

United States District Judge

Judge, Catherine D. Perry

**Courtroom 14S**

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**Court Reporter**

Gayle Madden  
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## Requirements

### 1. Local and Federal Rules

Many answers to frequently asked questions are contained in the [Local Rules](#) of the [Eastern District of Missouri](#), the Federal Rules of [Civil](#) and [Criminal](#) Procedure, and the [Federal Rules of Evidence](#). All counsel are expected to know these rules and to follow them.

### 2. Informal Matters

I do not hold a regularly-scheduled informal matters docket. Most minor agreed deadline changes can be done in writing, by filing a motion to extend the deadline and stating that opposing counsel consents. I am sometimes available for telephone conferences to resolve scheduling disputes. You must notify opposing counsel before seeking a telephone conference. If you have an emergency motion that you believe requires a formal hearing on the record, you should call my chambers to schedule a hearing. In civil cases counsel should not email me or any members of chambers staff unless you have been specifically instructed to do so. In criminal cases counsel may email my Judicial Assistant, Brian Crow, regarding scheduling and logistics, but not about substantive issues.

### 3. Available Courtroom Technologies

The Court has [evidence presentation equipment](#) available, including an evidence camera (ELMO), VCR, DVD, monitors, and hook-ups for computer stored evidence or computer presentations. Please call the Case Management Team in the Clerk's office to schedule training before trial. Training usually takes no more than 30 minutes, and gives you the opportunity to get comfortable with our equipment configuration before trial. If you intend to use your computer with the Evidence presentation System, you must confer with the clerk's office before trial to be sure your settings and connections are appropriate for our system. I like this equipment and prefer to use it for all trials. At the beginning of trial I will receive into evidence any exhibits that have not been objected to in the pretrial submissions. On the first day of trial, counsel should bring a joint list of all exhibits that can be admitted without objection.

#### **4. Real Time Court Reporting**

My court reporter (Gayle Madden, phone number 314-244-7987) uses real time court reporting. If you wish to order daily copy of the trial transcript, please contact her well in advance of trial so she can make appropriate arrangements.

#### **5. Scheduling Conferences and Case Management Orders**

Civil cases are usually set for Rule 16 conferences after all defendants have answered (or have filed motions in response to the complaint). If for some reason a party believes a conference should be set sooner, that party should file a motion. The Order setting Rule 16 conference, as well as the Case Management Orders, is self-explanatory. Please read them and follow them. When you come to the Rule 16 conference, be prepared to discuss the facts of your case and all other matters set out in the Rule 16 order, including settlement. Do not send an unprepared substitute attorney: I expect all counsel to know the case and be prepared to discuss all issues.

#### **6. ADR**

I refer most civil cases to mediation. Please be prepared to discuss the appropriate timing for a referral to mediation at the Rule 16 Conference. [A list of the court's neutrals](#) and the court's [ADR procedures](#) can be found at the [Court's website](#).

#### **7. Discovery Disputes**

Before filing any discovery-related motion, you must meet and confer with opposing counsel in an attempt to resolve the dispute, and your motion must contain a certification that you have done so. Sending nasty letters or emails to one another does not fulfill the "meet and confer" requirement, and I don't want to see those things attached to motions. You are expected to actually talk to one another. If your opponent will not return your calls when you attempt to resolve the matter, you should put that in your certification with the motion. When you cannot resolve legitimate disputes, and must file motions, I will either set the motions for hearing or rule on the papers, depending on what I think is appropriate after I've reviewed the motions. If you have an emergency, you should come to informal matters, or schedule a telephone conference.

#### **8. Courtesy Copies**

Courtesy copies of bulky summary judgment motions are helpful, but I do not need courtesy copies of other filings.

#### **9. Trial Settings**

Most cases are set for trial on a two-week docket. This is a "firm" setting, meaning that I almost always reach all the cases set within that time. I set jury and non-jury, civil and criminal on the same dockets. We pick juries at 9 a.m. and 1:15 p.m. on Mondays and Wednesdays in St. Louis. If you have not heard otherwise, you should always assume you are #1 on the docket

#### **10. Pretrial Conferences**

Although I do not generally have a formal pretrial conference in advance of the day of trial, I require parties to appear for trial 30 minutes before the scheduled jury selection for a final pretrial conference. We will use this time to discuss any evidentiary problems, motions in limine, scheduling issues, etc. In a particular case, if I believe a more lengthy pretrial conference is necessary, I will schedule one, or you may request one.

## **11. Voir Dire**

You will be provided a list of the jury panel members as they enter the courtroom. We do not provide the list in advance so don't ask. The list contains names, municipality where the juror lives, employer and former employer, occupation, and spouse's employer and occupation.

In most cases I allow attorneys to conduct part of the voir dire. I will begin by asking counsel to introduce themselves and their clients. I will then ask introductory questions, covering such things as the nature of the case, burden of proof, prior jury service, length of the trial, etc. If you want me to ask any specific questions that for some reason you prefer not to ask, please submit them to me in writing. Otherwise, you may inquire about anything relevant to jury selection. General questions must be asked generally, that is, of the panel as a whole. You may then ask follow-up questions of any persons who raise their hands. You may also ask follow-up questions based on my questioning. You may not ask unnecessary questions just to hear the jurors speak, ask the jurors to make promises to you, make speeches, argue your case or tell the jury about yourself or your family, or do anything else that is not directly designed to elicit information about the potential jurors.

After all questioning has been completed, the panel will be removed from the courtroom and I will immediately ask for challenges for cause. No challenges for cause or statements that the panel or that any juror is acceptable may be made in front of the jury panel. After any persons are stricken for cause, the plaintiff will make its peremptory challenges and then the defense will make its. In a civil case, the first seven or eight jurors remaining after the strikes will be seated, and all are "real" jurors. In a criminal case, the first twelve will be seated, and the number of alternates will depend on the length of trial.

After the jury is selected, all copies of jury lists must be returned to the clerk.

## **12. Courtroom Logistics and Trial Rules**

a. Use of lectern: Opening statements, examination of witnesses and closing arguments must be made from the lectern. You do not need to ask my permission to approach the witness. You may never hover over the witness during an examination and you may never hover over the jury for any reason.

b. Objections: Stand and state your legal basis for the objection, without argument or elaboration. I will either rule or ask you to approach for a sidebar conference.

c. Recross: I do not allow recross as a matter of right; recross is only allowed if something new is brought out on redirect. If counsel wishes to recross a witness, counsel must approach the bench with the request and tell me the areas on which recross is sought. I will determine whether the questioning will be allowed, and only allow it rarely.

d. Exhibits: You must pre-mark all exhibits, as set out in the Case Management Order. Do not ask us to mark exhibits for you. The Case Management Order requires defendants to use letters for exhibits. If you have more than 100 exhibits, I suggest you figure out a way to avoid exhibits such as AAAAAAAAAA, and there are many ways to do so and still comply with the pretrial order. To save time, I will receive into evidence at the beginning of trial any exhibits to which no objections are filed in the pretrial. To assist in this, I ask that you bring a list of all exhibits which may be received without objection at the beginning of trial.

e. Depositions: Counsel frequently "over designate" deposition portions in their pretrial submissions. I do not like to waste jury time ruling on what portions of the depositions can be read to the jury, when often the issues can be worked out by the attorneys without my ruling. If you intend to read less than what you designated in your pretrial, you must notify opposing counsel of what you really intend to read sufficiently in advance so that they may see if they still object or wish to counterdesignate. This will require meeting before trial, or at the end of the first day of trial. I will then rule on any remaining issues, but I will expect you to have attempted to resolve disputes before bringing them to me. Please plan for this when you are scheduling your time. If you are reading lengthy portions of a deposition, please bring a reader to sit on the witness stand and read the answers while you read the questions. Please caution your readers about being overly dramatic.

The court reporter does not transcribe deposition testimony. For the record you must provide a list of the pages and line showing the portions of each deposition that was actually read or shown to the jury. You may do this at the end of the day or the end of the trial, but it is your responsibility to provide a record of what is actually presented.

f. Video Depositions: If you wish to play video depositions, please let me know in advance, so I can rule objections in time for editing, or we can otherwise work out the logistics.

g. Jury Instructions: I use the [8th Circuit Model instructions](#) for boilerplate and things covered by those instructions. I usually send the instructions to the jury in writing. Both parties should have available clean copies of their proposed instructions for this purpose. I may also ask that you e-mail word processing versions of your proposed instructions to my assistant. Do not do this unless asked.

h. Closing arguments: Twenty minutes is the presumptive time limit. I occasionally allow longer if there is a very good reason. The clerk will provide you with a warning if you request. The plaintiff or government must use more than 50% of its time in the opening part of its argument

### **13. Expert Witnesses**

a. Be prepared at the Rule 16 conference to discuss the types of expert witnesses who are likely in the case, and whether and when they will provide reports and/or depositions. Parties are allowed to stipulate to different ways of disclosing expert opinions, but in the absence of stipulation, the provisions of Rule 26 will be applied. I do not usually require treating health care providers to prepare reports, but I do set a deadline for the plaintiff to disclose exactly who will testify, to produce their records, and for taking their deposition. In some cases treaters may be required to do reports (for example, depending on the plaintiff's claims, reports might be required where the diagnosis is in the nature of repetitive stress injury or post-traumatic stress disorder). Except for the absence of reports, treating providers are covered by the same rules as other experts.

b. Expert witness reports are hearsay and are not usually admitted as evidence. The evidence is the witness's testimony; the report is simply a means for discovery. Reports may be

used for impeachment purposes, of course, if the witness attempts to change his or her testimony.

c. Expert witnesses are limited to the opinions and bases for opinions that they provided during the discovery period. The expert may testify about any opinion disclosed in either the report or the deposition, but may not add reasons or authority for that opinion that was not disclosed some way during the discovery period. Absent unusual circumstances, the expert – including treating health care providers – may not supplement or change opinions after the close of expert discovery, and the deadlines set out in the Case Management Order trump any different deadlines in the rules or statutes.

d. I do not tell the jury that anyone is an expert. Do not ask me to tell the jury that your witness is an expert or is qualified to give expert testimony, and do not “tender the witness as an expert” in front of the jury. I simply allow or exclude the testimony, depending on whether it is properly admissible under Rule 702; I do not add my blessing in front of the jury.

e. Whether witnesses consider themselves “experts” on anything is irrelevant to any issue in the case. Counsel shall not ask these witnesses whether they do or do not consider themselves to be experts. Counsel may cross-examine, of course, on the witness’s qualifications, but questioning (or arguing) about whether someone “holds himself out as an expert” or “admits she is not an expert” on any particular topic is improper.

f. Expert witnesses are not allowed to opine on the law (that’s my job in instructing the jury), nor are they allowed to sum up the evidence and tell the jury that one side or the other should win (that’s your job in closing arguments).

#### **14. Courtroom Decorum**

Stand when the jury enters the courtroom; stand at all times when speaking.

All cell phones must be turned off. No photographs or audio or video recording or broadcasting from the courtroom is allowed. Although laptops may be used at counsel tables, if counsel wish laptops to be used by someone in the audience they must get approval from me in advance. Please be sure that your clients and witnesses observe these rules.

No eating, drinking other than water, gum chewing, or audible beepers or watches are allowed. Please tell your clients and witnesses these rules.

All witnesses and opposing counsel must be addressed by their last names, with appropriate titles. Do not address any witnesses by their first names, even your clients, and please advise witnesses not to address counsel by their first names. This rule governs how we address one another in the courtroom -- it is not a rule that witnesses have to refer to one another in any certain way in their testimony.

Please be civil to one another