United States District Judge

Stephen R. Clark

Chambers 14N

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Requirements

(Revised January 3, 2020)

Local and Federal Rules

You may find many answers to frequently asked questions 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. I expect all counsel to know these rules and to follow them.

Entry of Appearance

To represent any party in any case, you must be admitted to practice before this Court, and you must file an entry of appearance. If you have not filed an entry of appearance, I will not allow you to appear on the pleadings or otherwise represent a party or participate in the case.

Emergency Matters

If you have an emergency motion that you believe requires a formal hearing on the record, you should call my chambers to bring the motion to my attention and to request a hearing. In civil cases, counsel should not email me or chambers staff unless you have been specifically instructed to do so. In criminal cases, counsel may email my Paralegal, Chelsea Langeneckert, at chelsea_langeneckert@moed.uscourts.gov regarding scheduling and logistics. Do not email her about substantive issues.

Complaints, Counterclaims, Crossclaims, and Responsive Pleadings

After filing a complaint, counterclaim, or crossclaim, the party must provide a copy of the filed pleading to opposing counsel in Microsoft Word format.

When preparing an answer to a complaint, counterclaim, or crossclaim, I strongly encourage the responding party to: (1) work directly from the Microsoft Word version of the pleading it is responding to, (2) include in its answer three things for each allegation it responds to: (a) the

paragraph number of the allegation, (b) the exact text of the allegation, and (c) the answering party's response to that allegation.[1]

Note that the provisions of this section do not apply to pro se parties or appeals (e.g. Social Security, Bankruptcy, and the like).

Motions and Memoranda

If I grant leave and allow a party to file a brief that exceeds the page limitation set forth in the Local Rules, the brief must have a table of contents and table of authorities.

The following filings must contain precise citations to the record: (1) memoranda in support of motions for summary judgment, (2) memoranda in opposition to motions for summary judgment, (3) reply memoranda in support of motions for summary judgment, (4) statements of uncontroverted material facts, (5) responses to statements of uncontroverted material facts, and (6) replies to statements of uncontroverted material facts. Citations must include an exhibit number, page number, and if citing to a transcript, a line number. I will not search the record to find the evidence on which the parties rely.

In cases with multiple plaintiffs or multiple defendants, the parties shall avoid duplicative filings of dispositive motions. For example, when several movants raise the same or similar issues, they shall file a joint motion, with one memorandum in support. In turn, the respondents shall file one joint memorandum in opposition, and the movants shall file one joint reply memorandum. I will not accept separate motions raising the same or similar issues.

When filing a motion to amend any pleading, you must include, as an exhibit, the amended pleading with all changes tracked for comparison with the original pleading.

Courtesy Copies of Dispositive Motions and Pretrial Compliance Materials

If a party files any of the following documents and the filing—including exhibits—is longer than 25 pages, the party must provide a paper courtesy copy to chambers: (1) any motions to dismiss, motions for judgment on the pleadings, motions for summary judgment, or motions for class certification, together with the memorandum in support and any exhibits; (2) any opposition memorandum to the listed documents; (3) any reply memorandum to the listed documents; and (4) any statements of uncontroverted material facts.

[1] For example, if Plaintiff's complaint alleges in paragraph two that Defendant John Doe is a citizen of Missouri, Defendant John Doe's answer would respond to that allegation like this:

> 2. Defendant John Doe is a citizen of Missouri.
>
> **Defendant admits this allegation.**

Of course, responding parties must comply with the requirements that relate to partial denials as set out in Rule 8(b)(4) of the Federal Rules of Civil Procedure.

Parties shall provide a paper courtesy copy to chambers of all pretrial compliance materials, no matter the page length.

Parties may mail or hand-deliver courtesy copies to chambers at 111 South Tenth Street, Suite 14-N, St. Louis, Missouri 63102.

For all courtesy copies that include exhibits, the parties must include a table of exhibits, and all exhibits shall be tabbed or flagged to denote the first page of each exhibit. I strongly encourage parties to highlight relevant portions of exhibits, both on electronically-filed copies and on paper courtesy copies. If a party highlights portions of exhibits, the party must identically highlight the copies it serves on the opposing parties.

Rule 16 Conferences in Civil Cases

I usually set civil cases for Rule 16 conferences after all defendants have answered or filed motions in response to the complaint. If a party believes we need to have a conference sooner, that party should contact my Paralegal, Chelsea Langeneckert, to request an expedited conference. You must notify opposing counsel before seeking an expedited conference.

Before the conference, I will issue an order setting a Rule 16 conference that requires the parties to meet and to prepare a proposed Joint Scheduling Plan (JSP). The parties must file the JSP at least 10 calendar days before the scheduled Rule 16 conference. Unless I order otherwise, the plaintiff is responsible for initiating the meeting and for filing the JSP. I encourage the parties to cooperate when preparing the JSP.

If the parties are unable to resolve disagreements about issues in the JSP after meaningfully conferring in person or by telephone, they shall set forth in the JSP: (1) their respective positions on the issue and (2) the means they used when trying to resolve the disagreement (whether they conferred in person or by telephone). I will not accept separate JSPs, even if the parties disagree on issues.

Lead trial counsel are required to attend the Rule 16 conference in person. While I realize this in-person requirement may be less convenient for out-of-town lead counsel, meeting in person advances the purposes of Rule 16, and (1) it is my first opportunity to manage the case and meet counsel in person, (2) it is counsels' first opportunity to help me manage the case by advising of any particular issues requiring my attention or guidance, and (3) it allows counsel for both sides to meet and to further discuss the case with each other in person. (Also, I have three conference rooms outside the courtroom, and counsel are welcome to use them if they would like to continue any discussions after the Rule 16 conference.) Absent truly exceptional circumstances, I will not waive the in-person requirement.

That said, I do not expect to hold all other hearings in person. When appropriate, I plan to conduct discovery and status hearings by phone.

When a party appears pro se, I will hold the Rule 16 conference in the courtroom, on the record.

At the Rule 16 conference, you should be prepared to discuss the facts of your case and all other matters set out in Rules 16 and 26(f) of the Federal Rules of Civil Procedure and the Rule 16 order itself, including settlement. Do not send an unprepared substitute attorney or an attorney without authority to agree on changes to the proposed schedule, as I expect all attending counsel to know the case and to be prepared to discuss all issues, including changes to the proposed schedule and trial setting.

Case Management Orders in Civil Cases

I will strictly enforce the deadlines set forth in the Case Management Order (CMO). If a party needs to amend any part of the CMO, that party must file a motion to amend, and I will grant the motion only if the party shows that exceptional circumstances justify the amendment. Counsel should read the CMO carefully and refer to it throughout the case.

If a party needs a deadline extension for a pleading, motion, response brief, or reply brief, that party shall file a motion asking for the extension before the operative deadline passes. Parties must specify whether opposing counsel consents to the extension, or to any motion to amend the CMO.

Case Management/Status Conferences

Counsel may request a scheduling or status conference by calling my chambers and setting up an appointment. After I enter the CMO, counsel may contact chambers and arrange a conference call if they find a problem that is keeping the case from moving forward, or if they agree on an idea to move the case forward more efficiently. You must notify opposing counsel before seeking a conference.

Motions Raising Discovery Issues

I strongly encourage parties to work out all discovery disputes among themselves. If they are unable to, Local Rule 3.04 sets out requirements that parties must follow before filing any motion raising a discovery issue (including motions to compel, motions to quash, motions for discovery sanctions). I will not entertain any motion raising a discovery issue unless the parties have fully complied with Local Rule 3.04 and these Requirements.

If the parties cannot settle the dispute themselves, and if they have satisfied Local Rule 3.04 and these Requirements, they should file an appropriate motion. To make disposition of discovery disputes effective and efficient, I use this procedure:

(1) The party seeking the Court's ruling on a discovery issue must file a one-to-two-page single-spaced motion describing (a) the dispute, (b) how the parties tried to resolve the dispute, and (c) the party's legal position.

(2) Opposing counsel must then file a one-to-two-page single-spaced response agreeing with, clarifying, or disputing the assertions in the motion. Counsel should file the response as soon as possible, but no later than three (3) business days after the motion was filed. The opposing party shall not raise additional discovery issues in its response. Instead, the opposing

party must comply with Local Rule 3.04, and file its own discovery motion, if it wants to have me decide other discovery disputes.

(3) If the dispute concerns an objection to a specific discovery request, the parties must submit the specific request and objection simultaneously with the motion or response.

If I determine the motion warrants a hearing or additional briefing, I will schedule a telephone conference hearing or order briefing as appropriate. Otherwise, I will rule on the motion in a written order.

Before filing any discovery-related motion, you **must** meet and confer with opposing counsel and attempt to resolve the dispute, and you must certify in your motion that you have done so. When I say "meet and confer," I mean **you must actually speak with one another.** Sending nasty letters or emails to one another does not fulfill the meet-and-confer requirement, and I do not want to see them attached to motions. If opposing counsel does not return your calls within a reasonable time, you must put the specific dates, times, and methods of contact in your certification with the motion.

In addition, if any party has a dispute with a nonparty (e.g., regarding a subpoena), the same procedure applies, and the party must promptly inform the nonparty of my discovery-dispute Requirements. If the nonparty needs me to resolve the dispute, it should follow the procedure explained above.

Disputes During Depositions

If a bona fide dispute arises during a deposition, and the parties are unable to resolve it after making a good-faith effort, counsel should not hesitate to call my chambers (314-244-7540). I am usually available by telephone to resolve objections and disputes that arise during depositions. I will typically do so on the record, so make sure the court reporter for the deposition is available to transcribe the call.

Discovery Objections

Rules 33(b)(4), 34(b)(2)(B)–(C), and 36(a)(5) of the Federal Rules of Civil Procedure prohibit boilerplate and general objections in response to discovery requests. Parties should not carelessly raise "standard" objections such as attorney-client privilege, work-product doctrine, overly broad/unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. I will disregard or strike all standard, non-specific objections.

Similarly, parties shall not include in a response to a discovery request a "Preamble" or a "General Objections" section stating that the party objects to the discovery request "to the extent that" it violates some rule pertaining to discovery. Instead, the party must raise a specific objection (or objections) to each discovery request. This way, the opposing party and I will know exactly what objection applies to each request.

Discovery Stipulations

I encourage parties to stipulate about discovery procedures as set forth in Rule 29 of the Federal Rules of Civil Procedure.

Protective Orders/ Sealed Documents

If you file a proposed protective order that contemplates filing materials under seal, you must include a date certain on which the seal lifts or the documents are returned to the parties. I will deny without prejudice any proposed protective order without a date for lifting the seal or returning the documents to the parties. Counsel should review Local Rule 13.05 for additional requirements about sealed documents and files.

Informal Matters

I do not hold a regularly-scheduled informal matters docket. If both parties agree to minor deadline changes, they can file a joint motion for extension, or the requesting party can file a motion for extension that notes that opposing counsel consents.

Alternative Dispute Resolution in Civil Cases

As set out in the CMO, I will refer civil cases (except habeas corpus) to Alternative Dispute Resolution (ADR). Plaintiff's counsel, or any counsel to whom the parties agree in writing, will be lead counsel for purposes of coordinating ADR. Lead counsel shall work with opposing counsel to select a neutral. If the parties agree that someone other than plaintiff's counsel will serve as lead counsel, they shall inform me in writing of the agreed-on lead counsel. After I have referred the case to ADR, those deadlines are binding and may be extended by my order only.

Counsel may get a list of approved neutrals from the Clerk's Office. The parties must file a motion seeking permission to appoint a neutral who is not on the list of approved neutrals.

If the parties reach a settlement, they shall notify me immediately and shall file a stipulation for dismissal, a motion for leave to voluntarily dismiss, or a proposed consent judgment within thirty (30) days of the notice.

Expert Witnesses

a. Parties must provide all information or reports as required by Rule 26(a)(2) of the Federal Rules of Civil Procedure.

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 those 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 were not disclosed in some way during discovery. Unless unusual circumstances exist, the expert—including treating health care providers—may not supplement or change their opinions after expert discovery has closed, and the deadlines set out in the CMO trump any other 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 of the Federal Rules of Evidence; 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. Thus, counsel shall not ask these witnesses whether they consider themselves experts. Of course, counsel may bring out the witness's qualifications on cross-examination, but counsel shall not specifically ask whether someone "holds himself out as an expert" or "admits she is (or is not) an expert."

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).

Pretrial Conferences in Civil and Criminal Cases

At the Rule 16 conference, I will schedule a pretrial conference for the civil jury trial. In a civil bench trial, I will not schedule a pretrial conference unless the parties request one at least two weeks before the scheduled trial date.

In criminal cases, if your case is still on the docket three weeks before the scheduled trial date, I will schedule a pretrial conference.

In all cases, counsel should be prepared at the final pretrial conference to argue any motions in limine (and other preliminary matters), so that I can attempt to rule on them before the trial date. We will put any necessary argument and all rulings on the record at the end of the pretrial conference or 30 minutes before the trial starts. For trials in Cape Girardeau or Hannibal, I will hold final pretrial conferences the morning of trial or by phone the week before trial, unless I specify otherwise.

Available Courtroom Technologies

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. You will find instructions for how to use this equipment on the Court's website at http://www.moed.uscourts.gov under Courtroom Technology. I strongly encourage counsel to use the evidence camera or ELMO for all trials. Please call my 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. **You will not be trained 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 audio tapes; you will need to bring your own tape player.

For all proceedings in open court, I prefer that counsel use the Court's equipment.

Real-Time Court Reporting

My court reporter (Reagan Fiorino, phone number 314-244-7989) uses real-time court reporting. If you wish to order a daily copy of the trial transcript, please contact her well before trial so she can make appropriate arrangements.

Criminal Trial Motions to Continue

If a criminal defendant wants to continue a trial date or change-of-plea date, the criminal defendant must file a motion to continue. That motion to continue must include the length of the requested continuance or a proposed date, and the Government's position on both the motion itself and the length of the continuance or the proposed date. The criminal defendant must also file a waiver of speedy trial, and both the defendant and counsel must sign it.

In cases with several defendants, I will not grant a motion to continue unless all defendants agree to the continuance of the trial date and file waivers of speedy trial.

Trial

Most cases are set for trial on a three-week docket. This is a "firm" setting, meaning that I intend to 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 from me or my staff, you should always assume you are first on the docket.

a. Time of Trial: At the beginning of trial, I will announce when we will start and adjourn each day. Ordinarily, we will begin each day at 9:00 a.m. and adjourn at 5:00 or 5:30 p.m. (or possibly later for bench trials). I will be available to resolve preliminary matters 30 minutes before we begin or at the end of the trial day. Counsel should raise preliminary matters before we begin for the day, not when the jury and others are ready to proceed. Please keep in mind that I will resolve as many preliminary manners as I can at the pretrial conference and do not intend to use time at trial resolving them.

b. Using the Lectern: Counsel must stay at the lectern when asking voir dire questions, making opening statements, examining witnesses, and making closing arguments. You do not need to ask for permission before approaching and handing a witness an exhibit. But counsel must then return to the lectern for questioning, unless counsel needs to direct the witness's attention to

a part of the exhibit. Counsel may not hover over the witness during an examination and may never hover over the jury for any reason.

c. Jury Instructions in Civil and Criminal Cases: For civil cases, the parties shall submit proposed jury instructions as required in the CMO. For criminal cases, the parties shall submit proposed jury instructions at the pretrial conference or, if none will be held, on the first day of trial by 8:30 a.m.

Use the Eighth Circuit Model Instructions when applicable. Counsel must base the basic introductory and boilerplate instructions on the Eighth Circuit Model Instructions. If a party offers instructions from any other source, the party must include authority. Parties must meet and confer on jury instructions, and they must submit one package of jury instructions—on behalf of all the parties—when possible. Parties shall submit a "clean" copy and a "dirty" copy of each instruction. 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 proffered jury instructions in Word format by emailing them to my Paralegal at chelsea_langeneckert@moed.uscourts.gov.

d. Voir Dire in Civil and Criminal Cases: You will be given a list of the venire panel as the members enter the courtroom. The list is not available in advance. The list contains the name, municipality where the venireperson lives, current employer, former employer, occupation, and spouse's employer and occupation. You may take notes on this list, but the courtroom deputy will collect the list at the end of voir dire.

I will begin voir dire by asking counsel to introduce themselves and the persons at counsel table, including the parties. Before I call the case, counsel must jointly provide a brief statement of the nature of the case, phrased in neutral terms. I will read the joint statement to the panel members during voir dire.

I will ask introductory questions, covering things like the nature of the charges, burden of proof, prior jury service, length of the trial, etc. If you would like me to ask any specific questions, please submit them in writing.

Each party must give me a list of potential witnesses the morning of trial; this will allow me to ask if the potential jurors know any of the potential witnesses.

After I finish, counsel will have 20 minutes to ask questions. Counsel shall not make any comments about the fitness of the panel in the presence of the panel members.

After both sides are finished, I will remove the venire panel and immediately ask for challenges for cause. After I strike members for cause, the plaintiff will make its strikes, then the defense will make its strikes. To empanel the jury, I will begin with the remaining venireperson with the lowest juror number and progress numerically until the jury is fully empaneled. The number of alternates will depend on the trial's length. After I empanel the jury, counsel must return all copies of venire panel list to the courtroom deputy.

e. Opening Statements: I will decide the time period at the pretrial conference. Typically, I allow 20 minutes, but I may set shorter or longer time limits depending on the case. If you ask, the Clerk will give you a warning before your time expires. You may use exhibits in your opening statement if you have consent of opposing counsel and advise me in advance.

f. Exhibits: You must pre-mark all exhibits. Plaintiffs shall use numbers for exhibits, and defendants shall use letters. If you are a defendant and have more than 26 exhibits (A through Z), use AA, AB, AC . . . AZ, followed by BA, BB, etc. Unless the parties reach a different agreement and stipulate to it, examining counsel must show each exhibit to opposing counsel before showing it to a witness. Counsel must also show demonstrative and summary exhibits to opposing counsel before trial, even if counsel does not plan to offer it into evidence.

g. Evidentiary Objections: Parties will not argue evidentiary objections in front of the jury. Instead, counsel must object and state the basis for their objection in a word or, at most, a phrase without elaborating (unless I call counsel to the bench). To properly preserve your objection and to assist the Eighth Circuit, counsel may explain their positions, and I will explain my ruling, on the record after I have excused the jury for a scheduled break.

h. Recross: I do not allow recross as a matter of right and will allow it only if something new is brought out on redirect.

i. Depositions: Counsel frequently overdesignate portions of depositions in their pretrial submissions. I do not like to waste jury time ruling on what portions can be read to the jury, especially because counsel can often work out the issues on their own. If you intend to read less than what you designated in pretrial, you must notify opposing counsel of the portion you really intend to read. And you should do so such that opposing counsel have enough time to decide if they still object or wish to counter designate. Thus, if you plan to read less than your initial designation, you need to **meet** with opposing counsel before trial or at the end of the first day of trial. Then, I will rule on any remaining issues, but I expect you to **try to resolve any disputes yourselves** 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 read the answers from the stand while you read the questions. Please caution your readers not to be overly dramatic.

j. Entering Depositions on the Record: The court reporter does not transcribe deposition testimony. For the record, you must provide a list of the pages and lines showing the portions of each deposition that were 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.

k. Video Depositions: If you are playing video depositions, you must use video clips of the selected testimony to avoid wasting trial time searching for the testimony. If you intend to play video depositions, please let my Paralegal, Chelsea Langeneckert, know this before trial. This notice will allow me to rule on objections before editing, and it will allow us to work out any other logistical problems.

l. Note Taking: I generally permit jurors to take notes during the trial.

m. Closing Argument: I will decide the time period at the pretrial conference. Typically, I allow 20 minutes, but I may set shorter or longer time limits depending on the case. If you ask, the Clerk will give you a warning before your time expires. The plaintiff or Government must use more than 50% of its time in the opening part of its argument. Parties seeking money damages shall not request a specific amount of damages for the first time in rebuttal argument.

Decorum and General Courtroom Rules

I expect counsel to be thoroughly prepared for trial and all hearings.

a. When you arrive, notify the Deputy Clerk and introduce additional counsel, support staff, and parties.

b. Counsel shall treat each other, all Court personnel, and all witnesses, including adverse witnesses, professionally and courteously.

c. There will be no photographs, audio or video recording, or broadcasting in the courtroom. I do allow laptops and tablets at counsel tables. But if counsel want someone in the audience to use laptops or tablets, counsel must get advance approval from me. Please be sure that your clients and witnesses observe these rules.

d. Stand when the jury enters the courtroom; stand at all times when speaking. I do not allow eating, drinking (other than water), chewing gum, or carrying audible beepers or watches. You must turn off your cell phones and other electronic devices.

e. Counsel shall disclose to each other and to me the identity and order of witnesses as far in advance as possible, but at least 24 hours before the beginning of the trial day when counsel will call the witnesses.

f. Counsel must address all witnesses by their last names and with appropriate titles. Do not call any witnesses by their first names, and please advise witnesses to address counsel by their last names. Only one lawyer per party may question a particular witness.

g. 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.

h. Counsel should direct all statements to me and not to opposing counsel.

i. Verbal or Facial Contact with the Jury: No one at counsel table shall make any verbal comments, expressions (facial or otherwise), noises, or other expressions that a juror might find communicative. Nor shall anyone offer gratuitous comments about witness testimony or opposing counsel. I may summarily eject from the courtroom anyone who violates this rule. I will treat any signaling to a witness in the stand as contempt of court.

j. I disfavor sidebars. Counsel should raise all anticipated issues during breaks when the jury is not in the room.

k. If using a tape, counsel for both sides shall meet and confer to resolve all disputes about any alleged inaccuracies between the transcripts and the tape recordings. If counsel are unable to resolve the dispute, they shall advise me at least five (5) days before trial so the disputes do not come up in the middle of trial. These midstream disputes will delay things and unnecessarily expend resources.

l. Children are not allowed as spectators unless an adult sits with them in the spectators' area. A party to the suit (defendant, attorney, case agent, etc.) cannot qualify as the attending adult.

Well-tried cases or even famous trials don't just happen. A well-tried case is the result of hard work, careful and thorough preparation, and good lawyering.

Additional sources of information that may help answer your questions include:

- The Federal Judiciary Homepage;
- The Federal Judicial Center; and
- The United States Sentencing Commission.