

## **RULE 16.4**

**(As amended December 17, 2007)**

### **FINAL PRETRIAL CONFERENCE AND ORDER**

#### **(a) Final Pretrial Conference**

A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The Clerk shall notify counsel of the time and place by mailing to them a written notice.

A final pretrial conference may be conducted by the trial judge or any other judicial officer.

#### **(b) Preparation for Final Pretrial Conference**

Not later than 5 business days prior to the final pretrial conference, each party shall file with the Court and serve on every other party a pretrial memorandum, which normally need not exceed 5 pages in length, containing the following information: (1) a brief factual statement of the party's claim or defense, as the case may be, including an itemized statement of any damages claimed; (2) a brief statement of the party's contentions with respect to any controverted points of law, including evidentiary questions, together with supporting authority; (3) proposed stipulations concerning matters which are not in substantial dispute and to facts and documents which will avoid unnecessary proof; (4) the names and addresses of all witnesses the party intends to call at trial, other than those to be used for impeachment and rebuttal, but in the absence of stipulation, the disclosure of a witness shall not constitute a representation that the witness will be produced or called at trial; and (5) a list of the documents and things the party intends to offer as exhibits at trial.

Each party shall be prepared at the pretrial conference to discuss the issues set forth in items (1) through (5) above, to exchange or to agree to exchange medical reports, hospital records, and other documents, to make a representation concerning settlement as set forth in this rule and to discuss fully all aspects of the case.

#### **(c) Conduct of Final Pretrial Conference**

The Court will consider at the final pretrial conference the pleadings

and papers then on file; all motions and other proceedings then pending; and any other matters referred to in this rule or in Fed. R. Civ. P. 16, which may be applicable.

Unless excused for good cause, each party shall be represented at the final pretrial conference by counsel who is to conduct the trial on behalf of such party, who shall be thoroughly familiar with this rule and with the case. Counsel shall be required to make a representation to the Court at the final pretrial conference that counsel has made a recommendation to the client in respect to settlement and that the client has acted on such recommendation. Counsel's inability to make such representations shall be grounds for imposition of sanctions.

**(d) Final Pretrial Order**

Either at or following the final pretrial conference, the Court shall make a final pretrial order, which shall recite the action taken at the conference, and such order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice. Unless otherwise ordered, any objections to the final pretrial order must be made within fourteen (14) days after receipt by counsel of a copy thereof. Any discussion at the conference relating to settlement shall not be a part of the final pretrial order. The final pretrial order deadlines shall be such that they do not come into play until after the last settlement conference has been held and it appears that trial is unavoidable. In any case where there is a pending dispositive motion, one item on the final pretrial conference agenda shall be whether the provisions and deadlines of the final pretrial order should be stayed until the motion is resolved. The judicial officer presiding at the final pretrial conference shall tailor the order to the individual case and consider whether certain provisions of the final pretrial order should be waived. (For example, in a simple automobile negligence personal injury case it may not be necessary to list exhibits or summaries of witness testimony. In such cases trial briefs and draft jury instructions may also be unnecessary.) The number of copies of documents to be filed shall be limited. In a jury case, the original set of exhibits is ordinarily sufficient and should not be filed with the Clerk before trial.

In a nonjury case, one extra set for the judge to review in advance of the trial should be adequate. Trial briefs, voir dire, jury instructions, etc. should be simply the original and one copy.

**(e) Sanctions**

If a party fails to comply with the requirements of Fed. R. Civ. P. 16 or this rule, the Court may impose such penalties and sanctions as are just, including those set forth in Fed. R. Civ. P. 16(f).

**(f) Special Circumstances**

The Court may provide for a special pretrial procedure in any case when special circumstances warrant.

**(g) Settlement**

The parties, through their lawyers, shall be prepared to fully engage in meaningful settlement discussions at the conference. If the case will be tried by the judge without a jury, a different judicial officer will conduct the settlement discussions.

A judicial officer may direct that a separate settlement conference be held with party representatives present in person.