

## **JUDGE DONOVAN W. FRANK**

### **PRACTICE POINTERS AND PREFERENCES**

#### *Contact with Chambers*

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

#### *Motion Scheduling*

- Judge Frank hears civil motions on Friday mornings. Typically, two one-hour motion hearings are scheduled back-to-back beginning at 9:00 a.m. and 10:30 a.m. Parties who anticipate exceeding the one-hour time frame must request additional time when scheduling the motion hearing date.
- 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.
- When scheduling a motion, the parties should work together and inform the courtroom deputy 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 courtroom deputy of this fact.
- Parties must file their dispositive motions before the deadline in the pretrial scheduling order.
- A party moving for a temporary restraining order ("TRO") must submit its motion papers before the Court will schedule the TRO hearing. Two courtesy copies of the TRO papers must be provided to chambers immediately after the motion is filed on ECF.
- 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. Typically, the deadline date is based upon “served and filed,” and not heard, and the trial ready date should be 150 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 courtroom deputy 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 letter to the Court (and file it on ECF) 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.
- If possible, the parties should submit briefs and exhibits that are hyperlinked and searchable.
- 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 collated into two separate sets and 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. (Please note that this applies to conventional filings as well.)

- If a party is submitting a document under seal, please submit two three-hole punched courtesy copies to chambers. (Please note it is NOT necessary to place the chambers courtesy copies into individual envelopes.)

### *In-Court Proceedings*

- The Court strongly encourages parties to allow less experienced lawyers the opportunity to actively participate in cases by presenting arguments at motion hearings or examining witnesses at trial. The Court therefore may allow a bifurcated oral argument in which a senior attorney presents one portion of the argument and an associate who has worked on the case presents the other portion. Similarly, at trial, the Court may relax the usual one-lawyer-per-witness rule to allow less experienced lawyers an opportunity to examine witnesses. Counsel seeking permission to bifurcate arguments or witness examinations should contact Judge Frank's courtroom deputy at least one week prior to the scheduled hearing or trial date.
- Judge Frank reads all written submissions in advance of the hearing. Please do not use oral argument to repeat the facts set forth in the brief; instead, focus oral argument on key issues in the dispute and be prepared to answer questions from Judge Frank.
- 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 25 minutes (including a 5 minute rebuttal), to each side for oral argument and one hour total per motion hearing. This includes summary judgment, preliminary injunction, and *Daubert* motions.
- 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 courtroom deputy 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 courtroom deputy.

- If a party submits additional or new caselaw at oral argument, counsel must first furnish the additional caselaw 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 approximately three months prior to the trial-ready date, setting deadlines for submissions, etc.
- In jury trials, the parties must submit statements of the case, exhibit lists, witness lists, deposition designations, motions 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.
- The Court expects the parties to submit a joint proposed statement of the case that can be read to the jury during *voir dire*.
- Exhibits should be marked prior to trial and should correspond to the exhibit list. The Court's preference is to have the exhibits grouped by witness.
- Prior to trial, one set of hard copies of the exhibits should be delivered to chambers, in binders, and tabbed by exhibit number.
- The parties are required to meet and confer in advance of trial and then jointly submit to the Court 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.
- The Court will ask the *voir dire* questions previously submitted by the parties. Each side will also have fifteen minutes for *voir dire*.
- 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 the 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.