AO 72
(Rev. 8/82)

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OCT 27 1983

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

In Re:

Amendment to
Local Civil Rule CR 16

GENERAL ORDER

Local Civil Rule CR 16 is amended in its entirety to read as set forth in the attachment to this order. This amendment shall be effective May 1, 1984.

DATED this 27 day of October, 1983.

Walter T. McGovern
Chief United States District Judge

United States District Judge

United States District Judge

Barbara J. Rothstein
United States District Judge

United States District Judge

Attachment to General Order, amending
Local Civil Rule CR 16, effective May 1, 1984

CR 16

PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) LODGING DATE FOR PROPOSED PRETRIAL ORDER

In each case, the court shall set a deadline for counsel for all parties to lodge a proposed pretrial order ("lodging date"). Counsel shall receive at least 120 days' notice of the lodging date.

(b) COMPLETION OF DISCOVERY

Not later than 75 days prior to the lodging date, unless otherwise ordered by the court, all counsel shall exhaust the discovery procedures provided for in Rules 26 through 37, Federal Rules of Civil Procedure. Interrogatories, requests for admissions or production etc. must be served sufficiently early that all responses are due before this deadline. Any motion to compel discovery shall also be filed and served on or before this deadline.

(c) DISPOSITIVE MOTIONS

Not later than 75 days prior to the lodging date, counsel shall file all motions to dismiss, motions for summary judgment, or other dispositive motions, together with supporting papers.

(d) PLAINTIFF'S PRETRIAL STATEMENT

Not later than 30 days prior to the lodging date, counsel for plaintiff(s) shall serve upon counsel for all other parties a brief statement as to:

(1) Federal jurisdiction;
(2) Relevant facts about which plaintiff asserts there is no dispute and which plaintiff is prepared to admit;

(3) Plaintiff's factual contentions, which shall be stated in a summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth in Local Rule CR 16(k)(2);

(4) Issues of law;

(5) The names and addresses of all witnesses who might be called by plaintiff, and the general nature of the expected testimony of each. As to each witness, plaintiff shall indicate "will testify" or "possible witness only." Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(6) A list of all exhibits which will be offered by plaintiff at the time of trial, except exhibits to be used for impeachment only. The exhibits shall be numbered in the manner set forth in Local Rule CR 16(k)(3).

(e) DEFENDANT'S PRETRIAL STATEMENT

Not later than 20 days prior to the lodging date, each defense counsel shall serve upon counsel for all other parties a brief statement as to:

(1) Objections, additions or changes which defendant believes should be made to plaintiff's statement on federal jurisdiction and admitted facts;

(2) Facts which defendant for good and substantial reason is not prepared to admit but which defendant does not intend to contest;

(3) Objections as to the form of plaintiff's factual contentions;

(4) Defendant's factual contentions, which shall be stated in a summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below, in Local Rule 16(k)(2).

(5) Objections, additions or changes which defendant believes should be made to plaintiff's statement of issues of law;

(6) The names and addresses of all witnesses who might be called by defendant and the general nature of the expected testimony of each. As to each witness, defendant shall indicate, "will testify" or "possible witness only." Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(7) A list of all exhibits which will be offered by defendant at the time of trial, and which have not already been listed by plaintiff; but excluding exhibits to be used for impeachment only. The exhibits shall be numbered in the manner set forth in Local Rule CR 16(k)(3).

No party is required to list any exhibit which is listed by another party.

(f) REVIEW OF EXHIBITS

Prior to the conference of attorneys, counsel for each party should review every exhibit to be offered by any other party, and shall determine whether and on what basis counsel intends to object to the introduction of each into evidence. Counsel designating an exhibit for listing in the pretrial order shall promptly make that exhibit available for inspection and copying upon request by counsel for any other party. Prior to the conference of attorneys, counsel for each party shall furnish counsel for each other party a list identifying the proposed exhibits to which there is no objection, and setting forth the grounds for any objections to the admissibility of all other exhibits listed by any party.

(g) CONFERENCE OF ATTORNEYS

Not later than ten days prior to the lodging date, there shall be a conference of attorneys for the purpose of accomplishing the requirements of this rule. It shall be the duty of counsel for the plaintiff to arrange for the conference. The attorney principally responsible for trying the case on behalf of each party shall attend the conference. Each attorney shall be completely familiar with all aspects of the case in advance of the conference, and be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible, and to discuss the possibility of settlement. At the conference, counsel shall cooperate in developing a proposed pretrial order which can be signed by counsel for all parties. Except in land condemnation cases, the order shall, insofar as possible, be in the form set forth below in CR 16(k)(1). Plaintiff's factual contentions may be set forth on separate pages from defendant's contentions. Similarly, the parties' witness lists may be on separate pages. Counsel shall assemble a single pretrial order, properly paginated.

(h) LODGING OF PRETRIAL ORDER.

An agreed proposed pretrial order, bearing the signatures of counsel for each party, shall be lodged with the Clerk on or before the lodging date. A copy of the proposed pretrial order should be delivered to the Clerk at the same time, for forwarding

to the District Judge or Magistrate before whom the case is pending, and shall be marked with his or her name in the upper right-hand corner. The copy shall reflect that the original was signed by counsel for all parties.

(i) FINAL PRETRIAL CONFERENCE

The court may, in its discretion, schedule a final pretrial conference. Counsel who will have principal responsibility for trying the case for each party shall attend, together with any party proceeding pro se. At the final pretrial conference, the court may consider:

(1) The sufficiency of the proposed pretrial order;
(2) Any matters which may be presented relative to parties, process, pleading or proof, with a view to simplifying the issues and bringing about a just, speedy and inexpensive determination of the case;
(3) In jury cases, whether the parties desire to stipulate that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury;
(4) Requirements with respect to trial briefs;
(5) Requirements with respect to requests for instruction and suggested questions to be asked by the court on voir dire in cases to be tried by jury;
(6) The number of expert witnesses to be permitted to testify on any one subject;
(7) The possibility of settlement; but nothing with respect thereto shall be incorporated in the pretrial order, and any discussion with respect to settlement shall be entirely without prejudice, and may not be referred to during the trial of the case or in any arguments or motions.

(j) OTHER GENERAL PROVISIONS

(1) In order to accomplish effective pretrial procedures and to avoid wasting the time of court and counsel, the provisions of this rule will be strictly enforced. Sanctions and penalties for failure to comply are set forth in GR 3 and in the Federal Rules of Civil Procedure;
(2) The Court may, by order in a specific case, modify any of the procedures or deadlines set forth in this rule;
(3) A party proceeding without counsel shall comply in all respects with obligations imposed upon "counsel" under this rule.

(k) FORM OF PRETRIAL ORDER

(1) The following form of pretrial order shall be used, insofar as possible, in the trial of all cases except those involving land condemnation:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT _____

_____ Plaintiff, vs. _____ Defendant.	No. _____ PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this Court by virtue of: (State the facts and cite the statutes whereby jurisdiction of the case is vested in this Court.)

ADMITTED FACTS

The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

FACTS NOT ADMITTED BUT NOT CONTESTED

Plaintiff alleges the following facts, which defendant is not prepared to admit but does not contest: (List 1, 2, 3, etc.)

Defendant alleges the following facts, which plaintiff is not prepared to admit but does not contest: (List 1, 2, 3, etc.)

FACTUAL CONTENTIONS

The plaintiff contends as follows: (List 1, 2, 3, etc.)

The defendant contends as follows: (List 1, 2, 3, etc.)

(State contentions in summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below in CR 16(k)(2)).

ISSUES OF LAW

The following are the issues of law to be determined by the Court: (List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the Court, such as "Is the plaintiff entitled to recover?" will not be accepted.)

EXPERT WITNESSES

(a) Each party shall be limited to ..... expert witness(es) on the issues of .....
(b) The name(s) and address(es) of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of plaintiff:
(2) On behalf of defendant:

OTHER WITNESSES

The names and adresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff:
(b) On behalf of defendant: (As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named).

EXHIBITS

(a) The exhibits listed below may be received in evidence without objection:

Plaintiff's Exhibits

1. Photo of port side of ship. (Examples)
2. Photo of crane motor.
3. Photo of crane.

Defendant's Exhibits

A-1. Weather report. (Examples)
A-2. Log book.
A-3. X-ray of plaintiff's foot.
A-4. X-ray of wrist.

(b) The authenticity of the exhibits listed below is admitted. Admissibility is denied, however, for the reasons set forth in respect to each exhibit:

Plaintiff's Exhibits

4. Inventory report. (Examples)
   Reason-Hearsay and not within the exception stated in F.R.E. 803(6).

Defendant's Exhibits

A-5. Photograph. (Examples)
   Reason-Unduly prejudicial, F.R.E. 403.

(c) The authenticity of the exhibits listed below is denied. It is also contended that the exhibits are inadmissible for the additional reasons set forth in respect to each exhibit.

Plaintiff's Exhibits

5. Accountant's report. (Examples)
   Reason-Hearsay, prepared for litigation.

Defendant's Exhibits

A-6. Ship's log.
   Reason-Not the original record, hence not the best evidence.

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See CR 16(k)(3) for further explanation of numbering of exhibits).

ACTION BY THE COURT

(a) This case is scheduled for trial (before a jury) (without a jury) on _____ 19___ at _____.

(b) Trial briefs shall be submitted to the Court on or before .....

(c) (Omit this sub-paragraph in non-jury case). Jury instructions requested by either party shall be submitted to the Court on or before .....
Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before .....

(d) (Insert any other ruling made by the Court at or before pretrial conference.)

This order has been approved by the parties as evidenced by the signatures of their counsel. Upon entry of this order, the pleadings pass out of the case. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this _____ day of [insert month], 19[insert year].

_____
United States District Judge/Magistrate

FORM APPROVED

_____
Attorney for Plaintiff

_____
Attorney for Defendant

(2) Contentions as to Disputed Facts. Statements of contentions as to disputed facts should be brief and generally worded. The purpose of this section of the order is to apprise the court and the other parties of the general position of each party on major fact issues. Lengthly recitals of evidentiary detail are of little assistance, and serve only to impose unnecessary burdens upon the lawyer drafting them.

For example:

Proper: 1. Correspondence between the parties in November and December, 1982 established the price, quantity and time of delivery of the goods.

Improper: 1. On November 3, plaintiff wrote to defendant, stating ..... (etc.).
2. On November 7, 1982, defendant responded ..... (etc.).
3. On November 12, 1982, plaintiff replied ..... (etc.).

Proper: 1. Defendant was negligent in that: (a) the stabilizer on the aircraft was defectively designed; and (b) the airline was not given proper instructions as to maintenance and inspection of the stabilizer.

Improper: 1. The stabilizer on the aircraft was 117 inches in length and ..... (etc.).
2. Accepted industry standards provide that stabilizers must be ..... (etc.).
3. At an air speed of 570 mph, a stabilizer ..... (etc.).
4. Defendant distributed service bulletins on the stablilizer on ..... (etc.).

Proper: 1. Plaintiff's discharge was due to unsatisfactory performance of her job and insubordination to her supervisors. It was unrelated to her sex.

Improper: 1. Plaintiff made an error in balancing accounts on July 5, 1980, resulting in cost of $7,300 to defendant.
2. Defendant attempted to provide plaintiff training and counselling about this incident, but she refused.
3. On August 13, 1980, plaintiff again ..... (etc.).
4. Plaintiff told Mr. Wilson on June 15, 1980 that she refused to ..... (etc.).

(3) Numbering of Exhibits. The pretrial order identifies each exhibit with a number. This becomes the number for the exhibit at the trial, and appears on the exhibit tag. Plaintiff's exhibits are to be numbered 1, 2, 3, etc. All defendant's exhibits are to be numbered A-1, A-2, A-3, etc. In the pretrial

order, the exhibits are grouped according to whether there are objections to their admissibility. For example, the order might list, under "Exhibits which may be received in evidence without objection," plaintiff's exhibits 1, 3, 7, 8, and 11, and defendant's exhibits A-2, A-3, A-5, A-8, and A-9. Other exhibits would be listed in other categories. See the "Exhibits" section of the form order in Rule 16(k)(1), supra.

(4) A form of pretrial order to be used in land condemnation cases may be obtained from the Clerk of the Court.