

M. L. Gordon

**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.)

Judge and clerks review for potential conflicts of interest and other grounds for recusal; clerks review removed cases to determine if removal was proper and jurisdiction exists.

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

The first scheduling conference is usually held two months after the answer is filed. Because Judge Gordon only sits June 1 through the end of September, many scheduling conferences are held telephonically.

- C. Telephone conference calls?

In the months that the court is sitting, telephone calls are permitted only in cases in which there are two parties and at least one of the parties is represented by counsel more than 125 miles from Milwaukee.

- 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.)

Generally formal. Because of electronic recording, however, no side bar conferences can be held; if a conference during a jury trial is needed, the jury will be excused. Attorneys do not need to request permission to approach a witness.

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

Discovery motions are handled as regular motions. Scheduling conflicts often can be resolved by contacting a law clerk. The court does not schedule hearings pursuant to Local Rule 6.07.

F. Practice re assignments and references to magistrates.

Little referral to magistrates because the court now handles few complex cases; matter will be referred to magistrate for pruning of a witness list or other pretrial preparation if case becomes more involved.

G. ADR procedures.

No set procedure, but parties are encouraged from outset to discuss settlement.

II. Civil Law and Motion Procedures

A. Days, times for calendar. (What does the judge require in terms of advance notice to the Court, if any, of motions to be presented?)

Judge Gordon usually resolves motions based on the parties' brief. Hearings are scheduled if evidentiary proof is required.

B. Does the judge use a short form procedure for non-dispositive motions?

No.

C. Procedures re scheduling. (Call Judge's clerk or law clerk first to set? Reseting 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?)

Follows Local Rules 6.01-.07 but if scheduling of a matter is necessary, the law clerk should first be called; caller should already have consulted opposing counsel and have a list of several available dates agreeable to both.

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

Contact law clerk.

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

Varies with circumstances; contact law clerk.

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

Court strongly prefers stipulation of parties; otherwise, contact law clerk for procedure.

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

Follows Local Rules 6.01-.07 with exception that a party who fails to file a responsive brief may be given a warning letter.

- H. 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?)

Upon request of counsel, court exercises its discretion as to the need for holding oral argument.

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

Follow local rules.

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

File in clerk's office. Some motions -- like a motion in limine filed on a Friday to be considered at beginning of trial on Monday -- should also be filed with the court; contact law clerk if in doubt. See Local Rule §.02.

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

No proposed order generally required for substantive motions. Wherever possible, stipulation and proposed order required for scheduling changes; all orders changing dates must contain new dates -- open-ended orders will not be entered.

L. Other comments?

No 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.)

Court sits as General Duty court one month a year; contact law clerk for procedures.

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

Contact law clerk.

IV. Criminal Law Procedures

- A. Days, times for calendar.

N/A

- 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.)

N/A

- C. Bail procedures.

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

N/A

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

N/A

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

N/A

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?)

N/A

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.)

N/A

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?)

N/A

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?)

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

2. Are nolo contendere or Alford pleas ever accepted?

N/A

- 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?)

N/A

- M. Other comments?

N/A

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?)

Court generally holds pretrial conference 10 to 14 days before scheduled trial date. The pretrial is scheduled at the last status conference in the case. At pretrial conference, court will inform parties that trial briefs are not required, but may be submitted, preferably as early as possible. The parties are expected to file a pretrial report in accordance with Local Rule 7.06 at least 3 days before the pretrial conference.

- 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 attached order providing for deadlines for exchange of witnesses and discovery cutoff; order is normally distributed at a status conference.

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

See attached standing order. In addition to witness lists and discovery, the court usually schedules a dispositive motion deadline at least three months before the trial is scheduled.

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

Depends upon circumstances. Requires stipulation or motion.

- E. Are time limits imposed for trial?

Not as to testimonial submissions. However, voir dire opening statements and closing arguments are subject to time limitations.

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

Yes.

- G. Trial exhibits:

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

Required; exhibits must be marked in advance.

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

Parties should have exchanged copies of exhibits prior to the trial.

3. Pretrial resolution of objections to admissibility.

Court will entertain motions in limine that are made a reasonable time before trial. See answer to #9 below.

4. Marking -- numbering, lettering, conventions.

Parties should agree on a compatible numbering system before trial.

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

Preferred for written exhibits. Format depends on how many exhibits there are.

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

No prior approval normally required, but time limitations may be imposed.

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

Varies with nature of exhibit; stipulation or agreement of parties preferred but, if there is a dispute, court will decide.

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

Yes. If a dispute on whether a given exhibit should go into jury room, court hears the objections and resolves it.

9. Preferences re scheduling and briefing in limine motions?

Motions should be served and filed not less than five working days in advance of trial. Opposing party should serve and file a response not less than two working days in advance of trial.

H. Experts at trial

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

See attached order.

2. Exchange of reports or summaries of testimony.

See local and federal rules.

3. Voir dire re qualifications (preferred procedures).

The preferred method is the reading of the expert's credentials. Qualifications should not editorialize. The voir dire is conducted by the party calling the witness, subject to cross-examination on qualifications.

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

No special rules.

5. Other comments?

No other comments.

I. Jury selection process.

1. Voir dire questions.

Submitted three days before the pretrial conference, pursuant to Local Rule 7.06.

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

Court conducts the primary voir dire. Thereafter, each party is allowed to conduct a brief examination.

3. Exercise of challenges.

In civil cases, seven jurors will be selected if case is not complex and trial is not lengthy, eight or more jurors in complex actions or lengthy trials. Each side is given three alternating preemptory strikes.

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

Court usually calls up 14 jurors, but addresses questions to those in the box, as well as those who have not yet been called. After for-cause strikes, court allows three alternating preemptory strikes for each side, leaving a jury of 7 or 8. Lawyers are excused during deliberations but must remain available on one-half hour's notice until verdict is reached or in event jury has questions.

J. Juror note taking during trial. (Allowed? prohibited? cautionary instructions?)

Not permitted as a matter of course. Permitted in trial that is unusually long or complex.

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

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

Permitted.

2. Stipulations/pretrial exchange required?

Not required.

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

Not required.

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

No special policy, but should be noted in pretrial report, in accordance with Local Rule 7.06.

M. Jury instructions.

1. Format, preferred sources.

Proposed instructions, procedural and substantive, must be submitted in the pretrial report, in accordance with Local Rule 7.06. Each should be individually numbered with a citation to authority.

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

No preferred instructions.

3. Hearing re objections and making record.

Jury instruction conference is held toward close of trial, at which time objections may be made.

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

Following arguments by counsel. Court usually does not give opening instructions other than very general instructions on how the trial will proceed.

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?)

Instructed orally, but often given copies of instructions for use in jury room.

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?)

No special rules, but time limits frequently imposed.

VI. Discipline and Sanctions

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

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

A and B. Discipline and sanctions vary widely, depending on the nature of the offense. Counsel and parties who are late or fail to appear for a scheduled event will, at a minimum, be asked to explain reasons for tardiness or non-appearance. Occasionally, the court will impose a fine and has, in lieu of Rule 11 sanctions, assessed costs. Court is especially concerned about keeping a jury waiting when the jury has been told that proceedings will resume at a given time.

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?)
2. Before whom? (Trial judge? Magistrate? Another district judge?)
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?)
4. Any special procedures? (Early Neutral Evaluation? Special arbitration procedures? Mediation? Rent-a-judge? Mini-trial?)

A1, 2, 3 and 4. The court does not _____ conduct settlement conferences and generally requests counsel for the plaintiff to assume the burden of initiating settlement discussions. Upon the request of the parties, the court may participate in the discussion or refer a matter to a magistrate judge.

VIII. Ex Parte Communications

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

No ex parte communications between parties and court staff on the merits of a case are permitted. Discussion of scheduling and procedural issues are broadly allowed.

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

None.

- C. Differences between civil and criminal?

N/A

IX. Any other comments?

- a)
- b)
- c)
- d)