

PRACTICE AND PROCEDURE MANUAL

JUDGE ALETA A. TRAUGER

I. Brief Biography

Judge Aleta A. Trauger was appointed by President Clinton on October 26, 1998. She received her B.A. degree from Cornell College in Iowa in 1968, her Master of Arts in Teaching degree from Vanderbilt University in 1972 and her J.D. degree from Vanderbilt University School of Law in 1976. She was an Assistant United States Attorney from 1977–1982, serving for four years in Nashville and one year in Chicago, Illinois. She was in-house counsel for the College of Charleston in 1984–85, served as Mayor Bredesen's first Chief of Staff from 1991–92 and spent the rest of the years prior to 1991 in private practice in Nashville. For five years prior to her appointment to the United States District Court, Judge Trauger was a United States Bankruptcy Judge in Nashville.

II. Preliminary General Matters

A. Scheduling

Monte Klassen is Judge Trauger's courtroom deputy; she can be reached at (615) 736-7157. Judge Trauger sets her own calendar, and there are no standard days or times for any particular matters, except for jury trials in Nashville which begin on Tuesdays at 9:00 a.m.

B. Correspondence with Court

All written communication with the court should be in a manner expressly authorized by the Federal Rules of Civil Procedure. Letters to the court are not so authorized and any letters submitted will be filed with the Clerk of Court as part of the record.

C. Telephone Conferences with Court

Telephone conferences with Judge Trauger are required prior to the filing of motions to compel or other discovery motions. Requests for participation in case management or other conferences by telephone must be made in advance by written motion.

D. Telephone Conferences with Law Clerks

Counsel are not to initiate telephone conversations with Judge Trauger's law clerks. On rare occasions, a law clerk may be asked to contact counsel about an administrative matter.

E. Pro Hac Vice Admission

Counsel may be admitted *pro hac vice* pursuant to Local Rule 1(d). Association of local counsel may be required. [See Local Rule 1(h)]

F. Motion to Ascertain Status

Local Rule 8(b)(8) applies to motions to ascertain status.

III. Pretrial Matters - Civil Cases

A. Scheduling Orders

Judge Trauger conducts her own initial case management conferences. Counsel are required to file **three business days** prior to the initial case management conference a proposed initial case management order covering the subjects delineated in Local Rule 11(d)(2) and including additional standard provisions set out in the attachment to the Order setting the initial case management conference. Lead counsel for all parties are required to attend the initial case management conference, and Judge Trauger considers this an extremely important phase of every lawsuit. With rare exceptions, a firm trial date is set during the initial case management conference.

Cases reassigned to Judge Trauger from other judges who have delegated case management to the Magistrate Judge shall remain with the Magistrate Judge for case management and decision on non dispositive, pretrial motions. Judge Trauger infrequently will refer new cases to the Magistrate Judge for case management.

B. Continuances and Extensions

1. General Policy

Continuances will be considered upon agreement of the parties or for good cause shown.

2. Requests

When counsel becomes aware of the need for a continuance, he or she should immediately alert Judge Trauger's courtroom deputy by telephone that a continuance request is going to be made. Prior to submitting a written motion, counsel should consult with all opposing counsel and reflect the positions of opposing counsel and a suggested time frame for rescheduling within the motion. A proposed order granting the continuance with space for insertion of the new setting should be submitted.

C. Pretrial Motions

1. Referral to Magistrate Judge

For cases referred to the Magistrate Judge for case management, the Magistrate Judge will decide most pretrial, non dispositive motions; for other cases, Judge Trauger will decide those motions. Most dispositive motions are not referred to the Magistrate Judge for report and recommendation.

2. Oral Argument

Pursuant to Local Rule 8(b)(1), requests for oral argument must be made in writing. Judge Trauger prefers a separate motion requesting oral argument. Such motions are granted when appropriate.

3. Briefs

Briefs are not to exceed 20 pages

4. Chamber Copies of Filings

When filings relate to an upcoming hearing or conference and, therefore, are time-sensitive, a copy of the filing may be hand-delivered to chambers at the time the document is filed with the clerk's office.

5. Proposed Orders

Proposed orders should accompany routine motions requesting extensions of time, continuances, admission *pro hac vice*, etc.

D. Discovery

1. Discovery Period and Extensions

Pursuant to Local Rule 11(e)(1)(a), unless otherwise ordered, discovery is stayed prior to the initial case management conference. Discovery deadlines are set during Judge Trauger's initial case management conferences; extension of those deadlines will be granted only upon written motion and for good cause shown. For reassigned cases and others where the Magistrate Judge is conducting case management, discovery deadlines will be set and extended by the Magistrate Judge.

2. Interrogatory Responses

Local Rule 9(a)(2) is expanded in Judge Trauger's cases to allow 60 interrogatories, including sub-parts.

3. Resolution of Discovery Disputes

In cases for which Judge Trauger has conducted the initial case management conference, no motions concerning discovery are to be filed until after the parties have conferred in good faith and, unable to resolve their differences, have scheduled and participated in a conference telephone call with Judge Trauger. For reassigned cases and others in which the Magistrate Judge is conducting case management, discovery disputes will be resolved by the Magistrate Judge.

4. Confidentiality Agreements

Court approval of confidentiality agreements is considered on a case-by-case basis.

5. Expert Witnesses

Judge Trauger adheres to the procedure set out in Local Rule 12(c)(6) for the presentation of expert witnesses. Requests for departure from this procedure are considered on a case-by-case basis. Absent meritorious objection by opposing counsel, medical testimony may be presented at trial by deposition. Motions in limine should be filed if an expert's qualification are to be challenged.

E. Settlement

The advisability and timing of judicial settlement conferences/mediation are discussed at the initial case management conference. Judicial settlement conferences are conducted by a Magistrate Judge. In most instances, mediation and other means of alternative dispute resolution are only ordered upon consent of all parties. Requests for settlement conferences or other means of alternative dispute resolution may be made at any time by written motion.

If a jury case settles closer to trial than two business days, the cost of summoning the jury may be assessed against the parties.

F. Pretrial Briefs

Pretrial briefs are not routinely required in jury cases. In some instances, Judge Trauger will request briefs on particular issues.

Proposed findings of fact and conclusions of law must be filed five days in advance of bench trials.

G. Injunctions

1. Scheduling

Local Rule 8(d) applies to applications for temporary restraining orders. Scheduling requests for cases assigned to Judge Trauger should be made to the courtroom deputy.

2. Expedited Discovery

The court will consider written motions for expedited discovery for good cause shown.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

Motions to suppress evidence should be filed by the motion deadline. In most instances, these motions will be heard in advance of the trial date.

B. Motions

Motions should be made in writing and supported by a memorandum of law. Parties should comply with the Standing Discovery Order and Plan for Prompt Disposition of Criminal Cases.

C. Pretrial Conferences

Pretrial conferences are typically not held in criminal cases, unless the case is complex or a party requests a pretrial conference.

V. Trial Procedure

A. Scheduling

Jury trials in Nashville 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., but 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. Generally the court takes one morning break and one afternoon break and allows one hour for lunch.

Judge Trauger does not set trailer dockets for civil trials in Nashville and makes every attempt not to have civil trials be interrupted by other court proceedings.

B. Out of Town Parties, Witnesses or Attorneys

Special requests to accommodate out of town individuals should be made by written motion at the earliest available opportunity or discussed at the pretrial conference.

C. Motions in Limine

Deadlines for the filing of motions in limine and responses thereto are set in the Order Setting Case for Trial. Judge Trauger makes every effort to decide motions in limine far enough in advance of trial so that parties may appropriately plan the presentation of their cases.

D. Courtroom Decorum

Local Rule 12 sets out Judge Trauger's general expectations.

E. Voir Dire

After general *voir dire* by the court, counsel for each party is given an opportunity to *voir dire* the prospective jurors.

Names are randomly drawn, and an appropriate number of jurors are seated in the jury box and in chairs in front of the jury box so that all may be questioned at the same time. Each party exercises its peremptory challenges at the same time on written forms; therefore, duplicate strikes are a possibility. Challenges for cause are made at the bench during or at the end of *voir dire*. After the exercise of all challenges, the remaining perspective jurors move "up" to fill the empty chairs in numerical order.

In a civil trial, the first 7–10 jurors (depending on the anticipated length of trial) will constitute the jury. Alternate jurors have been abolished in federal civil trials. Therefore, all jurors remaining when deliberation begins will retire to the jury room. The jury must be comprised of at least 6 members.

In a criminal trial, the first 12 jurors constitute the jury, with an appropriate number of alternates (usually 2) following in numerical order.

F. Note Taking by Jurors

Jurors are permitted to take notes during the trial and take their notes into deliberation. The notes remain on their chairs in the courtroom at all other times. Judge Trauger gives strict instructions as to the use of the notes.

G. Opening Statements

1. Length

Absent good cause, Judge Trauger does not limit the 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. Prior to opening statement, counsel should advise the court whether any demonstrative or other evidence proposed to be used remains objected to. Evidence that is the subject of a pending motion in limine should not be used in opening statement.

H. Side Bar Conferences

Side bar conferences should be requested when necessary but kept to a minimum. Judge Trauger prefers that matters that need to be discussed out of the presence of the jury be raised during recesses.

I. Videotaped Testimony

The use of videotaped testimony should be discussed at the pretrial conference so that appropriate equipment can be made available at the trial and rulings on objections may be made sufficiently in advance to allow for editing.

J. Deposition Reading

Depositions read at trial should be carefully edited so that only testimony relating to the witness's background, the issues in the case and credibility is read. Judge Trauger allows a lawyer or paralegal to read the answers of the witness from the witness box when a deposition is to be read at trial.

K. Exhibits

The parties should stipulate to the admissibility and authenticity of as many exhibits as possible. Plaintiff's exhibits are to be **premarked** with numbers, defendant's with letters. When introducing an exhibit, counsel should always show it to opposing counsel first and have an extra copy available for the court. If an evidence presenter is available and counsel intends to use it, counsel should become skilled in using the machine prior to the start of the trial. Judge Trauger permits counsel to pass individual copies of exhibits to jurors.

L. Motions for Judgment as a Matter of Law

Motions for judgment as a matter of law are governed by Rule 50 of the Federal Rules of Civil Procedure.

M. Proposed Jury Instructions and Verdict Forms

Counsel are to confer in good faith and agree on as many jury instructions as possible prior to the pretrial conference. Three business days before the pretrial conference, counsel are to file an agreed set of jury instructions, in hard copy and on disc, one instruction per page, with heading at the top. By the same deadline, each counsel should file additional instructions about which there is not agreement with citations to authority, in hard copy and on disc. The standard introductory and concluding instructions given by the court in every trial do not need to be submitted by counsel.

Counsel should likewise confer in good faith and attempt to agree in advance of the pretrial conference on a verdict form. Three business days in advance of the pretrial conference, an agreed verdict form (or alternatives if there is no agreement) should likewise be submitted in hard copy and on disc.

N. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law are to be submitted five days in advance of bench trials.

O. Offers of Proof

Judge Trauger allows counsel to make offers of proof when requested and appropriate out of the presence of the jury.

P. Jury Deliberation

1. Copy of Instructions

A copy of the jury instructions is sent to the jury room with the jurors when they retire to consider their verdict.

2. Access to Exhibits

All exhibits submitted into evidence will be sent back to the jury room for use during deliberations. Counsel will be given an opportunity to assure that the appropriate exhibits are sent back by jointly conferring with the courtroom deputy.

3. Access to Transcript of Testimony or Videotaped Testimony

Requests by the jury to review testimony are considered by Judge Trauger on a case-by-case basis.

4. Availability of Counsel

Counsel must advise the courtroom deputy of where they may be reached on short notice at all times during jury deliberations.

5. Taking the Verdict and Special Interrogatories

Judge Trauger reads the verdict form when the jury returns with the verdict.

6. Polling the Jury

Judge Trauger polls each individual juror without request of counsel.

7. Interviewing the Jury

Local Rule 12(h) applies to post-verdict interrogation of jurors. Permission to interview jurors will only be granted in exceptional circumstances.

VI. Sentencing in Criminal Cases

Any party who anticipates producing testimony at a sentencing hearing should give notice of that fact as early as reasonably possible to the courtroom deputy and opposing counsel and provide an estimate of the time necessary for the presentation of the testimony.

VII. Other Comments

A. Pretrial Filings

Immediately upon the setting of the trial date (usually at the initial case management conference), Judge Trauger issues an order that sets out the nature and timing of pretrial filings, such as motions in limine, stipulations, exhibit lists, pretrial order, etc.

B. Summary Judgment

Counsel should carefully follow Local Rule 8(b)(7) regarding the statement of material facts not in dispute for purposes of summary judgment motions. Failure to respond to the statement shall mean the facts therein are not disputed.