

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, AT DAYTON

STANDING ORDER GOVERNING CIVIL CASES

Effective as of May 13, 2021

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I. GENERAL PROVISIONS

a. Local Rules

The [Local Civil Rules of the United States District Court for the Southern District of Ohio](#), including the *Introductory Statement on Civility*, shall be strictly adhered to by all parties and counsel appearing before the undersigned and will be strictly enforced by the Court. The Court reserves the right to sanction counsel who violate the Local Rules or Civility Statement.

b. Conflicting General Orders

This Standing Order replaces Dayton General Order No. 12-01 for all civil cases assigned to the undersigned. On or after the effective date of this Standing Order, all counsel of record are charged with knowledge of the procedures and requirements contained herein.

II. PRETRIAL PROCEDURES

a. Preliminary Pretrial Conference

The Court will generally set a pretrial scheduling conference to occur by telephone within 45 days after all parties have appeared in an action.

i. Participation

All *pro se* parties must participate in the preliminary pretrial conference. Parties represented by counsel need only appear at the preliminary pretrial conference through their “trial attorney” (defined in S.D. Ohio Civ. R. 83.4(a)).¹ Co-counsel for any party may also participate in the preliminary pretrial conference, but a party’s “trial attorney” is required to participate.

ii. Subject Matter

During the preliminary pretrial conference, the Court will discuss the contents of the Rule 26(f) report, including the dates and deadlines proposed by the parties; the parties’ discovery plan; the need for issuance of a

¹ “Unless otherwise ordered, in all actions filed in, transferred to, or removed to this Court, all parties other than *pro se* parties must be represented at all times by a ‘trial attorney’ who is a permanent member in good standing of the bar of this Court. Each filing made on behalf of such parties shall identify and be signed by the trial attorney. The trial attorney shall attend all hearings, conferences, and the trial itself unless excused by the Court from doing so. Admission *pro hac vice* does not entitle an attorney to appear as a party’s trial attorney, but the Court may, in its discretion and upon motion that shows good cause, permit an attorney who has been so admitted to act as a trial attorney.” S.D. Ohio Civ. R. 83.4(a).

protective order governing the exchange of confidential information; the status of settlement negotiations; and whether the parties seek to engage in mediation or other alternative dispute resolution (“ADR”) mechanism.

b. Rule 26(f) Conference and Report

Prior to the preliminary pretrial conference, the parties shall confer as required by Fed. R. Civ. P. 26(f) and jointly prepare a Rule 26(f) report for filing.

i. Trial Date

Trial in a civil case will generally not be set to commence any sooner than 5 months after the dispositive motion deadline.

ii. Discovery Plan

In formulating a discovery plan, the parties shall consider the need for a protective order governing the exchange and use of confidential information during the discovery phase of the case.

iii. Filing

The Rule 26(f) report of the parties shall be filed at least 7 days prior to the date of the pretrial scheduling conference.

iv. Binding Nature of the Rule 26(f) report

In the absence of objection by any party, the Court will generally adopt in a Scheduling Order the following deadlines jointly proposed by the parties in the Rule 26(f) report: amending the pleadings; adding/joining additional parties; filing motions directed to the pleadings (*i.e.*, motions to dismiss or for judgment on the pleadings); disclosing lay and expert witnesses; completing discovery; and filing dispositive motions. Unless otherwise stated in the Court’s Scheduling Order, the dates jointly proposed by the parties in the Rule 26(f) report shall govern the action and the parties are bound by the discovery plan and other agreements set forth in the Rule 26(f) report.

v. Form

A form Rule 26(f) report is attached in Appendix A to this Standing Order.

c. Scheduling Order

A Scheduling Order will promptly issue after the preliminary pretrial conference and shall, upon issuance, govern the case. No deadline set in the Scheduling Order shall be extended, amended, or continued in the

absence of a Court Order issued upon good cause shown. In other words, even if all parties agree, a Court Order is nevertheless required to extend, amend, or continue any deadline set in the Scheduling Order. To seek amendment of deadlines, counsel or *pro se* litigants must file a motion to amend and comply with all provisions of the Local Rules. *See* S.D. Ohio Civ. R. 7.2 and 7.3.

III. MAGISTRATE JUDGE PRACTICE

a. Assignment

All civil cases, upon filing, are assigned by the Clerk to a district judge and a magistrate judge.

b. Reference

All civil cases assigned to the undersigned, upon filing, are hereby referred by this Standing Order to the magistrate judge pursuant to 28 U.S.C. §§ 636(b)(1)(A), (B), and (C) and § 636(b)(3). Unless otherwise ordered,² the magistrate judge is 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 to dismiss, for judgment on the pleadings, or for summary judgment; (3) motions for class certification; and (4) motions *in limine*.

c. Consent

A United States magistrate judge of this court is available to conduct all proceedings in a civil action (including a jury or nonjury trial) and to order the entry of a final judgment (a judgment that may then be appealed directly to the United States Court of Appeals for the Sixth Circuit). A magistrate judge may exercise this authority only if all parties voluntarily consent. You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. *Pro se* litigants and counsel may consent at any time during the litigation so long as trial has not yet begun.

If all parties consent to the jurisdiction of the magistrate judge, they shall so advise the Clerk of Court by signing and jointly submitting to the Clerk [Form AO 85](#), which is attached to this Standing Order at [Appendix B](#).

² Certain categories of cases are referred to the United States magistrate judge to perform any and all functions authorized for full-time magistrate judges by statute. *See* [Dayton General Order, No. 13-01 \(S.D. Ohio May 30, 2013\)](#). These cases include, *inter alia*, IRS summonses, government loans, Miller Act cases, *pro se* cases, post-conviction relief matters, Social Security disability appeals, and all post-judgment proceedings in aid of execution. *Id.* In addition, other cases may be referred for full disposition upon the unanimous consent of the parties. *See* 28 U.S.C. § 636(c); *see also* subsection c., *infra*.

IV. DISCOVERY

a. The Discovery Deadline

No discovery from any source shall be requested or received, or any depositions occur, after the discovery deadline. All discovery must be completed, not just requested, by the discovery deadline. For such discovery to occur, the requesting party must seek leave of court to amend the discovery deadline for that limited purpose. The Court may disregard -- on summary judgment, at trial, or otherwise -- any information or documents obtained, received, or produced after the discovery deadline.

b. Discovery Disputes and Associated Motion Practice

The parties may jointly request an informal discovery dispute conference only after exhausting all extrajudicial means³ to resolve the dispute. *See* S.D. Ohio Civ. R. 37.1. In the absence of extraordinary circumstances, no discovery motion -- such as a motion to compel or a motion for a protective order (except for a joint motion for entry of a proposed protective order) -- shall be filed in a case assigned to the undersigned until the parties have participated in an informal discovery dispute conference as set forth in S.D. Ohio Civ. R. 37.1.

c. Depositions in Lieu of Trial Testimony

After the discovery deadline, a party may take a deposition for use at trial in lieu of live testimony only if leave of court is granted.

d. Protective Orders Governing Confidential Information in Discovery

Where the parties believe that a protective order is needed to govern the exchange and use of confidential information during the discovery phase of the case, the parties shall confer to negotiate the terms of such an order for the Court's approval. To obtain Court approval, the parties shall jointly file a motion for the entry a joint protective order and attach the joint proposed protective order thereto. In addition, the parties shall email the joint proposed protective order to the undersigned's chambers and the chambers of the assigned magistrate judge. In negotiating the terms of the protective order, the parties shall be familiar with Sixth Circuit case law, including *Shane Group, Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299 (6th Cir. 2016). Form protective orders are available on the Court's [website](#).

e. Inadvertent Disclosure

Pursuant to Evidence Rule 502(d), an inadvertent disclosure of a communication or information covered by the attorney-client privilege or work-product protection

³ The undersigned interprets the phrase "all extrajudicial means" to require both telephonic and written communication between the parties.

made in connection with this litigation shall not constitute a waiver of that privilege or protection in this or any other federal or state proceeding.

V. MOTION PRACTICE

a. Memoranda in Support

Memoranda in support of a motion shall be appended directly to the motion and shall not be filed separately on the Court's CM/ECF docketing system.

b. Evidence in Support

The Court prefers that, to the extent practicable, all evidence used in support of a motion shall be filed on the Court's CM/ECF system before the motion is filed. Citations to evidence shall reference the case-specific document number and PageID number (*e.g.*, Doc. No. 50 at PageID 123) where the evidence cited is located within the record.

i. Depositions

When filing deposition transcripts, the parties shall file the full transcript in a condensed format. All deposition transcripts filed with the Clerk must include a signature page and statement of changes in form or substance made by the witness pursuant to Fed. R. Civ. P. 30(e) and the certificate described in Fed. R. Civ. P. 30(f).

ii. Confidential Information as Evidence

Except where impractical to do so, a party seeking to support a motion with information deemed "confidential" or otherwise protected by the terms of a protective order must, sufficiently in advance of date upon which the party seeks to file such information with the Court, confer with the party or parties designating the information confidential or otherwise protected by the terms of a protective order to determine whether it is appropriate to file a motion for leave to file that information under seal.

iii. Filing Evidence Under Seal

Leave of court is required before a party may file evidence on the Court's docket under seal. This includes information deemed "confidential" or otherwise protected by the terms of a protective order. When moving for leave to file information under seal, the moving party shall be familiar with the standards set by the Sixth Circuit, including *Shane Group*. The Court anticipates that motions for leave to file documents under seal will be accompanied by: (1) a memorandum explaining, with legal citations, why the proposed seal is no broader than necessary; and (2) an affidavit demonstrating compliance with *Shane Group* and its progeny.

Any Order denying a motion to seal or denying a motion for continued sealing will be stayed for a period of 14 days after entry of the Order during which an appropriate appeal from the Order may be filed or during which all or part of the material filed under seal may be withdrawn before it becomes a part of the public record. If an appeal is filed, the subject Order will remain stayed until the appeal is determined and, if the Order is affirmed, in whole or in part, the Order will remain stayed for an additional 14 days after the entry of the appellate ruling during which all or part of the material filed under seal may be withdrawn before it becomes a part of the public record.

iv. The Same Evidence Should be Filed Once

To the extent practicable, the parties should refrain from filing the same evidence multiple times on the Court's docket. For example, if the transcript of a deposition is filed as Document #20 on the docket in support of a motion to compel, that same deposition should not be separately filed again to support a later-filed motion for summary judgment; instead, the party should simply cite Doc. 20 and the appropriate PageID in the motion for summary judgment. Similarly, if defendant cites a contract governing the relationship between the parties and files such contract as an exhibit in support of a motion for summary judgment, plaintiff should not again file the same contract as an exhibit to the memorandum in opposition; instead, plaintiff should simply cite to the contract filed by defendant.

c. Page Limitations and Formatting

While the Court prefers that memoranda not exceed the 20-page limitation set forth in S.D. Ohio Civ. R. 7.2(a)(4), leave of court is not required to file a memorandum exceeding that page limitation. However, parties filing memoranda exceeding 20 pages in length shall comply with all other requirements of S.D. Ohio Civ. R. 7.2(a)(4).

All briefs and memoranda shall comport with the following specifications: (1) one-inch margins on all sides; (2) main body of the text in 12-point, Times New Roman font; (3) footnote text in at least-10 point font in the same typeface as the main body of the text; and (4) citations in the main body of the text, not footnotes.

d. Impact on Court Discovery

Unless otherwise expressly ordered by the Court, discovery is not stayed, extended, continued, or tolled by the filing of any motion or while any dispositive motion remains pending on the docket awaiting decision. For example: the filing of a motion for judgment on the pleadings or the pendency of a motion to dismiss does not stay or toll the discovery deadline pending a decision on the motion.

e. Hearings and Oral Argument

Unless required by law or otherwise ordered by the Court, all motions will be decided on the parties' written submissions filed in accordance with S.D. Ohio Civ. R. 7.2. The parties may request oral argument or a hearing on any motion by following the procedure set forth in S.D. Ohio Civ. R. 7.1(b).

f. Courtesy Copies

Unless requested by the Court, the parties need not provide the Court with courtesy copies of any motion or memorandum.

VI. MEDIATION

Mediations are conducted by the Dayton Magistrate Judge not otherwise assigned to the case. To schedule a mediation, counsel should contact Judge Newman's Courtroom Deputy directly, not the Magistrate Judge's chambers.

VII. TRIAL, ASSOCIATED CONFERENCES AND DEADLINES

a. Final Pretrial Conference

The date for the final pretrial conference will generally be set forth in the Scheduling Order issued at the outset of the case and will typically occur approximately 14 days or more prior to trial. The trial attorney and all co-counsel who intend to participate at trial shall attend the final pretrial conference. The Court reserves the right to bar from trial all counsel who fail to attend the final pretrial conference in person.

b. Joint Proposed Final Pretrial Order

No later than 7 days before the final pretrial conference, the parties shall file a joint proposed final pretrial order using the form attached hereto in Appendix C. A copy of the joint proposed final pretrial order shall also be emailed to the undersigned's chambers.

i. Procedures for Preparing the Joint Proposed Final Pretrial Order

Unless otherwise ordered by the Court or agreed to by the parties, the following procedure applies to the parties' preparation of the joint proposed final pretrial order:

Plaintiff shall prepare and deliver to each defendant a first draft of the joint proposed final pretrial order no later than 14 days prior to the filing deadline (without the information which is within the knowledge of defendants, such as lists of witnesses, exhibits, etc.);

Defendant must add all information necessary to complete a second draft of the joint proposed final pretrial order, clearly delineating the text which has been changed or added, and deliver the second draft to plaintiff(s) no later than 7 days prior to the filing deadline;

Following delivery of the second draft of the joint proposed final pretrial order, the parties shall confer and, thereafter, file and submit the joint proposed final pretrial order to the Court as set forth above.

ii. Sanctions

Failure to timely file the joint proposed final pretrial order as required may result in the continuance of the final pretrial conference and trial. Further, the failure to timely file the joint proposed final pretrial order may result in the issuance of sanctions, including the dismissal of a case for failure to prosecute.

iii. Entry of the Final Pretrial Order

Following the final pretrial conference, the Court will promptly enter the final pretrial order with any changes thereto on the Court's docket.

c. Exhibits

Exhibits shall be marked with sequential numerals as follows: joint exhibits shall be designated JX__; plaintiff exhibits shall be designated PX__; and defendant exhibits shall be designated DX__.

i. Exchange Between the Parties

Unless otherwise ordered, all exhibits shall be marked and copies of such delivered to all other parties no later than 3 business days before the final pretrial conference.

ii. Court Copies

A hard copy of all exhibits shall be provided to the undersigned's Courtroom Deputy at least 3 business days prior to trial. To the extent possible, an electronic copy of all exhibits shall also be provided to the Court. If the parties are unable to provide the Court with electronic copies, 2 additional hard copies must be given to the undersigned's Courtroom Deputy at the time set forth above.

iii. Demonstratives

Sketches, models, diagrams, videos, PowerPoints, or any other demonstrative exhibit that will be used at trial for any purpose must be exhibited to all other parties no later than the final pretrial conference.

iv. Display of Exhibits at Trial

Unless admitted into evidence, no exhibit can be displayed to the jury without Court approval.

v. Admission into 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.

d. Jury Instructions

Proposed jury instructions and verdict forms must be filed 7 days or more before the final pretrial conference. In addition, a Word version of each parties' proposed jury instructions shall be emailed to chambers at newman_chambers@ohsd.uscourts.gov. 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.

i. Citation to Authority

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; Pattern Instructions from other circuit courts; and instructions given in prior cases of a similar nature.

ii. Agreed Statement of the Case

The parties are required to confer and submit an agreed statement of the case to the undersigned's chambers via email (newman_chambers@ohsd.uscourts.gov) 7 days or more before trial.

e. Motions *in Limine*

Unless otherwise ordered, all motions *in limine*, directed to the presentation of evidence at trial, must be filed not later than 14 days prior to the final pretrial conference. Memoranda in opposition to motions *in limine* shall be filed no later than 7 days prior to the final pretrial conference. The failure

to file a motion *in limine* does not waive any argument regarding the admissibility of evidence at trial.

f. 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.

g. Trial Briefs

Trial briefs, if desired by counsel or ordered by the Court, must be filed and served 7 days or more before 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.

h. Courtroom Practice

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

i. 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.

ii. 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 15 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. A recess of 15 minutes will occur 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.

iii. Voir Dire

For *voir dire*, the Court will generally ask initial questions of the entire panel first and will then allow counsel for the parties to ask follow-up questions.⁴ Following questioning, the Court will entertain “for cause” challenges and peremptory challenges. The parties shall each have 3 peremptory challenges and may request additional peremptory challenges during the final pretrial conference.

iv. Size of the Jury

The Court will seat a jury of 8 in civil cases with a requirement of unanimity, unless otherwise ordered in the final pretrial order.

v. Courtroom Demeanor

Counsel should consult with Judge Newman at the final pretrial conference regarding the judge’s preference as to requesting permission to approach a witness.

Presenting Exhibits to Witnesses. Since all evidence will have been previously deposited with the Courtroom Deputy, counsel should request the Courtroom Deputy 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 for suitable marking and then handed to the witness.

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

Objections. Counsel shall not make speaking objections and are not to argue objections in the hearing of the jury.

vi. 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 (counsel’s attention

⁴ For a list of sample questions, see *infra* Appendix D.

is directed to Fed. R. Civ. P. 51); and (2) the Court will determine the length of the summations to the jury.

IT IS SO ORDERED.

Date: May 13, 2021

s/Michael J. Newman
Hon. Michael J. Newman
United States District Judge

Appendix A

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

_____	:	Case No.
Plaintiff(s),	:	District Judge _____
	:	Magistrate Judge _____
vs.	:	
_____	:	RULE 26(f) REPORT OF PARTIES
	:	(to be filed not later than seven (7)
Defendant(s).	:	days prior to the preliminary
	:	pretrial conference)

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on _____,
and 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 Fed. R. Civ. P. 26(a)(1), including a medical package (if applicable).
- _____ will exchange such disclosures by _____.
- _____ are exempt from disclosure under Fed. R. Civ. P. 26(a)(1)(E).

3. The parties:

- _____ unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
- _____ do not unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636 (c).
- _____ unanimously give contingent consent to the jurisdiction of the 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 and/or to add additional parties: _____

6. Recommended discovery plan:

- a. 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:

b. 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 40 interrogatories/requests for admissions and the limitation of 10 depositions, each lasting no more than one day consisting of seven (7) hours?

c. Additional recommended limitations on discovery:

d. Recommended date for disclosure of lay witnesses.

e. 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).

f. Recommended date for making primary expert designations:

g. Recommended date for making rebuttal expert designations:

h. The parties have electronically stored information in the following formats:

The case presents the following issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced:

i. The case presents the following issues relating to claims of **privilege or of protection as trial preparation materials**:

Have the parties agreed on a procedure to assert such claims **AFTER** production?

_____ No

_____ Yes

_____ Yes, and the parties ask that the Court include their agreement in an order.

j. Recommended discovery cut-off date: _____

6. Recommended dispositive motion date: _____

7. Recommended date for status conference (if any): _____

8. Suggestions as to type and timing of efforts at Alternative Dispute Resolution:

9. Recommended date for a final pretrial conference: _____

10. 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: _____

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

Signatures:

Attorney for Plaintiff(s):

Attorney for Defendant(s)

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Ohio Bar #
Trial Attorney for

Appendix B

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Printed names of parties and attorneys</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

Appendix C

**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 witnesses 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.

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”

H. Discovery

Suggested Language:

“Discovery has been completed” OR

“The following provisions have been made for 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 describe the status of settlement negotiations.

VII. TRIAL TO A JURY

PROPOSED INSTRUCTIONS ---

Suggested Language:

“The parties have submitted proposed jury instructions as required by Judge Michael J. Newman’s Standing Order Governing Civil Cases.”

Counsel for Plaintiff(s)

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Counsel for Defendant(s)

Approved following Final Pretrial Conference:

Hon. Michael J. Newman
United States District Judge

Appendix D

VOIR DIRE QUESTIONS BY THE COURT

The Court will first conduct a preliminary examination, typically using questions such as the following. After the Court has finished its examination of the jury panel, counsel may elect to supplement the Court's examination with questions that do not repeat, in substance, any question the Court already has put to the panel.

1. I am now going to read the names of the parties and the witnesses that you may be hearing from in this case. Please listen to the list carefully as I will be asking you whether you know any of these people.

First, as I just told you, the Plaintiff is represented by _____. Seated at the counsel table with _____ is _____.

At the next table is the Defendant in this case _____. He [or she] is represented by _____ of _____.

The Plaintiff may call the following persons as witnesses:

The Defendant in this case may call the following persons as witnesses:

Is any panel member related by blood or marriage to any of the individuals that 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?

2. Has any panel member ever heard of or been involved with any of the following entities or persons: [List any businesses or non-witness entities that will be important in this case.] Are any of these names familiar to any panel member?

3. **OUTLINE THE COUNTS IN THE COMPLAINT**

Does any panel member have prior knowledge or information about the allegation(s) made against the Defendant(s), which I have just explained to you? This includes knowledge gained from personal contacts or from the media.

Follow-up Questions for Any Affirmative Responses:

- i. From what source did you hear about this case (newspaper, TV, radio, conversation with others)?
 - ii. How many times did you hear or read about it?
 - iii. Do you remember specifically what you heard or read?
 - iv. Did what you heard or read cause you to have any feeling concerning the merits of the parties' claims?
 - v. Did what you heard or read cause you to have a favorable or an unfavorable impression concerning the parties?
 - vi. Do you today have any impression or even tentative opinion as to the probable outcome of this case?
4. Does any panel member have any personal interest of any kind in this case, or in the Defendant(s)?

5. If any panel member has served as a juror in the federal or state court -- either in a civil or criminal case -- and regardless of the outcome of such case(s), would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?
6. 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 or Defendant?
7. Is there any reason in your mind why you cannot hear and consider the evidence and render a fair and impartial verdict?
8. Can 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.
9. 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 cannot do this, please hold up your hand.
10. Has any panel member formed or expressed any opinion as to the liability of the Defendant(s)?
11. Does any panel member have:
 - a. Any transportation problem? For example, does anyone have difficulty getting to or from the courthouse?
 - b. Any medical or disability problems, such as difficulty hearing, walking or seeing? Does any other medical problem exist which could affect your service on the jury?
12. The Court and counsel estimate this trial will last ____ days. Does any panel member have any immediate family or personal reason or situation which persuades you that you cannot serve as a juror during this period and give your undivided attention to this case?

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?