

**PRACTICE AND PROCEDURE MANUAL
FOR JUDGES AND MAGISTRATE JUDGES
FOR THE MIDDLE DISTRICT OF TENNESSEE
(Magistrate Judge E. Clifton Knowles)**

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I. NAME AND BRIEF BIOGRAPHY

Magistrate Judge E. Clifton Knowles

Magistrate Judge Knowles was appointed U.S. Magistrate Judge in July 2000. He graduated from Vanderbilt University in 1973 and from the University of Tennessee College of Law in 1977. He was Editor-in-Chief of the Tennessee Law Review, a member of the Order of the Coif, and received multiple scholarships while in law school. After graduation from law school, Magistrate Judge Knowles worked as an attorney at Arnett, Draper & Hagood in Knoxville, Tennessee; clerked for United States Court of Appeals Sixth Circuit Chief Judge George Edwards; and was a partner and member of Bass, Berry & Sims PLC. Since January of 2001, he has been an Adjunct Professor of Law at the Vanderbilt School of Law. Magistrate Judge Knowles has been active in many local professional and civic organizations.

II. PRELIMINARY GENERAL MATTERS

This Practice and Procedure Manual was compiled by the Federal Court Committee of the Nashville Bar Association. The Committee expresses thanks to all of the Judges and Magistrate Judges, and to the Clerk of the Court, for all of the input and guidance they provided in gathering this information.

In preparing the Manual, efforts were taken to avoid repeating or characterizing rules otherwise contained in the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Local Rules of Court, the Local Rules Governing Duties of and Proceedings before Magistrate Judges, or the Administrative Practices and Procedures for Electronic Case Filing. The Manual does not attempt to be an exhaustive guide for the practice of law. It is intended to provide information about judicial practices and preferences in this District that are not necessarily addressed in any set of rules.

To the extent that there is any conflict between this Manual and these other applicable rules, practices and procedures, the other applicable rules, practices and procedures control. **This Manual is the work of the Nashville Bar Association. It is not an official statement of the Court. This Manual may not be cited as authority.**

Last, at the time the Manual was prepared in 2005, this District had only recently adopted electronic case filing. It appears that some practices related to electronic case filing are still developing. Therefore, for some time, it may be prudent to address questions about electronic case filing to the Judge or Magistrate Judge in a particular case.

A. Scheduling

Magistrate Judge Knowles' courtroom deputy can be contacted at (615) 736-7347. His courtroom deputy handles items scheduled in the courtroom and trial settings.

B. Correspondence with the Court

Correspondence with the Court is discouraged. Written communication with the Court should be in the form of pleadings, motions, notices, memoranda, and briefs, as provided for in the Federal

Rules of Civil Procedure and the Local Rules. In the rare instances when correspondence with the Court is permitted, directed or invited by the Court, a copy of the correspondence shall be served on opposing counsel, and all such correspondence will be filed with the Clerk of Court and is a matter of public record, unless otherwise directed by the Court as in the case of confidential settlement conference statements.

C. Telephone Conferences with the Court

The judges, upon request, generally will attempt to accommodate out-of-town counsel or other circumstances unique to the case by permitting joint telephone conferences with the Court. The judges also may entertain telephone conferences regarding discovery disputes that arise during depositions.

Magistrate Judge Knowles encourages the use of joint telephone conferences with the Court to resolve discovery disputes and other simple matters.

D. Telephone Conference with Law Clerks

Magistrate Judge Knowles discourages telephone conferences with his law clerks. The merits of the case should never be discussed with the law clerks.

E. Pro Se Litigants

Pro se litigants are expected to follow the Local Rules and these guidelines, as are all parties represented by counsel.

Magistrate Judge Knowles typically does not set Initial Case Management Conferences in pro se cases, but he does enter Scheduling Orders.

F. Chamber Copies of Filings

Magistrate Judge Knowles does not want chamber copies of filings.

III. PRETRIAL MATTERS FOR CIVIL CASES

A. Case Management Conferences and Orders

Magistrate Judge Knowles does not have a “standard” Case Management Order form. In cases for Judges Echols and Campbell he usually includes the following in a Case Management Order: a statement of the Court’s jurisdiction, a statement of the theories of the parties, a date for the parties to provide initial disclosures, a deadline for motions to amend the pleadings, a discovery cut-off deadline, a deadline for filing of discovery-related motions, a dispositive motion deadline, and either a trial date (Judge Echols) or a target trial date (Judge Campbell). If the parties wish, they may add other dates or deadlines, such as a deadline for expert disclosures, expert depositions, etc. In cases he has on consent, he will try to schedule the trial when counsel request that it be scheduled. If both parties agree that a settlement conference is appropriate, they should call his courtroom deputy to schedule a settlement conference. He will enter an

order setting the settlement conference on a date convenient to the parties and the court and describing the matters that need to be addressed during the settlement conference.

B. Agreed Orders, Continuances and Extensions

Magistrate Judge Knowles, when acting as a case manager, tries to conform his practice on these matters to the referring district judge and will not make scheduling modifications that may affect a trial date set by the district judge. In cases that he has on consent, he will consider extensions upon agreement or for good cause shown.

C. Pretrial Motions

1. Referral to Magistrate Judge

Magistrate Judge Knowles has no applicable comments regarding this section.

2. Dispositive Motions

The district judges, with the exception of pro se cases, normally resolve dispositive motions without reference to a magistrate judge. District judges may refer specific dispositive motions to a magistrate judge for a Report and Recommendation and will normally refer all dispositive motions in cases where at least one of the litigants is pro se.

Magistrate Judge Knowles will rule on dispositive motions when the parties consent to trial before a magistrate judge.

3. Briefs

In appropriate cases, leave of Court to exceed the page limitations in the Local Rules is liberally granted. A reply memorandum may be filed upon leave of Court.

4. Oral Arguments

Magistrate Judge Knowles grants oral argument when it is appropriate or when it would be beneficial.

D. Discovery

1. Interrogatories

Magistrate Judge Knowles believes that if the needs of a case dictate more than (or fewer than) 25 interrogatories, such issues should be raised at a case management conference or, if that is not practical, by motion.

2. Telephone Depositions

Magistrate Judge Knowles has no applicable comments regarding this section.

3. Discovery Disputes

The judges agree that every effort should be made by the attorneys to resolve discovery disputes before bringing them to the Court's attention. For those cases assigned to a magistrate judge, discovery disputes will be decided by the case manager.

4. Motions to Compel/Rule 37 Sanctions

Magistrate Judge Knowles notes that the Advisory Committee notes to Fed. R. Civ. P. 37 provides that "expenses should ordinarily be awarded unless the Court finds that the losing party acted justifiably in carrying his point to the Court."

E. Confidentiality Agreements and Protective Orders

Magistrate Judge Knowles appreciates the need for Confidentiality Agreements and Protective Orders in certain cases, and will generally approve Agreed Orders submitted by the parties with the following caveat. Controlling authority from the Sixth Circuit provides that the parties may not agree among themselves to designate documents or information as "confidential," and to have that designation "automatically" apply to material filed with the Court. *See Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1176-1180 (6th Cir. 1983).

If parties wish to file confidential materials with the Court and wish that those materials be placed under seal, the party wishing to submit the confidential material should file an appropriate Motion to allow the confidential material to be filed under seal, and an appropriate Affidavit establishing why the material is confidential.

Additionally, some Agreed Orders provide that persons receiving confidential materials will return the material following the conclusion of the case. The parties cannot agree, among themselves, to impose this requirement upon the Court. Thus, most Agreed Confidentiality Orders should contain a statement that the provisions of the Agreed Confidentiality Order do not apply to confidential materials that are filed with the Court.

F. Expert Witnesses

Magistrate Judge Knowles allows examination of experts by a standard question and answer format and does not require the testimony to be reduced to writing.

G. Settlement

1. Who Presides

All judges handle settlement conferences for each other. Most settlement conferences are done by magistrate judges who are not assigned to the case as case manager, although parties may request the case manager to preside. The selection of a judge to preside over a settlement conference is viewed as an appropriate use of forum shopping.

2. Procedure

The general procedure for settlement conferences in non-jury cases is as follows: The settlement judge will issue an order setting forth his or her requirements for a judicial settlement conference. Normally, the parties will be required to provide the settlement judge with a confidential evaluation of their case and their demands. These confidential statements should be submitted directly to the settlement judge's courtroom deputy and not filed with the Court. They do not become part of the case file.

This submission should include a description of the case, the amount of the offer, the party's evaluation of the case, the cost of litigation, and representation that these matters have been discussed with the client. Any information that is not to be communicated to the other side needs to be designated as such. All individual parties must be present with full settlement authority, and all corporate parties must be present with representatives having full settlement authority unless prior approval is otherwise obtained. The attorneys are requested to give a short opening statement in the courtroom with everyone present.

The settlement judge then meets with the parties separately, and will meet with the attorneys individually, out of the presence of their clients. If settlement is reached, it is preferred that a simple settlement agreement be executed before the parties leave the courthouse.

H. Pretrial Briefs

Magistrate Judge Knowles does not require pretrial briefs either in jury or non-jury cases, but may request them. In non-jury cases he will usually request proposed findings of fact and conclusions of law, generally within thirty days after the parties receive the transcript.

I. Pretrial Orders

Unless ordered otherwise, an agreed proposed pretrial order should be jointly prepared by the parties and submitted to the Court no later than the time of the pretrial conference. The proposed order should contain a short summary of plaintiff's theory; a short summary of defendant's theory; the issues to be submitted to the judge or jury; any procedural issues; a statement that the pleadings are amended to conform to the pretrial order and that the order supplants the pleadings; and a statement that counsel have complied with the requirements regarding the exchange of witness lists, exhibit lists, expert witness statements, depositions which are expected to be offered into evidence, etc.

If the pretrial order is agreed upon and no disagreements remain as to requested stipulations or authenticity of exhibits, plaintiff's counsel shall state within the pretrial order that no pretrial conference is necessary and submit it to the Court prior to the pretrial conference date. The pretrial conference then may be stricken from the Court's calendar.

J. Pretrial Conference

Magistrate Judge Knowles has no applicable comments regarding this section.

K. Temporary Restraining Orders

The clerk will notify the assigned judge when a TRO is being requested at the time the complaint is filed. The papers should state what efforts have been made to contact the other side. Hearings, if any, will be scheduled through the courtroom deputy of the district judge to whom the TRO application is assigned. The assignment of the TRO application and the assignment of the case are separate matters. The judge who decides the TRO may or may not be the judge who has been assigned to the case.

If a TRO matter is filed other than at the initiation of the case, counsel should advise the secretary of the presiding judge.

Requests for expedited discovery will be considered upon written motions if good cause is shown.

IV. PRETRIAL MATTERS FOR CRIMINAL CASES

A. Initial Appearances, Detention Hearings and Preliminary Hearings

When a person is arrested on federal charges, the person ordinarily must be taken before a magistrate judge without unnecessary delay. Prior to this Initial Appearance, a pretrial services officer will provide the client with a financial affidavit if the defendant is seeking appointment of counsel, and will also provide a form called Important Notice to Defendant and Explanation of Rights and Proceedings. At the Initial Appearance, the magistrate judge will review these documents, the charges, and the statutory maximum penalties with the defendant. Fed. R. Crim. P. 5 sets forth the requirements for Initial Appearances.

In addition to the Initial Appearance, a magistrate judge will conduct the Arraignments, Detention Hearings, and Preliminary Hearings when the defendant has been arrested pursuant to a complaint. See Fed. R. Crim. P. 5.1 (Preliminary Hearings); Fed. R. Crim. P. 10 (Arraignments); 18 U.S.C. § 3142 (Bail Reform Act).

In felony cases where a defendant has been indicted, the defendant may submit a written "Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty," in lieu of an in-court arraignment.

In cases involving non-English speaking defendants, the Court will provide an interpreter to interpret during the court proceedings. The courtroom deputy will usually attempt to arrange to have the interpreter come to the courthouse approximately thirty minutes to one hour prior to the time set for the Initial Appearance. Thus, the interpreter will be available at that time to assist defense counsel to converse with the client. If defense counsel requires an interpreter to converse with the client at other times, counsel should contact the interpreter directly to arrange the meeting. The name and phone number for the interpreter can be obtained from the Clerk's Office at (615) 736-5498.

B. Discovery and Pretrial Motions

In felony cases, the practice in the Middle District is for the district judges to hear all pre-trial matters, such as admissibility of confessions, suppression of evidence, motions to dismiss, etc. If a particular matter is referred to a magistrate judge, it will be handled on an expedited basis. For petty offenses, which do not require consent, and for misdemeanors where consent to proceed before the magistrate judge has been granted, the magistrate judge will conduct all pretrial matters.

All judges will schedule suppression hearings when necessary in a particular case. Generally, the judges will try to schedule suppression hearings well in advance of trial.

C. Status Conferences and Pretrial Conferences

Magistrate Judge Knowles has no applicable comments regarding this section.

D. Locating Incarcerated Clients

There are no federal detention facilities currently located in the Middle District of Tennessee. The United States Marshals Service contracts for space with a number of local detention facilities in Tennessee and Kentucky. If a defendant is detained pending trial, defense counsel may contact the United States Marshal's Office at (615) 736-5417 to find out where their client is located. Defense counsel should then contact the facility directly concerning visitation and other rules of the particular facility where the client is located.

E. Service of Subpoenas for Criminal Proceedings

If defense counsel has been appointed by the Court, the United States Marshal will serve subpoenas on behalf of the defendant. Defense counsel must obtain an order from the district court judge that directs the United States Marshal to serve the subpoenas. This order should be obtained, and the list of subpoenas should be provided to the United States Marshal, well in advance of the criminal proceedings where the witnesses shall appear.

F. Requests for Continuances of Trials in Criminal Matters

Most judges require that a Waiver of Speedy Trial Rights, signed by the defendant, be filed along with a motion to continue a criminal trial.

Counsel should not assume that a trial will be continued automatically upon request of the parties. Further, each judge has different procedures and deadlines for filing motions to continue trials.

G. Guilty Pleas

The Court has standard plea petition forms that must be completed and submitted by the defendant in felony and misdemeanor cases. These form petitions are available on the Court's

website. Even in cases where the defendant has entered a plea agreement with the U.S. Attorney, the standard plea petition must be submitted as well.

V. TRIAL PROCEDURES

A. Scheduling

Jury trials in Nashville usually begin on Tuesdays at 9:00 a.m. and continue until concluded. The court day generally runs from 9:00 a.m. to 5:00–5:30 p.m. with a one-hour lunch break. However, counsel should be prepared to arrive early or stay late in order to discuss matters outside the presence of the jury or when the jury wishes to deliberate past normal working hours.

B. Out-of-Town Parties, Witnesses or Attorneys

The judges will attempt to accommodate out-of-town parties, witnesses and attorneys to the extent possible, although local counsel is expected to be ready to try the case. In attempting to accommodate out-of-town parties, witnesses and attorneys, the judges take into consideration potential hardship to other cases and the efficient administration of justice.

C. Motions in Limine

All of the judges encourage motions *in limine*. They alert the judges to evidentiary issues that will arise at trial and, when appropriate, may help narrow issues for trial. If a motion *in limine* is not decided until trial, the non-moving party should be careful to not go into a matter that is the subject of a motion *in limine*, whether in opening statements or with a witness, until a ruling has been made.

Magistrate Judge Knowles makes every effort to decide motions *in limine* far enough in advance of trial so the parties may plan the presentation of their case.

D. Voir Dire and Jury Selection

All of the judges permit reasonable *voir dire* by the attorneys after initial questions by the Court. Counsel will not be permitted to argue their case or get too personal with the jury.

E. Note-Taking by Jurors

All of the judges allow jurors to take notes and to take their notes into the jury room during deliberation. All of the judges instruct the jury regarding the use of notes.

F. Opening Statements

1. Length

Although the judges may consider a time limit on a case-by-case basis for good cause, there is no set time limit for opening statement by any of the judges. Also, the judges agree that opening statements should be direct and not contain arguments of counsel. Subject to the caveat that the

judges all may make case-by-case determinations for good cause, some of the judges have provided additional guidelines regarding the expected length of opening statements.

2. Use of Exhibits

Counsel who wish to use exhibits or demonstrative evidence in opening statement should consult with opposing counsel in advance and attempt to work out any objections. Counsel should also request permission from the judge to use exhibits or demonstrative evidence in opening statements. As a general rule, exhibits to which no counsel has an objection will be allowed during opening statement, and contested exhibits will not be allowed without prior Court approval.

G. Courtroom Decorum and Witness Examination

Attorneys shall stand when speaking, and all objections and comments thereon shall be addressed to the Court. There shall be no oral confrontation between opposing counsel, and neither counsel nor parties may leave the courtroom without prior approval of the judge.

There is some variation among the judges regarding where counsel should stand in the courtroom and regarding how documents are passed. Except as noted below, it is generally expected that counsel will remain behind, or within an arm's length, of the podium, ask permission to approach a witness, and that the judge's clerk or a courtroom officer will pass exhibits to the witness. Attorneys should introduce their witnesses with the background information referred to in LR 39.01(c)(2) and avoid time-consuming questions on that subject. Attorneys shall make their objections without speeches or coaching the witness. Attorneys should not repeat or attempt to recharacterize a witness's answers during an examination.

Magistrate Judge Knowles generally expects attorneys to remain at the podium, unless they request to move freely about the courtroom or approach the witness. He does not strictly enforce LR 39.01(c)(2).

For case management conferences with magistrate judges, it is acceptable for counsel to remain seated.

H. Side Bar Conferences

Side bar conferences are allowed, but requests for them should be kept to a minimum and used only for matters that can be resolved quickly. One of the reasons to keep side bar conferences to a minimum is that, due to the size of some of the courtrooms, it is not always possible to prevent the jury from hearing such conversations.

Magistrate Judge Knowles adds that, in addition to the general statement above, he prefers that matters that need to be discussed out of the presence of the jury be raised during recesses.

I. Videotaped or Audiotaped Testimony

Videotaped or audiotaped testimony is allowed. Attorneys should edit the tape to remove irrelevant and objectionable material. Opposing counsel should be allowed to view the tape

before it is presented. The use of videotaped testimony should be discussed at the pretrial conference so appropriate equipment can be made available at the trial.

J. Deposition Reading

Reading a deposition into the record is allowed. Depositions read at trial should be edited so that only testimony relating to the witness's background, the issues in the case and credibility is read. It is permissible to have co-counsel or a paralegal read the answers of the witness from the witness box when a deposition is to be read at trial.

If a transcript is lengthy and it is a non-jury trial, counsel may ask the Court if it would prefer to just have the transcript submitted rather than read into the record.

K. Exhibits

When introducing an exhibit, counsel should always show it to opposing counsel first and have an extra copy available for the Court. Copies of each party's exhibit list and witness list shall be provided to the Court, the courtroom deputy, court reporter and opposing counsel on the first day of trial.

Premarked: Magistrate Judge Knowles wants exhibits to be premarked.

Stipulation as to admissibility and authenticity: The parties should stipulate as to the admissibility and authenticity of as many exhibits as possible prior to trial.

L. Witness Lists

See Section V(K), regarding Exhibits.

M. Courtroom Technology

Use of courtroom evidence presenter with camera and screen/visual aids: All of the courtrooms have wireless internet connectivity. All judges expect counsel who plan to use courtroom technology to learn how to use it prior to trial so they can accomplish what is intended without assistance from the courtroom staff. The magistrate judge's courtrooms do not have an evidence presenter, but the equipment may be available from the clerk's office; counsel must make arrangements with the clerk's office for the use of the equipment.

N. Motions for Judgment as a Matter of Law

If a party can anticipate this motion, it should give the Court advance notice and file a brief in support of the motion. Otherwise, it will be heard on oral motion and argument. In many cases a ruling will be delayed until after a jury verdict.

O. Proposed Jury Instructions and Verdict Forms

In addition to the requirements of LR 51.01, Magistrate Judge Knowles requires all proposed jury instructions and verdict forms to be filed prior to the pretrial conference. The order setting the pretrial conference will set the filing deadline.

P. Proposed Findings of Fact and Conclusions of Law

Magistrate Judge Knowles has no applicable comments regarding this section.

Q. Offers Of Proof

Offers of proof are allowed pursuant to Fed.R.Evid. 103.

R. Closing Argument

Counsel may not express personal opinions or beliefs (such as statements that begin with "I believe..."), or make personal references to other lawyers. Counsel may argue any inferences from the proof that are logical and supported by the evidence. There is no set length for closing argument.

S. Jury Deliberation

1. Copies of Instructions

Magistrate Judge Knowles generally does not provide a copy of the jury instructions to the jury.

2. Access to Exhibits

Absent any objections, and subject to Item 3 below, jurors are given access to exhibits admitted at trial. Exhibits are sent to the jury room at the beginning of deliberation.

3. Access to Transcript of Testimony or Videotaped Testimony

Due to the concern that access tends to give undue emphasis to testimony which is transcribed or videotaped, this is discouraged and not frequently allowed. However, the judges will make determinations on a case-by-case basis.

4. Availability of Counsel

Counsel will not be required to remain at the courthouse during jury deliberations, but they must advise the courtroom deputy of a phone number where they can be reached on short notice. Counsel must be available to appear in Court without unreasonable delay while the jury is deliberating.

5. Taking the Verdict and Special Interrogatories

The judges will read the verdict form and special interrogatories.

6. Polling the Jury

Magistrate Judge Knowles will poll the jury upon request of counsel.

7. Interviewing the Jury

LR 39.01(f)(2) controls requests for post-verdict interviewing of jurors.

T. Requests for Attorneys' Fees

All requests for attorneys' fees should be made by filing an application in writing supported by detailed affidavits and time records.

VI. SENTENCING IN CRIMINAL CASES

LCrR 32.01 sets forth the timetable to be followed before a sentencing hearing. The Court will schedule a sentencing hearing at least 80 days after a finding of guilt by a jury, or after the submission of a guilty plea by a defendant.

Shortly after the finding of guilt or submission of guilty plea, a probation officer will contact defense counsel to arrange a presentence interview with the defendant and counsel.

Both parties are expected to confer with the probation officer during the presentence investigation process with a view toward resolving any disputed facts or factors.

Fed. R. Crim. P. 32 requires the probation office to disclose the presentence report to the defendant at least 35 days before sentencing. LCrR 32.01 then requires both parties, within 14 days of receiving the presentence report, to provide written objections concerning the contents of the presentence report. The objections should be provided both to the probation office and opposing counsel.

Within seven days of receiving the parties' objections, the probation office must disclose any changes or unresolved factual disputes or objections that remain in the presentence report.

At least seven days prior to sentencing, the parties shall file with the clerk, and with a copy to probation and opposing counsel, a pleading entitled "Position of the (Government or Defendant) With Respect To Sentencing Factors" containing only unresolved matters previously raised with all parties in writing.

With consent of the parties or when the interests of justice require the Court may on a case-by-case basis modify the requirements set forth in LCrR 32.01 in order to carry out prompt and fair sentencing.

VII. MEDIA COMMUNICATIONS

The Court speaks through its orders and memorandum opinions.