

JUDGE PATRICK J. SCHILTZ
PRACTICE POINTERS AND PREFERENCES
March 2019

Contact with Chambers

- Parties may contact Judge Schiltz’s courtroom deputy regarding pending cases.
- Judge Schiltz’s courtroom deputy will not give legal advice, but will answer questions about Judge Schiltz’s policies and preferences.

Motion Scheduling

- Parties should contact Judge Schiltz’s courtroom deputy to schedule oral argument on dispositive motions. Parties should contact chambers three to four months in advance of the dispositive-motion deadline in the pretrial-scheduling order to ensure they obtain a hearing date before the deadline.
- 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 for default judgments under Fed. R. Civ. P. 55(b)(2). 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 *Markman* motions himself. Parties are required to attend an informal “pre-*Markman* conference” with Judge Schiltz before the hearing on the *Markman* motion will be scheduled.
- Before contacting Judge Schiltz’s courtroom deputy to schedule a summary-judgment motion, the parties should confer as to whether they intend to bring cross-motions for summary judgment. Judge Schiltz issues a briefing order for cross-motions for summary judgment that modifies the deadlines provided in the Local Rules. All parties’ summary-judgment motions will be argued at a single hearing.
- Judge Schiltz hears *Daubert* motions himself. The scheduling of *Daubert* motions varies depending on the nature of the motion:

Sometimes a party seeks to bring a *Daubert* motion in connection with a dispositive motion. Generally, the party argues that the testimony of an expert witness should be excluded and that, without such testimony, a claim or defense of the opposing party must be dismissed. This type of *Daubert* motion should be brought contemporaneously with

the dispositive motion, and both the *Daubert* motion and the dispositive motion should be addressed in the same memoranda. For purposes of the word-count limit in D. Minn. L.R. 7.1(f), the *Daubert* motion and the dispositive motion are treated as a single motion.

Sometimes a party seeks to bring a *Daubert* motion that will exclude the anticipated trial testimony of an expert witness but that will not eliminate the need to try a claim or defense. This type of *Daubert* motion should be brought as a motion in limine in accordance with the trial notice. Trial notices are issued after Judge Schiltz resolves any dispositive motions.

Written Submissions

- Parties must 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 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, Inc. v. Royal Indem. Co.*, 2006 WL 2917173, 2006 U.S. Dist. LEXIS 74208 (D. Minn. Oct. 11, 2006).
- *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 and placed in a three-ring binder.

Judge Schiltz 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.)

- 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 and formally address the Court, so that Judge Schiltz and his court reporter will have no difficulty hearing you.
- Judge Schiltz carefully reads the briefs before the 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 engage in a back-and-forth discussion of the case with the attorneys. Counsel should be prepared to answer detailed questions about the case, including questions about the evidence in the record.
- A party may not use PowerPoint at a motions hearing to summarize or restate arguments or to add new arguments or evidence. A party may use PowerPoint to examine or highlight a particular portion of the record, such as the disputed language of a contract or a photograph of an allegedly defective product.
- 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 Judge Schiltz and opposing counsel.

Trial

- Judge Schiltz issues a trial notice containing detailed instructions for the parties approximately 90 days prior to the start of civil trial.
- Judge Schiltz conducts the *voir dire* himself, using a combination of his standard questions and case-specific questions submitted by the parties. In criminal cases, counsel are usually given 10 minutes to conduct *voir dire* after Judge Schiltz completes his questions. In civil cases, counsel are usually not permitted to conduct *voir dire*; instead, Judge Schiltz will call them to sidebar and ask if there are any additional questions that they would like him to ask.
- Parties' proposed jury instructions must identify supporting legal authority for each instruction. 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.

- 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.
- 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 Monday. Judge Schiltz will not get involved in settlement discussions unless invited by all parties.
- Judge Schiltz's trial days generally run from 8:30 a.m. to 4:30 p.m., with a 15-minute break in the morning and a 15-minute break in the afternoon, and with a lunch break from 12:00 noon to 1:30 p.m.
- Counsel must have sufficient witnesses on hand to assure that testimony can be taken every day until 4:30 p.m.
- Counsel are required to give each other 24 hours' notice of the witnesses they intend to call on any particular day during trial.
- Attorneys must stand when making objections.
- Attorneys should use the lectern when examining witnesses and addressing the jury. Attorneys need not ask 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.