

## 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, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence. All counsel and pro se parties are expected to know these rules and follow them. Frequent review of the rules is recommended because they are often amended. For information concerning electronic filing and service of documents, see the CM/ECF Procedures Manual.
2. **Notice Regarding Magistrate Judge Jurisdiction in Civil Cases:** Pursuant to 28 U.S.C. § 636(c), each party in a civil action must execute and file within 21 days of its appearance either a written consent to the exercise of authority by the magistrate judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a district judge. Parties are required to electronically submit their Notice Regarding Magistrate Judge Jurisdiction through the court's CM/ECF system. E.D. Mo. L.R. 2.08(A). If any party declines magistrate judge jurisdiction, the case will be reassigned to a United States District Court Judge. If all parties consent to my jurisdiction, the case will proceed before me until final judgment. I cannot rule on dispositive motions before consent from all parties is obtained, this includes motions to dismiss, motions to remand, motions for judgment on the pleadings, and summary judgment motions. Consent to a magistrate judge's authority does not constitute a waiver of any jurisdictional defense unreleased to the grant of authority under 28 U.S.C. § 636(c).
3. **Informal Matters:** For informal matters, such as agreed deadline changes, file a motion that sets forth the change or relief requested and states that opposing counsel consents to or does not oppose the motion. The motion will be ruled on promptly.
4. **Emergency Matters:** If you have an emergency motion that needs a formal hearing on the record, you should call my chambers or email Clare Fogarty at [Clare\\_Fogarty@moed.uscourts.gov](mailto:Clare_Fogarty@moed.uscourts.gov) or Jennifer Baker at [Jennifer\\_Baker@moed.uscourts.gov](mailto:Jennifer_Baker@moed.uscourts.gov) to schedule a hearing.
5. **Discovery Disputes:** Before filing any discovery related motion, the moving party must confer with the other side and make a good faith attempt to resolve the dispute in compliance with the Court's requirements and the Local Rules. If the parties are unable to reach an agreement without court intervention, they must file a joint memorandum requesting a conference. The memorandum must be filed jointly, must stipulate (in bullet points) a brief description of the issues not resolved and in dispute, and must not exceed three pages in length.
  - a. Moreover, the memorandum must also include a certification of specific attempts to resolve, including date(s), time(s) and manner(s) (e.g. in-person, Zoom, etc.) of attempts to resolve, and the names and bar numbers of attorneys participating and attending. *See* E.D. Mo. Local Rule 3.04(A); Fed R. Civ. P. 37(a)(1). Accordingly, the requirement that the parties confer means that the moving party must speak to the other side *in person* or by telephone. Motions that do not contain the required certification will be summarily denied without prejudice. If opposing counsel or self-represented litigant will not respond to attempts to resolve the dispute, the moving party must detail their efforts in the certification.

The Court will review motions concerning discovery disputes to determine if a conference with the parties is required for resolution.

6. **Rule 16 Conferences and Case Management Orders:** Civil cases are usually set for Rule 16 conferences after all defendants have answered or filed motions in response to the complaint. If a party believes a conference should be sooner, that party should file a motion. Rule 16 conferences are usually conducted, if at all, by phone or Zoom. A party may request that the Rule 16 conference be held in person by calling my chambers or emailing Clare Fogarty at [Clare\\_Fogarty@moed.uscourts.gov](mailto:Clare_Fogarty@moed.uscourts.gov) or Jennifer Baker at [Jennifer\\_Baker@moed.uscourts.gov](mailto:Jennifer_Baker@moed.uscourts.gov). When a party appears pro se, the Rule 16 conference is held in the courtroom, on the record. At the Rule 16 conference, counsel should be prepared to discuss the facts of the case and all other matters set out in the Rule 16 Order, including settlement.
7. **Scheduling and Status Conferences:** Counsel may request a scheduling or status conference by filing a motion, calling my chambers or emailing Clare Fogarty at [Clare\\_Fogarty@moed.uscourts.gov](mailto:Clare_Fogarty@moed.uscourts.gov) or Jennifer Baker at [Jennifer\\_Baker@moed.uscourts.gov](mailto:Jennifer_Baker@moed.uscourts.gov).
8. **Oral Argument on Dispositive Motions:** Parties may request oral argument on dispositive motions by filing a separate Request for Oral Argument with the Court.
9. **Alternative Dispute Resolution (ADR):** Most civil cases are referred to mediation. Be prepared to discuss the appropriate timing for referral to mediation at the Rule 16 Conference. When setting a date for mediation in the proposed schedule, counsel and self-represented litigants should consider what discovery is needed before a meaningful mediation may occur. A list of the Court-approved neutrals and ADR materials can be found at <http://www.moed.uscourts.gov>. Once the case has been referred to ADR, the deadlines are binding and may be extended only by Court order.
10. **Courtesy Copies (Dispositive Motions, Pretrial Compliance Materials, Proposed Orders):** Parties shall mail or hand-deliver to chambers at 17N, a paper courtesy copy of (1) any motion to dismiss, motion for summary judgment, or *Daubert* motion, together with the memorandum in support and any exhibits; (2) any opposition memorandum, including exhibits; (3) any reply memorandum, including exhibits; and, (4) all pretrial compliance materials. Courtesy copies must be printed on one side only.
  - a. In addition to being electronically filed as a PDF attachment to an appropriate notice or motion, a courtesy copy of all proposed orders must be sent in a word processing format to Clare Fogarty at [Clare\\_Fogarty@moed.uscourts.gov](mailto:Clare_Fogarty@moed.uscourts.gov) or Jennifer Baker at [Jennifer\\_Baker@moed.uscourts.gov](mailto:Jennifer_Baker@moed.uscourts.gov),. See CM/ECF Procedures Manual, § II.J.
11. **Final Pretrial Conferences:** Final pretrial conferences will be held the week immediately before the scheduled trial date. Counsel should be prepared at the final pretrial conference to argue any motions in limine and to discuss any evidentiary problems and scheduling issues. We will put any necessary argument and all rulings on the record.
  - a. Motions in limine must be filed at least twenty (20) days before trial. The Court will not consider any motion in limine unless it contains a statement that the

moving party's counsel has conferred in person or by telephone with opposing counsel in a good-faith effort to resolve the dispute presented by the motion.

Opposition to a motion in limine must be filed no later than five (5) days after the motion in limine is served.

12. **Available Courtroom Technology:** The Court has evidence presentation equipment available, including an evidence camera (e.g., ELMO), VCR, DVD, monitors, and hook-ups for computer stored evidence or computer presentation. An explanation on the use of this equipment is available on the Courts' website at <http://www.moed.uscourts.gov/> under Courtroom Technology. Please call the Case Management Team in the Clerk's office to schedule training before trial. No training will be provided on the day of trial. Training usually takes no more than 30 minutes and gives you the opportunity to get comfortable with the equipment before trial. If you intend to use your computer with the Courts' 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.
13. **Trial Settings:** Most cases are set for trial on a two-week docket. This is a firm setting, meaning the Court almost always reaches all the cases set within that time. For St. Louis trials, juries are picked at 9:00 a.m. or 1:15 p.m. on Mondays and Wednesdays. If you have not heard otherwise, you should assume your case is first on the trial docket.
14. **Jurors and Voir Dire:**
  - a. **Agreed Statement of the Case:** Before the case is called, counsel must supply the Court with a joint brief statement of the nature of the case to be read to panel members during voir dire. Counsel is expected to agree on this statement, which should be phrased in neutral terms.
  - b. **Number of Jurors and Seating:** The number of jurors in a civil trial will depend on the length of the trial. For voir dire questioning, the venire panel is seated left to right in the jury box, Nos. 1 through 5 in the front row, 6 through 10 in the middle row, and 11 through 16 in the last row. The rest of the venire panel members are seated in the middle and right rows of the spectator's gallery, also seated numerically, left to right.
  - c. **Juror List:** You will be provided a list of the jury panel members as they enter the courtroom. The jury list is not available in advance. The list contains the name, municipality where the juror lives, current employer, former employer, occupation, and spouse's employer and occupation. After the jury is selected, all copies of jury lists must be returned to the clerk.
  - d. **Voir Dire Examination:** In most cases, I allow attorneys to conduct part of the voir dire. I will 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, with notice to opposing counsel. Otherwise, you may inquire about anything relevant to jury selection. You may not ask unnecessary questions such as asking the jurors to make promises to you, make speeches, argue your case, tell the jury about yourself or your family, or do anything else that is not directly designed to elicit relevant information about the

potential jurors. In every case, the Court reserves the right to conduct the entire voir dire. In such cases, counsel will be advised to submit proposed voir dire question to the Court no later than two business days before trial.

- e. Jury Selection: 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 either the panel or any juror is acceptable may be made in front of the jury panel. After any panel members are stricken for cause, the parties will make their peremptory challenges from the number of jurors equal to the number to be seated plus the total number of peremptory strikes. Plaintiff will make its peremptory challenges and then the defense will make its challenges. In a civil case, all jurors remaining after the strikes will be seated and will deliberate; no formal alternates will be designated.

#### **15. General Courtroom Rules:**

- a. Time of Trial: I typically begin trial at 9:00 a.m. and conclude at 5:00 p.m. I expect the parties to be prepared to begin promptly so the jury is not kept waiting. Counsel will not be permitted to raise preliminary matters at the start of the trial day, when the jury is ready to proceed. The Court will be available to resolve preliminary matters 30 minutes prior to the scheduled start time of the trial day, during the lunch break, or the conclusion of the trial day.
- b. Use of Lectern: Voir dire, 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 to hand the witness an exhibit. Counsel must then return to the lectern for questioning, unless counsel must direct the witness's attention to a part of the exhibit.
- c. Objections: You should stand and state the legal basis for your objection without argument or elaboration. I will either rule or ask you to approach for a sidebar conference.
- d. Juror Note-Taking: I generally permit jurors to take notes during the trial if requested.
- e. Use of Exhibits and Opening Statements: You may use exhibits in your opening statement so long as you have consent from opposing counsel and advise me in advance.
- f. Exhibits: You must pre-mark all exhibits, as set out in the Case Management Order, and provide the Court and opposing counsel with an Exhibit List of those exhibits that will be offered at trial. Do not ask the courtroom clerk to mark exhibits for you. The Case Management Order requires plaintiffs to use numbers and defendants to use letters for exhibits. The parties should attempt to stipulate to the admission of as many exhibits as possible prior to trial. I ask that you indicate on your exhibit list all exhibits which may be received without objection at the beginning of trial. Unless otherwise stipulated, examining counsel must show each exhibit to opposing counsel prior to showing it to a witness. Demonstrative and summary exhibits must be shown to opposing counsel in advance of trial, even if not offered into evidence.

- g. Depositions and Video Depositions: Counsel often over designate portions of the deposition they intend to use at trial in their pretrial submissions. Prior to the start of trial, you must notify opposing counsel of what portions you actually intend to offer so that opposing counsel can determine whether they still wish to object or to counter-designate. Counsel must attempt to resolve any objections and bring to my attention any objections that cannot be resolved well in advance of the proposed use of the deposition so I can rule on any objections without wasting jury time. If you wish to play a video deposition, please let me know in advance, so that I can rule on objections in time for you to make the necessary edits or otherwise address the logistics.
- h. Jury Instructions: The 8th Circuit Model Instructions should be used when possible. The basic introductory and boilerplate instructions must be based on the 8th Circuit Model Instructions. If instructions from any other source are preferred, they must be accompanied by case authority. Parties are required to meet and confer regarding jury instructions and whenever possible submit one package of jury instructions to the court on behalf of all the parties. Parties shall submit a clean copy and a dirty copy of each instruction preferred. A clean copy for the jury will reflect only "Instruction No. \_\_\_" at the top with no further explanatory comments. The parties shall also submit their preferred jury instructions to the Court by e-mail in a word processing format (not PDF) to Clare Fogarty at [Clare\\_Fogarty@moed.uscourts.gov](mailto:Clare_Fogarty@moed.uscourts.gov) or Jennifer Baker at [Jennifer\\_Baker@moed.uscourts.gov](mailto:Jennifer_Baker@moed.uscourts.gov).

**16. Courtroom Decorum:**

- a. If you are able, please stand when the jury enters the courtroom and stand at all times when speaking.
- b. No cell phone usage except by counsel.
- c. No eating, drinking a beverage other than water, chewing gum, or audible beepers or watches are allowed. Please tell your clients and witnesses these rules.
- d. No recording of any kind is permitted.
- e. All witnesses and opposing counsel must be addressed by their last names, with appropriate titles. Do not call any witnesses by their first names, even your clients, and please advise witnesses not to address counsel by their first names. This rule is intended to govern how we address one another in the courtroom - it is not a rule requiring witnesses to refer to one another in any certain way during their testimony.
- f. Persons seated at counsel table shall not make any verbal comments, facial expressions, laughter, or other expressions, verbal or non-verbal, to the jury which would be interpreted as conveying a comment one way of the other with respect to any testimony, argument, or event that may occur during trial.
- g. All statements by counsel should be directed to the Court and not to each other. Counsel is expected to treat each other, all Court personnel, and all witnesses, including adverse witnesses, professionally and courteously.