Tips for Parties Practicing Before Judge Pepper

as of May 24, 2018

I. *Important Contact Information*

Official office hours:
8:30 a.m. to 5:00 p.m., Monday through Friday

Chambers group telephone line:
414-297-3335

E.D. Wisconsin District Court clerk's office telephone number:
414-297-3372

Conference line for appearing at telephonic hearings:
Call-in number 888-557-8511
Access code 4893665#

E-mail address for uploading proposed orders (in Word format):
PepperPO@wied.uscourts.gov

District court web site (including local rules and forms):
www.wied.uscourts.gov

Seventh Circuit web site:
https://www.ca7.uscourts.gov

II. *Communication*

We're here to help, and we want to make your communications with chambers as pleasant and fruitful as possible. Here are some tips:

A. Our chambers group telephone line is **414-297-3335**. I realize that sometimes, lawyers or parties may have the direct telephone numbers for members of chambers staff. I strongly encourage you **not** to use those direct line numbers. The person whose direct line you call may be on vacation, may be out sick, may be in training all day. You certainly can leave a voice message for that person, but the only person who can access that voice message is the person to whom that number is assigned, and if that person is out, you may not hear back for days. **Call the group telephone line**—someone will almost always answer, unless it's after hours or everyone's out at the same time (very rare). Calling the group line will put you in touch with a person much faster than calling a direct line.

B. Court staff cannot give legal advice. Sometimes the line between giving procedural information and giving legal advice can become blurry. My judicial assistant, Cary Biskupic, and my courtroom deputy, Kris Wrobel, are the people to talk to about scheduling issues. If you need resolution of a legal issue, file a motion.

C. If you file a motion, I will review it and decide whether a hearing is necessary. If I feel a hearing is necessary, chambers staff will schedule a date and time for it.

D. If you need to re-schedule a hearing, please call the chambers group line ***with all parties on the telephone.*** If all parties are present on the call and agree to the adjournment, we'll re-schedule the hearing. If the parties aren't in agreement regarding the adjournment, the party asking for the adjournment will need to file a motion (depending on the time frame, perhaps an expedited motion pursuant to Local Rule 7(h)).

E. If you want me to do something, the best way to ask is to file a **motion**. I've noticed that many lawyers communicate with the court by writing letters. Sometimes I don't know what to do with a letter—are you just writing to provide me with some information? Do you want me to take a particular action? If you file a motion, and state at the end the relief you are requesting, then I'll better know what you need from me, and can respond accordingly. The motion also will trigger the deadlines for responding under our local rules—letters don't do that. If you're just providing me with information, file a "notice." We have procedures for processing and dealing with motions and notices—letters, not so much. So—**file motions or notices, not letters.**

F. Stipulations are agreements between the parties. Stipulations are great, convenient, efficient tools for resolving motions and cases. But I'm not a party to stipulations. If whatever you are agreeing to requires me to do something in order for you to effectuate it, you need to ask me to do what you have agreed that you'd like me to do. For many reasons (some that have to do with the way our docket works), I ask parties to use the following process for stipulations:

1. Draft your stipulation (cleverly captioning it "Stipulation"), indicating exactly what the parties have agreed to, and have each party sign and date it. File it with the court.

2. File a one or two-sentence motion, asking me to approve the stipulation and enter an order doing whatever it is you need

me to do. If you have a proposed order, file it as an attachment to the motion.

3. Send—in Word, not a PDF—to the proposed order email box, **PepperPO@wied.uscourts.gov**, your proposed order indicating that I approve the stipulation and order the following, then list all the things you have agreed that I should order. Stick a signature block at the end.

G. E-filing is mandatory in the Eastern District, which means that every document that gets filed appears on the electronic docket, and I can access it on-line. As a consequence, I don't need (and selfishly, don't want) lawyers to drop paper "courtesy copies" by chambers. **So . . . save a tree-don't provide chambers with paper courtesy copies.** The earth, and I, will thank you.

H. Registered e-filers (lawyers) receive an e-mail, a "notice of electronic filing" (which we have to call NEFs, because the government couldn't survive without acronyms), each time a document is filed in one of their cases. My chambers doesn't receive an NEF every time something is filed in one of our cases—with some 350-400 cases, and numerous filings coming in on most of them on any given day, our e-mail system would grind to a standstill if we got an NEF for every document filed. Instead, we receive a "docket activity report," which summarizes all of the documents filed the previous day. Depending on when my staff and I review that report each day, we might not see something you've filed until 24 hours or more after you filed it. **If you need me to know that you filed something almost immediately after you file it, the best way to bring it to my attention is to give a courtesy call to the chambers group line (414-297-3335).** If you call and let chambers staff know that you've filed something, they can let me know, and I can try to look at it on the docket (or act on it) sooner rather than later.

I. In many cases, lawyers draft proposed orders ruling on motions that they've filed. This saves me work, of course, and ensures that you cover what you need covered in the order. On occasion, however, I'm not comfortable signing the order as you drafted it. I can ask the staff to call you and ask you to make the changes and re-submit the order. But if, in addition to filing the proposed order on the docket as an attachment to your motion, you submit a Word (not PDF) document to my proposed order e-mail box (**PepperPO@wied.uscourts.gov**), I am able to edit the order myself. So my preferred method of receiving a proposed order is to receive a Word document through the proposed orders e-mail box.

J. The proposed orders e-mail box is exactly what it sounds like—a mailbox set up solely to receive proposed orders. We don't use it as a correspondence address. So if you are trying to communicate with a person in chambers (as opposed to providing a proposed order), the proposed orders box isn't a good way to do that. The best way to communicate with chambers is to call the group phone line (**414-297-3335**).

K. The clerk's office for the Eastern District does not allow filings by fax, unless you have the judge's permission. I grant that permission only in the most rare of circumstances. If you file something by fax, you'll delay processing of whatever you filed, because someone will have to give it to me and ask me if I am willing to give permission for a fax filing. **Don't file by fax**.

L. Lawyers are busy people—I empathize, having been one myself. So it's often necessary for you to ask for extensions of time to file things or complete things, or to adjourn hearings. Two suggestions to make the process easier on everyone: (a) state in your motion how much additional time you need (either by asking for a date certain, or by asking for an additional set period of time); and (b) if you can, ask for the extension before the day of the deadline, or the adjournment before the day of the hearing. Again, because of the way our docket activity report works, filing a motion on the day of a deadline or hearing means we may not see it until the next day, and even if we do see it the day you file it, I may not be able to rule on the motion that day.

M. Our official office hours are 8:30 a.m. to 5:00 p.m. weekdays. We are closed on Saturdays, Sundays and federal holidays. (You can check our court web site—www.wied.uscourts.gov—for a list of federal holidays.)

N. Sometimes—very rarely—the federal building must close, usually as a result of severe weather. If you have a court hearing on a day that we must close, chambers staff will try to reach you by phone or e-mail to let you know if your hearing won't take place. We also try to post a message on the court web site when the building is closed, so if the weather is very bad, take a look at the web site. And be aware that, even if the building is closed, it is up to each individual judge to decide whether to cancel hearings. Even if the web site says the building is closed, a particular judge might decide not to cancel hearings. In an abundance of caution, call even if the web site says the building is closed.

III. *Discovery Issues in Civil Cases*

A. The Federal Rules of Civil Procedure require, and our local rules assume, that parties to civil cases will file Rule 26(f) discovery and scheduling plans prior to the date of the Rule 16 scheduling conference. I find these plans helpful—they give me a sense of how much time you think you'll need for the case, whether you and your opponent disagree on discovery issues, whether there are unusual issues that impact scheduling. If you don't file a Rule 26(f) plan before the scheduling conference, I may adjourn the conference until you file one, in order to avoid wasting time at the Rule 16 conference.

B. If, after I issue the scheduling order, all of the parties agree that they need to extend some of the discovery deadlines, the parties can agree to that extension without coming to me for an order, *as long as* the extended deadlines don't impact the dispositive motions deadline, the final pretrial date or the trial date. If the extensions of the discovery deadlines are going to impact those dates, please file a motion indicating as much. I'll likely schedule a hearing, so that I can determine how the extensions you want may affect the trial calendar.

C. It isn't true that judges hate discovery disputes. It is true that judges are not overly fond of being asked to resolve disputes that the parties, acting professionally, should have been able to resolve themselves. Judges also are uncomfortable with the sorts of discovery disputes that involve intemperate exchanges or *ad hominem* attacks, or that lack good faith efforts to resolve the issues.

D. I am more than willing to try to assist parties in resolving fairly straightforward discovery disputes by telephone. Whether it involves an objection to a deposition question, or an issue with the type of documents that should be produced or the time frame to be covered, please feel free to call the chambers group line (with all interested parties on the call) and ask if I'm available. If I am, I am happy to take the call, and try to resolve the issue with a short phone hearing. If I'm not available, my staff can let you know when I will be.

E. Some discovery disputes involve legal issues that need more fleshing out than can be done in a relatively short phone hearing. Don't hesitate to file motions in those instances, after you've tried in good faith to work the issues out with your opposing counsel.

F. Be aware that the expedited motions process in Civil Local Rule 7(h) may be appropriate in some circumstances where a little briefing, but only a little, is needed. Also be aware, however, that just because you designate a motion an expedited, non-dispositive, Rule 7(h) motion, it doesn't mean that I'll necessarily drop everything to rule on it. If western civilization will crumble if you don't get a decision in a week, perhaps a gentle call to chambers, explaining why it is truly urgent, would help your cause.

IV. *Docket "Encouragement"*

Parties who have resolved their cases frequently file a notice informing me of that fact and telling me that the settlement documents (whatever they may be) will be filed "shortly," or "within 45 days," etc. When I receive such notices, I will close the case administratively, with an order that says that once you have filed your settlement papers, we'll reopen and convert the administrative closure to the resolution upon which you've agreed. It is the parties' obligation to file the settlement papers and ask the court to convert the administrative closure to, say, a dismissal with prejudice.

V. *Motions for Default Judgment*

A. Before even considering ruling on a motion for default judgment, I check the docket to determine whether the plaintiff properly served the defendant(s) with the complaint. If I can't confirm proper service from the record, I will schedule a hearing to ask plaintiff's counsel for proof of proper service.

B. The fact that a defendant does not timely answer or otherwise respond to a properly-served complaint does not mean that the plaintiff wins, no questions asked. The plaintiff still must demonstrate that he/she/it could have proven the *prima facie* case at trial, and must support any request for damages/judgments. Attaching your proof to your motion for default judgment, providing your calculations for how you came up with your damages amount, and providing itemizations of fees and costs will help you avoid an invitation to attend a "prove-up" hearing.

VI. *General Courtroom Decorum/Procedures*

A. Please place your phones or other devices in silent mode while in the courtroom.

B. I use an electronic court reporting system, not a human court reporter. If you have a hearing which you believe requires a court reporter, let me know as soon as possible (either at an already-scheduled hearing, or by requesting the reporter through a motion), and we'll make arrangements to get a reporter for the hearing. If you need a recording of a particular hearing, you can contact the clerk's office (414-297-3372) with the case number and date of the hearing, and obtain a CD or thumb drive containing the recording. We are in the process of making the recordings of hearings available on the docket; you will soon begin to see that in your cases.

C. The courtroom I am lucky enough to use—Room 222—is an "electronic courtroom," in the sense that it is equipped with a document camera and video screens in the jury box and on counsel tables, *etc.* The court's IT department also has video "carts" that the Eastern District judges may use if the equipment is needed for a particular hearing or trial. If you plan to use demonstrative exhibits or present evidence electronically at a hearing or trial, please contact the chambers group line as soon as possible. We can schedule a time for you to come in and test the equipment in the courtroom to see if it meets your needs, or to practice using it so that your hearing or trial goes smoothly. We need a little heads-up, however; the day before the hearing or trial isn't enough. Our courtroom tech guru is **Eric Riedijk (414-297-1210)**; he can answer questions about what equipment is available.

D. I am aware that it costs parties time and money to travel to and appear in a courtroom. I frequently conduct hearings by telephone for that reason. Any party, however, may appear in person for a hearing, even if the hearing notice indicates that the hearing is scheduled to take place by telephone. Parties are always welcome in the courtroom. In criminal cases, for hearings where the defendant does not have a statutory right to be present in person, I encourage counsel to think about whether a telephone hearing might suffice, and if so, to request one.

E. In considering whether to appear in person or by telephone, you may wish to consider a few technical details. First, of course, I can't see people's faces on the phone. That can sometimes lead to misunderstandings—both by parties, and on my part. Second, if you need to conduct the call via speaker phone because you have clients/associates/professionals in your office, be aware that our phone system has difficulties with speaker phones. There are times when I can't hear the party who is using the speaker phone,

and must ask that he or she pick up the handset. If you are appearing by cell phone, background noise or a bad connection can make it difficult for me and the other parties to the call to understand you.

F. We have a conference telephone line for handling phone hearings. The hearing notice will contain the call-in number and the passcode; the call-in number and passcode always remain the same from hearing to hearing, case to case. It's the responsibility of the parties to call in at the appointed date and time. While we will try to contact a missing party if time and the calendar permit, we can't always do that. **The call-in number is 888-557-8511; the access code is 4893665#**.

G. I don't take evidence by telephone. I can't see the witnesses, and one can't show a witness an exhibit via phone. So if your hearing is going to involve testimony, know that it will be scheduled as an in-person hearing.

H. I don't keep exhibit stickers in the courtroom. I ask that parties confer with each other about how they wish to number exhibits (plaintiff 1-100, defendant 101-200, or plaintiff alphabetically and defendant numerically, etc.), and then pre-mark their exhibits before coming into the courtroom. You might also stick a packet of blank exhibit stickers in your briefcase, given that we don't keep them in the courtroom. If both parties intend to use the same exhibit, they needn't assign that exhibit two different numbers—they can agree to use the plaintiff's number or the defendant's number, or a discreet number or letter.

I. Please make copies of documentary exhibits for opposing counsel (if you haven't exchanged them before the hearing), for witnesses, for jurors (if the proceeding is a trial), and for me. If you've asked for a court reporter, you should make a copy for the court reporter; if the case involves an interpreter, you should make a copy for the interpreter. If the exhibits are voluminous, put the exhibits in a binder, separated by tabs. If you've filed exhibits on the docket, the other parties and I can access them on the computer screens in the courtroom, but it can be difficult to toggle between documents or pages in electronic format. Having copies with you will avoid wasting time during hearings/trials. If you file exhibits on the docket, please file each exhibit as a separate PDF, not one large PDF; this makes it easier to find individual exhibits, and makes it less likely that your PDF will be too large for the system to handle.

J. It's easy to get caught up in the moment, and start arguing with your opposing counsel during a hearing. Try not to give in to the temptation. When parties direct their remarks to a judge, rather than to each other, it usually is less likely that the remarks will devolve into incivility.

VII. *Trial Procedures*

A. In most cases, I issue a pretrial order, requiring parties to file pretrial reports, proposed exhibit lists, proposed witness lists, proposed *voir dire* questions, proposed jury instructions, forms of verdict, and motions *in limine*. If you haven't received such an order within a couple of weeks of the final pretrial conference, feel free to call chambers and enquire. In no circumstances should parties file these documents later than **seven days prior to the final pretrial conference date**.

B. By the date of the final pretrial conference, please provide Word versions of proposed *voir dire* questions, proposed jury instructions, and forms of verdict to the proposed order e-mail box (**PepperPO@wied.uscourts.gov**) address. This allows me and my staff to compile final versions of those documents after I rule on any disputes.

C. In **criminal cases**, I require all lawyers *and their clients* to be present in person at the final pretrial conference. If there is a reason that your client should not appear in person—a security issue, for example—contact chambers before the final pretrial conference and ask that your client be excused, and explain why. Otherwise, lawyers and their clients must be present at criminal final pretrial conferences.

D. In **civil** trials, I use anywhere from eight to twelve jurors, depending on the expected length of the trial and the time of year (we may select more jurors in winter, when inclement weather could cause problems for jurors in getting to court).

E. I ask the *voir dire* questions, rather than having counsel ask them. After I complete the list of questions upon which we've all agreed, I will provide counsel with the opportunity, at side bar, to tell me if there are any follow-up questions they think need asking.

F. Among the standard *voir dire* questions I will always ask are potential jurors' numbers, ages, occupations, city/village of residence, and marital status; whether anyone ever has served on

a jury (and if so, whether it was civil or criminal; whether the potential juror was the foreperson; and whether the jury reached a verdict); whether anyone knows the lawyers or witnesses in the case; whether anyone has any health issues that would prevent them from serving on the jury; and whether there is any other reason anyone could not serve on the jury. You don't need to include these in your proposed *voir dire* questions.

G. Once you provide jurors with copies of exhibits—whether singly, or in binders—*you may not make changes to those exhibits without court approval.* Lawyers may not go into the jury box during breaks (or at any other time during a jury trial).

H. I allow jurors to take notes, if all parties agree. I require jurors to leave their notebooks in the courtroom when they leave for breaks, for lunch and for the evening. I allow them to take the notes into the jury room during deliberations, and the notes are destroyed (without being read) after the trial.

I. When you make an objection during trial, please state, in a word or two, the basis for the objection—"Objection, hearsay," or "objection, no foundation," or "objection, cumulative." If I need to hear argument on the objection, I will invite counsel to side bar. If you don't agree with a ruling on an objection, please ask to be heard, rather than making your argument in front of the jury.

J. The Seventh Circuit Court of Appeals has issued standard pattern civil and criminal jury instructions. I expect that parties will use standard pattern instructions whenever they are appropriate, and will submit special instructions only for issues/situations for which no pattern instruction exists. You can access the pattern instructions at the Seventh Circuit's web site: https://www.ca7.uscourts.gov/Pattern_Jury_Instr/pattern_jury_instr.html.

K. I conduct jury instruction conferences *before* closing arguments. I send a copy of the final jury instructions to the deliberation room with the jurors.

L. I strongly discourage parties and lawyers from posting on any form of social media anything about a trial while it is in progress. While I instruct jurors that they cannot independently investigate a case on social media (or any other form of media), the pervasive presence of social media in our lives means that parties, lawyers and witnesses bear responsibility for avoiding juror taint on social media, just as they do in the courthouse. Please do not post on

social media during trial, and instruct your clients and witnesses not to do so.

M. I assume that anyone practicing in the Eastern District will have familiarized themselves with our local rules. That assumption has been proven wrong on several occasions with regard to one rule—General Local Rule 47(c). That rule states that parties, lawyers and their agents or employees "may not approach, interview, or communicate with a venire member or juror, before, during or after trial, except on leave of Court granted upon notice to opposing counsel and upon good cause shown." I understand that Wisconsin state courts, or other federal courts, may not have this rule. We do, and we enforce it. Lawyers and parties ***may not*** talk to members of the *venire* or *petit* jurors without the court's permission—period. This includes alternate jurors who do not get to deliberate