

## **Judge Huffaker's Civil and Criminal Practices and Procedures**

This document is binding on all parties practicing before Judge Huffaker (sometimes referred to as the Court). All parties shall read these *Civil and Criminal Practices and Procedures* once their case has been assigned to him and shall refer to it throughout the course of their case. The *Local Rules of the Middle District of Alabama*, the Federal Rules of Civil Procedure, the *ALMD Guidelines for Civil Discovery Practice*, and any separate orders issued by the Court shall override any section of this document which conflicts.

### **I. General Matters (civil and criminal)**

#### *a. Correspondence with the Court*

- i. Email correspondence with Chambers (Judge Huffaker and staff) shall be sent to [huffakerchambers@almd.uscourts.gov](mailto:huffakerchambers@almd.uscourts.gov). All attorneys of record should be copied on any email communication concerning an active case.

#### *b. Communication with Law Clerks*

- i. Communication with law clerks shall be minimized and limited to administrative issues concerning the matter before the Court.

#### *c. Telephone Conferences*

- i. The Court often will schedule telephone status conferences/hearings. While Chambers may contact counsel to set up a time for a telephone conference, the Court reserves the right to *sua sponte* set a time and date for a telephone conference or hearing. Counsel may file a motion to reschedule a telephone conference/hearing but should contact opposing counsel before filing the motion and should demonstrate good cause in the motion.
- ii. The Courtroom Deputy will provide counsel with the call-in information for telephone conferences.
- iii. Counsel shall call in at least 5 minutes before the scheduled start of the telephone conference.

d. *Courtesy Copies*

- i. Courtesy copies of briefs and evidentiary filings are not required unless specifically ordered by the Court. However, if counsel wishes to provide the Court with a courtesy copy, such a copy shall be identical to the version filed on CM/ECF, clearly identified as a “Courtesy Copy,” double-sided, placed in a D-Ring Binder (except for filings less than 50 pages in length), and hand-delivered or mailed to the civil clerk’s office at the Frank M. Johnson, Jr. U.S. Courthouse, One Church St., Montgomery, Alabama 36104.

e. *Motions for Extension of Time*

- i. The Parties should file motions requesting an extension sufficiently in advance of their deadline so the Court may issue a ruling in a timely fashion. Furthermore, the moving party shall contact opposing counsel in an effort to obtain their consent before filing such a motion and shall notify the Court in the motion of whether the extension request is opposed or unopposed.

f. *Motions to Seal & Redactions*

- i. The Parties should file motions to file under seal sufficiently in advance of their deadline so the Court may issue a ruling in a timely fashion.
- ii. The Parties are not permitted to file under seal documents, pleadings, or evidence without a good faith basis to do so. The Court reserves the right at any time, even after a party has filed documents under seal, to determine whether documents should remain under seal.
- iii. Before filing any motion to file under seal or any document under seal, the moving/filing party shall consult Local Rule 5.2. There is a general right by the public to access court records, and therefore the Parties should either redact or file under seal only

those documents, or information contained therein, that in good faith should be shielded from public viewing.

g. *Filings on CM/ECF*

- i. If not otherwise governed by an order in a given matter, all motions, briefs, and memoranda related to any matter set for a hearing before the Court must be filed electronically no later than **2:00 p.m. CST** the day before the hearing. Filings made after that time will not be considered at the hearing absent a showing of exceptional cause.
- ii. All briefs on any matter before the Court must be formal in format and filed with the Court. The Court does not accept “letter briefs” or “letter reports.”

h. *Proposed Orders*

- i. Any proposed order that a party desires the Court to enter should be submitted to the Court in both (i) an Adobe Acrobat PDF format attachment to the motion and (ii) by transmitting an electronic copy of the proposed order to the Court, with all counsel copied, as an attachment to an email message sent to: [huffakerchambers@almd.uscourts.gov](mailto:huffakerchambers@almd.uscourts.gov). For these purposes, the electronic copy should be in MS Word format and not in Adobe Acrobat PDF format.
- ii. If the proposed order relates to discovery matters, *e.g.*, a HIPAA order, protective order or confidentiality order, an electronic copy of the proposed order should be sent to the e-mail address of the assigned Magistrate Judge.

i. *Courtroom Protocol*

- i. Attorneys must stand when addressing the Court and when questioning a witness, unless otherwise excused by the Court.
- ii. Attorneys must be formal when they address one another and witnesses. They should address one another as Mr., Ms., etc.

- iii. Attorneys must stand at the lectern or counsel table unless the Court allows otherwise. Aside from showing respect to the Court, this is also to ensure that counsel is speaking into the microphone on the lectern or table for the record.
- iv. Attorneys and parties are NOT to leave their tables or the courtroom except during recess or with permission of the Court.
- v. The Courtroom Deputy (“CRD”), not the attorneys, should hand exhibits to the Court. Upon permission from the Court, attorneys may hand exhibits to witnesses. Counsel shall request leave from the Court before approaching a witness.
- vi. Upon permission from the Court, attorneys may be accompanied at counsel table by law office staff or vendors if required for evidence presentation.
- vii. No one is to sit in the jury box except the jury.
- viii. When Court convenes, or reconvenes after a recess, attorneys and parties are to be in place at counsel tables and not wandering around the courtroom or in the hallway.
- ix. During a criminal trial, counsel should ensure the defendant knows to stand when the Court is announcing a verdict in the matter, as well as when addressing the Court as otherwise directed.
- x. During criminal sentencing hearings, counsel should ensure the defendant knows to stand when addressing the Court, particularly during allocution. Counsel and the defendant shall also stand while the Court pronounces the sentence, which will occur after the Court has taken up any motions for a variance or departure and has calculated the pertinent guidelines.
- xi. If counsel anticipates a hearing (or sentencing) will be lengthy (longer than 45 minutes), counsel shall notify the Court of such no less than one (1) day before the hearing.

## II. Civil Cases

### a. *Rule 26 scheduling orders*

- i. The Court will issue a scheduling and case management order once the parties have filed a discovery plan pursuant to Fed. R. Civ. P. 26(f). The parties must confer and file a joint planning report within **thirty (30) days** of the filing of all answers in a given matter unless the Court sets a different time frame.
- ii. The following guidelines must be considered by the parties when drafting a Rule 26(f) report:
  1. Dispositive motions generally will be filed no later than 180 days prior to the pretrial hearing/conference date.
  2. Rule 26(a)(3) witness list exchange, deposition designations, and exchange of trial exhibits and evidence occur no later than **thirty (30) days** prior to the pretrial hearing/conference date.
  3. A case will ordinarily be set for trial during one of the Court's regularly scheduled civil trial terms, **within 18 to 24 months** of the case filing. The pretrial conference date is normally set within twenty-eight (28) days of a scheduled trial term. The dates of the Court's civil trial terms in Montgomery, Opelika, and Dothan are available on the Court's website located at [www.almd.uscourts.gov](http://www.almd.uscourts.gov).
- iii. The Court may or may not hold a scheduling conference before issuing a scheduling and case management order. If the Court holds a scheduling conference, counsel may participate in the scheduling conference by telephone call unless otherwise ordered by the Court.
- iv. The Court's scheduling and case management order typically contains a briefing order. Follow it!

- v. The deadlines set in the scheduling and case management order may not be changed absent leave of Court.

b. *Discovery Management*

i. General Discovery Practice

- 1. Each civil case will have an assigned Magistrate Judge. The Magistrate Judge generally will handle all discovery-related motions. Any discovery-related orders should be emailed to the chambers of the assigned Magistrate Judge.

ii. Motions to Extend Discovery Deadlines

- 1. If a party moves for an extension of any discovery deadline, that party shall set forth the following within the motion:
  - a. Whether the motion is opposed or unopposed,
  - b. Identification of the remaining discovery that is needed, and
  - c. Identification of the discovery that has already taken place, including the dates that written discovery was propounded, the dates that responses to the written discovery were provided, the dates of any depositions that have been taken, including the names of the deponents, and information regarding depositions that have been requested but not yet been taken.
- 2. The Court expects counsel to proactively engage in discovery once the discovery period has opened. Retained plaintiff counsel who file a suit are expected to proactively prosecute their case, and retained defense counsel are expected to proactively defend the case. As such, failure to show adequate progress with discovery may result in denial of a motion for extension.

c. *General Motion Practice*

- i. All relevant deadlines and guidelines governing motion practice before the Court are set forth in the scheduling and case management order. Follow them!
- ii. Dispositive and Substantive Motions
  1. For all dispositive and substantive motions, the brief accompanying the motion and the brief in opposition shall not exceed **thirty-five (35)** double-spaced pages unless the Court grants advance permission to exceed that limit. Reply briefs shall not exceed **fifteen (15)** double-spaced pages absent advance permission from the Court.
  2. Responses to dispositive/substantive motions shall be due **twenty-one (21) days** after the filing of the motion and any reply to the response within **fourteen (14) days** of the filing of the response unless the Court orders otherwise. After the briefing period has expired, the Court will take the motion under consideration without further notice to the parties.
- iii. Summary Judgment Motions
  1. In all briefs filed by any party relating to a summary judgment motion, the discussion of the evidence in the brief must be accompanied by a specific reference, by page and line, to where the evidence can be found in a supporting deposition or document. Failure to comply with this rule may result in the point or argument being deemed abandoned.
  2. The failure to sufficiently address or respond to an argument may result in the abandonment of the argument.

iv. Non-Dispositive Motions

1. For all non-dispositive motions (continuance, extension, compel, etc.), the parties shall confer in good faith to resolve disputes, stipulate to points of agreement, and narrow any remaining issues. All motions shall include in the caption an indication as to whether the motion is opposed or unopposed.
2. Responses to opposed non-dispositive motions shall be filed within **fourteen (14) days** of the motion and any reply within **seven (7) days** of the response unless the Court orders otherwise.

v. Failure to Respond to a Motion

1. The failure to file a response to any motion—either dispositive or non-dispositive—within the time allowed by the Court will be construed by the Court as the non-filing party’s lack of opposition to the motion.

vi. Formatting Obligations

1. Briefs or motions that exceed thirty-five (35) pages shall include a table of contents, a table of authorities, and delineated sections.

vii. Courtesy Copies

1. Absent a specific order of this Court, the submission of courtesy copies is not required.

d. *Mediation and Settlement*

- i. The scheduling and case management order will contain an obligation to conduct a face-to-face settlement conference, and if a settlement is not reached, then an obligation to discuss mediation with opposing counsel and the parties’ clients, then followed by an obligation to file a joint status report.



- ii. The Court's general policy is that mediation of the case is mandatory, and therefore the parties should expect to be ordered to mediate at some point during the case.
- iii. The parties shall promptly notify the Court of any settlement.

e. *Final Pretrial Proceedings*

- i. Each of the Court's civil terms has a set pretrial conference date. These dates may be found on the Court's [webpage](#).
- ii. Absent a specific order by the Court and good cause, all pretrial conferences will be held in Courtroom 2D, the Frank M. Johnson, Jr. U.S. Courthouse, One Church St., Montgomery, Alabama 36104.
- iii. The parties are required to jointly prepare a proposed pretrial order, and the plaintiff shall ensure that the proposed pretrial order is received by the Court no later than **seven (7) days** before the pretrial conference by transmitting an electronic copy of the proposed pretrial order to the Court as an attachment to an email message sent to [huffakerchambers@almd.uscourts.gov](mailto:huffakerchambers@almd.uscourts.gov). For this purpose, the electronic copy should be in MS Word format and not in Adobe Acrobat PDF format. A sample pretrial order can be found on the Court's webpage.

### **III. Trial Procedure (civil and criminal)**

a. *Voir Dire Preparation*

- i. Trial counsel are directed to review the jury questionnaire used in this District and to avoid any duplication of matters addressed in the questionnaire in their voir dire questions. The jury questionnaire is available on the Court's webpage.

b. *Trial Protocol*

- i. Prior to the beginning of trial, attorneys are to ensure that all exhibits have been pre-marked and that all exhibits have been submitted to the CRD along with three copies of witness and exhibit lists.
- ii. Attorneys are to have an original and three copies of all exhibits in separate D-ring binders for the Court (one for the judge, one for the CRD/clerk, one for the court reporter, and one for the jury). If the number of exhibits is voluminous, counsel shall contact the Court the week before trial to discuss whether an electronic copy is the better method of providing a copy to the Court.
- iii. **All exhibits** must be properly identified and **admitted** into evidence by the Court **prior to publication** (or **displayed** on the evidence presentation equipment) or otherwise shown to the jury.
- iv. At the end of each day of trial, attorneys are to ensure that **all** admitted exhibits are back in the possession of the CRD.
- v. Attorneys are to ensure that witnesses remain in the designated witness room or just outside the courtroom until called to testify. They should not be wondering around the courthouse complex before their anticipated testimony.
- vi. Attorneys must request and obtain permission from the Court each time the attorney wishes to approach the witness stand.
- vii. When asserting objections during trial, counsel shall state the legal basis for each objection, not simply state a general, unqualified objection.
- viii. During opening and closing statements, counsel will be permitted to move from behind the lectern, provided counsel maintains at least 15 feet of distance from the jury box.
- ix. When an appropriate witness is displaying or showing a firearm to a jury, counsel shall ensure that the witness is instructed to

exercise all customary precautions associated with firearms and shall always point the firearm away from the jury and anyone else in the courtroom.

- x. During witness testimony, only one attorney per party may lodge objections. The attorney tasked with examining the testifying witness shall be the only attorney who may lodge objections to another party's examination of that witness.
- xi. Any informal court communications outside of business hours should be sent to the Court at [huffakerchambers@almd.uscourts.gov](mailto:huffakerchambers@almd.uscourts.gov) with a copy to opposing counsel. Counsel should be mindful that any argument or citation included in an email does not preserve the record for trial and is not filed on the docket. Thus, counsel seeking to preserve the record should do so while in court.