

FEDERAL CIVIL JURY TRIAL PRACTICE

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY
in conjunction with
THE ASSOCIATION OF THE FEDERAL BAR OF NEW JERSEY
November 7, 2019

The Panel

- ▶ **PANELISTS**
 - ▶ The Hon. Michael A. Shipp, U.S.D.J.
 - ▶ The Hon. Tonianne J. Bongiovanni, U.S.M.J.
 - ▶ The Hon. Zahid N. Quraishi, U.S.M.J.
 - ▶ J. Andrew Ruymann, Chief, Civ. Div., U.S.A.O.
 - ▶ Marc Haefner, Partner, Walsh, Pizzi, O'Reilly Falanga LLP
- ▶ **MODERATOR**
 - ▶ Corinne McCann Trainor, Partner, Fox Rothschild LLP

Today's Agenda

- ▶ Opening Remarks by Fabiana Pierre-Louis, Esq.
- ▶ Introduction of Panelists
- ▶ Setting The Stage: Timing of Summary Judgment Motions & Pre-trial Conferences
- ▶ Final Pretrial Orders
- ▶ Other Pleadings, Pre-Trial Submissions, Motions, & Conferences
- ▶ The Trial
- ▶ Overlapping Criminal Issues in Civil Trials/Tax Fraud
- ▶ Preserving Issues for Appeal
- ▶ Post-Trial Filings
- ▶ Questions and Discussion

Setting The Stage: Timing of Summary Judgment Motions & Pre-trial Conferences

- ▶ Dispositive motions pending? Adjudicated?
- ▶ Pre-trial Conferences / Conferences with the Court
- ▶ Final Pre-Trial Conference
 - ▶ The purpose
 - ▶ What to expect?

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Final Pretrial Orders

- ▶ What is the Final Pretrial Order?
 - ▶ Fed. R. Civ. P. 16(e): "The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice." (emphasis added)
- ▶ Importance
- ▶ Drafting the order
- ▶ Review Final Pretrial Order

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FORM OF FINAL PRETRIAL ORDER USED BY:
 HON. MARY L. COOPER, USDJ
 HON. FRED L. WOLFSON, USDJ
 HON. PETER G. SHERIDAN, USDJ
 HON. MICHAEL A. SHIPP, USDJ
 HON. BRIAN R. MARTINOTTI, USDJ

This form is to be retyped in full (including all instructions) and all material inserted in proper sequence and not by means of attached riders except as provided below.
PLEASE NUMBER ALL PAGES

UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY

Plaintiff _____ Civil Action No.: _____
 v. _____ FINAL PRETRIAL ORDER
 Defendant _____

This matter having come before the Court for a pretrial conference pursuant to Fed. R. Civ. P. 16 and having appeared for plaintiff and having appeared for defendant, the following Final Pretrial Order is hereby entered:

1. JURISDICTION (set forth specifically).
2. PENDING/CONTEMPLATED MOTIONS (Set forth all pending or contemplated motions, whether dispositive or addressed to discovery or to the calendar. Also, set forth the nature of the motion and the return date. If the Court indicated that it would rule on any matter at pretrial, summarize that matter and each party's position).
3. STIPULATION OF FACTS (Set forth in narrative form a comprehensive listing of all uncontested facts, including all answers to interrogatories and admissions, to which there is agreement among the parties).
4. PLAINTIFF'S CONTESTED FACTS (State separately for each plaintiff: Proofs shall be limited at trial to the matters set forth below. Failure to set forth any matter shall be deemed a waiver thereof.
 - A. Plaintiff intends to prove the following contested facts with regard to liability:
 - B. Plaintiff intends to prove the following contested facts with regard to damages: (This must include each item of damages, the amount of each item, the factual basis

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for each item and, if punitive damages are claimed, the facts upon which plaintiff will rely to establish punitive damages).

5. **DEFENDANT'S CONTESTED FACTS** (State separately for each defendant. See instructions above).

A. Defendant intends to prove the following contested facts with regard to liability.

B. Defendant intends to prove the following contested facts with regard to damages. (This statement must include the factual basis for each defense against plaintiff's claim for damages).

6. **PLAINTIFF'S WITNESSES** (Aside from those called for impeachment purposes, only those witnesses whose names and addresses are listed below will be permitted to testify at trial).

A. On liability, plaintiff intends to call the following witnesses who will testify in accordance with the following summaries:

B. On damages, plaintiff intends to call the following witnesses who will testify in accordance with the following summaries:

C. Defendant objects to the following witnesses for the reasons stated:

DEFENDANT'S WITNESSES (See instructions above).

A. On liability, defendant intends to call the following witnesses who will testify in accordance with the following summaries:

B. On damages, defendant intends to call the following witnesses who will testify in accordance with the following summaries:

C. Plaintiff objects to the following witnesses for the reasons stated:

7. **EXPERT WITNESSES** (No opposing counsel shall be permitted to question the expert's qualifications unless the basis of an objection is set forth herein).

A. Plaintiff's expert witnesses are:

B. Defendant's objections to the qualifications of plaintiff's experts are:

C. Defendant's expert witnesses are:

D. Plaintiff's objections to the qualifications of defendant's experts are:

9. **PLAINTIFF'S EXHIBITS** (Except for exhibits the need for which could not reasonably have been foreseen or which are used solely for impeachment purposes, and the exhibits on file on the exhibit list provided herewith, be introduced at trial. Any objections to an exhibit, and the reasons for said objection, must be set forth below or it shall be deemed waived. All parties hereby agree that it will not be necessary to bring to the attention of any exhibit as to which an objection is made).

A. Plaintiff intends to introduce into evidence the exhibits listed on the attached exhibit list (set forth number with a description of each):

B. Defendant objects to the introduction of plaintiff's exhibits (set forth number of an exhibit and grounds for objection):

10. **DEFENDANT'S EXHIBITS** (See instructions above).

A. Defendant intends to introduce into evidence the exhibits listed on the attached exhibit list (set forth number with a description of each):

B. Plaintiff objects to the introduction of defendant's exhibits (set forth number of exhibit and grounds for objection):

(Copies of exhibits are to be made for opposing counsel, and a bench book of exhibits is to be delivered to the Judge at the start of trial. If counsel desires to display exhibits to the jury, sufficient copies should be available to provide each juror with a copy; alternatively, enlarged photographs or projected copies may be used).

11. **PLAINTIFF'S LEGAL ISSUES**

12. **DEFENDANT'S LEGAL ISSUES**

13. **CHOICE OF LAW:** (If there is any issue as to what state's law is applicable to any issue of the complaint, set forth the choice of law question. This issue shall be resolved by the Court in accordance with an order to be entered hereafter.)

14. **MISCELLANEOUS** (Set forth any other matters which require action by, or should be brought to the attention of the Court).

15. **JURY TRIALS** - (Set later than _____)

A. Each side shall agree to the Judge set a opposing counsel a trial level or memorandum in support of its position on all disputed issues of law. In the event a trial shall not be held, the delinquent party's complaint or defense may be stricken.

B. Counsel for each party shall submit to the Judge, with a copy to opposing counsel,

written requests for instructions to the jury. Supplemental requests for instructions may be submitted at any time prior to argument to the jury. All requests for instructions shall be plainly marked with the name and number of the case, shall contain citations of supporting authorities, if any, and shall designate the party submitting same. In the case of multiple requests by a party, these shall be numbered in sequence and each request shall be on a separate sheet of paper.

C. Joint proposed verdict form/special interrogatories are to be submitted to the trial judge.

A. Proposed jury dire are to be submitted to the trial judge.

16. **NON-JURY TRIALS** - Not later than _____

A. Each side shall submit to the Judge and opposing counsel a trial brief or memorandum in accordance with Local Civil Rule 7.2B with citations to authorities and arguments in support of its position on all disputed issues of law. In the event a brief shall not be filed, the delinquent party's complaint or defense may be stricken.

B. Each side shall submit to the Judge and other counsel proposed written findings of fact and conclusions of law. There is reserved to counsel the right to submit additional proposed findings of fact and conclusions of law during the course of the trial on those matters that cannot reasonably be anticipated.

17. **TRIAL COUNSEL** (List the names of trial counsel for all parties).

1. **BIFURCATION** (Where appropriate, the issues relating to liability shall be severed and tried to verdict. Thereafter, all issues relating to damages will be tried).

The issues of liability and damages SHALL / SHALL NOT be tried separately.

1. ESTIMATED LENGTH OF TRIAL

_____ DAYS FOR LIABILITY

and

_____ DAYS FOR DAMAGES

AMENDMENTS TO THIS PRETRIAL ORDER WILL NOT BE PERMITTED UNLESS THE COURT DETERMINES THAT MANIFEST INJUSTICE WOULD RESULT IF THE AMENDMENT IS DISALLOWED.

(ATTORNEY FOR PLAINTIFF)

(ATTORNEY FOR DEFENDANT)

UNITED STATES MAGISTRATE JUDGE

DATED: _____

(EXHIBIT LIST TO FOLLOW)

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Other Pleadings, Pre-Trial Submissions, Motions, & Conferences

- ▶ Witness subpoenas / deposition designations
- ▶ Requested voir dire questions
- ▶ Proposed form of verdict sheets (w/ special interrogatories)
- ▶ Requests to charge
- ▶ Daubert motions and hearings (and timing of motions)
- ▶ Motions in Limine
- ▶ Settlement conference / Mediation
- ▶ Other conferences?

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The Trial

- ▶ Courtroom technology / demonstratives / storage of materials, exhibits
- ▶ Consent to jury trial before the Magistrate Judge Loc. Civ. R. 73.1
- ▶ Jury Selection
 - ▶ Use of jury questionnaires
 - ▶ Jury consultants
 - ▶ How social media has changed jury selection

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Preferred Trial Practices of Trenton Judges

	Chief Judge Freda L. Wolfson	Judge Anne E. Thompson	Judge Michael Shipp	Judge Peter G. Sheridan	Judge Brian R. Martinotti
Jury Charges	Jurors will be provided with a written copy of the charge. Jurors may be charged at the beginning or middle of trial and/or before closing arguments on substantive law.	Jurors will be provided with a written copy of the charge. Jurors may be charged at the beginning or middle of trial and/or before closing arguments on substantive law.	Jurors will be provided with a written copy of the charge. Jurors may be charged before closing arguments on substantive law.	On disk in Word Perfect format one week before trial. Written copy provided to jurors for use in deliberations.	Unpublished
Jury Selection	State court procedure used for jury selection.	Does not use state court procedure of jury selection.	Counsel should contact the Courtroom Deputy Clerk with questions regarding jury selection.	All questions on voir dire will be asked by Judge Sheridan. Normal federal procedure followed in civil and criminal cases.	Unpublished

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Preferred Trial Practices of Trenton Judges

	Judge Zahid N. Quraishi	Judge Lois H. Goodman	Judge Tomiame J. Beagwanant	Judge Douglas K. Arpert
Jury Charges	Jurors will be provided with a written copy of the charge. Jurors may be charged at the beginning or middle of trial and/or before closing arguments on substantive law with counsel's consent.	Jurors will be provided with a written copy of the charge. Jurors may be charged at the beginning or middle of trial and/or before closing arguments on substantive law with counsel's consent.	Jurors will be provided with a written copy of the charge. Jurors may be charged at the beginning or middle of trial and/or before closing arguments on substantive law with counsel's consent.	Jurors will be provided with a written copy of the charge. Jurors may be charged at the beginning or middle of trial and/or before closing arguments on substantive law with counsel's consent.
Jury Selection	Counsel should contact the Courtroom Deputy Clerk with questions regarding jury selection.	Counsel should contact the Courtroom Deputy Clerk with questions regarding jury selection.	Counsel should contact the Courtroom Deputy Clerk with questions regarding jury selection.	Counsel should contact the Courtroom Deputy Clerk with questions regarding jury selection.

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Preferred Trial Practices of Trenton Judges

	Chief Judge Freda L. Wolfson	Judge Anne E. Thompson	Judge Michael Shipp	Judge Peter G. Sheridan	Judge Brian R. Martinotti
Peremptory Challenges	Prefers that counsel stand and announce their challenges. Does not require that a party forfeit any peremptory challenge that could have been, but was not, used in any round where the adversary continues to exercise peremptories.	Prefers that counsel stand and announce their challenges. Does not require that a party forfeit any peremptory challenge that could have been, but was not, used in any round where the adversary continues to exercise peremptories.	Unpublished	Prefers counsel to stand and announce their peremptory challenges. Batson concerns must be raised before the juror is excused.	Unpublished

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Preferred Trial Practices of Trenton Judges

	Judge Zahid N. Quraishi	Judge Lois H. Goodman	Judge Tonianne J. Bongiovanni	Judge Douglas E. Arpert
Peremptory Challenges	Prefers counsel to stand and announce their peremptory challenges. Only 1 pass permitted by a party without forfeiture.	Prefers counsel to stand and announce their peremptory challenges. Only 1 pass permitted by a party without forfeiture.	Prefers counsel to stand and announce their peremptory challenges. Only 1 pass permitted by a party without forfeiture.	Prefers counsel to stand and announce their peremptory challenges. Only 1 pass permitted by a party without forfeiture.

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Preferred Trial Practices of Trenton Judges

	Chief Judge Freda L. Wolfson	Judge Anna E. Thompson	Judge Michael Shipp	Judge Peter G. Sheridan	Judge Brian R. Martinotti
Juror Note Taking and Questioning	Note taking permitted. Jurors are not permitted to submit questions for the witnesses.	Note taking is permitted. Jurors may submit questions to the Court to be posed to witnesses.	Not permitted.	Note taking permitted. Jurors are not permitted to submit questions for the witnesses.	Unpublished
Exhibits	Admitted exhibits are usually sent to the jury room.	If jurors wish to see an exhibit during deliberations, they are permitted to do so in open court. The prosecuting attorney generally maintains custody of exhibits during trial.	Admitted exhibits are usually sent to the jury room.	All exhibits must be promouced by counsel.	Unpublished

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Preferred Trial Practices of Trenton Judges

	Judge Zahid N. Quraishi	Judge Lois H. Goodman	Judge Tonianne J. Bongiovanni	Judge Douglas E. Arpert
Juror Note Taking and Questioning	No fixed practices as to juror note taking. Jurors are not permitted to submit questions for the witnesses.	No fixed practices.	Juror note taking is permitted with consent of counsel.	No fixed practices.
Exhibits	Admitted exhibits are usually sent to the jury room. The Courtroom Deputy Clerk will take custody of exhibits marked in evidence.	Admitted exhibits are usually sent to the jury room. The Courtroom Deputy Clerk will take custody of exhibits marked in evidence.	Admitted exhibits are usually sent to the jury room. The Courtroom Deputy Clerk will take custody of exhibits marked in evidence.	Admitted exhibits are usually sent to the jury room. The Courtroom Deputy Clerk will take custody of exhibits marked in evidence.

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Preferred Trial Practices of Trenton Judges - Conference with jurors

Chief Judge Freda L. Wolfson Unpublished	Judge Anne E. Thompson Generally meets with jurors after a verdict.	Judge Michael Shipp No fixed practice.	Judge Peter G. Sheridan Usually meets with jurors after a verdict.	Judge Brian R. Martinotti Unpublished
Judge Zahid N. Qureshi May meet with jurors after a verdict, but counsel and parties are prohibited from doing so.	Judge Lois H. Goodman May meet with jurors after a verdict, but counsel and parties are prohibited from doing so.	Judge Tonianne J. Bongiovanni May meet with jurors after a verdict, but counsel and parties are prohibited from doing so.	Judge Douglas E. Arpert May meet with jurors after a verdict, but counsel and parties are prohibited from doing so.	

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Overlapping Criminal Issues in Civil Trials/Tax Fraud

- ▶ Identifying any potential issues
- ▶ How to protect client when criminal issues are apparent?

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Preserving Issues for Appeal

- ▶ Best practices
- ▶ Rule 51 - jury instructions

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Mid-Trial and Post-Trial Motions

- ▶ Rule 50(a), (b) - motion for judgment as a matter of law
- ▶ Rule 59 - motion for a new trial, altering or amending a judgment
- ▶ Rule 62 - motion to stay
- ▶ Notice of Appeal

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QUESTIONS AND DISCUSSION

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THANK YOU FOR ATTENDING

- ▶ PANELISTS
 - ▶ The Hon. Michael A. Shipp, U.S.D.J.
 - ▶ The Hon. Tonia J. Bongiovanni, U.S.M.J.
 - ▶ The Hon. Zahid N. Quraishi, U.S.M.J.
 - ▶ J. Andrew Ruymann, Chief, Civ. Div., U.S.A.O.
 - ▶ Marc Haefner, Partner, Walsh, Pizzi, O'Reilly Falanga LLP
- ▶ MODERATOR
 - ▶ Corinne McCann Trainor, Partner, Fox Rothschild LLP

Don't forget to sign out to record your CLE credits

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