

Information and Guidelines

For Practice and Procedure
before

The Honorable Michael A. Telesca

United States District Court
for the Western District of New York

1996

Honorable Michael A. Telesca
2720 United States Courthouse
100 State Street
Rochester, NY 14614-1387
(716) 263-5780

Revised as of October 1996

Communications and General Information

Address and Telephone Numbers

General Address:

United States Courthouse
100 State Street
Rochester, NY 14614
(716) 263-5780

Room:		Phone
2720	Judge Telesca	263-5780
2720	Judge Telesca's Secretary Joan Countryman	263-5780
2720	Judge Telesca's Law Clerks	263-6417
2751	Courtroom Deputy Melissa Kruk	263-6442
2120	District Court Clerk's Office Rachel Bandyck, Deputy Clerk in Charge	263-6263
2791	U.S. Court Reporter John DiMartino	263-5747

Hours

The Rochester Clerk's Office will be open for filing documents Monday through Friday from 9:00 A.M. to 5 00 P.M.

Motion Rules at a Glance

Motions Returnable:	9 A.M. Wednesday and Thursday of the first three weeks of each month, commencing the week of the first Monday In each month.
Oral Argument:	Upon request and as Judge Telesca, in his discretion, requires.
Special Filing Rules:	Yes
Courtesy Copies:	No (unless specifically requested to do so).

Guidelines

**for Practice and Procedure
before**

The Honorable Michael A. Telesca

**United States District Court
for the Western District of New York**

1996

INTRODUCTION

The following guidelines are intended to aid the Bar in the practice of law before this Court. These guidelines are not intended to supersede the Local Rules of Practice for this District or the Federal Rules of Civil Procedure all of which remain in full force and effect.

I. Status Conferences

It is the policy of this Court to take an active role in the management of each case on its docket. In addition to the conferences called for by Local Rule of Civil Procedure 16.1, from time to time, at the request of a party or on the Court's own initiative, a status conference will be held in chambers to discuss the progress of the case and the possibility of settlement.

Attorneys who request the Judge's assistance in resolving a case are encouraged to contact the Courtroom Deputy to schedule such a conference.

II. Motion Practice

A. Motion Days

Motion days for Judge Telesca will be held at 9:00 A.M., Wednesday and Thursday of the first three (3) weeks of each month commencing the week of the first Monday in each month. (For example, the first Monday in November, 1996, is the 4th. Motion days would thus be November

6 and 7, November 13 and 14, and November 20 and 21.) Parties need not call the courtroom deputy in advance to schedule return dates.

B. Filing of Motion Papers

All motion papers and supporting memoranda *must* be filed and served upon the opposing party in accordance with Local Rule of Civil Procedure 7.1.

C. Reply Papers

A moving party wishing to file reply papers must file and serve motion papers in accordance with Local Rule of Civil Procedure 7.1(c). The scope of reply papers should be limited to issues raised in the response papers opposing the motion. Failure to file timely either opposing papers or reply papers may result in adjournment of the motion by the Court and the possible imposition of sanctions against the offending attorney(s).

D. Cross-Motions

Cross-motions shall be filed no later than three (3) business days prior to the return date of the original motion. *See* Local Rule of Civil Procedure 7.1. Responses shall be filed at least one (1) business day prior to the return date.

E. Motion Scheduling

Regardless of the return date set forth in the motion, the Court may adjourn the motion on its own initiative at any time. Each party will be notified in advance of any such change by the Courtroom Deputy.

F. Adjournments

The Courtroom Deputy is in charge of all calendar matters. If you would like an adjournment, you must first reach agreement with your opposing counsel and then contact the Courtroom Deputy at the number provided under *Communications and General Information*. A motion may be adjourned once as of right where both parties consent. In situations where an opposing attorney will not consent to an adjournment, or where one adjournment has already been granted, the party requesting the adjournment should set forth in letter form his or her reasons for requesting the adjournment. Such letters should be directed to the Courtroom Deputy. *It is incumbent upon the party requesting an adjournment to notify the opposing party of the request and, if granted, the new motion date.*

Do not contact the Judge or his law clerks to request an adjournment.

G. Oral Argument

Oral argument will be heard on each motion beginning at 9:00 A.M. Attorneys for each party must appear to argue a motion or notify the Courtroom Deputy that by mutual consent of the parties the motion will be submitted. On all submitted motions, the moving party and the opposing party must each attach to their motion papers a proposed order granting or denying the relief requested. If counsel wishes to have a motion submitted without oral argument, merely state that on the notice of motion.

H. Ex Parte Application

Ex parte applications are disfavored by the Court and should be avoided except in the most extreme circumstances. Where such cases arise, the party submitting the application must state in the application that he or she has contacted opposing counsel in an attempt to resolve the situation through normal motion practice and why such an option is unsatisfactory, or, why contacting the opposing party would be inappropriate under the circumstances. *See* Local Rule of Civil Procedure 7.1. Applications for temporary restraining orders must comply strictly with the specific requirements set forth in Fed.R.Civ.P. 65.

III. Discovery and Subpoenas

A. Generally

Discovery disputes are generally referred to the Magistrate Judge for disposition.

B. Filing Requirement

Pursuant to Fed.R.Civ.P. 5(d) and Local Rule of Civil Procedure 7.1(a)(1), depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, shall not be filed with the Clerk's office, except for use in a specific motion or proceeding, in *pro se* cases or otherwise by order of the Court.

C. Subpoenas - Fed.R.Civ.P. 45

1. Generally

Subpoenas in federal court are issued by the Clerk of the Court upon application by a party or by an attorney as officer of the Court in accordance with Fed.R.Civ.P. 45(a)(3). A witness fee of \$40 and a mileage fee of \$.31 per mile must be served with the subpoena. *See* 28 U.S.C. § 1821. The party is responsible for service of subpoenas. Fed.R.Civ.P. 45(b).

2. Deposition Subpoenas

To subpoena a witness to appear for a deposition, a party must first serve and file a notice to take deposition upon the other parties in the action. *See* Fed.R.Civ.P. 30(b) and 31(a). The attendance of a witness at a deposition may be compelled by a subpoena issued by the Clerk or an attorney as provided by Fed.R.Civ.P. 45(a)(3).

IV. Pre-Trial Conferences

In each civil action scheduled for trial, a final pre-trial conference will be scheduled approximately one week prior to the trial date. A letter will be sent to each of the attorneys advising them of the date and time of the conference and setting forth their responsibilities. These instructions should be read carefully and taken seriously.

V. Jury Selection Procedures

In both criminal and civil cases a jury is selected by employing the "Struck Jury" method. *See U.S. v. Blouin*, 666 F.2d 796 (2d Cir. 1982).

CIVIL JURY SELECTION

1. The Deputy will call 14 names for the panel and such persons will be seated in the order they are called in the jury box in seats 1 through 14.
2. The Judge will then voir dire the jury asking questions of his own and also any questions proposed by the attorneys which have been submitted for review to Judge Telesca at or before the pre-trial conference and which he considers appropriate. In an appropriate case, attorneys may be permitted to participate in the questioning process.
3. The Judge will excuse any prospective jurors for cause where appropriate, and replace them with new prospective jurors and the process above will be repeated.
4. When the Judge has determined that none of the 14 prospective jurors in the jury box should be dismissed for cause, the parties then may exercise their peremptory challenges.
5. Each side in a civil case may exercise or waive three peremptory challenges. *See* 28 U.S.C. § 1870. These challenges shall be exercised in three rounds, one

challenge for each side in each round. If both sides exercise all of their peremptory challenges, (total 6), the remaining 8 will be sworn in as the Jury.

6. In a case with multiple defendants, the attorneys for the defendants will confer and jointly exercise their three peremptories. With rare exception, will additional peremptories be allowed.
7. Typically in a civil case a jury of 8 will be selected and all will act as principal jurors. There are no alternates in a civil case. Fed.R.Civ.P. 48.

VI. Miscellaneous Provisions

A. Sanctions

1. Fed.R.Civ.P. 11 requires the attorney or unrepresented party who signs a pleading, motion or other paper, to certify that, to the best of his or her knowledge, information and belief formed after reasonable inquiry under the circumstances it has, or after a reasonable opportunity for further investigation is likely to have, evidentiary support; is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and denials of contended facts are warranted by evidence or are reasonably based on a lack of information or belief.

The Court will not hesitate to sanction any attorney who violates this rule.

2. Sanctions may also be imposed upon an attorney who is not properly prepared for a scheduling, status or pre-trial conference. *See* Fed.R.Civ.P. 16(f).
3. Abuse of discovery may also result in the imposition of sanctions against the offending party. *See* Fed.R.Civ.P. 37.

B. Stipulations

All stipulations, whether for an adjournment or discontinuance of an action, etc., should be submitted to the Judge for his approval. A standard stipulation form may be used by modifying such form and adding "So Ordered" and a signature line for the Judge at the bottom.

C. Orders

All orders which require the Judge's signature should be directed to his attention or to the attention of his law clerks. All other papers should be filed with the Clerk pursuant to Fed.R.Civ.P. 5(d). Whenever possible, orders will be signed the same day they are received.

After the Judge has instructed a prevailing party to submit an order, the prevailing party must have the proposed order approved by opposing counsel before it is submitted to the Judge for signature. In the event of a disagreement as to the form of an order, the prevailing party may bring a motion to settle the order pursuant to Local Rule of Civil Procedure 7.2.

Be advised that whenever a motion to settle an order is made, costs and attorney 's fees will be awarded against an attorney who unreasonably withholds his or her consent as to form.

D. Requests for Enlargement of Time

All requests for enlargement of time shall be made in conformity with Fed.R.Civ.P. 6(b) Letter requests shall indicate: (1) by what date the party requesting the enlargement is required to respond, answer, or otherwise perform some act; (2) the length of the proposed extension; and (3) whether the other parties to the action have consented to such extension. Stipulations are encouraged.

Requests made after the specified period to respond, answer, or otherwise act has expired must be made in accordance with Fed.R.Civ.P. 6(b)(2). Letter requests made after the specified period has expired *will not be considered* by the Court unless all other parties to the action have stipulated to the extension.

E. Courtesy Copies

Please do not send courtesy copies of motion papers memoranda, ecto the Judge or his law clerks unless specifically requested to do so.

F. Law Clerk

Counsel or *pro se* parties desiring to speak to the Judge should make such a request to the Judge's secretary at the telephone number provided under *Communications and General Information*. Law clerks are also available to assist with procedural questions from attorneys. This does not mean, however, that the Judge's law clerks are available to do your research. Do not abuse this assistance.

G. Transcripts of Court Proceedings

If a transcript of a court proceeding is desired, the Court Reporter should be contacted directly at the telephone number under *Communications and General Information* and a confirming letter sent. Transcripts will not be prepared unless ordered.

Orders and Forms

Form 1: Scheduling Order for Civil Cases

Form 2: Bankruptcy Appeal Notice

Form 3: Civil Bench Trial Letter

Form 4: Civil Jury Trial Letter

Form 5: Criminal Trial Letter

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

John Doe,

Plaintiff(s)

vs

96-CV-0000T

Mary Roe,

Defendant(s)

Pursuant to Fed.R.Civ.P. 16(b), the following scheduling dates are to be adhered to:

1. All discovery shall be completed by
2. Any pre-trial motions, including all motions contemplated in Fed.R.Civ.P. 16(b)(1) shall be made returnable no later than

This case is assigned a trial date of

In the event of a jury demand, the parties are guided by 28 U.S.C. § 1870 and Fed.R.Civ.P. 47. Jury selection will take place on the trial date assigned.

3. A final pre-trial conference will be scheduled as close to the time of trial as is reasonable under the circumstances.

**NOTE: THE DATES ASSIGNED CAN ONLY BE CHANGED BY COURT ORDER.
SO ORDERED.**

Michael A. Telesca
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

John Doe,

Appellant(s)

vs

96-CV-0000T

Mary Roe,

Appellee(s)

You are hereby notified pursuant to Bankruptcy Rule 8007(b) that an appeal from an order of the Bankruptcy Court was docketed in this Court on _____. The relevant Bankruptcy Rules, including Bankruptcy Rules 8008 - 8012, shall govern the appeal; no further scheduling order shall be issued. Upon the filing of all briefs and appendices in accordance with the Rules, the parties shall jointly contact Mrs. Melissa Kruk, Courtroom Deputy, at 263-6442 to schedule oral argument.

DATE:

RODNEY C. EARLY, Clerk
United States District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614

TO:

UNITED STATES DISTRICT COURT

*Western District of New York
272 United States Courthouse
100 State Street
Rochester, New York 14614*

*Chambers of
Michael A. Telesca
District Judge*

*Chambers: 716-263-5780
Fax: 716-263-6299*

Form 3: Civil Bench Trial Letter Non-Jury Trial

July 29, 1996

Re: 96-Cv-0000T

Dear Counsel:

This case will be tried before the Court without a jury on October 15, 1996. A pre-trial conference will be held in my Chambers on October 11, 1996 at 10:00 A.M.

Both parties are to file a trial memorandum with the Court and provide a copy to the other party or before October 9, 1996. That memorandum shall contain a statement of the facts, the applicable law and any evidentiary questions which are anticipated to arise at trial.

REQUIRED PREPARATION FOR PRE-TRIAL CONFERENCE

1. Witness List - A list of the names and addresses of all prospective witnesses are to be supplied to the Court and to opposing counsel no later than October 9, 1996. Only those witnesses included in the list will be permitted to testify except for good cause shown.

2. Expert Testimony (If Any) - The names, addresses and a brief summary of qualifications of all expert witnesses will be exchanged at the pre-trial. If appropriate, the topic of limiting the number of expert witnesses will also be discussed. See Fed. R. Civ. P. 16(4). Counsel shall enter into written stipulations setting forth the qualifications of all expert witnesses in such form that they can be read to the Court by counsel at the time the expert witness takes the stand. A summary of each experts' testimony shall be exchanged between the parties and given to the Court along with other pre-trial submissions.

3. Deposition Testimony - Objections to deposition testimony that may be offered in evidence should be clearly marked and a reason stated for the objection. Hearsay objections to deposition testimony will be reserved for the time of trial. See Fed. R. Evid. 801(d)(1). Whenever possible, I would request counsel to cooperate and agree in advance of the pre-trial conference as to the admissibility of deposition testimony. See Fed. R. Civ. P. 33.

Civil Bench Trial Letter Non-Jury Trial

4. Findings of Fact and Conclusions of Law - IMPORTANT - Counsel are directed to provide the Court and each other with their proposed findings of fact and conclusions of law in numbered form on or before October 9, 1996.

5. Evidentiary Issues - Counsel should bring to my attention any unusual evidentiary issues which he or she expects to arise during the trial.

6. Relief Requested - A statement outlining the relief requested and the legal justification therefor.

7. Exhibits - Parties are to examine, mark and list all exhibits which they intend to introduce at trial. Counsel shall agree as to the authenticity and admissibility of such exhibits so far as possible and note the grounds for objection to any not agreed upon. All exhibits will be pre-marked by the respective parties. An exhibit list shall be prepared and presented to the Court and exchanged between counsel no later than October 9, 1996.

8. FAX Transmissions - DO NOT utilize FAX transmissions to keep the Court abreast of any disagreements between counsel.

With your cooperation, adherence to these requests will serve to organize and simplify the trial and will thus serve your clients' best interests.

Very truly yours,

Michael A. Telesca
United States District Judge

cc: Mary Magee, Esq.
Melissa Kruk, Courtroom Deputy

UNITED STATES DISTRICT COURT

*Western District of New York
272 United States Courthouse
100 State Street
Rochester, New York 14614*

*Chambers of
Michael A. Telesca
District Judge*

*Chambers: 716-263-5780
Fax: 716-263-6299*

Form 4: **Civil Jury Trial** Letter

September 20, 1996

Re: 96-Cv-0000T

Dear Counsel:

This case is scheduled for jury trial to commence on October 16, 1996 at 10:00 AM. In preparation for trial, a pre-trial conference is scheduled to be held in my Chambers on October 15, 1996 at 2:00 PM. The trial attorney for each party is required to attend the conference.

PRE-TRIAL CONFERENCE

In preparation for the pre-trial conference, the plaintiff is directed to supply the Court on or before the date of the conference with two copies of a proposed jury charge (with the exception of "boiler plate".) The defendants may obtain a copy of the plaintiff's proposed charge by paying reasonable duplication costs to plaintiff's counsel. After reviewing the plaintiff's proposed charge, the defendant may submit an alternate charge on any particular issue. The parties are reminded that these proposals are intended to assist the Court in preparing the final charge to the jury. The Court will inform counsel of its intended charge prior to closing arguments. F. R. Civ. P. Rule 51. Further jury charge requests or exceptions may be made at that time.

If any party requests the Court to consider a pre-trial brief or other legal memorandum, it must be filed with the Court at or before the pre-trial conference.

The following topics will be discussed at the pre-trial conference. Additional topics not listed may be discussed as appropriate. F. R. Civ. P. Rule 16.

Civil Jury Trial Letter

AREAS OF CONSIDERATION

1. Voir Dire - My procedure for jury selection and the extent of attorney participation will also be explained. (See F. R. Civ. P. Rule 47). If any party desires that a particular question be asked of the full array of jurors, such question should be submitted at the pre-trial conference. The parties are guided by 28 USC §1870 in determining the number of peremptory challenges permitted. Alternate jurors in a civil case are no longer permitted. See F. R. Civ. P. Rule 48.

2. Witness List - The names and addresses of all prospective witnesses are to be exchanged during the pre-trial and a copy of each witness list is to be supplied to the Court. Only those witnesses included on the list will be permitted to testify except for good cause shown. A brief summary of the proposed testimony of each witness is to be included as well.

3. Expert Testimony - The names, addresses and a brief summary of qualifications of all expert witnesses will be exchanged at the pre-trial. If appropriate, the topic of limiting the number of expert witnesses will also be discussed. (See F. R. Civ. P. Rule 16(4)). Whenever possible, counsel should be willing to stipulate to the qualifications of an expert witness. Note: The requirements of F. R. Civ. P. Rule 26(b)(4) will be strictly adhered to.

4. Order of Proof - The Court will review with the parties the order of proof, including the order and length of opening and closing arguments. See F. R. Civ. P. Rules 13 and 14. The trial schedule will also be established and any special scheduling concerns for witnesses will be discussed.

5. Deposition Testimony - The parties are presumed to be familiar with the deposition testimony in the case. Objections to deposition testimony that may be offered in evidence should be clearly marked and a reason stated for each objection. Hearsay objections to deposition testimony will be reserved for the time of trial. (See Federal Rules of Evidence 801(d)(1)). Whenever possible, I would request counsel to cooperate and agree in advance of the pre-trial conference as to the admissibility of deposition testimony. See F. R. Civ. P. Rule 33.

6. Uncontroverted Facts - The parties are directed to prepare a list of what they believe to be uncontroverted facts in the case. These lists will be discussed and counsel will be expected to cooperate in stipulating to uncontroverted facts.

Civil Jury Trial Letter

7. Evidentiary Issues - Counsel should bring to my attention any unusual evidentiary issues which he or she expects to arise during the trial. If appropriate, the Court will rule on the issue prior to the commencement of the trial.

8. Damages - All claims for damages should be revealed and supported by legal authority and limited only to those claims made in the pleadings. An itemized statement of special damages shall be prepared and submitted and when possible, stipulated into evidence.

9. Pre-Mark Exhibits - All exhibits will be pre-marked and whenever possible, stipulated into evidence.

Finally, the parties are reminded that the purpose of the conference is to insure that the evidence is presented in an understandable, orderly fashion. With your cooperation, the pre-trial conference will serve to organize and identify your responsibilities thus conserving time and resources. If you should have any questions about these instructions, you may contact either my law clerk assigned to this case or my courtroom deputy whose names appear below.

Very truly yours,

Michael A. Telesca
United States District Judge

cc: Bryce Baird, Esq.
Melissa Kruk, Courtroom Deputy

UNITED STATES DISTRICT COURT
Western District of New York
272 United States Courthouse
100 State Street
Rochester, New York 14614

Chambers of
Michael A. Telesca
District Judge

Chambers: 716-263-5780
Fax: 716-263-6299

Form 5: Criminal Jury Trial Letter

September 16, 1996

Re: 96-CR-0000T

Dear Counsel:

Jury selection in the above entitled matter is scheduled to begin on October 16, 1996 at 10:00 A.M. This case will then proceed directly to trial. In preparation for trial, a pre-trial conference is scheduled to take place in my Chambers on October 15, 1996 at 2:00 P.M. The attorney who is responsible for trying the case is required to attend. The following topics will be discussed at the pre-trial conference.

1. Voir Dire - My procedures for jury selection in criminal cases and my views on attorney participation in the voir dire process will be explained. If any party desires the Court to ask a particular question to the jurors, such question should be submitted at that time.

2. Witness Lists - The names of prospective witnesses and a short statement as to the general subject matter of their expected testimony shall be exchanged between the parties at the conference.

3. Jury Charge - The Government is directed to provide to the Court and defense counsel a copy of a complete proposed jury charge on or before the pre-trial date. If, after reviewing the proposed charge submitted by the Government, the defendant wishes to submit an alternate charge on a particular issue or issues, that alternate charge should be submitted thereafter. The parties are reminded that these are to be regarded as jury charge proposals intended to assist the Court in formulating its own final charge to the jury. The Court will inform counsel of its intended jury charge prior to closing arguments. F.R.Cr.P. Rule 30. Additional jury charge requests or exceptions may also be made at that time.

4. Evidentiary Issues - Counsel should bring to my attention any unusual evidentiary issues expected to arise during the trial. If appropriate, the Court may rule on the issue prior to the commencement of the trial.

Criminal Jury Trial Letter

5. Evidence Pursuant to Fed. R. Evid. 404(b) - The Government shall provide to the defendant and to the Court any evidence of defendant's uncharged misconduct which it intends to introduce at trial pursuant to Fed. R. Evid. 404(b).

6. Pre-Mark Exhibits - All exhibits will be pre-marked and whenever possible, stipulated into evidence.

7. Briefs - If any party desires the Court to consider a pre-trial brief or other legal memorandum, such brief must be filed with the Court on or before the pre-trial conference.

8. Discovery - The Assistant United States Attorney prosecuting the case will be asked when the Government plans to disclose, (if disclosure has not yet occurred), Section 3500 (Jencks Act) and Brady material.

9. Be particularly advised that sufficient witnesses should always be ready to give testimony so as to avoid gaps during the trial.

Your cooperation is greatly appreciated.

Very truly yours,

Michael A. Telesca
United States District Judge

cc: Mary Magee, Esq.
Melissa Kruk, Courtroom Deputy