PRACTICE AND PROCEDURE MANUAL
FOR JUDGES AND MAGISTRATE JUDGES
FOR THE MIDDLE DISTRICT OF TENNESSEE
(Magistrate Judge Jeffery S. Frensley)

I. NAME AND BRIEF BIOGRAPHY

Magistrate Judge Jeffery S. Frensley

Jeffery "Chip" Frensley filled the position vacated by Judge Cliff Knowles on October 9, 2016. He graduated from the University of Mississippi with a Bachelor of Arts degree in 1992 and earned his Juris Doctor degree from Vanderbilt University in 1995. He has over twenty years of federal courtroom litigation experience in both civil and criminal law. He was a member of the Criminal Justice Act (CJA) Panel for the Middle District of Tennessee from 1997 to 2016, and was recognized as the panel lawyer of the year as well as being listed in Best Lawyers in America for criminal defense. From 2008-2016, Mr. Frensley served as the Chief National CJA Representative to the Defender Services Committee of the United States Judicial Conference representing the nearly 14,000 private lawyers nationwide who represent indigent defendants in federal court. In 2015, Chip was one of eleven members selected to serve on the Ad Hoc Committee to Review the Criminal Justice Act by United States Supreme Court Chief Justice John G. Roberts, Jr. This is the first comprehensive review of the Act in over twenty years. In addition to his work in criminal defense, he practiced in the areas of employment law, civil rights litigation, and administrative law at both the trial and appellate levels.

II. PRELIMINARY GENERAL MATTERS

This Practice and Procedure Manual was prepared at the request of the Federal Court Committee of the Nashville Bar Association in the format of manuals previously compiled by the Committee.

[The following paragraphs are excerpted from original Manuals:

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, and is subject to change at any time without notice.**

Last, at the time the Manual was prepared in 2005, the District had only recently adopted electronic case filing. It would be prudent, therefore, to review local rules and administrative orders for information about electronic case filing and address any questions to the Judge or Magistrate Judge in a particular case.]

A. Scheduling

Judge Frensley ' courtroom deputy can be contacted at (615) 736-7344. His courtroom deputy handles scheduling of telephonic conference and matters to be set in the courtroom, including trial settings.

B. Correspondence with the Court

Other than for scheduling purposes, 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.

Requests for out-of-town counsel to participate telephonically in matters set before Judge Frensley should be made by motion sufficiently in advance of the matter set to allow for consideration of the motion.

Judges Frensley encourages the use of joint telephone conferences with the Court to resolve discovery disputes (including for disputes that arise during depositions), for subsequent case management conferences, and other simple matters. Judge Frensley does not record telephone conferences, but usually (although not always) enters an order generally reciting the substance and outcome of the telephone conference. To create any other record, the proceeding will need to occur in court.

D. Telephone Conference with Law Clerks

Judge Frensley discourages telephone conferences with his law clerks, other than as necessary to inquire about a scheduling question or issue. 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.

Judge Frensley typically does not set initial case management conferences in pro se cases, but he does enter scheduling orders.

F. Chamber Copies of Filings

Judge Frensley does not want chamber copies of filings, unless he requests them.

III. PRETRIAL MATTERS FOR CIVIL CASES

A. Case Management Conferences and Orders

Judge Frensley will generally utilize the referring District Judge's standard case management order. If the referring District Judge does not have a standard form, Judge Frensley's preferred standard form, which is available by separate link, can be used. If there are any special discovery or other case management procedures contemplated, those should be discussed and included in the proposed initial case management order. Also, if there is a disagreement over the case management schedule, counsel should **not** submit separate proposed orders; they should separately state their proposals under each section in the same proposed order. In addition to filing the proposed initial case management order, counsel should ensure that a copy is also emailed to the courtroom deputy in Word format on the same date that the proposed initial case management order is electronically filed. Carefully read the Notice of Setting of Initial Case Management Conference for additional instructions.

B. Agreed Orders, Continuances and Extensions

Judge Frensley 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.

Judge Frensley also requires the following procedures be followed for motions to modify a case management order or deadline:

Any motion to modify a case management order or any case management deadline must be filed at least seven (7) days in advance of the earliest impacted deadline. Unless a joint motion, the motion for modification must include a statement confirming that counsel for the moving party has discussed the requested modification or extension with opposing counsel and whether or not there is any objection to the requested modification or extension. The motion for modification must also include: (i) all deadlines, even unaffected deadlines, so that it will not be necessary for the Court to review one or more previous case management orders in consideration of the motion and (ii) a statement that the requested extension will still conform to the requirements of LR 16.01(d) (2.f) that no dispositive motion deadline, including response and reply briefs, shall be later than 90 days in advance of the trial date. Motions for extensions should also detail the moving party's efforts at diligently complying with the originally schedule deadline and the facts demonstrating good cause for modification of the deadline as required by Fed. R. Civ. P. 16(b)(4).

If, as a result of the requested modifications, the parties are also seeking a continuance of the trial date, the motion should be styled as a motion to continue trial, with a request that, if the trial is continued, the parties' requested modifications of the case management schedule be referred for consideration by the Magistrate Judge.

Proposed orders granting motions to extend deadlines should recite that, except for the modifications provided in the order, all other provisions of previous case management and scheduling orders remain in full force and affect. Parties should note that even if this language is

omitted, either by the parties or by Judge Frensley, he considers this to be the case.

C. Pretrial Motions

1. Referral to Magistrate Judge

Judge Frensley 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.

Judge Frensley 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. Proposals for additional pages and a reply schedule should be included in the proposed case management order, and raised at the initial (or a subsequent) case management conference.

4. Oral Arguments

Judge Frensley grants oral argument when it is appropriate or when it would be beneficial. Requests for oral argument should be made in the title and body of the underlying motion, or, preferably, by separate motion.

D. Discovery

Attorneys are expected to be knowledgeable of the 2015 amendments to discovery rules, and should prepare their written discovery requests and responses in accordance with the amendments.

1. Interrogatories

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

Judge Frensley has no applicable comments regarding this section.

3. No Speaking Objections During Depositions

Speaking objections are not allowed during the course of depositions. Similar to LR 39.01(d)(2),

objections made during depositions shall be concisely stated as being "hearsay," "a conclusion," etc., without argument.

4. 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 generally be decided by the Magistrate Judge.

Judge Frensley will schedule a telephonic discovery conference upon request (or as provided for by the case management order). The required effort to resolve a discovery dispute before bringing it to the attention of Judge Frensley means the attorneys should talk about the disputed issues, and the certification required by LR 37.01(b)(3) should state that the attorneys have spoken

Discovery disputes that cannot be resolved after good faith discussions should be brought promptly to the attention of Judge Frensley either by a request for a discovery conference or a discovery motion. In connection with any discovery conference or discovery motion, the parties will be required file a joint discovery dispute statement, which describes the specific discovery request(s) in dispute and details each party's position with supporting fact and legal authorities.

5. Motions to Compel or for Protective Order/Rule 37 Sanctions

Judge Frensley considers motions to compel/for protective order or for sanctions on a case-by-case basis. However, if counsel have not spoken to each other in an effort to resolve the dispute, or if there is any uncertainty about whether counsel have spoken to each other, the motion to compel or for sanctions will be denied. Any motion to compel or for a protective order must address the proportionality considerations in Fed. R. Civ. P. 26(b)(1).

E. <u>Protective Orders and Motions to Seal Documents or Portions of Documents</u>

Judge Frensley appreciates the need for protective orders in certain cases. Motions to approve agreed protective orders and proposed protective orders must not impermissibly conflate the standards for production of information as confidential with the more demanding standards for sealing judicial records from public view by containing any provision that information designated as "confidential" will be automatically sealed if filed with the Court. *See Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016). If this provision for automatic sealing is contained in a proposed protective order, it will either be stricken or the motion for entry of the proposed protective order will be denied.

If a party wants to file confidential materials with the Court, and requests that those materials be placed under seal, the procedures in Section 5.07 of Administrative Order 167 – Administrative Practices and Procedures for Electronic Case Filing should be followed. In order for the Court to make the requisite findings and conclusions mandated by the Sixth Circuit, "[t]he proponent of sealing must provide compelling reasons to seal the documents and demonstrate that the sealing is narrowly tailored to those reasons—specifically by 'analyz[ing] in detail, document by document, the propriety of secrecy, providing reasons and legal citations.'" *Beauchamp v Federal Home Loan Mortgage Co.*, 628 Fed.Appx. 202, 207 (6th Cir. 2016) (quoting *Shane Grp, Inc. v. Blue Cross Blue Shield of Michigan, supra* at *3). A protective order in a case is insufficient cause for sealing

a document. *Id*. Generally, "only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence … is typically enough to overcome the presumption of [public] access." *Rudd Equipment Co., Inc. v. John Deere Construction & Forestry Co.*, 834 F.3d 589, 594-95 (quoting *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 546 (7th Cir. 2002)).

F. Expert Witnesses

Judge Frensley 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 Magistrate Judges handle settlement conferences for each other. Most settlement conferences are done by Magistrate Judges who are not assigned to the case, although parties may request that the assigned Magistrate Judge conduct the settlement conference. The selection of a judge to conduct a settlement conference is viewed as an appropriate use of forum shopping. When Judge Frensley conducts a settlement conference in a case which to which he is assigned, if the case doesn't settle and there are any other pending or possible case management matters, he will recuse himself from the case. Judge Frensley prefers that requests for a settlement conference be made by motion for a status conference, which should also state (i) the reasons why mediation under LR 16.05 is not feasible; (ii) the parties' proposed timing for scheduling of the settlement conference; and (iii) any preference of a particular Magistrate Judge to conduct the settlement conference (which may include Magistrate Judge Bryant, who has been recalled on a limited availability to conduct settlement conferences). Judge Frensley will then schedule a telephonic status conference to discuss the need for (and, if appropriate, referral and scheduling of) a judicial settlement conference.

2. Procedure

If Judge Frensley is the settlement judge, he will issue an order with specific requirements for submissions by the parties. Generally, this submission should include a description of the case, the history of any settlement offers already exchanged, the party's evaluation of the case, the cost of litigation, and representation that these matters have been discussed with the client. These confidential statements should be submitted directly to Judge Frensley's courtroom deputy and not filed with the Court. They do not become part of the case file.

All individual parties must be present with full settlement authority, and all corporate parties must be present with representatives having full settlement authority. Judge Frensley may conduct a telephone conference with attorneys only prior to the settlement conference to discuss the logistics of the settlement conference. If a settlement is reached, counsel and the parties should be prepared to reduce the settlement (or at least the major terms) to writing to be signed by all parties before leaving the courthouse.

H. Pretrial Briefs

Judge Frensley encourages pretrial briefs in non-jury cases. He may request (additionally or

instead) that the parties' positions be presented as proposed findings of fact and conclusions of law, either prior to trial or within a prescribed period of time 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: (1) statement of the basis for the Court's jurisdiction; (2) a short summary of plaintiff's theory (no more than one page) and a short summary of defendant's theory (no more than one page); (3) the issues to be submitted to the judge or jury; (4) any procedural issues; (5) a statement that the pleadings are amended to conform to the pretrial order and that the order supplants the pleadings; (6) a succinct statement of the relief sought; (7) a summary of any anticipated evidentiary disputes; (8) 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.; and (9) an estimate of the anticipated length of trial.

J. Pretrial Conference

All counsel who are expected to participate in the trial must attend the pretrial conference. Counsel must submit to the Court prior to the pretrial conference the following: (1) stipulations; (2) motions in limine; (3) witness list; (4) exhibit list, and (5) for a jury trial, proposed jury instructions, with citations to supporting authorities, and proposed jury verdict forms.

Counsel should also be prepared at the pretrial conference to: (1) identify and discuss undisputed facts and issues; (2) discuss expert testimony; (3) generally preview proposed testimony and exhibits; (4) discuss motions in limine; (5) discuss settlement; and (6) if pretrial briefs have not already been filed, discuss what shall be in the pretrial briefs and when the briefs shall be filed.

The parties may be required to file additional materials as necessary.

K. Temporary Restraining Orders

Generally, requests for TROs are handled by the District Judges.

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 defendant 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. The requirements for initial appearances are set forth in Fed.R.Crim.P. 5.

In addition to the initial appearance, a Magistrate Judge will conduct the arraignment, detention hearing, and preliminary hearing. *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. A waiver form is available on the Court's website.

In cases involving non-English speaking defendants, the Court will provide an interpreter for 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, so that 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 an 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.

C. Status Conferences and Pretrial Conferences

Judge Frensley 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 Jury Trials in Criminal Matters

Judge Frensley has no applicable comments regarding this section.

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.

Bench trials will be set by availability on Judge Frensley's calendar.

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

Judge Frensley 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, Judge Frensley takes into consideration potential hardship to other cases and the efficient administration of justice.

C. Motions in Limine

Appropriate motions in limine are encouraged. Such motions identify evidentiary issues that will arise at trial and may help narrow issues for trial. However, excessive motions in limine are discouraged, and attorneys should carefully consider whether the issue is more properly raised and decided in the context of an objection at 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.

Judge Frensley makes every effort to decide motions in limine at the pretrial conference so the parties may plan the presentation of their case.

D. Voir Dire and Jury Selection

Procedures for voir dire will be discussed at the pretrial conference with Judge Frensley's Counsel are expected to be reasonable in the time used for voir dire, and will not be permitted to argue their case or get too personal with the jury.

In civil cases, typically, eight jurors are seated. There are no alternates in a federal civil trial. Each side (not each party) has three preemptory challenges which it exercises 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 Court's initial voir dire counsel for Plaintiff and then counsel for Defendant may ask questions. In pro se cases, the Court conducts all the voir dire.

After all challenges are complete the eight members of the venire with the lowest seat numbers are sworn in as jurors.

E. Note-Taking by Jurors and Other Jury Issues

Generally, jurors may take notes and may take their notes into the jury room during deliberation. Judge Frensley will instruct the jury regarding the use of notes. Other potential jury issues, including without limitation, questions by the jury and the timing of instructions to the jury, will be addressed on an as-needed basis, either at the pretrial conference or during trial outside the presence of the jury.

F. Opening Statements

1. Length

Generally, Judge Frensley does not set a time limit for opening statements, but expects attorneys to be reasonable in the time used for opening statements. Judge Frensley may impose a limit or set other guidelines in a specific case. Opening statements should be direct and not contain arguments of counsel.

2. Use of Exhibits

Counsel who wish to use exhibits or demonstrative evidence in opening statements should consult with opposing counsel in advance and attempt to work out any objections. At the pretrial conference, counsel should also request permission to use exhibits or demonstrative evidence in opening statements. As a general rule, and subject to any time or other limitations, exhibits to which no counsel has an objection will be allowed during opening statements, 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 conversation or oral confrontation between opposing counsel, and neither counsel nor parties may leave the courtroom without prior approval of Judge Frensley.

Except as noted below, Judge Frensley generally expects that counsel will remain behind, or within an arm's length, of the podium, unless they ask to move about the courtroom, for permission to approach witness, or for permission to approach the courtroom deputy or courtroom officer to pass an exhibit 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 re-characterize a witness's answers during an examination.

Only one attorney for a party may conduct examination and raise objections during the testimony of any given witness. If appropriate, Judge Frensley may allow recross.

In a particular case, Judge Frensley will sometimes ask (or allow) counsel to remain seated to respond to questions.

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.

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. Judge Frensley expects counsel will discuss this in advance of the pretrial conference and reach an agreement on the method. The use of videotaped testimony should be discussed at the pretrial conference so that 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, a paralegal, or someone retained for that purpose 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 request 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. 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.

Pre-marked: Judge Frensley wants exhibits to be pre-marked, and clearly marked as "Plaintiff's Exhibit" or "Defendant's Exhibit".

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. Those exhibits should be admitted at the beginning of the party's case.

L. Witness Lists

Witness lists should be exchanged by the parties as provided in a pretrial order, and should be provided to the Court, the courtroom deputy, the court reporter, and opposing counsel at the beginning of the trial.

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 Judges' 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. Alternatively, the trial may be held in another courtroom. Either option should be discussed with Judge Frensley as soon as possible so that appropriate arrangements can be made well in advance of trial. If counsel expect to use the evidence presenter or other technology during trial, they should make sure that is discussed at the pretrial conference. If counsel expect to use the evidence presenter or other technology during a hearing, they should notify the Court as much in advance as possible.

N. Motions for Judgment as a Matter of Law

Such motions will be heard on oral motion and argument. In some cases a ruling may be delayed until after a jury verdict.

O. Proposed Jury Instructions and Verdict Forms

In addition to the requirements of LR 51.01, Judge Frensley 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. Additionally, proposed jury instructions should be emailed to the courtroom deputy in Word format by the date set out in the pretrial order or as otherwise instructed.

P. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law are discussed above.

Q. Offers of Proof

Offers of proof are allowed. In a jury trial, offers of proof will ordinarily take place outside the presence of the jury, usually during a break, at lunch, or at the end of the day.

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, but may be set on a case-by-case basis.

S. Jury Deliberation

1. Copies of Instructions

A copy of the jury charge and verdict form will be provided to jurors for use in deliberations.

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 that 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. However, Judge Frensley may instruct counsel otherwise on an as-needed basis. 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

Judge Frensley will poll the jury in every case.

7. Interviewing the Jury

39.01(f)(2) controls requests for post-verdict interviewing of jurors. Permission to interview jurors will only be granted in extraordinary circumstances.

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, in accordance with LR 54.01(b).

VI. SENTENCING IN CRIMINAL CASES

Because sentencings in felony cases are handled by the District Judges, Judge Frensley has no applicable comments about sentencing in felony cases. For petty offenses, which do not require consent, and for misdemeanors where consent to proceed before the Magistrate Judge has been granted, sentencing will be handled on a case-by-case basis as necessary.

VII. MEDIA COMMUNICATIONS

The Court speaks through its orders and memorandum opinions.