**JUDGE CARR – CIVIL CASE PREFERENCES**

**Introduction**

The purpose of the following is to introduce and remind attorneys to some of my preferences and procedures in civil cases before me. Unless I indicate otherwise, these guidelines are not orders; rather, they express what I desire from lawyers in cases assigned to me.

**Initial Case Management Conference (CMC)**

Shortly after plaintiff has filed the complaint, a member of my staff may contact counsel to: 1) determine whether the identity of opposing counsel is known; 2) confirm that service either has occurred, is about to occur, or may be delayed; and 3) determine if other non-substantive matters need attention.

Once opposing counsel is known or becomes known by filing an appearance, my staff will schedule the initial case management conference. This usually occurs earlier than the timetable in our Local Rules.

At the CMC, I will discuss and, if possible, set a timetable for: 1.) Rule 26 disclosures; 2.) discovery; 3..) motion practice; 4) if agreeable, an early settlement conference; 5.) further pretrial conferences, and 6.) such other matters as may arise.

I encourage counsel – if time permits – to discuss those subjects beforehand. Ideally, counsel should meet and confer in accord with Rule 26, and, if possible, file a Report of the Parties’ Planning Meeting a week before the conference. If counsel anticipate any problems as the case progresses, let me know at the conference.

1. **Discovery**

Counsel may, upon agreement, engage in discovery before the CMC.

Counsel may, upon agreement, when the needs of the case so require, exceed the limits on discovery in the Federal and our Local Civil Rules. When counsel agree, a motion for leave is not required.

Counsel are to abide by the mandate in Local Civil Rule 37.1 that counsel shall not file any motion of any kind relating in any way to discovery until they, in good faith, confer or attempt to confer and then make a request for me to attempt to resolve any disputes. Counsel need not meet in person, but they shall confer and try in good faith to resolve their discovery disputes.

Whenever, despite mutual good faith efforts, a dispute remains unresolved, counsel must notify my chambers, preferably by email, briefly stating the nature of the dispute. I personally handle discovery disputes, including any that arise during a deposition.

Where the dispute involves claims of attorney-client privilege or attorney work product, it is not necessary, unless I order otherwise, to prepare and submit a privilege log. Where the dispute involves fewer than forty pages, counsel may submit copies of the documents under seal before the conference. They should do so not later than three business days before the conference.

Counsel must: 1.) communicate telephonically with each other where delay is occurring with regard to, *inter alia*, responding to emails relating to discovery matters, including responding to discovery requests and setting dates; 2.) conduct themselves during depositions as if they were in open court; 3.) refrain from engaging in disruptive conduct, such as using speaking objections, being rude to or disparaging witnesses or other counsel, and using vulgar or profane language; and 4.) not terminate a deposition without first contacting my chambers and seeking a resolution of the dispute.

1. **TROs**

Unless giving prior notice would jeopardize the plaintiff’s interests, counsel seeking a temporary restraining order must undertake all reasonable efforts to learn the identity of counsel for the defendant and provide that lawyer with a copy of the complaint, motion, and, if any, supporting brief, so that counsel may, if available, participate in the TRO proceedings.

1. **Motions**

Where, instead of filing an answer to a complaint, a defendant files a Rule 12 motion to dismiss or motion for judgment on the pleadings, the Courtroom Deputy, Ms. Tina Damoah, will issue an order granting the plaintiff one month to file an opposition, and the defendant two weeks thereafter to file a reply. If at any time before the entry of a decision on the motion, any counsel desires to raise an issue for discussion with me, counsel should contact Deputy Damoah at 419-213-5565 or email: tina\_damoah@ohnd.uscourts.gov.

Unless asked to do differently or if the case otherwise requires, I schedule the filing of motions for summary judgment one month after completion of all discovery, except where the parties desire to hold expert discovery in abeyance pending adjudication of the summary judgment motion.

Absent a specific request to do otherwise, I allow one month for filing the opposition to dispositive motions and two weeks for the reply. Where there is a counter-motion, I allow one month for filing the reply/opposition to the response/counter-motion and two weeks for the counter-movant’s reply.

Where summary judgment practice may involve *Daubert* issues, counsel should brief those issue before filling the summary judgment motion. Once decisional, I will undertake to adjudicate the *Daubert-*issue motion promptly to minimize delay before the summary judgment briefing.

I always prefer that counsel file reply briefs. If counsel considers a reply brief unnecessary, he or she should promptly notify my Courtroom Deputy. Otherwise the fact that the motion is decisional without a reply may be overlooked, with resulting delay in its adjudication.

Where a motion raises an unresolved, dispositive legal issue under Ohio (or another state’s) law, counsel should, before engaging in briefing, request that I consider certifying that issue to the Ohio (or if applicable, another state’s) Supreme Court.

All references to document numbers and page identification citations should be in the document’s text, not set off in footnotes.

If a motion has been decisional for more than two months, please call this to the attention of my Courtroom Deputy. Similarly, if counsel desire expedited adjudication of a motion, they should notify my Courtroom Deputy of that need.

While I prefer that counsel abide by the page limits of our Local Rules, doing so is not mandatory if the number of issues or their complexity warrant lengthier briefing. Requesting prior leave to exceed page limitations is not necessary.

If the parties undertake settlement negotiations while a motion is pending, they should notify my Courtroom Deputy. If settlement does not occur, they should request the motion be returned to the decisional list.

I strongly disfavor motions for reconsideration. I will impose sanctions ranging from the greater of $2,000 or actual fees/costs incurred by the prevailing party for motions that merely seek reconsideration of my reasoning, or when I conclude that the motion for reconsideration had no plausible justification. I therefore caution counsel when contemplating filing such a motion.

1. **Pro Hac Vice**

Unless opposing counsel objects, counsel may move orally for pro hac vice admission at the CMC or other pretrial conference. Such request, along with payment of the requisite fee, will suffice for consideration of granting the request.

I encourage, but do not require, counsel admitted pro hac vice to: 1.) retain the services of and have an appearance filed by, local counsel; and 2.) keep local counsel fully informed about, and when appropriate, involved in the case.

1. **Electronic Filing**

All documents, pleadings, motions and briefs must be filed in a text-searchable format so that they may be copied and/or keyword searched..

Depositions and critical exhibits to pleadings and briefs, such as a contract, affidavit, employee handbook, etc., should also be filed in a text-searchable PDF format.

Counsel may, upon seeking and obtaining prior approval from chambers, manually file exceptionally voluminous exhibits.

**Settlement/Mediation Conferences**

Generally, I conduct settlement conferences by Zoom. My office will host the conference. Virtual conferences make it possible, without unnecessary expense, for lead counsel and the parties, including a representative with full settlement authority, to attend.

Counsel may always request referral to Magistrate Judge Clay, and I will make the referral, his schedule permitting. A referral may also be made to another Magistrate Judge in our District, another District Judge, the Court’s Alternative Dispute Resolution program, or a private mediator.

I require lead trial counsel for all parties to participate in the settlement conference. Co-counsel may participate in addition to or - upon notification to the court - as a substitute when lead counsel is not available.

Persons representing corporate, institutional, governmental, or similar parties, shall have full authority to settle the case. “Full authority” means that the representative shall have the authority to: 1.) make a final and binding decision as to settlement; and 2.) settle in an amount up to the opposing party’s final pre-conference demand.\*\*

\*\**I understand that it is highly unlikely that this will be the amount for which the case will settle. But, if in the unusual circumstance the representative concludes that paying that amount is appropriate, I want that representative to be able make that commitment at the conference and not by way of a telephone call, text, or email.*

For all settlement conferences: 1.) plaintiff shall make a reasonable, good faith demand not later than three weeks before the conference; 2.) defendant shall make a reasonable, good faith offer not later than two weeks before the conference; and 3.) counsel for all parties shall file an *ex parte* narrative settlement statement not later than one week before the conference.

The required *ex parte* statements shall set forth: a.) that party’s view of the strengths and weaknesses of the case; b.) the strengths and weaknesses of the opposing party’s (ies’) case; c.) the last demand/offer made; and d.) what counsel expects the client will accept or pay.

Once a settlement is reached, when requested to ensure confidentiality of settlement terms, I instruct the parties that all they can tell anyone is that the case is over, they are satisfied, and they can say nothing else about the case. I also explain the risk of noncompliance with that mandate, including repayment of the settlement amount, dismissal with prejudice of the complaint, and the possibility of a contempt citation. If a party desires to inform a spouse, family member, or another designated individual, I will make it clear that such person is to be informed of this requirement as well.

I routinely ask the parties and counsel to agree that: 1.) they will submit any post-settlement conference disputes to me for a binding, non-appealable resolution; and 2.) I retain jurisdiction following settlement.

**Courtroom and Trial Procedures**

1. **Continuances**

The trial date set at the CMC is intended as a firm date. Where circumstances give rise to a compelling need for a continuance, a motion to vacate the trial date should be filed promptly. Delayed motions for continuances are strongly disfavored.

Counsel are not permitted to stipulate to continuation of a trial date or other substantive adjustments in the schedule. Modest changes that do not significantly disrupt either filing deadlines or affect the trial date are permissible. Notice should be given to the Courtroom Deputy in advance. Otherwise, counsel should contact chambers to request a conference be scheduled.

In the event that another case is set for trial on the date that your case is also set for trial, one of the cases will be tried by another District Judge, or, if the parties consent, by a United States Magistrate Judge.

1. **Motions in Limine**

Motions in limine are to be filed not later than two weeks prior to the trial date. Opposition to such motions are to be filed one week prior to the trial date.

1. **Exhibits and Witness Lists**

Witness lists are to be exchanged one week prior to trial. The anticipated order in which the witnesses will be called should be indicated on the witness list.

All exhibits are to be marked and exchanged not later than one week prior to trial. In accordance with Rule 39.1 (See, <https://www.ohnd.uscourts.gov/local-civil-rules>), the plaintiff shall mark exhibits with numbers, and the defendant shall mark exhibits with letters, unless otherwise ordered by the Court. If there are multiple parties on either side, counsel should confer and give each party a range of numbers for each side or party. As a general rule, counsel should mark each exhibit with its own number or letter (i.e., avoid multiple sub-exhibits under a number or letter).

The court is equipped with a document camera for displaying documents, etc. Counsel are encouraged to use that machine. Alternatively, counsel must provide exhibit books for each juror and the court.

If counsel intend to use other technologies or have special needs regarding exhibits, equipment, etc., they must notify the Courtroom Deputy not later than two weeks before trial, so that appropriate arrangements can be made.

Before displaying an exhibit to a witness or juror, I ask counsel to show a copy to opposing counsel, or otherwise make certain he or she is fully aware of which exhibit you will be displaying and confirm counsel has no objection to its display.

If you will be presenting evidence through a group of documents, give all the documents in the group to the witness at the outset.

Counsel are responsible for keeping track of their exhibits and making certain that all admitted exhibits are sent to the jury, extraneous material is redacted, and any excluded exhibits are extracted.

1. **Trial briefs**

As a general rule, counsel need not prepare trial briefs unless specifically asked to do so.

1. **Voir Dire**

If the parties consent, a Magistrate Judge will conduct voir dire.

Counsel are permitted to participate in voir dire. Although there are no rigid time limits, jury selection usually takes about a half day.

All jurors receive a questionnaire with the summons. They are to complete and return the questionnaire before reporting to court for voir dire. The Clerk’s office will email the completed questionnaires on the Friday afternoon before trial.

If counsel desire to prepare their own juror questionnaire, they should notify the court at the final pretrial. If counsel cannot agree on the content of such questionnaire, they may ask the court to resolve their differences, time permitting.

Where a lengthier questionnaire is prepared by counsel, the jurors may be asked to report at 9:00 a.m. to fill out the questionnaire, which then will be scanned and given on a disc to counsel before commencement of voir dire.

As a general rule, few limits are set on voir dire questions.

Challenges for cause should be asserted immediately after questioning of the challenged juror is completed. Challenges should be made and argued only at sidebar.

Peremptory strikes are exercised outside the presence of the jury, and are exercised alternatively until each side has exhausted its peremptory challenges.

As a general rule, twelve jurors will be empaneled, and all will participate in deliberations.

1. **Trial**

Trials are normally conducted Tuesday through Friday. Voir dire is usually conducted on the Monday afternoon prior to the start of the trial.

Counsel and jurors are asked to be available by 8:15 a.m. Once counsel and jurors are present, trial will begin and continue, with breaks as desired or needed, until 4:30 or 5:00 p.m. At times, the trial day will be extended to avoid the need to continue the trial into the following day or week.

On recessing at the completion of each trial day, counsel are to inform the court and opposing counsel of the witnesses to be called and exhibits to be offered the following day and the anticipated length of examination.

To the maximum extent possible, objections are to be made known at that time, so that - to the maximum extent possible - evidentiary disputes can be resolved that afternoon without making the jurors wait.

1. **Court Reporters**

Court reporting usually will be in real time. Counsel are to make arrangements directly with the reporter if they desire to have real time or a daily copy provided to them.

Voir dire normally will not be in real time, because the reporters receive the jurors' names shortly before the proceeding and do not have an opportunity to enter the jurors' names in their real-time dictionaries.

Counsel are asked to provide the court reporter with a copy of the witness list and a list of novel or unusual terms, spellings, etc. at their earliest opportunity.

1. **Examination; Objections**

Before each witness is called, counsel will be asked to briefly summarize the witness's anticipated testimony and indicate its relationship to the issues in the case.

Counsel may address the court, jury, and witnesses from counsel table, the fixed lectern or a small portable lectern. Please stand when addressing the court, jurors, or witnesses.

Counsel should address witnesses by surname (*i.e.,* Mr., Mrs., Ms. Jones). Where appropriate, counsel may address a witness by title (*i.e.*, Agent, Officer, Doctor).

When a document is first brought to the juror's attention, either state, or have the witness state, its exhibit number or letter, as well as the date, author, recipient, and general subject matter.

When a witness is testifying about a conversation, have the witness state the date, time, place, participants, and general subject matter.

State objections in the presence of the jury as briefly as possible to inform the court and opposing counsel of the grounds for the objection, preferably by citation to the applicable evidentiary rule or doctrine.

Speaking or argumentative objections in the presence of the jurors and witness are not permitted. All arguments on objections will be conducted at sidebar and on the record.

Offers of or requests for stipulation should be made at sidebar, or otherwise outside the presence of the jury.

If all counsel agree, in civil cases, jurors may ask questions, which court and counsel will screen before being asked of the witness.

In appropriate circumstances (i.e., protracted, or multi-issue cases), counsel may, upon agreement, summarize in a narrative and objective manner, the evidence already presented.

1. **Non-Jury Cases; Proposed Findings of Fact and Conclusions of Law**

Proposed findings of fact and conclusions of law are not required in all cases. Counsel should determine whether such materials need to be filed at the settlement/final pretrial conference.

1. **Jurors and Jury Instructions**

Counsel are to submit proposed jury instructions and any proposed special verdicts not later than one week prior to trial.

The proposed instructions should relate only to the substantive issues in the case. It is not necessary to submit opening and closing boilerplate.

Proposed instructions should indicate their source.

Counsel may obtain copies of instructions from prior cases from the court’s website.

As a general rule, instructions will follow (in order of preference): 1.) Sixth Circuit pattern instructions; 2.) Devitt & Blackmar; and 3.) Sand. Instructions on Ohio law will be based on Ohio Jury Instructions.

Before submitting proposed jury instructions, counsel are to have exchanged, discussed, and made good faith efforts to resolve any disagreements about them. Jury instructions that are agreed upon should be submitted as such.

Every effort will be made to prepare initial jury instructions (including instructions on the elements of claims and defenses) and charge the jury before opening statements. The jury always will be charged prior to closing arguments. Jurors will have copies of the instructions when being charged though not to retain until the case is concluded.

Counsel may refer to the instructions and law recited therein in opening statements and closing arguments.

Jurors may take notes and refer to the notes during deliberations.

1. **Videorecording of Proceedings**

If counsel and the parties consent, civil trials will be videorecorded. Counsel are encouraged to consent to this process.