisdiction (is or is not) disputed.

III. TRIAL INFORMATION

The estimated length of trial is ___ days.

Trial to (the Court/a jury) has been set for _____, 20__.

OR:

A trial assignment will be made by the Court at a future date.

IV. AGREED STATEMENTS AND LISTS

General Nature of the Claims of the Parties

Pending Motions/Motions in Limine

Uncontroverted Facts

Contested Issues of Fact and Law

Witnesses

Opinion (Expert) Witnesses

Exhibits

Depositions

Completion of Discovery

Miscellaneous Orders

Identify here any orders that do not fall under another heading

V. MODIFICATION

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. JURY INSTRUCTIONS

Jury instructions, including interrogatories, special verdict forms, and an index of the jury instructions must be submitted by email in Microsoft Word format to McFarland_Chambers@ohsd.uscourts.gov at least twenty-one (21) days before

trial. In addition, all the above must be electronically filed with the Clerk's Office at least twenty-one (21) days prior to the commencement of trial. Counsel may submit supplemental requests for instructions during trial, or at the conclusion of the evidence, but only on matters that could not have been reasonably anticipated before trial.

Each instruction should be on a separate page identified as "Plaintiff's (Defendant's) Requested Instruction No. ____." All instructions must contain citation to authority (including the page number for the specific legal proposition for which you are citing the case) upon which counsel relies. A request for special instructions must be filed with the Clerk's Office, prior to presentation to the Court.

Fourteen (14) days before trial, counsel shall file objections to proposed instructions/interrogatories/verdict forms. All objections shall include citation to authority (including the page number for the specific legal proposition for which you are citing the case). Failure to assert any foreseeable objection at this time may constitute waiver of that objection.

VII. SETTLEMENT EFFORTS

Describe the parties' efforts to negotiate a settlement.

VIII. TRIAL TO THE COURT

Proposed Findings of Fact & Conclusions of Law: Contemporaneously with the submission of this proposed Final Pretrial Order, each of the parties also must file Proposed Findings of Fact and Conclusions of Law. Each party must include all the findings of facts and conclusions of law that the party believes are required for the Court to find in the party's favor at the conclusion of trial.

IX. WORD FORMAT

This proposed Final Pretrial Order shall be emailed in Word format to McFarland_Chambers@ohsd.uscourts.gov at least seven (7) days before the Final Pretrial Conference. It should **not** be filed with the Clerk's office.

X. ADDITIONAL ACTION TAKEN

Suggested language: The foregoing stipulations and statements were amended at the Final Pretrial Conference as follows:

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: _____
JUDGE MATTHEW W. McFARLAND

Dated: _____

Counsel for Plaintiff

Counsel for Defendant

APPENDIX B
VOIR DIRE QUESTIONS BY COURT
Civil Jury Trial

The Court will first conduct a comprehensive examination of the jury panel. After the Court completes its examination, counsel may ask the panel additional questions. Counsel may not, however, repeat in substance any question that the Court has already asked.

The Court's examination will include questions such as the following:

Knowledge of the Parties, Counsel, and Witnesses

1. The Plaintiff(s) is/are seated at counsel table. _____, will you please stand? Are any of you or is any member of your immediate family personally acquainted with the Plaintiff(s), related to him/her/them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with the Plaintiff(s)?

2. The Plaintiff(s) is/are represented by _____, who is/are seated at counsel table. _____, will you please stand? _____ is/are with the law firm of _____. Are any of you or is any member of your immediate family personally acquainted with the _____, or any of the other attorneys from his/her/their law firm, _____? Are any of you related to them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with them?

3. The Defendant(s) is/are seated at counsel table. _____, will you please stand? Are any of you or is any member of your immediate family personally acquainted with the Defendant(s), related to him/her/them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with the Defendant(s)?

4. The Defendant(s) is/are represented by _____, who is/are seated at counsel table. _____, will you please stand? _____ is/are with the law firm of _____. Are any of you or is any member of your immediate family personally acquainted with the _____, or any of the other attorneys from his/her/their law firm, _____? Are any of you related to them by blood or marriage, or do any of you or does any

member of your immediate family have any connection of any kind with them?

5. I am going to read a list of witnesses who may be called during this trial. Please respond if you know any of these persons:

The parties may call the following persons as witnesses:

[List witnesses from Final Pretrial Order, including expert witnesses.]

Is any panel member related by family or marriage to any of the individuals whom I have just named?

Are you personally acquainted with these persons, or do you have any knowledge of them, directly or indirectly, through your social, business or professional lives?

Knowledge of the Case

6. Have any of you read or heard anything about this case from any source, and I am not indicating from this question that there has been any publicity concerning it?

Previous Jury Duty

7. Have any of you served as jurors in either criminal or civil cases, or as members of a grand jury, either in the state or federal courts?
- a. Civil
 - b. Criminal
 - c. Grand Jury

Would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?

Business Dealing with the Parties

8. Have you or any member of your immediate family had business dealings with the Plaintiff(s) or the Defendant(s)?

Previous Litigation of Prospective Jurors

9. Have any of you or has any member of your immediate family ever participated in a lawsuit of any kind, as a party or in any other capacity?

Ability to Sit as Fair and Impartial Jurors

10. Does any panel member have any feeling--thought--inclination--premonition -- prejudice--religious belief or persuasion--or bias--which might influence or interfere with your full and impartial consideration and which might influence you either in favor of or against either the Plaintiff(s) or the Defendant(s)?
11. You must understand that it is most important for you to keep open minds until you have heard all the evidence and received the Court's instruction concerning the law. Is there anyone here who would not be able to keep an open mind until all the evidence is produced and the Court's instructions are received?
12. Will you take the law as the Court instructs you, without any reservation whatsoever, and apply the facts to the Court's instructions on the law? If you cannot do this, please hold up your hand.
13. Do you recognize and accept the proposition that jurors are the sole judge of the facts and the Court is the sole judge of the law? If you do not recognize this or cannot accept this, please hold up your hand.
14. Is there anyone here who would not be able or willing to render a verdict solely on the evidence presented at the trial and the law as I give it to you

in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have?

Personal Inconvenience

15. Does any person here have any medical disability or problem – such as difficulty in seeing or hearing – or any illness that might cause a problem in serving as a juror in this case?

16. This trial may last _____. The exact period of time is impossible, of course, to know today. Does any prospective juror have any immediate personal or family situation that would limit his or her ability to serve as a juror in this case for the period of time?

17. Finally, can any of you think of any matter that you should call to the Court's attention that may have some bearing on your qualifications as a juror, or that – even to the slightest degree – may prevent your rendering a fair and impartial verdict based solely upon the evidence and my instructions as to the law?

APPENDIX C

NOTICE TO PRO SE LITIGANT
OPPOSING MOTION FOR SUMMARY JUDGMENT

MATTHEW W. McFARLAND
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

The purpose of this notice is to advise you that the defendant has filed a motion for summary judgment asking the Court to dismiss all or some of your claims without a trial. The defendant argues that there is no need for a trial regarding these claims because no reasonable jury could return a verdict in your favor.

The defendant's motion may be granted and your claims may be dismissed without further notice if you do not oppose the motion by filing an opposition brief that complies with Rule 56 of the Federal Rules of Civil Procedure and this Court's Standing Order on Civil Procedures. Copies of Rule 56 and the Court's Standing Order on Civil Procedure are attached to this notice. You should read them carefully. You must file your opposition brief with the Clerk of the Court and serve a copy to defendant's counsel **WITHIN 21 DAYS** of the date of service of defendant's motion for summary judgment.