

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

	)	JUDGE DONALD C. NUGENT
	)	
Plaintiff,	)	CASE NO.
	)	
v.	)	CIVIL TRIAL ORDER
	)	(Non-Jury)
	)	
Defendant.	)	

The above-titled case is scheduled for trial on \_\_\_\_\_ at \_\_\_\_\_, or as soon thereafter as reached. A Final Pretrial Conference will be scheduled upon request of any party at any time convenient to all parties. Pursuant to Local Rule 16.3(e), the parties and lead counsel of record must be present at the Final Pretrial Conference. Lead counsel of record shall submit a status report five (5) days prior to the Final Pretrial Conference. <sup>1</sup>

**Duty of Counsel**

Pursuant to this Trial Order, it is the duty of counsel to confer with each other frequently in order to prepare the case for trial. It will be necessary to confer in person on occasion. If an attorney is not complying with the requirements of this Trial Order, or is failing to cooperate with opposing counsel, opposing counsel shall immediately bring such matter to the Court's attention by written notification. Such disputes will not delay the trial of this case. The Court will not hesitate to impose sanctions sua sponte.

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<sup>1</sup> Parties are instructed to comply with Rule 6 of the Federal Rules of Civil Procedure when computing any period of time prescribed in this Order.

All counsel are required to be familiar with the Local Rules of this Court.

### **Trial Briefs**

Each party is required to file a trial brief with the Court no later than ten (10) days prior to the scheduled trial date. One (1) copy of each party's trial brief shall be filed with the Court. A trial brief shall include: (a) a statement of the facts; (b) a discussion of the controlling law; (c) a list of proposed witnesses along with a brief description of the subject matter of the testimony of each witness; (d) an index of all proposed exhibits containing a brief description of each exhibit; and (e) a discussion of any evidentiary issues likely to arise at trial.

A witness not listed in the trial brief shall not testify except under extraordinary circumstances. This rule applies to lay witnesses as well as to expert witnesses. An exhibit not listed in the trial brief shall not be introduced at trial, absent a showing of good cause.

Counsel are required to exchange trial briefs no later than five (5) days prior to the scheduled trial date.

### **Exhibits**

One (1) copy of each exhibit shall be furnished to the Court no later than two (2) days prior to the scheduled trial date. There is no need to file the exhibits with the Clerk of Court. Rather, exhibits may be delivered directly to the Judge's chambers. The original exhibits should be retained by counsel for use at trial. Counsel shall exchange copies of all exhibits and exhibit indexes no later than two (2) days prior to the scheduled trial date.

Exhibits shall be marked before trial with exhibit stickers, which are available from the Clerk's office upon request. The plaintiff shall mark exhibits with numbers and the

defendant shall mark exhibits with letters. Both sides are to indicate the case number on the bottom portion of the exhibit sticker. If there are multiple parties, the parties last name should precede the number or letter (e.g., "McGinty-1" or "Briggs-A"). If the parties have a joint exhibit, it shall be marked as "Jt. Ex . 1" or " Jt. Ex. 2" etc. If the defendant has more than twenty-six (26) exhibits, double letters shall be used (e.g., AA, BB, CC, etc.).

When a multi-page exhibit is used, each page of the exhibit must be separately numbered. For example, if plaintiff's exhibit one is a three-page document, the first page should be marked "1-1", the second page should be marked "1-2", and the third page should be marked "1-3".

The Court recommends that counsel place all exhibits in three-ring looseleaf binders with appropriately marked divider tabs. A table of contents for each binder must be included.

### **Stipulations of Fact**

Counsel for the parties shall confer with one another in person in order to prepare written stipulations as to all uncontested facts to be presented at trial to the Court. Said stipulations shall be filed with the Court no later than ten (10) days prior to the scheduled trial date. The Court will not allow direct or cross examination of any witness with respect to facts which are uncontested and facts which could have been stipulated.

### **Joint Statement of Disputed Facts**

Counsel for the parties shall confer with one another in person to prepare a joint statement listing all disputed issues of fact which are to be submitted to the Court. Such statement shall be filed with the Court no later than ten (10) days prior to the scheduled trial

date.

**Deposition Testimony (Video Tape and Written Transcript)**

When depositions (video tape and written transcript) are intended to be used as evidence at trial, counsel proposing to use such deposition testimony shall notify opposing counsel at least five (5) days prior to the scheduled trial date. Any objections to the deposition testimony must be filed in writing with the Court at least four (4) days prior to the scheduled trial date. Counsel proposing to use said deposition testimony shall file a reply brief within two (2) days thereafter or indicate agreement to delete the portions to which there is objection. If it is a video tape deposition, the Court must be provided with a complete written transcript of the video tape deposition. The Court will not allow the use of deposition testimony at trial unless counsel had complied with all of these procedures.

**Proposed Findings of Fact and Conclusions of Law in Non-Jury Trials**

In all non-jury cases, counsel for each of the parties shall prepare Proposed Findings of Fact and Conclusions of law, which shall be filed with the Court and served upon opposing counsel no later than ten (10) days prior to the scheduled trial date.

Proposed Finding of Fact and Conclusions of Law shall be consecutively numbered and set forth in separate paragraphs. The proposed Findings of Fact shall cite the particular witness(es) or exhibit(s) upon which each suggested finding is based; proposed Conclusions of Law shall cite relevant legal authority. Plaintiff's Conclusions of Law shall include a statement of the applicable statute conferring jurisdiction upon the Court.

**Motions**

Any pre-trial motion, such as a motion *in limine*, the moving party believes requires

the Court's attention prior to the commencement of trial, shall be filed in writing and served upon opposing counsel at least ten (10) days prior to the scheduled trial date. The nonmoving party shall respond, if desired, at least three (3) days prior to the scheduled trial date. Failure to comply with this requirement may impair the Court's ability to thoroughly analyze such motion before the commencement of trial.

### **Continuances**

No party shall be granted a continuance of a trial or hearing without a written motion from the party or counsel stating the reason for the continuance, endorsed in writing by all parties and lead counsel of record. The Court will not consider any motion for a continuance due to a conflict of trial assignment dates unless a copy of the conflicting assignment is attached thereto. The motion shall be filed within fifteen (15) days of counsel becoming aware of the conflict and not less than thirty (30) days prior to the scheduled trial date.

### **Settlement**

The parties shall notify the Court at the earliest possible time if a settlement is reached in the case.

### **Trial Order**

Counsel are expected to comply with this Trial Order. In order to accomplish this, the Court will assume that all counsel have read and familiarized themselves with this Trial Order and with the Local Rules of this Court.

### **Trial Conduct**

To prevent unnecessary delay and to ensure all counsel are able to fully participate in all stages of the trial, counsel are to remain available and in the proximity of the courtroom

during jury deliberations. If counsel needs to leave the immediate area, they must notify the courtroom deputy.

IT IS SO ORDERED.

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DONALD C. NUGENT  
United States District Judge

DATED: \_\_\_\_\_