

THE HONORABLE DAVID F. HAMILTON
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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.)

The Court will conduct a quick review of the complaint for jurisdictional issues on the first day after the Complaint is filed. If it appears, from the face of the Complaint, that there is a jurisdictional issue, the Court will likely order the Plaintiff to show cause. The Court is not generally concerned, in its initial review, with issues concerning the United States as a litigant, but will investigate such issues if called to his attention by the opposing party.

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

The first appearance by counsel for any Defendant triggers scheduling conference procedures. Normally, the initial pre-trial conference is scheduled on or about five (5) weeks after the first appearance by a defense counsel. The parties are to confer to prepare a Case Management Plan, and a form with suggested deadlines and procedures is provided by the Court for this purpose. The Court will permit deviation from the recommended schedule for deadlines, such as briefing deadlines for summary judgment motions, as it recognizes that these recommendations may not be appropriate for all cases. The Court attempts to set the trial date within one month of the trial date requested. Trial is usually set about one year after the Complaint is filed.

- C. Telephone conference calls?

The Court is willing to participate in telephone conference calls, when necessary.

- 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.)

Please see the attached "Trial Practice and Courtroom Procedures Before Judge David F. Hamilton." The parties who wish to use special equipment to display exhibits should discuss this matter with the deputy clerk at a pre-trial conference prior to trial. Attorneys should give special attention to ensuring that jurors are able to see and follow along with the course of displaying any exhibits.

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

Counsel should first confer with opposing counsel concerning any scheduling conflicts. Such scheduling conflicts should then be addressed with the Courtroom Deputy Clerk, Chris Wright.

- F. Practice re assignments and references to magistrates.

Please see the attached Magistrate Judge Assignment Order and example of form letter from the Court concerning the assignment of a Magistrate Judge to supervise discovery motions and pre-trial preparations. The Court does not concern itself with ADR procedures. The Court will not order mediation if only one side requests it. Judge Hamilton enters a Magistrate Judge Assignment Order in approximately one-third of the civil cases assigned to his courtroom. In case where an Assignment Order is not issued, Judge Hamilton handles all discovery and pretrial matters himself.

- G. ADR procedures.

ADR is a topic to be addressed in the Case Management Plan as appropriate.

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?)

For routine, non-dispositive, and uncontested motions, the filing of such motions is all that is necessary. Such motions should contain a statement that opposing counsel agrees or disagrees. Those who wish to file a motion to reconsider any order by the Court should contact the Courtroom Deputy Clerk, Chris Wright, in order to make the Court aware that a motion to reconsider will be filed.

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

Any questions or concerns about non-dispositive motions should be addressed to the Courtroom Deputy Clerk, Chris Wright.

- 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?)

Counsel should not contact the law clerks. All such matters should be addressed to the Courtroom Deputy Clerk, Chris Wright. The Court will set specific dates for any hearings or trial dates. See Procedure for Resolving Scheduling Conflict in I.E. above.

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

Counsel may file motions to obtain orders shortening time. Notice should be provided to opposing counsel, and the motion should contain a statement as to whether opposing counsel agrees or disagrees.

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

The Court schedules these types of hearings as needed. The Court will grant motions for evidentiary hearings. Those desiring an evidentiary hearing should contact the Courtroom Deputy Clerk, Chris Wright. The Court grants ex parte TROs only rarely.

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

Motions for continuance may be filed with the Court. The Court strongly prefers that opposing counsel file a joint motion for any continuances.

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

Counsel should refer to the Local Rules. This Court recognizes that certain briefing schedules contained in the Local Rules may not be appropriate in all cases, particularly with regards to the briefing schedule for summary judgment motions. Any deviations from the Local Rules will be established in the 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?)

The Court will grant oral argument in some cases if requested by a party. In some instances the Court will request an oral argument if Court has specific questions. The Court will indicate time limits for such oral argument in its order.

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

The Court finds that extra copies are helpful particularly if the Court must consider any motion quickly. Counsel should refer to the Local Rules for special length provisions and format. Contact with the law clerks is prohibited.

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

All motion papers and briefs should be filed in the Clerk's office.

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

The Local Rules require the submission of a proposed order for routine motions. In particular cases, the Court will write its own order for clarification.

- L. 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.)

The District Court judges rotate “motions” judge duty on a monthly basis. During the months that Judge Hamilton is motions judge, counsel should contact the Courtroom Deputy Clerk, Chris Wright, to schedule such matters or to address concerns or questions about procedures. The Court will conduct evidentiary hearings upon request.

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

IV. Criminal Law Procedures

- A. Days, times for calendar.

Days and times for calendars are established in the 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.)

The initial order will establish such dates. (The standard initial order form is in the process of being revised.)

- C. Bail procedures.

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

United States Magistrate Judge Foster makes all initial bail determinations.

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

Although this Court has not yet seen any appeals of bail determinations by Magistrate Judge Foster, any such appeal should be made in a written motion to the Court.

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

Again, all such bail matters are handled by United States Magistrate Judge Foster.

- 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?)

The dates established by the Initial Order will comply with the time constraints of the Speedy Trial Act. Proposed orders tendered with motions to continue should contain more description of the circumstances than a mere rote recitation of the Speedy Trial Act.

- 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.)

The Court sets the date for these hearings, but is receptive to requests or recommendations by counsel.

- 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?)

This Court does issues tentative rulings, only very rarely.

- 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?)

Although the scheduling of motion papers and briefs is established in the Case Management Plan, this Court is generally comfortable with the timing for filing of briefs and motions in limine as established by the Local Rules.

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

This Court does not require the filing of trial briefs. The government routinely files trial briefs, and the Court will accept trial briefs filed by defense counsel. A complete set of recent criminal jury instructions is available upon request from the Courtroom Deputy Clerk, Chris Wright. This Court usually requires counsel to provide proposed jury instructions and proposed voir dire questions on the Thursday before a Monday trial date. The Court prefers that counsel limit their proposed jury instructions to those pertaining directly to the elements or issue of the case at hand.

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

The Court will set pretrial conferences as needed or as requested by the parties.

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

Defense counsel should discuss discovery issues with the United States Attorney. The timing of discovery with regards to the Jencks Act and Rule 404(b) disclosures are established under a standard order issued by this Court.

- 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?

The Court requires the United States Attorney to establish the factual basis for the plea. The Court then will ask defense counsel if there is disagreement with the factual basis. The defendant will be sworn in and is subject to questioning at the plea hearing.

2. Are nolo contendere or Alford pleas ever accepted?

The Court accepts nolo contendere pleas.

- 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?)

The Court receives a confidential recommendation in writing from the probation officer, which recommendation remains confidential. Under a standing order of the Court, there is a deadline for submission of objections to the Presentence Report. The probation officer will advise defense counsel of that deadline. Objections to the Presentence Report should be filed in writing with the Court, not just the probation officer. If the Court is considering departures from the Guidelines that have not been argued by the parties, the Court will give notice. The Court will accept briefs on departure issues.

- M. Other comments?

Statements regarding victim impact are generally dealt with in a presentence report. The Court generally will accept for consideration letters from victims or other families or friends. The Court requests that any such letters be provided at least two days prior to the sentencing hearing.

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?)

The Court issues a standard Case Management Plan and Pretrial Order, which are subject to revision based upon the circumstances of the individual case. The Court will issue its own order following a final 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?)

- C. Motion cut-off date and discovery cut-off date. (What are normal limits; under what circumstances are these dates altered?)
- D. Trial continuances. (What grounds acceptable, necessary; cut-off time for motion; effect of stipulation among counsel?)
- E. Are time limits imposed for trial?
- F. Are mini-opening statements and summations permitted?
- G. Trial exhibits:
1. Pre-marking. (When required; civil vs. criminal.)

Counsel should consult the attached “Trial Practice and Courtroom Procedures Before Judge David F. Hamilton.” Counsel are asked to confer and resolve any issues concerning the pre-marking of trial exhibits prior to trial.
 2. Pretrial exchange of trial exhibits. (How required; must copies be provided to other side?)

The Court requires pretrial exchange of trial exhibits as established under the Case Management Plan.
 3. Pretrial resolution of objections to admissibility.

The Court will attempt to resolve pretrial objections to admissibility at least one week prior to trial, if possible.

4. Marking -- numbering, lettering, conventions.

The Court encourages counsel to agree on a numbering or lettering system at the outset of the case, which can be carried through to the close of trial. The Court requests that this same numbering system be followed at depositions, in order that deposition exhibits to be offered at trial will have the same consistent exhibit number or letter throughout the case. The Court will not allow duplicate exhibits or duplicate numbering or lettering of different exhibits.

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

The Court requires that counsel provide copies of exhibits for the judge and the jury in binders with tabs.

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

Any questions or concerns regarding the use of exhibits during the opening statement should be raised at the final pretrial conference.

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

Ordinarily, the Court requires that counsel provide jurors with the exhibits it considers absolutely essential to resolution of the case in binder format with tabs.

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

The Court will permit exhibits in the jury room, and jurors are permitted to take their exhibit notebooks into the jury room.

9. Preferences re scheduling and briefing in limine motions?

Scheduling and briefing of in limine motions are generally established in the Case Management Plan, and counsel may address any concerns in a pretrial conference or other motion.

H. Experts at trial

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

The exchange of identity of experts is established under the Case Management Plan.

2. Exchange of reports or summaries of testimony.

The exchange of reports or summaries is established in the Case Management Plan pursuant to Rule 26(a)(2) of the Federal Rule of Civil Procedure.

3. Voir dire re qualifications (preferred procedures).

Counsel should notify the Court of a request or need for a separate hearing on qualifications of expert witnesses.

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

The Court will consider such matters on a case-by-case basis during pretrial conferences.

5. Other comments?

I. Jury selection process.

1. Voir dire questions.

Counsel should consult the attached “Trial Practice and Courtroom Procedure Before Judge David F. Hamilton.”

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

The Court requests proposed voir dire questions. The Court will conduct voir dire, but permit counsel to follow up with questioning of the jurors.

3. Exercise of challenges.

Peremptory challenges will be exercised simultaneously and in writing. Following voir dire, the jurors will recess, and the Court will meet with counsel in his chambers to deal with objections on peremptory challenges and challenges for cause.

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

Normally, the Court will call panels of 20 prospective jurors in civil cases, and 40 in a criminal trial setting.

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

The Court encourages juror note-taking during trial.

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

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

Counsel should consult the attached “Trial Practice and Courtroom Procedures Before Judge David F. Hamilton.” Generally, discussions regarding the use of visual aids during trial should be discussed with the Court during a pretrial conference. The Court encourages the use of visual aids during trial to assist the jury.

2. Stipulations/pretrial exchange required?

The Court requires a pretrial exchange of visual aids to be used during trial. The Court prefers that counsel discuss and stipulate to the use of visual aids during trial.

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

Counsel should seek permission of the Court to use visual aids during trial at a pretrial conference.

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

During a bench trial, the Court will read deposition testimony at trial. Otherwise, the Court prefers that two people read the deposition testimony before the jury. In addition, the Court requires that counsel confer on

objections to deposition testimony prior to trial, and address such concerns with the Court before trial.

M. Jury instructions.

1. Format, preferred sources.

Counsel should consult the “Trial Practice and Courtroom procedures Before Judge David F. Hamilton,” attached hereto.

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

A complete set of recent civil jury instructions is available upon request from the Courtroom Deputy Clerk, Chris Wright. A schedule for submission of proposed jury instructions is provided in the Case Management Plan. The Court prefers that counsel limit their proposed jury instructions to those pertaining directly to the elements or issue of the case at hand. Counsel are encouraged to utilize the jury instructions in closing arguments in order to clarify the issues for the jury.

3. Hearing re objections and making record.

The Court will provide a draft of all jury instructions it intends to read to the jury at the end of the trial and will confer with counsel on any requests to modify such instructions. At that time, counsel may make a record of any such objections to the jury instructions.

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

The jury will hear the bulk of jury instructions prior to closing argument, and remaining instructions will be read to the jury after 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?)

Both preliminary and final instructions are read orally by the Court to the jury. These preliminary instructions are intended to summarize the important points of the claims or defenses of the

case at hand. Jurors are not provided copies of these preliminary instructions to take with them into the jury room. The jurors are provided a copy of the final instructions to which they may refer while the Court reads them. Jurors are permitted to take copies of the final instructions into the 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?)

The Court will establish time limits for closing argument. Use of exhibits in front of the jury during closing arguments should be discussed with the Court during conferences at trial.

VI. Discipline and Sanctions

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

Counsel are encouraged to read the Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit. This Court may raise Rule 11 issues sua sponte.

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

- C. Criminal matters.

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?)

B. Criminal matters.

1. Sentencing memoranda (preferences).

2. Resolution of factual disputes on sentencing.

VIII. Ex Parte Communications

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

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

C. Differences between civil and criminal?

IX Any other comments?

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b)

c)

d)

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