

MAGISTRATE JUDGE BECKY R. THORSON

Practice Pointers and Preferences

December 2019

ORDERS

- **Please read the standard orders issued by Magistrate Judge Thorson. This includes Rule 16 Pretrial Conference Orders and Settlement Conference Orders. They include requirements that parties and their counsel are expected to follow.**

CONTACT WITH CHAMBERS

- If you have questions about Magistrate Judge Thorson's Practice Pointers and Preferences, please contact Courtroom Deputy Melissa Kruger at 651-848-1210.
- Members of Magistrate Judge Thorson's chambers have been instructed not to provide answers to legal questions including procedural questions that would be governed by the Federal Rules of Civil Procedure, the Local Rules for the District of Minnesota, or the applicable pretrial scheduling order in the case.
- When calling the Court with a question regarding a specific case, please first identify yourself, the party you represent, and have the case name and number ready to provide to chambers.
- If you have a question or seek clarification regarding an order entered by the Court, please do not call chambers. Instead, file a letter in CM/ECF regarding your question or request for clarification.
- If you have a question about how to file a document on CM/ECF, please call the Technical Help Desk in the office of the Clerk of Court at 651-848-1100. You are also directed to the District's CM/ECF webpage, which has a number of useful resources.
- If the parties have permission to submit an e-mail to chambers, please be sure to include the case number and short name of the case in the subject line.

TELEPHONE CONFERENCES

- When calling in for a scheduled telephone conference with Magistrate Judge Thorson, the moving party must have all parties on the line before calling chambers unless a conference bridge call number has been set up by the Court.

TRANSCRIPTS

- All requests must be filed in CM/ECF. Detailed filing instructions are available on the Court's website.

EXTENSIONS TO ANSWER OR OTHERWISE RESPOND

- The parties should not assume that the Court will immediately sign orders for extensions to the deadline to answer or otherwise respond to a complaint. Accordingly, if an extension is sought per stipulation, the stipulation and proposed order should be provided well in advance of the answer deadline.

INITIAL PRETRIAL CONFERENCE AND 26(f) REPORT

- Rule 16 conferences by telephone are disfavored; however, participation by telephone will be considered at the request of a party where attendance in person would impose an undue burden or expense in view of the nature of the case, the amount in issue, and the matters likely to be discussed at the conference. Any request must be made by contacting Courtroom Deputy Melissa Kruger at 651-848-1210 before the Rule 26(f) Report is due.
- In advance of the pretrial conference, the parties must submit a Rule 26(f) Report in the form attached to the Order issued by the Court. In addition to the Rule 26(f) Report, each party must email to Magistrate Judge Thorson's chambers a 1-2 page confidential letter setting forth what settlement discussions have taken place and whether the party believes an early settlement conference would be productive.
- The parties must discuss whether electronic discovery procedures and practices apply to their case and be prepared to discuss electronic discovery issues at the pretrial conference. The Court refers counsel to "Discussion of Electronic Discovery at Rule 26(f) Conferences: A Guide for Practitioners," developed by the Court's Federal Practice Committee to help attorneys and parties prepare for a meaningful discussion of electronic discovery issues early in the litigation. The

Guide is available on the District's website under the Court Forms tab, in the Pretrial, Discovery, and Trial Forms section.

PROTECTIVE ORDERS AND FILING UNDER SEAL

- If any party believes a protective order may be necessary, it must raise the subject with all other parties during the Rule 26(f) meet-and-confer, and attempt to reach agreement as to the terms of the protective order to the extent possible before the Rule 26(f) Report is filed. The parties are encouraged, though not required, to use LR Form 6 as a template for a proposed protective order. http://www.mnd.uscourts.gov/local_rules/LR-26-1.pdf. The proposed protective order should be emailed in Word format to chambers, identifying any areas of disagreement so that they can be discussed at the pretrial conference. (See Protective Orders and Filing Under Seal, below.)
- The parties must become familiar with new Local Rule 5.6. To the extent any Party believes Confidential or Confidential – Attorneys' Eyes Only information cannot be redacted and must be included in a filing with the Court, they must follow the procedure set forth in the new Local Rule regarding filing documents under seal in civil cases. See D. Minn. LR 5.6. Local Rule 5.6 will be applied in all civil cases assigned to Magistrate Judge Thorson beginning February 27, 2017. The parties are also advised that any proposed protective order that addresses the filing of sealed documents must be consistent with LR 5.6.
- Any submission filed with the Court that is sealed must be delivered to all parties and hand-delivered to the chambers of Magistrate Judge Thorson the same day the documents are filed in CM/ECF.

STIPULATIONS AND PROPOSED ORDERS

- Stipulated proposals to amend a Scheduling Order must include statements that establish good cause for the proposed amendment(s). Agreement between the parties is not sufficient. While a formal motion is not necessary if the parties agree on their proposals, only the Court may modify a scheduling order and the requirements of Local Rule 16.3 must be met.

MOTION PRACTICE

- Before submitting any motion to the Court, check to make sure that you are in compliance with the Local Rules for the District of Minnesota and the case's pretrial scheduling order.
- Magistrate Judge Thorson strictly follows the form of discovery motions set forth in Local Rule 37.1. For all motions to compel discovery, Magistrate Judge Thorson requires that each discovery request, response, or objection at issue be set forth verbatim within your memorandum of law, followed immediately by your explanation of why the discovery is needed for your case and why the response is inadequate or the objection improper. If, because of the number of requests at issue, this requirement would cause a party to exceed the word count limit set forth in the Local Rules, the party must request relief from the word count limit under Local Rule 7.1 prior to filing the motion. Judge Thorson's Scheduling Orders may include further details consistent with these requirements.
- Although the decision of who should argue a motion is ultimately that of lead counsel in consultation with the client, Magistrate Judge Thorson encourages the parties and their counsel to allow a less experienced attorney who was deeply involved in the preparation of the motion papers to argue at the hearing. To facilitate a speaking opportunity for a less-experienced attorney, the Court may make accommodations, upon timely request. These might include, for example, allowing the argument to be split between counsel, providing additional time for argument, and/or permitting the less-experienced attorney who makes the argument an opportunity to consult with a colleague at counsel table.
- Your case's pretrial scheduling order may provide for an informal dispute resolution process. If so, please review the applicable scheduling order for the process, limitations, and expectations regarding this option. If informal dispute resolution is an option, the parties are encouraged to confer on whether the issue can be resolved through the process.
- Your case's pretrial scheduling order may require that the parties schedule a telephone conference with the Court before filing any discovery motion.

- If a motion or case is resolved, please notify chambers as soon as possible so that any scheduled hearing can be removed from the calendar. If a motion has been partially resolved, please notify chambers to let the Court know what parts have been resolved and no longer need to be addressed by the Court. If time permits, notification should be by joint stipulation, as provided by Local Rule 7.1.

SCHEDULING HEARINGS

- All motions to be heard by this Court must be scheduled through Magistrate Judge Thorson's Courtroom Deputy Melissa Kruger at 651-848-1210. When scheduling a motion, the parties should work together and inform Ms. Kruger of all motions pending or anticipated so they can be heard at the same time. Counsel may not notice additional motions for hearing on an already existing hearing date without first contacting the Court for permission. Also, when scheduling a motion, the party calling in should have alerted the other side that they will be calling in to obtain a hearing date. Ideally, counsel for all sides should contact the Court to schedule a hearing.
- When scheduling a hearing, counsel must inform Ms. Kruger about any applicable deadlines or other information that should be considered for scheduling purposes. As just one example, if the parties have a discovery dispute and the deadline for the completion of fact discovery is less than 3 months away, the moving party must inform the Court for purposes of scheduling.
- Once the moving party has secured a hearing date, it must promptly serve and file the **notice of hearing** informing all parties of the nature of the motion and the date, time, and location of the hearing. The moving party may serve and file the motion and remaining papers no later than 14 days before the hearing date, unless a different briefing schedule is set. A party may not call Chambers and secure a hearing date or "hold" a hearing date without the party promptly filing and serving a notice of hearing.
- When scheduling a motion, the parties should inform Ms. Kruger if there are related cases with related motions.
- If a hearing date or time must be rescheduled, it is helpful to have counsel for all parties on the line at the same time so that a new date/time can be provided that will work for all parties.

- Even if the parties agree that a motion can be submitted on the papers without oral argument, Ms. Kruger must be contacted to set the date for submission of the matter to the Court (the matter will be deemed submitted upon receipt of the last filing). The Court will determine whether to hold a hearing.

WRITTEN SUBMISSIONS

- Magistrate Judge Thorson follows the word count and format rules set forth in the Local Rules. You must obtain leave from the Court before filing a memorandum of law that exceeds the word count set forth by this Court, the Local Rules, or the Federal Rules of Civil Procedure. Magistrate Judge Thorson permits, but does not require, a table of contents or table of authorities in your memorandum of law supporting motions that will be heard by Magistrate Judge Thorson. The table of contents and table of authorities are not included in the word count.
- Any exhibits filed electronically should be attached to an affidavit or declaration that explains where specific exhibits can be located in the electronic attachments.
- If a party claims that responding to discovery presents an undue burden, the responding party must present evidence supporting this objection in their motion papers.
- Do not refer to other Court filings in your motion papers and assume the Court has easy access to them. If another pleading or document is important enough to reference in your motion papers, attach it so that your motion and supporting documents are a self-contained bundle.
- Please deliver to chambers two courtesy copies of your motion papers, three-hole punched. If voluminous, please provide them in three-ring binders if possible. If the motion or letter is under five pages total (including exhibits), courtesy copies are not necessary.
- The parties are advised to make voluminous submissions “user friendly.” For example, lengthy exhibits should be highlighted. Include tabs for courtesy copy notebooks.
- You must obtain leave of Court prior to filing a reply brief not provided for under the Federal Rules of Civil Procedure or the Local Rules.

- A party must obtain leave of Court prior to filing any additional case law or exhibits at oral argument. If the exhibits or case law was not available prior to the motion paper deadlines, the party seeking leave must make the request when the materials become available or 48 hours prior to the hearing, whichever is earlier. Requests for leave must be filed on CM/ECF and must also be served on the other parties. If there is a late-breaking development in the facts or the law less than 48 hours before the hearing, then counsel must provide the Court and all parties a copy of the late-breaking law or exhibits as soon as it becomes to counsel seeking to introduce it. The Court will determine at the hearing, based on the circumstances, whether the additional case law or exhibits will be received. This provision is not intended to serve as a reply or sur-reply. As set forth above, you must obtain leave of Court prior to filing a reply brief not provided for under the Federal Rules of Civil Procedure or the Local Rules.

IN COURT

- Arrive early so you are ready to appear as scheduled.
- Double-check the location of the hearing in advance of the hearing date. Magistrate Judge Thorson is located in the St. Paul Courthouse, but on occasion may schedule and hold hearings in the Minneapolis Courthouse.
- Do not bring food or beverages into the courtroom. Water will be provided by the Court at each counsel table.
- Unless otherwise directed by the Court, counsel should address the Court and counsel from the podium and speak directly into the microphone for audio recording. The podium can be adjusted for height.
- Magistrate Judge Thorson reviews the written submissions in advance, so keep that in mind when preparing your oral argument.
- If you intend to use visual aids at a hearing, such as PowerPoint or other presentation graphic, please bring paper copies for the Court, the law clerk, and opposing counsel. The copy should reference the case name and case number. PowerPoint slides that repeat background and arguments in the parties' briefs are discouraged and counsel should not assume the hearing will follow a linear slide

show format. Counsel must prepare visuals that are mindful of the time limits for hearing.

- If you plan to use the courtroom technology, please become familiar with it ahead of time. Training can be arranged through the Court's I.S. Department by first calling Magistrate Judge Thorson's Courtroom Deputy, Melissa Kruger, at 651-848-1210. The Court is not responsible for its functioning, so have a back-up plan if the technology is not available.

SETTLEMENT CONFERENCES

The Court's calendar for settlement conferences fills up quickly. If the parties seek an early settlement conference, the Court's Rule 16 Order provides "The scheduling of an all-day settlement conference requires considerable advance notice (sometimes several months). If the parties agree to seek an early settlement conference, they may jointly contact the Court prior to the Rule 16 conference to reserve a date. If a date is reserved, they must include it in their 26(f) Report. A notice of settlement conference confirming the date will be issued after the Rule 16 conference."

The Court will, in almost every case, set a settlement conference date in the Pretrial Scheduling Order and issue a separate Order for Settlement Conference. The parties must carefully review the orders. If any party seeks to excuse a required participant to attend in person, a written request seeking permission must be submitted well in advance of the settlement conference.

If the parties are contacting the Court because they were directed by the Article III judge to set a settlement they must speak with Melissa Kruger and inform her of the directive.