



Magistrate Judge Donald G. Wilkerson

Case Management Procedures

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General Matters

Court Hours and Promptness

Promptness is expected of everyone involved in the proceedings before the Court. The Courtroom Deputy should be advised of any delay to be occasioned by one's tardiness.

During trial days, Court will be in session from 9:00 until 4:30, with morning and afternoon breaks and an hour and a quarter for lunch. Judge Wilkerson will break between noon and 1:00 for lunch. Counsel's diligence in keeping track of the time will greatly assist the Court in avoiding an interruption in the testimony at illogical points. The timing of all breaks will be determined by the Court.

Facilities

The following technological devices for evidence presentation or video display are available: ELMO, projection screen, and dual television projections. Parties desiring to utilize such equipment must notify the Court in advance.

Media Relations

The media should expect this chambers and every member of it to comply with Canon 3(A)(6):

A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

Communications with Chambers

When the need arises to communicate with chambers, contact **Sona Patel** for cases ending with an **even number** (618) 482-9382, and **Natalie Stoltz** for cases ending with an **odd number** (618) 482-9278. For scheduling matters, contact Courtroom Deputy Jackie Payton (618) 482-9376.

Counsel and pro se litigants may contact chambers for issues pertaining to discovery disputes and scheduling matters. **Any other contact with chambers must be for emergencies only.** Such contact shall occur with the knowledge and consent of or in concert with opposing counsel or pro se litigants.

Every litigant and all attorneys are expected to respect the rules against inappropriate ex parte communications with all members of chambers. The typical effort to violate this rule occurs when persons attempt to influence law clerks in some action usually through the vehicle of inquiring about the law clerk's opinion regarding how he or she expects the Court to rule on a pending matter while simultaneously advocating a position. Appropriate communications with law clerks include scheduling matters (in the absence of the Courtroom Deputy and with consent of opposing counsel or parties) and the need for information regarding chambers-specific procedures and policies not clearly established herein. Letters and correspondence with chambers are improper ex parte communications and will not be accepted. Judge Wilkerson requires adherence to the Local Rules except in rare cases, of which he will directly advise parties. **Therefore, questions about Local Rules and procedures covered by such Rules should be addressed by reading the Rules and not directed to law clerks.**

Hearings and Trials

Courtroom Decorum and Professional Conduct

The Standards for Professional Conduct Within the Seventh Federal Judicial Circuit are hereby adopted as the governing standard for matters pending before Magistrate Judge Wilkerson. Pro se litigants will abide by the directions therein to counsel. The standards are located in the Practitioner's Handbook published by the Seventh Circuit Court of Appeals. Internet access to the standards may be obtained at the following URL: www.ca7.uscourts.gov/conduct.pdf

In addition to the Seventh Circuit standards, Judge Wilkerson expects the following:

- Attorneys/pro se litigants are expected to practice civility at all times in the Courtroom and attorneys are expected to exhibit professionalism and courtesy at all times.
- Stand when Judge Wilkerson enters the Courtroom.
- Unless permission is granted to do otherwise, parties addressing the Court are directed to stand at the podium at all times when speaking in Court.
- Counsel should advise clients and witnesses to avoid contact with the jury.
- When examining a witness attorneys/pro se litigants are instructed to ask permission of the Court before approaching a witness. If permission is granted the attorney/pro se litigant need not ask on subsequent occasions to approach that witness.
- When making objections attorneys/pro se litigants must stand.
- All statements by attorneys/pro se litigants must be directed to the Court and not to opposing counsel.
- During argument of opposing counsel, opposing counsel/pro se litigant must remain seated at counsel table and be respectful. Never divert the attention of the Court or jury.
- In the case that an attorney receives an adverse ruling from the Court, Judge Wilkerson expects that attorney to react in a professional manner. Judge Wilkerson does not believe that professionals should engage in fits of pique or vexation in the event of adverse rulings. Higher courts exist to correct mistakes of law. Judge Wilkerson is courteous to all who enter his courtroom and chambers and will not tolerate any less from professionals who appear before him.
- All pleadings shall be filed electronically on the Official Court Electronic Document Filing System , CM/ECF. [Electronic Case Filing Rules](#) are available on the Court's website. Once a case is in trial, all pleadings shall be filed with the Courtroom Deputy Clerk in the courtroom.
- Copies of proposed documents should be sent to the Court's proposed document inbox at dgwpd@ilsd.uscourts.gov in a word processing format.

Oral Argument

Judge Wilkerson will hear oral argument on motions in exceptional circumstances only upon his determination of such need. Parties who request oral argument should make the request in writing and state the reason the exception exists in the motion at issue. If Judge Wilkerson directs that oral argument should proceed, parties will be advised by written or telephone notice and further advised if a time limit for argument has been set. Parties should expect time limits to be strictly enforced.

Jury Instructions

Parties shall submit proposed jury instructions along with the Proposed Final Pretrial Order, three (3) days prior to the Final Pretrial Conference. The Court requires two copies of the instructions: one with citations ("dirty"), and one without ("clean"). Each set of jury instructions shall include the following header, "Instruction No. ____". Proposed jury instructions should be formatted so that only one instruction appears on each page.

Jury instructions should be submitted via e-mail to the Court's proposed documents inbox (dgwpd@ilsd.uscourts.gov) in a word processing format.

Bench Trials

At the conclusion of a bench trial, if requested by the Court, all parties shall submit proposed findings of fact and conclusions of law by the deadline set by the Court at the end of the trial.

Pretrial Information

Rule 16 Conference

The Court will set a Rule 16 Conference within forty (40) days after the first appearance of a defendant, or with respect to removed and transferred cases, within forty (40) days of the removal or transfer to this District.

The parties are required to meet and confer, consistent with Federal Rule of Civil Procedure 26(f), at least twenty-one (21) days prior to the scheduling conference set by the Court. At least seven (7) days prior to the scheduling conference, the parties must submit a Joint Report of Parties and Proposed Scheduling and Discovery Order ("JROP") to the Court via e-mail at dgwpd@iisd.uscourts.gov. This form may be downloaded by clicking [here](#). All parties are jointly responsible for arranging and participating in this meeting and for submitting the JROP. For Class Actions, click [here](#) for the form. **The failure to timely submit a JROP that is consistent with the form provided in the Local Rules and accessible on this website may result in an order to show cause.**

The Scheduling and Discovery Conference is held by telephone. Plaintiff is responsible for initiating the conference call. Plaintiff shall call Judge Wilkerson's teleconference number, (618) 482-9004, after all parties are on the line.

The purpose of the Rule 16 Conference is twofold: (1) to identify and plan to deal with novel or difficult discovery issues; and (2) to schedule a settlement conference. Counsel should be prepared to discuss each at the conference.

In all but a very few cases, a settlement conference will be set near the deadline for close of discovery. If parties prefer an earlier or later settlement conference, they may ask the Court for a new date at the conference or by motion. Sometimes cases have been so thoroughly investigated by both sides by the time suit is filed in federal court that no additional discovery is needed prior to a settlement conference. In those instances, a settlement conference will be set as soon as possible.

The Court is mandated to enter a scheduling order and, therefore, very rarely continues Rule 16 Conferences. Rule 16 Conferences will not be continued because of the filing of a motion to dismiss or to remand. The Court encourages cooperation between the parties in preparing and filing the JROP. A lack of cooperation does not relieve a party from complying with the requirement to file a JROP. If a party needs to file a separate JROP, a memorandum should be attached to the JROP explaining why a joint plan cannot be filed. The Rule 16 Conference will be held as scheduled, and any problems the parties have in working together will be addressed.

Discovery Disputes

Shortly after a Scheduling Order is issued, counsel will receive an "Order Regarding Discovery Disputes." This order is self-explanatory. The parties are encouraged to resolve discovery disputes informally without Court intervention. Only after a party is capable of certifying that it has made, or has attempted to make, a good faith effort to resolve the discovery dispute may that party contact the Court regarding the dispute. Discovery disputes which cannot be resolved informally will be handled telephonically and without written motions or briefs. **The parties shall not file motions on discovery disputes until directed to do so by the Court. All motions regarding discovery disputes filed without the Court's direction will be stricken.**

The party seeking discovery shall schedule a telephone conference between Judge Wilkerson and all parties contesting the particular discovery. The party scheduling the teleconference must make sure that each of the other parties are available prior to contacting chambers. The timing of the conference must be confirmed, in **even numbered** cases, by **Sona Patel (618) 482-9382**, and, in **odd numbered** cases, by **Natalie Stoltz (618) 482-9278**. If written discovery is involved, the interrogatories or requests in dispute should be faxed or emailed to chambers **in advance** of the teleconference. The **fax number** is **(618) 482-9277** and the **email address** is dqwpd@ilsd.uscourts.gov. Letters from counsel containing arguments are neither helpful nor desired. The Court will rule on the dispute during the teleconference. In this manner, discovery disputes can be resolved within a week of occurrence. The Court's conference number is (618) 482-9004.

Disputes which arise during depositions can be addressed immediately via a telephone conference. Contact **Jackie Payton** at **(618) 482-9376** to schedule a conference.

The non-prevailing party in a discovery dispute will bear the cost of the conference call.

Protective Orders

Parties seeking Protective Orders must **strictly adhere** to the dictates of the Seventh Circuit's decisions in Union Oil Co. of California v. Leavell, 220 F.3d 562 (7th Cir. 2000) and Citizens First National Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d 943 (7th Cir. 1999). At all times, the Court must protect the public's interest in openness, and the presumption lies in favor of openness and against secrecy. A particularized showing of good cause must be made for protecting specific materials and information. Proposed orders that do not conform to the strict standards of the Seventh Circuit will not be entered by the Court.

Settlement Conferences

As mentioned above, settlement conference dates are selected during the Rule 16 conference. Typically, settlement conferences are set at 9:00 a.m. or 1:30 p.m. Because it is impossible to gauge in advance how long a settlement conference will last, the Court will try to keep the rest of the day open. Attorneys and parties attending the settlement conferences should do the same. There are few rules attending these conferences, but they are firm and will not be deviated from except in very unusual circumstances. They are:

*Lead counsel must attend.

*The parties must attend.

A named individual defendant need not attend if covered by liability insurance. In that case, an insurance representative with full authority to negotiate and settle the case must be here. This is an area which causes trouble. Frequently, an insurance representative appears with authority to a certain dollar limit. Most of the time, that authority is insufficient to do the job. It then becomes necessary to track down by telephone the person who really has the authority so that negotiations can be completed. This is disruptive and inefficient. **A good rule of thumb for defendants trying to select a proper representative is to bring a person who can agree to any sum demanded by plaintiff without resort to the telephone.**

In employment cases, defendants should not bring anyone who had any relevant input in the employment decision(s) which gave rise to the underlying lawsuit. In some cases, due to the size of the defendant company, this is unavoidable. Where it can be avoided, however, it must be. A good rule of thumb is to leave behind anyone who might testify at trial concerning the reasons for the employment action taken. Corporate counsel is another group typically lacking objectivity. They are frequently consulted prior to employment actions and are part of that mix. Leave them at home if possible.

Municipalities, counties, and other public entities represented by boards are often sued in federal court. On many occasions, a quorum of a governing board has appeared at a settlement conference. This is good as long as Open Meetings Act laws are not violated. Counsel is urged to take appropriate precautions.

Defendants who appear with nothing but nuisance money may find themselves paying the cost of plaintiff(s) and plaintiff(s)' attorneys to attend.

If, during preparation for a settlement conference, the parties determine that the conference should not be held, the parties **MUST**, as soon as possible, file a motion to cancel the conference. In the motion, the parties should state why the otherwise mandatory settlement conference should not be held. Absent such a motion (and a subsequent order cancelling the conference), the settlement conference will be held as scheduled and the parties will still be under an obligation to timely submit settlement statements.

Settlement statements are to be submitted to the Court at least seven (7) days prior to the settlement conference. Click here for a copy of the [Settlement Statement of Attorney](#). The failure to timely submit a settlement statement may result in an order to show cause.

Settlement statements must be submitted to Judge Wilkerson via his official proposed document e-mail address at dgwpd@ilsd.uscourts.gov, by regular mail, by fax at (618) 482-9277, or in person by the deadline.

Final Pretrial Conference

Judge Wilkerson utilizes the Final Pretrial Order set out in the [Local Rules](#). Forms may be downloaded by clicking [here](#). Click [here](#) for instructions on how to prepare the Final Pretrial Order. Proposed Final Pretrial Orders should be submitted to the Court in a word processing format via e-mail to the Court's proposed documents inbox at least three days prior to the Final Pretrial Conference.

The Court expects faithful adherence to the rule requiring cooperation between the parties for completion of the Final Pretrial Order.

Parties are expected to have their exhibit lists attached to the proposed order at the time of the conference and opposing parties are expected to have already evaluated the exhibit lists to determine issues as to admissibility.

Should counsel anticipate any novel or particularly difficult legal issues which will require extensive arguments outside the hearing of the jury, the Court shall be so advised at the Final Pretrial Conference. The Court will then determine a time and forum for resolution of the issues involved and whether counsel will be required to brief the issues and when.

Prisoner/Pro Se Litigation

Pavey Hearings

When any defendant files in its answer the affirmative defense that the Plaintiff failed to exhaust his or her administrative remedies prior to filing suit, the Court will set a hearing pursuant to Pavey v. Conley, 544 F.3d 739 (7th Cir. 2008). The hearing will not be set, however, until all or nearly all defendants have filed an answer. Discovery on the merits of the case is stayed until the question of exhaustion has been resolved.

Recruitment of Counsel

Under SDIL-LR 83(i), every member of the bar of this Court shall be available for recruitment to represent or assist in the representation of those who cannot afford to hire an attorney. Recruited attorneys may request an exemption from the fees imposed by the Electronic Public Access fee schedule adopted by the Judicial Conference of the United States to avoid any burden of paying fees associated with accessing PACER for the case. Attorneys requesting this exemption should file a motion asking the Court to grant the exemption for the case to which they have been recruited.

Rule 56 Notice

In any case where notification of the filing of a motion for summary judgment is required because a party is proceeding pro se, the Court encourages the use of the following notice:

[Federal Rule of Civil Procedure 56 Notice](#)

Pro Se Litigant Guide

Pro se parties may download the [Pro Se Litigant Guide](#) provided by the Court.

Criminal Matters

Entry of a Guilty Plea

In the event a Defendant decides at any time before trial to enter a plea of guilty, a United States Magistrate Judge is authorized by 28 U.S.C. §636(b)(3) and SDIL 72.1(b)(2), with the consent of the Defendant and the United States of America, to conduct the proceedings required by Federal Rule of Criminal Procedure 11 incident to the plea. If, after conducting such proceedings, the Magistrate Judge recommends that the plea of guilty be accepted, a presentence investigation and report will be ordered pursuant to Federal Rule of Criminal Procedure 32. The assigned United States District Judge will then act on the Magistrate Judge's Report and Recommendation and, if the plea of guilty is accepted, will adjudicate guilt, decide whether to accept or reject any associated plea agreement, and will impose sentence. Here is a link to the consent form: [[Notice Regarding Entry of Plea of Guilty](#)]. The parties are instructed to contact **Courtroom Deputy Clerk Jackie Payton (618-482-9376)** to schedule change of plea proceedings.