

United States Senior District Judge Charles A. Shaw

Chambers 8-North

Address

111 S. 10th Street,
Suite 8.148
St. Louis, MO 63102

Phone

(314) 244-7480

Fax

(314) 244-7489

Case Management Team

Michele Crayton
(314) 244-7921

Jason Dockery
(314) 244-7935

Law Clerks

Susan Heider
Laura Leister

Court Reporter

Please contact Judge
Shaw's chambers
(314) 244-7480

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 Procedure](#), and the [Federal Rules of Evidence](#). All counsel and self-represented parties are expected to know these rules and to follow them. Also read Judge Shaw's Federal Practice Tips, which follow these Requirements. The tips should help attorneys avoid common pleading and electronic filing errors.

2. Electronic Filing

The United States District Court for the Eastern District of Missouri has adopted the Case Management/Electronic Case Files (CM/ECF) system. Under CM/ECF, all pleadings, motions and other documents must be filed in electronic format. This requirement does not apply to self-represented parties. For more information concerning electronic filing and service of documents, please see the [CM/ECF Procedures Manual](#) available on this website and the CM/ECF and PACER portions of this website.

If you file a motion for leave to file a document out of time, a motion to file an amended complaint or answer, or a motion to file a memorandum in excess of 15 pages, file the document for which leave is required as an attachment to the motion for leave. Do not file the document requiring leave as a separate document.

Exhibits are filed as separate attachments and must be identified with both an exhibit number and a brief description of the exhibit. (E.g., Ex. 1, May 2016 Agreement; Ex. 2, Affidavit of Steven Jones.)

3. Courtesy Copies of Dispositive Motions and Pretrial Compliance Materials

Parties shall submit a paper courtesy copy to Judge Shaw's chambers of (1) any motions to dismiss, motions for judgment on the pleadings, or motions for summary judgment, together with the memorandum in support and any exhibits; (2) any opposition memorandum, including exhibits; (3) any reply memorandum in support, including exhibits; and (4) all pretrial compliance materials. Courtesy copies of jury instructions shall be in 14-point type and printed on only one side of the page. Courtesy copies may be mailed or hand-delivered to Chambers at 111 South Tenth Street, Suite 8-N, St. Louis, Missouri 63102.

4. Informal Matters

Judge Shaw does not conduct informal matters. Informal matters must be filed in the form of a motion. The motion must state whether it is filed with the consent of the opposing party, is unopposed, or will be opposed. In the absence of this information, the motion will not be considered an informal matter.

5. Court Docket and Electronic Filings

The court docket is managed by Judge Shaw's law clerks, who handle all questions regarding the docket. Contact them at (314) 244-7480.

Judge Shaw's Case Management Team in the Clerk's Office handles all questions regarding electronic filing. Team members are:

Michele Crayton (314) 244-7921

Jason Dockery (314) 244-7935

For Southeastern Division cases, please contact:

Cathy Gould (573) 331-8801

6. Scheduling Plans

In most cases, an order directing the filing of a Joint Proposed Scheduling Plan will be issued after all defendants have filed an answer or responsive motion to the complaint, and after a Clerk's Entry of Default has been issued as to any non-responding defendants. Upon review of the Joint Proposed Scheduling Plan, Judge Shaw will consider whether a scheduling conference is necessary or advisable prior to issuing a Case Management Plan.

7. Case Management Orders

A Case Management Order ("CMO") will be issued shortly after the submission of a Joint Proposed Scheduling Plan. The *Scheduling Order* portion of the CMO will contain all relevant deadlines for the case, and the *Order Relating to Trial* portion will detail pretrial compliance requirements. Counsel should read the CMO carefully and refer to it throughout the case for answers to procedural questions. Any requests for changes to a CMO must be made by written motion. Changes in the CMO with respect to dispositive motion deadlines and trial dates are seldom granted.

8. Treating Physicians

Treating physicians will be considered expert witnesses under Rule 26(a)(2), Fed. Civ. P., to the extent they give testimony as to causation or prognosis. Note, while Rule 26 requires disclosure of all witnesses who will give expert testimony, only witnesses "retained or specially employed to provide expert testimony" must submit written reports. Rule 26(a)(2)(B). Rule 26(a)(2)(C) mandates additional disclosures from experts who are not required to provide written expert reports; these are often treating physicians.

9. Proposed Orders; Sealed Motions and Documents; Protective Orders

Attorneys are referred to the Court's CM/ECF Procedures Manual, available on this website, for instructions concerning filing proposed orders. A proposed order must be (1) filed as a pdf attachment to an appropriate notice or motion, and (2) sent to the Court's proposed orders mailbox, MOED_Proposed_Orders@moed.uscourts.gov, in a word-processing format as an e-mail attachment. The subject line of the e-mail must include the case name, case number (including the Judge's initials), and the document to which it pertains. See Section II.J of the CM/ECF Procedures Manual. Judge Shaw does not require proposed orders for informal-type motions such as motions for leave to file out of time, for leave to file an overlength brief, or to substitute attorneys.

Sealed motions and documents must be filed in accordance with Section VI of the CM/ECF Procedures Manual. See also Local Rule 13.05 concerning sealed documents. Proposed protective orders that

contemplate the filing of sealed documents should include language granting leave to file documents under seal.

10. Discovery Motion Docket

Judge Shaw issues rulings on disputed discovery motions *only* at a monthly Discovery Motion Docket ("DMD"). *The moving party* is responsible for filing and serving a notice of hearing setting a disputed discovery motion on the DMD. The notice must be filed at least seven (7) days in advance of the docket. Counsel should contact chambers to obtain the date, time and location of the next DMD prior to filing a notice of hearing. Motions are heard in the order that counsel arrive in the courtroom. Unless all counsel consent, Judge Shaw will not address a motion at the DMD if the opposing party has not had the opportunity to file a response within the time allowed by the Local Rules. Disputed discovery motions that are not noticed for hearing at the DMD within forty-five (45) days of filing may be denied without prejudice.

11. Pretrial Conference

In most civil cases, a final pretrial conference is held on the Thursday prior to the trial date. The conferences are held on the record in the courtroom. At the conference, Judge Shaw will establish a final order of trial, issue rulings on any motions in limine, and address evidentiary problems. The parties' joint voir dire statement and stipulated facts must be prepared and filed prior to the pretrial conference, as required by the Case Management Order. In some instances, more than one case will be set for trial on a particular day. When this occurs, counsel is expected to keep in contact with the Case Management Team to determine whether their case will proceed as scheduled.

12. Trial Docket

Judge Shaw's trial docket may be set for any Monday of the month and the docket may last from one to three weeks. The Case Management Order will state the length of the docket in each case.

Attorneys or self-represented parties in each civil case may be contacted 2-3 weeks prior to the beginning of the docket for a status report. They will be asked how long the trial is expected to last and the status of any settlement negotiations. Attorneys and self-represented parties should notify chambers, as soon as possible, if their case is settling or requires special attention by the Court. All civil cases are assigned a number-one trial setting. Counsel must be prepared to try the case on the scheduled day of trial. Typically, cases will be tried in order of age, but other factors including length of trial and type of case are considered in determining the most efficient order of the docket. Definitive trial settings will be announced at the final pretrial conference. If attorneys wish to use audiovisual, computer or other special equipment at trial, please contact a member of the Case Management Team at least two weeks prior to trial to make arrangements.

13. Transcripts

Contact Judge Shaw's chambers at (314) 244-7480 to order transcripts or to order daily copy. Attorneys requesting daily copy of a trial transcript are to contact chambers at least two weeks in advance of the trial and will also need to complete and submit [Form AO-0435](#).

14. Use of Personal Data Identifiers

Under CM/ECF, documents in Court files and electronic transcripts of proceedings are available to the public via the Internet. As a result, personal data identifiers in these materials are subject to wide dissemination. Personal data identifiers include Social Security and tax identification numbers, financial account numbers, names of minor children, dates of birth, and home addresses of individuals. Counsel should attempt to limit their use of personal data identifiers in pleadings and other documents filed with the

Court, and in statements and questions to witnesses at trial. When use of such information is required, counsel may partially redact personal data identifiers as follows:

- Social Security and tax identification numbers to the last four digits;
- Financial account numbers to the last four digits;
- Dates of birth to the year;
- Names of minor children to the initials;
- Home addresses to the city and state.

15. Available Courtroom Technologies

The Court has [evidence presentation equipment](#) available, including an evidence camera (ELMO), annotation monitors, VHS/DVD player, and interface at the attorney tables to allow connection of laptops for displaying digital documents, video, etc. through the courtroom multimedia system. Because this is shared equipment, it is not always available. Please call Judge Shaw's Case Management Team in the Clerk's Office to schedule the equipment for your trial, two weeks prior to trial. The clerk will also schedule a time for attorneys to come to the courtroom to be trained on the equipment.

16. Courtroom Procedures

- Use of Podium.** Counsel shall stand at the podium during opening statements, examination of witnesses and closing arguments. If there are exhibits to be viewed by a witness, you may ask to approach the witness for that purpose. It is unnecessary to repeat your request to approach each time you have an exhibit to show the witness; the initial request to approach is sufficient.
- Addressing the Court.** Counsel shall stand when making objections or addressing the court
- Exhibits.** Counsel must mark all exhibits in advance of trial.
- Deposition Designations.** Counsel should meet prior to the pretrial conference, and again prior to trial if necessary, to disclose which portions of deposition designations they will actually seek to read to the jury, and to attempt to resolve any disputes concerning deposition designations prior to seeking a ruling from the Court.

Note: Deposition designations will not be written down by the Court Reporter. Counsel will need to furnish the Court Reporter with a list of deposition designations that were read into the record, by page and line number.

- Voir Dire.** Generally, counsel is permitted to conduct voir dire examination after some preliminary questions by the Court. Counsel's questions must initially be directed to the panel as a whole. Individual examination of a prospective juror is permitted only if warranted by responses to questions. Individual prospective jurors should be addressed by their last name, preceded by Mr. or Ms. Do not repeat questions that have been asked by the court. Examinations that are repetitious or unduly lengthy will be terminated by the Court. Juror challenges will be considered after voir dire is completed at the bench. Exceptions may be made for disruptive jurors. The jury lists are not to be copied or duplicated in any way. The lists are not to be removed from the courtroom and must be returned to the clerk following jury selection. Jurors are seated starting from the right to the left and from the front to the back of the jury box. A sample courtroom seating chart follows at the end of this memorandum. Seating charts are also available in the Courtroom.
- Jury Instructions.** The current version of the Eighth Circuit Manual of Model Civil Jury Instructions should be used for all boilerplate and substantive matters covered by these instructions. Instructions from Devitt & Blackmar are permitted only where there is no applicable Eighth Circuit model instruction. The Missouri Approved Instructions (or another state's approved instructions, when appropriate) are used for issues governed by state law. The jury is given the instructions in writing. Counsel must submit two complete sets of instructions, including boilerplate instructions. One set of instructions must be clean, i.e., with no citation to authority, no case caption, and no indication which party has offered the instruction, and include only the words "Instruction No. ___" at

the top. The other set of instructions must indicate the source of or authority for the instruction, and which party has offered it, in addition to having the words "Instruction No. ___" at the top. Courtesy copies of jury instructions provided to the Court shall be in 14-point type and printed on only one side of the page. At trial, counsel should have jury instructions available in a word-processing format on a flash drive or rewritable CD to assist the Court in making necessary changes. Judge Shaw will instruct the jury before closing arguments are made.

Counsel may disclose and discuss jury instructions in closing argument.

- (g) **Opening Statements.** Opening statements, if any, shall not exceed twenty (20) minutes per party. Multiple parties on one side of a case who are represented by the same counsel will not have more than twenty (20) minutes for opening statements
- (h) **Addressing Witnesses, Clients and Counsel.** 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.

Witness examination shall be limited to direct, cross, redirect and recross (only two bites of the apple). **Note:** No "tag teaming" is allowed. Only one lawyer per side may question, cross-examine or object with respect to a particular witness. The lawyer conducting direct examination of a witness must make any objections during cross-examination of that witness.
- (i) **Redirect Examination.** Redirect examination should not repeat direct examination, and recross examination should be limited accordingly.
- (j) **Closing Argument.** After all of the evidence is presented, the court will advise the parties how much time will be allotted for closing arguments. This will generally not exceed twenty (20) minutes. The plaintiff must use more than half the available time in the first part of closing argument. Counsel should inform the Court if a warning is requested.

17. Courtroom Decorum

No food or drink is permitted, except for water. No chewing gum is permitted. No audible beepers or watches are allowed. Local Rule 13.02 concerning electronic devices will be strictly enforced.

Only counsel and parties are permitted to enter inside the bar railing. Exceptions may be made for persons assisting counsel, or for client representation. Counsel should inform their clients, witnesses, and other observers of these rules.

18. Courtroom Seating Chart

Benches

38	37	36	35	34	33	32	31	30	29	28	27
26	25	24			23	22	21	20	19	18	17

Jury Box

16	15	14	13	12	11
10	9	8	7		6
5	4	3	2		1

Federal Practice Tips

November 2019

**Charles A. Shaw
United States District Judge**

I. Avoidable Pleading and Filing Errors

1. **Read** the Court's CM/ECF Procedures Manual. Most of the avoidable filing errors discussed below are addressed in that Manual, available online at the Eastern District's website, www.moed.uscourts.gov (select the CM/ECF tab at the top, then select the CM/ECF Procedures Manual link in the E-Filing (CM/ECF) box on the right side of the page). In addition, **read** my Judge's Requirements, also available on the Court's website. Finally, **read** the E.D. Mo. Local Rules.

Not all judges in this district enforce the CM/ECF procedural rules or Local Rules as strictly as I do, but the rules were adopted by the Court and are in place to provide guidance to attorneys as well as to ensure accuracy and order in the Court records. Attorneys will never go wrong by adhering strictly to the requirements of these rules and must do so in my cases.

The following are examples of common pleading and filing errors.

Pleading

- a. Failure to adequately plead the citizenship of a partnership or limited liability corporation (LLC) in a diversity case. This is by far the most common pleading error I see. Under 8th Circuit and Supreme Court precedent, the citizenship of these entities is based on the citizenship of each of their underlying members or partners (general and limited), **not** the state of incorporation or principal place of business. See GMAC Commercial Credit, LLC v. Dillard Dep't Stores, Inc., 357 F.3d 827, 829 (8th Cir. 2004) (LLCs); Carden v. Arkoma Associates, 494 U.S. 185, 195-96 (1990) (partnerships). So, you must plead facts concerning (1) the state of citizenship of each individual member or partner, and (2) the state of incorporation and principal place of business of each corporate member or partner. If an LLC's or partnership's members are themselves LLCs or partnerships, it is not adequate to plead that. Instead, you must dig down into membership structure of the LLC or partnership and plead facts concerning the citizenship of the underlying individuals and/or the IRS Subchapter C corporations (i.e., those legally considered to be separate entities from their owners) that own the LLC or partnership. Otherwise, you cannot establish diversity jurisdiction.
- b. Failure to adequately plead the **citizenship** of an individual in a diversity case. Many times, both plaintiffs and removing defendants will allege facts concerning the residence of an individual. It is well established that an allegation of residence is not the equivalent of an allegation of **citizenship** and does not satisfy the pleading requirements for federal diversity jurisdiction under 28 U.S.C. § 1332(a)(1). You must plead citizenship to properly invoke the federal courts' diversity jurisdiction. See Sanders v. Clemco Industries, 823 F.2d 214, 216 (8th Cir. 1987); Jones v. Hadican, 552 F.2d 249, 251 n.3 (8th Cir. 1977); Pattiz v. Schwartz, 386 F.2d 300, 301 (8th Cir. 1968).
- c. In a removed diversity case, failure to plead the citizenship of the parties **both** at the time of filing in state court and at the time of removal to federal court. See Knudson v. Systems Painters, Inc., 634 F.3d 968, 975 (8th Cir. 2011).

Filing

- a. **Motions need a supporting memorandum, but only one response is allowed.** When you file a motion, you must file a separate memorandum in support setting out the argument and authorities on which you rely. Local Rule 4.01(A). However, no separate memorandum is needed for simple motions such as for extension of time, to file an overlength brief, etc. Here is the important part: Although a motion must be accompanied by a supporting memorandum, **the non-moving party is only allowed one response** to

the motion and memorandum. **Do not file separate responses to the motion and the memorandum.** See Local Rule 4.01(B) (permitting a “single memorandum” to be filed in response to a motion).

- b. **Response and Reply Times.** Responses to motions are due fourteen (14) days after service of the motion, except that responses to motions for extension of time are due seven (7) days after service. See Local Rule 4.01(B). Reply memoranda are due ten (10) days after service of a response. See Local Rule 4.01(C). Summary judgment oppositions are due twenty-one (21) days after service of the motion. See Local Rule 4.01(F). Note: My Case Management Orders allow thirty (30) days for a summary judgment opposition. **Important:** The Local Rules are read in conjunction with Rules 6(a) and (d), Fed. R. Civ. P., to determine the response date. As of December 1, 2016, three (3) days are no longer added to the response time if service was by CM/ECF filing. **Note:** Rule 6(d) does not apply to Court orders; as a result, three (3) days are never added when responding to any Court order.
- c. **Motions.** If you are asking the Court to take any action or issue an order in a case, Rule 7(b), Fed. R. Civ. P., requires that you do it in the form of a motion that states the grounds for seeking the order and the relief sought. If you are not asking the Court to take action or issue an order, don't select the Motion filing event. There are numerous civil filing events that may be applicable, such as Notices, and under the Other Documents heading, Memorandum, Request (a non-motion event), Response to Court, Status Report, and Supplemental. Call my case management team in the Clerk's Office if you don't know which event to select.
- d. **Surreponses and Surreplies.** Additional briefing beyond the standard motion, response and reply requires leave of Court, which is not routinely granted. You must (1) file a motion for leave of Court to file a surresponse or surreply, (2) submit the proposed surresponse or surreply as an attachment to the motion for leave, and (3) explain in the motion for leave why additional briefing is needed. **Note:** A brief following a reply is properly titled a **surreesponse**, and a brief following a surresponse is a **surreply**. Many attorneys get this backwards.
- e. **Documents that need leave of Court.** File motions for leave of Court to file amended pleadings, overlength briefs, or out of time documents. File the proposed amended pleading, overlength memorandum, or out of time document as an attachment to the motion for leave. Do not file amended pleadings, overlength memoranda, or out of time documents separately, without leave of Court. See CM/ECF Procedures Manual Section II.B. Also, don't designate a proposed amended pleading, overlength memorandum, or out of time document as an exhibit, or put an exhibit sticker on it, unless the document will be an exhibit when it is filed. If you improperly include an exhibit sticker or designation, you will be ordered to refile the document because the Clerk cannot modify a PDF document to remove it.
- f. **Overlength briefs.** Think twice before you seek leave to file a memorandum in excess of 15 pages. Make sure you are putting forth your arguments in a concise, easily understood format. Don't waste three pages telling the Court the standard of review--do that in a paragraph. Unnecessarily long memoranda make it more difficult for the Court to issue timely rulings.
- g. **Login and password.** You cannot file a document for another attorney using your electronic login and password. CM/ECF Procedures Manual, Section II.H. provides in pertinent part, "The use of an attorney's e-filing login and password to file a document constitutes the signature of that attorney on that document for purposes of Fed. R. Civ. P.

11. The login and password issued to an individual attorney may be used only to file documents on behalf of that attorney."

Section II.H. also provides, "For an electronic filing, only the attorney whose login and password are used to file the document will be entered as an attorney of record. **Additional attorneys who wish to appear of record must enter their appearances separately using their own e-filing logins and passwords.**" For example, if the names of four attorneys appear on a complaint, only the attorney whose login and password was used to file the complaint will be entered onto the docket sheet.

- h. **Proposed orders.** If you are submitting a proposed order, you must (1) file the proposed order electronically as an attachment to the motion or memorandum to which it pertains; and (2) send a word-processing version of the proposed order to the Court's proposed orders mailbox at: MOED_Proposed_Orders@moed.uscourts.gov. The subject line of the e-mail should include the case name and number (including the judge's initials) as it is a shared mailbox and should identify the document to which it pertains. CM/ECF Procedures Manual, Section II.I. Do not submit proposed orders for informal-type matters such as motions for leave to file amended pleadings, for extensions of time, or for leave to file an overlength brief or to file out of time.
- i. **Identifying exhibits.** When you file a document that has exhibits, you must identify each exhibit with a name that includes both the exhibit designation and a brief description of the exhibit, e.g., Ex. 1--Jones Affidavit; Ex. 2-- Smith Contract, Ex. 3--Second Jones Affidavit. Do not simply label exhibits as Exhibit 1 and Exhibit 2. See CM/ECF Procedures Manual Section II.F and the instructions that appear in red text on the filing screens. This identification makes it much easier for the Court and the parties to readily find things in the record.

When filing deposition transcripts as exhibits, do not redact the transcripts to the degree that they no longer make sense. Leave the pertinent testimony in its context.

- j. **Filing under seal.** Read Section VI of the CM/ECF Procedures Manual before filing a motion or document under seal. The Manual provides step-by-step directions, including for filing exhibits to sealed motions or documents. When you file a sealed motion or document, it is necessary to make two separate entries in the CM/ECF system. The first entry is a motion requesting leave to file a sealed motion or sealed document, and the second entry is the actual sealed motion or sealed document. CM/ECF Procedures Manual, Section VI.B. There are separate filing events for Sealed Documents and Sealed Motions. Choose the correct one.
- k. **Sealed filings and protective orders.** If a protective order granting leave to file documents under seal has been entered in a case, it is not necessary to file a motion for leave. See CM/ECF Procedures Manual, Section VI.B.
- l. **Electronic access to sealed filings.** When a document is filed under seal, electronic notice of the document number only is sent to counsel of record. The docket text will read Sealed Motion or Sealed Document. Only Court users can access or view sealed motions or documents on the CM/ECF system. See CM/ECF Procedures Manual, Section VI.B.
- m. **Service of sealed filings; certificate of service.** The attorney filing a sealed motion or document must serve opposing counsel by other means, such as email or U.S. Mail, as service **will not occur via the CM/ECF system**. The sealed paper must include a certificate

of service reflecting the means by which service was made. See CM/ECF Procedures Manual, Section VI.B.; Local Rule 2.12(B).

- n. **Filing on behalf of multiple parties.** When a joint motion or document such as an answer is electronically filed on behalf of more than one defendant or plaintiff, the filing attorney should select in CM/ECF the names of all party filers on whose behalf the motion or document is filed, so that the docket sheet correctly reflects all filers of the motion or document. This can be important for two reasons: First, for the docket sheet to be clear and accurate and, second, because the Court's automated tickler system depends on the accuracy of docket entries. For example, a docket entry showing that an answer was filed on behalf of one defendant--but that was actually filed by all of the defendants--will not trigger the Court's automated tickler system for issuance of a Case Management Order and may delay your case.
- o. **Amendment by interlineation.** I do not allow amendment to pleadings by interlineation, because it can cause confusion in the record.
- p. **Personal data identifiers.** Obey Federal Rule of Civil Procedure 5.2 and Local Rule 2.17 and do not include personal data identifiers in any document or exhibit that you file. Follow the Local Rule's directions for redacting information such as Social Security and tax I.D. numbers, the names of minor children, dates of birth, financial accounts numbers, and home addresses of non-parties.
- q. **Joint motions.** When parties who are represented by separate counsel file a joint motion or document, the motion or document must contain an attorney signature block and a representation of the filing attorney's signature for each separately represented party. See Rule 11(a), Federal Rules of Civil Procedure; CM/ECF Procedures Manual, Sections II.C. and II.H. Otherwise, the Court will consider the motion or document as having been filed only by the party whose attorney signed it.
- r. **Summary judgment motions.** Summary judgment motions must be accompanied by a document titled Statement of Uncontroverted Material Facts, which must be filed separately from the motion using the filing event "Statement of Uncontroverted Material Facts." The Statement of Uncontroverted Material Facts must set forth each relevant fact in a separately numbered paragraph stating how each fact is established by the record, with appropriate supporting citation(s). See Local Rule 4.01(E). A party opposing a summary judgment motion must also file a separate document titled Response to Statement of Material Facts, using the filing event "Response to Statement of Material Facts." The Response must set forth each relevant fact as to which the opposing party contends a genuine issue exists, supported by specific references to the record. The Response must note for all disputed facts the paragraph number from the moving party's Statement of Uncontroverted Material Facts. All matters set forth in the moving party's Statement of Uncontroverted Material Facts that are not specifically controverted will be deemed admitted for purposes of summary judgment. See Local Rule 4.01(E).
- s. **General CM/ECF tips.**
 - When filing any document, read each filing screen. There are useful filing tips and directions on many of the screens. If an assistant files documents for you, tell them to read the screens and to label exhibits with both an exhibit designation and a brief description.

- When you receive a Notice of Electronic Filing (NEF) that an order has been issued, click on the document number's hyperlink and read the entire order. Not all relevant information from an order is included in the NEF, unless the order is titled "docket text order" and has no hyperlink.
- When filing a document on behalf of more than one party, select all appropriate party filers.
- It is error to combine multiple unrelated motions into one document. For example, don't file an Entry of Appearance and Motion for Extension of Time, or a Motion to Compel and for Extension of Time. Instead, file a separate motion to compel and a separate motion for extension of time. However, it is proper to file an alternative motion, such as motion to dismiss or in the alternative for summary judgment.
- Discovery or disclosure documents may not be filed. See Local Rule 3.02.
- Check your document for accuracy before filing. Please do not file a draft document with markups, or a document from the wrong case. Once you file a document electronically, everyone in the case has a copy.
- As of December 1, 2018, no certificate of service is required when a public paper is served by filing it with the Court's electronic filing system. See Rule 5, Fed. R. Civ. P., Local Rule 2.12(A), (B). A certificate of service is required when sealed motions or documents are filed. See CM/ECF Administrative Procedures, §§ II.G., VI.B.4.

II. Communication with the Court

1. Err in favor of calling my chambers or my case management team in the Clerk's Office if you have a question, before you take the action you're unsure about. If your question concerns technical filings tips, such as which filing event to choose, start with the case management team. If your question concerns my preferences, call chambers.
2. My case management team is Michele Crayton (314) 244-7921, and Jason Dockery (314) 244-7935.
3. My law clerks are Susan Heider (odd-numbered cases), and Laura Leister (even-numbered cases).
4. Do not send me correspondence or copy me on correspondence among attorneys. Attorneys should not communicate with the Court in writing except by motion or memorandum. See Local Rule 4.04(A).
5. Attorneys should always notify the Court of developments in cases in writing, but if a case has settled and there are dispositive motions pending or a closely upcoming trial date, attorneys should also call chambers as soon as possible to let the Court know. This is a courtesy that is greatly appreciated.
6. The Court has motion reports available that should list every pending motion. On very rare occasions, a motion might be omitted for some reason. I am most likely aware of your motion, but if you are concerned, call chambers at (314) 244-7480 and ask to speak to the law clerk assigned to the case.
7. If there has been no ruling on a case-dispositive motion and pretrial compliance is due, file the pretrial compliance unless I issue an order postponing the deadline for filing.

III. Case Management Issues

1. I do not hold Rule 16 conferences and instead issue an order requiring the filing of a Joint Proposed Scheduling Plan (JSP) after all parties have filed responsive pleadings or there has been a Clerk's Entry of Default under Rule 55(a) for any parties who did not respond.

2. In most cases I will require the filing of a JSP even if a dispositive motion has been filed, unless it is apparent from the face of the complaint that it is likely to be dismissed, or there is a challenge to subject matter jurisdiction. I may require a JSP if a motion to remand or motion to dismiss for lack of personal jurisdiction is pending because any discovery will be useful even if the case is remanded to state court or transferred to another district.

3. The JSP should include a schedule for discovery that is unlikely to occur, but not for discovery that definitely will not occur. Parties should be realistic about trial dates in the JSP and allow adequate time to review dispositive motions--at least 100 days prior to the trial setting. If your proposed deadline for filing a summary judgment motion is January 1, don't ask for a February 1 trial setting. The motion won't even be fully briefed at that point.

4. My Case Management Orders include dates for the filing of Daubert motions. If you think there may be a Daubert issue in your case, include a proposed date for filing motions in your JSP. Parties should request a Daubert hearing if one is deemed necessary.

5. Carefully read and follow the deadlines and requirements imposed by the Case Management Order issued in each case. I occasionally change aspects of my standard Case Management Order, and it will be different from those issued by other judges in this district, although it may appear similar on a casual perusal.

6. Significantly more motions to dismiss are being filed and granted under the Twombly/Iqbal standard. Although the 8th Circuit says notice pleading is still the rule under Twombly and Iqbal, I don't believe this is true in practice. Plead facts necessary to support the elements of the cause of action to avoid a motion to dismiss.

7. To survive a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff need not provide specific facts in support of its allegations, Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam), but must include sufficient factual information to provide the grounds on which the claim rests, and to raise a right to relief above a speculative level. Schaaf v. Residential Funding Corp., 517 F.3d 544, 549 (8th Cir. 2008) (citing Twombly, 550 U.S. at 555 & n.3). This obligation requires a plaintiff to plead more than labels and conclusions and a formulaic recitation of the elements of a cause of action will not do. Twombly, 550 U.S. at 555. A complaint must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory. Id. at 562 (quoted case omitted). This standard simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim or element. Id. at 556.

8. Motions to Compel. Comply with the good faith effort to resolve requirements of Fed. R. Civ. P. 37(a)(1) and Rule Local Rule 3.04(A) before filing any motion relating to discovery or disclosure. **Note:** Local Rule 3.04(A) requires a statement that movant's counsel has conferred in person or by telephone with the opposing counsel. Letters or email trails do not comply with the Local Rule's requirement. Pick up the phone and make a call or agree to meet in person. Motions that do not demonstrate on their face

that the good faith effort to resolve requirement has been fully met will be summarily denied without prejudice.

Once it is clear a discovery dispute can't be resolved, promptly file your motion to compel. Cases get delayed when counsel allow months to go by before they get serious about obtaining the discovery they need. Be aware that I only issue rulings on discovery motions at my monthly discovery motion docket. Call chambers for the date of the next docket and file a Notice of Hearing at least seven days prior to the docket. I will not hear a motion, however, before the opposing party has had the full response time allowed by Local Rule 4.01(B). If you have a motion to compel that is particularly time sensitive, call chambers and ask for a date for a special setting.

I follow the provisions of Rule 37(a)(5)(A), Fed. R. Civ. P., with respect to attorney's fees and expenses associated with discovery motions.

9. Always respond to a motion; otherwise I will assume you have no objection. Responses must be filed within the time set by Local Rule 4.01. Some attorneys believe no response is required until a motion is noticed up for hearing, but this is incorrect. Except for discovery motions, I do not conduct hearings on motions.

10. Progress in a case does not cease because there is a pending dispositive motion. I expect counsel to complete discovery and meet deadlines even though they are awaiting a ruling. Do not put off settlement discussions until a dispositive motion has been ruled. Instead, factor the risks of winning or losing the dispositive motion into earlier settlement discussions.

IV. Alternative Dispute Resolution

1. Mediation should be scheduled as soon as the parties have enough facts to make valid decisions as to the strength and possible value of a case. This will vary from case to case, but mediation should occur before the dispositive motion deadline, as parties are often more reluctant to settle if they have expended attorneys' fees on summary judgment motions.

2. Mediation with a self-represented party can be problematic, but there has been some success with the Court's appointment of limited scope counsel for the purpose of ADR under Local Rule 6.02(C). Volunteer attorneys agree to serve without compensation and enter a Limited Representation Appearance to assist otherwise unrepresented parties in the alternative dispute resolution process only. All Court-certified neutrals will serve pro bono where a self-represented party has been granted in forma pauperis status.

3. Mediation may not be appropriate where the value of a case is so small that it is financially unfeasible, such as in some Fair Debt Collection Practices Act or Telephone Consumer Protection Act cases. In almost all other cases, there is value in mediation. Many times, parties just want to have their side of a dispute heard by someone. Being able to explain their case to a neutral may give them enough satisfaction in that regard to allow them to make a reasonable settlement. Even if mediation does not result in settlement, it often is useful in giving parties more realistic expectations as to the value of a claim and ultimate likelihood of success, by getting an objective neutral's view of the strong and weak aspects of the case for dispositive motion or for the jury.

4. Early Neutral Evaluation can be very useful and justify the additional expense in a case where a party has unrealistic expectations as to the value of his/her case, including matters involving self-represented parties.

V. Suggestions to Improve Attorney Effectiveness

1. To start, read my Judge's Requirements, the CM/ECF Procedures Manual, and the Local Rules. Be familiar with the Federal Rules of Civil Procedure or Criminal Procedure.
2. If you are new to CM/ECF filing, take the one-hour webinar on CM/ECF Attorney Training offered quarterly by the Clerk's Office. Register on the Court website, www.moed.uscourts.gov. There are also other CM/ECF training materials available on the website, including video and slide presentations about case opening and other topics.
3. Ask questions before you file documents if you are not sure how to proceed. It is much better to ask a question than to make a mistake that chambers personnel or the Clerk will need to fix. Direct technical filing questions to the Case Management Team, not the law clerks.
4. Don't file a shotgun complaint. Figure out the plaintiff's strongest claims and limit your pleading to those. Otherwise, you significantly risk delaying your case and increasing your client's cost of litigation because a pleading that includes weak claims will draw motions to dismiss. These will have to await a Court ruling. If you make it past summary judgment with multiple claims, you'll have to prepare jury instructions for each of the claims and, to the extent any claims are duplicative, you'll have to elect your remedies. So why not do that at the start of the case?
5. After you've drafted a motion or memorandum, ask someone else in your office to read it with a critical eye. Is it well written? Are there gaps in your logic or your discussion? Have you properly cited illustrative cases to support your argument? Have you failed to respond to aspects of the other side's brief? If you have a claim that you know is very weak or barred by the applicable law, consider whether you should concede a motion on that claim.
6. Strive to improve the level of your practice generally. Don't put off accomplishing tasks until the last minute. Carefully proofread documents that you sign. Be sure your cited cases stand for the proposition you assert they do and have not been overruled.
7. The attorneys who are the most respected by federal judges, and who are often the most successful, are those able to zealously represent their client while still demonstrating appropriate courtesy and professionalism toward the court and opposing counsel. They show restraint and avoid hyperboles. The following are a few examples of ways to avoid unprofessional or discourteous conduct:
 - Don't stonewall in producing discovery which is obviously discoverable. (When a motion to compel is filed, Rule 37(a)(5)(A), Fed. R. Civ. P., requires the court to consider awarding expenses, including attorney's fees, against the party, attorney, or deponent whose conduct necessitated the motion.)
 - Cooperate with opposing counsel in facilitating discovery (such as agreeing on dates and places for producing documents, taking depositions, or making documents available for inspection), and facilitating the presentation of evidence at trial (by entering into stipulations regarding clearly admissible exhibits, or facts that shouldn't have to be proved).
 - Cooperate with opposing counsel by consenting to reasonable requests, such as for additional time to file a memorandum.

- Comply with the Order Referring Case to ADR by meeting deadlines and participating in mediation or early neutral evaluation in good faith. Counsel of record, parties, and corporate representatives or claims professionals having authority to settle claims must attend all mediation conferences.
- Keep the Court informed of the status of the case. If a case has settled and discovery or substantive motions are pending, promptly notify the Court so it is not required to do unnecessary work. If the trial date is approaching, notify both the Court and the Clerk's Office so the jury may be cancelled.
- Avoid making personal attacks on opposing counsel in memoranda or oral arguments and avoid using a sarcastic or ridiculing tone in almost every instance, as this makes you look worse than your opponent.
- Never mis-cite or knowingly misinterpret case law. Federal courts read your cited cases and conduct their own research. It is far better to concede a point you can't win than to make a strained or implausible argument around it; your credibility with the Court may be permanently damaged if you do.
- Provide paper courtesy copies of dispositive motions and pretrial compliance materials directly to chambers. Delivery by hand or by regular mail is requested.
- Don't drop in to see me for an ex parte talk or a ruling on an informal matter, at any time. You may call my law clerks for information on my preferences and procedures, but not for legal advice.
- Be courteous to Court personnel, including Court clerks, judicial assistants and law clerks. These people are carrying out their assigned duties and can be useful sources of information. Remember, however, that no Court personnel may offer any legal advice. For example, Court personnel cannot calculate when a response is due, as this constitutes legal advice. Instead, they can only refer you to the appropriate local or federal rule for guidance.

8. Avoiding Trial Mistakes Common to Inexperienced Attorneys:

- Be sure your pretrial compliance materials fully comply with the requirements of the Case Management Order. This usually includes a trial brief, full sets of jury instructions, any objections to exhibits and deposition testimony, and motions in limine.
- Be aware that jury instructions in federal court are typically governed by federal pattern instructions, or by Missouri Approved Instructions in diversity cases involving Missouri law. Lawyers can save time and trouble by agreeing on a pattern source of instructions before trial (e.g., Eighth Circuit Model; Kevin F. O'Malley, et al., Federal Jury Practice and Instructions (Sixth Ed.)). Also, where there is a dispute, provide alternative proposed instructions for the Court to choose from.
- Make sure your trial exhibits are properly marked prior to trial, and well organized for easy access during trial without fumbling or unnecessary delay.
- Be prepared to cite cases in support of your arguments on evidentiary issues at trial.
- Be prepared in your case generally: make sure you fully know the facts of your case and the law applicable to it. This is the most important aspect of trial readiness. Other aspects of trial preparation include being prepared to examine and cross-examine witnesses in a direct, efficient manner.

- Do not raise dispositive issues in a motion in limine. The proper procedure is to file a dispositive motion which can be fully briefed and considered by the Court.
- Always come to the podium or, at minimum, stand whenever addressing the Court, including when making objections.
- Try to avoid settling your case on the eve of trial, as the Court will assess jury costs if the prospective jurors report for service in the case. See Local Rule 8.04.
- The Court has evidence presentation equipment available, including an evidence camera (ELMO), VCR, monitors, and hook-ups for computer-stored evidence or computer presentations. Because this is shared equipment, it is not always available. Two weeks before a trial, call to schedule equipment for your trial. Ask to speak to a clerk on the Case Management Team of the judge in whose courtroom your trial is set. Also, ask the clerk to schedule a time for you to come to court to be trained on the equipment.

9. Avoiding Trial Mistakes Common to Experienced Attorneys:

- Demonstrate civility to opposing counsel, parties and witnesses, outside the boundaries of proper advocacy. Lawyers who, during pretrial and during trial, go out of their way to make another lawyer look foolish, or to frustrate the orderly movement of a case because he or she can, is performing a disservice to the client, the Court, and the profession.
- In closing argument, avoid calling the opposing attorney's argument ridiculous. A jury knows if a position is not supported by the evidence, and while they respect advocacy, they are repulsed by personal attacks among lawyers.
- Avoid asking for millions of dollars when the evidence shows that only minimal damages have been proved.
- Male lawyers should never treat female lawyers in a condescending manner. This angers jurors and the Court.
- When using charts or blowups, be sure they are large enough and clear enough to be read by the jury. Write legibly on charts, so that you may rely on them later as an exhibit or for illustrating points to the jury.
- In non-jury cases, ask if the Court would like a copy of all exhibits prior to trial. This makes it much easier for the judge to follow the testimony.
- In pretrial compliance materials, always list as "may call" all witnesses listed by the opposing party, and list as "may introduce" all exhibits listed by the opposing party. This simple step can eliminate real problems in the introduction of evidence at trial.
- In pretrial compliance materials, to avoid confusion, list not only the order of the exhibits, but refer to the deposition number of that exhibit if it has been identified in a deposition.
- Be prepared ahead of time to introduce all exhibits to which it is obvious there will be no objections. This saves time at the beginning of the trial and avoids the need for witness identification and submission.

10. Federal court can be a scary place. Consider obtaining co-counsel or otherwise seeking help if you find yourself in a situation which is outside of your experience. The Eighth Circuit law library on

the 22nd floor of the Courthouse is a good source of information, including treatises on federal practice and procedure as well as substantive areas of the law, and model jury instructions. Keep in mind there may be situations in which you might do yourself and your client a service by deciding that another lawyer is better able to handle a case.