



## **PROPOSED PRETRIAL ORDER CONTENTS AND SUBMISSION INSTRUCTIONS FOR CIVIL CASES BEFORE JUDGE MATTHEW L. GARCIA**

In calendaring the deadlines below, Counsel should compute the time in accordance with Federal Rule of Civil Procedure 6 – Computing and Extending Time; Time for Motion Papers.

### **A. The Proposed Pretrial Order**

Prior to trial, the parties shall jointly prepare and submit a Proposed Pretrial Order containing the following components, absent prior modification by the Court.

The subjects discussed below should be addressed in separate, numbered sections of the Proposed Pretrial Order.

1. Jurisdiction. A concise statement of the basis for federal subject matter jurisdiction, and if jurisdiction is disputed, the nature and basis of the dispute.
2. Attorneys. List all attorneys trying the case, including their contact information (business address, telephone number, and e-mail address).
3. Claims and Defenses. A concise joint statement (1 or 2 short paragraphs) of the claim(s) of the plaintiff(s), defense(s) of defendant(s), and all counterclaims and cross claims and the defenses to them. In a jury trial, this statement will be read to the jury during voir dire.
4. Witnesses. A list of names and addresses of all witnesses including experts: (a) who will be called; (b) who may be called; (c) whose deposition will be used. In a jury trial, this list will be read to the jury during voir dire. Any witness not listed in the Proposed Pretrial Order will be precluded from testifying absent a showing of good cause, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable as rebuttal witnesses) as may be necessary.
  - a. Objections. A statement of any objections to the calling of any witness, including expert witnesses. Objections not made in the Proposed Pretrial Order will be deemed waived absent a showing of good cause. If the objection is the subject of a motion *in limine*, the Proposed Pretrial Order may simply refer to the motion

and need not repeat the grounds stated in the motion.

b. Depositions. For each witness whose deposition will be used, the party that intends to call that witness shall submit the witness's deposition transcript with the testimony the party intends to read to the jury highlighted in yellow. Any party that objects to the other party's designations shall submit a list of its objections by page and line number and the basis for the objection. The opposing party shall submit its response to such objections. The basis for an objection and the response shall be stated as succinctly as possible with appropriate citations to evidentiary rules or case law. Objections not made in the pretrial order will be deemed waived absent a showing of good cause. If the Court will be called upon to rule upon objections, a copy of the deposition is to be provided with the pretrial order.

5. Exhibits. A schedule of all exhibits a party may introduce at trial, as well as any demonstrative exhibits or evidence, identified by trial exhibit number, with a brief description of each exhibit. Any exhibit not listed in the Pretrial Order will be excluded from evidence. Joint exhibits should be denominated "JX," plaintiff's exhibits, "PX" and defendant's exhibits, "DX." The exhibit number should follow thereafter (e.g. JX1, PX3, DX252, etc...). Three copies of the exhibits should be submitted in separate binders on the first day of trial.

6. Objections. A statement of any objections to each exhibit. Objections not made in the Proposed Pretrial Order will be deemed waived. The parties should follow a similar format for objections to exhibits as is outlined above for deposition designations.

7. Type and length of trial. A statement of whether the trial will be a bench trial or jury trial, and a realistic estimate of the length of the trial. A typical trial day will begin at 9:00 a.m. and end at 5 p.m., with a break of approximately 60 to 75 minutes for lunch and 15-minute breaks in the mornings and afternoons.

8. Proposed findings and conclusions. For a bench trial, the parties shall confer about proposed findings of fact and law as to which they agree and submit those to the Court. Each party also shall submit its separate proposed findings of fact and conclusions of law. Proposed findings shall be filed on the CM/ECF system and an electronic version in Microsoft Word should be submitted to the Court's chambers.

9. Stipulations. A listing of any stipulations agreed to by the parties, including stipulations regarding the presentation or admissibility of evidence.

10. Settlement status. A statement summarizing the current status of settlement negotiations and whether the parties believe a final pretrial settlement conference would be productive.

11. Trial Briefs. Trial briefs are required as part of the Pretrial Order in bench trials. Ordinarily, Judge Garcia will not accept trial briefs in a jury trial, unless he has granted a prior motion to file such a brief or ordered the filing of a trial brief *sua sponte*. Any trial briefs shall be limited to 25 pages without leave of court.

**B. Jury instructions**

12. Proposed jury instructions. A compiled version of jury instructions shall be filed, indicating which instructions are in dispute. The joint proposed jury instructions must be e-mailed to garciaproposedtext@nmd.uscourts.gov in an electronic version in Microsoft Word. The joint proposed jury instructions must also be filed on the CM/ECF system with a cover page identifying the case caption and the title JOINT PROPOSED JURY INSTRUCTIONS.

- a. Agreed instructions. The parties are directed to confer and agree upon jury instructions to the extent possible prior to the submission of the jury instructions to the Court. Agreed proposed instructions should be marked as such and shall be numbered consecutively.
- b. Disputed instructions. Proposed instructions that are not agreed shall be numbered, shall identify the proponent of the instruction, and shall include supporting authority. Objections to any proposed instructions must be set forth in writing and shall include supporting authority.

All instructions—both those that are agreed upon and those for which there are disputes—shall be submitted to the Court in a single document. The plaintiff is responsible for timely submitting the instructions.

*Proposed jury instructions are due twenty-one (21) days before the trial date.*

**C. Etiquette, Decorum, and Schedule**

1. Stand when you speak. Do not refer to any party or attorney by their first name. Always address the Court only; do not address or argue with opposing counsel in the presence of the jury. If counsel must confer with one another, please request permission of the Court for a moment to do so privately and quietly.

2. Speaking objections are not allowed. Any objection should be stated succinctly with reference to specific legal authority. The Court will then hear opposing counsel's response and make a ruling. If necessary, you may ask to approach the bench to discuss an objection.

3. It is imperative that counsel be on time. Counsel must be in the courtroom no later than 8:30 a.m. and be prepared to address any matter that requires a discussion outside the jury's presence.

4. A multi-day jury trial generally will recess at about 5:00 p.m. The Court generally will provide the jury and counsel with a morning and afternoon break of 15 minutes. The Court will also allow approximately an hour for lunch.

5. Three copies of all exhibits, both stipulated and disputed, should be submitted in separate binders to Judge Garcia's chambers on the first day of trial.

**D. Pretrial conferences**

The Court will hold a pretrial conference to discuss trial plan, jury instructions, exhibits, motions *in limine*, and other pretrial matters. At that conference, Judge Garcia will address pending motions *in limine*, objections to witnesses and exhibits, and contested jury instructions, and will discuss trial procedures and scheduling. Lead trial counsel must be fully prepared and with authority to discuss all aspects of the case must attend. The parties are welcome to attend the pretrial conference with their lawyers if they wish to do so.

Matthew L. Garcia  
United States District Court Judge