

## 16.2 Pretrial Procedure in Civil Cases.

### (a) Matters to Be Completed Before Final Pretrial Conference.

- (1) **Exhibit List.** Unless the court orders otherwise, before the pretrial conference documents and objects expected to be introduced as exhibits must be physically numbered and inspected. Exhibits must be listed on approved forms available from the clerk and on the court’s Web site, <http://www.ned.uscourts.gov/forms> > “Exhibit List,” or on forms prepared in substantially the same format. Documents and objects expected to be used solely for impeachment purposes that have not been given to opposing parties need not be numbered or listed until identified at trial. Except upon a showing of good cause, failure to list an exhibit required by this rule to be listed results in its nonadmissibility over an objection.
  - (A) **Objections.** All objections to the admissibility of any listed exhibit must be noted on the exhibit list. Objections not disclosed on the exhibit list, other than objections under Federal Rules of Evidence 402 and 403, are considered waived unless excused by the court for good cause.
  - (B) **Exception for Good Cause.** The judge holding the pretrial conference may, for good cause shown, authorize the parties to defer listing exhibits or objections until a later date specified by that judge.
  - (C) **Effect of Listing.** Merely because a party lists an exhibit on an exhibit list does not mean that an opposing party may offer it into evidence without meeting all necessary evidentiary prerequisites.
- (2) **Proposed Final Pretrial Order.** Unless the court orders otherwise, a proposed “Order on Final Pretrial Conference” that includes each matter listed below must be jointly prepared and presented to the judge at the pretrial conference. An acceptable pretrial order form is available from the clerk or on the court’s Web site, <http://www.ned.uscourts.gov/forms>>”Order on Final Pretrial Conference.”
  - (A) **Exhibits.** A complete list of exhibits and objections prepared under Nebraska Civil Rule 16.2(a)(1) must be attached to the proposed order.

- (B) **Uncontroverted Facts.** The parties must jointly state any facts that may be accepted as established at trial, in a form that may be read to the jury.
- (C) **Controverted and Unresolved Issues.** The parties must jointly list all remaining legal issues to be determined, setting out in detail each element of the genuinely controverted unresolved claim or defense (including issues on the merits and issues of jurisdiction, venue, joinder, validity of appointment of a representative of a party, class action, substitution of parties, attorney's fees and applicable law under which fees are claimed, and prejudgment interest). The following must be specified: (i) any claimed special damages or permanent injuries; (ii) any elements of negligence and contributory negligence; and (iii) any other unresolved matters requiring the court's attention, for example, possible consolidation for trial, bifurcated trials on specified issues, and pending motions.
- (D) **Witnesses.** Each party must separately list all witnesses, including rebuttal witnesses, whom that party expects to call to testify, except witnesses who may be called for impeachment purposes as defined in Nebraska Civil Rule 16.2(c). The list must (1) include the city and state where each witness resides and (2) identify witnesses whom the party expects to be present and whom the party may call. Except upon a showing of good cause, a witness whose name and city of residence does not appear on the list will not be permitted to testify over objection for any purpose except impeachment. The witness list must identify each witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived, and unless the witness was disclosed under Federal Rule of Civil Procedure 26(a)(3), over objection the witness may not testify for any other purpose. A witness appearing on any party's witness list may be called by any other party.
- (E) **Expert Witness Qualifications.** The parties must separately list persons whom they expect to call as expert witnesses and (i) state each witness's qualifications or (ii) attach the witness's curriculum vitae.
- (F) **Voir Dire.** In cases to be tried to a jury, parties must state any

requests regarding the conduct of juror examination. See Fed. R. Civ. P. 47(a); NECivR 47.2(a).

- (G) **Number of Jurors.** In cases to be tried to a jury, parties must state a preference regarding the number of jurors. See Fed. R. Civ. P. 48 and NECivR 48.1.
  - (H) **Verdict.** In cases to be tried to a jury, the parties must state whether they will stipulate to a less-than-unanimous verdict.
  - (I) **Briefs, Instructions, and Proposed Findings.** Parties must state any requests regarding: deadlines for filing trial briefs, see NECivR 39.2(a); proposed jury instructions, see NECivR 51.1(a); or proposed findings of fact, see NECivR 52.1.
  - (J) **Length of Trial.** Parties must estimate the length of trial (in days) and state both the minimum and maximum number of trial days that the court should reserve.
  - (K) **Trial Date.** Parties must state any special requests regarding the setting of a trial date.
- (b) **Representation Required.** Unless otherwise approved in advance by the judge conducting the conference, each party for whom an attorney has filed an appearance must be represented at the conference by the lead trial attorney who has adequate information and authority to responsibly and effectively participate in every aspect of the conference. All attorneys attending the final pretrial conference must be identified in the final pretrial order and may be required to sign the order approving its form at the conference.
- (c) **"Impeachment Purposes" Defined.** With regard to this rule, "impeachment purposes" means only to attack or support (1) a witness's credibility or (2) the validity of or the weight to be given to the contents of a document or object used solely to attack or support a witness's credibility. It does not include evidence that merely contradicts other evidence.