

QUESTIONNAIRE FOR DISTRICT JUDGE  
AND MAGISTRATE INTERVIEWS

Answers of Judge McKinney

I. Commencement of Action and General Procedures

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

Court does not necessarily conduct an initial review of jurisdiction or removal.

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

Established in the case management plan.

- C. Telephone conference calls?

Court will conduct telephone conference calls.

- 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, CD ROMS, etc.)

Court does not have an established practice of where to locate counsel tables.

Counsel are expected to stand when addressing the Court.

Tardiness and scheduling conflicts are addressed by the Court on a case-by-case basis.

Side-bar conference are not used in criminal proceedings. In other proceedings, side-bar conferences should be avoided by addressing issues with the Court prior to trial.

Counsel should request permission to approach witness.

Case management plan requires the marking and handling and exchange of exhibits prior to trial.

Notify the Court, prior to the trial, if a party intends to use computers, video exhibits, CD ROMs or other media.

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

Contact Court Room Deputy.

- F. Practice re assignments and references to magistrates.

Governed by local rules and established in case management plan.

- G. ADR procedures.

ADR procedures are left to counsel. The Court does not maintain a list of arbitrators.

## 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?)

Court rarely hears argument.

Court will grant oral argument if Court has specific questions.

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

The Court is available by telephone for non-dispositive motions.

- C. 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?)

Court's law clerk does not have contact with counsel. Counsel should contact Court Room Deputy regarding scheduling.

Court is involved in scheduling and may reset upon Court's motion.

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

Court will entertain written motions to either shorten or extend time and requires notice to opposing counsel.

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

Court requires a hearing. Evidentiary hearing will be set as soon as possible. Court rarely grants *ex parte* TRO's.

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

Court will entertain motions to continue. Motions addressed on a case-by-case basis.

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

Established in case management plan.

- 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?)

Court rarely hears argument. Court will grant oral argument if Court has specific questions.

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

Established by local rules. Extra copies not required.

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

All filing to be done with clerk.

Courtesy copy of filing may be provided to the Court when the filing with clerk is shortly before hearing.

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

Counsel are encouraged to file proposed orders.

- L. Other comments?

None.

### 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.)

Judges rotate motion duty. If "on duty" motion judge is unavailable, Chief Judge will hear motion or assign motion to an available judge.

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

Court will hold evidentiary hearings, if necessary.

### IV. Criminal Law Procedures

- A. Days, times for calendar.

Established in case management plan.

- 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.)

Dates set in initial order. Criminal case goes first.

C. Bail procedures.

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

Performed by United States Magistrate Judge.

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

File written motion to appeal Magistrate Judge's determination.

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

Contact United States attorney and pre-trial release officer. Court will permit if all parties agree.

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?)

Yes.

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.)

Evidentiary hearing set when motion is filed. Counsel may make proffers of evidence.

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?)

The Court does not have tentative ruling system. Court will establish time limits.

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?)

Established in case management plan. Do not contact law clerks.

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

Established in case management plan. Court utilizes stock instructions. Copies will be provided to counsel early in trial.

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

Established in case management plan.

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

United States attorney decides what discovery to provide. Deadlines, motions, Rule 404(b) issues and Jenks Act covered in case management plan.

- 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?

Written plea agreement required. Defendant will be sworn and questioned by the Court. United States attorney establishes factual basis through witness/agent testimony.

2. Are *nolo contendere* or *Alford* pleas ever accepted?

*Nolo contendere* pleas are accepted.

- 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?)

Court does not confer with probation officer without notice to and/or presence of counsel.

Objections to presentence report must be in writing.

The Court will give notice to parties of Court's intention to depart from guidelines. Parties are given the opportunity to brief departure issues.

M. Other comments?

None.

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 utilizes a standard pretrial order and case management plan. Court will customize these as appropriate.

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?)

This is regulated by trial rules and spelled out in case management plan. Problems with obtaining information from or about expert witnesses should be addressed with the Court.

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

Established in case management plan.

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

Court will address request for continuances on a case-by-case basis.

Court will grant continuances in appropriate circumstances.

E. Are time limits imposed for trial?

No.

F. Are mini-opening statements and summations permitted?

Court will consider these requests on a case-by-case basis.

G. Trial exhibits:

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

Established by case management plan.

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

Established by case management plan.

3. Pretrial resolution of objections to admissibility.

The Court will consider resolving objections as to admissibility prior to trial.

4. Marking -- numbering, lettering, conventions.

Plaintiff's exhibits are numbered.

Defendant's exhibits are lettered.

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

Not generally required. Court prefers to have copy of deposition when deposition is read aloud to jury.

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

Court wants advance notice of counsel's intent to use exhibit during opening statement.

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

Copies are not required.

Copies of exhibits may prove useful in complex litigation. Court prefers exhibits be presented in binders. Court will address whether to provide jury with all exhibits or only portion thereof on a case-by-case basis.

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

Exhibits go into the jury room.

9. Preferences re scheduling and briefing *in limine* motions?

Established in case management plan.

H. Experts at trial

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

Established in case management plan.

2. Exchange of reports or summaries of testimony.

Established in case management plan.

3. Voir dire re qualifications (preferred procedures).

Notify Court of counsel's intent to voir dire expert on qualifications.

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

Court would consider on a case-by-case basis.

5. Other comments?

None.

I. Jury selection process.

1. Voir dire questions.

Court conducts voir dire. Parties should submit voir dire questions to the Court.

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

Court conducts voir dire. Parties should submit voir dire questions to the Court.

3. Exercise of challenges.

Challenges are made in writing. Challenges for cause are conducted of the bench. Jurors may be stricken in any order.

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

Court normally calls twenty-five (25) people for six (6)-person juries. Court will select "alternates" in a civil case scheduled to take longer than two (2) days.

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

Court permits juror note taking with a cautionary instruction.

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

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

Court requires advance notice. Court considers on a case by case basis.

2. Stipulations/pretrial exchange required?

Yes.

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

Yes.

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

No preferred practice.

M. Jury instructions.

1. Format, preferred sources.

Prefers 7th Circuit Pattern Jury Instructions. Court wants instructions prepared in same type face used by Court and submitted to Court on disk.

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

Counsel should submit authority/citation in support of each requested instruction.

3. Hearing re objections and making record.

Prior to final argument.

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

Court gives issue instruction prior to voir dire. Court gives cautionary instructions during trial and final instructions following closing 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?)

Court instructs the jury orally. Instructions go into the jury room during deliberations.

- 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?)

Counsel is to stand at lectern during closing argument. Court is flexible on time allowed for argument. Counsel may read or argue instructions in closing argument. Plaintiff's counsel may not use more time during rebuttal than he or she utilized during opening argument.

## VI. Discipline and Sanctions

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

Court will not impose sanctions without hearing.

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

Court will not impose sanctions without hearing.

- C. Criminal matters.

Court will not impose sanctions without hearing.

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?)

Established in case management plan.

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

Conducted by Magistrate 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?)

Conducted prior to trial. Clients are required to be present.

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

No special procedures established. Court is open to the suggestions of the parties regarding special procedures.

- B. Criminal matters.

1. Sentencing memoranda (preferences).

Court will consider sentencing memoranda.

2. Resolution of factual disputes on sentencing.

Factual disputes are resolved by hearing conducted at sentencing.

VIII. Ex Parte Communications

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

Ex parte communication with Judge and law clerk are to be avoided.  
Contact the Court through the Court Room Deputy.

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

Yes.

C. Differences between civil and criminal?

Discouraged in all cases, particularly in criminal matters.

IX. Any other comments?

None.

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