

QUESTIONNAIRE FOR DISTRICT JUDGE  
AND MAGISTRATE INTERVIEWS

Commencement of Action and General Procedures

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

The Honorable John W. Reynolds, Jr. ("JWR") and the law clerk assigned to the action review every new file for basis of jurisdiction, to determine whether immediate court action is necessary (e.g., if injunctive relief is requested), and to screen for conflicts of interest.

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

The courtroom deputy clerk generally notices a scheduling conference and requests that plaintiff's counsel, after consultation with defendant's counsel, file a status report prior to the conference. The courtroom deputy clerk typically conducts the scheduling conference by telephone within two months after the action is filed. An Order Following Scheduling Conference is then signed by the court and forwarded to the parties, in which the following dates are established: deadline for naming expert witnesses in accordance with Local Rule 7.07(d); deadline for completion of discovery; deadline for filing dispositive motions; date by which pretrial reports will be filed; date for pretrial conference; and date for trial. The parties need court approval to change the scheduling order.

- . Telephone conference calls?

The first scheduling conference is always by telephone. The pretrial conference is always in person. The court may occasionally schedule telephonic status conferences or telephonic hearings on motions filed under Local Rule 6.07.

- . 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.)
  1. Scheduling conflicts should be brought to the court's attention as soon as possible and will be dealt with in a fair manner.
  2. The court frowns on tardiness.
  3. The court prefers that counsel use the microphone at all times in the courtroom. Counsel may either sit at counsel table or stand at the podium.
  4. The court does not allow side-bar conferences. If there is a need for discussion outside the hearing of the jury, the court will excuse the jury. All discussions with the court are on the record.
  5. It is not necessary to request permission to approach the witnesses.
  6. All exhibits should be pre-marked. The Order Following Scheduling Conference assigns exhibit numbers to the parties (typically plaintiff is assigned 1 to 499, and defendant 500+). All exhibits referenced at trial are deemed admitted into evidence unless there is an objection, i.e., there is no need to move that exhibits be admitted. Transaction exhibits are typically allowed in the jury room for deliberations, with some exceptions (depending on the nature of the action and the exhibits). Counsel are requested to agree on what exhibits should go to the jury room, and the court will only get involved when counsel disagree.
  7. Computer use is allowed as long as there is no interference with the proceedings.
  8. Video testimony is boring but allowed. Counsel must provide their own equipment and ensure that the court and the jury have a clear view.
  9. CDRoms are allowed. Counsel must provide their own equipment and ensure that the court and the jury have a clear view.
- . Procedures for resolving scheduling conflicts. (Trial dates, motion dates; how and when brought to court's attention; what grounds valid for rescheduling?)

Any request to reschedule a date contained in the Order Following Scheduling Conference must be made by written stipulation or motion filed in accordance with Local Rule 6. The stipulation or motion should include the reason(s) for the request and a suggested alternative date. The court generally will

not reschedule a trial, even if the parties agree to it, unless there is a compelling reason to do so. If counsel has a conflict with a conference or hearing date noticed by the courtroom deputy clerk, counsel may contact the courtroom deputy clerk to make other arrangements.

- . Practice re assignments and references to magistrates.

Actions involving time-consuming discovery or other pretrial matters may be referred to a magistrate judge for pretrial proceedings. The court may also refer an action to a magistrate judge to conduct settlement proceedings.

- . ADR procedures.

The court views the pretrial conference primarily as a settlement conference. Counsel who will try the action must attend the pretrial conference, should know what expenses and attorney fees have been incurred to date, and should be prepared to discuss settlement. The court views itself as presiding over a dispute resolution institution and that, for the good of the parties, actions typically should be settled. The court will offer its facilities to act as an honest broker for the parties to bring about settlement. The court typically does not directly involve clients with pretrial conferences/settlement discussions, but rather works with the attorneys.

The court may also refer an action to a magistrate judge to conduct settlement proceedings, or allow the parties to participate in outside mediation or arbitration upon the request of both parties.

#### Civil Law and Motion Procedures

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

All motions must be filed in accordance with the Local Rules and Federal Rules of Civil Procedure. Dispositive motions must be filed by the deadline established in the Order Following Scheduling Conference. Timing for the filing of response and reply briefs is set forth in Local Rule 6.01. All non-dispositive motions should be filed in accordance with Local Rule 6.07. Motions are typically decided on the papers without oral argument.

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

All non-dispositive motions should be filed in accordance with Local Rule 6.07 (which allows for a 2-page supporting brief). Upon receipt of the motion, the court will notify the parties of the date by which an opposing brief (not to exceed 2

pages), shall be filed, typically within one week after the motion is filed. If a hearing on the motion is necessary, the court will also notify the parties of the date for the hearing, typically within 2 weeks after the motion is filed, which will be conducted by telephone.

- . 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?)

Motions are generally decided on the papers, without oral argument. A party may request oral argument with motion papers and such request is almost always granted. The court may schedule oral argument if some matters need clarification. If oral argument is scheduled, the court will forward a written notice to the parties.

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

Non-dispositive and discovery type motions which are filed close to the trial date will often be given an expedited briefing schedule to facilitate timely resolution. The court frowns on ex parte motions.

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

When a motion for a temporary restraining order or preliminary injunction is filed, the court will schedule an in-person status conference. At the status conference, the court will discuss whether it is possible to maintain the status quo, establish a briefing schedule (including submission of proposed findings of fact and conclusions of law), and determine whether an evidentiary hearing or oral argument is necessary and if so, will schedule it.

Ex parte motions are frowned upon. Ex parte temporary restraining orders will be granted only when the movant has strictly complied with Rule 65 of the Federal Rules of Civil Procedure (granting an ex parte order rarely occurs).

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

Any request to reschedule the trial date must be made by written stipulation or motion filed in accordance with the Local Rule 6. The stipulation or motion should include the reason(s) for the request and a suggested alternative date. The court generally will not reschedule a trial, even if the parties agree to it, unless there is a compelling reason to do so.

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

See Local Rule 6.01 and above discussion regarding non-dispositive motions.

- . 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?)

Motions are generally decided on the papers, without oral argument. A party may request oral argument with motion papers and such request is almost always granted. The court may schedule oral argument if some matters need clarification, and may note the matters to be addressed at oral argument in its scheduling notice. If oral argument is scheduled, the court will forward a written notice to the parties.

New authorities regarding a motion (authority released after briefing and before decision) may be submitted to the court, without argument. The submission should reference the portion of the brief to which the authority applies. The court encourages legal matters to be in brief form.

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

Local Rules 5 and 6 establish form and procedure for motions and briefs and their filing. An original and one copy of all documents must be filed with the clerk of court, although two courtesy copies (for JWR and the law clerk assigned to the action) may also be forwarded to chambers. If a document is filed less than 48 hours before a matter will be addressed, the person making the filing is responsible for transmitting a copy directly to chambers after filing it with the clerk of court.

The court will not permit substantive ex parte communications. Counsel may direct inquiries regarding procedural or housekeeping matters to the law clerk assigned to the action.

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

(See preceding discussion.)

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

While unnecessary, counsel are free to submit a proposed order with a motion. When the court requests that counsel prepare an order, the order should be approved by opposing counsel as to form before submission to the court.

- . Other comments?

No.

#### . General Duty Judge -- Special Proceedings

- . 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.)

Emergency matters which come to JWR as duty judge (because the assigned judge is unavailable) are forwarded by the law clerk for the judge assigned to the action, and are handled similarly to emergency matters on the court's regular caseload. (See above discussion regarding calendaring TROs, etc.)

Miscellaneous actions and other matters received as duty judge are reviewed by JWR and the law clerk assigned to the action on a case-by-case basis; there is no set procedure. The court frowns upon ex parte motions, which will only be granted if provided for by law.

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

A party may request an evidentiary hearing on a duty judge matter at the time the matter comes to the court. JWR and the law clerk assigned to the action will review the request and the court will contact the parties if a hearing will be scheduled.

#### . Criminal Law Procedures

- . Days, times for calendar.

JWR does not handle criminal matters except occasionally as duty judge.

- . 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.)

Not applicable.

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

Not applicable.
  - . Procedure for appeal of magistrate's ruling on bail issues.
 

Not applicable.
  - . Procedure for obtaining exemption from bail conditions (trip out of town) or modification of bail provisions.
 

Not applicable.
- . 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?)
 

Not applicable.
- . Criminal evidentiary/suppression hearings. (Procedures to calendar evidentiary hearings; proffers, declarations or affidavits vs. live testimony; statements of contested and uncontested facts and issues.)
 

Not applicable.
- . Oral argument. (Ever considered unnecessary? Any provision for identifying particular issues for argument? Any tentative ruling system? Time limits? Preferred practice for submitting newly discovered authorities?)
 

Not applicable.
- . Motion papers and briefs. Timing on filing briefs and motions in limine. (Extra copies desired? Particular format preferred? Contacts with law clerks encouraged, discouraged?)
 

Not applicable.
- . Trial briefs, jury instructions, forms of verdict. (When required from defense, preferred format and sequence, etc.)
 

Not applicable.

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

Not applicable.

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

Not applicable.

- . Entering pleas.

- . 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?

Not applicable.

- . Are nolo contendere or Alford pleas ever accepted?

Not applicable

- . 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?)

Not applicable

- . Other comments?

Not applicable.

#### Pretrial and Trial

Pretrial conferences are typically scheduled 1 to 2 weeks before trial. Trials are typically scheduled within 9 to 12 months from when the action was filed, and the first day of trial is scheduled to begin on a Tuesday. The typical trial day runs from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m., and counsel are requested to stop at 5:00 p.m. and not ask for additional time for any reason. Once a trial has commenced, it is given top priority. Other matters on the court calendar are rescheduled.

- . 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 Order Following Scheduling Conference requires that pretrial reports be filed 3 business days before the pretrial conference is scheduled. The requirements for the pretrial report are listed in the Order Following Scheduling Conference, and include: (1) a short summary statement of the facts of the case and theories of liability or defense; (2) a statement of the issues; (3) the names and addresses of all witnesses expected to testify, and whether or the witness has been deposed; (4) a narrative statement of the background of any expert witnesses and whether the expert has been deposed; (5) a list of exhibits to be offered at trial; (6) a designation of all depositions or portions of depositions to be read into the record at trial as substantive evidence; and (7) counsel's best estimate on the time needed to try the action. Pretrial reports for an action scheduled for jury trial must also include all proposed questions that counsel would like the court to ask on voir dire; proposed instructions on substantive issues; and a proposed verdict form. Pretrial reports for an action scheduled for court trial must also include a stipulation of facts, proposed findings of fact and conclusions of law, or a combination thereof.

- . 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?)

1. As set forth in the Order Following Scheduling Conference, the plaintiff must disclose information concerning expert witnesses in accordance with Local Rule 7.07(d), or be barred from calling such witnesses at trial. The deadline for doing so is typically 12 weeks before the discovery deadline.

2. As set forth in the Order Following Scheduling Conference, the defendant must disclose information concerning expert witnesses in accordance with Local Rule 7.07(d), or be barred from calling such witnesses at trial. The deadline for doing so is typically 6 weeks before the discovery deadline.

3. Pretrial reports must be filed 3 business days before the pretrial conference is scheduled, and must include names and addresses of all witnesses, whether the witness has been deposed, and, if the witness is an expert, a narrative statement of the expert's background.

4. A witness identified as "live" may be presented through deposition, but opposing counsel should be notified as early as practicable. Portions of depositions to be read should be clearly designated. Counsel are expected to cull through depositions and designate only those portions which are necessary.

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

Dispositive motion and discovery deadlines are established in the Order Following Scheduling Conference. The dispositive motion deadline is set at least three months before the pretrial conference to allow the motion to be fully briefed and considered before the pretrial. The deadline for completing discovery typically is set for one week before the dispositive motion deadline.

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

Any request to reschedule the trial date must be made by written stipulation or motion filed in accordance with the Local Rule 6. The stipulation or motion should include the reason(s) for the request and a suggested alternative date. The court generally will not reschedule a trial, even if the parties agree to it, unless there is a compelling reason to do so.

- . Are time limits imposed for trial?

The court will review counsel's estimate of the time needed to try the action which is contained in the pretrial reports, and will determine the time allotted for trial.

- . Are mini-opening statements and summations permitted?

Opening statements and summations are permitted but must be made within the time limits of the trial.

- . Trial exhibits:

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

All exhibits should be pre-marked. The Order Following Scheduling Conference assigns exhibit numbers to the parties (typically plaintiff is assigned 1 to 499, and defendant 500+).

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

Copies of trial exhibits should be exchanged between the parties before trial.

- . Pretrial resolution of objections to admissibility.

The court typically will rule on objections to admissibility at the time the evidence is offered at trial, and the offer of proof will be made by exhibits or interrogation of the witness on the record.

- . Marking -- numbering, lettering, conventions.

(See above discussion regarding pre-marking exhibits.)

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

Parties are encouraged to provide two copies of exhibits (for JWR and the law clerk assigned to the action) in three-ring binders or other organized manner.

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

If opposition to the use of an exhibit in an opening statement is anticipated, counsel should obtain prior approval.

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

Counsel may use their discretion regarding whether and in what format jurors will receive copies of exhibits. If an exhibit will be repeatedly referred to or is important, counsel are encouraged to provide a copy for each juror.

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

Transaction exhibits are typically allowed in the jury room for deliberations, with some exceptions (depending on the nature of the action and the exhibits). Counsel are requested to agree on what exhibits should go to the jury room, and the court will only get involved when counsel disagree.

- . Preferences re scheduling and briefing in limine motions?

(See above discussion regarding pretrial resolution of objections to admissibility.)

- . Experts at trial

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

As set forth in the Order Following Scheduling Conference, the parties must disclose information concerning expert witnesses in accordance with Local Rule 7.07(d), or be barred from calling such witnesses at trial. The deadline for doing so is typically 12 weeks for plaintiff, and 6 weeks for defendant, before the discovery deadline.

- . Exchange of reports or summaries of testimony.

See preceding discussion. In addition, the Order Following Scheduling Conference requires that pretrial reports include a narrative statement of the backgrounds of expert witnesses.

- . Voir dire re qualifications (preferred procedures).

None.

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

No.

- . Other comments?

No.

- . Jury selection process.

- . Voir dire questions.

The pretrial report must include proposed voir dire questions. The court will review the proposed questions, and ask those it deems appropriate in addition to the court's standard questions regarding jurors' backgrounds, knowledge of the action, etc. Upon completing questioning, the court will ask counsel if they have any further questions dealing with the factual backgrounds of the jurors. Attitudinal questions or "romancing the jury" is discouraged.

- . Examination of jurors. (court vs. counsel upon request of counsel.)

(See preceding discussion.)

- . Exercise of challenges.

The bailiff submits the list of impaneled jurors alternately between plaintiff's and defendant's counsel. Each side is given 3 strikes. Strikes are indicated by drawing a line through the name of the juror to be stricken, and identifying the strike as P1, P2 and P3 or D1, D2, and D3.

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

Fourteen jurors are called from a panel of 25 to 30. The court's questions are put to the panel of 14. Eight are initially selected to the petit jury. At least six jurors must decide the action (jurors are sometimes excused during the course of a trial), but all jurors who hear the case participate in deliberations and all who deliberate must agree on the verdict if one is rendered.

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

Juror note-taking during a trial is not routine, but may be permitted if requested.

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

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

Visual aids should be marked as exhibits and shown to opposing counsel before use. There is no need for judicial approval unless there is an objection. Use of visual aids typically will be permitted unless argumentative or confusing. Counsel are encouraged to prepare visual aids to assist the jury and the court in understanding issues, e.g., charts which show the names, business affiliations, and titles of witnesses and participants in transactions or occurrences that are the subject of the trial, or which illustrate a chronology of relevant events.

- . Stipulations/pretrial exchange required?

Visual aids should be exchanged between the parties before trial.

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

No, unless an objection is made.

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

Where testimony consists of more than a few questions and answers, the court prefers that a reader take the witness stand and read the answers in response to questions read by the lawyer. Counsel are expected to cull through depositions and designate only those portions which are necessary. Videotape depositions may be used sparingly with advance notice to the court and opposing counsel.

For a court trial, counsel may designate relevant deposition portions to be reviewed outside of trial time by JWR and the law clerk assigned to the action.

- . Jury instructions.

- . Format, preferred sources.

Proposed jury instructions must be submitted with the pretrial report. Each proposed instruction should be on a separate page, with its source clearly noted.

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

The court uses standard general jury instructions along with proposed substantive jury instructions submitted by counsel.

- . Hearing re objections and making record.

At the close of the evidence, the court will hold an informal conference in chambers regarding the jury instructions and the verdict. During the conference, objections will be discussed. The court will determine which instructions will be given and the form of the verdict and will give a copy to counsel prior to closing arguments. After the court has instructed the jury, but before the jury begins deliberations, all objections to the instructions and verdict must be made on the record.

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

The court gives standard introductory instructions after the petit jury is selected and before opening statements. Substantive instructions are given after closing arguments.

- . 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 instructed orally. Transparencies are not used and copies of instructions are not furnished to jurors as the instructions are read. A copy of the jury instructions is sent to the jury room for deliberations.

- . 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?)

There are no special ground rules for closing arguments. Time limits may be established by the court.

#### . Discipline and Sanctions

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

The court will discipline and sanction when necessary and as provided for in the Federal Rules of Civil Procedure and other applicable law.

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

(See preceding discussion.)

- . Criminal matters.

Not applicable.

#### . Settlement and Sentencing

- . Civil settlement conferences.

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

(See above discussion regarding ADR procedures.)

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

(See above discussion regarding ADR procedures.)

- . 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?)

(See above discussion regarding ADR procedures.)

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

No.

- . Criminal matters.
  - . Sentencing memoranda (preferences).

Not applicable.

- . Resolution of factual disputes on sentencing.

Not applicable.

#### . Ex Parte Communications

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

The court will not permit substantive ex parte communications. Counsel may direct inquiries regarding procedural or housekeeping matters to the law clerk assigned to the action.

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

The court does not communicate with other courts regarding pending matters.

- . Differences between civil and criminal?

Not applicable.

#### . Any other comments?

Counsel should review the Local Rules for the Eastern District of Wisconsin and the Federal Rules of Civil Procedure. The Seventh Circuit strictly enforces them.

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