

**JUDGE PATRICK J. SCHILTZ**  
PRACTICE POINTERS AND PREFERENCES  
May 2007

*Contact with Chambers*

- Counsel may contact Judge Schiltz’s calendar clerk and law clerks regarding pending cases.
- Judge Schiltz’s calendar clerk and law clerks will not give legal advice, but they will answer questions about Judge Schiltz’s policies and preferences.

*Motion Scheduling*

- Contact Judge Schiltz’s calendar clerk to schedule oral argument on dispositive motions.
- Oral arguments may be scheduled on any day of the week. Judge Schiltz does not have a “motion day.” Judge Schiltz typically hears three dispositive motions per week.
- Nondispositive motions are heard by the magistrate judge. Hearings on such motions should be scheduled by contacting the magistrate judge’s judicial assistant.
- Judge Schiltz hears *Daubert* and *Markman* motions himself. With respect to *Markman* motions, parties are required to attend an informal “pre-*Markman* conference” with Judge Schiltz before the hearing on the *Markman* motion will be scheduled.

*Written Submissions*

- Judge Schiltz insists that parties strictly adhere to the word-count and page limits set forth in the Local Rules. Motions to enlarge the word-count limit are highly disfavored. Such motions, if they are to be filed, must be filed in advance of the filing of the subject brief. *See Randall v. Lady of Am. Franchise Corp.*, No. 04-CV-3394, Order [Docket No. 123] (D. Minn. Sept. 13, 2006).
- Judge Schiltz does not allow parties to file multiple contemporaneous or near-contemporaneous summary-judgment motions in order to obtain additional briefing space. *See Carlson Mktg. Group, Inc. v. Royal Indem. Co.*, No. 04-CV-3368, 2006 WL 2917173, 2006 U.S. Dist. LEXIS 74208 (D. Minn. Oct. 11, 2006). For example, parties may not file separate motions for each substantive count of a complaint.
- Judge Schiltz does not permit “motions to strike” unless they are directed at a pleading pursuant to Rule 12(f). “Motions to strike” affidavits, memoranda, or other materials supporting a motion are not authorized by either the Federal Rules of Civil Procedure or the Local Rules. *See Carlson Mktg. Group*, 2006 WL 2917173, 2006 U.S. Dist. LEXIS 74208.

- Counsel are encouraged to make every effort to avoid duplication in their briefing of cross-motions for summary judgment. Each point should be made only once.
- With respect to the submission of courtesy copies of motion papers, *two* courtesy copies of memoranda and *one* courtesy copy of every other document should be delivered to the chambers of Judge Schiltz. Judge Schiltz prefers those courtesy copies to be three-hole punched and unstapled (and, if voluminous, appropriately tabbed). He also prefers that parties note the docket number of the filed document on the courtesy copies submitted to the Court. (The easiest way to do this is to submit copies of filed documents with the CM/ECF header on the documents.) Courtesy copies may be provided the day after documents are filed on ECF.
- No rule requires that unpublished opinions cited in memoranda be filed with the Court or served on opposing parties. Judge Schiltz asks, though, that if such an opinion is not available in CM/ECF or on Westlaw or LEXIS, a copy of the opinion be served and filed. *Cf.* Fed. R. App. P. 32.1(b).

### *In-Court Proceedings*

- Be on time.
- Judge Schiltz is located in St. Paul and conducts most (but not all) hearings there. Many hearings have been delayed because counsel went to the wrong courthouse. During the three-year renovation of the St. Paul courthouse, counsel should be certain to verify the location of the hearing.
- Observe formal decorum in the courtroom. Stand at the podium and formally address the Court and counsel.
- Judge Schiltz reads every word of every brief before the oral argument. Judge Schiltz does not use oral argument to listen to attorneys summarize what is in the briefs that he has just read; instead, he uses oral argument to ask questions of attorneys. Counsel should be prepared to answer detailed questions about the case, including questions about the evidence in the record.
- TROs, preliminary injunctions, and *Daubert* motions are handled without witness testimony, absent advance permission from the Court.
- If a party submits new legal authority at oral argument, that party should provide courtesy copies of the authority to the Court and opposing counsel.

### *Trial*

- Judge Schiltz issues a trial notice containing detailed instructions for the parties at least 90 days prior to the start of trial.

- Judge Schiltz conducts most of the *voir dire* himself, using a combination of his “standard” questions and “case-specific” questions submitted by the parties. Counsel are given 10-15 minutes to conduct *voir dire* after Judge Schiltz completes his questions.
- Parties are required to meet and confer regarding jury instructions in advance of trial and jointly file one set of proposed jury instructions. Each jury instruction must identify supporting legal authority. Judge Schiltz prefers to use the Eighth Circuit model instructions, but he will use O’Malley when it fills gaps in the Eighth Circuit instructions or when it does a better job covering a particular topic. Unless there is a particular reason not to do so, parties are expected to cite the most current version of the supporting authority for each jury instruction.
- No party may submit more than five motions in limine except in extraordinary circumstances and with the prior permission of the Court. Each motion in limine must be limited to one discrete issue. No brief in support of, or in opposition to, any motion in limine may exceed 3000 words. No reply brief may be submitted with respect to any motion in limine. Parties should use motions in limine to address evidentiary issues that are likely to arise at trial, and not to reargue summary-judgment motions or motions to dismiss.
- Judge Schiltz conducts a pretrial conference and rules on motions in limine on the Friday before the trial is scheduled to start, and schedules jury selection for the following Tuesday. The parties have the intervening Monday available to conduct a settlement conference or mediation, if they wish to do so. Judge Schiltz is willing to help, but he will not get involved in settlement discussions unless invited by the parties.
- Counsel are directed to have sufficient witnesses on hand to assure a full day of trial each day. Judge Schiltz’s trial day runs to 5:00 p.m.
- Counsel are required to give each other 24 hours advance notice of the witnesses they intend to call on any particular day during trial.
- Attorneys must stand when making objections.
- Judge Schiltz prefers that attorneys use the lectern when examining witnesses. Attorneys need not ask the Judge’s permission to approach a witness.
- All exhibits should be marked in advance of trial, as instructed in the trial notice.

#### *Settlement Conferences*

- Judge Schiltz refers all settlement conferences to the magistrate judge.
- Parties should request a settlement conference through the magistrate judge’s judicial assistant.

- Judge Schiltz is willing to entertain more than one settlement conference in a case.