

PRE-TRIAL PROCEDURE*Jury Cases Should Require Conferences**Recommendations:*

1. That in any action the court may, and in actions which may be tried to a jury the court shall, direct the attorneys

for the parties and the parties or their duly authorized agents to appear before it for a conference to consider

a. All dilatory pleas and all motions and exceptions relating to the suit pending.

b. The simplification of the issues.

c. The necessity or desirability of amendments to the pleadings.

d. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

e. The limitation of the number of expert witnesses.

f. The advisability of the preliminary reference of issues

to a master or auditor for findings to be used as evidence when the trial is to be by jury.

g. Such other matters as may aid in the disposition of the action.

2. That to expedite trials and to make the foregoing provisions more effective,

a. Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may order any party to produce and permit the inspection and copying or photographing by or on behalf of the moving party, of any designated documents, papers (except written statements of witnesses), books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

b. In an action in which the mental or physical condition of a party is in con-

troversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only

on motion for good cause shown and upon notice to the party to be examined and to all other parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery, the party causing the examination to be made shall be entitled

upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same physical or mental condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect to the same mental or physical condition.

c. At any time after the defendant has made appearance in the cause, or time therefor has elapsed, a party may serve upon any other party a written request for the admission by the letter of the genuineness of any relevant documents described in and exhibited with the request



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or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

d. If any party or an officer or managing agent of a party refuses to obey an order made under subdivisions a or b of this rule, the court may make such orders in regard to the refusal as are just, and among others, the following: an order that the matters regarding the character or description of the thing, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition; an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. If a party, after being served with a request under subdivision c to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of

any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made. In such circumstances, if the court finds that the denial was made in bad faith, the party making the same may be punished as for contempt.

The court shall make an order which recites the action taken at the pre-trial conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.

Respectfully submitted,

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