

## **Magistrate Judge Douglas L. Micko**

### **Practice Pointers and Preferences**

*(last updated November 7, 2023)*

#### **Contact with Chambers**

- Magistrate Judge Micko prefers that attorneys and their staff contact his courtroom deputy rather than his law clerks. Chambers may be reached at 651-848-1900 or at [Micko\\_Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov).
- If you have an urgent request that needs a response within 24 hours, please contact chambers directly at 651-848-1900 or at [Micko\\_Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov).
- Magistrate Judge Micko's courtroom deputy will not give legal advice, but she will answer questions about Magistrate Judge Micko's policies and preferences.
- Requests for relief, including substantive requests or procedural requests (such as for extensions to deadlines), must be brought by motion or, if appropriate, by using Magistrate Judge Micko's informal dispute resolution ("IDR") process, which is described further down in these Practice Pointers and Preferences. Please note that joint motions are preferred to joint stipulations, and motions for extensions are preferred to letters or requests. Emails and telephone calls to Chambers are not appropriate means for requesting relief from the Court.
- Neither Magistrate Judge Micko nor any member of his Chambers staff will communicate with members of the media about any matter before the Court.
- When calling Chambers with a question about a specific case, first identify yourself and the party you represent, and be ready to provide the case name and number. When emailing Chambers with a question about a specific case, include the case name and number in the subject line of the email and identify yourself and the party you represent in the body of the email. Parties should also copy opposing counsel of record when emailing Chambers.
- If you have a question or seek clarification regarding an order entered by Magistrate Judge Micko, please do not call or email Chambers seeking an answer or clarification. Instead, file a letter on Court's Case Management/Electronic Case Files program ("CM/ECF") containing your question or request for clarification.
- If you have a question about how to file or access a document on CM/ECF, please contact the ECF Help Desk in the Clerk's Office at 612-664-5144, 866-325-4975

(toll free), or [ecfhelpdesk@mnd.uscourts.gov](mailto:ecfhelpdesk@mnd.uscourts.gov). Helpful ECF reference guides, procedures, and other resources are available on the Court's electronic Filing Tools webpage, which can be found here: <https://www.mnd.uscourts.gov/electronic-filing-tools>.

### **Resources for Pro Se Litigants**

- People who represent themselves without a lawyer's help are called "pro se litigants." Magistrate Judge Micko expects pro se litigants to be familiar with and follow the Federal Rules of Civil Procedure and the Local Rules for the District of Minnesota. A free copy of the Federal Rules of Civil Procedure is available here: <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure>, and the Local Rules can be found here: <https://www.mnd.uscourts.gov/court-info/local-rules-and-orders>. A guidebook and other useful resources for pro se litigants are available on the District Court's website, which you can find here: <https://www.mnd.uscourts.gov/representing-yourself>.

### **First Pretrial Conference and Rule 26(f) Report**

- If the Order Setting a Pretrial Conference in a case sets the Rule 16 conference for an in-person proceeding, Magistrate Judge Micko will consider requests to hold the Rule 16 conference remotely, by telephone, or by Zoom, although remote hearings are not favored. However, participation by telephone can be appropriate at the request of a party where attendance in person would impose an undue burden or expense in view of the nature of the case, the amount at issue, and the matters likely to be discussed at the conference. Any request to participate by telephone should be made by contacting Magistrate Judge Micko's courtroom deputy at 651-848-1901 before the Rule 26(f) Report is due. If counsel for one side seeks to participate by telephone, and that request is granted, Magistrate Judge Micko may order that the entire proceeding be held telephonically.
- The parties are encouraged to use the downloadable templates, in both PDF and Word formats, for Rule 26(f) reports found on Magistrate Judge Micko's website here: <https://www.mnd.uscourts.gov/DLM>. Templates are available for general civil cases, intellectual property cases, and ERISA cases. The parties must discuss whether electronic discovery will be a factor in their case and be prepared to discuss electronic discovery issues at the pretrial conference. Well in advance of the conference, please review the Court's "Discussion of Electronic Discovery at Rule 26(f) Conferences: A Guide for Practitioners," developed by the Court's Federal Practice Committee to help attorneys and parties prepare for a meaningful discussion of electronic discovery issues early in the litigation. The Guide is available here and on the District of Minnesota's website. Please email a courtesy

copy of the Rule 26(f) Report in Word format to Chambers at [Micko\\_Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov) when it is filed.

## **Informal Dispute Resolution (“IDR”) and Civil Motion Practice**

### **Meet-and-Confer**

- Except as otherwise specified in Local Rule 7.1(a), the parties must comply with the meet-and-confer requirement before filing any motion or requesting Informal Dispute Resolution (“IDR”). This requirement is intended to lead to a meaningful, good faith exchange of views, and if possible, a full or partial resolution of the issue(s) in dispute. To satisfy Rule 7.1(a), parties must diligently attempt to resolve their dispute(s) in person, by videoconference, or by telephone. cursory conversation or exchanges of emails, letters, or voice messages will be considered insufficient.
- If the moving party is unable to meet-and-confer before filing a motion because the opposing party was unavailable before the motion due date, the moving party should file a meet-and-confer statement with the initial motion explaining that the moving party was not able to meet with the opposing party before filing the motion and detailing the reason why. The moving party must promptly meet-and-confer with the opposing party as soon as possible after filing the motion, and must file an amended meet-and-confer statement pursuant to Local Rule 7.1(a)(1)(B).

### **Informal Dispute Resolution**

- During the meet-and-confer, the parties must discuss whether to resolve the dispute through Magistrate Judge Micko’s IDR process. The IDR process is available to resolve non-dispositive disputes. Typically, when the parties use the IDR process, they do not brief the matter and do not file declarations or sworn affidavits. IDR offers an efficient means to promptly resolve issues, but because it is relatively informal, a decision through IDR is not appealable to the District Judge or the Eighth Circuit. For this reason, all parties with a stake in the disputed issue must agree to use the IDR process.

If the parties agree to use the IDR process, they must jointly contact Chambers to schedule a conference. Each party will then submit a short letter confirming that the party has agreed to resolve the dispute through IDR, setting forth the issue(s) to be resolved, and stating that party’s position. Charts and bullet-point summaries of the issue(s) are encouraged. Unless otherwise specified by the Court, letter submissions shall be no more than three (3) pages long and must be

emailed to Chambers and all parties at least two (2) business days before the conference.

### **Obtaining a Motions Hearing or IDR Conference Date**

- Before moving for an order relating to discovery, the movant must request an informal conference with the Court. The purpose of this call is to explore narrowing the discovery dispute, confirm that informal dispute resolution is considered, and discuss the most efficient way to brief disputed issues. Accordingly, before moving for an order relating to discovery, the movant must request an informal conference with the Court by submitting a SHORT JOINT EMAIL to chambers at [Micko Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov) stating:
  - a) the discovery dispute;
  - b) whether all parties agree to informal dispute resolution; and
  - c) any other information that would be helpful to the parties and the Court in resolving the dispute in a just, speedy, and inexpensive way. No attachments are permitted. The Court will then schedule a conference call.

The informal conference is required to ensure that the dispute is presented and resolved consistent with Federal Rule of Civil Procedure 1. It does not mean that the parties all concede to informal dispute resolution.

- Following the informal conference with the Court, the moving party may contact Magistrate Judge Micko's Chambers at 651-848-1900 to schedule a motion hearing. Pursuant to Local Rule 7.1(b), a hearing date must be obtained before any non-dispositive motion is filed, even if the motion is unopposed, and even if the parties agree that no hearing is necessary. If the parties agree that a hearing is not necessary, the moving party should include a statement to that effect in the notice of hearing. Magistrate Judge Micko will determine whether to cancel the hearing after briefing is complete.

Before calling Chambers for a hearing date, the moving party should alert all other parties of the intent to do so. The parties should inform Chambers of all other pending or anticipated motions so the motions can be heard at the same time. The parties should also inform Chambers of any related cases with related motions.

## **Filing Motion Papers**

- Once the moving party has secured a hearing date, that party must promptly serve and file the notice of hearing informing all parties of the nature of the motion and the date, time, and location of the hearing. The moving party shall serve and file the motion and remaining motion papers in compliance with the dates prescribed by Local Rule 7.1, unless a different briefing schedule is set by the Court. A party may not call Chambers and secure a hearing date or “hold” a hearing date without that party promptly serving and filing a notice of hearing. This means that a Notice of Hearing is permitted to be filed earlier and separately from the remaining motion papers pursuant to Local Rule 7.1. Parties should email courtesy copies of proposed orders in Word format to [Micko Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov). If possible, proposed orders should be provided in 13-point, Times New Roman font.
- If a pending motion is resolved, please notify Chambers as soon as possible so that any scheduled hearing can be removed from the calendar. If a motion has been partially resolved, please notify Chambers which parts have been resolved and no longer need to be addressed by the Court. If time permits, notification should be by joint motion, as provided by Local Rule 7.1. A party seeking to withdraw a motion should file a formal notice of withdrawal on CM/ECF.

## **Hearings**

- The parties are encouraged to meet-and-confer regarding the anticipated length of the hearing and to inform Chambers of the length of time they are requesting. Please be aware that most hearings will be scheduled for no more than one (1) hour.
- Magistrate Judge Micko strongly encourages litigants to seek opportunities for newer lawyers to conduct hearings before the Court. This is particularly true of motions which the newer lawyer drafted or made a significant contribution to preparing. Magistrate Judge Micko believes it is crucial to provide substantive courtroom opportunities to newer lawyers. This will benefit the newer lawyer and will also benefit their law firm, clients, and the legal profession in general. Magistrate Judge Micko will make no inferences about the importance a party places on a particular issue from the experience level of the lawyer chosen to argue that issue.
- Counsel should refer to the record using citations to the CM/ECF docket number rather than any other applicable identifier (e.g., exhibit or bates number).

## In-Person Hearings

- If you intend to use paper copies of caselaw, documents, etc., at an in-person hearing, please bring sufficient copies for the Court, the law clerk, and opposing counsel.
- If you intend to use visual aids at an in-person hearing, such as PowerPoint or other presentation graphics, please bring sufficient copies for the Court, the law clerk, and opposing counsel. Magistrate Judge Micko and his staff are not responsible for the functioning of the courtroom's technology, so it is important for you to have a back-up plan if the technology is not available at the hearing. The copies should reference the case name and case number.
- If you plan to use the courtroom technology, please become familiar with it ahead of time. Training can be arranged by contacting Magistrate Judge Micko's Chambers at 651-848-1900 or [Micko Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov).

## Remote Hearings

- Remote hearings will be held telephonically or using Zoom for Government. Counsel are responsible for ensuring that they and any participants affiliated with them have tested the technology and understand how to use it. Before any Zoom video hearing begins, counsel must review the District's instructions for participating in a Zoom video conference here: <https://www.mnd.uscourts.gov/sites/mnd/files/Preparing-to-Participate-in-a-Zoom-Video-Conference.pdf>.
- Attorneys who anticipate using presentations, exhibits or demonstratives during a video hearing should inform Chambers by emailing [Micko Chambers@mnd.uscourts.gov](mailto:Micko_Chambers@mnd.uscourts.gov) before the hearing and copying all counsel of record so that necessary arrangements can be made to the Zoom settings. Counsel must deliver PDF copies of any documents they intend to use via email to Chambers and all counsel of record at least **48 hours** before the hearing is scheduled to begin.
- Counsel are expected to conduct themselves during a hearing by Zoom for Government in the same manner they would during an in-person hearing in the courtroom. This includes wearing appropriate courtroom attire, maintaining courtroom decorum throughout the remote proceeding, and using a Court-approved background which can be found here: <https://www.mnd.uscourts.gov/virtual-hearings>.