

QUESTIONNAIRE FOR DISTRICT JUDGE
AND MAGISTRATE INTERVIEWS

I. Commencement of Action and General Procedures

- A. Initial court review upon filing? (Removal review; jurisdictional review; U.S. as litigant.)

Upon commencement of a civil action, the case is randomly assigned to either a district judge or a magistrate judge. Regardless of the assignment, a consent to jurisdiction form is sent to the parties. It must be returned to the Clerk of Court within 20 days. If the case is assigned to a district judge and the parties consent, the assigned district judge executes a transfer order and sends the case to the magistrate judge whose name appears on the consent form. Consent to jurisdiction of the magistrate judge can occur at any time after commencement of the lawsuit so long as it is approved by the assigned judge.

If the case is initially assigned to a magistrate judge, regardless of whether the parties consent, the magistrate judge will be responsible for all pretrial processing. If the parties do not consent, at the conclusion of the pretrial processing, the case will be returned to the Clerk of Court for random assignment to a district judge. If the parties consent, the case will remain with the assigned magistrate judge for final resolution.

- B. Scheduling conference procedures. (When, what format, what forms used for scheduling first conferences and pretrial conferences?)

Soon after assignment of a civil case, Magistrate Judge Goodstein holds a status conference at which time a case management schedule is established. Depending upon the case, he may also hold a further status conference to ascertain what, if any significant matters remain. At one of the status conferences, he will set a time for dispositive motions and a trial date. Trial dates are certain. The magistrate judge will work with the parties in scheduling trial dates. However, once a firm trial date is set in a civil action, it will be changed only under extraordinary circumstances.

C. Telephone conference calls?

All initial scheduling conferences are conducted by telephone. Many brief hearings on non-dispositive motions, such as discovery disputes, are also conducted by telephone.

D. Courtroom protocol. (Where counsel tables are positioned, whether to stand when addressing the Court; tardiness; scheduling conflicts; side-bar conferences; request to approach witness, marking and handling of exhibits, use of computers, video exhibits, CDRoms, etc.)

Proceedings start at the scheduled time. Counsel should remain at table when questioning witnesses, except if there is a need to approach. During jury trials, side-bar conferences are the exception.

E. Procedures for resolving scheduling conflicts. (Trial dates, motion dates; how and when brought to Court's attention; what grounds valid for rescheduling?)

Will try and accommodate scheduling conflicts except for trial date. Matter should first be discussed with opposing counsel to ascertain that party's position on request for adjournment; then telephone law clerk.

F. Practice re assignments and references to magistrates.

See IA above.

G. ADR procedures.

Encourage ADR. See Section VII A.

II. Civil Law and Motion Procedures

A. Days, times for calendar (what does the judge require in terms of advance notice to the court of motions to be presented?).

No set motion date.

Local rules. Oral argument infrequent except under Local Rule 6.07 procedure for non-dispositive motions. File Rule 6.07 motion and telephone law clerk regarding scheduling.

- B. Procedures re scheduling. (Call Judge's clerk or law clerk first to set? Resetting on Court's own motion? Short matters called first? Will any orders on motions be entered without court appearance? What types of motions? How do lawyers determine whether an appearance is required?)

See IIA above.

- C. Procedures re obtaining orders shortening time. (Court or magistrate; need for personal appearance by attorney; ex parte vs. stipulated; notice to opposing counsel?)

If a matter is to be rescheduled, attempts at reaching a stipulation with the opposing party should be made; then contact law clerk.

- D. Calendaring TROs, preliminary injunction hearings, contempt hearings. (What arrangements required; practice re allowing evidentiary hearings?)

After bringing motion, contact law clerk regarding scheduling., The court may hold a telephone conference with the attorneys to discuss procedures, i.e. evidence, oral argument, briefs, etc.

- E. Continuances. (Practice re granting; preferred procedures.)

Trial continuance rarely granted; only for extraordinary circumstances. Stipulations for rescheduling other matters will be given prompt attention.

- F. Briefing schedules. (Any special preferences or rules?)

Local rules.

- G. Oral argument. (When desired, when unnecessary? Will oral argument on motions be granted if a party requests it? Under what circumstances? Any provision for identifying particular questions for argument? Any tentative ruling procedure? Any time limits? Preferred procedure for presenting new authorities not included in briefs?)

Rarely on dispositive motions, except on Social Security appeals or preliminary injunction hearings. Will use Local Rule 6.07 and oral argument on certain non-dispositive motions.

- H. Motion papers and briefs. (Extra copies desired? Particular format preferred? Special length provisions? Contacts with law clerks encouraged, discouraged?)

See Local Rules. If questions, call law clerk.

- I. Should motion papers and briefs be filed in chambers, in the clerk's office, or both?

Clerk's office, except if directed otherwise by court staff.

- J. Preparation of proposed orders after rulings. (When submitted, by whom, preferred procedures re obtaining opposing counsel's approval as to form?)

Submit only upon request.

- K. Other comments?

III. General Duty Judge -- Special Proceedings

- A. Preferred procedures for scheduling matters in General Duty department. (Call clerk? Regular calendar? Orders shortening time and emergency matters -- practice; ex parte vs. stipulation; notice to opposing counsel.)

N/A to Magistrate Judge.

- B. Evidentiary hearings. (How to schedule, preferred practice?)

N/A to Magistrate Judge.

IV. Criminal Law Procedures

- A. Days, times for calendar.

When duty magistrate judge (every third month): Arraignment and pleas normally on Friday mornings.

Petty offenses, third Monday of every month at 9:00 a.m.

All other appearances are scheduled as is needed, as soon as possible.

- B. Procedures for scheduling. (Scheduling orders; how firm are dates initially set? Preferred method of changing dates, continuances; conflict between criminal trial date and civil trial already set.)

Motions for continuance of a felony trial are to be submitted in writing and directed to the District Court Judge who is assigned the case. On misdemeanor matters tried before the Magistrate Judge, file a written motion.

Initial appearances before the Magistrate Judge involving an arrest pursuant to a warrant are scheduled as soon as possible.

Arraignment - if the defendant is not in custody, a summons or notice for his or her appearance will be issued. These will usually be scheduled on Friday mornings.

Changing dates other than trial date - if known in advance, file a written motion to reschedule. Depending upon the circumstances and urgency, a request may be made by a telephone call provided opposing counsel has no objection.

The adjournment could be affected by the time constraints of the Speedy Trial Act (evidentiary hearings will not be rescheduled if it would result in changing the trial date).

C. Bail procedures.

1. When, by whom are initial bail determinations made; preferred method, content of presentation (proffer or live witnesses)

Initial bail is set by the Duty Magistrate Judge. A report will be prepared by the Pre-Trial Services Department.

2. Procedure for appeal of Magistrate Judge's ruling on bail issues.

If appealing, the District Judge assigned to the case will hear the appeal. If requesting a modification or reconsideration, will have to come back to Magistrate Judge who set the bond. The Magistrate Judge who initially established the conditions of release, or detained the defendant, will remain responsible for any review or modification, even if a different Magistrate Judge is assigned to process pretrial matters.

3. Procedure for obtaining exemption from bail conditions (trip out of town) or modification of bail provisions.

Write letter to Magistrate Judge who set the bond setting for the specific request including a statement that the U. S. Attorney has no objection. The

pretrial services office should also be notified, especially if the defendant is subject to electronic monitoring conditions. If the U. S. Attorney objects, then a formal motion must be filed and a subsequent hearing will be set.

- D. Speedy Trial Act motions and orders. (Will Court accept stipulation between Government and counsel re Speedy Trial Act time exclusion, or complex case designations? If not, how, when determined?)

Request for change must be put in writing. Motion for continuance of felony trial is heard by the District Court Judge assigned the case.

- E. Criminal evidentiary/suppression hearings. (Procedures to calendar evidentiary hearings; proffers, declarations or affidavits vs. live testimony; statements of contested and uncontested facts and issues.)

See Pre-Trial order attached.

- F. Oral argument. (Ever considered unnecessary? Any provision for identifying particular issues for argument? Any tentative ruling system? Time limits? Preferred practice for submitting newly discovered authorities?)

Not normally. Normal course involves a short period of time to submit post-hearing briefs. When time will not permit briefing, the Magistrate Judge may entertain oral argument.

- G. Motion papers and briefs. Timing on filing briefs and motions in limine. (Extra copies desired? Particular format preferred? Contacts with law clerks encouraged, discouraged?)

File original and copy in clerk's office.

- H. Trial briefs, jury instructions, forms of verdict. (When required from defense, preferred format and sequence, etc.)

In misdemeanor cases, a final pretrial conference will be held approximately ten (10) days before trial. Proposed voir dire questions and proposed jury instructions are to be submitted at the final pretrial conference. Felony cases - follow procedures set forth by assigned District Court Judge.

- I. Pretrial conferences. (When, how scheduled; preferred procedures?)

Conducted approximately ten (10) days before the trial. Scheduling of that conference will be announced at the arraignment.

- J. Discovery. (Deadlines; motions necessary? “Open-file” discovery practices? Reciprocity? Timing re Jenks Act and Rule 404(b) disclosures.

Government usually follows open file policy. At arraignment, government is asked if they will follow that policy and when discovery materials will be made available. Governed by procedures of pretrial order (see attached document).

- K. Entering pleas.

1. Procedure preferred re presentation of factual basis, terms of any plea bargain; when is written plea required/preferred? Will the defendant be sworn and subject to questioning at plea hearing?

Felonies are heard by the District Judge assigned the case.

In Misdemeanor matters, Magistrate Judge requires the plea agreement be in writing and filed before the plea date. Once filed, a presentence investigation will be entered and a date set for plea and sentencing. The plea and sentencing are normally conducted at a combined hearing.

2. Are nolo contendere or Alford pleas ever accepted?

Will accept nolo contendere pleas when good cause shown.,

- L. Sentencing. (Does the judge confer with the probation officer without notice to and/or presence of counsel? Timing on objections to Presentence Report; must objections be in writing? Will the Court give notice of its intention to depart from the Guidelines -- opportunity to brief departure issues?)

Attorneys and defendant read the pre-sentence report prior to sentencing. They must notify the probation department if there are any objections and the probation agent is to notify the Magistrate Judge of objections to factual matters in the report prior to the sentencing hearing. Efforts will be made at the sentencing hearing to resolve any disputes. The Sentencing Guidelines apply to all felonies and certain misdemeanors.

- M. Other comments?

An attorney should not accept a federal criminal case without being fully versed in the application of the Sentencing Guidelines.

V. Pretrial and Trial

- A. Pretrial reports - civil. (Joint vs. separate; amount of detail; any areas of particular interest to Court? Does the judge have his own form of pretrial order, does he use a standard form prescribed for use in the court as a whole, or does each case have a customized order?)

See Order Prior to Final Pretrial (“Order”) (attached).

- B. Identification of trial witnesses. (How much detail required in statements; any flexibility in application; expert witnesses? Can witness identified as “live” be presented through deposition?)

See Order.

- C. Motion cut-off date and discovery cut-off date. (What are normal limits; under what circumstances are these dates altered?)

Set at status conference.

- D. Trial continuances. (What grounds acceptable, necessary; cut-off time for motion; effect of stipulation among counsel?)

Only under extraordinary circumstances.

- E. Are time limits imposed for trial?

No, but counsel will be asked for realistic estimate as to length of trial at final pretrial conference, and the time reserved for trial and its supervision will be governed by that estimate.

- F. Are mini-opening statements and summations permitted?

This depends on the estimated length of trial, and the complexity of issues.

- G. Trial exhibits:

1. Pre-marking. (When required; civil vs. criminal.)

In criminal cases, the government should pro-mark its exhibits. In civil cases, the parties will be advised at the pretrial conference to pre-mark their exhibits. Numbering will be consecutive, i.e. plaintiff 1-100; defendant 101-200.

2. Pretrial exchange of trial exhibits. (How required; must copies be provided to other side?)

Counsel will be asked at the pretrial conference if there has been an exchange of trial exhibits.

3. Pretrial resolution of objections to admissibility.

Prefers motions in limine. Will be discussed at final pretrial conference.

4. Marking -- numbering, lettering, conventions.

See G.1 above

5. Copies of exhibits for judge. (Required? If so, what format -- loose, binders, etc.)

Prefers copies. Binders are preferable for numerous exhibits.

6. Use in opening statement -- necessity to obtain prior court approval.

Should be discussed at pretrial conference.

7. Copies of exhibits for jurors? (Required/allowed? If so, what format -- loose, binders, all vs. fewer than all?)

Should be discussed at pretrial conference.

8. Exhibits into jury room? (How decided; general rule?)

Discussed at close of evidence; but general rule is to send exhibits to jury room unless good cause for not doing so.

9. Preferences re scheduling and briefing in limine motions?

At or before final pretrial conference.

H. Experts at trial

1. Exchange of identities. (When, how requested; civil vs. criminal.)

See Order for pretrial report. However, disclosure of experts is requirement of discovery process. See Local Rule 7.07(d).

2. Exchange of reports or summaries of testimony.

See Local Rule 7.07(d).

3. Voir dire re qualifications (preferred procedures).

Voir dire expert at trial.

4. Any special rules re presentation to jury? (Summaries in lieu of direct testimony, etc.)

None.

5. Other comments?

I. Jury selection process.

1. Voir dire questions.

See Order. Questions submitted by counsel in advance.

2. Examination of jurors. (Court vs. counsel upon request of counsel.)

By the court; limited follow up allowed. Procedure will be discussed at final pretrial conference.

3. Exercise of challenges.

Off jury list.

4. General practice. (How many called up at a time; general questions to whole panel, etc.)

Procedures in jury selection will be discussed at final pretrial conference.

- J. Juror notetaking during trial. (Allowed? prohibited? cautionary instructions?)

Depends on case; discuss at final pretrial conference.

- K. Visual aids during trial (charts, videos, models, computer generated exhibits).

Yes.

1. Use in opening statements. (Need for judicial approval? limitations? conditions on use?)

Discuss at final pretrial conference.

2. Stipulations/pretrial exchange required?

Any objections should be raised at pretrial conference.

3. Court permission required during trial? (When, how, any limit on types of visual aids?)

Discuss at pretrial.

- L. Deposition testimony at trial. (Preferred practice; who reads what parts, etc.)

Prefers to have someone answer questions from witness stand.

- M. Jury instructions.

1. Format, preferred sources.

See Order. Submit proposed instruction with authority for same cited at bottom.

2. Does judge have own preferred instructions? (If so, are they required? When are they provided to counsel?)

Yes.

3. Hearing re objections and making record.

Court conducts a charging conference and counsel place their objections on the record.

4. When is jury instructed? (Any pre-instruction at commencement of case? Before or after argument, or both?)

Normally after argument.

5. How is jury instructed? (Orally only? Are transparencies of the instructions used as the judge reads? Are copies of instructions given to jurors during deliberation?)

Orally and copies given to jury during deliberation.

- N. Closing argument -- ground rules. (Where to stand; what can be used, e.g., exhibits, blowups of instructions, blowups of trial testimony; preferred method of handling objections during argument; any special rules re what can be said about instructions; time limits?)

Reasonableness. Time limits will be discussed at charging conference.

VI. Discipline and Sanctions

- A. Civil matters -- Rules 11, 16, 26, etc.

Will use sanctions when appropriate.

- B. General sanctions under 28 U.S.C. 1927 (when imposed, what sort of hearing held, what types of notice given?)

- C. Criminal matters.

The defendant will not be handcuffed in court unless he or she is a security risk and the matter will be discussed with counsel prior to any order.

VII. Settlement and Sentencing

- A. Civil settlement conferences.

1. When, how set? (Routinely? Only as requested? At what stage of the proceedings? How many times?)

Settlement will be discussed with counsel at the initial scheduling conference. An appropriate date will be set for the parties to submit a settlement statement with the court detailing their efforts in that regard and suggesting what form of ADR might be appropriate to pursue an order to resolve the case.

2. Before whom? (Trial judge? Magistrate Judge? Another district judge?)

The magistrate judges will conduct settlement conferences for the district judges and for the other magistrate judges on an ad hoc basis. In other words, instead of conducting settlement conferences in cases assigned to him, Judge Goodstein will refer the case to one of the other magistrate judges for a settlement conference.

3. Settlement conference statements, procedures. (Written statements required/desired? Are they filed? Must clients be present? What format for conference? Use of computer-generated and video materials at conference?)

A settlement conference statement is required at least 10 days prior to the date of the conference. Clients, or persons with authority to settle, are required to attend in person. The conference is more akin to mediation and the judge will caucus separately with each party.

4. Any special procedures? (Early Neutral Evaluation? Special arbitration procedures? Mediation? Rent-a-judge? Mini-trial?)

While mediation is the normal format, any other appropriate form of ADR, including a summary jury trial, will be considered.

B. Criminal matters.

1. Sentencing memoranda (preferences).

No requirement for sentencing memorandum.

2. Resolution of factual disputes on sentencing.

Any factual disputes concerning matters relevant to sentencing should be made known to the Magistrate Judge before the sentencing hearing. This should be done through the probation department, specifically the probation agent assigned to the case. The parties should attempt to resolve these disputes prior to the hearing.

VIII. Ex Parte Communications

- A. Communications between Court and party. (Any circumstances when permitted; clerk/law clerk involvement?)

Call the law clerk.

- B. Communications between Court and state court on related cases.

This depends on the particular case and matters under consideration.

- C. Differences between civil and criminal?

Call the law clerk.

IX. Any other comments?

The court proceeds on the basis that counsel are familiar with the Local Rules. However, particular practices and procedures within the court often change so, when in doubt, contact the law clerk.