

ORDER

It is **ORDERED** that, effective March 1, 2002, the following requirements will prevail for pretrial conferences set before Judge Callie V. S. Granade.

1. Counsel will confer and will prepare a single proposed Pretrial Order, in the form attached, which must be filed with the Clerk of Court at least one full week prior to the pretrial conference.

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

A. Jurisdiction

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

C. If the above is/are not agreed to, counsel will certify the question(s) to the court for resolution at the pretrial conference.

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

4. The proposed Pretrial Order will contain:

A. In the caption of the joint pretrial document, a complete listing of all parties, both plaintiff and defendant, who remain in the case as of the date the document is filed. Do not use "et al.".

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

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

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

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

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

4. Whenever duress, fraud or mistake is an issue, the facts and circumstances relied upon by the parties as constituting the claimed duress or fraud or mistake (see FEDERAL RULE OF CIVIL PROCEDURE 9(b)) will be specified with particularity.

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

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

E. An estimate of the number of trial days required, exclusive of the jury selection time.

F. A statement indicating whether the case is a jury or non-jury case. If a jury case, whether the jury trial is applicable to all aspects of the case or only to certain issues,

which will be specified. In view of Rule 48 allowing not fewer than six and not more than twelve jurors, the parties are to include a statement of their respective (or collective if they can agree) positions with regard to the number of jurors they request be selected to sit in this case. If the parties are unable to agree, the court will cause a jury of eight to be selected.

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

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

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

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

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

K. Each party will list and provide to counsel for all parties, for copying and inspection, all exhibits which are to be offered in evidence. All exhibits to which there are objections will be noted and by whom the objection was made, setting forth the nature of the objection and the authority supporting same. Failure to comply will constitute a waiver of any such objection. Except for good cause shown, the court will not permit the introduction of any exhibits unless they have been listed in the Pretrial Order, with the exception of exhibits to be used solely for the purpose of impeachment. Markers obtained from the clerk will be attached to all exhibits, and such exhibits delivered to the clerk immediately prior to the commencement of trial.

CAVEAT: Should a party or counsel fail to appear at the Pretrial Conference and such failure is not otherwise satisfactorily explained to the court, either (a) the cause will stand dismissed for failure to prosecute, if such failure occurs on the part of the plaintiff; or (b) default judgment will be entered if such failure occurs on the part of the defendant; or (c) the court may take such other action as it deems appropriate.

The court is conscious of the fact that, where one or more out-of-town attorneys are involved in a case, travel to Mobile to attend a pretrial conference may be unduly burdensome and expensive to the client. The court recognizes that there are some types of cases (generally those that are not complex, or involve relatively few issues necessary for resolution) where a meaningful pretrial may be conducted by telephone conference call between the attorneys and the court. Therefore, the parties are

encouraged to discuss among themselves whether they feel they can adequately conduct the conference by telephone, and then to confer with the court prior to the date set for the pretrial conference to see if it can be agreed to so conduct the conference.

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

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

/s/ Callie V. S. Granade
CHIEF UNITED STATES DISTRICT JUDGE

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

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

STYLE OF CASE

(List all parties. DO NOT USE “ET AL.”.)

PRETRIAL ORDER

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

I.

AGREED FACTS

(See Paragraph 4B of Pretrial Order)

II.

DISPUTED FACTS

(See Paragraph 4C of Pretrial Order)

IIA.

In contract, fraud, negligence or conspiracy cases, set forth the requirements of Paragraphs

4C(1), (2), (3), (4) and/or (5).

III.

TRIABLE ISSUES

1. (Not to be a restatement of the disputed facts but a catalogue of the legal issues such as negligence, contributory negligence, assumption of risk, etc. See paragraph 4D of the Pretrial Order.)
- 2.
- 3.

IV.

TRIAL TIME

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

V.

TYPE OF TRIAL

JURY NON-JURY

VI.

MOTIONS

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

VII.

DEPOSITIONS

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

VIII.

WITNESSES

(See paragraph 4 I of the Pretrial Order).

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

A.

B.

C.

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

A. (listing qualifications)

B. (listing qualifications)

Defendant contests the qualifications of _____

_____. (State reasons)

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

A.

B.

C.

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

A. (listing qualifications)

B. (listing qualifications)

The plaintiff contests the qualifications of _____
_____. (State reasons)

IX.

DAMAGES

(See Paragraph 4J of Pretrial Order).

X.

EXHIBITS

(See Paragraph 4K of the Pretrial Order).

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

XI.

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

TRIAL DATE

This case is set for trial on _____.

UNITED STATES DISTRICT JUDGE

APPROVED:

Attorney for Plaintiff

Attorney for Defendant

