

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

Plaintiff(s),)
)
)
 v.) CAUSE NO.
)
)
)
 Defendant(s).)

ORDER FOR CIVIL TRIAL AND FINAL PRETRIAL CONFERENCE,
ORDER CONTROLLING THE CASE
(Judge William C. Lee)

This matter is before the court following a preliminary pre-trial, or scheduling, conference held with all attorneys of record participating. The following dates constitute the scheduling of this case through trial. All references to conferences required between counsel or with the court shall be attended by all attorneys who will try the case, unless before such conference the court grants permission for other counsel to attend.

ORDER FOR FINAL PRETRIAL CONFERENCE

The attorneys are directed to appear in chambers of Judge William C. Lee on **Monday, , at 1:30 p.m.** (Fort Wayne time) for a pre-trial conference pursuant to Rule 16, Federal Rules of Civil Procedure.

Not less than 10 business days prior to the final pre-trial conference, counsel shall hold a personal conference and are admonished to give special attention to the stipulation of all uncontroverted facts and the possibility of settlement, all in accordance with Local Rule 16.1 of the rules of this court.

Not less than 5 business days prior to the final pre-trial conference, counsel shall submit a proposed final pre-trial order to the clerk, either manually, or via e-mail to the chambers of the presiding judge. At the time of the pre-trial conference with the court, each party to this action shall either personally or by a representative be available to personally or telephonically confer with counsel regarding the possibility of settlement of this cause. Said party or representative shall have authority to settle this cause.

NOTICE OF TRIAL SETTING

Pursuant to instructions given counsel in attendance at the pretrial conference, the court will conduct a calendar of trials commencing at **8:30 a.m. (Fort Wayne time) on, Tuesday,**

In the event there are multiple cases set for trial on a given date, each case will be ready for trial on said date. Cases will be called for trial in the order in which they were added to the calendar. It is the sole responsibility of counsel to follow the status of the calendar and be prepared for trial on said date, and if the case is not reached on that date, counsel shall be prepared for trial on the next day the case can be reached. Counsel are requested to promptly advise the Clerk in the event of settlement or other final disposition of the case so that the other attorneys and litigants may be promptly notified.

ORDER CONTROLLING THE CASE

This order contains instructions and various time limitations relating to trial. Literal compliance with this order is mandatory and will expedite the trial of this matter. In the event that any of the parties to this action desire to be relieved of any portion of this order, they shall electronically file a motion with the court requesting such relief not later than 45 days prior to trial.

I. CASES WHICH ARE TO BE TRIED TO A JURY¹

A. Preliminary Statement Identifying the Case

In all jury cases, plaintiff's counsel shall prepare, and serve upon opposing counsel not later than 25 days prior to trial, a concise preliminary statement describing the case in an impartial, easily understood manner, which shall be read to the jury panel prior to the voir dire. Counsel for the parties shall then confer in person in a good faith effort to agree upon the statement.

The agreed-upon statement shall be signed by the parties and their counsel. Plaintiff's counsel shall electronically file, not later than 15 days before trial, a pdf of said statement which contains the "s-slashed" signatures of all counsel and parties who have signed the original. Plaintiff's counsel shall become the custodian of the originally signed document. Defendant's counsel shall file a notice of endorsement of the document e-filed by Plaintiff's counsel. In the event of inability to agree, counsel shall e-file their proposed preliminary statements not later than 15 days before trial, with copies served on opposing counsel at the same time.

¹To facilitate compliance, a time line for preparation of trials consistent with the provisions of this Order is attached as Appendix A.

B. Voir Dire Questions and Jury Instructions

In all jury cases, a complete set of proposed voir dire questions shall be prepared by plaintiff's counsel, who shall then serve opposing counsel with a copy of the same not later than 25 days before trial. Counsel for the parties shall then confer in person and, to the extent possible, agree upon a complete set of voir dire questions.

Not later than 5 days before trial, counsel for the plaintiff shall e-file the voir dire questions to which agreement has been reached. With respect to any voir dire questions to which agreement could not be reached, each counsel shall e-file, not later than 5 days before trial, his or her additional voir dire questions with copies served upon opposing counsel at the same time.

The court shall prepare all standard opening and closing instructions, and other general instructions, copies of which are available on Judge William Lee's web page at www.innd.uscourts.gov, and the parties are not responsible for submitting any of these standard instructions. Plaintiff's counsel shall prepare in writing proposed jury instructions that deal with the substantive issues of the case as well as verdict forms. Plaintiff's counsel shall then serve opposing counsel with a copy of the jury instructions that deal with the substantive issues of the case as well as the verdict forms not later than 25 days before trial. Counsel for the parties shall then confer in person and, to the extent possible, agree upon the instructions that deal with the substantive issues of the case as well as appropriate verdict forms.

When formulating the proposed jury instructions that deal with the substantive issues of the case, the parties shall consult and utilize the Fifth Circuit pattern jury instructions, the Ninth Circuit pattern jury instructions, and the Indiana Pattern Jury Instructions, all of which are available on those courts' web sites. The Fifth Circuit pattern jury instructions and Ninth Circuit pattern jury instructions may also be obtained from the West Publishing Company, and the Indiana Pattern Jury Instructions from The Bobbs-Merrill Company, Inc. Points and authorities in support of any proposed jury instruction shall be included with the jury instruction submitted to the court.

After their in person conference and not later than 5 days before trial, counsel for the parties shall jointly submit to the Clerk three separate filings. First, counsel shall e-file the substantive jury instructions and verdict forms on which agreement has been reached. Second, counsel shall e-file the plaintiff's proposed verdict forms and jury instructions to which agreement could not be secured (together with plaintiff's points and authorities in support thereof and defendant's objections thereto). Third, counsel shall e-file defendant's proposed verdict forms and jury instructions to which agreement could not be secured (together with defendant's points and authorities in support thereof and plaintiff's objections thereto).

In addition to the electronically filed copy, counsel are required to submit their proposed jury instructions and verdict forms, which includes both those instructions and verdict forms

where agreement was reached as well as those where agreement was not reached, to the Clerk of the Court on a diskette, or via e-mail to lee_chambers@innd.uscourts.gov, in a form compatible with the court's computer system. The court currently utilizes WordPerfect 12 on IBM compatible personal computers. The plaintiff shall submit the proposed jury instructions and verdict forms on diskette, or via e-mail, and the defendant shall submit any other proposed instructions or verdict forms on diskette, or via e-mail.

C. Motions in Limine

In all jury cases, motions in limine are to be e-filed, with supporting briefs, not later than 20 days prior to trial. Any response is to be e-filed 7 days thereafter with replies to be filed 3 days after any response is filed.

In any response, counsel shall specifically state, if applicable, that they have no objection to the granting of any part of a motion in limine, in which case a reply thereon is unnecessary and an order may be entered accordingly.

II. CASES WHICH ARE TO BE TRIED TO THE BENCH

In all bench cases, counsel for each of the parties shall prepare proposed findings of fact and conclusions of law, a copy of which is to be served via e-mail in word processing format, on opposing counsel not later than 20 days before trial. The plaintiff's conclusions of law shall include a statement of the applicable statute(s) conferring jurisdiction upon the court, with appropriate citations. Upon receiving these proposed findings of fact and conclusions of law from the opposing side, each counsel shall then:

- (A) Underline those portions which he/she disputes.
- (B) **Bold** those portions which he/she admits.
- (C) *Italicize* those portions which he/she does not dispute, but deems irrelevant.

In this connection, counsel need not come to a uniform conclusion as to an entire proposed finding, or, indeed, an entire sentence within a proposed finding. They may agree with part of it, disagree with part of it, or consider a portion of it irrelevant.

Upon completion of the foregoing, each counsel shall then electronically file a marked/annotated copy of opposing counsel's proposed findings of fact and conclusions of law and return one marked copy to opposing counsel, not later than 10 days before trial. The parties shall be prepared to submit to the court, and to exchange among themselves, supplemental findings of fact and conclusions of law during the course of the trial, with respect to which the same annotation procedure may be ordered.

III. IN ALL CASES

A. Trial Briefs

In all cases, plaintiff's counsel shall e-file a trial brief not later than 25 days before the trial, serving a copy on counsel for all parties at the same time. Plaintiff's trial brief shall:

- (i) Identify each issue to be tried and each element of the claim(s) involved in the action and provide a thorough briefing of the law pertaining to each such issue and element of the claim(s).
- (ii) Identify all facts which plaintiff intends to prove at trial to sustain each element of the claim(s) for relief, and list the names and addresses of all witnesses who will testify in support of each fact and element. If any facts or elements of any claim(s) for relief are to be proved by documentary or physical exhibits, as contrasted with the testimony of witnesses, such documentary or physical evidence shall be itemized and listed under each element of the claim(s) for relief.
- (iii) Contain appropriate memoranda, with citations to legal authority, in support of evidentiary questions and any other legal issues which may reasonably be anticipated to arise at trial.

Opposing counsel shall e-file, not later than 15 days before trial, an opposing trial brief, with a copy to be served on counsel for all parties at the same time. Opposing counsel's trial brief shall:

- (i) State precisely the extent to which it agrees and/or disagrees with the plaintiff's statement of the issues and provide a thorough briefing of the substantive law of the case insofar as there is a disagreement with the briefing of these issues provided by plaintiff.
- (ii) Identify any additional issues to be tried.
- (iii) Identify all facts which defendant intends to prove at trial to defend against each element of the plaintiff's claim(s) for relief, and list the names and addresses of all witnesses who will testify contrary to each fact and element of the plaintiff's claim(s). If any facts are to be proved by documentary or physical exhibits, as contrasted with the testimony of witnesses, such documentary or physical evidence shall be itemized and listed under each element of plaintiff's claim(s) for relief. With respect to affirmative defenses, witnesses and documentary and physical exhibits to be offered in support of facts and elements thereof shall be identified.

(iv) Contain appropriate memoranda, with citations to legal authority, in support of evidentiary questions and any other legal issues which may reasonably be anticipated to arise at trial.

Counsel for any party who deems it necessary may e-file a supplementary brief not later than 5 days before trial, with a copy to be served on counsel for all parties at the same time.

B. Pretrial Disclosure of Witnesses, Deposition Testimony and Exhibits

In all cases, counsel shall comply with the pretrial disclosure requirements of Fed. R. Civ. P. 26(a)(3); however, the disclosures shall be provided to the other parties (marked either numerically or alphabetically) 25 days before trial (rather than the 30 days provided for in the Rule). Within 15 days thereafter (rather than the 14 days provided for in the Rule) a party may serve and e-file its objections to a designated deposition or to the admissibility of any document or other exhibit with appropriate memoranda, citing points and authorities, as to why the same should not be admitted. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

Thereafter, not later than five (5) days before trial, counsel shall e-file a court provided form constituting a list with a brief description of each item to be offered as an exhibit at trial. Before e-filing, each counsel shall mark on said form whether they are objecting to a respective exhibit in any respect. If no objection is noted as to a specific exhibit, the court anticipates that the exhibit will be admitted without formal proof.

Counsel for the parties are hereby authorized to issue subpoenas duces tecum as to all necessary exhibits not otherwise voluntarily obtainable, provided, however, that a copy of such subpoena duces tecum is delivered not less than 10 days in advance to all opposing counsel so that appropriate objections may be made to the court.

The trial will be expedited if, in addition to the formal list of exhibits, copies are made for opposing counsel, and a bench book of exhibits is prepared and delivered to the Clerk of the Court 5 days before trial.

C. Depositions

It is the intent of the Court to limit deposition testimony to only those matters that are essential to the presentation of the case.

Accordingly, if counsel believe that the presentation of any deposition will take more than forty-five minutes of trial time, including the use of summaries and excerpts, this should be brought to the court's attention at the final pretrial conference so that the court may assist the parties in structuring the presentation of said deposition through the use of summaries and excerpts so that said presentation will not take more than forty-five minutes of trial time. No

deposition presented at trial shall take more than forty-five minutes of trial time unless leave of court is obtained prior to the commencement of trial.

D. Settlement

During the entire pendency of this action, through and including the end of trial, the parties are admonished to vigorously pursue the possibility of settlement of this cause.

E. Prior Orders - Issues

Any order by the court or one of the court's magistrate judges heretofore entered, shall continue to be binding on the parties except as herein modified. Moreover, this order shall not be construed to allow the parties to enlarge the issues as limited by any pretrial order or the pleadings.

F. Sanctions for Non-Compliance

Counsel are expected to comply literally with this Order Controlling the Case. The court will consider the imposition of appropriate sanctions in the event of non-compliance.

Entered:

William C. Lee, Judge
United States District Court

TIME LINE FOR PREPARATION OF TRIAL
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
(FT. WAYNE DIVISION)

() 25 days before trial	() 20 days before trial	() 15 days before trial	() 10 days before trial	() 5 days before trial	() Trial — Bench — Jury
Plaintiff serves Defendant with proposed "Statement of the Case," if jury trial	Parties file: Motions in limine with responses to be filed 7 days later and replies 3 days after response.	Parties file: Agreed "Statement of Case" in jury trial. Def. files trial brief.	Counsel file marked copy of opposing counsel's proposed fdgs. of fact w/clerk. Subpoenas served on opposing counsel for possible objections.	Plnf. files agreed jury instructions & voir dire questions.	
Plnf. serves Def. w/proposed voir dire questions, & verdict forms.	Parties electronically serve opposing counsel with proposed fdgs. of fact/conc. of law in all bench cases.			Parties file: Jury instructions & voir dire questions to which agreement cannot be reached w/authorities cited.	
Plnf. files trial brief.			Counsel make objections to pretrial disclosures	Supplemental trial briefs may be filed.	
Counsel make pretrial disclosures pursuant to FRCP 26(a)(3)(A)(B)(C)				Parties file: List of evidence to which there is no objection & to which no formal proof is required.	
				Parties file: Memo in support of their position regarding exhibits to which there is objection.	
				Bench book of exhibits delivered to clerk.	

Appendix "A"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

INFORMATION FOR ATTORNEYS REGARDING TRIALS

EXHIBITS:

All proposed exhibits should be marked with identification stickers, available in the Clerk's Office, before the beginning of trial. Plaintiff exhibits will be marked numerically and Defendant exhibits will be marked alphabetically. Even though you may have an exhibit with a "deposition" identification sticker, it must be re-marked for trial.

Multi-page exhibits should be stapled, not paper clipped, and marked as one exhibit.

The Deputy Clerk, not the court reporter, is the custodian of all exhibits admitted into evidence. Offering counsel may retain any offered but not admitted exhibits.

Exhibits are kept at the corner of the Clerk's table and are available for your use during the trial. At the conclusion of a witness's testimony, please retrieve any exhibits used and replace on the Clerk's table. All admitted exhibits must be in the Clerk's possession during each recess or adjournment of the court.

In a bench trial, Exhibits are retained by the Clerk's Office for a period of time; therefore, if you intend to move for the return of original exhibits, you must (1) provide a copy for the Clerk, or (2) obtain leave of court to admit substitute, photocopies at the outset of trial.

In a jury trial, the clerk will return to counsel all exhibits, either offered or admitted in evidence, and any demonstrative exhibits, and will obtain a receipt therefore. The items are to be retained by the attorney producing them and shall remain subject to the orders of this court. Upon request, counsel shall make either the original items or copies thereof available to opposing counsel for the designation or preparation of a record upon appeal. It is the responsibility of counsel to transport any needed exhibits to the Court of Appeals when appropriate. It is the responsibility of counsel to maintain the integrity of all exhibits and they are not to be altered, modified or destroyed.

WITNESSES:

When calling a witness, please announce his or her full name for the benefit of the Clerk and court reporter. Once the witness is seated, please ask the witness to spell his or her name.

JURY TRIALS:

Pursuant to this District's Amended Jury Selection Plan, juror qualification questionnaires are not available for inspection. However, you will be given a completed questionnaire from each prospective juror on the morning of trial. The court conducts the voir dire, and will not orally voir dire any questions already contained on the questionnaire. You will be given the opportunity to have the court inquire into special areas, if necessary. You must return all questionnaires to the deputy clerk by the first recess of court.