

Rule 140

FINAL PRETRIAL CONFERENCE PROCEDURE

- (a) **Timing.** A final pretrial conference under K.S.A. 60-216(e) may be held when discovery is complete. The parties must be prepared to complete the procedural steps stated in subsection (c). If a final pretrial conference is held, it must be held at least 14 days before trial.
- (b) **Participants.** If a final pretrial conference is held, the court must conduct the conference and participate throughout. An attorney who will participate in the trial must attend the conference. A party may be — and if the court orders, must be — present at the conference.
- (c) **Procedural Steps.** A final pretrial conference must be conducted substantially in conformity with the following procedural steps:
 - (1) Each party, beginning with the plaintiff, states concisely:
 - (A) the party's factual contentions; and
 - (B) the theory of the party's action, defense, or claim for relief.
 - (2) The court rules on any proposed amendments.
 - (3) The court and parties confer about undisputed matters and request admissions and stipulations.
 - (4) Parties submit in writing the names and addresses of witnesses parties plan to call. Parties must be prepared to state the essence of each witness' testimony.
 - (5) Parties inform the court and opposing parties of all exhibits parties intend to use at the trial. The exhibits may be marked for identification and admitted into evidence.
 - (6) The court may rule on any motions, including motions in limine, for dismissal, judgment on the pleadings, or summary judgment.
 - (7) Parties state:
 - (A) whether a jury is requested and, if so, whether a jury of less than 12 will be accepted; and
 - (B) the amount of time required for trial.
 - (8) If needed, the court appoints a guardian *ad litem*.

- (9) The court considers and rules on limiting the number of expert and cumulative witnesses each party may call.
 - (10) The court states the factual issues.
 - (11) The court states and may rule on the legal issues.
 - (12) The court states and may rule on evidentiary issues.
 - (13) The court may rule on jury instruction issues.
 - (14) The parties discuss and explore settlement possibilities.
 - (15) The court determines whether briefs may be filed and, if so, specifies the time for filing them.
 - (16) The court determines any procedures that may aid in disposition of the case, including:
 - (A) submission on special verdict or general verdict and interrogatories;
 - (B) consolidated or split trials;
 - (C) reference to a master; and
 - (D) less than unanimous verdict.
- (d) **Additional Matters in Condemnation Case.** In a condemnation case, the following additional matters must be considered:
- (1) Date of the taking.
 - (2) Any inconsistency between the appraisers' report and the petition's stated description of the taking.
 - (3) Legal description and size of the original tract before the taking.
 - (4) Legal description and size of the original tract taken.
 - (5) Size of the tract or parcel remaining after the taking.
 - (6) The nature of the taking — whether a fee simple interest or an easement — and any limitations on the taking established in the petition or appraisers' report.
 - (7) Access rights taken.

- (8) Any other factors to be considered in ascertaining compensation, *i.e.*, K.S.A. 26-513(d).
- (9) The parties' positions regarding highest and best use.
- (10) Requests for admissions and stipulations.
- (11) Exhibits, plats, or demonstrative evidence to be introduced.
- (12) Views of the premises.
- (13) For each witness-appraiser who will testify as to the value or damage, the party calling the witness must state the witness' valuation of the entire property or interest immediately before the taking and, when appropriate, the valuation of that portion of the tract or interest remaining immediately after the taking.
- (14) Any special instructions needed.
- (15) In the case of a temporary taking, the duration of the taking.
- (16) Any motion in limine not previously ruled upon.
- (e) **Post-Conference Discoveries.** If an additional witness or evidence is discovered after the final pretrial conference, the discovering party immediately must inform, in writing, the court and all parties not in default for failure to appear.
- (f) **Pretrial Order.** The court must prepare — or designate counsel to prepare — the pretrial order.
- (g) **Objection to Pretrial Order.** If a party objects to a pretrial order, the objection must be filed, with a copy of the pretrial order attached. An objection must be filed no later than 14 days after the pretrial order is filed unless trial begins in that 14-day period, in which case the objection must be filed at the beginning of trial.

[**History:** Am. effective March 11, 1999; Am. (f) and (g) effective September 8, 2006; Am. (h) effective February 12, 2010; Am. (a) and (f) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]