

STANDING ORDER ON CIVIL PROCEDURES

**DOUGLAS R. COLE
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Cincinnati Chambers
**Potter Stewart U.S. Courthouse, Room 810
100 East Fifth Street
Cincinnati, Ohio 45202**

Dayton Chambers
**Walter H. Rice Federal Building and U.S. Courthouse, Room 902
200 West Second Street
Dayton, Ohio 45402**

**Courtroom Deputy
Cole_Chambers@ohsd.uscourts.gov
(513) 564-7620**

Table of Contents

I. PRETRIAL PROCEDURES	3
A. DISCOVERY CONFERENCE, JOINT DISCOVERY PLAN, AND REQUIRED DISCLOSURES	3
B. PRELIMINARY PRETRIAL CONFERENCE	3
C. COUNSEL NOT ADMITTED IN THE SOUTHERN DISTRICT	5
D. DISCOVERY	5
E. STATUS CONFERENCES	6
F. MOTIONS	6
G. SETTLEMENT CONFERENCE	10
H. FINAL PRETRIAL CONFERENCE	11
I. WITNESSES	12
J. DEADLINES	12
II. TRIAL PROCEDURES	13
A. COUNSEL TABLES.....	13
B. COURT SESSIONS	13
C. COURTROOM EQUIPMENT	13
D. ADDRESSING THE COURT	13
E. DECORUM	14
F. VOIR DIRE EXAMINATION	14
G. CHALLENGES FOR CAUSE	15
H. PEREMPTORY CHALLENGES	15
I. JURY INSTRUCTIONS & VERDICT FORM	15

J.	EXAMINATION OF WITNESSES	16
K.	OBJECTIONS	16
L.	DEMONSTRATIVE EVIDENCE	17
M.	DEPOSITIONS	17
N.	TRIAL BRIEFS	18
O.	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	18
P.	MOTIONS IN LIMINE	18
Q.	NO MOTIONS DURING TRIAL	18
R.	STIPULATIONS	19
S.	SUMMARY OF DEADLINES	19
III.	APPENDICES	20
	APPENDIX A	20
	APPENDIX B	27
	APPENDIX C	30

I. PRETRIAL PROCEDURES

A. DISCOVERY CONFERENCE, JOINT DISCOVERY PLAN, AND REQUIRED DISCLOSURES¹

1. Discovery 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 shall agree on a date for the discovery conference required by Fed. R. Civ. P. 26(f).

2. Joint Discovery Plan

Following the discovery conference, but not less than seven days before the Preliminary Pretrial Conference, the parties shall file the preliminary discovery plan required by Fed. R. Civ. P. 26(f)(3). They shall use the required Joint Discovery Plan form on the Court's website under Judge Cole's Forms and Procedures.

3. Required Disclosures

Unless otherwise agreed in the discovery plan, the parties shall make the disclosures required by Fed. R. Civ. P. 26(a)(1) within fourteen (14) days after the discovery conference.

B. PRELIMINARY PRETRIAL CONFERENCE

The Court will schedule a Preliminary Pretrial Conference to occur within sixty (60) days of the date when all counsel are identified. Generally, this conference will be conducted in person, unless otherwise noted in the pretrial notice. The conference will deal with the following matters, wherever applicable:

1. What are the essential facts and legal claims at issue from each party's perspective?
2. What will be involved in discovery and how much time will be required for it?

A discovery cut-off date will be established. This Court's general rule is to require that all discovery be complete at least six months before the proposed trial date to allow time for briefing and resolving dispositive motions.

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 disclosures: (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) a *pro se* prisoner action, (v) an action to enforce or quash an administrative summons or subpoena, (vi) an action by the United States to recover benefit payments, (vii) a government student loan case, (viii) a proceeding ancillary to an action in another court, and (ix) an action to enforce an arbitration award.

3. Do the parties anticipate a protective order and/or sealing documents?

The parties should be familiar with *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.

4. Will there be expert witnesses, and, if so, what dates should be established for the disclosure of expert witnesses?

The Court's usual practice is to require the disclosure of plaintiff's experts with their reports 30 to 45 days before the defendant is required to disclose experts. (*See* Fed. R. Civ. P. 26(a)(2)).

5. Settlement Discussions:

- a. Plaintiff shall make an initial written settlement demand no later than the date of the DISCOVERY CONFERENCE;
- b. Defendant shall respond in writing no later than the date of filing the DISCOVERY PLAN; and
- c. No later than three business days prior to the Preliminary Pretrial Conference, each party shall submit to the Court's email at Cole_Chambers@ohsd.uscourts.gov an *ex parte* letter, not to exceed five pages, providing a brief synopsis of the case and explaining the status of settlement negotiations. These letters will be held in confidence by the Court, should not be filed with the Clerk's Office, and may be, but do not have to be, exchanged with opposing counsel.

6. After the Preliminary Pretrial Conference, the Court will enter a Scheduling Order.

7. Any party who intends to apply to the Court for the payment of his or her attorneys' fees by an opposing party shall provide to the counsel for the party from whom such recovery will be sought, every three months starting three months after the complaint is filed, a statement showing the total gross amount of attorneys' fees incurred and number of hours expended in the matter (*e.g.*, if the complaint is filed on February 2, 2020, the attorneys' fee and hours information is due to opposing counsel on May 2, 2020, etc.). The attorneys' fee and hours information need only be current through the end of the last month that ended 30 or more days prior to the statement date (*e.g.*, if the statement date is May 2, 2020, the attorneys' fee and hours information need only reflect time incurred through March 31, 2020). The statement need not provide detailed billing information reflecting the activities that comprise the total gross number of hours and fee amounts, but, in providing this statement, the attorney for the submitting party is certifying that the information contained therein is true and accurate. Failure to provide timely statements under this provision may be considered a release of the opposing party from the payment of such fees.

The Court shall consider a party's formal motion for attorneys' fees and/or costs only after a verdict or judgment has been rendered. *See* S.D. Ohio Civ. R. 54.1 and 54.2.

C. COUNSEL NOT ADMITTED IN THE SOUTHERN DISTRICT OF OHIO

Counsel admitted to practice before the highest court of any state may move to be admitted in the Southern District of Ohio for purposes of appearance in a specific case. Counsel must attach to the motion for admission *pro hac vice* a Certificate of Good Standing issued by the highest court of any state, and the appropriate filing fees. *See* S.D. Ohio Civ. R. 83.3(e). Permission will be conditional only and may be revoked at any time.

Counsel admitted *pro hac vice* shall obtain local counsel who is admitted to the bar of the Southern District of Ohio. Counsel admitted *pro hac vice* are also expected to familiarize themselves with, and to follow, the Southern District of Ohio Civil Rules, as well as all standing orders of this Court. The order granting admission *pro hac vice* is conditioned upon counsel's registration and participation in the Court's electronic filing system.

D. DISCOVERY

1. Steps Before Filing Discovery Motions

Parties shall not file discovery motions, *i.e.*, motions to compel or motions for protective order regarding discovery disputes, unless and until counsel use the following procedure: counsel must first attempt to resolve disputes by extrajudicial means (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 are unable to resolve the dispute between themselves, then they must contact the Court's Case Manager by either phone ((513) 564-7620) or by email at Cole_Chambers@ohsd.uscourts.gov and a telephone conference with all counsel and the Court will be scheduled as soon as possible.

If any party files a motion to compel, the party must attach to that motion the written correspondence, including any responsive correspondence, demonstrating compliance with this rule.

2. Deadlines

In general, the deadline for discovery will be set in the Scheduling 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 30 days, the discovery request must be made at least 30 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.

3. Protective Orders

If the parties jointly seek Court approval of a protective order, they must email a copy of the proposed protective order to Chambers at Cole_Chambers@ohsd.uscourts.gov. The parties should be familiar with *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.

E. STATUS CONFERENCES

Counsel or *pro se* litigants may, at any time, request a status conference, and the Court will grant such request. As a general matter, such conferences shall be conducted telephonically. Any party wishing to address an issue at the status conference shall provide to the Court and the opposing party, no later than three days before the conference, a summary of each issue the party intends to raise.

F. MOTIONS

1. All Motions

a. Hearings

Other than motions for summary judgment (which are addressed below), or 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 on the memoranda filed with the Clerk on the schedule set forth in S.D. Ohio Civ. R. 7.2, unless otherwise ordered. Counsel can request oral argument, and the Court will use its discretion in setting a hearing.

b. 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 must contain all related attachments, each with the CM/ECF electronic heading.

c. 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.

d. Page Limitations and Formatting

Briefs and/or memoranda in support should not exceed 20 pages. If more than 20 pages are required to brief the issues adequately, then 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. No motion for excess pages is required. 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 on all sides; (2) main body of text a minimum of 12-point font in Times New Roman, Century Schoolbook or similar proportionally spaced typeface; (3) footnote text in at least 10-point font in the same typeface as the main body of text; and (4) citations in the main body of text and not in the footnotes.

2. Motions for Summary Judgment

a. 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.

b. 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.

c. Counsel are Reminded That These Provisions are Intended to Identify Facts That are In Dispute

Counsel are encouraged to limit their statements under this rule to facts and not disputes as to legal issues.

d. 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.

e. Exhibits, Depositions, and Citations to the Record

The Court requires that depositions, deposition exhibits, and exhibits to any dispositive motion be filed in a separate filing prior to the filing of such motion in which the depositions and exhibits will be cited as evidence. All citations to the record within the motion should be in the form of PageID numbers, which are generated after a document is filed on CM/ECF. This is the preferred citation method for the Sixth Circuit, hence this Court’s preferred citation method.

The parties are urged to file depositions as they are transcribed. Deposition testimony and exhibits must be cited by CM/ECF Doc. # and PageID # in all dispositive and pretrial motions.

A summary judgment filing should be docketed as follows. Please note that all exhibits to the Motion should be attached as individual exhibits separately in CM/ECF:

- i. Doc. A – Deposition referenced in subsequent motion
- ii. Doc. A-1, A-2, A-3, etc. – Exhibits to Deposition attached individually
- iii. Doc. B – Notice of Filing Exhibits to Motion for Summary Judgment (Please note: when filing in CM/ECF, select “Notice – Other Event” and type specific text description of the filing, i.e., “Of Filing Exhibits to Motion for Summary Judgment”)

- iv. Doc. B-1, B-2, B-3, etc. – Exhibits to Motion for Summary Judgment not already filed attached individually
- v. Doc. C – Motion for Summary Judgment and Memorandum in Support
- vi. Doc. C-1 – Proposed Undisputed Facts

Prior to filing, please note the following:

- i. Exhibits already in the record. If an identical copy of the document has already been filed, the earliest version of the document shall be cited rather than filing an additional copy as a new exhibit or attachment.
- ii. Depositions. Except for good cause shown or where the deposition previously has been filed in the case at issue, each deposition cited in any dispositive motion or related brief must be filed: (a) in its entirety, (b) as a separate document, and (c) prior to the filing of said motion or brief. Because the Court requires PageID citation and depositions to be filed in full, deposition transcripts must be filed prior to the filing of a motion, as CM/ECF PageID numbers are not generated until a document is filed. Filing a transcript in advance allows counsel to use the correct citation format throughout the brief.
- iii. Citations. In every motion and related brief, citations to documents and exhibits previously filed with the Court, including all depositions, must include the CM/ECF document number and, where applicable, pinpoint citations using the PageID number. Counsel also may choose to include an abbreviated title for the cited document or exhibit. For example, a citation might read “Smith Dep., Doc. ## at PageID ###.”
- iv. No duplicative excerpts. Where a deposition or other document is already in the record, the excerpts relied upon in support of the motion should not be filed as attachments in support of the motion.

f. Oral Argument on Motions for Summary Judgment

If either the movant or the opponent requests oral argument on a motion for summary judgment, the Court typically will schedule the matter for argument. The party shall make its request known by stating “ORAL ARGUMENT REQUESTED” on either its motion or opposition. Absent extraordinary circumstances, oral arguments on such motions will be conducted in person, and not telephonically.

g. Motions to Seal

i. Leave of Court is Required

Parties wishing to file documents under seal must first seek leave of Court to do so. Parties should evaluate their exhibits prior to motion deadlines

documents and communicate with opposing counsel if, pursuant to a protective order, for example, the other side's documents may need to be filed under seal. Parties must be sure that any request to seal a document complies with *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016), and its progeny.

ii. 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 Chambers at Cole_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.

G. SETTLEMENT CONFERENCE

1. Settlement Authority

In an effort to encourage settlements, the Court may schedule a settlement conference at any time. Counsel also may request that a conference be scheduled at any time when it appears such a conference would be fruitful.

Attorneys attending settlement conferences must bring the party, principal, or agent with full settlement authority. By full settlement authority, the Court means the person or persons attending must have the authority independently to make all necessary financial and settlement decisions.

2. Ex Parte Settlement Letters

Each counsel must prepare and submit a detailed *ex parte* letter no longer than five pages to the Court seven days prior to the conference with a synopsis of the case and the status of any settlement negotiations to date. These letters will be held in confidence by the Court, should not be filed with the Clerk's Office, and may be, but do not have to be, exchanged with opposing counsel.

H. FINAL PRETRIAL CONFERENCE

Approximately 10 days prior to the trial date, the Court will hold a Final Pretrial Conference. At that Conference, the Court will engage the parties in settlement negotiations.

Prior to the Final Pretrial Conference, counsel for each party will assemble all exhibits to be used at trial and make available to opposing counsel either the original exhibits or copies thereof.

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

1. A jointly prepared Final Pretrial Order in the form set forth in Appendix A.
2. A brief joint statement of facts to be read to the Jury in the Final Pretrial Order.
3. A detailed *ex parte* letter no longer than five pages with a synopsis of the case and the status of any settlement negotiations to date. These letters will be held in confidence by the Court, should not be filed with the Clerk's Office, and may be, but are not required to be, exchanged with opposing counsel.

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.

In the event that counsel agree to submit the entire case on cross motions for summary judgment, the Final Pretrial Conference and trial dates may be vacated.

COUNSEL ARE REQUIRED TO LIST ALL EXHIBITS IN THE FINAL PRETRIAL ORDER.

The following procedure will be followed: All exhibits will be assembled, marked, and placed in three-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.*, a Bates number).

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 days before trial.

Counsel shall also submit a list no later than three business days prior to trial of exhibits on which there is an agreement on admissibility.

Each counsel will deposit an original and two 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 days prior to trial. In certain cases, the Court may also request a copy of exhibits in electronic form, also with an index. Counsel shall also provide a complete set of exhibits to opposing counsel.

I. WITNESSES

1. Lay Witnesses

Each party shall disclose to opposing counsel no later than 30 days before the discovery deadline set forth in the Court's Calendar Order, the names of all lay witnesses who the party reserves the right to call during its case-in-chief.

2. Expert Witnesses

a. Disclosure

Each party shall disclose to opposing counsel, pursuant to Fed. R. Civ. P. 26(a)(2), the identity of all opinion witnesses on the dates set forth in the Court's Scheduling Order. No disclosure may list more than five expert witnesses without specific Court permission.

b. Use at Trial

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

J. DEADLINES

Deadlines set forth in this Order, the Calendar Order, the Final Pretrial Order, and in any other Order issued by this Court are firm deadlines. The parties shall file all required documents by the dates set forth in these Orders, unless prior approval of the Court for filing on a later date has been obtained. The Court can and will impose sanctions, including monetary sanctions, for failure to meet these deadlines.

II. TRIAL PROCEDURES

Conduct of counsel during all Court appearances will be governed by the following instructions.

A. COUNSEL TABLES

The parties will occupy the counsel table designated by the Court's Case Manager before the opening of the first trial session.

B. COURT SESSIONS

Under ordinary circumstances, trials of no more than two weeks duration will be held Monday through Friday.

Trial hours are generally 9:30 a.m. to 12:00 p.m. and 1:15 p.m. to 5:00 p.m., with a 15-minute break in the morning and the afternoon.

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 entrances and exits of the jury.

Counsel and the parties shall be present in the courtroom 30 minutes before Court convenes every day (generally 9:00 a.m.). The purpose of this requirement is to resolve any problems that may arise during the course of this trial. If counsel need to bring anything to the Court's attention, they should contact the Case Manager 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 Case Manager informed as to where you may be located in case the Court needs to find you quickly.

C. COURTROOM EQUIPMENT

The audiovisual equipment available in the courtroom will depend on where the trial is scheduled to occur. The Court will make every effort to hold any jury trial in a courtroom that is equipped with audiovisual display equipment, but that may not occur. At the Final Pretrial Conference, the parties will discuss audiovisual needs with the Court.

D. ADDRESSING THE COURT

Counsel will address the Court and the jury in the following manner:

1. Voir dire examination, opening statements, and closing arguments will be conducted from the lectern facing the jury.
2. Counsel shall stand when addressing the Court for any reason.

E. DECORUM

Colloquy or argument between counsel shall not be permitted. All remarks shall be addressed to the Court.

Appearance, mannerisms, or habits that are designed to arouse the sympathy or prejudice of the jury are an impediment to an impartial trial and will not be permitted.

During a trial, counsel shall not exhibit familiarity with witnesses, jurors, or opposing counsel and shall avoid the use of first names.

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

F. 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. Counsel can contact the Jury Commissioner, Maria Welker, the week before trial at (513)564-7522 to obtain the juror questionnaire forms.

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

The Court will conduct a preliminary voir dire examination 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.²

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.

Background information is contained in juror questionnaire forms which are on file in the Clerk's Office. Counsel should examine these questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the juror questionnaire or regarding information contained in the juror questionnaire.

² The Court's voir dire questions are contained in Appendix B.

G. CHALLENGES FOR CAUSE

The entire panel will be subject to challenge a 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).

H. 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 of 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 manner in which 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 Court’s Case Manager will announce the composition of the jury, which shall be the first eight remaining on the list.

I. JURY INSTRUCTIONS & VERDICT FORM

Twenty-one days before trial, counsel shall electronically file proposed instructions and interrogatories and email the instructions in Microsoft Word format to Cole_Chambers@ohsd.uscourts.gov. Supplemental requests for instructions during 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. However, agreed instructions 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:

1. Supreme Court case law;
2. Sixth Circuit case law;

3. Federal Jury Practice and Instruction by O'Malley, Grenig & Lee; or
4. Pattern Jury Instructions published by a federal court. (Counsel must make certain substantive instructions on federal questions conform to Sixth Circuit case law.)

Fourteen days before trial, counsel shall file objections to proposed instructions. 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.

J. 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.

Counsel shall not approach a witness without asking the permission of the Court. When permission is granted for the purpose of working with an exhibit, counsel should resume the examination from the lectern when finished with the exhibit. In most cases, the courtroom deputy will place exhibits before the witness.

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).

K. OBJECTIONS

Counsel shall stand when making an objection and will 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 permission is given or argument is requested by the Court. Either counsel may request a sidebar conference.

L. DEMONSTRATIVE EVIDENCE

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 Court's Case Manager 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 prior to 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, etc. If counsel are not familiar with how to operate it, please contact the Case Manager prior to trial. Placing a document on the visualizer is the equivalent of handing a document to the jury. Therefore, no exhibit may be placed on the visualizer unless previously admitted or agreed to by the parties.

There is no requirement that counsel object to any exhibit at the Final Pretrial Conference. Counsel will confer in advance of trial and attempt to agree to admissibility of exhibits and to resolve objections to any exhibits.

Each counsel is responsible for any exhibits secured from the Court's Case Manager. At the end of each trial session, all exhibits shall be returned to the Court's Case Manager.

In formulating a question to a witness dealing with an exhibit, counsel shall specify the exhibit number or designation so that the record will be clear.

Exhibits which are produced for the first time during trial, as in the case of exhibits used for impeachment, shall be tendered to the Court's Case Manager for marking and then copies should be 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

Counsel shall submit to each other their deposition designations at least 14 days before trial. Counsel will confer and attempt to resolve objections by agreement. If any objections remain, counsel shall 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 visually recorded depositions. Visually recorded depositions which contain objections must be accompanied by a full or, if agreed, partial transcript. The jointly prepared deposition designations list of objections and grounds for these objections must be filed with the Court no later than seven days prior to the commencement of trial. Counsel are responsible for editing any visually 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 any time 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). 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.

O. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a trial to the Court, the parties SHALL file Findings of Fact and Conclusions of Law which the parties believe are necessary to be made to support a favorable judgment. These shall be filed 14 days before trial.

P. MOTIONS IN LIMINE

Motions in limine must be filed and served not later than 21 days before trial. Response to the motion(s) shall be filed 14 days before trial.

Q. NO MOTIONS DURING TRIAL

The Court does not permit motions to be filed during trial. If there is an issue that arises during trial and requires the Court's attention, the parties must first attempt to resolve the issue themselves. If that effort is not successful, counsel must alert the Court and be prepared to orally present his argument. The Court will hear argument on the issue prior to or after the testimony that day.

R. STIPULATIONS

Stipulations shall be set forth in a pleading captioned "Stipulations" and must be signed by all counsel. Stipulations can be filed at any time prior to or during trial.

S. SUMMARY OF DEADLINES

Jury Instructions/Interrogatories/Verdict Forms	Twenty-One (21) days before trial
Motions in Limine	Twenty-One (21) days before trial
Proposed Findings of Fact and Conclusions of Law (Bench Trial)	Fourteen (14) days before trial
Objections to Proposed Jury Instructions / Interrogatories / Verdict Forms	Fourteen (14) days before trial
Responses to Motions in Limine	Fourteen (14) days before trial
Joint Deposition Designations and Objections	Seven (7) days before trial
Cross-reference Index of Plaintiff's and Defendant's exhibits that are the same	Seven (7) days before trial
List of Agreed Admissible Exhibits	Three (3) business days before trial
Exhibits	Three (3) business days before trial
Witness Lists	Three (3) business days before trial

SO ORDERED.

DATE

DOUGLAS R. COLE
UNITED STATES DISTRICT JUDGE

APPENDIX A

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

_____	:	Case No.
	:	
Plaintiff(s),	:	JUDGE DOUGLAS R. COLE
	:	
v.	:	
	:	<u>FINAL PRETRIAL ORDER</u>
_____	:	<u>(REQUIRED FORM)</u>
	:	
Defendant(s).	:	

This action came before the Court at a Final Pretrial Conference held on _____, 20__, at ___ a.m./p.m., pursuant to Rule 16, Federal Rules of Civil Procedure.

I. APPEARANCES:

For Plaintiff:

For Defendant:

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 jurisdiction of the Court (is/is not) disputed.

III. TRIAL INFORMATION:

- A. The estimated length of trial is ___ days.
- B. Trial to (the Court/a jury) has been set for _____, 20__, pursuant to the General Order on Trial Assignment.

Or:

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

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties

1. Plaintiff Claims:

Set out brief summary without detail; an itemized statement of special damages should be included.

2. Defendant Claims:

Set out brief summary without detail.

3. All other parties' claims:

Same type of statement where third parties are involved.

4. Brief joint statement of facts to be read to jury.

B. Pending Motions/Motions in Limine

1. The following Motions, if any, are pending:

Briefly list motions pending and identify which motions must be decided prior to trial.

2. Plaintiff anticipates/does not anticipate filing Motions in Limine.

If filing Motions in Limine, briefly list the motions that are expected to be filed.

3. Defendant anticipates/does not anticipate filing Motions in Limine.

If filing Motions in Limine, briefly list the motions that are expected to be filed.

Motions in Limine must be filed at least twenty-one (21) days prior to the commencement of trial.

C. Uncontroverted Facts

Suggested language:

The following facts are established by admissions in the pleadings or by stipulations of counsel:

Set out uncontroverted or uncontested facts.

D. Contested Issues of Fact and Law

Suggested language:

1. Contested Issues of Fact: The contested issues of fact remaining for decision are:

Set out a brief statement of the remaining contested issues of fact.

2. Contested Issues of Law: The contested issues of law in addition to those implicit in the foregoing issues of fact, are:

Set out a brief statement of the remaining contested issues of law.

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

E. Witnesses

Suggested language:

1. In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call, or will have available at the trial:

As to each witness, state the witness's name and role in the dispute and provide a brief synopsis of the witness's testimony.

2. In the absence of reasonable notice to opposing counsel to the contrary, defendant will call, or will have available at the trial:

As to each witness, state the witness's name and role in the dispute and provide a brief synopsis of the witness's testimony.

3. In the absence of reasonable notice to opposing counsel to the contrary, _____ will call:

As to each witness, state the witness's name and role in the dispute and provide a brief synopsis of the witness's testimony. (Use for third parties, if any).

4. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

Note: Only witnesses listed in the Pretrial Order or identified in accordance with paragraph 4 above will be permitted to testify at the trial, except witnesses called solely for purpose of impeachment or for good cause shown.

F. Opinion (Expert) Witnesses

Suggested language:

Parties are limited to the following number of opinion witnesses whose names have been disclosed to the other side.

Plaintiff:

List all opinion witnesses plaintiff intends to call at trial.

Defendant:

List all opinion witnesses defendant intends to call at trial.

Counsel have attached a resume of each opinion witness's qualifications as Appendix A herein.

G. Exhibits

The exhibit list should be prepared prior to the Final Pretrial Conference and set forth in the Final Pretrial Order. Exhibit markers should be attached to all exhibits at the time they are shown to opposing counsel during the preparation of the pretrial order. Exhibit markers should be attached to the lower right-hand corner whenever possible.

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the Final Pretrial Order, with the exception of exhibits to be used solely for the purpose of impeachment.

Exhibit lists should be attached as appendices to the Final Pretrial Order as follows:

- Appendix B Joint Exhibits
- Appendix C Plaintiff Exhibits
- Appendix D Defendant Exhibits
- Appendix E Third-Party Exhibits

H. Depositions

Suggested language:

Testimony of the following witnesses will be offered by deposition/videotape:

List all witnesses whose testimony will be offered by deposition or videotape, and state the method of presentation. If none, so state.

I. Completion of Discovery

Except for good cause, all discovery shall be completed before the Final Pretrial Order is signed by the Court. If discovery has not been completed, the proposed pretrial order shall state what discovery is yet to be done by each side, when it is scheduled, when it will be completed, and whether any problems, such as objections or motions, are likely with respect to the uncompleted discovery.

Suggested language:

Discovery has been completed.

Or: Discovery is to be completed by _____, 20__.

Or: Further discovery is limited to _____.

Or: The following provisions were made for discovery:

Specify all such provisions.

J. Miscellaneous Orders

Set forth any orders not properly includable elsewhere.

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 shall be submitted by email in Microsoft Word format to Cole_Chambers@ohsd.uscourts.gov at least twenty one (21) days prior to the commencement of trial. In addition, all of the above shall be electronically filed with the Clerk's Office at least twenty one (21) days prior to the commencement of trial. There is reserved to counsel the right to submit supplemental requests for instructions during trial, or at the conclusion of the evidence, but only on matters that cannot be reasonably anticipated.

Each instruction should be on a separate page identified as "Plaintiff's (Defendant's) Requested Instruction No. ." All instructions must contain a citation of 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

Set forth circumstances surrounding 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, the parties separately shall file those Findings of Fact and Conclusions of Law that each counsel believes the Court should make.

IX. WORD FORMAT

This proposed Final Pretrial Order shall be emailed in Word format to Cole_Chambers@ohsd.uscourts.gov at least seven (7) days prior to 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:

SO ORDERED.

—/s/Douglas R. Cole—
Judge Douglas R. Cole
United States District Court

Date

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 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 already put to the panel by the Court.

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

A. 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 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?

B. 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?

C. 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?

D. 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)?

E. 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?

F. 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 of 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?

G. 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**

DOUGLAS R. COLE
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 with regard to 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.