

Pretrial Order – Additional Requirements for Division 2

The Pretrial Order should be reasonably sufficient for any Judge unfamiliar with the case to pick it up and try it. When we set multiple cases for jury trial weeks, your case may be sent to another Division for trial.

You should use the PTO draft form that is available as Appendix C to the Local Civil Rules. In addition, prior to the statutory Pretrial Conference date and preparation of the PTO draft, please discuss deadlines, dates and content for the following:

Theories.

- The theories sections of your PTO should be fully articulated. Plaintiffs must itemize their damage claims. The PTO will control the litigation going forward. Notice pleading has passed. Theories must be those contemplated by the most recent pleadings. If there was no timely motion to amend a pleading, a new theory will not be allowed, except by agreement, in the PTO.

Exhibits.

- All exhibits should be marked and a Joint Master Exhibit List prepared well in advance of the trial. If a Protective Order was entered, exhibits which were intended to be treated as “confidential” should be noted as such on the Joint Master Exhibit List.
- All marked exhibits for use in the trial should be exchanged by a date certain prior to the Final Trial Conference. Objections to the exhibits, if any, will be addressed at the Final Trial Conference to minimize delays during the trial.
- Exhibits will be deemed received during trial as they are identified by the first sponsoring witness, absent a sustained contemporary objection to preserve the record at the first identification. There will be no need for counsel to move for receipt or admission of exhibits into evidence at the trial.
- Copies of the exhibits for use by the Court should be submitted as separate PDF files on a USB drive. In Division 2, the bench computer is equipped with two working USB drives for exhibit sticks.
- Exhibits for use by the witnesses and ultimately by a jury should all be in separate PDF files on a USB drive. We will not be using paper exhibits. There will be no need to continually approach the witnesses to hand them exhibits separately to identify. They will be identified on the monitor in front of the witness.

Deposition Designations.

- Set a deadline well in advance of trial for parties to file their opening deposition designations. Then, set a reasonable date two or three weeks later for objections and counter designations to be filed. If all designations are complete at least two weeks before the Final Trial Conference, the Court will rule on that date. After that date, the Court is unlikely to have time and the deposition designation may not be allowed for trial.

Jury Instructions.

- The core jury instructions, *i.e.*, the claims, defenses, liability/standards of conduct, damages, and the verdict form that will be used in the trial must be completed by the Final Trial Conference. The Final Trial Conference will not be adjourned until those core jury instructions are completed.
- Submit your respective draft proposed or the agreed core jury instructions to Ms. Aubrey (julia.aubrey@jocogov.org) in MS-Word format as an attachment to an e-mail. You must be sure to file all of your proposed instructions, however, with the Clerk for the record.

For Trial to the Court.

- The most important segments in this Division for a trial to the Court are the Theories sections and the Questions of Fact. Those will guide the Court in hearing the evidence and making both credibility and sufficiency of the evidence decisions, as well as understanding the bases for relevance and materiality objections. Please be sure to include all of the material Questions of Fact that must be answered in order for your respective parties to obtain judgment in their favor.