INDEX
TO PRELIMINARY PRETRIAL PACKET
IN CASES ASSIGNED TO DISTRICT JUDGE WILLIAM M. CONLEY

MANDATORY ELECTRONIC FILING

Electronic Case Filing is the standard way of doing business with the District Court in the Western District of Wisconsin. Effective January 22, 2008, electronic filing is mandatory in all civil and criminal cases.

Information on electronic filing and the court's administrative procedures are available on our website: www.wiwd.uscourts.gov under Local Procedures/Electronic filing Procedures.

SUMMARY JUDGMENT PROCEDURES

I. MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A motion, together with such materials permitted by Rule 56(e) as the moving party may wish to serve and file; and

2. In a separate document, a statement of proposed findings of fact or a stipulation of fact between or among the parties to the action, or both; and

3. Evidentiary materials (see I.C.); and

4. A supporting brief.

B. Rules Regarding Proposed Findings of Fact:

1. Each fact must be proposed in a separate, numbered paragraph, limited as nearly as possible to a single factual proposition.

2. Each factual proposition must be followed by a reference to evidence supporting the proposed fact. For example, "1. Plaintiff Smith bought six Holstein calves on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3."

3. The statement of proposed findings of fact shall include ALL factual propositions the moving party considers necessary for judgment in the party's favor. For example, the proposed findings shall include factual statements relating to jurisdiction, the identity of the parties, the dispute, and the context of the dispute.

4. The court will not consider facts contained only in a brief.

C. Evidence:

1. As noted in I.B. above, each proposed finding must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use:

a) Depositions. Give the name of the witness, the date of the deposition, and page of the transcript of cited deposition testimony;

b) Answers to Interrogatories. State the number of the interrogatory and the party answering it;

c) Admissions made pursuant to Fed. R. Civ. P. 36. (State the number of the requested admission and the identity of the parties to whom it was directed); or

d) Other Admissions. The identity of the document, the number of the page, and paragraph of the document in which that admission is made.

e) Affidavits. The page and paragraph number, the name of the affiant, and the date of the affidavit. (Affidavits must be made by persons who have first-hand knowledge and must show that the person making the affidavit is in a position to testify about those facts.)

f) Documentary evidence that is shown to be true and correct, either by an affidavit or by stipulation of the parties. (State exhibit number, page and paragraph.)

II. RESPONSE TO MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A response to the moving party's proposed finding of fact; and

2. A brief in opposition to the motion for summary judgment; and

3. Evidentiary materials (See I.C.)

B. In addition to responding to the moving party's proposed facts, a responding party may propose its own findings of fact following the procedure in section I.B. and C. above.

1. A responding party should file additional proposed findings of fact if it needs them to defeat the motion for summary judgment.

2. The purpose of additional proposed findings of fact is to SUPPLEMENT the moving party's proposed findings of fact, not to dispute any facts proposed by the moving party. They do not take the place of responses. Even if the responding party files additional proposed findings of fact, it MUST file a separate response to the moving party's proposed findings of fact.

C. Unless the responding party puts into dispute a fact proposed by the moving party, the court will conclude that the fact is undisputed.

D. Rules Regarding Responses to the Moving Party's Proposed Findings of Facts:

1. Answer each numbered fact proposed by the moving party in separate paragraphs, using the same number.

2. If you dispute a proposed fact, state your version of the fact and refer to evidence that supports that version. For example,

3. Moving party proposes as a fact:

"1. Plaintiff Smith purchased six Holstein calves from Dell's Dairy Farm on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3."

Responding party responds:

"1. Dispute. The purchase Smith made from Dell's Dairy Farm on July 11, 2006 was for one Black Angus bull. John Dell Affidavit, Feb. 1, 2007, Exh. A."

4. The court prefers but does not require that the responding party repeat verbatim the moving party's proposed fact and then respond to it. Using this format from the example above would lead to this response by the responding party:

"1. Plaintiff Smith purchased six Holstein calves from Dell's Dairy Farm on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3."

"Dispute. The purchase Smith made from Dell's Dairy Farm on July 11, 2006 was for one Black Angus bull." John Dell Affidavit, Feb. 1, 2007, Exh. A."

5. When a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute. The court will disregard any new facts that are not directly responsive to the proposed fact. If a responding party believes that more facts are necessary to tell its story, it should include them in its own proposed facts, as discussed in II.B.

E. Evidence

1. Each fact proposed in disputing a moving party's proposed findings of fact and all additional facts proposed by the responding party must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use evidence as described in Procedure I.C.1. a. through f.

2. The court will not consider any factual propositions made in response to the moving party's proposed facts that are not supported properly and sufficiently by admissible evidence.

III. REPLY BY MOVING PARTY

A. Contents:

1. A reply, if any, to each numbered factual statement made by the responding party in response to the moving party's proposed findings of fact, together with references to evidentiary materials;

2. An answer to each additional numbered factual statement proposed by the responding party under Procedure II.B., if any, together with references to evidentiary materials;

3. A reply brief; and

4. Evidentiary materials (see I.C.).

B. If the responding party has filed additional proposed findings of fact, the moving party should file its response to those proposed facts at the same time as its reply, following the procedure in section II.

C. When the moving party answers the responding party's responses to the moving party's original proposed findings of fact, and answers the responding party's additional proposed findings of fact, the moving party should repeat verbatim the entire sequence associated with each proposed finding of fact so that the reply is a self-contained history of all proposed facts, responses and replies by all parties. Pro se litigants, however, are not required to repeat the entire sequence associated with a proposed finding of fact.

IV. SUR-REPLY BY RESPONDING PARTY

A responding party shall *not* file a sur-reply without first obtaining permission from the court. The court only permits sur-replies in rare situations.

DEADLINE CHART FOR SINGLE MOTION FOR SUMMARY JUDGMENT

Deadline 1	Deadline 2	Deadline 3
(All deadlines appear in the Preliminary Pretrial Conference Order)		
• Moving party's motion		
• Moving party's brief	• Non-moving party's response brief	• Moving Party's reply brief
• Moving party's proposed findings of fact	• Non-moving party's response to moving party's proposed findings of fact	• Moving party's reply to non-moving party's response to moving party's proposed findings of fact
	• Non-moving party's additional proposed findings of fact	• Moving party's response to non-moving party's additional proposed findings of fact, if any

DEADLINE CHART FOR CROSS MOTIONS FOR SUMMARY JUDGMENT

Deadline 1	Deadline 2	Deadline 3
(All deadlines appear in the Preliminary Pretrial Conference Order)		
• Defendant's motion		
• Defendant's brief	• Plaintiff's response brief	• Defendant's reply brief
• Defendant's proposed findings of fact	• Plaintiff's response to defendant's proposed findings of fact	• Defendant's reply to plaintiff's response to proposed findings of fact
• Plaintiff's motion		
• Plaintiff's brief	• Defendant's response brief	• Plaintiff's reply brief
• Plaintiff's proposed findings of fact	• Defendant's response to plaintiff's proposed findings of fact	• Plaintiff's reply to defendant's response to proposed findings of fact

SPECIFIC ADVICE FOR PRO SE LITIGANTS

This court expects all litigants, including persons representing themselves, to follow this court's Summary Judgment Procedures. If a party does not follow the procedures, there will be no second chance to do so. Therefore, PAY ATTENTION to the following list of mistakes pro se plaintiffs tend to make when they oppose a defendant's motion for summary judgment:

Problem: The plaintiff does not answer the defendant's proposed facts correctly.

Solution: To answer correctly, a plaintiff must file a document titled "Response to Defendant's Proposed Findings of Fact." In this document, the plaintiff must answer each numbered fact that the defendant proposes, using separate paragraphs that have the same numbers as defendant's paragraphs. See Procedure II.D. If plaintiff does not object to a fact that the defendant proposes, he should answer, "No dispute."

Problem: The plaintiff submits his own set of proposed facts without answering the defendant's facts.

Solution: Procedure II.B. allows a plaintiff to file his own set of proposed facts in response to a defendant's motion ONLY if he thinks he needs additional facts to prove his claim.

Problem: The plaintiff does not tell the court and the defendant where there is evidence in the record to support his version of a fact.

Solution: Plaintiff must pay attention to Procedure II.D.2., which tells him how to dispute a fact proposed by the defendant. Also, he should pay attention to Procedure I.B.2., which explains how a new proposed fact should be written.

Problem: The plaintiff supports a fact with an exhibit that the court cannot accept as evidence because it is not authenticated.

Solution: Procedure I.C. explains what may be submitted as evidence. A copy of a document will not be accepted as evidence unless it is authenticated. That means that the plaintiff or someone else who has personal knowledge what the document is must declare under penalty of perjury in a separate affidavit that the document is a true and correct copy of what it appears to be. For example, if plaintiff wants to support a proposed fact with evidence that he received a conduct report, he must submit a copy of the conduct report, together with an affidavit in which he declares under penalty of perjury that the copy is a true and unaltered copy of the conduct report he received on such and such a date.

SUMMARY JUDGMENT OVERVIEW REMINDERS

1. All facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact. (Think of your proposed findings of fact as telling a story to someone who knows nothing of the controversy.)

2. The court will not search the record for factual evidence. Even if there is evidence in the record to support your position on summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion.

3. A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute.

4. Your brief is the place to make your legal argument, not to restate the facts. When you finish it, check it over with a fine-tooth comb to be sure you haven't relied upon or assumed any facts in making your legal argument that you failed to include in the separate document setting out your proposed findings of fact.

BENCH TRIAL PROCEDURES FOR PRETRIAL SUBMISSIONS

Counsel are hereby directed to observe the following requirements in preparing for a trial to the court.

I. No later than *two weeks* before the final pretrial conference, counsel are to confer for the following purposes:

A. To enter into written stipulations of uncontested facts in such form that they can be offered at trial as the first evidence presented by the party desiring to offer them. If there is a challenge to the admissibility of some uncontested facts that one party wishes included, the party objecting and the grounds for objection must be stated.

B. To make any deletions from their previously-exchanged lists of potential trial witnesses.

C. To enter into written stipulations setting forth the qualifications of expert witnesses.

D. To examine, mark and list all exhibits that any party intends to offer at trial. (A copy of this court's Procedures for Trial Exhibits is contained in the attachments.)

E. To agree as to the authenticity and admissibility of such exhibits so far as possible and note the grounds for objection to any not agreed upon.

F. To agree so far as possible on the contested issues of law.

G. To examine and prepare a list of all depositions and portions of depositions to be admitted into evidence. If any party objects to the admissibility of any portion, the name of the party objecting and the grounds shall be set forth.

H. To explore the prospects of settlement.

It shall be the responsibility of plaintiff's counsel to convene the conference between counsel and, following that conference, to prepare the Pretrial Statement described in the next paragraph.

II. No later than *one week* before the final pretrial conference, plaintiff's counsel shall submit a Pretrial Statement containing the following:

A. The parties' written stipulations of uncontested facts.

B. The probable length of trial. If the parties cannot agree, each counsel shall state the probable length of their case-in-chief exclusive of cross-examination.

C. The names of prospective witnesses. Only witnesses so listed will be permitted to testify at trial other than for good cause shown.

D. The parties' written stipulation setting forth the qualifications of all expert witnesses.

E. An agreed statement of the contested issues of law supplemented by a separate statement by each counsel of those issues of law not agreed to by all parties.

III. No later than *three days* before the final pretrial conference, each counsel shall submit the following:

A. Exhibit lists. Exhibits used only for impeachment or refreshing recollection, need not be listed, but any exhibits not listed shall be excluded from admission into evidence except upon good cause shown. Please refer to the Procedures for Trial Exhibits, and use the trial exhibit form available on the court's website. If the exhibit lists are lengthy, the parties may want to designate exhibits by "will use" and "may use" to expedite pre-trial review of objections. The exhibit lists should also contain any objections by the opposing party.

B. Designations, counter-designations and objections to both of depositions to be offered into evidence at trial, by page and line references for witnesses unavailable at trial. Extensive reading from depositions is strongly discouraged. Toward that end, the proponent of a deposition may -- though is not required to -- prepare a written narrative summary of some or all deposition transcripts the party intends to offer into evidence, with annotated page and line references in parenthesis after each sentence, in lieu of part or all of the narrative of questions and answers.

C. Any remaining contested exhibits the parties intend to offer into evidence preferably in electronic form.

D. Courtesy copies of all depositions to be used at trial preferably in electronic form. For any depositions with designated testimony, the party offering the testimony should provide a transcript in electronic form with the proposed designations, counter-designations and objections delineated on the transcript, e.g., designations in one color, counter-designations in another and lines of objected testimony otherwise colored or marked.

E. Unless already set forth in a motion for summary judgment, a statement of all the facts that counsel will request the court to find at the conclusion of the trial. In preparing these statements, counsel should have in mind those findings that will support a judgment in their client's favor. They should be organized in the manner in which counsel desire them to be entered.

F. A proposed form of special verdict, as if the case were to be tried to a jury.

G. Trial briefs (not required).

IV. Before the start of trial, each counsel shall submit to the court a complete set of counsel's pre-marked trial exhibits to be used by the judge as working copies at trial. Absent extraordinary circumstances, counsel should submit exhibits in electronic form.

Final pretrial submissions are to be filed as stated above with no exceptions. Failure to comply may result in sanctions up to and including entry of default.

JURY TRIAL PROCEDURES FOR PRETRIAL SUBMISSIONS

I. The preliminary pretrial conference order provides the deadline for the initial pretrial submission of Rule 26(a)(3) disclosures and motions in limine. In addition,

A. On or before the date identified in the Preliminary Pretrial Conference Order as the First Final Pretrial Conference, the parties shall provide opposing counsel and the court:

1. Rule 26(a)(3) disclosures.

2. Motions in limine.

3. Exhibit lists. Exhibits used only for impeachment and refreshing recollection need not be listed, but any exhibits not listed shall be excluded from admission into evidence except upon good cause shown. Please refer to the Procedures for Trial Exhibits, and use the trial exhibit form available on the court's website. If the exhibit list exceeds 100 exhibits, the parties should designate exhibits by "will use" and "may use" to expedite pre-trial review of objections.

4. A list of portions of depositions, to be offered into evidence at trial, by page and line references for witnesses unavailable at trial. Extensive reading from depositions is strongly discouraged. Toward that end, the proponent of a deposition may -- though is not required to -- prepare a written narrative summary of some or all deposition transcripts the party intends to offer into evidence, with annotated page and line references in parenthesis after each sentence, in lieu of part or all of the narrative of questions and answers.

5. Suggested additional voir dire questions, if any. The parties should not duplicate the standard questions.

6. Proposed verdict forms.

7. Suggested additional jury instructions. The parties should not duplicate the standard instructions. In submitting proposed jury instructions, the parties shall include the citation of the pattern instruction, decision, statute, regulation or other authority supporting the proposition stated, with any additions underscored and any deletions set forth in parentheses. Parties may submit briefs in support of their proposed jury instructions.

8. A short, written narrative statement of the background and experience of each expert, if any. These statements will be read to the jury and no proof will be received on the matters covered.

9. In addition to electronically filing voir dire questions, verdict forms and jury instructions, please submit to the court an electronic copy of each in Microsoft Word format to wiwd_wmc@wiwd.uscourts.gov.

B. By the response deadline set in the Preliminary Pretrial Conference Order, the parties shall provide opposing counsel and the court:

1. Responses to motions in limine.

2. Objections to the opposing party's designated exhibits. Please submit any objections on the trial exhibit list submitted by the opposing party.

3. Objections and counter designations to proffered deposition designations.

4. Responses to opposing parties' voir dire questions, verdict forms, and jury instructions.

5. Responses to the opposing parties' expert narratives.

II. Each party shall be represented at the final pretrial conferences by the lawyer who will actually try the case unless the party is proceeding pro se, in which case the pro se party must appear. A party represented by counsel shall also be present in person unless

A. Counsel has been delegated with full authority to settle the case; or

B. Attendance in person is impossible and arrangements are made for communication by telephone during the entire duration of the conference for the purpose of acting upon settlement proposals.

III. If a party wishes to arrange for a witness to testify via videoconference, counsel should contact the court's information technology department through the clerk's office immediately following the in-person final pretrial conference. As the proponent of this testimony, it is counsel's responsibility -- and not the court's IT department -- to insure that the necessary technology and information is available at both ends of that conference call.

IV. The court will hold a second final pretrial conference by zoom videoconference or telephonically the week before trial. (If not already scheduled, the court will schedule this hearing at the first final pretrial conference.) The purpose of this conference primarily will be to review objections to exhibits and deposition designations.

A. At least two days *before* the second conference, counsel are directed to consult in good faith and reach resolution on the admissibility of exhibits and deposition designations to the extent possible.

B. One day *before* the second conference, the parties shall provide the court (preferably in electronic form) with:

1. Any remaining, contested exhibits they intend to offer into evidence. Please see the Standing Order Governing Electronic Evidence to be Used by the Jury During its Deliberations.

2. A courtesy copy of all depositions to be used at trial. For any depositions with designated testimony, the party offering the testimony should provide a transcript with the proposed designations, counter-designations and objections delineated on the transcript (e.g., designations in one color, counter-designations in another and lines of objected testimony otherwise colored or marked).

COURT'S STANDARD COMBINED REMARKS AND VOIR DIRE QUESTIONS

I am Judge Conley. You are here for possible jury service in case no. __-cv-___-wmc: [plaintiff] versus [defendant]. Many people approach jury service with apprehension and anxiety, but if each of us does our job, most people end up feeling that jury service was a worthwhile, even gratifying, experience.

The United States Courthouse that you entered this morning is not the judges' courthouse; neither is it the lawyers' courthouse; nor even the litigants' courthouse. This is your courthouse and your system of justice. Indeed, this building belongs to the public; and it is important that each of us keep in mind that the public's business is being conducted here.

To be able to continue to serve you better, we seek your input, not just in the case before us but in a large sense. Each of you has a stake in this system. When this trial concludes you will not only be asked to rule on this case, but also to tell us anonymously what we did right and what we did wrong. We cannot serve the public and improve our system of justice without each of your valuable contributions.

Other than by paying taxes and voting, service on a jury is probably the most important duty that most of us will undertake in support of our system of government. Only by realizing how unique our system of justice is, and how dependent it is on good people like you, can we truly understand and appreciate it.

Trial by jury has been eliminated in many countries of the world. The United States justice system is the place where most of the jury trials in the world are now held. Contrary to general belief, we have the highest involvement of non-lawyers of any justice system in

the world. That is a heritage handed down by the people who founded our country. I cannot describe its importance any better than the U.S. Supreme Court Justices did in the video you watched this morning, so I won't try.

Instead, I will try to give you a sense of your role as jurors in this trial. My job as judge is to decide legal questions and your job as jurors is to decide fact questions. The judge decides what kind of evidence is admissible and instructs the jurors at the end of the trial as to the law that they must apply in deciding the case. These instructions provide the legal yard stick by which the jurors must measure the evidence in order to decide the case, but the jurors decide what the facts are -- that is, they decide from the evidence admitted at trial what actually happened. An important part of the jurors' job is to decide what testimony to believe and what testimony not to believe.

In deciding what actually happened, the jurors are searching for the truth. Many people in fact define a trial as a search for the truth. The trial begins with "Voir Dire," which literally means from the Latin and French "to speak the truth" or "to inquire." Consistent with these definitions, the purpose of voir dire is to ask a series of questions of jury panel members and to obtain candid, truthful responses to help insure that we seat a jury comprised of impartial individuals -- a fundamental right of both parties.

The clerk has already seated the first 14 prospective jurors in the jury box. All prospective jurors, whether seated in the box or not, should listen carefully as they may be called and asked the same or similar questions.

The deputy clerk will now swear the entire jury panel.

VOIR DIRE

I want to introduce each of you to our court personnel:

A. Judge William Conley

B. Deputy Clerk _____

[after introduction, inquire if anyone on the jury knows them]

QUESTIONS

1. Statement of the case: [A very concise description of plaintiff's claims and defendant's defenses, sufficient for the panel to determine whether they are familiar with the case.]

   a. Have any one of you ever heard of this case before today? How? When?

   b. When you heard about it, did you form any opinion concerning the case?

   c. Do you believe that your ability to serve impartially as a juror in this case has been affected by what you have heard about it?

2. The trial of this case will begin _____ and will last _____ days. The trial day will generally run from 8:30 a.m. until 5:30 p.m., though we may begin slightly earlier or go later if necessary to insure completion within the promised time frame. You will have at least an hour for lunch and two additional short breaks of 15-20 minutes, one in the morning and one in the afternoon. Is there any one of you who would be unable to serve as a juror during this time for any reason, including vision, hearing or other health limitations?

3. Counsel to stand and tell the jury where they practice and with whom. Ask panel whether anyone knows counsel or their associates or partners.

4. Counsel will then introduce their client, including any party representative at counsel table. Ask panel whether anyone knows the parties or corporate representatives. If anyone has had involvement with the party, have you formed any opinions positive or negative about that party?

5. The following people or entities are also involved in this case or may be called as witnesses in this case. Please raise your hand if you know any of these people:

    a. [list of witness names]

    b. [list of witness names]

6. Question to prospective jurors.

    a. Please stand up and tell us about yourself.

    b. Examples:

        1. Name, age, and city or town of residence.

        2. Where born and raised.

        3. Marital status and number of children, if any.

        4. Current occupation (former if retired).

        5. Current (or former) occupation of your spouse or domestic partner.

        6. Any military service, including branch, rank and approximate date of discharge.

        7. How far you went in school and major areas of study, if any.

        8. Memberships in any groups or organizations.

        9. Hobbies and leisure-time activities.

        10. Favorite types of reading material.

11. Favorite types of television shows, movies, music or other entertainment.

12. Bumper stickers.

13. Letters to the editor or call in to radio or TV show.

14. Regular contributor to any blogs, online discussion groups or online chat rooms.

15. Primary source of news.

7. General questions regarding prior experience with court proceedings:

a. Have any of you ever been a party to a lawsuit? Describe circumstances.

b. Have any of you ever been a witness in a lawsuit?

c. How many of you have served previously on a jury? Of those of you who have, please describe your experience. Were you ever the foreperson on a jury?

d. Do any of you know any of the other persons on the jury panel?

e. Have you or anyone close to you, even worked in a law firm or taken law classes?

8. Case-specific questions to panel:

a. Have you or anyone close to you ever [insert questions specific to this case]

9. At the end of the case, I will give you instructions that will govern your deliberations. You are required to follow those instructions, even if you do not agree with them. Is there any one of you who would be unable or unwilling to follow these instructions?

10. Do you know of any reason whatsoever why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

- Side bar to address strikes for cause and possible follow up questions.
- Exercise preemptory challenges.
- Swear in jury and adjourn.

STANDARD JURY INSTRUCTIONS – CIVIL

I. INTRODUCTORY INSTRUCTIONS

II. CLOSING INSTRUCTIONS (Read at the close of evidence of the liability phase, prior to closing arguments.)

III. DELIBERATIONS INSTRUCTIONS (Read after closing arguments.)

IV. DAMAGES INSTRUCTIONS

I. INTRODUCTORY INSTRUCTIONS

Members of the jury, we are about to begin the trial of this case. Before it begins, I will give you some basic instructions to help you understand how the trial will proceed, how you should evaluate the evidence, and how you should conduct yourselves during the trial.

The party who begins the lawsuit is called the plaintiff. Here, as you have already heard, the plaintiff is [insert]. The party against whom the suit is brought is called the defendant. Here, the defendant is [insert].

As you heard during the voir dire, plaintiff alleges that defendant [describe claims and basic legal elements of claims and defenses]. At the end of the evidence, I will provide you with more detailed instructions on the law governing plaintiff's claim and defendant's defenses.

Order of Trial

The case will proceed as follows:

First, plaintiff's counsel will make an opening statement outlining its case. Immediately after plaintiff's statement, defendant's counsel will also make an opening statement outlining its case. What is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, plaintiff will introduce evidence in support of its claims. Then defendant may introduce evidence to rebut plaintiff's claims, but it is not required to introduce evidence or to call any witnesses to address plaintiff's claims. If defendant introduces evidence, plaintiff may then introduce rebuttal evidence.

Defendant will also introduce evidence in support of defenses for which it bears the burden of proof. Here, too, plaintiff is not required to introduce evidence or to call any witnesses to address defendant's defenses. If plaintiff introduces evidence, defendant may then introduce rebuttal evidence.

Third, after the evidence is presented, I will instruct you on the law that you are to apply in reaching your verdict.

Fourth, the parties' counsel then will make closing arguments, explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is also not evidence. You will ultimately be asked to decide what the evidence proves or does not prove. Plaintiff has the right to give the first closing argument because it has the burden of proof and to make a short rebuttal argument after defendant's closing argument.

Fifth, I will provide brief instructions to guide your deliberations.

You have heard and will hear the term "burden of proof" used during this trial. In simple terms, the phrase "burden of proof" means that the party who makes a claim has the obligation of proving that claim. At the end of the trial, I will instruct you on the proper burden of proof to be applied in this case.

The trial day will generally run from 8:30 a.m. until 5:30 p.m., unless the case appears at risk of going beyond its promised length, in which case I may ask you to arrive a little earlier or stay later. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

Breaks and Recesses

During breaks and recesses, as well as the end of each day, please keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties to this lawsuit have a right to expect from you that you will keep an open mind throughout the trial. You should not reach a conclusion until you have heard all of the evidence, have heard the lawyers' closing arguments and my instructions to you on the law, and have retired to deliberate with the other members of the jury. Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end.

Second, I know that many of you use cell phones, computers, the internet and other tools of technology. I must warn you, in particular, against commenting about the trial, talking to anyone about this case or using these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, text messaging, or on Twitter, or other applications, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, My Space, Snap Chat, LinkedIn, You Tube or whatever else that has been invented more recently. There have been news accounts recently about cases that have had to be re-tried because a member of the jury communicated electronically about the case during the trial. You can

imagine what this would mean in the cost of a re-trial, the inconvenience to your fellow jurors whose work would have gone for nothing and the stress experienced by the parties.

Third, do not permit any person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Also, do not discuss that event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Fourth, although it is a normal human tendency to converse with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors. The parties, attorneys and witnesses are similarly admonished, so please don't be offended when they avoid interactions with you.

Fifth and finally, you, as jurors, must decide this case based solely on the evidence presented here within the walls of this courtroom. No matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation about the issues or facts in the case, nor about the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, read newspapers, listen to the radio or television about anything or anyone related to this case. And, again, I would especially admonish you regarding the use of the internet (especially search engines, websites, blogs, or any other electronic tools) to obtain information about this case or to help you decide the case. In fact, do not try to

find out information from any source outside the confines of this courtroom; if an internet or newspaper headline catches your eye, or a television news lead catches your ear, do not examine the article or listen further. For anyone familiar with the facts of a story, you know that media accounts tend to be incomplete at best and inaccurate at worst. I can assure you that internet accounts are even worse. News accounts or internet blogs may also contain matters that are not proper for your consideration as a matter of law. However imperfect they may be, the rules of evidence have been developed over hundreds of years for a reason: they are the best means we've come up with to provide parties a fair hearing. For this reason, you are required to base your verdict solely on the evidence produced in court.

Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness's opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness's memory; the witness's appearance and manner while testifying; the witness's interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness's testimony; and the reasonableness of the witness's testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

Objections

During the trial, you will hear the lawyers make objections to certain questions or to certain answers of the witnesses. When they do so, it is because they believe the question or answer is legally improper and they want me to rule on it. Do not try to guess why the objection is being made or what the answer would have been if the witness had been allowed to answer it.

If I tell you not to consider a particular statement that has already been made, put that statement out of your mind and remember that you may not refer to it during your deliberations. Again, there are good reasons that certain evidence is excluded and it is important that you respect these rulings and directions.

Questions

During the trial, I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of my questions.

If you wish to ask a question about something you do not understand, write it down on a separate slip of paper. If, when the lawyers have finished all of their questioning of the witness, the question is still unanswered to your satisfaction, raise your hand, the bailiff will take your written question from you. I will then review it, show it to counsel, and decide whether it is a question that can be asked. If it cannot, I will tell you that. I will try to remember to ask about questions after each witness has testified.

Notetaking

If you want to take notes, there are notepads and pencils for taking notes next to the jury bench. This does not mean you have to take notes; take them only if you want to

and if you think they will help you to recall the evidence during your deliberations. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Keep in mind that just because you have written something down it does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, charged with the responsibility of recording evidence. Each of you is responsible for recalling the testimony and other evidence.

Although you can see that the trial is being reported, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

Evidence

Evidence at a trial includes the sworn testimony of the witnesses, exhibits admitted into the record, facts judicially noticed, and facts stipulated by counsel. You may consider only evidence that is admitted into the record. Summaries and timelines used for convenience and to help explain the facts of the case are not themselves evidence or proof of any facts.

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of the lawyers, questions and objections of the lawyers, testimony that I instruct you to disregard, and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Evidence may be either direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness said or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

Contradictory or Impeaching Evidence

A witness may be discredited by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe any witness has been discredited, it is up to you to decide how much of the testimony of that witness you believe.

If a witness is shown to have given false testimony knowingly, that is voluntarily and intentionally, about any important matter, you have a right to distrust the witness's testimony about other matters. You may reject all the testimony of that witness or you may choose to believe some or all of it.

The general rule is that if you find that a witness said something before the trial that is different from what the witness said at trial you are to consider the earlier statements only as an aid in evaluating the truthfulness of the witness's testimony at trial. You cannot consider as evidence in this trial what was said earlier before the trial began.

There is an exception to this general rule. If you find that any of the parties made statements before the trial began that are different from the statements they made at trial, you may consider as evidence in the case whichever statement you find more believable.

Depositions and Interrogatories

During the course of a trial, the lawyers may refer to or read from depositions. Depositions are transcripts of testimony taken from witnesses while the parties are preparing for trial. Deposition testimony is given under oath, just like the testimony at this trial.

Similarly, lawyers may also refer to answers of one of the parties to interrogatories submitted by the other party. These answers were given in writing and under oath before this trial. You should give the answers the same consideration as if given by the party here in court.

Drawing of Inferences

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts you find have been proved, such reasonable conclusions as seem justified in the light of your own experience and common sense.

Experts

A person's training and experience may make him or her a true expert in a technical field. The law allows that person to state an opinion here about matters in that particular field. It is up to you to decide whether you believe the expert's testimony and choose to rely upon it. Part of that decision will depend on your judgment about whether the expert's

background of training and experience is sufficient for him or her to give the expert opinion that you heard, and whether the expert's opinions are based on sound reasons, judgment, and information.

During the trial, an expert witness may be asked a question based on assumptions that certain facts are true and then asked for his or her opinion based upon that assumption. Such an opinion is of use to you only if the opinion is based on assumed facts that are proven later. If you find that the assumptions stated in the question have not been proven, then you should not give any weight to the answer the expert gave to the question.

ADDITIONAL LANGUAGE FOR PATENT TRIALS:

General Patent Information

Video on the Patent System

At this juncture, I will ask that you turn your attention to the monitors in the jury box so that you can watch a video that explains the basics of the U.S. patent system, the parts of a patent, and how a person obtains a patent. After that, we will continue with some instructions specific to this patent lawsuit. [Play the video and pass out sample patent.]

Issues to Decide

At the close of the trial, you will receive specific instructions about the law you are to follow as you deliberate to reach your verdict. You must follow the law as the court describes it to you. The following is a very brief overview of the law and the issues specific to this trial. This is only an overview and you may not completely follow it in this brief outline because of certain terms yet to be defined. But it may help both the parties and you in framing the evidence and will take on greater meaning over the course of this trial. You will also have the actual text of these instructions while deliberating.

[Plaintiff's] Contentions

[Plaintiff] alleges [defendant] infringes claims [insert case specific information] of the patent by [insert case specific information]

To prove infringement, [plaintiff] must prove by a preponderance of the evidence (i.e., that it is more likely than not) that every limitation of that claim is present in the accused [insert]. If an accused product or process does not meet every requirement recited

in a patent claim, then that product or process does not infringe that claim. In this case, you will be asked to consider whether the accused product or process meets the following requirements or limitations:

[insert case specific information]

[Defendant's] Contentions

[insert case specific information]

I hope that for all of you this case is interesting and, ultimately, a gratifying experience.

II. CLOSING INSTRUCTIONS

[Remind jury that break before closings is last chance to use their cell phones]

A. Introduction

Ladies and Gentlemen of the Jury:

You are about to hear closing arguments of the parties. Before these arguments, I will instruct you on the law. After closing arguments, I will provide very brief instructions governing your deliberations. After that, the case will be in your hands.

It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The case will be submitted to you in the form of a special verdict consisting of [insert number] questions. [Read special verdict form.] In answering the questions, you should consider only the evidence that has been received at this trial. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you undertake to answer it. Do not answer questions needlessly.

B. Burden of Proof

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the

matter sought to be proved is more probably true than not true. On the liability questions in the special verdict, the burden of proof is on the party contending that the answer to a question should be "yes." You should base your decision on all of the evidence, regardless of which party presented it.

C. Answers Not Based on Guesswork

If after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

D. Liability

[Insert instructions specific to this case.]

III. DELIBERATIONS INSTRUCTIONS

A. Introduction

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence, the law and the arguments, I will give you the instructions that will govern your deliberations in the jury room. The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question. Your deliberations will be secret. You will never have to explain your verdict to anyone. If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

B. Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. When thinking about who should be presiding juror, you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may

help you understand that juror's position better or give you a better way to explain why you think your position is correct.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, do not tell me how you stand as to your verdict, numerically or otherwise on the issue submitted.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the courtroom.

C. Suggestions for Conducting Deliberations

In order to help you determine the facts, you may want to consider discussing one question at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone has a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that you assign separate tasks, such as note taking, time keeping and recording votes to more than one person to help break up the workload during your deliberations.

IV. DAMAGES INSTRUCTIONS

A. Compensatory Damages

Now we have reached the damages portions of this case and you must consider what amount of damages to award plaintiff. As the party asking for damages, plaintiff has the burden of convincing you, by the preponderance of the evidence, both that [plaintiff] has been injured or damaged and the amount of the damages. These are called compensatory damages.

You must determine the amount of money that will fairly and reasonably compensate plaintiffs for any injury that you find they sustained as a direct result of defendant's unlawful conduct. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

Do not measure damages by what the lawyers ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do not make any deductions because of a doubt in your minds about the liability of any of the parties.

In assessing damages here, you should consider the following types of compensatory damages:

a. The wages, salary, increase in the cost of benefits or the loss of benefits that [plaintiff] lost and the present value of the wages, salary and value of health insurance benefits that [plaintiff] is reasonably certain to lose in the future;

b. The mental and emotional pain and suffering that [plaintiff] has experienced, and is reasonably certain to experience in the future. No evidence of the dollar value of physical, mental or emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate [plaintiff] for the injury [she, he or they] have sustained.

When I say "present value," I mean the sum of money needed now which, together with what that sum may reasonably be expected to earn in the future, will equal the amounts of those monetary losses at the times in the future when they will be sustained.

If you find in favor of [plaintiff] but find that [she, he or they] have failed to prove compensatory damages, you must return a verdict for [her, him or them] in the amount of one dollar.

B. Punitive Damages

You are not required to make any award of punitive damages against [defendant], but you may do so if you think it is proper under the circumstances to make such an award as an example or punishment to deter [defendant] and others in similar positions going forward from offending in a similar manner in the future. Punitive damages may be awarded even if the violation of plaintiffs' rights resulted in only nominal compensatory

damages. That is, even if plaintiffs can show no damages or other injury as a result of [defendant's] actions, if their conduct was malicious or in reckless disregard of plaintiffs' rights, punitive damages may be awarded.

Punitive damages are never a matter of right. It is in the jury's discretion to award or withhold them. Punitive damages may not be awarded unless the defendant acted with complete indifference to the plaintiff's rights. Even if you find that the violations were reckless or deliberate, you may withhold or allow punitive damages as you see fit.

If you find that [defendant's] conduct was motivated by evil motive or intent, such as ill will or spite or grudge either toward the injured person individually or toward all persons such as plaintiff, then you may find that [defendant] maliciously violated the plaintiffs' rights.

Acts are reckless when they represent a complete indifference to plaintiffs' rights. If a defendant was in a position in which he certainly should have known that his conduct would violate the plaintiff's rights, and proceeded to act in disregard of that knowledge and of the harm or the risk of harm that would result to the plaintiff, then he acted with reckless disregard for plaintiffs' rights.

In answering this question, you are instructed that the burden is on the plaintiff to convince you by a preponderance of the evidence that the answer should be "yes."

You may award an amount of punitive damages in addition to the amount of compensatory damages you already awarded plaintiff. You must use sound reasoning in setting the amount of punitive damages. The amount should be sufficient to punish [defendant] and deter others from engaging in similar conduct in the future. In

determining the amount of any punitive damages, you should consider the following factors:

- The reprehensibility of [defendant's] conduct;
- The impact of [defendant's] conduct on plaintiffs;
- The relationship between plaintiff and [defendant];
- The likelihood that [defendant] would repeat the conduct if an award of punitive damages is not made;
- [defendant's financial condition;]
- The relationship of any award of punitive damages to the amount of actual harm plaintiffs suffered.

ORDER REGARDING TIMELY PRESENTATION OF TRIAL WITNESSES AND TRIAL EVIDENCE

The parties must have all witnesses and other evidence ready and available for timely presentation at trial in order to prevent delay. Counsel shall keep in mind that trial may proceed substantially more quickly than anticipated and, if necessary for its completion with the time promised to the jury, continue into the evening hours. Although the court will work with the parties to accommodate witnesses' schedules, particularly if advised in advance of potential problems, failure to comply with this order may result in counsel being precluded from the presentation of any additional evidence by the non-complying party.

Entered this 1st day of February, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

PROCEDURES FOR TRIAL EXHIBITS

Before trial, the parties are to label all exhibits that may be offered at trial. Before the start of trial, the parties are to provide the deputy clerk with a list of all exhibits that may be offered into evidence at trial. Counsel are to retain the original exhibits following trial.

1. Each party is to submit a list of their exhibits. Please use the trial exhibit form available on the court's website and attached to this procedure. The party should state to whom the exhibits belong, the number of each exhibit and a brief description.

2. Each party is to provide the court with the original exhibit list and a copy of each exhibit in electronic form that may be offered for the judge's use. Please see the attached standing order on electronic exhibits.

3. As a general rule, the plaintiff should use exhibit numbers 1 – 500, and the defendant should use exhibit numbers 501 and up.

4. Each party is to maintain custody of his or her own exhibits throughout the trial.

5. At the end of trial, each party is to retain all exhibits that become a part of the record. It is each party's responsibility to maintain their own exhibits and to make arrangements with the clerk's office for inclusion of the exhibits in the appeal record, if there is an appeal.

6. Each party should be aware that once reference is made to an exhibit or document at trial, the exhibit or document becomes part of the record, even though the exhibit or document might not be formally offered or received into evidence.

Any questions concerning these instructions may be directed to the clerk's office at (608) 264-5156.

EXHIBIT FORM

EXHIBIT (S) OF (Indicate plaintiff or defendant)			V. Case No._____	
Date	Identification		Description	Offers, Objections, Rulings, Exceptions
	No.	Witness		

PRO SE LITIGANTS' PROCEDURES FOR CALLING WITNESSES

At trial, plaintiff will have to be ready to prove facts supporting his claims against the defendants. One way to offer proof is through the testimony of witnesses who have personal knowledge about the matter being tried. If a party wants witnesses to be present and available to testify on the day of trial, the party must follow the procedures explained below. ("Party" means either a plaintiff or a defendant.) These procedures must be followed whether the witness is:

1. A defendant to be called to testify by a plaintiff; or

2. A plaintiff to be called to testify by a defendant; or

3. A person not a party to the lawsuit to be called to testify by either a plaintiff or a defendant.

I. PROCEDURES FOR OBTAINING ATTENDANCE OF INCARCERATED WITNESSES WHO AGREE TO TESTIFY VOLUNTARILY

An incarcerated witness who tells a party that he is willing to attend trial to give testimony cannot come to court unless the court orders his custodian to let him come. The court must issue an order known as a writ of habeas corpus ad testificandum. This court will not issue such a writ unless the party can establish to the court's satisfaction that

1. The witness has agreed to attend voluntarily; and

2. The witness has actual knowledge of facts directly related to the issue to be tried.

A witness's willingness to come to court as a witness can be shown in one of two ways.

1. The party can serve and file an affidavit declaring under penalty of perjury that the witness told the party that he or she is willing to testify voluntarily, that is, without being subpoenaed. The party must say in the affidavit when and where the witness informed the party of this willingness;

   OR

2. The party can serve and file an affidavit in which the witness declares under penalty of perjury that he or she is willing to testify without being subpoenaed.

The witness's actual knowledge of relevant facts may be shown in one of two ways.

1. The party can declare under penalty of perjury that the witness has relevant information about the party's claim. However, this can be done only if the party knows first-hand that the witness saw or heard something that will help him prove

his case. For example, if the trial is about an incident that happened in or around a plaintiff's cell and, at the time, the plaintiff saw that a cellmate was present and witnessed the incident, the plaintiff may tell the court in an affidavit what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or hear what occurred;

OR

2. The party can serve and file an affidavit in which the witness tells the court what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or hear what occurred.

Not later than four weeks before trial, a party planning to use the testimony of an incarcerated witness who has agreed to come to trial must serve and file a written motion for a court order requiring the witness to be brought to court at the time of trial. The motion must

1. State the name and address of the witness; and

2. Come with an affidavit described above to show that the witness is willing to testify and that the witness has first-hand knowledge of facts directly related to the issue to be tried.

When the court rules on the motion, it will say who must be brought to court and will direct the clerk of court to prepare the necessary writ of habeas corpus ad testificandum.

II. PROCEDURE FOR OBTAINING THE ATTENDANCE OF INCARCERATED WITNESSES WHO REFUSE TO TESTIFY VOLUNTARILY

If an incarcerated witness refuses to attend trial, TWO separate procedures are required. The court will have to issue a writ of habeas corpus ad testificandum telling the warden to bring the witness to trial and the party must serve the witness with a subpoena.

Not later than four weeks before trial, the party seeking the testimony of an incarcerated witness who refuses to testify voluntarily must file a motion asking the court to issue a writ of habeas corpus ad testificandum and asking the court to provide the party with a subpoena form. (All requests from subpoenas from pro se litigants will be sent to the judge for review before the clerk will issue them.)

The motion for a writ of habeas corpus ad testificandum will not be granted unless the party submits an affidavit

1. Giving the name and address of the witness; and

2. Declaring under penalty of perjury that the witness has relevant information about the party's claim. As noted above, this can be done only if the party knows first-hand that the witness saw or heard something that will help him prove his case. In the affidavit, the party must tell the court what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or to hear what occurred.

The request for a subpoena form will not be granted unless the party satisfies the court in his affidavit that

1. The witness refuses to testify voluntarily;

2. The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or

3. The party is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court.

If the court grants the party's request for a subpoena for an incarcerated witness, it will be the party's responsibility to complete the subpoena form and send it to the person at least 18 years of age who will be serving the subpoena or to the United States Marshal, if the court has ordered that the subpoena be served by the Marshal. The address of the United States Marshal is 120 N. Henry St., Suite 440, Madison, Wisconsin, 53703. If the subpoena is not received by the Marshal at least two weeks in advance of trial, the Marshal may not have enough time to serve the subpoena on the party's witness.

III. UNINCARCERTAED WITNESSES WHO AGREE TO TESTIFY VOLUNTARILY

It is the responsibility of the party who has asked an unincarcerated witness to come to court to tell the witness of the time and date of trial. No action need be sought or obtained from the court.

IV. UNINCARCERATED WITNESSES WHO REFUSE TO TESTIFY VOLUNTARILY

If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, no later than four weeks before trial, the party must serve and file a request for a subpoena form. All parties who want to subpoena an unincarcerated witness, even parties proceeding in forma pauperis, must be prepared to tender an appropriate sum of money to the witness at the time the subpoena is served. The appropriate sum of money is a daily witness fee and the witness's mileage costs. In addition, if the witness's attendance is required for more than one trial day, an allowance for a room and meals must be paid. The

current rates for daily witness fees, mileage costs and room and meals may be obtained either by writing the clerk of court at 120 North Henry Street, Madison, Wisconsin, 53703, or calling the office of the clerk at (608) 264-5156.

Before the court will grant a request for a subpoena form for an unincarcerated witness, the party must satisfy the court by affidavit declared to be true under penalty of perjury that

1. The witness refuses to testify voluntarily;

2. The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or

3. The party is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court; and

4. The party is prepared to tender to the Marshal or other individual serving the subpoena a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witness's mileage, as well as costs for room and meals if the witness's appearance at trial will require an overnight stay.

If the court grants the party's request for a subpoena for an unincarcerated witness, it will be the party's responsibility to complete the subpoena form and send it to the person at least 18 years of age who will be serving the subpoena or to the United States Marshal, if the court has ordered that the subpoena be served by the Marshal, together with the necessary check or money order. The address of the United States Marshal is 120 North Henry Street, Suite 440, Madison, Wisconsin, 53703. If the subpoena is not received by the Marshal at least two weeks in advance of trial, the marshal may not have enough time to serve the subpoena on the party's witness.

V. SUMMARY

The chart below may assist in referring you to the section of this paper which sets forth the appropriate procedure for securing the testimony of witnesses in your case.

WITNESSES			
INCARCERATED		**UNINCARCERATED**	
VOLUNTARY	**INVOLUNTARY**	**VOLUNTARY**	**INVOLUNTARY**
• A court order that the witness be brought to court is required. • Papers are due 4 weeks before trial.	• A court order that the witness be brought to court and a subpoena are required. • A motion must be served and filed 4 weeks before trial. • Subpoena forms must be completed 2 weeks before trial.	• Nothing need be sought or obtained from the court.	• Pro se parties must obtain an order granting issuance of a subpoena. • Papers are due 4 weeks before trial. • Completed forms and fees are due 2 weeks before trial.

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

IN RE: STANDING ORDER GOVERNING THE USE AND SUBMISSION OF ELECTRONIC EVIDENCE	ADMINISTRATIVE ORDER 434

1. A party may submit electronic evidence to the court by sharing the evidence with the court via Box for Federal Government — the preferred method — or by submitting the evidence on a flash drive. Box for Federal Government is a secure service offered by the court as an alternative to digital storage devices. Box for Federal Government can be used to submit documents, spreadsheets, video files, and other kinds of evidence that cannot be filed in CM/ECF. Questions about Box for Federal Government should be directed to the clerk's office.
2. Each party shall submit a complete set of its pre-marked trial exhibits at least one week before the final hearing in a criminal case or the final pretrial conference in a civil case. A party that uses Box for Federal Government will have "view/upload" rights to its own folder. Only court users may delete files or view or alter the contents of another party's folder.
3. Electronic evidence must be submitted in one of the following formats: .pdf, .jpg, .bmp, .tif, .gif, .avi, .wmv, .wma, .wav, .mpg, .mp3, .mp4 or .3gpp. **Zip files and other multi-file archives are specifically prohibited.**
4. The size of individual files shall not exceed 1 gigabyte.
5. Trial exhibits must follow a specific naming convention. A party may be required to resubmit trial exhibits that are not named as follows:

   Case Number_Party Role_Party_Name_Exhibit Number.
   For example: 23-cv-123_Defendant_ABC Insurance Company_Exhibit 501

6. Before closing arguments in a jury trial, each party must collect any evidence that it intends to submit to the jury, including electronic evidence, and must provide that evidence to the courtroom deputy. Electronic evidence file names must correspond unambiguously with exhibit numbers used during the trial. Electronic storage devices

shall contain only evidence that has been approved for the jury and shall not contain any other files or information.

7. Any request for relief from this order must be presented in a timely motion in limine.

Entered: July 30, 2024.

BY THE COURT:

/s/

JAMES D. PETERSON
Chief District Judge

POLICY REGARDING SETTLEMENTS, STIPULATED DISMISSALS AND OTHER DISPOSITIONS OF CASES

This court takes seriously its obligations under Federal Rule of Civil Procedure 1. Accordingly, the parties should anticipate that the court will not remove a case from the trial calendar merely because they have informally settled it; the court expects parties to file the appropriate stipulation or joint-motion to formally terminate the case.

Once a plaintiff files a notice of voluntary dismissal, pursuant to Rule 41(a)(1), the court will close the case without further action. The parties should be aware that the court loses jurisdiction of the case after receiving a notice of dismissal with prejudice. *See Dupuy v. McEwen*, 495 F.3d 807, 809 (7th Cir. 2007). This precludes the court from, for example, retaining jurisdiction to enforce a settlement agreement or to enter further orders.

If a case is settled on the weekend before trial, the court should be notified immediately by calling Clerk of Court Peter Oppeneer at (608) 287-4875. This notification will enable the Clerk to call off unneeded jurors and to advise the trial judge to discontinue working on the case. The same procedure should be followed to report last-minute emergencies which might affect the start of the trial.

POLICY REGARDING COUNSEL ROOMS DURING TRIAL

We will do our best to provide a room for counsel to use during trial. However, because the courthouse has a limited number of rooms, we cannot guarantee that an attorney room will be available. We do not have enough rooms to provide a separate space for counsel to eat lunch.

To ensure fairness, counsel rooms will be randomly assigned the Wednesday before a trial is scheduled to start. Counsel may request a room by calling (608) 264-5156. If one party requests a room, we will assign a counsel room to each party in the case. If there are not enough rooms available for all parties in a case, no party will be assigned a room.

Cleaning staff will perform routine cleaning tasks in rooms assigned to counsel during trial. On the day trial is completed, counsel are expected to remove their materials and leave the room neat and orderly. If the trial ends late in the day and another trial is not scheduled to begin the next day, counsel may make arrangements to remove their materials the next morning.

POLICY REGARDING CONTACTING JURORS

Pursuant to Local Rule 4 (LR 47.2), parties, lawyers, and anyone acting on a party's behalf must obtain permission from the trial judge or magistrate judge before contacting jurors. Requests for permission to contact jurors may be made during the Final Pretrial Conference, or as soon after trial as practicable.

If the court determines that such communication is appropriate, the clerk's office will obtain the phone numbers and email addresses of jurors who are willing to speak to counsel for the parties. The clerk's office will then provide this information directly to counsel. Unless specifically authorized by the court, the parties may not contact jurors themselves; only counsel may do so. Counsel who receive permission to contact jurors will be expected to scrupulously observe the rules of professional responsibility when doing so.