

CIVIL PRETRIAL PACKET

JUDGE GREG S. STEPHENS

The Court hereby orders the following, which shall govern trial of this matter unless specifically modified by subsequent order. Failure to follow the instructions herein could subject parties or counsel to sanctions, including but not limited to, exclusion of evidence or witnesses; adverse judgment against a party, dismissal of a party's case, or a finding of contempt of court:

A. DISCLOSURE OF EXPERTS AND THEIR REPORTS:

Parties are ordered to reveal to opposing parties, by the dates specified in the scheduling order, the names of all expert witnesses to be called at trial.

A party may not call an expert witness to testify unless a written report has been procured from that witness and provided to opposing parties. The report must be supplied no later than 30 days after the deadline for the disclosure of the expert. It is each party's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the expert's opinion. Parties must also, along with a report, provide a *curriculum vitae* for each expert witness.

Unless good cause is shown, all supplemental reports must be supplied no later than 30 days prior to trial. The report of an expert must reflect his or her opinion as to each issue subject of the expert's testimony. An expert will not be permitted to testify or provide an opinion on any issue not raised in the report.

An expert witness who has provided medical, dental, optometric, chiropractic, or mental health care may testify and offer opinions as to matters addressed in the healthcare provider's records. The healthcare providers' records relevant to the case may be provided in lieu of a formal written report, provided that the expert's opinion is contained within the records, the records adequately set forth the expert's opinion, and a formal written report would be redundant.

B. DISCOVERY CUTOFF DATE:

All discovery must be completed by the provided discovery cutoff date.

If all parties agree, discovery, witness disclosure and expert report exchange deadlines may be changed by agreed entry, without necessity of a motion. However, none of the dates and

deadlines set forth in sections E through G of the scheduling order, as well as the trial date, may be altered without leave of court.

C. MOTIONS:

Motions shall be governed by Civil Rule 6(C)(1) and Local Rule 5.12. Responses to a motion (other than a motion for summary judgment) shall be filed no later than 14 days after service of the motion, unless leave to answer out of time is granted. The moving party may reply to the response no later than 7 days after service of the response, unless otherwise granted by leave of court. Responses to motions for summary judgment shall be filed no later than 28 days from service, and replies to summary judgment motions shall be filed no later than 7 days from service.

When the time period for replies has run, the Court will consider a motion submitted for decision, unless oral argument is granted upon specific request of a party.

All motions and responsive/reply memorandum shall be filed with the Clerk of Courts. *The filing party shall also provide a courtesy copy to chambers, as stated in Local Rules, so that the Court is aware of the filing. A filing party bears the burden of responsibility for providing a courtesy copy and the failure to provide a courtesy copy may result in the Court not considering the arguments contained in the filing. A courtesy copy may be provided electronically, via email, rather than as a paper copy.* The Court will not reconsider rulings based upon arguments not timely provided to chambers.

Concerning matters that can be reasonably be consented to between the parties, the Court prefers the submission of an agreed entry, indicating approval of all parties or their counsel, as opposed to a motion, whenever possible.

D. MEDIATION:

If mediation is ordered, the Court expects the parties to mediate unless relieved of this obligation by motion/entry. The scheduling order will state a deadline to mediate. The Court expects the parties, no later than 90 days prior to the deadline, to contact the assigned mediator and schedule a timely mediation session. An order to comply will issue if mediation is not so scheduled.

Sanctions may be imposed for failure to mediate as ordered, including, but not limited to, dismissal of the case for failure to prosecute.

E. PRETRIAL STATEMENTS:

Each party shall prepare a pretrial statement which shall contain the following:

- 1) A concise statement of its claims and defenses;
- 2) Those facts established by admissions in the pleadings, admissions by discovery, and stipulations of counsel;
- 3) The contested issues of fact;
- 4) The contested issues of law, with citations of authority for the party's position;
- 5) The names and addresses of fact witnesses expected to testify, together with a brief statement of the subject matter of each witness' testimony, and a brief summary of the anticipated testimony;
- 6) The names, addresses, and qualifications of expert witnesses expected to testify, together with a brief statement of the subject matter of each witness' testimony and a brief summary of the anticipated testimony;
- 7) A list of exhibits which each party intends to offer into evidence, marked as follows:
 - (a) Joint exhibits marked with Roman numerals;
 - (b) Plaintiff's exhibits with Arabic numbers;
 - (c) Defendant's exhibits with letters;
- 8) Motions *in limine* or other pretrial motions pending or which are anticipated;
- 9) A list of all special damages being alleged;
- 10) Each party's expectation of the trial time needed to present Its side of the case; and
- 11) The status of settlement negotiations, including specific demands and/or offers.

The pretrial statements shall be delivered to the Court's chambers no later than 4:00 p.m. on the date stated in the scheduling order. This deadline cannot be extended except by leave of court. Failure to submit the pretrial statement or comply with any other court order in a timely manner may result in the imposition of appropriate sanctions including, but not limited to, dismissal of the case or a finding of contempt of court. The failure to include any of the materials specified in this order may result in the imposition of appropriate sanctions including,

but not limited to, exclusion of testimony or exhibits, denial of claims, directed verdicts, dismissal of the case, or a finding of contempt of court.

F. JURY INSTRUCTIONS:

Joint jury instructions are required to be submitted electronically in Microsoft Word, at least one week before trial. If the parties cannot agree on jury instructions, then each party must submit its proposed jury instructions as described above. If the parties cannot agree, they, if *pro se*, or their counsel, will meet in Judge's chambers a few days before trial to resolve any disputes. If there is a particular legal or evidentiary issue which any party wishes to bring to the Court's attention, a short memorandum with pertinent cases attached is appreciated.

G. ISSUES TRIED TO THE COURT:

In lieu of jury instructions, for any issue to be tried to the Court, each party shall submit to the Court, in writing and electronically, at least one week before trial, proposed findings of fact and conclusions of law. For each claim to be tried to the Court, each party shall submit to the Court, in writing and electronically, at least one week before trial, a memorandum setting forth the elements to be proved to establish such claim.

The Court expects the parties, before the trial, to have briefed the Court on all legal issues related to the trial. The Court will not permit, except in the most extraordinary circumstances, parties to submit post-trial briefs. The Court believes that a 'bench trial' should progress and be resolved virtually the same as a jury trial, in the sense that the legal issues should all be clarified before the trial begins, and that the Court, as fact-finder, should be ready to apply the law to the facts immediately at the conclusion of the trial, when the Court's factual findings are fresh.

H. ATTENDANCE AT PRETRIAL AND SETTLEMENT CONFERENCE:

Trial counsel and all parties, including someone with settlement authority, shall be personally present at the pretrial and settlement conference. However, with prior leave of court: (1) a corporate party may appear through an officer or employee having knowledge of the subject matter of the case; (2) a party who is insured concerning the claim may appear through a claim representative from his or her liability carrier; and (3) in those instances when trial counsel can assure the Court that a representative of an insurance carrier is available for immediate contact by telephone, the trial counsel for an insured party may appear for the party and the insurance carrier.

I. TRIAL MATERIALS EXCHANGE:

Each party, or its counsel, shall assemble all depositions, documents, photographs and other items to be used at trial. Each party's set of materials shall be placed in a binder or cover, and shall be marked in accordance with section E(7) of this packet. Separate sets of materials shall be delivered to opposing parties, or their counsel, and to the Court before 4:00 p.m. on the date indicated in the scheduling order.

Objections to the admission of exhibits or to the use of other material must be made in writing and filed before 4:00 p.m. on the date indicated in the scheduling order, and a copy of the objections shall be contemporaneously delivered to the Court in chambers. Objections shall include both the grounds for the objection and a brief citation of authority. Any hearing necessary on objections shall be held at 8:30 a.m. the first day of trial, unless otherwise specified.

Failure to include a document, photograph, or other item in the materials as required by this Order will prevent its use as evidence or as trial material. Relief from this provision may be obtained only upon motion for good cause shown.

J. PERPETUATION OF EVIDENCE DEPOSITIONS:

Perpetuation depositions may be taken at any time prior to trial, so long as the parties comply with Local Rule 5.16 concerning video tape depositions.

K. TRIAL:

The courts in Butler County use a computer recording. The Court has equipment for playing video depositions and for displaying documents. However, any party wishing to use the Court's audio-visual equipment must contact the Court at least 2 weeks prior to trial to ensure that the equipment is available and set up for use prior to the start of trial. Should parties or counsel need instruction on how to use any equipment, they must arrange, sufficiently in advance of trial, for instructional assistance. Trial will not be delayed because of failure to properly prepare for the use of audio-visual equipment. Parties and counsel are duly noticed that lack of preparation could result in the exclusion of evidence if the evidence cannot be presented in any alternative form.

The parties, or their counsel, are responsible for insuring that all transcripts and video depositions are filed with the Clerk's office prior to trial. The parties, or their counsel, are also required to contact the Clerk's office prior to trial to insure the availability of the recorded

depositions. The parties and their counsel are cautioned to view the videos before filing and to test the videos before trial to insure that there is 'sound' on the video.

The trial shall commence at 9:00 a.m. on the date indicated, unless otherwise specified. Jury lists and jury questionnaires will be available at the Clerk's office at 3:30 p.m. on the working day before the trial date.

Prior to the start of trial, all parties, or their counsel, shall furnish the bailiff and the Court with a list identifying each exhibit with the accompanying identification number or letter.

L. HEARINGS AND CONTINUANCES:

The Court expects that attorneys filing cases in Butler County will be able to appear for hearings in Butler County. Unless exceptional circumstances require otherwise and the Court expressly grants permission to appear by telephone, personal appearance is required at all hearings. The attorney of record or local counsel who has sufficient knowledge of the case and authority to manage this case must appear at all scheduled hearings. *Failure to appear will result in Rule 41 dismissal.*

Unless exceptional circumstances require otherwise, all requests to continue hearings shall be made by written motion at least 10 days prior to the scheduled hearing date. Any party or counsel filing a motion to Continue shall certify that all other parties/counsel who have entered appearance have been contacted and whether they consent to the continuance, or shall state a reason why such contact was not possible. If all such parties/counsel do not consent, the motion shall so state and the Court, at its discretion, may require a hearing prior to ruling on the motion to continue. If a continuance is requested and granted 10 days or fewer prior to a hearing, the requesting party is responsible for notifying all parties, whether they have entered appearance or not, of the continuance.

In order for the efficient management of the Court's docket in setting initial Status Report Hearings, which are primarily for scheduling purposes, the Court expects that firms or law offices with multiple attorneys will make reasonable efforts to arrange for coverage by alternate in-house counsel rather than moving for a continuance if counsel of record is unavailable.