

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

Office of the Clerk

**JUDICIAL PREFERENCES
For Judge Mark S. Norris, United States District Judge**

A. CONTACT INFORMATION

1. **Courtroom:** Courtroom 4 in the Odell Horton Federal Building, Memphis, Tennessee
2. **Judge's Initials:** MSN
3. **Chambers' E-mail Address (also known as the "ECF Inbox"):**
ECF_Judge_Norris@tnwd.uscourts.gov
4. **Chambers' Address:**
167 N. Main St.
Memphis, TN
Odell Horton Federal Building
(901) 495-1200
5. **Staff Information:**
Cindy Migliore, Judicial Assistant, (901) 495-1376
Zandra Frazier, Courtroom Deputy, (901) 495-1277
Erin Connelly, Law Clerk
Brock Willis, Law Clerk

B. GENERAL PREFERENCES

1. Counsel should become familiar with the Court's Local Rules. Counsel must comply with all Local Rules unless otherwise directed by the Court.
2. Written (or electronic) correspondence from counsel to the Court should be avoided, except for matters, such as scheduling, advising of a settlement, notifying of emergencies, etc. **Counsel should take care that such communications do not address the merits of any motion or pending case.** Unless the law permits or the circumstances otherwise require, counsel must copy counsel for all parties on any correspondence with the Court.
3. Calls from counsel to Chambers should be avoided except for the reasons stated above in (2). Counsel should include counsel for all parties in the case on any call to Chambers, where possible.

4. Absent an emergency or extenuating circumstances, a party must file a motion when seeking to (1) reset a hearing, or (2) extend a deadline. **The motion should be filed at least three (3) business days prior to the applicable hearing or deadline.** The Court will not entertain such requests via e-mail, phone, or other informal means.

5. The Court will consider reasonable requests for extension of deadlines. Absent such requests, deadlines will be enforced.

6. Counsel should include the case number and abbreviated case name in the subject line when submitting proposed orders to the ECF Inbox (ECF_Judge_Norris@tnwd.uscourts.gov).

7. Counsel shall comply with the Local Rules regarding pro hac vice admissions.

C. SCHEDULING CONFERENCES

1. By default, scheduling conferences, status conferences, or other similar case management conferences will be set to occur via Microsoft Teams as a video/virtual conference. If parties prefer to have such conference(s) in person, they must file a motion at least seven (7) days prior to the conference.

2. Parties must submit their proposed scheduling orders in Word format to the ECF Inbox (ECF_Judge_Norris@tnwd.uscourts.gov) at least seven (7) days prior to the scheduling conference.

D. DISCOVERY

1. All written discovery requests should be served sufficiently in advance of the discovery deadline so that responses will be due prior to the deadline.

2. Parties may agree to conduct discovery after the deadline is expired, but the Court will not involve itself in discovery disputes that arise following the expiration of the deadline absent exceptional circumstances.

3. Once a scheduling order has been entered, it will be modified only on a showing of good cause. The length of discovery will depend on the complexity of each case.

4. Counsel for all parties should confer regarding any discovery disputes. Such disputes should be brought promptly before the Court only when necessary and must comply with Local Rule 26.1(b).

5. Parties may agree to any reasonable confidentiality terms, but such terms do not automatically merit the filing of those materials “under seal.” To file a document under seal, the parties must move for leave to do so pursuant to the applicable Local Rules. Parties should be mindful of the high value placed on public access to judicial records and should be guided by the provisions of Fed. R. Civ. P. 26(c), the Local Rules, and *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219 (6th Cir. 1996). Such motions will be closely scrutinized.

6. Written reports by expert witnesses who are scheduled to testify need not be filed with the Court unless a party files a *Daubert* motion. Such reports should be filed with the Court at least seven (7) days prior to the *Daubert* hearing.

7. The Court generally adheres to the Standard Track Scheduling Order contained in Appendix H of the Local Rules and encourages participants in the scheduling conference to become familiar with the form prior to the conference. The Court encourages parties to use the Word format of Judge Norris's sample Standard Track Scheduling Order, which is available on the Court's website, when submitting proposed scheduling orders to the Court.

E. MOTIONS, BRIEFS, AND HEARINGS

1. Motions are set for hearings or oral arguments at the discretion of the Court. In accordance with Local Rule 7.2(d), requests for hearings or oral arguments must (1) be made in the motion or response, and (2) explain why a hearing or oral argument would be helpful or necessary. If the Court determines that a hearing or oral arguments would be helpful or necessary, the Court will set the date and time for the hearing or argument and enter a setting letter to notify all counsel.

2. If counsel intends to present evidence at a hearing, they must notify the Court at least two (2) business days prior to the hearing. Counsel must also bring courtesy copies of any exhibits and provide those to Judge Norris and opposing counsel at the hearing.

3. Documents related to a hearing or trial should be filed early enough to allow for filing, recording, and review by the Court. If a party must file something last minute, please deliver a hard copy to Chambers and bring a copy to the hearing or trial. Unless otherwise instructed by the Court, courtesy copies should not be mailed or delivered to Chambers.

4. A party who relies on materials in the record—including, depositions, documents, electronically stored information, affidavits, declarations, stipulations, admissions, interrogatory answers, or other materials—to support or oppose a motion for summary judgment must include those materials in an appendix that complies with the requirements set forth below.

a. The appendix must be assembled as a self-contained document, separate from the motion and brief or response and brief.

b. Each page of the appendix must measure 8½ x 11 inches. Non-documentary materials (e.g., videotapes and other physical materials) and oversized materials (e.g., maps and schematic drawings) that are included in the appendix must be placed in an envelope that measures 9 x 12 inches.

c. Each page of the appendix must be numbered legibly in the lower right-hand corner. The first page must be numbered as "1," and succeeding pages must be numbered sequentially through the last page of the entire appendix (i.e., the numbering system must not re-start with each succeeding document in the appendix). An envelope that contains non-documentary or oversized materials must be numbered as if it were a single page.

d. The appendix should include a table of contents listing the materials included and relevant page numbers.

5. The Court will consider reasonable requests to exceed page limits; however, generally, such requests are denied unless good cause exists.

6. Failure to comply with page limits may result in the Court disregarding the noncompliant portion of the brief or summarily denying the underlying motion.

7. Trial briefs are encouraged in all jury trials but not required. The Court may request trial briefs on a case-by-case basis.

8. If a party files a motion for emergency relief, the filing party should also e-mail the motion and any documents filed in support to the ECF Inbox (ECF_Judge_Norris@tnwd.uscourts.gov), copying counsel for all parties.

9. If a motion needs to be resolved on an expedited basis, counsel should caption it as an expedited motion and include the reasons for expedited consideration.

10. When a Notice of Settlement is filed in a case, the Court will automatically enter an order denying without prejudice any pending motions as moot. If an issue arises, the parties may refile any such motions.

F. PRETRIAL CONFERENCE

1. All attorneys who will try a case are required to attend the pretrial conference **in-person**. The parties are not required to attend the pretrial conference.

2. If an attorney fails to appear at the pretrial conference or to comply with the directions set forth herein, an *ex parte* hearing may be held and judgment of dismissal or default or other appropriate sanctions entered.

3. Counsel should be familiar with Judge Norris's Pretrial Procedures and come to the conference with full authority to accomplish the purpose of the conference, which is to simplify and define the triable issues, expedite the trial, and save time and expense. At the time of conference, counsel will report to the Court the prospects of settlement.

4. After the pretrial conference, the Court will enter a pretrial order that shall govern the conduct of the trial and will constitute the final statement of the issues involved.

5. Prior to the conference, counsel **must** do the following:

a. Complete all discovery.

b. Confer and exchange information as to the ultimate issues of law and fact in order to eliminate unnecessary or irrelevant issues that appear in the pleadings or discovery, arrive at all possible stipulations, and exchange documents and exhibits which will be offered in evidence at trial.

c. Prepare a single proposed joint pretrial order that covers the items set forth below. If counsel for all parties are unable to agree completely on a joint order, they shall submit a proposed joint pretrial order that identifies which matters are agreed upon and those matters on which they have disagreement. If counsel still cannot agree, the attorney for each party must submit a proposed pretrial order. Plaintiff's counsel is responsible for initiating the proposed pretrial order. All counsel are responsible for ensuring the proposed pretrial order is timely filed.

d. Comply with Fed. R. Civ. P. 26(a)(3)(B) on pretrial disclosures. That rule requires disclosure of witnesses, deposition testimony, and exhibits, (other than impeachment evidence), to the opposing counsel thirty (30) days before trial. Within fourteen (14) days, the opposing party must serve and file a list disclosing any objection, together with the grounds for such objection, to the admissibility of any exhibit, deposition testimony, or witness testimony.

e. Furnish to the opposing party, for copying and inspection, all exhibits which are to be offered in evidence.

G. JOINT PROPOSED PRETRIAL ORDER

The parties' proposed pretrial order shall contain the following:

1. In the caption, a complete listing of all parties, both plaintiff and defendant, who remain in the case as of the date the joint proposed pretrial order is filed. Do not use "et al."

2. A statement indicating whether the case is a jury trial or non-jury trial.

3. An estimate of the length of trial.

4. A recitation that the pleadings are amended to conform to the pretrial order and the pretrial order supplants the pleadings.

5. Statement of the Court's jurisdiction and any remaining jurisdictional issues and suggested proper resolution.

6. A list of pending motions and suggested rulings thereon.

7. A short summary of the case that may be read to the venire at the beginning of voir dire.

8. The respective contentions of the parties, including contentions about the nature and amount of damages and with respect to liability.

9. A comprehensive written statement of uncontested facts that may be stipulated and read to the jury (possible sources of these agreed facts are the pleadings, discovery, or admission of counsel).

10. A written statement of the contested issues of fact that will explain to the Court the nature of the parties' dispute.

11. A written statement of the contested issues of law. This is not to be a restatement of the disputed facts but an itemization of the legal issues such as negligence, contributory negligence, etc. **This is the most important part of the joint pretrial order as these issues, not the pleadings, will govern the trial.** The Court wants an agreed list, not a separate list for each party. If either party insists on a triable issue, it is to be listed in the joint proposed pretrial order and will be a triable issue unless the Court decides otherwise at the pretrial conference.

12. A list of exhibits (except documents for impeachment only) to be offered in evidence by the parties, and preferably, if possible, a stipulation on their admissibility. If the parties cannot so stipulate, then the objections must be noted in the proposed pretrial order. To the extent possible, objections shall be ruled on at the pretrial conference.

13. A list of witnesses for the parties, indicating those who will be called, in the absence of reasonable notice to opposing counsel to the contrary, and those who only may be called. Any objection to a witness in general must be noted in the proposed joint pretrial order. If any Rule 702 ("expert") witnesses, including treating physicians who will give expert testimony, are listed, the witness shall be identified as such, along with the subject matter of the expert testimony. Opposing counsel shall specify any objection to the witness's expertise or testimony in the proposed joint pretrial order. To the extent possible, objections will be ruled on at the pretrial conference.

14. Any deposition testimony that the parties desire to offer into evidence at the trial. The parties shall designate only the relevant portions of the deposition that they wish to read at trial and advise opposing counsel of same. All objections to any such testimony must be noted in the proposed joint pretrial order. To the extent possible, objections will be ruled on at the pretrial conference.

15. A statement of the relief sought and the amount of the ascertainable damages. The listing of the amount of damages shall not constitute an agreement as to the recoverability of same unless so stated.

16. A list of the names of all attorneys of record in the case along with their law firm affiliations, if any; addresses; phone numbers; and email addresses.

17. A list of any special equipment such as overhead projectors, easels, computers, etc. that the parties intend to bring for use at the trial. The court provides a presentation system including monitors, an evidence camera, and a video distribution system for these components. The court does not provide personal computers or laptops to counsel; however, at the Court's discretion, counsel may access the video distribution system with their own laptops to disseminate computer generated evidence.

H. MOTIONS IN LIMINE; JURY INSTRUCTIONS; PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Any motions in limine must be filed not later than twenty-one (21) days before the trial date. The opposing party must file a response within seven (7) days of the date of service of the motion in limine. Motions submitted after the deadline may be denied solely on that ground. The Court will generally hear argument on pending motions in limine at the final pretrial conference but may reserve ruling until trial.

2. For jury cases, the parties must submit the following in Word format to the ECF Inbox (ECF_Judge_Norris@tnwd.uscourts.gov) no later than **two (2) weeks prior to the beginning of trial:**

a. An **agreed** set of proposed jury instructions. The parties must confer regarding proposed jury instructions to narrow areas of disagreement. The proposed jury instructions should include citations to model instructions or other supporting authority. A party requesting an instruction that cannot be agreed on must submit that instruction to the Court and opposing counsel, setting out the disagreement, by the same deadline.

b. An **agreed** proposed verdict form.

c. Any special questions for voir dire examination of the jury venire.

3. For non-jury cases, the parties must submit proposed findings of fact and proposed conclusions of law in place of the proposed jury instructions no later than **two (2) weeks prior to the beginning of trial.**

I. TRIAL

1. The Court will conduct general voir dire and either ask counsel's proposed special questions at that time or allow counsel to conduct limited voir dire.

2. Time limits for opening statements and closing arguments will be determined on a case-by-case basis.

3. Arguments are not permitted during opening statements. The Court may reduce the time allotted to closing arguments for counsel who violate this rule.

4. Display of printed or electronic visual media during opening statements or closing arguments will be permitted only if such exhibits either (i) have been admitted into evidence, or (ii) are the subject of a stipulation by the parties. Exceptions to this should be sought by motion, filed sufficiently in advance of the proposed use of the exhibit that all parties have a reasonable opportunity to respond.

5. Counsel must stand when addressing the Court or making objections.

6. More than one attorney may represent a party at trial, but only one attorney may address a witness.

7. Sidebar will be allowed if deemed necessary by the Court. If a lengthy conference is needed, the jury will be excused.

8. A party wishing to introduce videotaped testimony must notify the courtroom deputy on or before the final pretrial conference.

9. No formal motion to admit exhibits is required. Exhibits should be admitted individually and not collectively. Parties should move to admit each exhibit at or around the time it is presented unless admitted via pretrial stipulation. All objections to exhibits are dealt with at or before the final pretrial conference to the extent possible.

10. No examination beyond redirect and recross except under exceptional circumstances.

11. No written motion is required for a motion for judgment as a matter of law or when such motion is made during trial.

12. Notetaking by jurors is permitted.

13. Special verdict forms are utilized when necessitated by the nature of a particular case.

14. Written jury instructions are provided to the jury.

15. Counsel who leave the vicinity of the courtroom during jury deliberations must notify the courtroom deputy of his or her whereabouts and be able to return to the courtroom within ten minutes of being notified to do so.

16. Judge Norris adheres to the Local Rules regarding the interrogation of jurors after a trial has concluded. If the jury is polled, Judge Norris will conduct the polling.