

CR 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Scheduling Conference or Joint Status Report. As soon as practicable after a case is filed, the court shall convene a scheduling conference, or order the submission of a joint status report, or both. Counsel with principal responsibility for a case shall attend the scheduling conference. Counsel shall be prepared to discuss at the scheduling conference those matters listed in Rule 16(c) of the Federal Rules of Civil Procedure and to state whether there is a significant possibility that early and inexpensive resolution of the case would be fostered by any alternative dispute resolution ("ADR") procedure, as described in Rule 39.1 of these rules. Counsel should identify any appropriate ADR procedure, and suggest at what stage of the case it should be employed.

(b) Later Recommendations of Parties for ADR Proceedings. As the case proceeds, if counsel for any party concludes that an ADR procedure would have a significant possibility of fostering an early and inexpensive resolution of the case, that counsel shall so advise the court and all other counsel in writing. Whenever possible, such reports should be submitted jointly by counsel for all parties.

(c) Orders for Further Conference, Reports, or ADR Procedures. At any stage of the case, the court may do one or more of the following:

- (1) schedule a conference, for some or all of the purposes prescribed for the initial scheduling conference;
- (2) direct a written report from the parties as to the advisability of employing any ADR procedure;
- (3) direct the parties to participate in an ADR procedure; provided, that the court shall order participation in an arbitration or a summary jury trial only with the agreement of all parties.

(d) Scheduling Order. In each case, the court shall enter a scheduling order, as prescribed in Rule 16(b) of the Federal Rules of Civil Procedure, as soon as practicable after the scheduling conference or receipt of the joint status report.

(e) Lodging Date for Proposed Pretrial Order. The proposed pretrial order shall be lodged ("lodging date") 30 days prior to the scheduled trial date, unless otherwise ordered by the court.

(f) Completion of Discovery. Not later than 120 days prior to the trial 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.

(g) Dispositive Motions. Not later than 90 days prior to the trial date, unless otherwise ordered

by the court, counsel shall file all motions to dismiss, motions for summary judgment, other dispositive motions, and other reasonably foreseeable motions, together with supporting papers.

(h) 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) Which claims for relief plaintiff intends to pursue at trial, stated in summary fashion;
- (3) Relevant facts about which plaintiff asserts there is no dispute and which plaintiff is prepared to admit;
- (4) 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 16.1;
- (5) Issues of law;
- (6) 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;
- (7) 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 16.1.

(i) 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) Which affirmative defenses and/or claims for relief defendant intends to pursue at trial, stated in summary fashion;
- (3) 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 CR 16.1;
- (4) Objections, additions or changes which defendant believes should be made to plaintiff's statement of issues of law;

(5) 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;

(6) 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 16.1.

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

(j) Review of Exhibits. Each exhibit listed in the pretrial statement of a party shall be promptly made available for inspection and copying upon request by counsel for any other party. Prior to the conference of attorneys, counsel for each party shall review every exhibit to be offered by any other party, and shall provide counsel for all other parties with a list stating whether, as to each exhibit, the party will (1) stipulate to admissibility, (2) stipulate to authenticity but not admissibility, or (3) dispute authenticity and admissibility.

(k) 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 Local Rule CR 16.1. 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.

(l) 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 judge 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.

(m) 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 and take action with respect to:

(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.

(n) Other General Provisions.

(1) In order to accomplish effective pretrial procedures and to avoid wasting the time of the parties, counsel, and the court, 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 or forego 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.

(4) The full-time magistrate judges of this court are authorized to conduct pretrial conferences, enter and modify scheduling orders, and perform all other functions performed by district judges under Fed.R.Civ.P. 16 and this rule.

[Effective May 1, 1992; amended effective September 30, 1994; July 1, 1997.]

CR 16.1 FORM OF PRETRIAL ORDER

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

Hon. [name of judge]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT _____

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

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).

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims: (E.g., breach of contract, violation of 28 U.S.C. § 1983). The defendant will pursue the following affirmative defenses and/or claims: (E.g., accord and satisfaction, estoppel, waiver).

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.)

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.)

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.) If the parties cannot agree on the issues of law, separate statements may be given in the pretrial order.

EXPERT WITNESSES

(a) Each party shall be limited to _____ expert witness(es) on the issues of _____.

(b) The name(s) and addresses 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 addresses 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: (E.g., Jane Doe, 10 Elm Street, Seattle, WA; will testify concerning formation of the parties' contract, performance, breach and damage to plaintiff.)

(b) On behalf of defendant: (follow same format).

(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) Admissibility stipulated:

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) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits

4. Inventory Report. (Examples)

Defendant's Exhibits

A-5. Photograph. (Examples)

(c) Authenticity and admissibility disputed:

Plaintiff's Exhibits

5. Accountant's report. (Examples)

Defendant's Exhibits

A-6. Ship's log.

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See below 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 _____, 20____, at _____.

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

(c) (Omit this subparagraph 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. This order shall control the subsequent course of the action unless modified by a subsequent order.

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], 20[insert year].

United States District Judge/ Magistrate Judge

FORM APPROVED

Attorney for Plaintiff

Attorney for Defendant

(2) Drafting of Contentions. 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. Lengthy recitals and 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 stabilizer 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 counseling 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. Defendant's exhibits are to be numbered A-1, A-2, A-3, etc.

[Effective May 1, 1992; amended effective March 30, 1995; July 1, 1997; January 1, 2002.]