

## **MAGISTRATE JUDGE HILDY BOWBEER Practice Pointers and Preferences**

### **CONTACT WITH CHAMBERS**

Chambers phone: (651) 848-1900

Chambers email: [bowbeer\\_chambers@mnd.uscourts.gov](mailto:bowbeer_chambers@mnd.uscourts.gov)

Courtroom Deputy/Judicial Assistant: Judy Kirby

- Magistrate Judge Bowbeer's last name is pronounced Bōw-beer. The accent is on the first syllable.
- Magistrate Judge Bowbeer encourages you to call her chambers and speak with her Courtroom Deputy/Judicial Assistant, if you have questions about her practice pointers and preferences.
- The Court is aware that incarcerated, detained, or otherwise confined individuals may not be able to comply with all of these practice pointers. In such cases, the Court expects compliance only to the extent possible and practical.
- Members of Magistrate Judge Bowbeer's chambers have been instructed not to provide answers to legal questions over the telephone. This includes procedural questions that would be governed by the Federal Rules of Civil Procedure or the Local Rules for the District of Minnesota.
- When calling in for a scheduled telephone conference with Magistrate Judge Bowbeer, the moving party must have all parties on the line before calling chambers unless otherwise instructed by the Court.
- When calling the Court with a question regarding a specific case, please first identify yourself and the party you represent, and have the case name and number ready.
- When sending e-mail to the chambers, please be sure to include the case number and short name of the case in the Subject line.
- If you need clarification regarding an order entered by Magistrate Judge Bowbeer, please do not call chambers. Instead, file a letter on CM/ECF asking Magistrate Judge Bowbeer 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 (612) 664-5155. You

are also directed to the District's CM/ECF page, which has a number of useful resources. [http://www.mnd.uscourts.gov/cmecf/reference\\_guides.shtml](http://www.mnd.uscourts.gov/cmecf/reference_guides.shtml)

- Requests for hearing transcripts are now handled through CM/ECF. Please contact the office of the Clerk of Court at 651-848-1100 or the Technical Help Desk at 612-664-5155 if you have any questions.

## FIRST PRETRIAL CONFERENCE

- Pursuant to the Notice of Pretrial Conference, the parties must submit in advance of the pretrial conference a Rule 26(f) Report in the form attached to the Notice issued by the Court.
- The Court refers counsel to "Discussion of Electronic Discovery at Rule 26(f) Conferences: A Guide for Practitioners," developed by the 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 Court's website under the Court Forms tab, in the Pretrial, Discovery, and Trial Forms section.
- Email a courtesy copy of the pretrial conference Rule 26(f) Report in Word format to chambers at [bowbeer\\_chambers@mnd.uscourts.gov](mailto:bowbeer_chambers@mnd.uscourts.gov) when it is filed on ECF. A hard copy of the Rule 26(f) Report is not required.
- In addition to the Rule 26(f) Report, each party must email to Magistrate Judge Bowbeer's chambers by the date specified in the Notice of Pretrial Conference a confidential letter setting forth what settlement discussions have taken place and whether the party believes an early settlement conference would be productive.
- If any party believes a protective order will be necessary, it should 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 proposed protective order should be emailed to chambers in Word format along with the courtesy copy of the Rule 26(f) Report, identifying any areas of disagreement so that they can be discussed at the pretrial conference. (See Protective Orders and Sealed Documents, below.)
- Participation in Rule 16 conferences should ordinarily be in person, with lead trial counsel and local counsel (if lead counsel is not admitted to the Minnesota bar) present. 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. Magistrate Judge Bowbeer welcomes the

attendance of newer lawyers, externs, law clerks, and mentees at Rule 16 conferences.

## PROTECTIVE ORDERS AND SEALED DOCUMENTS

- If any party believes any of the documents or information likely to be produced or cited in the case should be restricted in access or use during the pendency of the case, the parties are encouraged to seek a protective order at the inception of the case, before discovery begins. If no protective order is in place by the time documents are to be produced, documents asserted to be confidential may not be withheld on the basis that no protective order is yet in place. Instead, the producing party must produce the documents to opposing counsel for attorney's review only; after the protective order is entered, the producing party must designate the documents under the protective order.
- If a party files a document containing confidential information with the Court, it must do so in accordance with Local Rule 5.6. The joint motion for continued sealing must be filed using the Joint Motion Regarding Continued Sealing Form. See [http://www.mnd.uscourts.gov/FORMS/Clerks\\_Office/Joint-Motion-Form.pdf](http://www.mnd.uscourts.gov/FORMS/Clerks_Office/Joint-Motion-Form.pdf). The parties are reminded that the designation of material by a party during discovery as confidential pursuant to a protective order, while sufficient to justify the initial filing of the document under temporary seal, will not by itself justify continued sealing. The joint motion must identify with specificity the portions of each document the party or parties consider to be confidential (ideally by reference to a redacted document already on file or attached to the joint motion) and the specific reasons for the claim of confidentiality, tailored to the particular information at issue.
- If a party files a document under seal in connection with a motion to be heard by Magistrate Judge Bowbeer, the party must hand-deliver to her chambers a courtesy hard copy of that document on which the confidential information (i.e., the information that was redacted from the publicly filed document) is **highlighted in yellow**. The sealing of entire pleadings, memoranda of law, exhibits, and the like is strongly discouraged; however, in the rare event that an entire document is filed under seal, the courtesy hard copy of that document must so note. Courtesy hard copies must be delivered to Magistrate Judge Bowbeer's chambers the same day the documents are filed on CMECF.
- Counsel are strongly encouraged to meet and confer to the extent practicable prior to filing documents under seal to attempt to reach agreement on whether information designated by a party as confidential pursuant to a protective order should be de-designated and therefore need not be filed under seal.

## STIPULATIONS AND PROPOSED ORDERS

- Counsel must comply with the electronic filing rules relating to the submission of stipulations and proposed orders. A stipulation must be filed electronically. A courtesy hard copy of the stipulation is not required. A proposed order must be a separate document, in Word format, emailed to chambers at [bowbeer\\_chambers@mnd.uscourts.gov](mailto:bowbeer_chambers@mnd.uscourts.gov), and must reference the docket number of the motion or stipulation to which it relates. If the proposed order is a protective order, please restate the text of the protective order within the proposed order rather than simply referring to the motion or stipulation.
- For non-dispositive motions, the proposed order must specifically identify the relief you seek (for example, for a motion to compel, identify in your proposed order each discovery request for which you seek relief and the relief sought) rather than simply state that the motion is “granted” or “denied.”
- Even where the parties agree upon the relief sought, a stipulation or joint motion must always include the information required by the Local Rules (for example, in a stipulation for modification of the scheduling order, the information required by Local Rule 16.3) to support the request for relief.

## SCHEDULING AND CONDUCT OF HEARINGS

- The obligation to meet and confer before filing a non-dispositive motion, as set forth in the Local Rules, is critical. A mere exchange of emails or letters without diligent attempts at personal contact will generally not be considered sufficient to discharge this obligation.
- All motions to be heard by Magistrate Judge Bowbeer must be scheduled through her Courtroom Deputy, at 651-848-1900. Pursuant to Local Rule 7.1(b), **a date for the hearing of any non-dispositive motion must be obtained before the motion is filed.**
- All non-dispositive motions must be filed and served, but need not be fully briefed or heard, by the applicable deadline set forth in the scheduling order.
- When scheduling a motion, the parties should work together and inform the Courtroom Deputy of all motions pending or anticipated in a particular case so that they can be heard at the same time. The parties should also inform the Courtroom Deputy if there are related cases with related motions.
- When a motion must be rescheduled, it is helpful to have 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 to a dispute agree that the motion can be submitted on the papers without a hearing, the moving party must call the Courtroom Deputy to set the date for submission of the matter to the Court. The matter will be deemed submitted upon receipt of the last filing. Magistrate Judge Bowbeer ultimately will determine whether to hold a hearing on the matter.
- As a general rule, Magistrate Judge Bowbeer schedules an hour for hearings. You must inform the Courtroom Deputy well ahead of time if you anticipate that more time will be needed so that Magistrate Judge Bowbeer and court personnel can arrange their schedules accordingly. Once a motion has been scheduled, do not add motions without calling the Courtroom Deputy to make sure there is enough time scheduled for all of the motions to be heard.
- Before filing a formal non-dispositive motion on a particular dispute, the parties should confer on whether the issue can be resolved instead through an informal telephone conference with Magistrate Judge Bowbeer. Please see the applicable pretrial order for the process, limitations, and expectations regarding this informal dispute resolution option.
- 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(a)(2).

## **WRITTEN SUBMISSIONS**

- Before you file any motion, make sure you are in compliance with the Local Rules and the pretrial scheduling order in effect in the case. For example, all motions to modify the pretrial scheduling order require compliance with Local Rule 16.3.
- Magistrate Judge Bowbeer expects strict adherence to the word count, type size, and format requirements set forth in the Local Rules. Magistrate Judge Bowbeer strongly discourages the use of procedural devices (such as splitting a motion to dismiss several counts of a complaint into separate motions) to circumvent the word count limit. You must obtain leave of Court before filing a memorandum or other submission that exceeds the word count or page limits set by this Court, the Local Rules, or the Federal Rules of Civil Procedure.
- For all motions to compel discovery, Magistrate Judge Bowbeer requires that each interrogatory or request, response, and 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. Magistrate Judge Bowbeer will not address any discovery dispute that is not raised in this manner. 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, Magistrate Judge Bowbeer will entertain a request for relief from the word count limit under Local Rule 7.1(f)(1)(D).

- You may file a reply memorandum as a matter of right in connection with a motion for leave to amend a pleading if the other side argues that the amendment would be futile, provided that you file your initial motion and supporting papers no less than 21 days before the hearing date, and you file your reply no more than 7 days after the other side files its response arguing futility. To anticipate this expanded briefing schedule, the parties must discuss during the required pre-motion meet-and-confer whether the other side intends to argue futility. In such cases, the total word count for the opening and reply memoranda may not exceed 12,000 words unless otherwise authorized.

For all other non-dispositive motions, you must obtain leave of Court before filing a reply memorandum. If the court grants leave to file a reply, the reply must be e-filed and delivered to chambers no later than four days after the filing of a response to a non-dispositive motion. For a case involving one or more parties who are not on the court's CM/ECF system (e.g., a case involving *pro se* litigants), the Court will set a date by which any reply is to be served and filed. Unless otherwise authorized, the reply memorandum may not exceed 1,750 words, including footnotes, and the total word count for the opening and reply memoranda may not exceed 12,000 words.

- As soon after filing as practicable, the parties must hand-deliver one courtesy hard copy of each document filed with the Court. The hard copy should be collated and organized, with the CM/ECF legend showing the docket number of the filed materials at the top of each page. If it is not practicable to provide a copy with the CM/ECF legend, please label each page with the applicable CM/ECF docket number. Attachments and exhibits should be paginated and accompanied by an index that explains where specific exhibits can be found in the attachments. Any reference to an exhibit or attachment in your brief or memorandum should be precise enough to allow the Court to find the relevant page or pages quickly and easily. If the materials are very voluminous, Magistrate Judge Bowbeer and her staff would appreciate receiving the courtesy copies 3-hole punched with tabbed documents and exhibits; please **do not** submit the materials in binders. The copies can be delivered to the Clerk's Office.
- Any exhibits filed electronically must be attached to an affidavit that explains where specific exhibits can be found in the electronic attachments.

- A motion to amend a pleading or a scheduling order must be accompanied by a “redline” version of the proposed amended pleading or order showing the differences between it and the original.
- If you file a letter to Magistrate Judge Bowbeer on ECF, even if filed at her request or with her permission, you must also email a copy of the letter to [bowbeer\\_chambers@mnd.uscourts.gov](mailto:bowbeer_chambers@mnd.uscourts.gov), copying counsel of record. This is particularly important on time-sensitive matters, as documents filed on ECF will ordinarily not come to the Court’s attention until the next business day. Nothing in this paragraph, however, should be viewed as granting permission to file or send a letter that has not been requested by the Court or otherwise authorized by Court order or the Rules.

## SETTLEMENT CONFERENCES

- Be sure to read thoroughly and comply fully with any Order for Settlement Conference issued by the Court. Among other things, this Order requires the parties to send to the Court, in advance of the conference, a confidential letter addressing several topics. That letter is critical not only to the Court’s preparation for a productive conference, but also to your and your client’s preparation.
- All parties whose authority is necessary to settle the case must attend in person. Party representatives and their counsel must be prepared to spend the entire day, and even the evening, at the settlement conference. They should, therefore, be prepared to change any commitments, events, or travel plans they may have made for the afternoon or evening, if Magistrate Judge Bowbeer concludes that the parties are making or could yet make progress at the conference.
- Magistrate Judge Bowbeer may *sua sponte* schedule status conferences or settlement conferences to explore options for alternative dispute resolution. In addition, Magistrate Judge Bowbeer will in her discretion consider joint or ex parte requests that she schedule a settlement conference or otherwise assist in settlement negotiations, provided that the content of any ex parte request must be strictly limited to the topic of settlement and may not comment on any matter that may come before Magistrate Judge Bowbeer for a ruling. Such requests must be submitted by email to [bowbeer\\_chambers@mnd.uscourts.gov](mailto:bowbeer_chambers@mnd.uscourts.gov). Magistrate Judge Bowbeer will treat such ex parte requests as confidential unless otherwise advised.

## IN COURT

- Judge Bowbeer expects that in both written submissions and oral argument, counsel will focus on the merits of their client's position and refrain from rhetoric that denigrates the intelligence, ethics, morals, motives, integrity, or personal behavior of the opposing party or its counsel, unless such matters are directly at issue in the proceeding.
- Be prompt. Counsel and parties should allow enough time for travel, taking into account weather, traffic congestion and road construction, to ensure that they will be present and ready to proceed at the designated starting time.
- Do not bring food or beverages, other than water, into the courtroom.
- Magistrate Judge Bowbeer has no preference as to which side sits at which counsel table.
- Stand at the podium when addressing the Court and counsel, and speak directly into the microphone. The podium can be adjusted up and down.
- Direct your oral arguments to the Court, not to opposing counsel, the law clerk, or to other court personnel.
- Address the Court and opposing counsel with civility and formality.
- In preparing for oral argument, keep in mind that Magistrate Judge Bowbeer will have read all timely-filed written submissions. Therefore, rather than repeating the arguments set forth in your written submissions, focus your oral argument on responding to your opponent's arguments.
- If you submit additional case law or exhibits at oral argument, you must first furnish such materials to opposing counsel. Bring enough copies to provide one each to other parties represented at the motion and two for the Court.
- If you intend to use courtroom technology during hearings or at trial, please become familiar with it before the hearing. Training can be arranged through the Courtroom Deputy. Please bring hard copies of any PowerPoint™ or other presentation graphics for the Court and opposing counsel.
- Magistrate Judge Bowbeer is located in the St. Paul Courthouse, Courtroom 6B, but on occasion may hold hearings in Minneapolis. Please make sure to verify the location of the hearing in advance of the hearing date to avoid delays resulting from going to the wrong courthouse.

## OPPORTUNITIES FOR LESS-EXPERIENCED LAWYERS.

- Magistrate Judge Bowbeer strongly encourages parties and lead counsel to consider opportunities for less-experienced lawyers to take speaking roles in conferences, hearings, trials, and other litigation proceedings. In furtherance of this goal, she is willing to consider modifying her typical courtroom procedures where appropriate in order to facilitate, or remove potential barriers to, those opportunities.
- **Pretrial Planning:** The Rule 26(f) process, the Rule 16 conference, and final pretrial conferences are occasions for counsel to discuss with their respective clients, with each other, and, where applicable, with the Court, case-appropriate opportunities and accommodations for less-experienced lawyers to participate more fully throughout the litigation. These opportunities for participation include, for example, the Rule 16 conference and other court conferences, depositions, meet and confers, motion practice, settlement conferences, and trial.
- **Motion Hearings:** Indisputably, the decision of who should argue a motion is that of lead counsel in consultation with the client. But a less-experienced lawyer who was deeply involved in the preparation of motion papers may be more knowledgeable about the facts, circumstances, and law underlying that motion, and therefore of greater assistance to the Court's understanding, than the more senior lawyer who might ordinarily make the argument. Accordingly, Magistrate Judge Bowbeer encourages the parties and their counsel to consider having that less-experienced lawyer handle all or part of the oral argument on a motion in which he or she was significantly involved. To facilitate a speaking opportunity for a less-experienced attorney, Magistrate Judge Bowbeer is willing, upon timely request, to make reasonable accommodations such as, for example, allowing the argument to be split between counsel, providing additional time for argument, and/or permitting the less-experienced lawyer who makes the argument an opportunity to consult with lead counsel if an issue arises that requires the latter's input.
- **Settlement Conferences:** Magistrate Judge Bowbeer expects that lead trial counsel will attend all settlement conferences, as the client will look to that attorney for insight and guidance about the strengths, challenges, and costs of its case and the comparative value of a possible settlement. That said, the parties and their counsel are encouraged to consider whether a less-experienced attorney who has played a significant role in the litigation should also attend the settlement conference. That less-experienced attorney may be able to bring an additional valuable perspective to the process if, for example, he or she has built a relationship of trust with the client, is particularly familiar with key documents or testimony, or is conversant with the case law around a pivotal legal issue.

- **Trials:** In cases in which the parties have consented to Magistrate Judge Bowbeer for all purposes, including trial, counsel are encouraged to discuss with their respective clients and with opposing counsel case-appropriate opportunities and accommodations for less-experienced lawyers to participate at trial, and to discuss this subject with Magistrate Judge Bowbeer during the final pretrial conference. To facilitate those opportunities, Magistrate Judge Bowbeer may permit, upon timely request and to the extent consistent with available time and the attention and understanding of the jury, accommodations such as splitting of oral arguments on disputed issues, allowing additional time for oral arguments, permitting a less-experienced lawyer to conduct a portion of the examination of a witness, permitting both a less-experienced and more experienced lawyer to defend the same witness and make non-cumulative objections, and/or splitting of opening statements and closing arguments.
- **No Adverse Inferences:** Magistrate Judge Bowbeer will draw no inference about the importance or merits of a particular issue, witness, or motion based on the relative seniority of the lawyer involved. She will not assume, for example, that a motion is less meritorious or less important because a less-experienced attorney has been selected to argue it. At the same time, she recognizes that there may be a number of reasons why a client or lead counsel may choose not to have a less-experienced attorney take on a particular speaking role, and she will draw no adverse inference from that choice. But regardless of the selection of counsel for any speaking opportunity, all attorneys appearing before Magistrate Judge Bowbeer are expected to be adequately prepared and thoroughly familiar with the factual record, the applicable law, and the materials filed with the Court, and to conduct themselves in accordance with the highest standards of professionalism and civility.