

# Chief United States Magistrate Judge

Shirley Padmore Mensah

## Courtroom 13S

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**For all COVID-19 updates,  
including both courthouse  
information and case information,  
please consult the Court's [COVID-  
19 Information Center](#)**

## 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](#), 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.

### 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

If you have an informal matter, please notify opposing counsel, ascertain opposing counsel's availability, and call my chambers to schedule a time for an in-court or telephone conference. Most minor, agreed deadline changes can be handled in writing, by filing a motion to extend the deadline and stating that opposing counsel consents. I will rule on such consent motions as soon as possible. If you have an emergency motion that needs a formal hearing on the record, you should call my chambers to schedule a hearing.

#### **4. Rule 16 Conferences in Civil Cases**

Civil cases are usually set for Rule 16 conferences after all defendants have answered or filed motions in response to the complaint. If for some reason a party believes a conference should be sooner, that party should file a motion. Rule 16 conferences are conducted **by Zoom**. At the Rule 16 conference, you should be prepared to discuss the facts of your case and all other matters set out in the Rule 16 Order, including settlement. Please do not send an unprepared substitute attorney or an attorney who cannot make a commitment regarding the calendar of trial counsel, as I expect all counsel to know the case and be prepared to discuss all issues, including changes to the proposed schedule and trial setting.

#### **5. Scheduling and Status Conferences**

If counsel find they have a problem that is keeping the case from moving forward, or if counsel agree regarding an idea to move the case forward more efficiently, counsel may file a motion requesting a scheduling or status conference. Whenever possible, counsel should include in the motion dates and times when all counsel are available. Such conferences will typically be held by telephone or Zoom.

#### **6. Case Management Orders in Civil and Criminal Cases**

The deadlines set forth in the Civil and Criminal Case Management Orders will be strictly enforced. Modifications should be requested by filing an appropriate motion to amend and will be granted only upon a showing of good cause.

#### **7. Alternative Dispute Resolution (ADR)**

I refer most civil cases to mediation. Please 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 should consider what discovery they need to conduct a meaningful mediation conference. A list of the [Court's neutrals](#) and the [ADR procedures](#) can be found at <http://www.moed.uscourts.gov/>. Please note that once the case has been referred to ADR, those deadlines are binding and may only be extended by court order.

#### **8. Discovery Disputes**

In most cases, I require the parties to first attempt to resolve their discovery 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 before any discovery motion requesting a conference. The memorandum must be filed jointly; must specify the parties' previous attempts to resolve; must stipulate (in bullet points) the issues in dispute; and must not exceed three pages in length.

A party need not request a conference if (a) that party is seeking discovery from a non-party; (b) the opposing party has failed to timely respond to discovery requests or (c) the opposing party has failed to make disclosures mandated by a court order.

Pursuant to Local Rule 37-3.04, no motion to compel will be considered unless the parties have first attempted to resolve the dispute without court intervention.

## **9. Sealed Documents**

Attorneys are referred to the provisions of E.D.Mo. Local Rule 13.05 concerning sealed documents and files.

## **10. Final Pretrial Conferences**

I will typically hold final pretrial conferences 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.

## **11. 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 proffered, they must be accompanied by case authority.

The parties are required to meet and confer regarding jury instructions. Whenever possible, the parties shall submit one package of agreed-upon jury instructions to the court on behalf of all the parties.

The parties shall file with the Court their proffered jury instructions, with explanatory comments and citations to model jury instructions and cases. The parties shall also submit their proffered jury instructions, with explanatory comments and citations to model jury instructions and cases, to the Court in Microsoft Word or other editable electronic format by e-mail to chambers at the following e-mail address: [MOEDml\\_Mensah@moed.uscourts.gov](mailto:MOEDml_Mensah@moed.uscourts.gov).

## **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 Court's website at <http://www.moed.uscourts.gov> under [Courtroom Technology](#). Interested counsel should 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 the equipment before trial. No training will be provided on the day of trial. If you intend to use your computer with the Court's 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. The Court does not provide equipment to play an audio tape; you will need to bring your own tape player.

### **13. Voir Dire**

In advance of trial, before the jurors enter the courtroom, 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 are expected to agree on this statement, which should be phrased in neutral terms.

Counsel will be provided with a jury panel list as the jury arrives in the courtroom. The list contains the names, employer, former employer, occupation, spouse's employer and occupation, and the number of employees the prospective juror supervises in the work force. The list also contains the municipality in which the juror lives. The list must be returned to the deputy clerk after the jury is selected.

I will open voir dire by explaining its purpose and describing the voir dire procedure to the jury. I may ask a few basic introductory questions of the panel such as prior jury service, any hardships due to the length of the trial, etc. At the request of counsel, I will also inquire into any specific area relevant to the lawsuit. Each party must provide me with a list of potential witnesses so that I may ask if the potential jurors know any of the potential witnesses.

Counsel will be allowed to conduct general voir dire for no more than thirty minutes. After all questioning has been completed, the venire 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 is acceptable may be made in front of the jury panel. After any persons are stricken for cause, the parties will make their peremptory challenges.

### **14. Trial**

- a. Time of Trial: Times for starting and adjourning the trial day will be announced at the start of trial. Court will begin promptly to avoid keeping the jury waiting. In particular, counsel are discouraged from raising preliminary matters at the start of the trial day, when the jury and all others are ready to proceed. The Court will be available to resolve preliminary matters 30 minutes prior to the scheduled start of the trial day, or during the lunch break, or at the conclusion of the trial day.
- b. Opening Statements: You may generally use exhibits in your opening statement so long as you have consent from opposing counsel and advise me in advance.
- c. Evidentiary Objections: No evidentiary objections shall be argued in the presence of the jury. There will be no speaking objections. Counsel must state the legal basis for their objections in a word or, at most, a phrase without elaboration or argument (unless called to the bench). Bench conferences during trial are discouraged. For purposes of "protecting the record" and assisting the Court of Appeals, counsel may explain their positions and the Court may explain its ruling on the record after the jury has been excused for a scheduled break or lunch.
- d. Recross: Recross is not allowed as a matter of right. Recross is only allowed if something new is brought out on redirect.

- e. Closing arguments: Twenty minutes is the presumptive time limit. The clerk will provide you with a warning if you request.

## **15. Courtroom Decorum**

- a. Please notify the Deputy Clerk upon arrival and introduce additional counsel, support staff and parties.
- b. Please stand when the jury enters the courtroom; stand at all times when speaking. No eating, drinking (other than water), gum chewing or audible beepers or watches are allowed. Cell phones and other personal electronic devices should be turned off. Please tell your clients and witnesses these rules.
- c. Counsel shall treat all court employees, each other, and all witnesses, including adverse witnesses, professionally and courteously. All witnesses must be addressed by their last names with appropriate titles, and please advise witnesses not to address counsel by their first names. Only one lawyer per party may question a particular witness.
- d. Children are not allowed as spectators unless they are accompanied by an adult seated with them in the spectators' area. A party to the suit (defendant, attorney, case agent, etc.) cannot qualify as the attending adult.
- e. All statements by counsel should be directed to the Court and not to opposing counsel.
- f. Counsel shall disclose the identity and order of witnesses as far in advance as possible but in no event less than 24 hours before the beginning of the trial day on which the witnesses are to be called.
- g. 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. All exhibits should be marked in advance.
- h. Counsel should stand for all objections and state the legal basis for their objection without argument or elaboration. Counsel should instruct their witnesses not to answer a question while an objection is pending. Non-examining counsel should remain seated during witness examination unless standing to make an objection.