Individual Rules of Practice

John D. Russell

United States District Judge

Civil Cases

(Rev. August 5, 2024)

Parties must act with the highest degree of professionalism and courtesy in their dealings with other parties, the Court and Court staff, and anyone else involved in the litigation. Abusive conduct of any kind will not be tolerated and should promptly be brought to the Court's attention. For the avoidance of doubt, this provision applies to discovery communications and conduct in depositions.

1. Guidelines for All Submissions

a. Designation of Lead Trial Counsel. At the outset of each case, or upon reassignment of a matter to this Court, each party must identify to the Court one individual who shall serve as Lead Trial Counsel for that party. This designation must be provided to the Court in the party's first submission (including in reassigned cases). The designation of Lead Trial Counsel cannot be changed absent prior approval by the Court. As specified below, Lead Trial Counsel is required to personally attend all conferences before the Court and to be personally involved in discovery disputes before they are brought to the Court.

b. Amended or Corrected Filings. Any amended or corrected filing (including but not limited to amended pleadings) shall be filed with a redline showing all differences between the original and revised filing. Any motion to amend a pleading shall similarly be filed with a redline showing all differences between the operative pleading and the proposed amended pleading. If amendment is permitted without a motion, the party shall submit the redline at the following email address: CM-ECFIntake_OKND@oknd.uscourts.gov with a copy to opposing counsel.

c. Courtesy Copies of Filings. Each party must submit a courtesy copy of any filing that includes more than five exhibits or exceeds one hundred pages in length (inclusive of all exhibits). The courtesy copy must be a complete and exact duplicate of the filing after it was filed with the Court, including the case and docket number at the top of each page. However, where a filing includes exhibits that are filed separately or are filed under seal, the party should present the filing and its exhibits collectively, with exhibits presented in numerical order and separated by numbered tabs. All pages filed under seal must include a watermark or other designation to that effect. Double-sided printing is encouraged.

2. Initial Conferences

a. The Court will set an initial conference for no later than six weeks after filing of the Complaint regardless of whether issue has been joined.

b. No later than three business days prior to the initial conference, the parties must email Chambers a written report of their agreements or disagreements regarding case management and discovery and a proposed Case Management Plan in a form corresponding to the Court's Case Management Form (found on the Chambers web page). In formulating their Case Management Plan, the parties should bear in mind that all discovery and post-discovery motion practice must be completed prior to the trial-ready date set by the Court, which will appear on the Case Management Form furnished to the parties along with the notice of the initial conference. This may not be the actual trial date, but it will be the date following which the parties will not be heard to complain that they are not ready for trial. At the initial conference, the Court will issue a binding Case Management Order that, in most cases, will require the case to be ready for trial within nine months (or less) of the date of the Case Management Order. If the parties submit a proposed case management plan that makes any modification to the Court's Case Management Order Form other than filling in the blank lines, they must submit a redline indicating any change from the Court's Form. **Please note that these requirements differ from**

those set forth in Rule 26(f) of the Federal Rules of Civil Procedure and Local Civil Rule 16-1(b).

3. Trial-Pending Exchanges and Pretrial Orders in Civil Cases

a. The trial-pending exchanges among the parties mandated by Rule 26(a)(3) of the Federal Rules of Civil Procedure shall be strictly enforced, except that the disclosures prescribed therein may be made 21 (instead of 30) days before trial.

b. In addition, in *all* civil cases, the parties shall jointly file with the Court, no later than one week prior to trial, a proposed Pretrial Order (plus a courtesy hard copy of the same for submission to Chambers) consisting of the following:

(1) A joint overview of the case.

(2) A statement of the factual and legal basis for the invocation of federal jurisdiction.

(3) A particularized description of each party's remaining claims, counterclaims, cross-claims, or third-party claims (failure to specify will be deemed a forfeiture).

(4) A list of each admitted fact, including jurisdictional facts. If a party has an objection to the admissibility in evidence of any admitted fact, the party should set forth the objection.

(5) A list of facts, though not admitted, that are not to be contested at the trial by evidence to the contrary.

(6) A particularized statement of the specific facts, stipulations, admissions, and other matters on which the parties agree.

(7) A list of issues of law that remain to be litigated upon the trial. Attorneys are expected to agree on which legal issues remain. If the parties cannot reach an agreement, each party's separate list should be set out in the Pretrial Order.

(8) Each party's particularized contentions as to the specific facts that are disputed. (In addition, in non-jury cases, the parties,

following trial, will be required to submit proposed findings of fact, with citations to the record, and proposed conclusions of law.)

(9) A particularized statement of the injunctive relief, declaratory relief, and/or damages claimed (including amounts) for each claim, counterclaim, cross-claim, or third-party claim.

(10) A list of the names of the witnesses (both fact witnesses and expert witnesses) that each party intends to call, in the likely order of appearance. *This should be a final and binding list, without qualifications or reservations*. A witness whose name appears on the list of more than one party will testify only once but may be examined at that time by all parties on all relevant matters.

(11) A list of all exhibits to be offered by each party, and particularized objections thereto noted in accordance with Rule 26(a)(3) of the Federal Rules of Civil Procedure.

(12) A final estimate of the length of trial (assuming a typical trial day of 9:00 a.m. to 5:00 p.m., Monday through Friday).

4. Discovery Disputes

a. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party—in person, by videoconference, or by telephone—to resolve the dispute. This process must include at least one conference among Lead Trial Counsel for the parties involved in the dispute.

b. Where a party raises a discovery dispute with the opposing party, the opposing party must, absent extenuating circumstances, make itself available to confer in good faith to resolve the dispute within two business days of a request for a conference. If a party requests a Lead Trial Counsel conference, Lead Trial Counsel for the opposing party must, absent extenuating circumstances, make themselves available within two business days.

c. If the meet-and-confer process does not resolve the dispute within 10 business days of the dispute first being raised (or sooner, if an impasse has been reached), the party seeking discovery may file a motion to

resolve the discovery dispute. The motion must specifically state that the required Lead Trial Counsel conference occurred.

d. Counsel should seek relief in accordance with these procedures in a timely fashion. If a party waits until near the close of discovery to raise an issue that could have been raised earlier, the party is unlikely to be granted the relief that it seeks or more time for discovery.

e. Privilege Logs and Privilege Log Disputes. Privilege logs should be sufficiently detailed to enable the receiving party to evaluate a claim of privilege, including identification of attorneys involved in the relevant documents or communications. Privilege logs must be promptly produced and updated on a rolling basis as documents are produced. Each log and update must include a certification from counsel that counsel has reviewed the withheld or redacted documents, and that there is a good-faith basis to assert privilege over those documents. Disputes related to privilege logs are subject to the Court's rules governing discovery disputes. The Court may on its own initiative order in camera production to the Court of unredacted documents from the producing party's log where a dispute is raised.

5. Conduct in Depositions

a. All objections during a deposition must be "stated concisely in a nonargumentative and nonsuggestive manner." Fed. R. Civ. P. 30(c)(2). Witness coaching or disruptive commentary of any kind during questioning is prohibited. Objections to the form of a question (e.g., argumentative, asked and answered, calls for a narrative response, calls for a legal conclusion, compound, vague, ambiguous, calls for speculation) should be limited to "objection, form." If the examining attorney is unclear as to the nature of the form objection, they may seek further clarification from the objecting attorney.

b. If a dispute arises during a deposition, the parties may call Chambers or the assigned Magistrate Judge to raise the dispute with the Court during the deposition. If a party wishes to engage the Court in this manner, all parties in attendance at the deposition must make themselves available and call the Court jointly.

6. Participation by Junior Attorneys

The Court encourages the participation of less-experienced attorneys in all proceedings—including pretrial conferences, hearings on discovery

disputes, oral arguments, and examinations of witnesses at trial—particularly where that attorney played a substantial role in drafting the underlying filing or in preparing the relevant witness. The Court may be inclined to grant a request for oral argument, or a request for more than one attorney to speak on behalf of a party in a conference, where doing so would afford the opportunity for a junior attorney to gain experience.

7. Proposed Jury Instructions

Proposed jury charges must be submitted to the Court at least one week before trial. Any proposed jury charge submitted thereafter will not be considered by the Court, except upon a showing that the proposed charge relates to an issue that could not reasonably have been expected to arise at trial. In addition, the Court's standard practice is to give the jury a one-page preliminary instruction shortly before or after opening statements, highlighting some of the issues and legal requirements in the case. The parties should submit their proposals for preliminary instructions at least three business days before trial.

8. Proposed Voir Dire Requests

Proposed voir dire requests must be submitted to the Court at least three business days before the start of jury selection. The jury will be selected by calling forward a total number of venire to account for all jurors and alternates plus the number of peremptory challenges based on the number of parties; once passed for cause, the parties must use all peremptory challenges to reduce the panel to the number of jurors plus alternates. The Court does not use jury questionnaires. Except in rare circumstances, the Court will conduct all questioning at voir dire.

9. Motions in Limine

Motions in limine are not a matter of right and should be largely limited to matters on which pre-trial rulings are critical. After a trial date is set, any party, without further leave of Court, may serve such a motion directed at limiting the proof at trial, provided the motion is served upon all parties by no later than the date set by the Court's scheduling order. Absent leave of Court, a party should raise all motions in limine within a single brief. Any party referencing a proposed trial exhibit in such motion papers must submit a courtesy copy of that exhibit to the Court along with the motion papers.

Such motions will normally be resolved by the Court on the morning of the first day of trial.

10. Stipulations of Settlement and Discontinuance

The Court will not strike a trial setting on the grounds of settlement unless the parties have submitted to Chambers a stipulation or letter on behalf of all parties affirming that the case has been finally settled and that the Court may dismiss the case with prejudice. Except for good cause shown, no such stipulation shall be accepted that provides for re-opening of the case more than 30 days after dismissal or that provides for the Court to retain jurisdiction for more than 30 days following dismissal except to enforce injunctive relief.

11. Summations in Civil Cases

In all civil trials, plaintiff's counsel will sum up first, followed by defendant's counsel. Where there is only one defense summation, plaintiff's counsel will normally not be permitted a rebuttal summation except in unusual circumstances. Where there are two or more defense summations, plaintiff's counsel will normally be permitted a brief rebuttal.

12. Protective Orders

Protective orders will be governed by the Court's Local Rules.

13. Trial

a. Local Rules. You are expected to be familiar with Local General Rule 3, concerning courtroom behavior, and adhere strictly to each of the requirements of this rule.

b. General Courtroom Protocol.

(1) Do not leave the courtroom while trial is in progress without obtaining leave of Court.

(2) Attorneys should not directly address opposing counsel in open court without leave of Court.

(3) Computers may be used by counsel, as long as the use is unobtrusive and is cleared through the courtroom deputy prior to the morning of trial.

(4) Do not place on the courtroom furniture, including chairs, conference tables, or benches, any objects which might scratch or mar the surfaces including briefcases with metal closures or feet, demonstrative aids, exhibits, etc.

(5) Do not chew gum or eat mints, candy, etc. in the courtroom.

(6) No beverages, including bottled water, are allowed in the courtroom.

(7) Coats, umbrellas, or briefcases of attorneys and litigants should be kept in the coat closet behind the defense counsel table.

c. Prior to trial.

(1) If you have reason to anticipate that any question of law or evidence is particularly difficult, give the Court as much advance notice as possible.

(2) Objections to proposed jury instructions and pertinent case law should be provided to the Court prior to trial.

d. Voir dire. If prior to trial the Court approves supplemental voir dire examination by counsel, the following rules will apply:

(1) Voir dire examination may not be conducted in a manner designed to inform the jury of the anticipated evidence or the applicable law, nor to provide the type of information which is normally included in the opening statement.

(2) The only purpose of voir dire examination is to gain knowledge about a prospective juror which will aid in making an informed challenge.

(3) A statement disguised as a question will not be permitted.

(4) Counsel may not ask a question based on a hypothetical statement of the facts or the law.

(5) Voir dire may not be used to explain the burden of proof.

(6) Do not attempt to elicit promises or assurances of any kind from jurors nor ask them to give any indication of what their verdict would be based on certain conditions.

(7) Each side is limited to 10-15 minutes unless additional time is approved by the Court prior to trial.

e. Opening statements. Unless the case is unusually complex, each party will be limited to 15-20 minutes, per side, except in multiple party cases, when time for the opening statement may be substantially reduced, per party. Any additional time is subject to prior approval of the Court. Opening statement is to be used to outline the proposed evidence, not for argument.

f. Exhibits.

(1) Court time may not be used for marking exhibits. This must be done in advance of the court session.

(2) Advise opposing counsel and the Court of the exhibits to be used in advance of the day's court session.

(3) Exhibits to which there is no objection should be offered and received in evidence without the necessity of formal identification.

(4) If you intend to question a witness about a group of exhibits, avoid delay by having the witness notebook already on the witness stand.

(5) While the Court permits exhibits to be passed to the jury, this procedure should be used sparingly and reserved for truly significant exhibits. Use of the Court's electronic publication system is preferred. If possible, when you wish to publish an exhibit to the jury, have a copy for each juror. Juror exhibit books are encouraged and will be allowed with prior approval of the Court.

(6) In all civil trials, regardless of whether the parties provided exhibits to the Court in advance of trial, the parties shall tender to the bench a copy of any exhibit a party seeks to offer into evidence at the same time the party hands the original exhibit to a witness during an examination. Plaintiff's and defendant's exhibits shall

both be marked by numbers (e.g., "Plaintiff's Exhibit 1," "Defendant's Exhibit 1").

(7) Parties are not required to provide the Court with copies of exhibits in advance of trial but are expected to have all exhibits available on the morning of the start of trial.

g. Witnesses.

(1) Witnesses should be readily available to avoid needless delay, including video depositions.

(2) Please stand whenever you address the Court or interrogate witnesses. (An exception is made for physical infirmity.) Use the lectern unless your comment is to be brief.

(3) Examination of a witness will include direct examination, cross examination, one re-direct examination, and one re-cross examination except in exceptional circumstances.

(4) Attorneys will not interrupt each other or a witness except to assert an objection, and the attorneys will never interrupt the Court for any reason.

(5) Do not greet or introduce yourself to adverse witnesses. Commence your cross-examination without preliminaries. Do not face or otherwise appear to address yourself to jurors when questioning a witness.

(6) Except for children, address witnesses by their surnames, for example, Mr. A, Sergeant B, or Doctor C.

(7) Never assert your personal opinion as to the credibility of a witness or the culpability of a civil litigant, nor as counsel assert personal knowledge of a fact in issue, nor assert a fact not in evidence.

(8) Do not react to a statement by another counsel or a witness being examined by another counsel by any gesture or facial expression signifying agreement, disagreement, approval or disapproval. Advise your clients they are subject to this same limitation.

(9) Where more than one attorney represents a party, only the attorney handling the particular witness may respond to an objection or raise an objection in regard to his/her testimony. Likewise, only one opposing attorney should make or argue motions or other objections as to that witness.

(10) If a witness is not available for trial, a party may use/read the testimony of that witness from the deposition transcript portion which has been designated or cross-designated by any other party. At trial, except for good cause shown, the reader of the testimony of a single witness will remain the same and counsel shall agree as to who reads the designated questions.

h. Jury Protocol.

(1) Stand a respectful distance from the jury at all times. Statements and arguments to the jury will be made from the lectern.

(2) When you object in the presence of the jury, make your objection short and to the point. Do not argue the objection in the presence of the jury, and do not argue with the ruling of the Court in the presence of the jury. Do not make motions (e.g., motion for mistrial) in the presence of the jury. Bench conferences should be kept to a minimum.

(3) Except in ruling on an objection, the Court will not, in the presence of the jury, declare that a witness is qualified as an expert or qualified to render an expert opinion, and counsel should not ask the Court to do so.

i. Deposition designations and counter designations. The following rules are supplemental to those set forth in Local Civil Rule 30-1. Deposition designations and counter designations are exchanged between counsel and are FILED as a pleading pursuant to Rule 26(a)(3)(ii) of the Federal Rules of Civil Procedure and Local Civil Rule 30-1 with the name of the witness, page, line number, and basis for the objection (not the transcript itself).

(1) The deposition transcripts are to be highlighted in different colors indicating the designations and the counter designations.

(2) Objections, and the basis therefor, should be referenced or annotated in the margins. The highlighted and annotated deposition transcripts should be SUBMITTED in hard copy (not filed) to the Court Clerk no later than seven days before trial.

(3) Objections to any deposition designations and counter designations will be considered by the Court only after a good faith effort to resolve such objections by means of a personal meeting between counsel. A high degree of cooperation between counsel is expected to minimize the number of objections. Subsequent to this meeting, any unresolved objections to deposition designations and counter designations are to be FILED no later than seven days before trial as separate pleadings (i.e., a motion or an objection) with a table setting out the page, line, and basis for the objections for each designation of testimony as to each deponent without attachments of any deposition transcripts.

(4) If a witness is not available for trial, a party may use/read the testimony of that witness from the deposition transcript portion which has been designated or cross-designated by any other party. At trial, except for good cause shown, the reader of the testimony of a single witness will remain the same and counsel shall agree as to who reads the designated questions.

j. Video testimony.

(1) The Court will permit the parties to edit and present videotaped testimony organized by subject matter if it will assist the jury to understand the evidence or determine a fact in issue.

(2) The testimony of a single witness, or of multiple witnesses, relating to designated subject matter may be combined into a single presentation.

k. Juror Notebooks. In cases of appropriate complexity, the Court will permit the parties to distribute to each juror identical notebooks.

(1) Counsel are required to confer on the contents of the notebooks prior to commencement of the trial. Any argument or disagreements should immediately be brought to the attention of the Court.

(2) Juror Notebooks may include copies of the following:

- The Court's preliminary instructions;
- Selected exhibits that have been ruled admissible or that the parties agree will be admitted without objection (or excerpts thereof);
- Stipulations of the parties;
- With agreement of counsel, other material not subject to genuine dispute, which may include:
    - Photographs of parties, witnesses or exhibits;
    - Curricula vitae of experts;
    - Agreed upon glossaries;
    - Agreed upon chronologies or timelines; and
    - Blank paper for the jurors' use in taking notes.
- During the course of the trial, the Court may permit the parties to supplement the materials in the notebooks with additional documents as they become relevant and after they have been ruled admissible or otherwise approved by the Court for inclusion.