

## **CIVIL PRETRIAL PACKET JUDGE GREGORY S. STEPHENS**

The Court hereby orders the following, which shall govern the proceedings in this matter unless specifically modified by subsequent order. The Court intends these instructions, including deadlines, to be orders – not suggestions. Failure to follow the orders herein could subject parties or counsel to sanctions, including but not limited to, exclusion of evidence or witnesses; adverse judgment against a party, dismissal of a party’s case, or a finding of contempt of court. To the extent any of these orders conflict with the Court’s Local Rules, these orders shall control.

### **A. HEARINGS AND CONTINUANCES:**

The Court expects that attorneys filing cases in Butler County will be able to appear for hearings in Butler County. Unless exceptional circumstances require otherwise and the Court expressly grants permission to appear by telephone, personal appearance is required at all hearings. The attorney of record or local counsel who has sufficient knowledge of the case and authority to manage this case must appear at all scheduled hearings.

**Failure to appear by Plaintiff, or if represented, by Plaintiff’s counsel, shall result in a Rule 41 dismissal. Failure to appear by Defendant, or if represented, by Defendant’s counsel, shall result in sanctions and/or contempt proceedings. This does not apply to parties not prosecuting or defending a claim, such as subrogated parties or lienholders named as parties only for the purpose of protecting their property interests.**

Unless exceptional circumstances require otherwise, all requests to continue hearings shall be made by **written motion** at least 10 days prior to the scheduled hearing date. Any party or counsel filing a motion to continue shall certify that all other parties/counsel who have entered appearance have been contacted and whether they consent to the continuance, or shall state a reason why such contact was not possible. If all such parties/counsel do not consent, the motion shall so state and the Court, at its discretion, may require a hearing prior to ruling on the motion to continue. If a continuance is requested and granted 10 days or fewer

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prior to a hearing, the requesting party is responsible for notifying all parties, whether they have entered appearance or not, of the continuance.

In order for the efficient management of the Court's docket in setting initial Status Report Hearings, which are primarily for scheduling purposes, the Court expects that firms or law offices with multiple attorneys will make reasonable efforts to arrange for coverage by alternate in-house counsel rather than moving for a continuance if counsel of record is unavailable.

The Court intends to comply with Ohio Supreme Court Case Time Limits, as prescribed in Sup. R. 39 and related Supreme Court Report Forms. Absent extraordinary circumstances, the Court expects cases to be concluded within the prescribed deadlines. The Court does not subscribe to a "one continuance" rule and, other than agreed modifications as set forth in Section C, below, expects that the first scheduling order be the only scheduling order issued in a case. **Parties who are unprepared to conclude their case in a timely manner may face denial of a motion to continue (even if unopposed) and dismissal without prejudice pursuant to Civ. R. 41(B) if a continuance will run contrary to Supreme Court guidelines.** This includes foreclosure matters in which the Plaintiff informs the Court it is unable to proceed due to loss mitigation efforts.

**B. DISCLOSURE OF EXPERTS AND THEIR REPORTS:**

Parties are ordered to reveal to opposing parties, by the dates specified in the scheduling order, the names of all expert witnesses to be called at trial.

A party may not call an expert witness to testify unless a written report has been procured from that witness and provided to opposing parties. The report must be supplied no later than 30 days after the deadline for the disclosure of the expert. It is each party's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the expert's opinion. Parties must also, along with a report, provide a curriculum vitae for each expert witness. Reports need not be filed. A notice of compliance with the exchange deadline shall be deemed *prima facie* evidence that the report was provided.

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Unless good cause is shown, all supplemental reports must be supplied no later than 30 days prior to trial. The report of an expert must reflect his or her opinion as to each issue subject of the expert's testimony. An expert will not be permitted to testify or provide an opinion on any issue not raised in the report.

An expert witness who has provided medical, dental, optometric, chiropractic, or mental health care may testify and offer opinions as to matters addressed in the healthcare provider's records. The healthcare providers' records relevant to the case may be provided in lieu of a formal written report, provided that the expert's opinion is contained within the records, the records adequately set forth the expert's opinion, and a formal written report would be redundant.

**C. DISCOVERY CUTOFF DATE:**

All discovery, including depositions, must be completed by the provided discovery cutoff date. Depositions taken for the purpose of perpetuation of testimony at trial may be taken after the cutoff date.

If all parties agree, discovery, witness disclosure and expert report exchange deadlines may be changed by agreed entry, without necessity of a motion. However, none of the dates and deadlines set forth in sections E through G of the scheduling order, as well as the trial date, may be altered without leave of court.

**D. MOTIONS:**

**1. Deadlines and Extensions**

Motions shall be governed by Civil Rule 6(C)(1) and Local Rule 5.12. Responses to a motion (other than a motion for summary judgment) shall be filed no later than 14 days after service of the motion, unless leave to answer out of time is granted. The moving party may reply to the response no later than 7 days after service of the response, unless otherwise granted by leave of court. Responses to motions for summary judgment shall be filed no later than 28 days from service, and replies to summary judgment motions shall be filed no later than 7 days from service.

For purposes of these orders, it will be assumed that motions will be served upon opposing parties the same date as filing. A party who is not served on the date of filing and wishes to calculate time based upon the date of service shall include the date of service in the caption of his or her response/reply. **Failure to comply with this instruction may result in exclusion of an argument as untimely based upon filing date. No motions for reconsideration will be accepted.**

Motions for extension of time to respond/reply must be filed prior to the deadline to respond/reply and (except due to extraordinary circumstances) must include whether the opposing parties consent to the extension. The granting of extensions relative to summary judgment motion deadlines as set in a scheduling order, even if agreed by the parties, should not be presumed. Such motions will be denied if the Court determines an extension will leave insufficient time to resolve the motion prior to pretrial or trial. **Parties are cautioned that the denial of a motion for an extension leaves the original deadline intact and untimely filings may be stricken regardless of whether an extension was requested and denied.**

The filing of a motion to strike all or part of a memorandum or affidavit shall not act to toll the deadline to respond to the motion or response accompanying the portion requested to be stricken. The party moving to strike shall timely respond/reply as though the motion to strike is denied, but may also present alternative argument in the event the motion is ultimately granted.

When the time period for replies has run, the Court will consider a motion submitted for decision, unless oral argument is granted upon specific request of a party.

## **2. Briefs – Length and Contents**

All briefs and/or memoranda are subject to the 15-page limit set forth in the Court's Local Rules. The page limit shall not be exceeded without leave. Parties seeking leave shall do so sufficiently in advance of the motion/response/reply deadline to permit the Court to rule on the motion for leave to exceed the page limit before the deadline. Motions for leave to exceed the page limit instantaneously will be stricken from the docket, as will the proposed motion/response/reply that accompanies the motion to exceed. Any filing exceeding the page limit without leave will be stricken.

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Any citations to unreported case law must utilize Westlaw citations. If a Westlaw citation is not available, the filing party must attach a copy of the case. **Failure to comply with this order may result in the Court not considering the cited authority.**

All motions and responsive/reply memorandum shall be filed with the Clerk of Courts. **The filing party shall also provide a courtesy copy to chambers, as stated in Local Rules, so that the Court is aware of the filing. A filing party bears the burden of responsibility for providing a courtesy copy and the failure to provide a courtesy copy may result in the Court not considering the arguments contained in the filing. A courtesy copy should be provided electronically, via email to stephenscc@bcoho.gov, rather than as a paper copy.** The Court will not reconsider rulings based upon arguments not timely provided to chambers.

Concerning matters that can reasonably be consented to between the parties, the Court prefers the submission of an agreed entry, indicating approval of all parties or their counsel, as opposed to a motion, whenever possible.

**E. MEDIATION:**

If mediation is ordered, the Court expects the parties to mediate unless relieved of this obligation by motion/entry. The scheduling order will state a deadline to mediate. The Court expects the parties, no later than 90 days prior to the deadline, to contact the assigned mediator and schedule a timely mediation session. An order to comply will issue if mediation is not so scheduled.

If mediation is not ordered in an initial scheduling order, the parties may request mediation by contacting chambers.

**Sanctions may be imposed for failure to mediate as ordered, including, but not limited to, dismissal of the case for failure to prosecute.**

**F. PRETRIAL STATEMENTS:**

Each party shall prepare and file with the Clerk of Courts a pretrial statement which shall contain the following:

- 1) A concise statement of its claims and defenses;

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- 2) Those facts established by admissions in the pleadings, admissions by discovery, and stipulations of counsel;
- 3) The contested issues of fact;
- 4) The contested issues of law, with citations of authority for the party's position;
- 5) The names of fact witnesses expected to testify, together with a brief statement of the subject matter of each witness' testimony, and a brief summary of the anticipated testimony.
- 6) The names and qualifications of expert witnesses expected to testify, together with a brief statement of the subject matter of each witness' testimony and a brief summary of the anticipated testimony.
- 7) A list of exhibits which each party intends to offer into evidence, marked as follows:
  - (a) Joint exhibits marked with Roman numerals;
  - (b) Plaintiff's exhibits with Arabic numbers;
  - (c) Defendant's exhibits with letters;
- 8) Motions *in limine* or other pretrial motions pending or which are anticipated;
- 9) A list of all special damages being alleged;
- 10) Each party's expectation of the trial time needed to present its side of the case; and
- 11) The status of settlement negotiations, including specific demands and/or offers. (Upon motion and leave, specific demands and/or offers may be excluded from filed documents, but shall be included in the copy provided to chambers as required, below).

The pretrial statements shall be electronically delivered to the Court's chambers via email to [stephenscc@bcoho.gov](mailto:stephenscc@bcoho.gov) no later than 4:00 p.m. on the date stated in the scheduling order. This deadline cannot be extended except by leave of court. **Failure to submit the pretrial statement or comply with any other court order in a timely manner may result in the imposition of appropriate sanctions including, but not limited to, dismissal of the**

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case or a finding of contempt of court. The failure to include any of the materials specified in this order may result in the imposition of appropriate sanctions including, but not limited to, exclusion of testimony or exhibits, denial of claims, directed verdicts, dismissal of the case, or a finding of contempt of court.

**G. JURY INSTRUCTIONS:**

Joint jury instructions are required to be submitted electronically in Microsoft Word, at least one week before trial. If the parties cannot agree on jury instructions, then each party must submit its proposed jury instructions as described above. If there is a particular legal or evidentiary issue which any party wishes to bring to the Court's attention, a short memorandum with pertinent cases attached is appreciated.

**H. ISSUES TRIED TO THE COURT:**

In lieu of jury instructions, for any issue to be tried to the Court, each party shall submit to the Court, in writing and electronically, at least one week before trial, proposed findings of fact and conclusions of law. For each claim to be tried to the Court, each party shall submit to the Court, in writing and electronically, at least one week before trial, a memorandum setting forth the elements to be proved to establish such claim.

The Court expects the parties, before the trial, to have briefed the Court on all legal issues related to the trial. The Court will not permit, except in the most extraordinary circumstances, parties to submit post-trial briefs. The Court believes that a 'bench trial' should progress and be resolved virtually the same as a jury trial, in the sense that the legal issues should all be clarified before the trial begins, and that the Court, as fact-finder, should be ready to apply the law to the facts immediately at the conclusion of the trial, when the Court's factual findings are fresh. The Court, at its discretion, may take lengthier or more complex matters under advisement for later written decision.

**I. ATTENDANCE AT PRETRIAL AND SETTLEMENT CONFERENCE:**

Trial counsel and all parties, including someone with settlement authority, shall be personally present at the pretrial and settlement conference. However, with prior leave of

court: (1) a corporate party may appear through an officer or employee having knowledge of the subject matter of the case; (2) a party who is insured concerning the claim may appear through a claim representative from his or her liability carrier; and (3) in those instances when trial counsel can assure the Court that an out-of-town representative of an insurance carrier is available for immediate contact by telephone, the trial counsel for an insured party may appear for the party and the insurance carrier. Local insurance representatives (i.e., those physically located in Butler, Hamilton, Clermont, Warren, Preble or Montgomery County) must appear in person.

**J. TRIAL MATERIALS EXCHANGE:**

Each party, or its counsel, shall assemble all depositions, documents, photographs and other items to be used at trial. Each party's set of materials shall be placed in a binder or cover, and shall be marked in accordance with section F(7) herein. Separate sets of materials shall be delivered to opposing parties, or their counsel, and to the Court before 4:00 p.m. on the date indicated in the scheduling order.

Objections to the admission of exhibits or to the use of other material must be made in writing and filed before 4:00 p.m. on the date indicated in the scheduling order, and a copy of the objections shall be contemporaneously delivered to the Court in chambers. Objections shall include both the grounds for the objection and a brief citation of authority. Any hearing necessary on objections shall be held at 8:30 a.m. the first day of trial, unless otherwise specified. The Court may also deal with motions *in limine* and other pretrial matters at that time.

**Failure to include a document, photograph, or other item in the materials as required by this Order will prevent its use as evidence or as trial material.** Relief from this provision may be obtained only upon motion for good cause shown.

**K. PERPETUATION OF EVIDENCE DEPOSITIONS:**

Perpetuation depositions may be taken at any time prior to trial, so long as the parties comply with Local Rule 5.16 concerning video tape depositions.

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**L. TRIAL:**

The courts in Butler County use a computer recording. The Court has technology for broadcasting videos (depositions and other recordings) and displaying documents to trial participants, including jurors and witnesses. However, parties wishing to utilize this technology must provide their own laptop computer or compatible hardware drive. Should parties or counsel need instruction on how to use any equipment, they must arrange, sufficiently in advance of trial, for instructional assistance. Trial will not be delayed because of failure to properly prepare for the use of audio-visual equipment. **Parties and counsel are duly cautioned that lack of preparation could result in the exclusion of evidence if the evidence cannot be presented in any alternative form.**

The parties, or their counsel, are responsible for insuring that all transcripts and video depositions are filed with the Clerk's office prior to trial. The parties, or their counsel, are also required to contact the Clerk's office prior to trial to insure the availability of the recorded depositions. The parties and their counsel are cautioned to view the videos before filing and to test the videos before trial to insure that there is 'sound' on the video.

The trial shall commence at 9:00 a.m. on the date indicated, unless otherwise specified. Jury lists and jury questionnaires will be available via email from the Clerk's office by calling (513) 887-3278, option 1, between 3:30 p.m. and 4:30 p.m. on the working day before the trial date.

Prior to the start of trial, all parties, or their counsel, shall furnish the bailiff and the Court with a list identifying each exhibit with the accompanying identification number or letter.

**M. CIVILITY:**

Civility not only reflects the good character of attorneys who practice it, but it also plays a key role in the efficient and fair administration of justice. The Court will not tolerate rudeness or bullying toward opposing counsel or parties. Briefs and memoranda shall not contain *ad hominem* attacks.

The Court anticipates, and expects, counsel to vigorously pursue or defend claims on behalf of their clients. Parties and counsel often face diverse challenges while maneuvering

the litigation minefield. Not all unsuccessful claims/defenses are frivolous, and not all disagreements are sanctionable. The Court disfavors the use of motions for sanctions and/or attorney fees as routine and suitable for all missteps, or as strategy to gain an upper hand. Instead, such motions should be reserved for the most egregious circumstances.

The Court expects parties and their counsel to make extra-judicial efforts to resolve any discovery or procedural conflicts before filing motions. If motions are filed seeking court intervention over frivolous or inconsequential disputes, or due to lack of cooperation of the opposing party, the Court intends to impose an award of attorney fees relative to the motion – whether requested or not, or whether the motion is later withdrawn – which may or may not be in favor of the party filing the motion. Other appropriate sanctions may be imposed, *sua sponte*, as well. Counsel and parties shall govern themselves accordingly.

**Revised March 21, 2024**

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