

**STANDARDS FOR FINAL PRETRIAL SUBMISSIONS AND ORDERS  
AUGUST 2008**

- 1           1. (a) As soon as practicable after the complaint is filed, the court will set a date for an  
2           initial conference at which it will enter an order setting the dates for milestones in  
3           the case. The order may (i) include the dates for motions to dismiss, the close of  
4           fact and expert discovery, motions for summary judgment (subject to Standard 2),  
5           final pretrial submissions and the final pretrial conference and/or (ii) set the dates  
6           for certain of these events followed by further conferences.  
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8           (b) If the court does not hold an initial conference, the court will set these dates by  
9           order as soon as practicable after the complaint is filed.  
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11          (c) Where discovery is stayed pending resolution of motions to dismiss, the court will  
12          not set subsequent dates until the motions are decided.  
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14          2. The parties' final pretrial submissions will not be due until a reasonable time after the  
15          court has ruled on all pending summary judgment motions.  
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17          3. Trial should be held reasonably soon but normally no more than four to six weeks  
18          after the final pretrial conference (in some courts referred to as the "docket call").  
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20          4. Counsel who will try the case will confer sufficiently in advance of the final pretrial  
21          conference to be able to prepare their final pretrial conference submissions.  
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23          (a) In their conference(s), counsel will exchange:  
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25               (i) a list and copies of the exhibits to be used at trial;  
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27               (ii) objections to the other side's exhibits;  
28               (iii) a list of witnesses they genuinely expect to call (either in person or  
29               through deposition testimony), including a short description and estimate of  
30               the length of each witness' testimony;  
31               (iv)(1) designations of any deposition testimony they anticipate offering as part  
32               of their respective cases in chief, (2) counter-designations of deposition  
33               testimony and (3) objections to an opponent's designated testimony;  
34               (v) a brief description of any anticipated *in limine* motions (e.g., to strike  
35               proposed experts under *Daubert* or similar state law standards); and  
36               (vi) the parties' disclosures, admissions, interrogatory answers or other written  
37               discovery responses they intend to offer into evidence.

- 37 (b) Counsel should also try to agree on (i) proposed stipulations of uncontested facts  
38 and (ii) the anticipated length of the trial.  
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- 40 5. At a date at least five days before the final pretrial conference, to be agreed or set by  
41 the court, the parties will file with the court their:  
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- 43 (a) list of witnesses they genuinely expect to call (either in person or through  
44 deposition testimony) in their respective cases in chief, including a short  
45 description and estimate of the length of each witness's testimony;  
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- 47 (b) designations of all deposition testimony they anticipate offering as part of  
48 their respective cases in chief, (ii) counter-designations of deposition testimony  
49 and (iii) objections to an opponent's designated testimony, with objections not  
50 made being waived;  
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- 52 (c) list of all proposed exhibits in their respective cases in chief;  
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- 54 (d) written objections to proposed exhibits, with any objections not made being  
55 deemed waived and any exhibits not objected to being deemed admissible at trial;  
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- 57 (e) anticipated *in limine* motions that have not already been filed or required by  
58 previous court order to be filed at a set time (including motions addressed to  
59 experts under Daubert or similar state law standards);  
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- 61 (f) admissions, interrogatory answers or other written discovery responses they  
62 intend to offer into evidence, together with any objections to these materials;  
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- 64 (g) stipulations of uncontested facts; and  
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- 66 (h) brief statements of the parties' respective claims and defenses and the relief  
67 sought, including (i) each element of damages and, other than for intangible  
68 damages (e.g., pain and suffering, mental anguish or loss of consortium), the  
69 monetary amount, including prejudgment interest, punitive damages and  
70 attorneys' fees, and (ii) other requested relief.  
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- 72 6. At a date at least two days before the final pretrial conference to be agreed or set by  
73 the court, the parties will submit any additional objections or points pertinent to the  
74 court's consideration of the submissions listed in Standard 5 above.  
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- 76 7. (a) The court will enter an order reciting the actions taken at the final pretrial  
77 conference, including (i) any tentative or final rulings based on the parties'  
78 submissions, (ii) date(s) for submitting any additional matters, including *in limine*  
79 motions and (iii) a date and time to begin trial and its anticipated length and daily  
80 schedule (e.g., from 9:00 a.m. to noon and 1:30 to 5:00 p.m., with one 20 minute  
81 break in the morning and afternoon).  
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(b) The court's order also should provide that:

- (i) only witnesses or exhibits listed will be permitted at trial, except for impeachment or rebuttal;
- (ii) any objection to an exhibit not made will be deemed waived, any exhibit not objected to will be deemed admissible at trial and any party may introduce into evidence or otherwise use any other party's exhibits;
- (iii) no person may testify whose identity, being subject to disclosure or timely requested in discovery, was not disclosed in time to be deposed;
- (iv) any facts stipulated to by the parties will be deemed established; and
- (v) the parties will identify to the opposing parties the witnesses they expect to testify on a given day no later than one hour after the conclusion of trial on the day before that testimony.

(c) If the court sets time limits on the parties' trial presentations, the order will also set those limits and provide how they are to be determined.

- 8. Any party wishing to use a demonstrative exhibit (*e.g.*, a chart based on other evidence or exhibits in the case) will provide it to the opposing party or parties at least 48 hours in advance of offering or using it in evidence.
- 9. At a date reasonably close to but no less than seven days before trial, to be set by the court based on the complexity of the case, the parties will submit their preliminary proposed *voir dire* questions, jury instructions and verdict forms, along with a short proposed description of the case and the parties' respective claims. If the parties cannot agree on the proposed jury instructions, they will submit separate jury instructions with supporting legal authority on any disputed issues.

