United States District Judge

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Requirements

1. Local and Federal Rules

Many answers to frequently asked questions are contained in the 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 judicial assistant 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.
I am always happy to handle Oaths of Admission of 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.

3. Rule 16 Conferences and Case Management Orders

Civil cases are usually set for Rule 16 conferences after all defendants have answered or filed motions in response to the complaint. If for some reason a party believes a conference should be sooner, that party should file a motion. Rule 16 conferences are conducted in person, and are usually held in chambers. When a party appears pro se, the Rule 16 conference is held in the courtroom, on the record. Out-of-town counsel may arrange to participate by conference call, but must notify chambers with contact information at least one business day prior to the scheduled conference. 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. Do not send an unprepared substitute attorney or an attorney who cannot make a commitment regarding the calendar of trial counsel, as I expect all counsel to know the case and be prepared to discuss all issues, including changes to the proposed schedule and trial setting.

4. Scheduling and Status Conferences

Counsel may request a scheduling or status conference when the need arises by calling my chambers and setting up an appointment. If after entry of the Case Management Order, counsel find they have a problem that is keeping the case from moving forward, or counsel are in agreement regarding an idea to move the case forward more efficiently, counsel may contact chambers and arrange a conference call to discuss the matter.

5. Alternative Dispute Resolution (ADR)

I refer most civil cases to mediation. Please be prepared to discuss the appropriate timing for referral to mediation 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. A list of the Court's neutrals and the court's ADR can be found at http://www.moed.uscourts.gov/. Please note that once the case has been referred to ADR, those deadlines are binding and may only be extended by court order.

6. 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.

7. Expert Witnesses

a. Be prepared at the Rule 16 conference to discuss the types of expert witnesses who are likely to testify in the case and whether and when they will provide reports and/or depositions. Parties are allowed to stipulate to different ways of disclosing expert opinions, but in the absence of a stipulation, the provisions of Rule 26 will be applied.
b. Disclosure of Non-Retained Experts: Rule 26(a)(2)(C) of the Federal Rules of Civil Procedure was amended on December 1, 2010, "to mandate summary disclosures of the

opinions to be offered by expert witnesses who are not required to provide reports under Rule 26(a)(2)(B) and of the facts supporting those opinions." 2010 Advisory Committee Notes. I read the amendment generally to cover witnesses such as treating physicians, and the employees of parties who are expected to provide expert opinions but whose duties as employees do not regularly involve giving expert testimony. Parties must identify such witnesses under Rule 26(a)(2)(A) and provide the disclosure of expert opinions required under Rule 26(a)(2)(C). Such witnesses may offer both fact testimony and expert opinions, and the disclosure is required only as to the expert opinions. The disclosure requires less than the written report required under (a)(2)(B), but must include a summary of the opinions to be offered, and the facts upon which those opinions are based. Any opinions not disclosed are subject to being excluded at trial. I usually require the disclosure to be made in conjunction with the disclosure of that party's other expert disclosures, and typically include the following language in my Case Management Orders:

Disclosures of treating physicians or other witnesses expected to provide expert opinions, who are not retained or specially employed to provide expert testimony within the meaning of Fed. R. Civ. P. 26(a)(2)(B), shall be made in accordance with Rule 26(a)(2)(C) and on the same date as that party is required to disclose other expert witnesses, unless the Case Management Order provides otherwise. Failure to disclose a summary of all opinions and supporting facts to which the witness is expected to testify shall be grounds to exclude any undisclosed opinions. Any objections to the sufficiency of the disclosure shall be made promptly.

8. Trial Settings

Most cases are set for trial on a three-week docket. This is a firm setting, meaning I almost always reach all the cases set within that time. For St. Louis trials, juries are picked at 9:00 a.m. or 1:15 p.m. on Mondays and Wednesdays. If you have not heard otherwise, you should assume your case is #1 on the trial docket.

9. Final Pretrial Conferences

If your case is still on the docket two weeks prior to the scheduled trial date, you will be contacted by chambers to schedule a final pretrial conference. I normally hold final pretrial conferences two or three business days prior to the scheduled trial date. Counsel should be prepared at the final pretrial conference to argue any motions in limine, so that I can attempt to rule on such motions in advance of the trial date. We will put any necessary argument and all rulings on the record at the end of the pretrial conference or 30 minutes prior to the start of trial. For trials in Cape Girardeau or Hannibal, final pretrial conferences will be held in St. Louis, unless you are notified otherwise.

10. 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 at http://www.moed.uscourts.govunder Courtroom Technology. I strongly encourage counsel to use

the evidence camera or ELMO for all trials. Please call the Case Management Team in 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. 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 are appropriate for our system. The Court does not provide equipment to play an audio tape; you will need to bring your own tape player.

11. Jurors and Voir Dire

a. Agreed Statement of the Case: 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. Counsel is expected to agree on this statement, which should be phrased in neutral terms.

b. Number of Jurors and Seating: The number of jurors in a civil trial will depend on the length of the trial. For voir dire questioning, the venire panel is seated left to right in the jury box, Nos. 1 through 5 in the front row, 6 through 10 in the middle row, and 11 through 16 in the last row. The rest of the venire panel members are seated in the left and middle rows of the spectators' gallery, also seated numerically, left to right.

c. Juror List: You will be provided a list of the jury panel members as they enter the courtroom, as well as a seating chart with the jury panel members' names filled-in, and each panel member will wear a tag with his or her number. The jury list is not available in advance. The list contains the name, municipality where the juror lives, current employer, former employer, occupation, and spouse's employer and occupation. Hobbies and children's ages and occupation are provided if the juror gives us that information. You may take notes on this list if you so desire. After the jury is selected, all copies of jury lists must be returned to the clerk.

d. Voir Dire Examination: In most cases I allow attorneys to conduct part of the voir dire. I will begin by asking counsel to introduce themselves and their clients. I then ask introductory questions covering such things as the nature of the case, burden of proof, prior jury service, length of the trial, etc. 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. Questions must first be posed to the panel as a whole. You may then ask follow-up questions of any persons who raise their hands. You may also ask follow-up questions based on my questioning. You may not ask unnecessary questions in order to establish rapport, ask 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. In every case I reserve the right to conduct the entire voir dire. In such cases, counsel will be advised to submit proposed voir dire question to the Court no later than two business days before trial.

e. Jury Selection: After all questioning has been completed, the panel will be removed from the courtroom and I will immediately ask for challenges for cause. No challenges for cause or statements that either the panel or any juror is acceptable may be made in front of the jury panel. After any panel members are stricken for cause, the parties will make their peremptory challenges from the number of jurors equal to the number to be seated plus the total number of peremptory strikes (i.e., for a seven-person jury, with three

peremptory strikes per side, challenges will be exercised with regard to the first thirteen jurors remaining after strikes for cause). Plaintiff will make its peremptory challenges and then the defense will make its challenges. In a civil case, all jurors remaining after the strikes will be seated and will deliberate; no formal alternates will be designated.

12. Courtroom Logistics and Trial Rules

a. Time of Trial: I typically begin trial at 9:00 a.m. and conclude at 5:00 p.m. I expect the parties to be prepared to begin promptly, so the jury is not kept waiting. Counsel will not be permitted to raise preliminary matters at the start of the trial day, when the jury is ready to proceed. The Court will be available to resolve preliminary matters 30 minutes prior to the scheduled start time of the trial day, during the lunch break, or at the conclusion of the trial day.

b. Use of Lectern: Voir dire, opening statements, examination of witnesses, and closing arguments must be made from the lectern. You do not need to ask my permission to approach the witness to hand the witness an exhibit. Counsel must then return to the lectern for questioning, unless counsel must direct the witness's attention to a part of the exhibit. Counsel may not hover over the witness during an examination and may never hover over the jury for any reason.

c. Objections: You should stand and state the legal basis for your objection without argument or elaboration. I will either rule or ask you to approach for a sidebar conference.

d. Juror Note-Taking: I generally permit jurors to take notes during the trial.

e. Use of Exhibits and Opening Statements: You may use exhibits in your opening statement so long as you have consent from opposing counsel and advise me in advance.

f. Recross: I do not allow recross as a matter of right; recross is allowed only if something new is brought out on redirect. If counsel wishes to recross a witness, counsel must approach the bench with the request and tell me the areas on which recross is sought. I will determine whether the questioning will be allowed.

g. 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. If you are a defendant and have more than seventy-eight exhibits (ZZZ), you should consider using a method that avoids excessive multiple use of a single letter (such as AAAAA). There are several ways to do so and still comply with the pretrial order (for example, after Z, you might use AA, AB, AC . . . AZ, followed by BA, BB, etc.).
   The parties must 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.

h. Depositions and Video Depositions: Counsel often "overdesignate" portions of the deposition they intend to use at trial in their pretrial submissions. 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.

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.

i. Jury Instructions: I use the Eighth Circuit Model Jury Instructions for boilerplate and substantive matters covered by those instructions. The Missouri Approved Instructions (or another state's approved instructions, when appropriate) are used for issues governed by state law.

I usually send the final instructions to the jury in writing, and also display them to the jury on the visual presenter while they are being read. The parties must submit two complete sets of instructions. One set should be "clean," i.e., with no authority, case caption or indication of the offering party, and shall include only the words "Instruction No. ___" at the top. The other set of instructions should indicate the source of or authority for the instruction, indicate the offering party, and be numbered at the top. The parties must also give the Court a clean copy of their instructions on disk at the final pretrial conference, in order to assist the Court in making necessary changes.

Counsel are required to meet and confer regarding jury instructions and, whenever possible, to submit one package of jury instructions to the Court on behalf of the parties. In the absence of agreement as to the instructions, counsel should expect to have the final jury instruction conference in the evening, at the conclusion of the trial day.

13. Courtroom Decorum

a. Please stand when the jury enters the courtroom and stand at all times when speaking.
b. No eating, cell phone usage, drinking other than water, gum chewing, or audible beepers or watches are allowed. Please tell your clients and witnesses these rules.
c. All witnesses and opposing counsel must be addressed by their last names, with appropriate titles. Do not call any witnesses by their first names, even your clients, and 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.
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. Young children are not allowed as spectators unless they are accompanied by an adult seated with them in the spectators' area. An individual seated at counsel table or a witness, while testifying, cannot qualify as the attending adult.
f. All statements by counsel should be directed to the Court and not to each other. Counsel is expected to treat each other, all Court personnel, and all witnesses, including adverse witnesses, professionally and courteously.