

CINCINNATI CIVIL PROCEDURES

**TIMOTHY S. BLACK
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
AT CINCINNATI**

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Courtroom Deputy Clerk, Mary Rogers**

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The following pre-trial and trial procedures supplement the Local Rules for the Southern District of Ohio. (Those Rules are referred to hereinafter as “S.D. Ohio Civ. R. __.”) The parties are advised to read, and be familiar with, both these procedures and the Local Rules. Copies of the Local Rules may be obtained in the Clerk’s Office free of charge and on the Court’s website at: www.ohsd.uscourts.gov/localrules.

I. CALENDAR ORDER

Shortly after the date when all defendants file an answer, a notice is filed regarding the requirement for all counsel¹ to meet in order to fulfill the requirements under Rule 26(f). After the parties file their Rule 26 Report², the Court will enter a Calendar Order which will typically include: (1) a deadline for moving to amend the complaint and/or to add parties; (2) a deadline for the completion of discovery; (3) a deadline for all dispositive motions; and (4) a date for the final pretrial conference; (5) and a date to commence trial. The filing of a motion for continuance, or any other motion, until ruled upon by the Court, will not modify the dates in the Calendar Order.

II. DISCOVERY

The deadline for discovery will be set in the Calendar Order. Discovery requests must be made at such time that responses are due before the discovery deadline.

Counsel may, by agreement, continue discovery beyond the deadline. In this 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 trial setting will be vacated as a result of information acquired in the continued discovery.

This Court does not permit 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

¹ Although these procedural instructions use the term “counsel,” the Court recognizes the many cases in which litigants proceed *pro se*; that is, without the aid of counsel. These instructions apply with equal force to all litigants, whether or not they obtain counsel.

² Attorneys may access a form Rule 26(f) Report at: [http://www.ohsd.uscourts.gov/judges/black/Rule26\(f\)form.pdf](http://www.ohsd.uscourts.gov/judges/black/Rule26(f)form.pdf)

counsel are unable to resolve the dispute between themselves, then they must contact the Court's Deputy Clerk, Mary Rogers, by either phone (513-564-7529) or by email (Mary_Rogers@ohsd.uscourts.gov), and a telephone conference with all counsel and the Court will be scheduled as soon as possible.

The filing of a dispositive motion does not toll the running of the discovery deadline. Discovery will not be stayed during the pendency of a dispositive motion unless there are exceptional circumstances.

1. Establishing the Discovery Deadline:

The discovery deadline will be set in the Calendar Order. The Court will not supervise the parties' discovery efforts after the discovery deadline.

2. Extending the Discovery Deadline:

Motions to extend the discovery deadline will only be considered if filed prior to expiration of the current discovery deadline.

The filing of a dispositive motion does not toll the running of the discovery deadline. Discovery will not be stayed during the pendency of a dispositive motion unless there are exceptional circumstances.

**III. DISCLOSURE OF WITNESSES
PRIOR TO THE DISCOVERY DEADLINE**

All witnesses to be called during a party's case-in-chief must be disclosed within sufficient time to permit discovery. Unless otherwise ordered, plaintiff will disclose to defendant the names of all expert witnesses at least 60 days prior to the discovery deadline; defendant will disclose to plaintiff the names of all expert witnesses at least 45 days prior to the discovery deadline; and both parties will disclose the names of all other case-in-chief witnesses at least 30 days prior to the discovery deadline. No additional witnesses may be listed in the Final Pretrial Order except by permission of the Court. Witnesses whose testimony is limited to rebuttal of an opponent's case need not be listed.

IV. CONFERENCES

1. Status Conferences:

Counsel or *pro se* litigants may, at any time, request a status conference, and such request will be granted.

2. Informal Discovery Conferences:

The parties may, at any time, request that an informal discovery conference be held by telephone pursuant to S. D. Ohio Civ. R. 37.1. Because such conferences are informal, and no discovery motion is pending, the Court will not issue a ruling; instead, the Court will recommend how the parties should resolve their discovery dispute. Each party is required to email to chambers (Black_Chambers@ohsd.uscourts.gov), 24 hours prior to the conference, a one page statement of the issues to be presented at the conference.

3. Settlement Conferences:

The parties may, at any time, request a settlement conference, and one will be promptly scheduled.

V. DISPOSITIVE MOTIONS PRACTICE

1. When Motions May Be Filed:

Dispositive motions may be filed at any time prior to the dispositive motions deadline.

2. Motions for Summary Judgment

a. Movant's Statement of Proposed Undisputed Facts

Counsel must attach as the first attachment to every opening brief in support of a motion for summary judgment a document entitled "Proposed Undisputed Facts," which

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 of a witness competent to testify as to the facts a trial, (2) a sworn deposition, and/or (3) other evidence, including documentary evidence, that would be admissible at trial. 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 Proposed Undisputed Facts and Statement of 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," which 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 must be filed and served with the Response to Proposed Undisputed Facts. The Response must also include, in a separate section entitled "Disputed Issues of Material Fact," a list of each issue of material fact the opponent contends must be tried.

3. Oral Argument:

Oral argument on motions to dismiss or for summary judgment will not be scheduled unless a party makes such a request and a showing pursuant to S.D. Ohio Civ. R. 7.1(b)(2).

4. Amending the Dispositive Motions Deadline:

Motions to amend the dispositive motions deadline will only be considered if filed prior to the current dispositive motions deadline.

5. Briefs and Memoranda:

Counsel are reminded of S.D. of Ohio Civ. R. 7.2(a)(3), which provides:

Memoranda in support of or in opposition to any motion or application to the Court should not exceed twenty (20) pages. In all cases in which memoranda exceed twenty (20) pages, counsel must include a combined table of contents and a succinct clear and accurate summary, not to exceed five (5) pages, indicating the main sections of the memorandum, the principal arguments and citations to primary authority made in each section, as well as the pages on which each section and any sub-sections may be found.

No motion for leave to file a pleading of more than 20 pages is required.

VI. FOREIGN COUNSEL

Counsel admitted to practice before any United States District Court may, upon motion, be admitted in the Southern District of Ohio for purposes of representation in a specific case. *See* S.D. Ohio Civ. R. 83.3. Such permission will be conditional only and may be withdrawn at any time for failure to observe the rules of this district and the general Orders of this Court. Counsel admitted *pro hac vice* shall obtain local counsel who is familiar with the procedures in 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.

VII. ATTORNEY'S FEES

Any party who intends to apply to the Court for the payment of his or her attorney's fees by an opposing party shall file successive applications every 120 days indicating the legal services rendered and the amount charged to date. Each activity to be reimbursed should be listed, together with date, the number of hours, and the nature of the activity. These applications shall be filed in accordance with the Federal and Local Rules of Civil Procedure and shall be served upon all parties. Failure to file any one of the applications may be considered a release of the opposing party from the payment of such fees.

The Court shall consider a party's successive applications for attorney fees after a verdict or judgment has been rendered, and shall limit its consideration to the reasonable compensation for the necessary services rendered and the reasonable and necessary

expenses incurred by the trial attorney(s) in the case. Pursuant to S.D. Ohio Civ. R. 54.2, counsel shall have 45 days from the date of judgment to submit her/her fee application. Opposing counsel shall respond 10 days after receipt of the application.

VIII. JURY VOIR DIRE

Counsel will be permitted to conduct the *voir dire* after preliminary questions by the District Judge. The entire panel of prospective jurors (i.e., those seated inside and outside of the jury box), will be examined in one continuous examination. Counsel will be provided with a list of the jurors' names and numbers prior to the commencement of trial. Counsel are encouraged to obtain the jurors' questionnaires from the Clerk of Courts three days before trial.

In civil cases, eight jurors will be seated in the jury box. Pursuant to Fed. R. Civ. P. 48, all eight jurors will deliberate.

Counsel shall initially address their questions to the entire panel in general, and may question individual jurors if justified.

1. Challenges to the Jury Panel:

The entire panel may be challenged for cause. This will be conducted outside the presence of the jury at the conclusion of the *voir dire* examination. The Court may suggest that a certain juror or jurors be challenged for cause. Counsel may, of course, agree or disagree and may raise an additional challenge or challenges for cause.

2. Peremptory Challenges:

Peremptory challenges will be exercised during a recess of the proceedings. Counsel will ordinarily be permitted fifteen minutes for this process. The Court will assign four peremptory challenges to each side.

IX. FINAL PRETRIAL CONFERENCE

Within approximately one to three weeks prior to trial, a Final Pretrial Conference will be held. The date of such conference will be set forth in the Calendar Order.

Counsel are directed to submit a joint proposed Final Pretrial Order directly to the District Judge by email (Black_Chambers @ ohsd.uscourts.gov) at least 3 days prior to

the final pretrial conference. The Final Pretrial Order shall be in the form set forth in the Appendix to this trial preparation packet.

Trial counsel must attend the Final Pretrial Conference. No attorney may act as trial counsel who has not attended the final pretrial conference, unless permission of the Court is granted.

Prior to the final pretrial conference, counsel for each of the parties will assemble all exhibits to be used at the trial and make available to opposing counsel either the original exhibits or copies thereof. It is not necessary to bring exhibits to the final pretrial conference or to file them with the Court prior to trial. Counsel are required, however, to list all exhibits in the Final Pretrial Order and provide copies of them to the Court and the parties prior to trial.

The following procedure will be used for marking exhibits:

1. Plaintiff's exhibits will be identified by numbers in sequence, starting with 1; each number will be preceded with the letter "P."
2. Defendant's exhibits will be identified by numbers in sequence, starting with 1; each number will be preceded with the letter "D."
3. Joint exhibits will be identified by numbers in sequence, starting with 1; each number will be preceded with the letter "J."
4. Additional party's exhibits will be identified by numbers in sequence, starting with 1; each number will be precede with the party's initial.

Exhibits will be placed in binders and each exhibit will be tabbed. Bates stamping of each page of each trial exhibit is recommended. Trial exhibits will remain in the custody of the Courtroom Deputy Clerk during the trial. At least four sets of bound and tabbed exhibits are necessary: one for trial exhibits; one copy for the Court; one copy for opposing counsel; and one copy for the Judge's law clerk. Counsel may wish to prepare additional sets of exhibits for the use of the jury, if applicable.

Objections to the admissibility of evidence may be made by written motion prior to trial. Ordinarily, rulings on the admissibility of evidence will be made during the trial.

X. REQUESTED JURY INSTRUCTIONS AND VERDICT FORM

Agreed requests for jury instructions must be submitted to the court at least 3 days prior to the Final Pretrial Conference. Only in the event that counsel cannot agree will separate instructions be accepted. Each requested instruction must be numbered and presented on a separate 8 ½" x 11" page. Proposed jury instructions shall be filed with the Court and submitted electronically in Word format to Black_Chambers@ohsd.uscourts.gov. Requested instructions must contain a citation of authority upon which counsel relies. Requested instructions that do not contain such citations will be rejected.

The Court uses as sources for charges, among others, Devitt and Blackmar's FEDERAL JURY PRACTICE AND INSTRUCTIONS, and OHIO JURY INSTRUCTIONS. The Court is bound by determinations of the Supreme Court of the United States and the United States Court of Appeals for the Sixth Circuit. Where appropriate, determinations by the Supreme Court of Ohio, or in the absence thereof, determinations by the Ohio Courts of Appeals will be deemed binding.

XI. MOTIONS IN LIMINE

Unless otherwise ordered, all motions in limine must be filed not later than 7 days before the Final Pretrial Conference, and responses to motions in limine shall be filed within 2 days of the Final Pretrial Conference.

XII. TRIALS

1. Findings of Fact and Conclusions of Law:

In trials to the Court (i.e., bench trials), counsel shall file Findings of Fact and Conclusions of Law which they believe the Court should make. In trials scheduled to last two days or less, the proposed Findings of Fact and Conclusions of Law shall be filed on the first day of trial. In all other cases - that is, where trial is expected to last three or more days - the proposed Findings of Fact and Conclusions of Law shall be filed within 10 days of the conclusion of trial, unless otherwise ordered. If trial transcript citations will be relevant to the Court's decision, the Court will consider extending the ten-day deadline, upon motion of either party, to a date after the parties' receipt of the trial transcript.

2. Court Sessions:

Trials will start promptly at 9:30 a.m., unless otherwise ordered. The morning session will continue until approximately noon. The afternoon session will start one and one-half hours after the end of the morning session and will end at approximately 5:00 p.m. There will be a morning recess at approximately 10:45 a.m., and an afternoon recess at approximately 3:00 p.m.

It is expected that the parties and all counsel will be seated at the counsel tables ten minutes prior to the above times when the Court is called into session.

3. Counsel Tables:

Plaintiff in all civil cases and the United States in all criminal cases will occupy the counsel table near the jury box. The defendant in both civil and criminal cases will occupy the counsel table farthest from the jury box. Additional or separate tables will be provided upon request for multiple plaintiffs, defendants, or third parties.

4. Jury Voir Dire - See §8, supra.

5. Presentation of the Case:

There are no specific rules governing the manner of interrogation, addresses by counsel and presentation of exhibits. Counsel may present their case in the style with which they are comfortable, so long as they do so in a dignified and respectful manner in accordance with rule.

6. Jury Instruction Conference:

Prior to closing arguments in jury cases, the Court will hold a conference with counsel, in chambers and on the record, for the following purposes: The Court will have prepared a draft jury charge, which will be discussed in detail with counsel. Objections may be made at this time, and the Court may then modify the jury charge. Counsel will know, before closing arguments, the final composition of the charge. The District Judge prefers to charge the jury after closing arguments.

Counsel and the Court will determine the length of closing arguments. Plaintiff's counsel must use at least half of the allotted time in opening argument, and must use closing argument only to rebut defendant's closing argument.

XIII. APPENDIX

Final Pretrial Order Format

Final Pretrial Order following this format must be jointly prepared and submitted by counsel to the District Judge at least 3 days prior to the date of the Final Pretrial Conference:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

xxx

Plaintiff(s)

vs

Civil Case No.

xxx

Defendant(s)

FINAL PRETRIAL ORDER

This matter came before the Court at a Final Pretrial Conference held on _____ at _____, pursuant to Fed. R. Civ. P. 16.

I. APPEARANCES:

For Plaintiff:

For Defendant:

II. NATURE OF ACTION AND JURISDICTION

A. This is an action _____.

B. The jurisdiction of the Court is invoked under ___ U.S.C. § __.

C. The jurisdiction of the Court is (is not) disputed.

D. The parties (have) (have not) consented to entry of final judgment by the United States Magistrate Judge.

III. TRIAL INFORMATION

A. The estimated length of trial _____ is days.

B. Trial to (the court) (the jury) has been set for

IV. AGREED STATEMENT AND LISTS:

A. General Nature of the Parties' Claims

(1) PLAINTIFF CLAIMS:

(suggested type of simple language)

"Plaintiff asserts in Count 1 a right of recovery for defendant(s) negligence as follows:"

"Plaintiff asserts in Count 2 a right of recovery for defendant(s) 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 that plaintiff was contributorily negligent as follows:"

"Defendant, as an affirmative defense, asserts that plaintiff's claims are outlawed by the Statute of Limitations for the following reasons:"

(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.”

D. Witnesses

Suggested language:

- (1) "Plaintiff will call or will have available for testimony at trial those witnesses listed on 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 non-listed rebuttal witnesses whose testimony could not reasonably be anticipated without prior notice to opposing counsel."

*Provide a brief individualized synopsis of each witness’ testimony.

INSTRUCTIONS: Leave to call additional witnesses may be granted by the Court in unusual situations. Counsel seeking such leave must file a Motion to Add Witnesses and serve a copy upon opposing counsel with names, addresses, and an offer of proof of such witness's testimony at least five (5) days prior to trial.

E. Expert Witnesses

Suggested language:

"Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed to opposing counsel:

Plaintiff

Defendant

F. Exhibits

The parties will offer as exhibits those items listed herein as follows:

- (1) Joint Exhibits - Appendix D
- (2) Plaintiff Exhibits - Appendix E
- (3) Defendant Exhibits - Appendix F
- (4) Third-Party Exhibits - Appendix G

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

G. Depositions

Suggested language:

"Testimony of the following witnesses will be offered by deposition/video tape;"

OR

"No testimony will be offered by deposition/video tape."

* List all witnesses whose testimony will be offered by deposition or videotape.
If none, so state.

INSTRUCTIONS: Depositions must be filed by the time of Final Pretrial Conference with the portions to be read noted therein. An opportunity will be given to opposing counsel to read any omitted portion. Counsel will be notified at trial of rulings on all objections.

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 motions pending 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

"Settlement negotiations are still ongoing at this time."

VII. PROPOSED INSTRUCTION - TRIAL TO A JURY

Pursuant to section **X** of this trial packet, Jury Instructions are to be submitted seven 3 days prior to the Final Pretrial Conference.

UNITED STATES DISTRICT JUDGE

Counsel for Plaintiff (or **Plaintiff, if pro se**)

Counsel for Defendant (or **Defendant, if pro se**)

PLAINTIFF'S WITNESSES

NAME

ADDRESS

DEFENDANT'S WITNESSES

NAME

ADDRESS

THIRD PARTY WITNESSES

NAME

ADDRESS

JOINT EXHIBITS OF PLAINTIFF AND DEFENDANT

PLAINTIFF'S EXHIBITS

DEFENDANT’S EXHIBITS

APPENDIX G

EXHIBITS OF _____

(Use numbers prefixed by initial of party)