

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 receipt of a new complaint or notice of removal, this Court always conducts a preliminary review for proper jurisdiction, removal, potential conflicts of interest, and service.

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

Except in complex litigation, cases are routinely assigned to the magistrate judge following the filing of the complaint. The magistrate judge then sets a scheduling conference as soon as possible after the filing of the answer. If counsel involved are experienced practitioners in federal court, the scheduling conference will often be held via telephone conference, otherwise personal appearances are required. Counsel are required to submit a proposed case management schedule to the magistrate judge prior to the conference to serve as a starting point.

- C. Telephone conference calls?

This Court conducts the majority of its civil hearings by telephone conference calls. I have found that holding hearings by telephone is an efficient and expedient means of conducting business when there is otherwise no need for an in person appearance. This approach is also very cost effective for the parties because travel expenses are not incurred needlessly.

- 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.)

Counsel tables are positioned parallel to and equidistant from the jury box, with plaintiff's table closer to the Court. Unless the Court specifically grants permission to remain seated, counsel are expected to stand when addressing the Court and should also seek permission before approaching a witness. Timeliness is expected; tardiness is not tolerated. In the event of a scheduling conflict, counsel should inform the Court of the conflict as soon as possible, and the Court will attempt to

accommodate counsel when possible. Side-bar conferences are held at the request of either the Court or counsel when appropriate.

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

Any scheduling conflicts should be brought to the Court's attention immediately upon discovery of the conflict. While the Court will normally attempt to accommodate changes in scheduling due to conflicts, it is not always possible. However, the Court has held hearings outside of normal business hours where necessary to accommodate the parties (i.e., early in the morning, during lunch, or after 5:00 p.m.). In the event that a party seeks an extension of time in which to file a pleading, etc., such a request must be filed prior to the current deadline. Where counsel have potential but not yet actual conflicts, the Court has adopted a wait-and-see position, usually setting a future telephone status call to check on the status of the potential conflict or requiring counsel to notify the Court as soon as the conflict either materializes or goes away.

- F. Practice re assignments and references to magistrates.

All non-complex civil cases, with the exception of social security appeals and habeas corpus petitions, are routinely assigned to the magistrate judge upon filing of the complaint. The magistrate judge then sets a schedule for the case and supervises discovery through the filing of a motion for summary judgment. If a motion to dismiss is filed, the magistrate judge will submit a report and recommendation to the district court judge, and the parties are given the opportunity to object pursuant to Rule 72. At the time a dispositive motion is filed, the reference to the magistrate judge terminates and all future hearings are conducted by the district court judge.

In complex civil litigation, it is often the practice of this Court not to refer the case to the magistrate judge. Scheduling, discovery disputes, etc., are all handled by the district court judge. I have found that this practice helps keep the litigation moving efficiently because efforts are not duplicated by holding hearings both before the magistrate judge and on appeal to the district court judge.

- G. ADR procedures.

The use of ADR is encouraged by this Court. The Court routinely encourages the parties to attend settlement conferences either before the district court judge or magistrate judge whenever there is any indication that such a conference would be

helpful. The Court has also approved stays of actions pending arbitration or mediation when requested by the parties.

## 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?)

Not applicable. Written motions are to be filed with the Clerk's Office.

- 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? 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?)

Scheduling for this Court is done by my secretary. Unless the Court determines that oral argument would be helpful, the Court often rules on the pleadings themselves. However, should the Court desire oral argument, the judge's secretary will contact the parties to establish a mutually convenient time for a hearing. The parties are to assume that there will be no appearance required unless specifically notified by the Court.

In the event that the parties need a conference with the judge that cannot be accommodated by the normal motions practice, the parties should contact my secretary and inform her of the nature of the situation. I will then either settle the dispute at that time or make arrangements for a telephone conference call in the near future.

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

Huh??

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

When parties anticipate that a request for a TRO, preliminary injunction, or rule to show cause will be filed in the near future, the courtesy of an advance phone call to the Court is appreciated and will assist the Court in identifying available time in which to hold a telephone conference or hearing. The necessity of oral argument and/or an evidentiary hearing is determined on a case by case basis.

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

Requests for extensions or continuance should be made via written motion and should indicate whether opposing counsel has any objection to the request. Extensions or continuances may be granted for good cause shown, however the Court does not welcome eleventh hour requests. Requests for continuance that appear to be posed solely for purposes of delay will not be tolerated.

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

Unless considerations of complexity or magnitude warrant a lengthier response time, responses should be filed no later than 14 days after the filing of the motion itself. With the exception of motions for summary judgment, reply briefs are not allowed without prior authorization from the Court. Parties should note that requests for extension of time must be filed prior to the current deadline in order to be considered by the Court.

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?)

This Court does not hold oral argument, even when requested by parties, unless it determines that such argument would be helpful to the Court in resolving the issues before it. Should the Court desire oral argument only with respect to certain issues, it will so notify the parties when scheduling the hearing. Although rulings may be issued from the bench, the Court reserves the right to enter a written opinion. If possible, requests to provide supplemental authority not cited in the original briefs should be handled prior to the hearing in the form of a motion to supplement the record.

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

Parties must file one original and one copy of each pleading with the Clerk's Office. Pleadings should be double-spaced with page numbers and printed on white paper 8 1/2" x 11" in size with a one inch margin on all sides. Memoranda may not exceed 15 pages in length without authorization from the Court. This Court does not permit contact with its law clerks on the merits of any case pending before it.

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

All pleadings must be filed in the Clerk's Office. If a pleading is filed shortly before a scheduled hearing, it must still be filed in the Clerk's Office. However, a courtesy copy clearly marked as such may be delivered to chambers. Filing by fax is not permitted without leave of Court.

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

The Court generally prepares its own orders after rulings. However, when the Court directs a party to submit a proposed order, it should be done within the time frame specified by the Court after first attempting to obtain approval from opposing counsel as to form.

- 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.)

Not applicable.

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

Not applicable.

### IV. Criminal Law Procedures

A. Days, times for calendar.

Not applicable.

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 Court will set what it finds to be a reasonable schedule based on experience and comments from counsel. Requests for extensions or continuance should be made via written motion and should indicate whether opposing counsel has any objection to the request. Extensions or continuances may be granted for good cause shown, but will not be granted when posed solely for purposes of delay. In this Court, criminal trials take precedence over civil trials set during the same timeframe.

C. Bail procedures.

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

Bail determinations are made by the magistrate judge (or district court judge if the magistrate judge is unavailable) at the time of the initial appearance. The determination is generally based on the pretrial report prepared by the probation officer.

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

Appeal may be presented to the district court judge via written motion.

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

Request may be made in writing to the magistrate or district judge who initially granted the bail request.

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?)

??

- 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.)

Upon the filing of a motion to suppress, the Court will contact the parties to schedule a hearing. Testimony may be presented in the form of live witness testimony or sworn affidavits. Statements of contested/uncontested facts may be helpful, but are not required.

- 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 not hold oral argument unless it determines that such argument would be helpful to the Court in resolving the issues before it. Should the Court desire oral argument only with respect to certain issues, it will so notify the parties when scheduling the hearing. Although rulings may be issued from the bench, the Court reserves the right to enter a written opinion. If possible, requests to provide supplemental authority not cited in the original briefs should be handled prior to the hearing in the form of a motion to supplement the record.

- 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?)

Any pretrial motions are to be filed within 20 days of the arraignment unless another deadline is set by the Court. Parties must file one original and one copy of each pleading with the Clerk's Office. Pleadings should be double-spaced with page numbers and printed on white paper 8 1/2" x 11" in size with a one inch margin on all sides. Memoranda may not exceed 15 pages in length without authorization from the Court. This Court does not permit contact with its law clerks on the merits of any case pending before it.

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

Jury instructions and forms of verdict, proposed voir dire questions, and any depositions to be offered into evidence at trial must be provided to the Court no later than 12:00 noon on the Friday before trial is scheduled to begin. With respect to jury instructions, parties should provide the Court with one clean copy and one

copy that contains the authority for the proposed instruction. A formal jury instruction conference will be conducted by the Court once the trial is underway. On the morning of trial, counsel should submit a brief joint statement of the case, as well as a list of all witnesses that may be offered by either side.

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

Generally, the Court will schedule a telephone status conference approximately two weeks prior to trial that is similar to a final pretrial conference in a civil trial.

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

Within five working days after the arraignment, counsel for the parties shall confer and comply with Fed. R. Cr. P. 16. If additional discovery is sought, defense counsel shall confer with the appropriate Assistant United States Attorney in an attempt to satisfy the request. If a motion to compel is necessary, such a motion shall be supported by a brief and shall be filed within 15 days of the arraignment unless another deadline is set by the Court. The brief should contain the statement that the prescribed conference was held, the date of the conference, the name of the Assistant United States Attorney with whom the conference was held; and the statement that agreement could not be reached concerning the discovery sought.

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?

Either written plea agreements or blind pleas are accepted by the Court. During the change of plea hearing, the defendant will be questioned by the Court regarding the change of plea and understanding of plea agreement.

2. Are nolo contendere or Alford pleas ever accepted?  
No.????

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?)

This Court does confer with the probation officer assigned to a particular case without notice to and outside the presence of counsel. Objections to Presentence Reports must be made in writing and must be filed within 15 days of receiving the Presentence Report, unless an extension of time is approved by the Court. Should the Court consider a departure from the Guidelines, counsel for both sides will have an opportunity to make their respective arguments.

M. Other comments?

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 parties should jointly submit a final pretrial order either prior to or at the final pretrial conference. The order should contain a brief statement of the case, uncontested issues of fact and law, contested issues of fact and law, an estimation of the number of necessary trial days, witness lists, exhibit lists, and proposed jury instructions. While no particular format is required, a sample pretrial order is appended to the Local Rules for the Central District of Illinois.

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?)

Witnesses not identified in the final pretrial order approved by the Court will not be allowed at trial absent approval of the Court. Should the Court allow the addition of a previously undisclosed witness over the objection of opposing counsel, opposing counsel will generally be afforded the opportunity to depose the witness at the expense of the party offering the witness. In the event that testimony will be presented via deposition rather than live, notice shall be given to opposing counsel as soon as possible. A copy of the deposition transcript shall be submitted to the Court no later than 12:00 noon on the Friday before trial, in which counsel shall have previously marked the portions offered in one color ink and opposing counsel shall have previously identified any objections that the Court must rule on.

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

Deadlines for the conclusion of discovery and filing of dispositive motions will be set during the initial case scheduling conference. Requests for extension of the deadlines may be made in writing and should state whether opposing counsel has any objection to the extension. Extensions may be granted for good cause shown, such as complexity of case, voluminous discovery, etc.

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

Requests for continuance should be made via written motion and should indicate whether opposing counsel has any objection to the request. While continuances may be granted for good cause shown, the Court does not welcome eleventh hour requests and will not tolerate requests that appear to be posed solely for purposes of delay.

- E. Are time limits imposed for trial?

While the Court generally defers to counsels' estimation of the number of trial days, the Court will move the trial along and will not tolerate deliberate delay or the presentation of cumulative testimony.

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

Opening statements are permitted in a length previously approved by the Court.

- G. Trial exhibits:

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

Trial exhibits should be marked in advance in both civil and criminal cases to the extent possible.

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

Parties are required to exchange exhibits prior to trial, whether by the exchange of copies of the exhibits or some other agreed upon method.

3. Pretrial resolution of objections to admissibility.

Where possible, and particularly with respect to demonstrative aids, the Court prefers to rule on any admissibility issues prior to trial. If it becomes necessary to rule on the admissibility of an exhibit during the course of the trial, it should be presented to the Court prior to the jury's arrival in the courtroom.

4. Marking -- numbering, lettering, conventions.

The Court does not have a preference regarding whether the parties use numbers or letters on their respective exhibits, as long as the exhibits are clearly identified as either plaintiff's exhibits or defendant's exhibits.

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

Copies of exhibits for the trial judge are appreciated but are not required.

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

Opposing counsel should be placed on notice of counsel's intent to use exhibits in opening statements. To the extent that there is any objection by opposing counsel, the issue must be resolved by the Court prior to the beginning of opening statements.

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

The Court has an Elmo system that facilitates the presentation of documents, photos, etc. to the judge, jury, witness, and opposing counsel via a set of television monitors. To the extent that one or more exhibits are difficult to read, lengthy, or will be referred to often, the Court may approve the provision of copies to the jurors in the form of juror notebooks.

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

Counsel generally reach an agreement as to which exhibits will be sent into the jury room during deliberations. To the extent that counsel are unable to reach an agreement, the Court will make a determination.

9. Preferences re scheduling and briefing in limine motions?

The Court will set a briefing schedule for any motions in limine at the final pretrial conference.

H. Experts at trial

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

In civil trials, parties are expected to comply with Fed. R. Civ. P 26 with regard to the disclosure of expert testimony. In criminal trials, parties must follow the dictates of Fed. R. Cr. P. 16.

2. Exchange of reports or summaries of testimony.

During the scheduling conference, the Court will establish a schedule for the completion of expert depositions and the exchange of expert reports.

3. Voir dire re qualifications (preferred procedures).

No preferred procedure.

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

No special rules.

5. Other comments?

I. Jury selection process.

1. Voir dire questions.

The Court has a standard series of questions that it will ask the prospective jurors during voir dire. Counsel are encouraged to submit any additional questions they would like to have asked during voir dire for review by the Court no later than 12:00 noon on the Friday before trial. The Court will incorporate any questions that are ultimately approved into its series of questions.

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

Generally, counsel are not permitted to ask questions directly of the prospective jurors. However, there are times when the Court will ask a particular juror to come over to the side bar, at which time counsel may pose questions directly to the juror.

3. Exercise of challenges.

In a civil trial, this Court begins with a base of 6 jurors and adds an appropriate number of alternates based on the expected length of the trial. Counsel then are allotted a certain number of strikes each. Counsel for plaintiff will make the first strike, followed by counsel for defendant. Counsel will continue to alternate strikes until all strikes have been made. This process allows counsel to see the jury as it develops.

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

In a civil trial, the Court generally calls between 12 and 16 potential jurors forward, depending on the expected length of the trial. While the questions that are asked are directed to those individuals called forward, the remainder of the panel are instructed to listen to the questions being asked in order to facilitate more expedient questioning if they are later called forward. The Court does not pose general questions to the entire panel.

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

The Court does not generally permit juror notetaking during the trial, as it distracts the jurors from their main task of focusing on the demeanor and conduct of the

witnesses. However, during particularly lengthy trials, the Court has permitted note taking at the request of counsel after giving appropriate cautionary instructions to the jurors.

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

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

Opposing counsel should be placed on notice of counsel's intent to use visual aids in opening statements. To the extent that there is any objection by opposing counsel, the issue must be resolved by the Court prior to the beginning of opening statements.

2. Stipulations/pretrial exchange required?

Opposing counsel should have an opportunity to examine visual aids prior to their use at trial in order to streamline the objection process and facilitate the presentation of information to the jury. To the extent possible, stipulations with respect to the use of visual aids are encouraged.

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

While the Court does not require counsel to seek permission prior to each use of visual aids during trial, the Court does appreciate advance notice of an intent to use visual aids so that courtroom personnel can make any appropriate equipment, extension cords, easels, etc. readily available. The Court does not have any preset limitations on the type or number of visual aids that may be implemented.

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

In the event that testimony will be presented via deposition rather than live, notice shall be given to opposing counsel as soon as possible. A copy of the deposition transcript shall be submitted to the Court no later than 12:00 noon on the Friday before trial, in which counsel shall have previously marked the portions offered in one color ink and opposing counsel shall have previously identified any objections

that the Court must rule on. Counsel may read the role of the attorney and designate another individual to read the part of the witness.

M. Jury instructions.

1. Format, preferred sources.

Counsel should submit two copies of proposed jury instructions, one with the instruction number and relevant authority on it and a second copy that contains only the text of the proposed instruction itself. While IPI or Seventh Circuit Pattern Instructions are preferred, the Court will consider instructions based on any relevant authority.

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

No.

3. Hearing re objections and making record.

The Court will conduct a formal jury instruction conference on the record at some point during the trial. This is normally done either before Court opens in the morning or after the jury has been sent home for the day.

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

The Court has some standard preliminary instructions that are normally given at the beginning of the case prior to opening statements. Although the bulk of the instructions are generally given after closing arguments, the Court has on occasion instructed the jury prior to closing arguments where such instructions were thought to assist the jury in understanding the closing arguments.

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?)

The jury is generally instructed orally, with a printed copy of the instructions being sent to the jury room for use during deliberations. However, in complex cases where there are numerous and detailed instructions, the Court has on occasion given a copy of the instructions to each juror to follow along with during the reading of the instructions.

- 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 are prohibited from entering the area immediately in front of the jury box at any time during the trial. With that exception, counsel are free to move around and utilize the remainder of the space in front of the bar. The Court does not have any preset limitations on the number or type of exhibits that may be used by counsel, and counsel are free to refer to instructions that will be given. The Court encourages counsel to address any objections to anticipated remarks that may be made during closing statements prior to that time and outside the presence of the jury. However, while the Court prefers not to interrupt counsel during the presentation of closing arguments, it may sometimes be unavoidable. After conferring with counsel outside the presence of the jury, the Court will determine the amount of time allotted to each side for closing arguments. At that time, Plaintiff's counsel should designate how much of that time will be reserved for rebuttal.

VI. Discipline and Sanctions

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

The issue of sanctions is generally done via written motion, with an opportunity to file a written response. Such matters are then normally set for an in person hearing. The Court may also determine sua sponte that sanctions may be appropriate in a given situation and will so advise the parties and provide an opportunity to respond.

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

Sanctions under this section are generally requested via written motion, with opposing counsel being afforded an opportunity to file a written response. Such matters will likely be set for either a telephonic or in person hearing. The Court may also determine sua sponte that such sanctions may be appropriate in a given situation and will so advise the parties and provide an opportunity to respond.

- C. Criminal matters.

The issue of sanctions in the criminal context is generally addressed in the same manner as civil sanctions.

## 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?)

This Court encourages parties to participate in formal or informal settlement conferences at any stage in the proceedings if there is any indication that such an undertaking may be helpful. Settlement conferences are generally set either before the district court judge or magistrate judge at the request of at least one of the parties. Although a settlement conference may not be successful at one stage of the proceedings, the Court is willing to facilitate additional conferences at later stages of the litigation.

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

I am happy to participate in a settlement conference in a case pending in this Court whenever it is appropriate to do so. However, if this Court will be the ultimate trier of fact in the case, then either the magistrate judge or another district court judge will conduct the 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?)

The Court appreciates receiving a brief statement of each party's position and the status of negotiations prior to the settlement conference. Each party should file its brief under seal and provide a copy of the brief to opposing counsel. While clients are not required to be present, someone with authority to settle the case must be in attendance. The Court has no preset limitations on what materials may be utilized during the settlement conference.

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

The Court is willing to consider any suggested procedures that may assist in resolving the litigation.

### B. Criminal matters.

1. Sentencing memoranda (preferences).

Not applicable.

2. Resolution of factual disputes on sentencing.

Where there are factual disputes regarding information contained in the presentence report prepared by the probation officer, the Court will require the government to present evidence on the issue. If the government presents sufficient evidence, the burden then shifts to the defendant to rebut that evidence in order to sustain the objection.

### VIII. Ex Parte Communications

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

Ex parte communications are not permitted with the district court judge. Furthermore, this Court does not permit communications with its law clerks regarding the merits of the case as such communications could be construed as ex parte.

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

While in some instances the Court may contact state court personnel regarding the status of a related case, the Court generally relies on counsel to apprise it of the status of related litigation. Periodic telephone status calls are routinely held to facilitate this process.

- C. Differences between civil and criminal?

None.

### IX. Any other comments?

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

MW1-71922-1  
9/3/97