

Katherine A. Crytzer, United States District Judge
Judicial Preferences
(Updated 4/14/2023)

General Preferences

Counsel should review and be familiar with this Court's local rules. Counsel must comply with all local rules absent specific order from this Court.

1. Written correspondence from counsel to the Court.

Written correspondence from counsel to the Court should be avoided except for routine matters, such as scheduling, advising of a settlement, etc.; and any emergencies; that do not address the merits of any motion or pending case. Unless the law otherwise permits or the circumstances require, counsel must copy counsel for all Parties on any correspondence with the Court.

An email may be sent to Crytzer_Chambers@tned.uscourts.gov.

Absent emergency or extenuating circumstances, a Party must file a motion on the record when seeking to (1) reset a hearing or (2) extend a deadline. The Court will not informally entertain such requests via email.

2. Communication between counsel and the Judge's law clerks.

Judge Crytzer permits limited communication with her law clerks for routine matters, such as scheduling, advising of a settlement, etc.; and any emergencies; that do not address the merits of any pending case or motion. Law clerks cannot and will not provide any legal advice or suggestions regarding how to proceed with substantive issue in a case.

If a Party needs to communicate directly with a law clerk, the Party should either call Chambers at 865-545-4255, or send an email to Crytzer_Chambers@tned.uscourts.gov.

Counsel should include a representative for each Party in the case on any call to Chambers, where possible, and counsel should copy counsel for all Parties on any email to Chambers.

3. Preference for the use of telephone conferences rather than in-person conferences for any category of conferences that you schedule in connection with a case.

Unless otherwise noted by the Court or requested by a Party, Judge Crytzer will hold all hearings in person. Judge Crytzer may conduct initial Rule 16 civil scheduling conferences and case management conferences by conference call on a case-by-case basis. Judge Crytzer will conduct final pretrial conferences in both criminal and civil cases in person in Knoxville.

Any discovery dispute in a civil case should be addressed by telephone conference with the assigned magistrate judge before a Party files a motion. Parties may contact chambers of the assigned magistrate judge to request the scheduling of a phone conference.

4. Preference regarding pro hac vice admissions.

Counsel shall comply with Local Rule 83.5.

5. Preference regarding oral arguments on motions.

Generally, “motions will be disposed of routinely as soon as possible after they become at issue, unless a hearing has been requested and granted or unless the Court desires a hearing on the motion(s).” E.D. Tenn. L.R. 7.2. Where appropriate, a Party may request a hearing. The Court may also schedule a hearing. If the Court schedules a hearing, and a Party intends to present evidence, the Party must notify the undersigned’s Chambers in advance so that arrangements can be made. The Court will provide specific instructions regarding notification on a case-by-case basis.

6. Preference for courtesy copies of motions, briefs, and other writings for Chambers.

Documents related to a hearing or trial should be filed early enough to allow for filing, recording, and review by the Court. If you must file something at the last minute, please promptly deliver a hard copy to Chambers and bring a copy to the hearing or trial. Unless the Court instructs otherwise, regular courtesy copies shall not be mailed or hand delivered to Chambers.

7. Preferences regarding requests for additional pages in excess of the page limitations set forth in Local Rule 7.1(b).

Reasonable requests to exceed the page limitation will be considered, but the Court will deny such requests unless good cause exists and is demonstrated. Failure to comply with page limitations may result in the Court disregarding the noncompliant portion of the brief or summarily denying the underlying motion.

8. How needs of out-of-town parties, attorneys, or witnesses are accommodated.

The Court will make all reasonable efforts to accommodate all Parties, attorneys, and witnesses. Counsel should raise specific issues to the Court as necessary.

9. Preferences regarding the delivery of written reports to the Court by expert witnesses who are scheduled to testify.

Written reports by purported expert witnesses who are scheduled to testify need not be filed with the Court unless a Party files a *Daubert* motion. In that event, written reports of the purported expert witnesses being challenged should be filed with the court at least seven (7) days prior to the *Daubert* hearing.

10. Counsel participation in voir dire.

Judge Crytzer will conduct preliminary voir dire in both civil and criminal jury trials, but she allows counsel to conduct additional voir dire. The Court will give counsel latitude in conducting the voir dire so long as it is focused on the selection of an appropriate jury and does not become repetitive or overly intrusive. Once voir dire is completed, counsel will submit their peremptory challenges to the Court on a form provided by the courtroom deputy.

11. Time limits for opening and closing statements at trial.

Judge Crytzer will generally set a time limit for opening statements at the final pretrial conference. A time limit for closing statements, which will depend on the evidence elicited at trial and issues that remain by the time the evidence closes, will be set during the trial. These limits will be based on an individual assessment of the case and its complexity.

12. Preference for counsel to examine witnesses from counsel table or elsewhere, including whether you prefer counsel to remain seated while examining witnesses.

Absent necessary accommodations, Counsel should stand when addressing the Court or making objections and should examine witnesses from the lectern. Counsel should be familiar with and comply with Local Rule 83.3 regarding Courtroom Decorum.

13. Whether more than one attorney may handle trial for a Party.

More than one attorney may represent a Party at trial. However, only one attorney for a Party may elicit testimony from any one specific witness and lodge any objections during the testimony of that witness.

14. Preference for handling sidebar conferences.

Sidebar conferences should be kept to a minimum. Counsel should strive to raise matters that may require a sidebar in conjunction with breaks during trial when the jury is out of the courtroom, and to the extent possible should also notify the courtroom deputy as the need to address an issue approaches.

15. Preference or requirements for introducing videotaped testimony.

A Party seeking to introduce videotaped testimony must give the courtroom deputy advanced notice so that he or she may have the equipment prepared to avoid a disruption in the progression of the trial.

16. Pre-marking of documentary and photographic exhibits and other demonstrative evidence for trial and the date upon which exchange of exhibits is to take place, if any.

In a civil case, the pre-marking of exhibits and dates for exchange are set forth in the case scheduling order. In a criminal case, the Court's preferences for pre-marking evidence will be discussed before trial.

17. Preference for the moving of exhibits into evidence at trial.

Unless admitted pretrial via stipulation, the Parties should move to admit each exhibit at or around the time it is presented at trial before it is published to the jury. Each exhibit should generally be admitted individually and not collectively. All known objections to exhibits should be addressed at or before the final pretrial conference, to the extent possible.

18. Allowance of examination of witnesses beyond redirect and recross.

The Court will not allow examination of witnesses beyond redirect and recross absent exceptional circumstances.

19. Special requirements for reading of depositions or other material onto the record at trial.

No special requirements. The Court will address any specific issues as they arise.

20. Preference for written motion and/or brief for judgment as a matter of law or judgment on the pleadings when such motion is made during trial.

No written motion or brief is required.

21. Approach to in limine motions.

Judge Crytzer's scheduling order addresses the requirements and deadlines for motions in limine in a civil case. In a criminal case, motions in limine must be filed at least fifteen (15) days before trial. The Court may consider motions in limine at the final pretrial conference.

22. Practice for the receipt of proposed jury instructions, including the form of jury instruction.

The Court's requirements for proposed jury instructions are set forth in Local Rule 51.1. In addition, Judge Crytzer generally requires the Parties to submit joint proposed jury instructions with citations to supporting authorities. If the Parties are not able to reach an agreement, the Parties should submit alternative versions of each unsettled instruction along with supporting authorities. The Parties should clearly mark in the document which Party seeks each proposed instruction and

whether it is agreed to by any opposing Party. The Parties must email the proposed jury instructions in Word format to Judge Crytzer's Chambers.

In each case, Judge Crytzer specifically addresses the schedule for submitting jury instructions.

23. Note-Taking by jurors.

Permitted.

24. Whether the jury may take exhibits into the jury room for deliberation and, if so, any limits.

All admitted exhibits are made available to the jury in the jury room using the Jury Evidence Recording System (JERS) unless the Court specifically directs otherwise. *See* E.D. Tenn. L.R. 43.3. In advance of trial, Parties should discuss whether, and if so how, physical exhibits should be released to the jury.

25. Preference regarding the submission of written verdict forms (in the form of interrogatory questions) to the jury.

Judge Crytzer routinely submits a written verdict form to the jury. Parties should submit a proposed verdict form to the Court for consideration in advance of the final pretrial conference. Specifically, Parties should submit a Word version of the Parties' proposed verdict form to the Chambers email address and indicate whether it is agreed to by all Parties. If the Parties cannot reach agreement on a proposed verdict form, each Party should submit a Word version of the relevant Party's proposed verdict form to the Chambers email address, copying all Parties.

26. Written jury instructions provided to the jury.

In addition to Judge Crytzer charging the jury, the Court will provide a copy of the jury instructions to the jury that the jury may use during deliberations.

27. Requirements as to counsel's whereabouts during jury deliberations.

Counsel who leaves the vicinity of the courtroom during jury deliberation should notify the courtroom deputy of his or her whereabouts and be able to return to court within ten (10) minutes of being notified to do so.

28. Whether counsel may speak with the jurors after a verdict has been rendered and recorded and, if a jury is polled, who conducts the polling.

Judge Crytzer adheres to Local Rule 48.1 with regard to interrogation of jurors after a trial has concluded. Judge Crytzer routinely polls the jury after a verdict is returned. A Party that desires that the jury be polled should make such a request at the pretrial conference and on the record promptly after the verdict is published.

29. Jury requests for review of testimony or recorded evidence.

The Court will release admitted evidence to the jury during deliberations unless the court specifically directs otherwise. The jury can play recorded exhibits in the deliberation room. If any issue arises, the Court will address the issue on a case-by-case basis.

30. Handling requests for temporary restraining orders, preliminary injunctions, and other emergency relief.

If a Party files a motion for emergency relief, the filing Party should also email the motion and any documents filed in support to Chambers, copying counsel for all Parties.

31. Prefer to receive copies of appellate filings when an appeal has been taken from an order.

The Court does not need to receive such copies.

32. Communications with the media regarding a case.

Local Rules control, including Local Rule 83.2.

Preferences Specific to a Civil Case

1. Preferences regarding Federal Rule of Civil Procedure 6.

When seeking an extension of time under Rule 6(b), counsel should state the relevant standard and provide specific facts sufficient to satisfy the standard. Where appropriate, counsel may also find it beneficial to specifically request an extension to a date certain or request an extension of a specific number of days when moving for an extension of time. An unbounded request for an extension may leave the Court guessing how much time counsel needs.

To the extent possible, any motion seeking an extension should indicate whether the motion is unopposed. This will expedite review of unopposed motions.

2. Preferences regarding Federal Rule of Civil Procedure 16.

Judge Crytzer welcomes input from Parties regarding the scheduling needs of a case. Judge Crytzer's standard civil scheduling order (Rule 16(b)), which sets forth Judge Crytzer's standard schedule and deadlines in a civil case, is available on the Court's website.

Parties should consult Judge Crytzer's standard civil scheduling order as the starting point for proposed deadlines when preparing their Rule 26(f) report. The Parties initially communicate their scheduling needs to the Court in their Rule 26(f) report. The Court will determine whether to hold a scheduling conference on a case-by-case basis after receiving and reviewing the Parties' Rule 26(f) report.

3. Preferences regarding Federal Rule of Civil Procedure 26.

To avoid delay, under Rule 26(f), "the parties must confer as soon as practicable" regarding a plan for discovery. Judge Crytzer's standard civil scheduling order, which sets forth Judge Crytzer's standard schedule and deadlines in a civil case, is available on the Court's website. Parties should consult Judge Crytzer's standard civil scheduling order and use it as a starting point for proposed deadlines when preparing their Rule 26(f) report. The Court will use the Parties' Rule 26(f) report to determine whether to hold a Rule 16 scheduling conference in a particular case.

The Court will not permit duplicative or overly burdensome discovery. *See* Fed. R. Civ. P. 26(b). All written discovery requests should be served sufficiently in advance of the discovery deadline so that responses will be due prior to the deadline. The Court will endeavor to give favorable consideration to motions for reasonable extensions of deadlines supported by good cause. Absent such requests, the Court will enforce its deadlines.

4. The extent to which counsel may influence the length of the discovery period, extensions, trial dates, etc.

Judge Crytzer's standard civil scheduling order, which sets forth Judge Crytzer's standard schedule and deadlines in a civil case, is available on the Court's website. But she gives considerable weight to the input of counsel in setting discovery deadlines and a trial date. The time allowed for discovery in a case will depend primarily upon its complexity. The trial date will be set to allow adequate time for discovery and prompt motions practice.

5. The average amount of time allowed for discovery in a standard case.

The time allotted for discovery depends on the complexity of the case. However, Judge Crytzer will generally give the Parties six (6) months to complete discovery in a standard civil case of average complexity.

6. Preferred approach and procedures for handling discovery conferences and disputes.

Counsel should (1) meet and confer using their best efforts to resolve discovery disputes promptly among themselves, but (2) bring any unresolved disputes to the attention of the Court promptly so that they may be resolved. Discovery disputes are generally handled by conference call with the assigned magistrate judge with all attorneys present on the call.

7. Preferences regarding the handling of confidentiality agreements.

The Parties may agree to any reasonable confidentiality terms between or among themselves; however, the Parties' designation of materials as confidential does not

automatically merit the filing of those materials “under seal.” *See* E.D. Tenn. L.R. 26.2. To file a document under seal, the Parties must move for leave to do so pursuant to the applicable rules. The Parties should be mindful of the high value placed on public access to judicial records and should be guided by the provisions of Rule 26(c), and Local Rule 26.2. Counsel should also consider whether portions of a document are divisible. The Court will closely scrutinize motions to seal.

8. Preferences regarding Default and Default Judgment under Federal Rule of Civil Procedure 55.

Entry of default judgment is a two-step process. First, the entry of default under Rule 55(a), and then second, the entry of default judgment under Rule 55(b). The Eastern District of Tennessee has a practice of requiring a Party to use certain procedures and forms to request default and then default judgment. Instructions and relevant forms are available on the Court’s website at <https://www.tned.uscourts.gov/default-judgment-instructions-and-forms>. Absent unforeseen circumstances, any party requesting relief under Rule 55 should follow the procedures and instructions provided by the Court and use the provided forms.

9. Preferences regarding a Motion for Summary Judgment under Federal Rule of Civil Procedure 56.

When evaluating a Motion for Summary Judgment, Judge Crytzer will not consider any facts or arguments that were not raised in the moving Party’s Motion for Summary Judgment and Memorandum in Support (including any exhibits) or the answering Party’s Response (including any exhibits). *See* E.D. Tenn. L.R. 7.1(a), (b) (requiring a brief to “include a concise statement of the factual and legal grounds which justify the ruling sought” and stating that a brief “shall not exceed 25 pages in length unless otherwise ordered by the Court”). This includes any “Statement of Undisputed Material Facts” or “Response” to such a document that a Party submits. *See* E.D. Tenn. L.R. 7.1(d) (“No additional briefs, affidavits, or other papers in support of or in opposition to a motion shall be filed without prior approval of the Court.”). Judge Crytzer may strike any “Statement of Undisputed Material Facts” or “Response” that a Party submits.

If Parties file cross motions for summary judgment, Judge Crytzer generally prefers that each Party’s motion for summary judgment be briefed independently.

10. Preferences regarding dismissal of an action under Federal Rule of Civil Procedure 41.

The Federal Rules of Civil Procedure provide two distinct procedures for dismissal under Rule 41. First, under Rule 41(a)(1)(A)(ii), “the plaintiff may dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared.” “Rule 41(a)(1)(A)(ii) orders, generally speaking are ‘self-executing’ and do ‘not require judicial approval.’” *Exact Software North America, Inc. v. DeMoisey*, 718 F.3d 535, 540 (6th Cir. 2013) (quoting *Green v. Nevers*, 111 F.3d 1295, 1301 (6th Cir. 1997)). Second, under Rule 41(a)(2), “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Counsel should identify for the Court which provision of Rule 41 applies when seeking to dismiss an action.

11. Preferences and procedure regarding scheduling civil trials, including whether a date certain for trial is assigned; if so, the amount of time prior to trial that such a date certain is assigned; and the extent to which it may be moved during the month in which it has been scheduled.

The Court will set deadlines related to trial and a trial date. The Court expects these deadlines to be met. If issues arise, counsel should raise them to the Court promptly.

12. Preferences regarding the submission of trial briefs by counsel in civil cases.

The scheduling order in each case addresses trial briefs. The Court may request additional briefing on a case-by-case basis.

13. As to injunctions, whether expedited discovery and briefing is allowed and, if so, whether briefing is allowed before or after any preliminary injunction hearing, and whether proposed findings of fact or conclusions of law in such cases are required.

The Court will address any request on a case-by-case basis.

14. Preferences and procedures regarding settlement.

Parties who reach a settlement to resolve an entire case shall promptly notify the Court by filing a “Notice of Settlement.” Thereafter, in accordance with Local Rule 68.1, the Parties must file an agreed stipulation under Rule 41(a)(1)(A)(ii), described above, or submit an agreed order of dismissal under E.D. Tenn. ECF Rule 4.8.

15. General approach to settlement in non-jury cases and use of magistrate judges.

Judge Crytzer encourages the use of mediation and other alternative dispute resolution methods to efficiently resolve cases. Magistrate judges may be involved on a case-by-case basis.

Preferences Specific to a Criminal Case

1. Preferences regarding any proposed evidentiary hearing on an objection to the Presentence Investigation Report.

If any evidentiary hearing may be required on any objection to the Presentence Investigation Report, a Party must expressly request a hearing at the time of filing either an Objection to the Presentence Investigation Report or a Response to any Objection to the Presentence Report. *See* E.D. Tenn. L.R. 83.9(c).

2. Preferences regarding proposed witnesses at a sentencing hearing.

Any Party that expects to present any witnesses at a sentencing hearing must file a Notice on the docket at least fourteen (14) days before a sentencing hearing. [CM/ECF Other Filings>Notices> Notice(Other)]. That Notice must include the legal name of each proposed witness and an estimate of the amount of time needed to affirmatively present testimony from each proposed witness. A failure to timely file the requisite Notice may result in the exclusion of any proposed witness.