



“No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.”

-Felix Frankfurter, 1951

United States Magistrate Judge Abbie Crites-Leoni

**Cape Girardeau
(Duty Station)
Courtroom 4A**

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Paralegal
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Law Clerk
Erin McHugh-Dial

Requirements

1. Local and Federal Rules

Many answers to frequently asked questions are contained in the [Local Rules](http://www.moep.uscourts.gov/local-rules) (<http://www.moep.uscourts.gov/local-rules>) of the Eastern District of Missouri, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the [Federal Rules of Evidence](#). All counsel and *pro se* parties are expected to know these rules and follow them. Frequent review of the rules is recommended because they are often amended.

2. Informal Matters

I do not have a set time for informal matters (minor issues such as deadline changes or other minor disputes), but most days I can usually be available. If you have an informal matter, please notify opposing counsel, ascertain opposing counsel's availability, and call my Paralegal, April Ash, to schedule a time for an in-court or telephone conference. Most minor, agreed deadline changes can be handled in writing, by filing a motion to extend the deadline and stating that opposing counsel consents. I will rule on such consent motions as

soon as possible. If you have an emergency motion that needs a formal hearing on the record, you should call my chambers to schedule a hearing.

3. Attorney Admissions

I am always happy to handle Oaths of Admission for new attorneys. You may call my chambers to schedule a time for an Oath of Admission. I welcome, but do not require, an admitted attorney to introduce the new attorney.

4. Court Docket

My court docket is managed by my Paralegal, April Ash. She handles all questions regarding my docket.

5. Rule 16 Conferences in Civil Cases

I conduct most Rule 16 conferences via telephone although prefer to meet with counsel in person when possible. First, an Order Setting Rule 16 Conference will be issued requiring the parties to meet and prepare a proposed Joint Scheduling Plan (JSP). Unless otherwise ordered, the JSP is to be filed with the court no later than one week prior to the scheduled Rule 16 conference. Unless otherwise ordered, plaintiffs are responsible for initiating the meeting and filing the JSP.

The court encourages cooperation between the parties in preparing and filing the JSP. **A lack of cooperation does not relieve a party from complying with the requirement to file a JSP.** If a party finds the need to file a separate JSP, a memorandum should be attached to the JSP explaining why a joint plan cannot be filed. The Rule 16 conference will be at a scheduled time and any problems the parties have in working together will be addressed.

At the Rule 16 conference, you should be prepared to discuss the facts of your case and all other matters set out in the Rule 16 Order, including settlement and any potential problems or unusual issues that your case presents. Please do not send an unprepared substitute attorney or an attorney who cannot make a commitment regarding the calendar of trial counsel. I expect the attorneys who attend the conference to know the case and be prepared to discuss all issues, including changes to the proposed schedule and trial setting.

6. Scheduling and Status Conferences

Counsel may request a scheduling or status conference when the need arises by calling my chambers and scheduling an appointment.

7. Case Management Orders in Civil Cases

A Case Management Order (CMO) is entered pursuant to the discussion at the Rule 16 conference. Any requests for changes, modification, or amendment of a CMO shall be made by written motion and filed electronically. Requests for changes in the CMO with respect to trial dates and deadlines for dispositive motions are not routinely granted and must be supported by statements of good cause.

Generally, the trial date and the date for filing dispositive motions are firm and will not be moved absent exceptional circumstances. Other dates in the CMO may be changed by

written order of court. If both parties agree to adjust dates other than the trial date or dispositive motion dates in the CMO, counsel may file a consent motion to amend the CMO detailing the requested changes.

8. Alternative Dispute Resolution (ADR)

I refer most civil cases to mediation. Please be prepared to discuss the appropriate timing for referral to ADR at the Rule 16 conference. When setting a date for mediation in the proposed schedule, counsel should consider what discovery they need in order to conduct a meaningful mediation conference. Plaintiff's counsel, or any counsel the parties agree to, will be designated as lead counsel who shall work with opposing counsel to select a neutral and notify the Court Clerk of the agreed upon neutral, no later than twenty days from the start of the referral. Please note that once the case has been referred to ADR, those deadlines are binding and may only be extended by order of the Court. Lead counsel will be contacted by the Court if deadlines have expired.

List of the Court's neutrals: <https://www.moed.uscourts.gov/neutrals/>. For more information: <https://www.moed.uscourts.gov/alternative-dispute-resolution-adr>.

If a settlement is reached, the Court must be notified immediately, and parties shall file a Stipulation for Dismissal within thirty days. The Court must also be notified immediately if a settlement is not reached so the case can proceed to trial.

9. Discovery Disputes

Before filing any discovery-related motion, you must confer with opposing counsel and attempt to resolve the dispute, and in accordance with the relevant local rule, your motion must contain a certification that you have done so. Motions that do not contain the required certification will be denied without prejudice. The requirement that the parties confer means that the moving party must actually speak to opposing counsel, in person or by telephone. If opposing counsel will not return your calls when you attempt to resolve the matter, you should detail those efforts in your certification with the motion. I expect the parties to make a good faith effort to resolve the dispute prior to filing a discovery-related motion.

When you cannot resolve legitimate disputes, and must file motions, I will either set the motions for hearing or rule on the papers, depending on what I think is appropriate after I have reviewed the motions. If you desire to have a hearing on the discovery motion, you should note that request in your motion or memorandum and, once the filings are complete, contact chambers to request a hearing. If you have an emergency, you should contact chambers and arrange a preliminary telephone conference.

10. Sealed Document and Protective Orders

Proposed protective orders submitted to the Court for approval that contemplate the filing of a file or documents under seal must contain a date certain on which the seal will be lifted or the documents returned to the parties. A proposed protective order lacking a date certain for lifting the seal or returning the documents to the parties will be denied without prejudice. Attorneys are

also referred to the provisions of E.D.Mo. Local Rule 13.05 concerning sealed documents and files.

11. Final Pretrial Conference

I typically set a final pretrial conference for the week preceding trial. At that conference, scheduling issues, evidentiary problems, motions in limine, and any other relevant matters will be discussed. A record may be made on those issues requiring such a record. Counsel will also be advised of the starting time of the trial for the following week, usually Tuesday at either 9:00 a.m. or 1:00 p.m. Any necessary argument and all rulings will be on the record.

12. Jury Instructions

The 8th Circuit Manual of Model Jury Instructions for the District Courts of the Eighth Circuit should be used when possible. The Jury Instruction Builder and current instructions may be found at <https://juryinstructions.ca8.uscourts.gov/>. The basic introductory and boilerplate instructions must be based on the 8th Circuit Model Jury Instructions. See If instructions from any other source are proffered, they must be accompanied by case authority.

The parties are required to meet and confer regarding jury instructions and whenever possible submit one package of jury instructions to the Court on behalf of all the parties. Parties must submit a "clean" copy and a "dirty" copy of each instruction proffered. A "clean" copy for the jury will reflect only "Instruction No. ___" at the top of each separate instruction page with no further explanatory comments.

The parties shall also submit their proffered jury instructions to the Court in Microsoft Word or other electronic format by e-mail to my Paralegal, April Ash, at the following e-mail address: April.Ash@moed.uscourts.gov.

13. Available Courtroom Technology

The Court has evidence presentation equipment available, including an evidence camera (e.g., ELMO), VCR, DVD, monitors, and hook-ups for computer stored evidence or computer presentation. An explanation on the use of this equipment is available on the Court's website, <http://www.moep.uscourts.gov/courtroom-technology>. Interested counsel should call the Clerk's Office to schedule training before trial. Training usually takes no more than 30 minutes, and gives you the opportunity to get comfortable with the equipment BEFORE trial. Please contact the Clerk's Office at least one week prior to trial to request a training session and time to practice with the equipment. No training will be provided on the day of trial. If you intend to use your computer with the Court's evidence presentation system, you must confer with the Clerk's Office before trial to be sure your settings and connections will successfully interface with the Court's system. The Court does not provide equipment to play an audio tape; you will need to bring your own tape player.

At the beginning of trial I will receive into evidence any exhibits that have not been objected to in the pretrial submissions. On the first day of trial, counsel should bring a joint list of all exhibits that can be admitted without objection.

14. Jurors and Voir Dire

Before the case is called, counsel must supply the Court with a joint brief statement of the nature of the case to be read to panel members during voir dire. Attorneys for both parties are expected to agree on this statement, which should be phrased in neutral terms.

Counsel will be provided with a jury panel list as the jury arrives in the courtroom. The list contains the names, employer, former employer, occupation, spouse's employer and occupation, and the number of employees the prospective juror supervises in the work force. The list also contains the municipality in which the juror lives. The list must be returned to the deputy clerk after the jury is selected.

I will open voir dire by explaining its purpose and describing the voir dire procedure to the jury. I may ask a few basic introductory questions of the panel such as the nature of the case, burden of proof, prior jury service, length of the trial, etc. I will ask if the potential jurors know any of the potential witnesses from the lists provided by the parties in the pretrial filings. Finally, I will read the brief stipulated statement of the nature of the case prepared by counsel as part of the pretrial package.

After initial questions by the Court, counsel may conduct additional voir dire subject to time limits. The voir dire specifics, such as time limits, will be outlined at the pretrial conference. In every case, the Court reserves the right to conduct the voir dire. In such cases, counsel will be encouraged to submit voir dire questions to the Court no later than five days before trial. If you want me to ask any specific questions that, for some reason, you prefer not to ask, please submit them to me in writing, with notice to opposing counsel. Otherwise, you may inquire about anything relevant to jury selection. You may not ask unnecessary questions such as asking the jurors to make promises to you, make speeches, argue your case, tell the jury about yourself or your family, or do anything else that is not directly designed to elicit relevant information about the potential jurors.

After all questioning has been completed, the venire panel will be removed from the courtroom and I will immediately ask for challenges for cause. No challenges for cause or statements that the panel is acceptable may be made in front of the jury panel. After any persons are stricken for cause, the parties will make their peremptory challenges. In civil cases, the first seven or eight jurors remaining after the strikes will be seated and will deliberate; no formal alternates will be designated.

For voir dire questioning, the venire panel is seated left to right in the jury box. The panel members numbered 1 through 7 will be seated in the front row of the jury box, while jurors numbered 8 through 14 will be seated in the back row. The rest of the venire panel members will be seated in the spectator's gallery, also seated numerically, left to right.

15. The Trial

a. *Time of Trial:* Times for starting and adjourning the trial day will be announced at the start of trial. Court will begin promptly to avoid keeping the jury waiting. In particular, counsel are discouraged from raising preliminary matters at the start of the trial day, when the jury and all others are ready to proceed. The Court will be available to resolve

preliminary matters 30 minutes prior to the scheduled start of the trial day, or during the lunch break, or at the conclusion of the trial day.

b. *Use of Exhibits and Opening Statements*: This is permitted as long as you have consent from opposing counsel and advise the Court in advance. No exhibit shall be shown to the jury in opening statements or at any other time until it is received in evidence or the Court has granted permission for the exhibit to be shown to the jury, unless the parties stipulate to its use on the record in advance of its publication to the jury.

c. *Evidentiary Objections*: Counsel should stand for all objections, and state the legal basis for the objection in a word or, at most, a phrase without elaboration or argument (unless called to the bench). No evidentiary objections shall be argued in the presence of the jury. Bench conferences during trial are discouraged. I will either rule or ask you to approach for a sidebar conference. For purposes of "protecting the record" and assisting the Court of Appeals, counsel may explain their positions and the Court may explain its ruling on the record after the jury has been excused for a scheduled break or lunch. Counsel should instruct their witnesses not to answer a question while an objection is pending.

d. *Recross*: Recross is not allowed as a matter of right. Recross is only allowed if something new is brought out on redirect.

16. Courtroom Logistics and Procedures

a. *Use of the Lectern*: Voir dire, opening statements, examination of witnesses, and closing arguments must be made from the lectern. You may approach a witness to deliver an exhibit, but must then return to the lectern for questioning. You may never hover over the jury for any reason.

b. *Recording*: Except for trials, the proceedings in my courtroom are at a minimum electronically recorded. Therefore, anything you say must be directed into the microphone at the lectern. If you speak from one of the counsel tables or while you are returning to the lectern after handing an exhibit to a witness, your question or objection may not be part of the record.

c. *Exhibits*: You must pre-mark all exhibits, as set out in the Case Management Order. Do not ask the courtroom clerk to mark exhibits for you. The Case Management Order requires plaintiffs to use numbers and defendants to use letters for exhibits. The parties should attempt to stipulate to the admission of as many exhibits as possible prior to trial. I ask that you bring a list of all exhibits which may be received without objection at the beginning of trial. Unless otherwise stipulated, examining counsel must show each exhibit to opposing counsel prior to showing it to a witness. Demonstrative and summary exhibits must be shown to opposing counsel in advance of trial, even if not offered into evidence.

d. *Depositions and Video Depositions*: Please do not over designate portions of depositions you intend to use at trial. Prior to the start of trial, you must notify opposing counsel of what portions you actually intend to offer, so that opposing counsel can determine whether they still wish to object or to counter-designate. Counsel must attempt to resolve any

objections and bring to my attention any objections that cannot be resolved well in advance of the proposed use of the deposition, so that I can rule on any objections without wasting jury time. All objections to depositions will be ruled on before the jurors report daily, at noon, in the evenings, or after the jurors are excused. If you wish to play a video deposition, please let me know in advance, so that I can rule on objections in time for you to make the necessary edits or otherwise address the logistics.

e. Use of Depositions at Trial: If you are reading lengthy portions of a deposition, please bring a reader to sit on the witness stand and read the answers while you read the questions. Please caution your readers about being overly dramatic.

The court reporter does not transcribe deposition testimony. For the record you must provide a list of the pages and line showing the portions of each deposition that was actually read or shown to the jury. You may do this at the end of the day or the end of the trial, but it is your responsibility to provide a record of what is actually presented.

f. Rule Excluding Witnesses from Courtroom: If you wish to exclude potential witnesses from the courtroom during trial, you must advise me at the final pretrial conference. Once in place, the rule remains in place for the entire trial.

g. Real Time Court Reporting: Court reporters for my civil trials use real time court reporting. If you wish to order a daily copy of the trial transcript, please contact the court reporter well in advance of the trial so that the appropriate arrangements can be made. My Paralegal will be able to confirm the assigned court reporter for your case.

17. Courtroom Decorum

Jurors form impressions of the operations of their courts based upon the performance of the judge, lawyers, and court personnel. Lawyers and persons representing themselves are expected to practice civility at all times in the courtroom. Jurors have a right to believe that their time will not be wasted. Jurors will not be expected to wait in the jury room while counsel and the Court are resolving motions or objections.

a. Please notify the Deputy Clerk upon arrival and introduce additional counsel, support staff and parties.

b. Please stand when the jury enters the courtroom and stand at all times when speaking. No eating, drinking (other than water), gum chewing or audible beepers or watches are allowed. Cell phones and other personal electronic devices should be turned off. Please relay these rules to your clients and witnesses.

c. Counsel shall treat all court employees, each other and all witnesses, including adverse witnesses, professionally and courteously. All witnesses must be addressed by their last names with appropriate titles. Additionally, please advise witnesses not to address counsel by their first names. This rule is intended to govern how we address one another in the courtroom - it is not a rule requiring witnesses to refer to one another in any certain way during their testimony. Only one lawyer per party may question a particular witness.

d. Children are not allowed as spectators unless they are accompanied by an adult seated with them in the spectators' area. A party to the suit (defendant, attorney, case agent, etc.) cannot qualify as the attending adult.

d. Persons seated at counsel table shall not make any verbal comments, facial expressions, laughter, or other expressions, verbal or non-verbal, to the jury which would be interpreted as conveying a comment one way or the other with respect to any testimony, argument, or event that may occur during trial.

e. All statements by counsel should be directed to the Court and not to opposing counsel.

f. Counsel shall disclose the identity and order of witnesses as far in advance as possible, but not less than 5:00 p.m. the evening before the beginning of the trial day on which the witnesses are to be called.

g. Sidebar conferences are disfavored, but may be had with Court approval. Scheduling or substantive issues should be addressed during breaks without the jury present.