

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

JUDGE WOODARD

INSTRUCTIONS FOR FINAL PRETRIAL CONFERENCE

COUNSEL AND ANY UNREPRESENTED PARTY ARE EXPECTED TO READ THESE INSTRUCTIONS CAREFULLY AND COMPLY IN FULL. FAILURE OF COUNSEL TO BE FULLY PREPARED TO PARTICIPATE IN THE PRETRIAL CONFERENCE WILL SERIOUSLY INCONVENIENCE OPPOSING COUNSEL AND THE COURT, AND MAY RESULT IN THE IMPOSITION OF SANCTIONS UNDER THE PROVISIONS OF RULE 16(f), FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULE 7016-1.

The objective of the final pretrial conference is the formulation of a pretrial order which will govern the course of the trial. It is therefore necessary that counsel prepare for the final pretrial conference with the same thoroughness as for trial. The trial date(s) will be set at the pretrial hearing.

In order to facilitate the conference, the parties will comply with the following instructions:

1. Unless prior permission is granted by the Court as set forth below, each party will be represented at the pretrial conference by lead counsel for that party. Other counsel may also participate in the conference to assist lead counsel, but it is mandatory that counsel who will be in charge of the trial attend the conference on behalf of his/her client. In the event of a conflict between this setting and a setting in any other court, the order of priority of settings therein fixed will be strictly adhered to. In the event lead counsel for any party is unable to attend the conference because of a prior setting in another court, counsel must file a notice of the conflict and motion to continue promptly upon receipt of the pretrial hearing notice. In the event of such a conflict, the conference may be rescheduled if the conflicting setting predates the Order Scheduling Pretrial Conference. Counsel are cautioned that conflicts with deposition schedules will not be recognized as grounds for rescheduling the conference, and no such requests should be made on that ground. Permission may be granted for representation of the party in question at the conference by substitute counsel. Such substitute representation will not be permitted, however, unless substitute counsel is an attorney who will actually participate in the trial; has a familiarity with the case at least equal to that of lead counsel; and has full authority to speak for the client and enter into binding agreements and stipulations on behalf of the client without the necessity to consult with lead counsel.

The presence of the client at the pretrial conference is not mandatory, although it may be helpful to facilitate settlement discussions. Any party proceeding pro se must attend the pre-trial conference.

2. The pretrial order will be in the form located on the Bankruptcy Forms page of Court's website at <http://www.msnb.uscourts.gov>. In order to conserve the time of counsel and the Court at the conference, the parties are required to confer and prepare a proposed pretrial order using the pretrial order form found on the Court's website. The parties must then file a joint preliminary draft of the pretrial order at least 10 days prior to the conference. For those issues on which counsel do not agree, each party shall include its proposed language or list. The pretrial order will be refined at the conference and remaining disputes resolved, but advance preparation will make this task easier and assure that no issue is overlooked. Please note also that under the provisions of the pretrial order (§ 3), the pleadings will stand amended to conform with the pretrial order.

3. Counsel will confer in advance of the conference for the purpose of reaching agreement upon those facts which are not in issue and can be stipulated or taken as admitted. All such stipulated or admitted facts shall be set out in § 9a of the pretrial submission of each party. In addition, each party will set out in full in § 9a of the party's pretrial submission the exact language of any additional stipulations desired by the party, but not agreed upon prior to the conference. These additional proposals will be fully discussed at the conference in an effort to reach agreement on all possible stipulations.

Counsel are expected to stipulate all relevant and material facts which are not genuinely at issue. Where relevancy is an issue, but the historical facts are not in genuine dispute, counsel are expected to stipulate the historical facts, but will be permitted to reserve objections as to relevancy. In jury cases, such stipulations will not be read to the jury before the Court has ruled on relevancy. Substantial trial time can thereby be saved, and the genuine issues more clearly presented.

4. In addition to preparing the list and brief description of exhibits required for completion of §10 of the pretrial order, counsel will also prepare and—not later than 2 weeks prior to the time fixed for the pretrial conference—submit to counsel opposite a complete set of pre-numbered copies of all exhibits proposed to be offered in evidence. Each party will number exhibits beginning with the number "1" preceded by an appropriate prefix. Plaintiff's exhibits will be prefixed with the letter "P"; defendant's exhibits will be prefixed with the letter "D"; and if there is more than one plaintiff or defendant, a two letter prefix should be used. For example, in a multiple defendant case the exhibits of defendant Jones would be numbered DJ-1, et seq. and exhibits for defendant Smith would be numbered DS-1, et seq., and so on. Counsel will not be allowed to offer at trial any exhibit not properly numbered, listed and served upon opposing counsel as herein required, except for impeachment purposes or upon good cause shown to the Court.

It is of the utmost importance that the above requirements as to exhibits be complied with, as the parties will be called upon at the conference to stipulate to both the authenticity and admissibility in evidence of all exhibits. If authenticity and/or admissibility are not stipulated, counsel must be prepared to state specific objections to be set out in the pretrial order. In order that these matters may be meaningfully dealt with at the conference, it is necessary that counsel be familiar with the applicable Federal Rules of Evidence, and that they have had a realistic period of time before the conference to examine the opposing exhibits in the light of those rules.

5. Witnesses should be designated as either “Will Call” or “May Call.” Please refer to page 4 of the pretrial order form for definitions of those terms.

6. Counsel should note the requirement concerning depositions to be read in evidence for purposes other than impeachment, as set out in ¶12 of the pretrial order form. The purpose of this practice is to avoid unnecessary trial delays by disposing of deposition controversies before the trial begins. Please bear in mind that counsel must, not later than 21 days before trial, discuss among themselves their intended use of depositions, other than for impeachment, and attempt to resolve all controversies by agreement. Any controversies remaining unresolved after that conference must be submitted not later than 10 days before trial. All objections are waived unless submitted for decision at least 10 days prior to trial after first conferring with other counsel in an effort to resolve the controversy.

7. The conference will also explore settlement possibilities, and counsel should therefore be prepared to provide realistic appraisal of those possibilities. While no effort will be made to pressure the parties into settlement, experience has shown that the opportunity afforded by the pretrial conference for frank discussion between counsel often leads to settlement of cases which might otherwise go to trial. Settlement discussion will be “off the record” in order to encourage frankness and candor. In some cases it has proved highly beneficial for parties to be present during settlement discussions. This is especially so when there has developed a difference of opinion between attorney and client as to the settlement value of the case.

8. The final pretrial order will be prepared by counsel following the pretrial conference. Ordinarily, plaintiff’s counsel will be asked to prepare the final pretrial order from the pretrial submissions and the agreements reached at the pretrial conference. Plaintiff’s counsel will then submit the proposed pretrial order to defense counsel for approval. If changes are required after submission to defense counsel, it will be the responsibility of defense counsel to contact all other counsel to obtain agreement to the proposed changes and to revise the pretrial order to incorporate any agreed changes. When the pretrial order has been finalized and signed by all counsel it should be forwarded to the Court for the presiding judge’s signature. Unless a different time is fixed by the Court, plaintiff’s counsel shall submit the proposed pretrial order to defense counsel within 14 days after the pretrial conference and defense counsel shall submit the final proposed pretrial order to the Court within 10 days thereafter.

The pretrial order must be in the exact format of the court designated form and must include all of the language contained in the printed form. If additional space is needed, extra sheets may be inserted at the appropriate points. A copy of the designated pretrial order form may be found on the Court’s website at: <http://www.msnb.uscourts.gov> on the Bankruptcy Forms page.