

Best Practices in Federal Court

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and

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Civil Rules—What is Important

- Rule 1—The rules should be construed, administered, and employed by the court AND THE PARTIES to secure a just, speedy, and inexpensive determination of every action and proceeding.
- Rule 26—discovery plan—think about deadlines-Rule 26(f) Calculator
 - Nonprivileged matter that is relevant and proportional to the needs of the case
 - Experts—recent decisions out of the 8th Circuit—extensions for report—good cause required
- Rule 16
 - Scheduling order—before moving for an order relating to discovery, the movant must request a conference with the court.
 - Modifying schedule—modified ONLY GOOD CAUSE—AND with Judge’s consent.
 - To establish good cause, a party must show its diligence in attempting to meet the progression order.

Local Rules

- Magistrate Judges Civil Case Management Practices
 - Communicating with the Assigned Magistrate Judge
 - The Rule 26(f) Report
 - Scheduling Conferences
 - Initial, Interim, Ad Hoc, Final Resolution
 - Discovery Practices
 - Alternative Dispute Resolution
 - Final Pretrial Conferences
 - Consent to Proceed before a Magistrate Judge
- Local Rules (Updated every year)

Case Progression—Things to Keep in Mind

- Case Conference instructions changing—November????
- How the dates you choose affect your trial date
- Extensions—Motions, emailing, calling
- Conference with the court—email, call
- Protective Orders—Website
- Discovery Disputes—True meet and confer—contact court—if don't--strike
- Motions to restrict/seal
 - Need to file a motion and the document
 - Difference between restrict and seal
- Limitations on Briefs—now have word limits (12-1-21) 13,000 briefs/6,500 reply
 - All text-including the caption, headings, footnotes, and quotations counts toward these limits
- Dismissal—Lack of prosecution (12-1-22)
- New Summary Judgment Rules (12-1-22)

Summary Judgement

- New rules as of 12-1-22
- Concise Statement of Material Fact
- A fact is “material” if pertinent to the outcome of the issues identified in the Summary Judgment Motion.
 - Failure to submit a statement of Material facts may be ground to deny the motion
- Statement of Material facts should consist of short numbered paragraphs
- Each numbered paragraph shall contain pinpoint references to affidavits, pleadings, discovery responses etc.
- Failure to provide citations to the exact locations in the record supporting the factual allegations may be grounds to deny the motion
- Statement of material facts shall be filed as a separate document from the motion for SJ and the brief.
 - The word limits do not apply to the separate statement of material facts

Summary Judgment Continued—Party Opposing SJ

- Must file a brief AND a separate statement of concise responses to the moving party's statement of material facts
- Should consist of separate numbered paragraphs corresponding to the numbered paragraphs in the movant's brief and must include pinpoint references to affidavits, pleadings, discover responses etc.
- Each response must clearly state the asserted fact is:
 - Undisputed
 - Disputed, or
 - Undisputed in part and disputed in part
- Properly referenced material facts in the movant's statement are considered admitted unless controverted in the opposing party's response

Summary Judgment Continued—Party Opposing SJ Continued

- If the response admits in part and disputes in part the asserted fact, it must specify which part of the asserted fact is admitted and which is disputed.
- If the party opposing a SJ motion wishes to assert facts not set forth in the moving party's statement of material facts, the opposing party may include in its response its statement of additional material facts, in the same form and manner as the moving party is required to do.
- Response to movants statement of material facts and brief in opposition due 21 days after service of the motions and material facts
- Responsive statement of material facts filed separate from brief opposing the motion

Summary Judgment—Moving Party's Reply

- If the party opposing SJ submits a statement of additional Material facts, the moving party shall within 14 days after service serve and file a statement of concise responses to the opposing party's statement of material facts
- Reply brief now due 14 days after service
- Facts deemed admitted pursuant to the rule are admitted solely for the purposes of SJ, and shall not be deemed admitted for any other purpose, including as admission for trial
- If a party does not comply with the rules court may require immediate compliance but opposing party SHALL NOT file a motion to strike based on alleged noncompliance with the rule
- Any dispute over admissibility of evidence should be raised through an objection, in the objecting party's brief or responsive statement, to the facts relying on the evidence

Stipulated Material Facts

- Parties are encouraged to stipulate to facts
- May file a stipulation—filed separately— setting forth facts to which the parties have agreed SOLELY for purposes of summary judgment, which shall not be used for any other purpose in the absence of express language to that effect.
- Facts so stipulated DO NOT require citations to evidentiary support

Social Security Cases

- New rules for Social Security Cases
 - The Plaintiff does not need to serve a summons or complaint under Civil Rule 4
 - The court must notify the Commissioner of the commencement of the action by transmitting a Notice of Electronic Filing to the appropriate office within the Social Security Administration's Office of General Counsel and to the United States Attorney for the district where the action is filed.
- New General Order with word limits

Settlement

- Mediation—New plan as of 12-6-22
 - If you were a mediator on the court list and have not re-applied please do
 - Goal was to streamline the plan—Mediation Reference Orders
 - Used when court is ordering parties to mediation
- Settlement Conferences—which magistrate judge does them?
 - MJ assigned to case—as long as a DJ is assigned
 - If consented to MJ—can do if jury and written consent
 - If MJ bench trial or jury trial and no consent—another MJ can do settlement conference
 - ALAWYS starts with talking to assigned judges chambers
- If going to mediation or doing a settlement conference deadlines may be stayed.

Final Pretrial Conference

- Date will be in Trial Setting Order
 - Reference to District Judge Trial Deadlines and Practices
 - Change from Deadlines traditionally set in the district
 - Example: Jury instructions 28 days prior to trial
- Zoom--default way pretrial conference is set
 - If want in person tell court at the time of trial setting or prior to the conference
- Exhibit lists—form on website
 - Must list objections on the Exhibit list

Trial

- Magistrate Judge v. District Judge
 - DJ must try criminal before civil
 - NE criminal load is in the top 10 in the Nation
 - MJ—Certain trial dates

Courtroom Technology

- Equipment
 - Contact courtroom deputy
 - If bringing in equipment need order from judge allowing
- Exhibits—in court hearings
 - Need curtesy copy for the judge
 - Original for courtroom deputy –Diff from state court now
- During trial or hearing try not to interrupt witness, other attorney or the judge
 - Hard for court reporter and particularly digital recording

Criminal

- Rule 16 Changes—Additional Expert Disclosures
 - Omaha
 - Lincoln
- Motion to Suppress Procedures
 - Response—14 days Omaha
 - 7 days after to meet and confer
 - 7 days after to submit witness and exhibit lists
 - 7 days after have status call with the court
 - Know Witness availability for call
 - Set hearing date for motion

Criminal Continued

- Continuances
 - New rule 12-1-22 – Movant must confer all defense counsel and gov and motion must state whether continuance is opposed by any party
 - Length
 - Number
- Local Rules (Updated every year)

COVID

- Chief Judge Rossiter ending to conduct proceedings by video conference on May 22, 2023
- So, will go back to statute as to what can be done remotely
- As to masks in courthouse will ideally end on May 22, 2023

Multi-State Practice

- All jurisdictions are not the same—know practice where case is
- Common mistakes
 - Civility of the bar
 - Meet and Confer
 - Frustration—discovery disputes
- Most important rule or custom
 - Telephone conference before filing a Motion to Compel
 - Meet and Confer--Talk

Multistate Continued

- Rule or Customs unusual
 - Our Rule 26—more thorough many courts
 - Requirement to engage court informally before formal motion practice
- Now Omaha and Lincoln consistent –Case management practices

Questions?

Thank You!