

**Section 5. Pre-Trial Conferences**

**(a) Settlement procedures.** Settlement conferences are encouraged and recommended for case disposition. However, because of the diversity of approaches to be used, specific procedures are not set forth.

Lawyers will be notified by the court of the procedures to be followed in any action where settlement conferences are to be held.

**(b) Procedures to be followed.** In those courts where a formal pre-trial conference is held prior to assignment for trial, a trial date shall be set and the conference shall cover those matters set forth in paragraphs (d) and (e) of this section.

**(c) Settlement discussions with court.** The court may request counsel to explore settlement between themselves further and may engage in settlement discussions.

**(d) Pretrial chambers conferences.** At an informal chambers conference before trial the trial court shall:

- (1) determine whether settlement possibilities have been exhausted;
- (2) determine whether all pleadings have been filed;
- (3) ascertain the relevance to each party of each cause of action; and,
- (4) with a view to ascertaining and reducing the issues to be tried, shall inquire:
  - (i) whether the issues in the case may be narrowed or modified by stipulations or motions;
  - (ii) whether dismissal of any of the causes of actions or parties will be requested;
  - (iii) whether stipulations may be reached as to those facts about which there is no substantial controversy;
  - (iv) whether stipulations may be reached for waiver of foundation and other objections regarding exhibits, tests, or experiments;
  - (v) whether there are any requests for producing evidence out of order;
  - (vi) whether motions in limine to exclude or admit specified evidence or bar reference thereto will be requested; and
  - (vii) whether there are any unusual or critical legal or evidentiary issues anticipated;
- (5) direct the parties to disclose the number and names of witnesses they anticipate calling, and to make good faith estimates as to the length of testimony and arguments;
- (6) direct the parties to disclose whether any party or witness requires interpreter services and, if so, the nature of the interpreter services (specifying language and, if known, particular dialect) required;
- (7) inquire whether the number of experts or other witnesses may be reduced;
- (8) ascertain whether there may be time problems in presentation of the case, e.g., because of other commitments of counsel, witnesses, or the court and advise counsel of the hours and days for trial; and
- (9) ascertain whether counsel have graphic devices they want to use during opening statements; and

(10) ascertain whether a jury, if previously demanded, will be waived. If a jury is requested, the judge shall make inquiries with a view to determining:

(i) the areas of proposed voir dire interrogation to be directed to prospective jurors, and whether there is any contention that the case is one of "unusual circumstances";

(ii) the substance of a brief statement to be made by the trial court to the prospective jurors outlining the case, the contentions of the parties, and the anticipated issues to be tried;

(iii) the number of alternate jurors (it is suggested that the identity of the alternates not be disclosed to the jury); and

(iv) in multiple party cases, whether there are issues as to the number of "sides" and allocation of peremptory challenges.

**(e) Formal conference.** After conclusion of the informal chambers conference and any review of the court file and preliminary research the court finds advisable, a formal record shall be made of:

(1) arguments and rulings upon motions, bifurcation, and order of proof;

(2) statement of stipulations, including whether graphic devices can be used during opening statement; and

(3) in a jury trial, specification of:

(i) the brief statement the trial court proposes to make to prospective jurors outlining the case, contentions of the parties, and anticipated issues to be tried;

(ii) the areas of proposed voir dire interrogation to be directed to the prospective jurors;

(iii) whether any of the defendants have adverse interests to warrant individual peremptory challenges and number of them;

(iv) the number of alternate jurors, if any, and the method by which the alternates shall be determined;

(v) the need for any preliminary jury instructions.

**Cross Reference:** Minn. R. Civ. P. 116; Minn. Gen. R. Prac. 111, 112.

(Amended effective March 1, 2009.)

***Task Force Comment - 1991 Adoption***

*Subsection (a) is derived from existing Trialbook paragraph 6. The deleted language is unnecessary as it merely repeats other requirements.*

*Subsection (b) is derived from existing Trialbook paragraph 7.*

*Subsection (c) is derived from existing Trialbook paragraph 8.*

*Subsection (d) is derived from existing Trialbook paragraph 9.*

*Subsection (e) is derived from existing Trialbook paragraph 10.*

*This section sets forth many of the matters which can, and often should, be discussed in pretrial proceedings. The section does not enumerate all the subjects that can be discussed or resolved in pretrial conferences or other pretrial proceedings. The pretrial conference is intended to be a*

*flexible device and the trial judge has considerable discretion to tailor the pretrial conference to suit the needs of an individual case. Many matters that may be useful in pretrial conferences are discussed in the Federal Judicial Center's Manual for Complex Litigation (2d ed. 1985).*

*The Task Force considered proposals and concerns expressed on the subject of the role of trial judges, both in jury trial matters and bench trial matters. The Task Force believes this is a difficult issue, and one on which trial judges and counsel should have guidance. The Task Force recommends that this problem area be given further study by the Minnesota Supreme Court and interested bar associations.*

***Advisory Committee Comment - 2008 Amendment***

*Section 5(d)(6) is new, added to reflect the amendments to Rules 111.02(l), 111.03(b)(8), and 112.02(g), requiring earlier disclosure of information about the potential need for interpreter services in a case, either for witnesses or for a party. See Minn. Gen. R. Prac. 8.13.*