

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PHILLIP E. BACON,

Plaintiff,

v.

SCHEDULING ORDER  
06-C-455-S

SHARON HARDER, PAUL TRITES,  
DEB LEMKE and KENNETH ADLER,

Defendants.

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IT IS ORDERED that each party shall file a pre-trial report with the Court and the opposing party. This report shall contain the following:

1. A statement of undisputed material facts; that is, those facts which both parties believe can be agreed upon.

2. A statement of disputed material facts for which it would appear there can be no agreement.

3. A list of all witnesses which each party wishes to have testify by name and address, together with a brief narrative of the testimony which is expected from each witness and a statement of whether each witness has agreed to appear voluntarily.

(a) If a witness is unincarcerated, plaintiff(s) must deliver a witness fee of forty dollars (\$40.00) per day, plus travel expenses, and a subpoena requiring a witness to appear. Subpoenas may be obtained from the Clerk of Court. See Rule 45(a), Federal Rules of Civil

Procedure. The voluntary attendance of prospective witnesses is encouraged.

(b) If a proposed witness is incarcerated and does not wish to attend the trial, plaintiff(s) must deliver a witness fee of forty dollars (\$40.00) per day as in paragraph 3(a) above. (Witness fees and travel expenses in paragraphs 3(a) and 3(b) are required even if plaintiff(s) are proceeding in forma pauperis under 28 U.S.C. § 1915 because that statute does not authorize the use of public funds for this expense.)

c) If a witness is incarcerated and has agreed to attend the trial, plaintiff(s) must show that the prospective witness has so agreed and that the witness has actual knowledge of relevant facts.

4. Demands for relief, including an itemized list of money damages.

5. A list setting forth all those exhibits, documents and files which will be offered.

As ordered herein, the above information, to be contained in a pre-trial report, shall be furnished not later than January 8, 2007, 2006, or the case shall be subject to dismissal.

All dispositive motions, to include motions for summary judgment, shall be served and filed not later than December 4, 2006, memorandum concerning motions for summary judgment enclosed.

Briefing schedules will not be issued in this case. All motions which are filed prior to trial shall be accompanied by appropriate memoranda; opposing party has 20 days within which to respond; and the moving party 10 days within which to reply.

Proposed voir dire, jury instructions and form of special verdict, together with proposed exhibits to be offered and the exhibit list, pursuant to the enclosed memorandum, are to be served and filed with the Court not later than January 8, 2007.

This case is scheduled for jury selection on January 16, 2007 at 9:00 A.M. and for trial to a seven-person jury on January 19, 2006 at 9:00 A.M.; parties to meet with the Court at 8:30 A.M. on each day to discuss voir dire and other issues relating to trial.

Hereafter this order will control the course of the trial and may not be amended except by consent of the parties or by the Court to prevent manifest injustice.

Entered this 17<sup>th</sup> day of October, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge

**Procedure to be followed on Motions for Summary Judgment  
in cases involving pro se litigants**

**Instructions - Read Carefully**

- I. A motion for summary judgment made pursuant to Rule 56, Federal Rules of Civil Procedure, shall be served and filed in the following form:
- A. The motion itself, together with any materials permitted by Rule 56(e).
  - B. A statement of proposed findings of fact. The statement should include those factual propositions necessary to judgment in movant's favor and to which there is no genuine issue. Such factual propositions shall be set forth in numbered paragraphs, each referring to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSIONS on file or AFFIDAVITS<sup>1</sup> supporting movant's contention that there is no genuine issue as to that factual proposition.  
  
Such references to the record shall include the numbered paragraph of any PLEADINGS, the name of the witness and the page of the transcript of any DEPOSITION, the number of an ANSWER to INTERROGATORY and the identity of the party to whom it was directed, or the number of the requested ADMISSION and the identity of the party to whom it was directed.
  - C. A statement of proposed conclusions of law, in numbered paragraphs.
  - D. A brief in support of the motion.
- II. RESPONSE: On or before 20 days after service of the motion or unless otherwise ordered, any party opposing the motion shall serve and file the following:
- A. Any materials permitted by Rule 56(e).
  - B. A response to the movant's statement of proposed findings of fact. This response shall state clearly whether there is a genuine issue as to the whole or part of each numbered paragraph of the movant's proposed findings of fact, and if only as to a part, the response shall identify precisely that part. The response shall refer to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSIONS on file or AFFIDAVITS complying with Rule 56(e), which respondent believes give rise to the genuine issue. References to the record shall have specificity required by I.B. above. If an opposing party believes

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<sup>1</sup> Affidavits must be made on personal knowledge, set forth facts that would be admissible in evidence and show that the affiant is competent to testify to the matters stated therein.

that the motion for summary judgment must fail because of material facts not stated by the movant and as to which there is no genuine issue, the opposing party may state these other factual propositions, using the format set forth in I.B. above.

- C. A response to the movant's statement of proposed conclusions of law. The response shall state clearly whether each numbered proposed conclusion is agreed to or disputed in whole or in part, and if only in part, which portion is disputed. If an opposing party believes that the motion for summary judgment must fail because of conclusions of law not stated by movant, that party may state those other conclusions of law.
  - D. A brief in opposition to the motion.
- III. REPLY: On or before 10 days after service of the response or unless otherwise ordered, the movant may serve and file in reply any or all of the following items:
- A. Any materials permitted by Rule 56(e).
  - B. A statement in reply to any response to movant's proposed findings of fact and in reply to any findings of fact proposed in the response, each with that specificity required by I.B. above.
  - C. A statement in reply to any response to movant's proposed conclusions of law, and a statement in reply to any numbered conclusions of law proposed in the response.
  - D. A reply brief.
- IV. In deciding the motion for summary judgment, THE COURT WILL FIND NO GENUINE ISSUE AS TO ANY PROPOSED FINDING OF FACT UNLESS AN OPPOSING PARTY ASSERTS, BY REFERENCE TO EVIDENCE IN THE MANNER DESCRIBED ABOVE, THAT SUCH AN ISSUE EXISTS. THE COURT IS UNDER NO OBLIGATION TO SEARCH THE RECORD FOR FACTUAL MATTERS SUPPORTING EITHER THE GRANTING OR DENIAL OF THE MOTION.
- V. All motions for summary judgment shall be decided without oral argument, unless the Court otherwise directs.

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PROCEDURE FOR MARKING EXHIBITS IN  
CASES INVOLVING PRO SE LITIGANTS

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All exhibits that may be offered at trial shall be prepared before commencement of trial.

Questions concerning these instructions may be directed to the clerk's office, 608-264-5156.

1. All exhibits are to be labeled with labels, three of which are enclosed, any additional labels are to be obtained from the clerk's office on day of trial.
2. Each exhibit shall be listed on the enclosed yellow exhibit sheet. The list should state to whom each exhibit belongs, its number, and a brief description. See attached sample.
3. Plaintiff(s) shall use exhibit numbers starting with 1. Defendant(s) shall begin numbering with 101.
4. A copy of the exhibit list and a copy of each of the exhibits that may be offered must be provided for the opposing party. The originals will be given to the clerk. An additional copy of the exhibit list and exhibits may be provided for the judge's use.
5. Once reference is made to an exhibit at trial, the exhibit becomes part of the record and custody is transferred to the clerk, even though the exhibit might not be formally offered or received.

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Theresa M. Owens  
Clerk of Court