

JUDGE PATRICK J. SCHILTZ
PRACTICE POINTERS AND PREFERENCES
February 2012

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 “motions day.”
- 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 personally hears motions under Fed. R. Civ. P. 55(b)(2) for default judgments. Such motions are dispositive. A party should not file a motion for a default judgment until the party first asks the Clerk to enter the default under Fed. R. Civ. P. 55(a).
- 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

- Parties must adhere to the word-count limits set forth in the Local Rules. Requests to enlarge the word-count limits are disfavored. Such requests must be filed in advance of the filing of the subject brief in accordance with Local Rule 7.1(d). The subject brief should not be filed unless and until the request is granted. *See Randall v. Lady of Am. Franchise Corp.*, No. 04-CV-3394, Order [Docket No. 123] (D. Minn. Sept. 13, 2006).
- Parties may not file multiple contemporaneous or near-contemporaneous summary-judgment motions in order to obtain additional briefing space. Under Local Rule 7.1(b)(4), “[m]ultiple motions for summary judgment (or partial summary judgment) filed by a single party at or about the same time will be considered as a single motion for purposes of” applying the word-count limits in Local Rule 7.1(d).

- 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 v. Royal Indem. Co.*, No. 04-CV-3368, 2006 WL 2917173, 2006 U.S. Dist. LEXIS 74208 (D. Minn. Oct. 11, 2006).
- 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.
- *Two* courtesy copies of memoranda and *one* courtesy copy of supporting documents should be delivered to the chambers of Judge Schiltz. Judge Schiltz prefers those courtesy copies to be:
 - three-hole punched;
 - unstapled; and
 - if voluminous, appropriately tabbed.

Judge Schiltz also prefers that parties note the docket number of the filed document on the courtesy copies. (The easiest way to do this is to submit copies of filed documents with the CM/ECF header on the documents.) Courtesy copies must be provided no later than the day after documents are filed on ECF. Counsel need not provide courtesy copies of certificates of service or certificates of word-count compliance.

- Under Local Rule 7.1(i), an unpublished opinion cited in a memorandum should not be filed with the Court or served on opposing parties, unless the opinion is not available in CM/ECF or on Westlaw or LEXIS.

In-Court Proceedings

- Try to arrive at least 15 minutes before the hearing is scheduled. Judge Schiltz almost always begins hearings at or slightly before the scheduled time.
- Observe formal decorum in the courtroom. Stand at the podium when addressing the Court, so that Judge Schiltz and his court reporter will be able to hear you.
- Judge Schiltz carefully reads the briefs before oral argument. Judge Schiltz does not use oral argument to listen to attorneys summarize what is in the briefs; 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 usually 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 usually 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.
- Judge Schiltz's trial days generally run from 9:00 a.m. to 5:00 p.m., with a 15-minute break in the morning and a 15-minute break in the afternoon, and with a lunch break from 12:30 p.m. to 2:00 p.m.
- Counsel must have sufficient witnesses on hand to assure that testimony can be taken every day until 5:00 p.m.
- Counsel should give each other 24 hours' notice of the witnesses they intend to call on any particular day during trial.
- Attorneys should stand when making objections.
- Attorneys should use the lectern when examining witnesses. Attorneys need not ask the Judge Schiltz'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. Parties may request more than one settlement conference in a case.