

**TRIAL PROCEDURES SUPPLEMENT TO LOCAL BANKRUPTCY
RULES FOR THE HON. EDWARD K. BERNATAVICIUS**

I. TRIAL BRIEFS

Unless otherwise ordered by the Court, pursuant to Local Bankruptcy Rule (“LBR”) 9013-2(a)(2), the Court will require the submission of trial briefs. Pursuant to LBR 9013-2(a)(1), trial briefs must be filed **no later than seven days before the trial date**.

A party’s trial brief should contain: (1) a concise statement of the facts of the case; (2) all admissions and stipulations; (3) a summary of any relevant procedural history; (4) a summary of the points of law involved with supporting authorities; (5) a summary of the disputed issues of fact and of the testimony that the party plans to introduce to prove its version of the disputed facts; and (6) a brief discussion of any anticipated evidentiary issues or other problems that the party believes are likely to arise at trial.

The judge’s copies of the trial briefs should be delivered to Judge Bernatavicius’ chambers on the same date they are filed.

Unless specifically requested by the Court, no supplemental trial briefs may be filed and none will be considered.

II. PRETRIAL STIPULATION AND ORDER

Unless otherwise ordered by the Court, the parties must prepare and file a written joint pretrial stipulation pursuant to LBR 7016-1(b) through (f). The pretrial stipulation must contain the statements and information required by LBR 7016-1(b)(2).

Pursuant to LBR 7016-1(b)(1)(C) and (b)(2)(D), the parties must meet and confer no later than twenty-eight (28) days before the pretrial conference to attempt to stipulate to the authenticity and admissibility of the documents exchanged (without the necessity for live testimony). **The Court expects the parties to make good faith efforts to resolve all evidentiary issues.**

The Court will issue an order to set the trial date, approve a pretrial stipulation and provide for the procedures concerning the presentation of testimony as set forth in Sections III below.

III. PRESENTATION OF TESTIMONY

Except as otherwise ordered by the court, each party must present the testimony of its witnesses, including expert witnesses, **through live testimony in person at the trial.**

IV. MOTIONS IN LIMINE

All motions in limine, such as those seeking to exclude items or categories of evidence, *Daubert* determinations, etc., must be set for hearing on regular notice at least two weeks prior to the commencement of trial.

V. DEADLINES FOR SUBMISSION OF EXHIBITS AND OBJECTIONS

A. Plaintiff must file and submit to opposing counsel all exhibits comprising plaintiff's case in chief not later than twenty-eight days before the trial date. A judge's copy must be delivered to chambers on the same date that the documents are filed. All exhibits must be assembled in a three-ring binder. See Section VI below for more details regarding the submission of exhibits.

B. Defendant must file and submit to opposing counsel all exhibits comprising defendant's case not later than twenty-one days before the trial date. A judge's copy must be delivered to chambers on the same date that the documents are filed. All exhibits must be assembled in a three-ring binder. See Section VI below for more details regarding the submission of exhibits.

C. In addition, all exhibits must also be lodged with the Courtroom Deputy not later than seven days before the trial date. Each party must lodge sufficient copies for all parties, the witness stand, and the court recorder. See Section VI below for more details regarding the submission of exhibits.

D. At trial, each party must also have sufficient copies of any exhibits used for impeachment or rebuttal for the opposing party, witnesses, the court recorder, and the judge.

E. Evidentiary objections will be adjudicated at the time an exhibit is offered into evidence or at the time testimony is presented at trial.

VI. EXHIBITS

A. All exhibits must be assembled in a three-ring binder. At least four binders containing all exhibits must be lodged with the Courtroom Deputy not later than seven days before the first trial date. All exhibits must be marked for identification, be separately tabbed, and contain page numbers. Each exhibit must be marked at the bottom-right of the first page of the exhibit. Unless the parties agree upon a unified, joint set of exhibits, plaintiff's exhibits must be marked in numerical order and defendant's exhibits must be marked in alphabetical order (e.g., Plaintiff's Exhibit 1, 2, 3, etc.; Defendant's Exhibit A, B, C, etc.). If the parties agree on a unified, joint set of exhibits, the exhibits must be marked in numerical order. The court prefers that the parties use a joint set of exhibits if possible.

B. Each exhibit binder must include as its first page an exhibit register. A sample exhibit register may be obtained from the court recorder or from the Clerk's Office and must be procured sufficiently in advance of the trial date to permit the completed register to be available when the exhibit binders are delivered to the court.

C. At the commencement of trial, the parties must be prepared to stipulate to admission of all undisputed exhibits. Bona fide objections may be reserved, with the issue of admissibility deferred until the exhibit is offered into evidence.

VII. EXCERPTS FROM DISCOVERY DOCUMENTS

A. **Deposition Transcripts.** A party intending to offer evidence by way of deposition testimony pursuant to Fed. R. Civ. P. 32, other than for impeachment or rebuttal, must submit a declaration authenticating the excerpts from the

transcript and must comply with LBR 7030-1(b). However, notwithstanding LBR 7030-1(b), the entire original transcript must be filed on the docket not later than the applicable deadline for submission of exhibits set forth in Section V.

B. Other Discovery Documents. Excerpts from interrogatories, Requests or admissions, or other discovery documents to be offered at trial, other than those used for impeachment or rebuttal, must be filed pursuant to LBR 7026-2(c) not later than the applicable deadline for submission of declarations, exhibits, and objections set forth in Section V.

VIII. OTHER

A. Subpoenas Required. Any party that seeks to present the testimony of a hostile (i.e., uncooperative) third-party witness at trial is responsible for properly and timely serving on that witness a subpoena to appear at trial.

B. Schedule. No later than three Court days before trial, the parties must submit a schedule for the appearance of third-party witnesses, i.e., which third-party witnesses will provide testimony on each date of the trial, and whether a witness must be present in the morning and/or in the afternoon.

C. Continuance of Trial Date. Trials will be commenced promptly at the scheduled date and time. Trial dates will **not** be continued or vacated absent good cause, on a properly noticed motion, supported by competent and persuasive evidence. The parties will be contacted and informed whether the continuance has been granted or denied.

D. Settlement. No later than five days before the trial date, Plaintiff must telephone the Courtroom Deputy at (951) 774-1098 to report (1) whether the parties intend to go forward with trial as scheduled; (2) if settlement is imminent; (3) whether less time than is set forth in the order setting trial will be required (e.g., the parties will call fewer witnesses than anticipated); and (4) any other relevant information. Stipulations for settlement must be in writing, executed by each party or its counsel, filed and delivered to chambers before the date of trial. If time constraints prevent reducing a settlement to writing prior to trial, the parties or their counsel must (1) advise chambers of the settlement and (2) appear at the time set for trial to recite the stipulation on the record.

E. Opening Arguments. Unless otherwise ordered by the Court, opening arguments are not required. The Court will have read the trial briefs in advance.

F. Closing Arguments. Any closing arguments by the parties at the conclusion of trial cannot exceed twenty minutes per party.

G. Judicial Notice. The Court reserves its ability to take judicial notice of any pleadings on file with the Court and any prior rulings of the Court, whether or not a party requests that the Court take judicial notice of those pleadings or rulings.

IX. COMPLIANCE

Failure to comply with these procedures may result in the imposition of sanctions, including, but not limited to, monetary sanctions, removal from the trial calendar, dismissal for failure to prosecute, or the exclusion of evidence (e.g., witnesses who were not timely identified or exhibits that were not timely submitted).