

JUDGE DONOVAN W. FRANK

PRACTICE POINTERS AND PREFERENCES

Contact with Chambers

- Judge Frank encourages you to contact his calendar clerk, Brenda Schaffer, at 651-848-1296, if you have questions about his preferences and procedures.
- Please direct questions to Judge Frank's calendar clerk, not his law clerks. The law clerk will initiate contact with the parties if the Court deems it appropriate.

Motion Scheduling

- Judge Frank's motion day is Friday. He typically schedules three motions to be heard in the morning.
- Oral argument on dispositive motions must take place at least 42 days after the filing of a party's motion papers. More often than not, the hearing will occur more than 42 days after a motion is filed.
- The calendar clerk has been instructed not to provide oral argument dates until the day the moving party is ready to file its motion.
- When scheduling a motion, the parties should work together and inform the calendar clerk of all motions pending in a particular case to ensure that they are all heard together. Also, if there are related cases with related motions, the parties should inform the calendar clerk of this fact.
- Parties must file their dispositive motions before the deadline in the pretrial scheduling order.
- A party moving for a TRO must submit its motion papers before the Court will schedule the TRO hearing.
- Motions to transfer, remand, and compel arbitration are to be briefed as dispositive motions under the Local Rules.

- When scheduling a dispositive motion, the parties should pay careful attention to the spacing (time period) between the dispositive motion deadline and the trial ready date. If the deadline date is “served filed and heard,” the trial date should be 60 to 90 days from that deadline. If the deadline date is based upon “served and filed,” and not heard, the trial ready date should be 90 to 120 days from the dispositive motion deadline date. When this spacing is utilized, it permits the Court to make a ruling and still allows time for the parties to prepare for trial and exhaust settlement in the context of the ruling so as to preserve the trial date.
- Judge Frank hears *Daubert* motions himself. *Daubert* motions are generally heard at the pretrial conference. If, however, the parties agree that a ruling on a *Daubert* motion would be dispositive of one or more issues in the case, Judge Frank asks the parties to contact his calendar clerk to schedule a *Daubert* hearing prior to the pretrial conference.
- In patent cases, Judge Frank uses Form 4, which is the special Rule 26(f) Report for patent cases under the Local Rules.
- All discovery motions are heard by the Magistrate Judge.

Written Submissions

- Judge Frank strictly follows the word count and format rules set forth in the Local Rules. In certain circumstances, permission will be given to exceed the word limit.
- A party must submit a written motion to the Court well in advance to request additional briefing space, not after the word count has been exceeded in the opening memorandum.
- Judge Frank discourages the use of procedural devices, such as filing a motion for each count of a complaint, in order to gain additional briefing space.
- When filing exhibits electronically, attach a separate exhibit index that explains where specific exhibits can be found in the electronic attachments.
- Parties are encouraged to submit complete transcripts of key depositions, not just excerpts.
- Please remember that parties are to send chambers two courtesy copies of motion papers under the Local Rules. Judge Frank prefers that the courtesy copies be organized, with tabs as appropriate, three-hole punched, and bound, stapled, or, if necessary, clamped together. For voluminous filings, courtesy copies tabbed and organized in binders are welcome.

- If a party is submitting a document under seal or filing the document conventionally, please submit two three-hole punched courtesy copies to chambers.

In-Court Proceedings

- Stand at the podium when addressing the Court and counsel. Address the Court and opposing counsel with civility and formality. Direct your arguments to the Court, not to the law clerk or other court personnel.
- Judge Frank has no preference as to which side of the courtroom the parties sit.
- Judge Frank allows 30 minutes to each side for oral argument on motions, and only one hour total per motion. This includes summary judgment, preliminary injunction, and *Daubert* motions. Please contact the calendar clerk if you believe you will need more time.
- TRO hearings will not be scheduled until Judge Frank has reviewed the motion papers.
- TRO, preliminary injunction, and *Daubert* motions are handled without witness testimony, absent advance permission from the Court.
- Parties are encouraged to make use of courtroom technology during oral argument on motions and at trial. You must contact the calendar clerk ahead of time if you plan to utilize courtroom technology. Please become familiar with courtroom technology before using it. Training can be arranged through the calendar clerk.
- Judge Frank reads all written submissions in advance, so please keep that in mind when preparing your oral argument.
- If a party submits additional or new case law at oral argument, counsel must first furnish the additional case law to opposing counsel. Bring two additional copies of cases or any other handouts used in oral argument for the Court.

Trial

- Judge Frank will issue a trial notice at least two months prior to the trial-ready date, setting deadlines for submissions, etc.
- In jury trials, the parties must submit trial statements, exhibit lists, witness lists, deposition designations, motion in limine, proposed *voir dire* questions, and proposed jury instructions 10 days before trial. Responses to motions in limine are due 3 days before trial.

- Exhibits should be marked prior to trial and should correspond to the exhibit list.
- Prior to trial, one set of hard copies of the exhibits should be delivered to chambers, in binders and tabbed by Exhibit number.
- The Court expects the parties to submit a joint proposed statement of the case that can be read to the jury during *voir dire*.
- The parties are required to meet and confer in advance of trial and then jointly submit to the Court the proposed jury instructions. Jury instructions on which the parties agree shall be represented in black ink. Jury instructions on which the parties disagree shall be submitted by each party representing in a designated color (i.e., red for plaintiff, blue for defendant) their respective proposed jury instruction. The Court notes that most, if not all, of the jury instructions should be agreed upon and in black ink.
- Parties must include citations with proposed jury instructions.
- The parties should consider submitting preliminary instructions that will preview the substantive legal issues in the case.
- Each side will have fifteen minutes for *voir dire*. The Court will also ask *voir dire* questions previously submitted by the parties.
- If videotaped depositions are to be used at trial, attorneys must confer and edit the tapes to get to the heart of the matter. Any dispute over use of videotape should be raised in limine prior to trial.

Settlement Conferences

- Judge Frank refers all settlement conferences to the Magistrate Judge. The parties can request a settlement conference at any time by contacting the Magistrate Judge.
- The Court will allow more than one settlement conference in a case.