UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Plaintiff,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
Defendant(s), *et al.*	)	
	)	
Defendants.	)	

PRO SE PRISONER TRIAL EXPLANATION ORDER FOR TRIALS WITH JUDGE MYERSCOUGH

This order describes how the Court generally conducts a final pretrial conference and trial. READ THIS ORDER NOW. Both sides must review the order very carefully; it contains important instructions and may answer the parties' questions about how this case will proceed going forward. These are general guidelines. The procedure may vary depending on the circumstances of each case.

I. Proceedings Before Trial

a. Final Pretrial Order

The parties are required to submit to the Court a joint proposed final pretrial order by the date set by the Court. In preparing this order, the parties must discuss what they believe the factual and legal issues will be at trial; the exhibits each party intends to introduce and the objections, if any, to the exhibits; and, who each party intends to call as a witness. The parties should gather this information and send it to the opposing party as soon as possible. Do not send this information to the Court. Submit only the joint proposed final pretrial order when it is finalized. A sample form for a final pretrial order is attached.

The Court has or will set deadlines for other materials due for discussion at the final pretrial conference. The Court typically will file its own proposed draft of jury instructions for discussion at the final pretrial conference.

b. Final Pretrial Conference

During the final pretrial conference, the Court will discuss the proposed final pretrial order, the process for selecting the jury, the prospects for settlement, jury instructions, motions in limine, voir dire, and any other issues that may arise. Any motions seeking to reschedule the final pretrial conference or to modify any previous orders regarding this conference must be made in writing at least seven (7) days prior to the final pretrial conference.

c. Motions in Limine

Motions in limine are motions where a party asks the Court to prevent the opposing party from offering certain evidence during trial. In general, evidence will be excluded only if the evidence is not admissible for the purposes a party seeks to introduce it.

d. Witnesses at Trial

Unless otherwise ordered by the Court, the parties will be present in person at trial, and any party called as a witness will testify in person. Witnesses who are still incarcerated and prison officials who are not parties will testify by video. The clerk will issue writs for these witnesses to testify by video, as directed by the Court. During the trial, the witnesses who testify by video may need to be taken out of the normal order of the presentation of evidence. This is because the scheduling of video witnesses is dependent on the availability of the prison's video conference room.

For all other witnesses, the party intending to call the witness may ask the witness to testify voluntarily. If the witness will not agree, the party must subpoena the witness. The Court will direct the Clerk to issue subpoenas for witnesses Plaintiff identifies in the final pretrial

order, if the Court determines that the proposed witness has relevant testimony. The Clerk will send the subpoenas to Plaintiff for service. Plaintiff is responsible for serving any subpoenas via certified mail or other appropriate means and paying the required witness and mileage fees. The Court does not have the authority to waive those fees, even if the party is proceeding *in forma pauperis*. The Court will not send a copy of any subpoenas to Plaintiff's witnesses.

II. Trial

a. Jury Selection

The trial will begin with jury selection. The clerk will call 14 jurors into the jury box. The Court will ask these individuals questions related to their abilities to serve as jurors in the case. For example, the Court will ask each juror if they know any of the people involved in the trial, whether they have read or heard anything about the case, and whether there is any reason they believe they cannot serve as impartial jurors. The Court's standard voir dire questions are located on the website under local orders and are attached to this order. ilcd.uscourts.gov. If either party wants the Court to ask a specific question, they must submit the proposed question(s) to the Court before the final pretrial conference as directed by the Court.

Once all questions have been asked, the Court permits each side to strike up to three jurors. These are called peremptory strikes and do not require a party to state the reason for the strike. If a party strikes a potential juror, that juror will be dismissed and will not decide the case. The parties may strike one juror at a time, with Plaintiff going first. The back-and-forth continues until all strikes have been exercised or until the parties indicate that they do not wish to exercise any further strikes, whichever happens first. Each side will then have a chance to ask to strike additional jurors for cause, which means that a party must explain why a certain juror cannot be fair and impartial. The Court will rule on requests to strike for cause. A minimum of six jurors is required for a civil case.

b. Opening Statements

After the parties select the jury, standard preliminary jury instructions will be read, and then opening statements will begin.

Plaintiff may give an opening statement describing his claims. An opening statement should give the jury an idea of what the case is about and what the jurors will see and hear from the witnesses and from the exhibits that Plaintiff will offer into evidence. The opening statement is not a time to give testimony. What is said during opening statements is not evidence. Therefore, if one party begins to make comments in the nature of testimony, and the other party objects, the court may interrupt the party speaking and instruct the jury to not consider the testimony-like statements.

Following Plaintiff's opening statement, defense counsel may make a statement about the defendants' case.

c. Presenting Evidence

After opening statements, the parties will present evidence. Evidence consists of witness testimony and exhibits. Because Plaintiff has the burden of proof, he presents his case first. This is called Plaintiff's "case in chief." Plaintiff must present enough evidence for a reasonable jury to find that each legal element of his claims has been proven by a preponderance of the evidence. Plaintiff also has the burden to prove the damages he suffered. It will be the plaintiff's burden at trial to prove any losses he sustained. The Court's draft of jury instructions will include instructions on what Plaintiff must prove for his claims and for damages. The final instructions given to the jury may differ depending on the evidence presented at trial. The Court will finalize jury instructions during a jury instruction conference held prior to closing arguments.

Plaintiff may provide his own testimony, call witnesses, and introduce documents into evidence to prove his case. All evidence presented must comply with the Federal Rules of

Evidence. If certain evidence is not introduced during trial, the jury may not consider it, even if the evidence was filed with a party's summary judgment materials or other court filings. Remember that the jurors may have never visited a prison and may not have extensive knowledge about how a prison works. It is up to the parties to provide evidence explaining the circumstances surrounding the events at issue at trial.

i. Witness Testimony

If a party calls a witness to testify, the party must ask the witness questions that are relevant to the claim or claims being tried. This is called "direct examination." The party may not give his own testimony during direct examination and may not argue with the witness if the party believes that the witness has given incorrect or improper testimony. If the party believes that the witness has not answered the question, the party may repeat the question or ask the question a different way.

The parties are reminded that witnesses other than experts are limited to testimony about their own observations. Therefore, the person questioning a witness should ask questions at the beginning about how the witness came to know the facts about which the witness is testifying: Where was the witness at the time? Was the witness close enough to hear and see what was going on? What reason did the witness have to pay attention to what was going on?
When the party is finished asking the witness questions, it is the other side's turn to ask the witness questions. This is called "cross-examination."

If a party believes that a witness is giving testimony that does not comply with the Federal Rules of Evidence, the party may raise an objection with the judge and tell the judge the reason for the objection. If the judge agrees with the objection, the objection will be "sustained," and the witness will not be allowed to answer the question. If the judge does not agree with the objection, the objection will be "overruled," or denied.

ii. Plaintiff's testimony

Plaintiff is entitled to take the witness stand and present his own testimony at trial. Because this is a *pro se* trial, the presentation of Plaintiff's own testimony will be different from the testimony of other witnesses. Plaintiff does not need to ask himself questions. He may present his testimony and explain what happened to him in a narrative form. Plaintiff's testimony must be based on his own observations and experience. If defense counsel objects during Plaintiff's testimony, Plaintiff should stop talking, wait for the Court to rule on the objection, and continue testifying only after the Court's ruling.

iii. Introducing Documents as Exhibits

If Plaintiff wishes to offer a document as evidence, he must include the document in his exhibit list. Before the document can be shown to the jury, Plaintiff must ask a witness who has personal knowledge of the document to explain what the document is. There is an exception to that rule if the other side agrees that the document is admissible.

The parties must bring copies of their exhibits to the trial. The clerk is responsible for keeping the exhibits used during the trial for the duration of the case and on appeal.

d. Defense Case-in-Chief

After Plaintiff has presented his case, the defendants may move to dismiss Plaintiff's case on the ground that Plaintiff has failed to present enough evidence to allow a jury to find that each element of his claim has been proven by a preponderance of the evidence. Fed. R. Civ. P. 50. If the defendants' motion is denied, the defendants will present their case. Evidence favorable to Defendants is often presented during Plaintiff's case-in-chief. Defense counsel is not required to reintroduce evidence already admitted.

e. Rebuttal

After the defendants rest, Plaintiff may, but is not required to, present additional evidence to rebut the defendants' case. Any testimony or other evidence presented during this phase of the trial is limited to responding to evidence introduced by the defendants. Plaintiff may not introduce new evidence simply because he failed to address a matter in his case in chief.

After the evidence is closed, the defendants may again ask that the case be dismissed because Plaintiff has failed to present enough evidence to allow a jury to find that each element of his claim has been proven by a preponderance of the evidence. If the defendants' motion is denied, then the Court will read the jury instructions, and closing arguments will begin.

f. Closing Arguments

After evidence has closed, Plaintiff may give a closing argument explaining why the evidence presented at trial supports a verdict in his favor. As with the opening statement, the closing argument is not a time to offer new testimony. Plaintiff should focus on the evidence presented during the trial and attempt to explain to the jury why this evidence is sufficient to prove his claims. In a closing argument, a party may explain why he believes his witnesses are more credible, why his evidence should be given more weight, and what inferences may be drawn from the evidence presented.

Defense counsel will then have an opportunity to present a closing statement. Plaintiff will have an opportunity to make a rebuttal argument.

g. Jury Deliberations

The jury will deliberate until they have a unanimous verdict. The amount of time a jury takes to reach a verdict varies with each case. If the jury sends a question to the Court, the Court will consult the parties prior to responding. Once the jury returns a verdict, either party may ask the Court to poll the jury. This means the clerk will ask each juror individually if the verdict read by the Court was his or her verdict.