

## ORDER

It is ORDERED that effective April 1, 1995 the following special requirements shall prevail for pretrials set before Judge Charles R. Butler, Jr.

1. Counsel shall confer and shall prepare a single proposed Pretrial Order in the form attached, which must be filed with the Clerk of Court by 5:00 p.m. on Wednesday, one week prior to pretrial.

2. Counsel shall make a genuine effort to stipulate as to the following:

A. Jurisdiction

B. Propriety of parties, correctness of identity of legal entities, necessity for appointment of guardian ad litem, guardian, administrator etc., and validity of appointment if already made, and correctness of designation of party as partnership, corporation or individual d/b/a trade name.

C. If the above be not agreed to, counsel shall certify the question to the Court for resolution at the conference.

3. Settlement. At the Conference counsel will discuss settlement potential with the Court. The Court expects that counsel will have conferred prior to the pretrial conference and will have engaged in meaningful settlement discussion. Counsel should be prepared to discuss the status of any settlement negotiations, including the last settlement proposal made by you and to you; and also whether any form of Alternate Dispute Resolution would be beneficial to resolving the case prior to trial.

4. The proposed Pretrial Order shall contain:

A. A comprehensive written statement of uncontested facts, in sufficient form that if the Court elects to do so, it can be read to the jury.

B. A written statement of contested facts that will explain to the Court the nature of the parties' disputes. It is not necessary for the parties to set forth every possible variation of every factual dispute involved in the case for fear that they may waive the presentation of some evidence at trial. What the Court is interested in is a concise statement of what fact or facts are in dispute that relate to the legal issues (see C below) that are to be tried in the case.

1. Whenever an alleged breach of contractual obligation is in issue, a statement of the act(s) or omission(s) relied upon by the party or parties asserting such breach.

2. Whenever negligence or wantonness is an issue, a statement of the act(s) or omission(s) relied upon by the party or parties asserting same.

3. Whenever the meaning or interpretation of a contract or other writing is in issue, each party shall separately state all facts and circumstances relied upon which serve to aid in the interpretation.

4. Whenever duress, fraud or mistake is an issue, the facts and circumstances relied upon by the parties as constituting the claimed duress or fraud or mistake (see Federal Rule of Civil Procedures 9(b)) shall be specified with particularity.

5. Whenever a conspiracy is charged the party contending same shall set forth the facts and circumstances relied upon as constituting the conspiracy, listing the names of all conspirators making up the conspiracy, together with a narrative of the testimony of such witnesses in regard to the facts of the conspiracy.

C. The triable issue or issues. State the triable issue or issues in the context of the facts or factual disputes in the case (e.g., whether, if the defendant's vehicle crossed the center line, such constituted negligence; whether, if the defendant failed to deliver the goods by a certain date, this constitutes a breach of the contract; whether the defendant's actions in terminating the plaintiff's employment were racially motivated).

D. Rule 16(d) requires the parties to "formulate a plan for trial, including a program for facilitating the admission of evidence", so that the Court may consider "an order establishing a reasonable limit on the time allowed for presenting evidence" (R.16(c) (15)). Therefore the parties should include in the pretrial order, not only an estimate of the number of trial days required, but also a statement of the number of witnesses they reasonably expect to testify on behalf of each party. (See 4(H) below).

E. A statement indicating whether the case is a jury or non-jury case. If a jury case, whether the jury trial is applicable to all aspects of the case or only to certain issues, which shall be specified. In view of Rule 48 allowing not fewer than six and not more than twelve jurors, the parties are to include a statement of their respective (or collective if they can agree) positions with regard to the number of jurors they request be selected to sit in this case. If the parties are unable to agree, the Court will cause a jury of eight to be selected.

(In jury cases, counsel shall file with the Court, not later than one week prior to the beginning of civil jury term in which the case is set, copies of all proposed jury instructions and any special questions for voir dire examination of the jury venire, and shall furnish opposing counsel a copy of same. In addition, all motions in limine must be filed with the Court not later than one(1) week prior to the beginning of trial, except with respect to matters which could not have been anticipated by counsel by such time.)

F. A list and description of any legal issues or motions pending or contemplated.

G. If a party desires to offer deposition testimony into evidence at the trial, he shall designate only those relevant portions of same which he wishes read at trial and advise opposing counsel of same. Opposing counsel shall then designate those relevant portions of such deposition which he wishes to offer in evidence. All objections to any such testimony shall be made in writing and submitted with the Joint Pretrial Document so that the Court may consider whether ruling on such objections will facilitate either the conduct of the trial or result in the disposition of certain evidentiary matters that may assist continuing settlement negotiations. The parties should bring to the Court's attention at the pretrial conference whether any specific rulings by the Court will so facilitate the conduct of the trial or ongoing settlement negotiations.

H. Counsel shall list the names and addresses of all witnesses who shall or who they reasonably expect will be called to testify at the trial. It is the desire of the Court that such witness lists be kept to a reasonable minimum and additional witnesses may be added, only for good cause shown and on written motion. With respect to expert witnesses, counsel shall furnish the Court and opposing counsel with a curriculum vitae of such experts. When an expert witness is called to the stand, counsel will read to such expert all his qualifications and inquire as to whether same are correct. If correct, the next question will be relative to the merits of the case. In addition, counsel shall furnish the Court and opposing counsel with a brief statement of the opinion or opinions which counsel expects to elicit from such expert. Any objections to an expert's qualifications shall be separately set forth in the Joint Pretrial Document.

I. Whenever damages are claimed and are ascertainable, the parties shall agree as to the amount of the ascertainable damages and shall so state them. If the parties are unable to agree, then the plaintiff shall state with specificity the amount of damages and the category or categories of damages (e.g., doctor and hospital bills \$\_\_\_\_, lost wages \$\_\_\_\_, pain and suffering \$\_\_\_\_). If the damages are agreed upon, then no further testimony will be required to substantiate the amount thereof. The listing of such damages shall not constitute an agreement as to the recoverability of same unless so stated.

J. Each party shall list and furnish counsel for all parties, for copying and inspection, all exhibits which are to be offered in evidence. All exhibits to which there are objections shall be noted and by whom the objection was made, setting forth the nature of the objection and the authority supporting same. Failure to comply shall constitute a waiver of any such objection. All exhibits to which there is no objection shall be deemed admitted. Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the Pretrial Order, with the exception of exhibits to be used solely for the purpose of impeachment. Markers obtained from the Clerk shall be attached to all exhibits, and such exhibits delivered to the Clerk immediately prior to the commencement of trial.

CAVEAT: Should a party or his counsel fail to appear at the Pretrial Conference and such

failure is not otherwise satisfactorily explained to the Court, the cause shall: (a) stand dismissed for failure to prosecute, if such failure occurs on the part of the plaintiff; (b) default judgment shall be entered if such failure occurs on the part of the defendant, or (c) the Court may take such other action as it deems appropriate.

The Court is conscious of the fact that where one or more out of town attorneys are involved in a case, travel to Mobile to attend a pretrial conference may be unduly burdensome and expensive to the client. The Court recognizes that there are some types of cases (generally those that are not complex, or involve relatively few issues necessary for resolution) where a meaningful pretrial may be conducted by telephone conference call between the attorneys and the Court. Therefore, the parties are encouraged to discuss among themselves whether they feel they can adequately conduct the conference by telephone, and then to confer with the Court prior to the date set for the pretrial conference to see if it can be agreed to so conduct the conference.

Failure to strictly comply with this Order in the form and under the terms contained herein, unless previously excused, may result in the offending party being found in civil contempt, and such civil contempt shall continue from day to day until compliance with the Order. Failure to comply within a period of five (5) days thereafter, and explanation satisfactory to the Court not having been given and accepted, may result in the cause being dismissed or default judgment being entered, or such other action taken by the Court which it deems under the circumstances to be appropriate.

5. The Pretrial Order shall constitute the final statement of the issues involved, govern the conduct of the trial, and shall constitute the basis for any relief afforded by the Court. However, the Pretrial Order may be amended at any time by the Court or on motion of a party for good cause to avoid manifest injustice.

**FOR THE PURPOSES OF YOUR PREPARATION OF  
SUGGESTED PRETRIAL ORDERS, IT IS RECOMMENDED  
THAT YOU FOLLOW THE FOLLOWING FORMAT**

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IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA

STYLE OF CASE

PRETRIAL ORDER

There is no contest as to the jurisdiction of this Court or as to the correctness of the named defendant(s) or the named plaintiff(s).

I.

AGREED FACTS

(See Paragraph 4A of Pretrial Order)

II.

DISPUTED FACTS

(See Paragraph 4B of Pretrial Order)

IIA.

In contract, fraud, negligence or conspiracy cases, set forth the requirements of Paragraphs 4B(1) (2) (3), and/or (4).

III.

TRIABLE ISSUES

1. (Not to be a restatement of the disputed facts but a catalogue of the legal issues such as negligence, contributory negligence, assumption of risk, etc.)
- 2.
- 3.

IV.

TRIAL TIME

It is estimated that this case will take \_\_\_\_\_ days to try, exclusive of jury selection time. The plaintiff expects to call \_\_\_ witness(es), and the defendant(s) \_\_\_\_\_.

V.

TYPE OF TRIAL

JURY

NON-JURY

VI.

MOTIONS

State any outstanding motions, etc., as per Paragraph 4F of the Pretrial Order.

VII.

DEPOSITIONS

List those portions of depositions to be used at trial. State any objections. (See Paragraph 4G of the Pretrial Order).

VIII.

WITNESSES

1. The Plaintiff will or may call the following witnesses:

A.

B.

C.

Of the named witnesses, the following will be called as experts:

A. (listing qualifications)

B. (listing qualifications)

Defendant contests the qualifications of \_\_\_\_\_

\_\_\_\_\_. (State reasons)

2. The defendant will or may call the following witnesses:

A.

B.

C.

Of the above named witnesses, the following will be called as experts:

A. (listing qualifications)

B. (listing qualifications)

The plaintiff contests the qualifications of \_\_\_\_\_

\_\_\_\_\_. (State reasons)

IX.

DAMAGES

(See Paragraph 4 I of Pretrial Order)

X.

EXHIBITS

Attorneys are to list their exhibits numerically on the attached list with a brief description of each exhibit. Please mark your exhibits to correspond with the exhibit list.

XI.

Attach list of names of attorneys in any firm or copy of the letterhead.

TRIAL DATE

This case is set for trial on \_\_\_\_\_.

\_\_\_\_\_  
CHIEF DISTRICT JUDGE

APPROVED:

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant