

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA
PRE-TRIAL CONFERENCE RULES FOR JUDGE TERENCE C. KERN

1. Counsel are expected to be familiar with Local Rule 16.1, dealing with pretrial procedure, and adhere to each of its requirements.
2. If an exhibit or witness is not listed in the proposed Pretrial Order, neither will be allowed at trial, except by written motion with good cause shown. Attempted inclusion by reference to all exhibits or witnesses of an opposing party is not permitted.
3. **Exhibit Guidelines:**
 - If listing a multiple page exhibit, especially in a broad category such as "hospital records," the pages of the exhibit should be numbered or Bates stamped and the number of pages listed in the Pretrial Order.
 - Rather than listing, for example, "photographs" as an exhibit category, the number of photographs should be listed and a general description of each photograph or group of photographs provided.
 - For a category such as "medical bills," counsel should seek to use a summary exhibit prepared in advance. (See Fed.R.Evid. 1006).
4. **Pretrial Conference:**
 - At the pretrial conference, counsel should be prepared to present their arguments regarding (1) objections to exhibits, (2) pending dispositive motions, (3) pending motions in limine. The Court intends to conclude the Pretrial Conference with the case ready for trial.
 - Counsel should also be prepared to address all matters expected to cause numerous sidebar conferences or lengthy argument during trial. Once a jury is seated, the Court wants to keep them working and interested in the case. When possible, argument and record-making should be delayed until a convenient recess, or before or after the trial day.
 - Counsel are required to meet prior to the Pretrial Conference to review all proposed exhibits. Allegations during trial that counsel have "never seen" one of opposing counsel's listed exhibits will be viewed with disfavor.
5. **Motions in Limine and Daubert Motions:**
 - The Court strongly encourages the use of motions in limine to resolve complicated or unusual evidentiary issues. Such motions should be filed by the deadline set forth in the Scheduling Order and will be addressed at the Pretrial Conference. Counsel should not wait until trial to seek exclusion of evidence counsel knew opposing counsel would seek to introduce. If a motion in limine is not timely filed, it will not be considered absent a showing of manifest injustice.
 - In particular, counsel are directed to raise objections to anticipated scientific evidence and expert testimony by a timely motion in limine. Any issues implicating

Daubert v. Merrell Dow Pharmaceuticals, Inc. 509 U.S. 579 (1993) should be raised in a Daubert motion pursuant to the deadline set forth in the Scheduling Order.

6. Daily copy is not permitted without prior approval of the Court. Daily copy is a real and substantial inconvenience to the Court's personnel and will not be allowed except in exceptional circumstances. A party desiring daily copy should file an appropriate motion to be heard at the pretrial conference.

7. Voir Dire:

- The Court permits attorney-conducted voir dire with imposed time limits. At the Pretrial Conference, counsel should be prepared to discuss possible areas of voir dire inquiry and/or questions counsel wish the Court to ask.
- In the event supplemental voir dire examination by counsel has been approved by the Court prior to trial, the following rules will apply:
 - Voir dire examination must be conducted in such a fashion as to gain knowledge which will aid in making an informed challenge
 - Voir dire examination may not be conducted in a manner designed to inform the jury of the anticipated evidence or the applicable law, nor to provide the type of information which is normally included in the opening statement.
 - A statement disguised as a question will not be permitted.
 - Counsel may not ask a question based on a hypothetical statement of the facts or the law.
 - Voir dire may not be used to explain the burden of proof.
 - Do not attempt to elicit promises or assurances of any kind from jurors nor ask them to give any indication of what their verdict would be based on certain conditions or assumptions.
 - Each side is limited to 10-15 minutes unless additional time is approved by the Court prior to trial.

8. Video Evidence Presentation System (VEPS):

If counsel intends to use the Court's Video Evidence Presentation System (VEPS) for presentation of exhibits, you or your technical personnel must be familiar with the equipment prior to trial. Training may be scheduled through the Clerk's office.

9. Exhibit Notebooks:

- Counsel are required to prepare separate exhibit notebooks for: (1) the witness stand; (2) opposing counsel; (3) the Court; and (4) the Court's law clerk. In cases requiring voluminous exhibits, counsel should prepare an exhibit notebook tailored to each witness, or group of witnesses if the group is to give testimony in common. The purpose of this requirement is the elimination of repeated trips by counsel to the witness stand.
- To the extent possible, the Court requests the parties attempt to agree on a set of exhibits for use during trial in order to eliminate duplicate copies of non-objectionable exhibits. Any exhibits that a party wishes to introduce, but that are

objected to, should be included in a separate set of “Plaintiff’s” or “Defendant’s” exhibits.

10. Juror Notebooks:

- Juror notebooks are rarely used by the Court given the existence of evidence presentation technology in the courtroom. However, in cases of appropriate complexity, the Court may permit the parties to distribute to each juror identical notebooks, which may include copies of:
 - The Court's preliminary instructions
 - Selected exhibits that have been ruled admissible or that the parties agree will be admitted without objection (or excerpts thereof);
 - Stipulations of the parties;
 - With agreement of counsel, other material not subject to genuine dispute, which may include:
 - Photographs of parties, witnesses, or exhibits
 - Curricula vitae of experts;
 - Agreed upon glossaries, chronologies, or time lines; and
 - Blank paper for the jurors' use in taking notes.
- If counsel believe that juror notebooks are necessary in a case, they should raise this issue at the Pretrial Conference and are required to confer on the contents of the notebooks prior to commencement of the trial. Any arguments or disagreements should immediately be brought to the attention of the Court.
- During the course of the trial, the Court may permit the parties to supplement the materials contained in the notebooks with additional documents as they become relevant and after they have been ruled admissible or otherwise approved by the Court for inclusion.

11. The Court permits juror note-taking. In a simple trial of short duration (1-3 days), the Court will normally not make a statement to the jurors in this regard without request of counsel, although notetaking will not be prohibited. In other cases, the Court will give the jury a standard note-taking instruction, similar to Section 5.11 in Devitt and Blackmar, Federal Jury Practice and Instructions, 6th ed.

12. Closing argument will take place after final instructions are read to the jury unless otherwise indicated by the Court