

## **Rule 39-212. Pre-Trial Conference**

**39-212.1.** A Pre-trial Conference shall be scheduled by the Court Administrator in all civil cases not subject to arbitration pursuant to Section 7361 of the Judicial Code, 42 Pa.C.S.A. Section 7361, unless otherwise dispensed with by the Court, for the general purpose of fully exploring the possibility of settlement of the case. Additional consideration shall be given to:

- (a) Simplification of the issues;
- (b) Necessity or desirability of amendments to the pleadings and request for amendments;
- (c) Admission of facts and of documents to avoid unnecessary proof;
- (d) Limitation of the number of expert and other witnesses;
- (e) Reference of issues to a Master, only with the consent of all parties, for findings to be used as evidence in a jury trial; and
- (f) Other matters which may aid in disposing of the action.

**39-212.2.** No Pre-trial Conference shall be scheduled until all Pre-trial Motions, Petitions, Answers and Objections have been disposed of, discovery is completed and the case is ready for trial.

**39-212.3.** At least five (5) days prior to the Pre-trial Conference, each party shall exchange and submit to the Court a Pre-trial Memorandum which shall include the following:

- (a) A narrative statement of the facts to be proved at trial;
- (b) A statement of the legal theory upon which the right of recovery or defense is predicated, together with a citation of authority supporting the party's position;
- (c) A statement of any legal issues likely to arise which will require a ruling by the Court with citation to authority supporting the party's position;
- (d) An itemized statement of the damages to be proved at trial, and where applicable, the amount claimed for each item of damage;
- (e) A list of stipulations to which the opposition can reasonably be expected to agree;
- (f) A list of all exhibits which are to be offered at trial, including a brief description of each, together with a statement of the purpose for which each will be offered;

- (g) A copy of written reports from any expert witness expected to testify;
- (h) A list of any hypothetical questions to be used;
- (i) A list of the names and addresses of all witnesses to be called, except in rebuttal. (Such lists shall impose no obligation to call all listed witnesses or procure their attendance at trial);
- (j) The estimated length of trial.
- (k) **Certification by the attorney submitting same that mediation has been previously pursued or, if not, that the topic of mediation was discussed by the parties and rejected only after good faith consideration.**

If a party becomes aware of the necessity or desirability of using a witness or an exhibit not listed in his Pre-trial Memorandum, he shall promptly notify opposing counsel and the Pre-trial Conference Judge of the name and address of the witness or the nature of the exhibit. A party may not call a witness or use an exhibit without first having complied with this section unless permission of the Court is granted upon cause shown.

**39-212.4.** Each party appearing in the case or having an actual interest in it shall be represented at the Pre-trial Conference by counsel who will be in direct charge and responsible to the Court at trial. Such counsel must be vested with authority to bind his client by stipulation with respect to the trial or settlement of the case. All attorneys shall bring their files, together with any additional appropriate materials to the conference.

**39-212.5.** Matters resolved or determined by the Court and parties at the Pre-trial Conference shall be incorporated in an Order by the Court and made part of the record for the use of the Court and parties in subsequent proceedings. Such Orders shall control the course of the action unless modified by the Court at trial to prevent manifest injustice.

**39-212.6.** Unless excused from attendance in advance by the Court, counsel who fails to attend the Pre-trial Conference shall not be permitted to participate in the trial of the case.

If a party or his counsel fails to attend the Pre-trial Conference or fails to comply with the requirements of these Rules or any Pre-trial Order or Stipulation, the Court may, with or without Motion by any party, impose such penalty or sanction as it deems appropriate, including but not limited to the dismissal of the Complaint or Counterclaim, exclusion of a claim or defense or part thereof, exclusion of the use of certain witnesses or exhibits, removal from the trial list or imposition of counsel fees incurred as a result of noncompliance.