

NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE	DOCKET NUMBER 0000CV99999	Trial Court of Massachusetts The Superior Court
CASE NAME.		____ Clerk of Court ____ County
TO		COURT NAME & ADDRESS

A final pre-trial conference in the above-referenced case will be held on:

Date:

Time:

Event:

Session / Courtroom Location: /

Before the conference, trial counsel for all parties and any self-represented parties **shall confer** and prepare a joint pre-trial memorandum. The memorandum shall provide, at a minimum, the information identified below. Unless all counsel and self-represented parties agree otherwise, counsel for the plaintiff shall be responsible for preparing and circulating the first draft. The parties shall file the memorandum jointly **no less than five (5) business days** before the conference. Each party's lead trial counsel and any self-represented parties are expected to attend the conference.

A. FOR JURY TRIAL

The joint pre-trial memorandum shall include the following parts:

- (1) Agreed facts in a form suitable for submission as an exhibit at trial;
- (2) A brief statement by each party of what that party expects the evidence to show;
- (3) Agreed suggested description of the case to be read to the jury during empanelment;
- (4) Statement of all significant legal issues (including, in particular, any significant evidentiary issues), the positions of the parties on these issues, and a statement of relevant legal authorities. The parties shall provide copies of all cases and other authorities relied on, other than reported cases from the Supreme Judicial Court and Appeals Court.
- (5) The name and address of each witness to be called by each party. If a party fails to list a witness in the pre-trial memorandum, the Court may bar the witness from testifying unless the party shows good cause, for instance that the party could not reasonably anticipate the need for the witness before trial. No party may reserve the right to add a witness after the conference without leave of the Court. In addition, the parties shall identify any witness or party who needs an interpreter, as well as the language the interpreter needs to speak.
- (6) (a) The names, addresses, and qualifications of each expert witness the parties intend to call, together with the subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify, and a detailed summary of the grounds of each expert's opinion as detailed as would be expected in an answer to an expert interrogatory. The information as to any expert set forth in the pre-trial memorandum must be signed by that expert in accordance with Superior Court Rule 30B(b). A scanned or facsimile signature is sufficient. If an expert witness's identity and expected testimony has previously been disclosed in response to expert interrogatories, this item may be covered by appending to the pre-trial memorandum a copy of the expert interrogatory responses. Failure to comply with this paragraph forfeits the party's ability to present an expert as of right. See Superior Court Rule 30B(a).

(b) A statement whether any party is moving to conduct an expert deposition under Mass. R. Civ. P. 26(b)(4). If any party is so moving, and unless all parties agree to the expert deposition, the moving party shall append to the pre-trial memorandum a written motion to conduct the expert deposition and opposition so that the motion may be decided by the judge at the conference.

(c) A statement whether any party intends to serve a *Daubert-Lanigan* motion challenging the admissibility of expert testimony and, if so, when the party intends to serve and file such a motion, and the anticipated basis for such a motion. If a party fails to inform the Court, in the pre-trial memorandum, of the party's intent to file a *Daubert-Lanigan* motion the Court may, in its discretion, consider the motion waived. If the date proposed for the filing of a *Daubert-Lanigan* motion is deemed by the Court to be too close to trial, the Court may set an earlier date for filing the motion. At the conference, the court will set a hearing date for any *Daubert-Lanigan* motion.

NOTE: Inclusion of an expert witness' identity and expected testimony in the joint pre-trial memorandum does not waive any party's right to object to that expert's testimony on the ground that responses to expert discovery were untimely or inadequate.

- (7) Estimated length of trial (please specify whether the estimate is based on half days or full days).
- (8) An itemization of any special or liquidated damages alleged.
- (9) A certification that counsel for all parties have conferred and discussed the possibility of settlement, and the amenability of the case to mediation or other forms of alternate dispute resolution. If alternative dispute resolution has commenced or will commence, the parties shall inform the Court of its status. The parties shall not disclose the contents of settlement demands or offers in the pre-trial memorandum.
- (10) A statement whether the parties have consulted about provisions for case-specific management available under Superior Court Rule 20(2)(h)-(i), and if so, which provisions are agreed to or are still under consideration.

B. FOR BENCH TRIAL

If all parties have agreed to a bench trial and waived detailed findings (Superior Court Rule 20(2)(h)), the joint pre-trial memorandum need not include items (A)(1)-(3), above, and the parties need not file proposed findings of fact. If the parties have agreed to a bench trial but have not waived detailed findings, the joint pre-trial memorandum shall include all items listed in (A), above, except item (3).

C. FUTURE FILINGS (All cases, whether jury trial or bench trial)

No less than five (5) business days before the final trial conference, the parties shall submit to the Court documents required by Superior Court Rule 6(2) and Standing Order 1-88(H)(2)(a) & (b), including a list of stipulated exhibits and a list of contested exhibits that each party proposes to introduce at trial. The list shall, in addition, be given to the judge at the beginning of trial, and a copy shall be given to the clerk or court reporter. Also, no less than five (5) business days before the final trial conference the parties shall submit any deposition transcript to be offered at trial, with any objections highlighted for action by the court. The transcript should include notes in the margins briefly explaining the grounds for any objections and the responses given by the proponent of the testimony. Videotaped depositions are governed by Mass. R. Civ. P. 30A.

The parties must confer sufficiently in advance of the final trial conference to discuss these matters and file the required information in Court no less than five business days before the final trial conference

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**Trial Court of Massachusetts
The Superior Court**



**NOTICE TO COUNSEL AND SELF-REPRESENTED LITIGANTS
CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)**

In light of the delays in civil jury trials caused by the COVID-19 pandemic, the Court encourages counsel and self-represented litigants to review the Individual Case Management options set forth in Superior Court Rule 20(2). The Superior Court has made available the following options for resolving civil cases. The judge presiding over the final pre-trial conference will discuss the availability of each option.

Judicial Assessment

A judicial assessment is a hearing before a judge where each party makes a short oral presentation of their case, after which the judge orally gives an evaluation of liability and damages. This option is available either in-person or remotely, and at any stage of a case. Any party interested in this option should file a short motion requesting a judicial assessment. The session judge will inform the parties how the assessment will be conducted and what materials, if any, the parties should submit before the assessment.

Judicial Settlement Conferences and ADR

In a judicial settlement conference, a Superior Court judge, agreed on by the parties, works with the parties and their counsel to resolve the case in a manner similar to mediation or conciliation. (For information about mediation and conciliation, see the Alternative Dispute Resolution webpage on Mass.gov.) The judge conducting the judicial settlement conference would thereafter be recused from the case. The conference may be conducted in-person or remotely.

The Court also reminds counsel and self-represented litigants that they are always free to pursue ADR through providers of their choice. ADR is a voluntary process and, while encouraged by the Court, cannot be ordered by the Court. A list of court-connected approved ADR programs is available on the Alternative Dispute Resolution webpage on Mass.gov. ADR program availability may vary by county. Fees charged by court-connected programs vary and are not set by the Court. The Superior Court offers remote mediation services, at no cost to the parties, through its ADR Officer, Jim McCormack. You may reach Mr. McCormack by email at James.mccormack@jud.state.ma.us. Also, Judges John Cratsley (ret.), Mitchell Sikora (ret.) (for Suffolk and Norfolk counties), and Paul Chernoff (ret.) (for Middlesex county) provide ADR services, at no cost, where at least one party is unable to engage a private mediator. These judges also offer ADR services virtually. Forms to request referral to mediation with retired Judges Cratsley, Sikora, or Chernoff are available on the Superior Court's webpage under Superior Court Forms

In addition, parties may request referral of their case to the American College of Trial Lawyers' Statewide Superior Court Conciliation Program. The request form can be found on the Superior Court's webpage under Superior Court Forms.

For any final pre-trial conference held virtually, counsel are encouraged to share the hearing invitation with their clients and inform them that they are welcome to attend the conference virtually. Counsel and self-represented litigants are expected to be prepared to discuss the litigation options described above at the final pre-trial conference.

DATE ISSUED

ASSOCIATE JUSTICE

ASSISTANT CLERK

SESSION PHONE#