

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF OKLAHOMA**

The Honorable Paul R. Thomas

INSTRUCTIONS GOVERNING ADVERSARY PROCEEDINGS

PLEASE READ CAREFULLY

INTRODUCTION:

This instruction sheet is intended to give guidance to counsel involved in adversary proceedings before this Court, from the Scheduling Conference through Trial. The instructions contained herein shall bind the parties as if included in the Local Rules of the Court. Neither counsel nor the parties may deviate from these mandatory instructions without leave of the Court.

A. After Scheduling Conference and Before Pretrial Conference:

Counsel and parties shall comply with the following requirements prior to the scheduled Pretrial Conference:

- 1) Within fourteen (14) days after the Scheduling Conference, all counsel shall exchange in writing preliminary Witness and Exhibit Lists for the purpose of aiding discovery. This list shall not be a final statement of evidence to be presented at Trial, but should be exchanged in good faith.

The list of witnesses shall contain the name and address of each witness with a brief summary of anticipated testimony. The list of exhibits shall state each exhibit with specificity.

These lists shall not be filed with the Court.

- 2) Discovery shall be conducted within the time ordered by the Court at the Scheduling Conference. Any request for extension of the discovery cutoff date must be made prior to the expiration of the original time set for discovery and must contain a statement of opposing counsel's acquiescence or opposition. Discovery may be conducted by agreement of all counsel/parties beyond the time set by the Court if the continuation of discovery by agreement does not delay the Pretrial Conference and/or Trial.
- 3) Fed. R. Bankr. P. 7037 shall govern discovery disputes. The Court strongly encourages resolution of discovery disputes by counsel.

4) **Fourteen (14) days prior to the Pretrial Conference,**

- (a) Counsel shall exchange FINAL lists of witnesses and exhibits using Local Forms 9017 -1(Witnesses) and 9017-2(Exhibits).

The witness list shall contain the name and address of each witness and a brief summary of the witness' anticipated testimony.

The exhibit list shall list each exhibit in sequential order of intended introduction, and shall specifically identify each exhibit with a brief description of the intended purpose for its introduction.

These lists shall not be filed with the Clerk of the Court, but they shall be attached to the Pretrial Order.

- (b) Counsel shall exchange marked copies of all exhibits anticipated for use at trial. Plaintiff's exhibits shall be marked numerically. Defendant's exhibits shall be marked alphabetically.
- (c) Parties may file a Pretrial Memorandum as an aid to the Court in preparing for the Pretrial Conference.

B. Pretrial Order:

Seven (7) days prior to the Pretrial Conference, counsel shall electronically submit to the Court a Pretrial Order using Local Form 9072-1(C).

The Pretrial Order will control the course of the trial. It shall be the responsibility of counsel for the Plaintiff to prepare the initial draft of a proposed pretrial order with the cooperation and input of other counsel. The Pretrial Order shall be the product of cooperation of all parties and shall be signed by all parties as an agreed pretrial order unless otherwise directed by the Court. Once approved by the Court, it may not be amended without authorization of the Court.

C. Pretrial Conference:

The Pretrial Conference will be utilized to narrow all issues, be they legal or factual, and facilitate the effective organization of the case in anticipation of trial. Counsel who will conduct the trial shall attend the Pretrial Conference. Failure to appear, an unprepared appearance, or a failure to participate in good faith may result in dismissal or sanctions including striking pleadings, default judgments, assessment of expenses, or such other relief the Court may deem appropriate.

At the Pretrial Conference, counsel shall be prepared to discuss:

- 1) the elimination of unnecessary claims and defenses;

- 2) the possibility of stipulations and admissions of fact;
- 3) the elimination of unnecessary proof and cumulative evidence;
- 4) exhibits and witnesses, the necessity for same, the potential for stipulation of admission, stipulation of qualification of experts, the potential for stipulation of content or testimony thus eliminating need for introduction of physical exhibit into evidence or of examining witness at trial;
- 5) disposition of pending matters, including trailing motions, the necessity and admissibility of deposition testimony at trial;
- 6) any other appropriate matters in need of resolution in order to effectuate trial;
- 7) potential trial dates;
- 8) the necessity for Trial briefs;
- 9) the necessity for the submission of proposed Findings of Fact and Conclusions of Law;
- 10). the possibility of settlement.

D. Trial:

Trial shall be conducted at the date and time prescribed by the Court at the Pretrial Conference. The following instructions shall govern the conduct of the parties at trial:

- 1) **Seven (7) days** prior to the trial, counsel shall provide two (2) sets of exhibits to the Judge. These may be mailed or hand-delivered.
- 2) During the trial, exhibits may be introduced into evidence using the Court's Digital Evidence Presentation System.¹ Copies of the exhibits shall be accepted by the Court Recording Deputy upon admission and will not be returned to counsel. Counsel is responsible for ensuring that the record is complete by providing the Court Recording Deputy with all admitted exhibits before the conclusion of the trial.

¹The Digital Evidence Presentation System (ADEP@) allows parties to present evidence in several forms:

1. Paper documents may be displayed on the system using a document camera;
2. Documents which have been stored electronically may be presented by connecting a laptop computer with the DEP;
3. Audio and may be played on the system.

In each instance, the parties must provide the Courtroom Recording Deputy with an original and one copy of the exhibits (other than a DVD) in paper form. Training will be made available on an appointment basis if necessary. To request training please contact the court at 918-549-7200

- 3) If the parties have stipulated to the admission of exhibits, the parties shall so inform the Court at trial. Before conclusion of the trial, counsel are responsible for ensuring that the record is complete by providing the Court Recording Deputy with all exhibits admitted by stipulation.
- 4) Counsel shall have prepared the exhibits in sequential order of intended introduction at trial prior to the time scheduled for trial. Failure to properly prepare for trial could result in sanctions against said counsel.

E. Record of the Trial:

The official record of the trial is taken by digital media (FTR) recording. Microphones are placed at strategic locations in the Courtroom. Counsel can take a number of steps to facilitate the record taking in the Courtroom:

- 1) Give a business card to the person operating the electronic recording equipment (the Court Recording Deputy).
- 2) When speaking on the record, make certain that you do not address the Court from the attorney tables. You must address the Court from the microphone at the lectern.
- 3) At the beginning of the trial, identify yourself at a microphone positioned at the lectern and spell your name for the record.
- 4) Make certain that all witnesses called to testify identify themselves clearly and spell their names once seated in the witness chair.
- 5) Make certain that verbal responses are elicited from witnesses.
- 6) If any witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such names and terms for the Court Recording Deputy.

For the convenience of counsel, a digital time counter is located on the Bench. Counsel may write down the time as an aid to locating a portion of the record to refer to or playback as needed. The time counter may be used to identify portions of the record which counsel may want duplicated or transcribed for appeal purposes or otherwise.

Copies of the digital recordings or of a transcript of the record may be obtained from the Court Recording Deputy by submitting the appropriate order forms. These forms are available from the Court Recording Deputy or on the Court's website.

This Court uses Digital Evidence Presentation System which allows parties to present paper documents using a document camera. Documents which have been stored electronically may be presented by connecting a laptop computer directly to the Digital Evidence Presentation System or by playing audio and DVD on the system.