Civil Caseflow *Best Practices*

Time Guidelines Communication & Leadership

- Commit to compliance with the time standards set forth in Sup.R. 5.21 and know the court's over-age rates and clearance rates. Monitor performance and watch for patterns of consistent increase in over-age civil cases. Review the monthly Supreme Court report before submitting it.
  - **Best Practice:** Use the data to continuously improve case management. Identify overtime cases and the oldest cases and make an action plan to resolve them.
- Educate the parties on the time standard for their case type and schedule dates to promote compliance with that time standard so the case does not go over-age.
- Team Approach: Set expectations and create a culture where judges, magistrates, court staff, and clerks work together to establish a team atmosphere. Assign clearly defined roles and utilize each member of the case management team to help proactively move cases forward. Educate staff on the time standards and ask them to remind attorneys and parties of the goal to stay within the time standards.
  - **Best Practice:** Empower staff and recognize their work. As a judicial officer, lead by example and staff will follow, reinforcing a culture of shared responsibility for effective case management.

Triage & Differentiated Case Management

- Triage incoming cases and determine if the cases can be assigned to a streamlined path, general path, or complex path. See the Pathway Approach Bench Card here.
- Utilize Sup.R. 5.22 for Complex Cases. This rule permits a court to redesignate a civil case filing as complex and increase the court's time to resolve the complex case from 2 to 3 years. This designation needs to be done within 6 months of the filing date. Remind attorneys of the designation deadline.
- Use technology and electronic case management systems to assign cases appropriately and accurately to the correct path (streamlined, general, complex). Systematizing into tracks allows the court to allocate the valuable resources of judicial time and staff levels proportionately based on the actual needs of the case. This automated routing may reduce delay and allows judges to prepare accordingly, improving case resolution times and satisfaction for all parties.
  - **Best Practice:** To streamline a high volume of cases (e.g., breach of contract cases), upon notification that a case has been filed, send a scheduling order notifying the parties of the specific dates of events. For example, set the date for the status conference for 3 months, the due date for dispositive motions at 6 months, and the bench trial date at 9 months.

Dispute Resolution

- Review the file soon after filing to determine if mediation is appropriate and consider offering mediation in person or via video conference. See the Supreme Court of Ohio's Dispute Resolution webpage for additional information and resources.
- The Supreme Court Reporting Instructions permit a court to deactivate (toll) a case when the case is referred to a dispute resolution program for up to sixty days.

Scheduling & Calendaring

- Use a scheduling order. [*See appendix for sample scheduling order.*]
- Establish early-stage scheduling practices that allow sufficient time to resolve the case if continuances are needed.
- Build in time for continuances, decisions on motions, and objections within the time standard.
  - Instead of scheduling a continuance six weeks later, schedule it three weeks later – this has just shortened the timeline of the case by three weeks.

- Consider the complexity of the dispositive motion, the briefing schedule required by the Civil Rules, the time needed to render a decision, and how these factors may impact the case before trial can proceed when setting the case calendar.
- For matters in which a magistrate is presiding, account for the 14-day objection period and time to address a potential objection to a magistrate's decision when scheduling case events so there is adequate time at the end of the case to meet the time standard.

Service

- Staff should check to see if service has been made between 45 and 60 days after the civil case has been filed and monitor for service monthly. As soon as service is perfected, set a pretrial and scheduling conference to keep the case moving.
- When service has not been perfected within six months after filing, use Civ.R. 4(E) notice reminders to notify all attorneys and parties of the potential for dismissal of the case due to inaction to avoid cases sitting at a standstill. [*See appendix for sample Civ.R. 4(E) notice*].
- Consider issuing a Civ.R.41 dismissal if service on the matter is not made within 30 days after sending the Civ.R. 4(E) notice, and if the party on whose behalf such service was required does not show good cause why service was not made within that period.
- If service on the matter is not made within 30 days after sending the Civ.R. 4(E) notice, and if the party on whose behalf such service was required does not show good cause why such service was not made within that period, issue a Civ.R. 41 dismissal.

Answer

- Be proactive and monitor service. When 90 days after a complaint is filed has elapsed, check to see if answers have been filed to all claims, counterclaims, cross claims, and third-party claims.
- If service has been accomplished and no answer has been filed, a case management conference does not need to be scheduled.
- Create a local rule explaining when a motion for default can be filed pursuant to Civ.R. 55 and that the case may be subject to dismissal if a motion for default is not timely filed.

Pretrial Procedure

- At the initial scheduling conference, when setting dates consider the amount of time the attorneys need to prepare their case for the following:
  - Discovery, discovery deadlines, and deadlines for motions for summary judgement.
  - Mediation, if the parties can benefit from it.
  - **Best Practice:** Communicate a clear expectation to counsel that the court expects them to move the case forward by diligently conducting necessary discovery and preparing for trial. Advise counsel that filing a case to avoid the running of a statute and then doing nothing is disfavored and that continuances will not be granted if there has not been diligence in prosecuting the case.
- Get attorneys' input on selecting dates. This helps eliminate scheduling conflicts on the attorney's calendars and promotes adherence to established deadlines by holding the parties accountable to those agreed upon dates.
- Use the scheduling order pursuant to Civ.R. 16 and include specific calendar dates to outline the expected events of the case. [*See appendix for sample scheduling order.*]
- All scheduling orders should include case management conferences early in the process.
  - **Best Practice:** Include dispositive motion deadlines that allow sufficient time to accommodate a continuance in the event that one is necessary, noting that continuances should be generally disfavored.

Operational Efficiency in Caseflow

- Follow Sup.R. 5.23 and rule on motions within 120 days from the date of filing of the motion and decide cases submitted for determination or after court trial within 90 days.
  - Use a calendar reminder or "tickler" system to note that a ruling on the motion in the case is due on the specific date (120 days from filing).
- Use Civ.R. 53 (D) (3). This will help streamline the process for magistrates and reduce objections to decisions, requests for transcripts, and additional hearings on the case.
  - The magistrate should be aware of the time standards and issue a timely decision, factoring in the fourteen-day period permissible for the parties to file an objection and add time for the judge to consider an objection.

Discovery Plans and Discovery Disputes

- Use Civ.R. 26(F) which requires parties to confer in order to develop a proposed discovery plan no later than 21 days before the scheduling conference. This is in accordance with exceptions in Civ.R. 1(C).
- **Best Practice:**
  - If parties do not submit a Civ.R. 26(F) proposed discovery plan, email the parties directing them to submit one. Include an actual date for the discovery conference between counsel and unrepresented parties on the case scheduling order. [*See appendix for sample scheduling order.*]
  - Adopt the parties' proposed discovery plan, if reasonable. Enforce the deadlines that they choose. Compliance is expected since the parties selected the dates.
  - Include Civ.R. 26 discovery plan form on the court's website with a note that adherence to Civ.R. 26(F) will be strictly enforced. This will set the expectations for the parties and attorneys providing a tool to facilitate compliance. [*See appendix for sample discovery plan form.*]
  - Include language in the discovery plan and scheduling order stating that extensions of any discovery deadline require court approval. This may help reduce delays by letting parties know that agreements amongst the parties to extend discovery or other deadlines are not permitted and are subject to court approval. Do not routinely sign off on discovery extensions that will delay trial.
- Set the expectation with the parties that all discovery disputes will be resolved timely and promote an open line of communication policy for the parties to jointly communicate with the court to resolve any discovery-related issue so that the dates previously set forth stay on the docket. To reduce travel time, use phone or video conferences when possible.
- Discovery disputes cause delays. Some disputes may be resolved through information communication and without a motion. Consider adopting a local rule or individual standing order or include a requirement in the scheduling order that the parties convene an informal discovery conference with the court before filing any discovery motion, including not just motions to compel, but all discovery disputes (i.e., disputed protective orders, motions to quash, etc.). Discuss this issue specifically with counsel at the initial case management conference or scheduling conference to set a clear expectation. Explain that counsel are expected to have complied with Civ.R. 37(A)(1) before the informal conference by actually conferring with opposing counsel to attempt to resolve or narrow the issue.
- When discovery disputes arise, the type of motion and issue will determine the need for a hearing.
  - Not all discovery disputes will require a hearing.
  - For example, a motion to compel may be settled simply by getting all parties together on a phone call with the judicial officer to facilitate dialogue to work out the issue.
  - **Best Practice:** Once a discovery dispute issue is resolved after a phone call, for the record, the court should put on an entry indicating that the motion filed is moot because the issue has been resolved or the filing party may withdraw the motion.
- Motions to enforce compliance with subpoenas to third parties are contempt proceedings and require a hearing; consideration of sanctions under Civ. Rule 37 generally requires a hearing (see e.g. Civ. R. 37(A)(5)(a) and 37(C)(2)).
- Enforce discovery cut-off dates at a reasonable time before trial.
- Discovery disputes sometimes arise shortly before the trial date. If possible, do not reschedule the trial date. If a hearing is required, set expedited briefing schedules and inform the parties how the court will rule on pending motions, and memorialize the rulings in a docket entry. Issuing prompt rulings allows the parties to better understand the issues remaining for trial, and may help facilitate a settlement.

Meaningful Events

- Encourage the parties to have settlement discussions prior to the final pre-trial conference date.
- To promote firm and credible trial dates, include a strongly worded, well-reasoned continuance policy in the local rules.
  - **Best Practice:** The local rule should require the request for continuance to be in writing, include the specific reason for needing the continuance, and include a notation that the parties are aware of this request, and which party has requested it. This makes a transparent record as to who requested the continuance. In addition, adding a requirement for the parties to sign the request for continuance acknowledging that they agree promotes further accountability.
  - **Best Practice:** When a continuance is granted, include the reason for the continuance and the next scheduled court date in the court's entry.

Cases with Self-represented Parties

- Require the appearance of all parties at all proceedings, including discovery disputes, and go on the record so that the court's expectations are clearly communicated and all parties receive the same message.
- Explain that even though a self-represented party is appearing without an attorney, all the same rules apply to them as if they had an attorney.
- Suggest that self-represented parties consult with an attorney, even if not retaining an attorney, to get basic information about what to expect at the hearings and trials.
  - Limited scope representation can also be an option if the party would like to have counsel or representation on a specific legal issue, and not the entire case. Please click here for our online tool on limited scope representation.
- Set expectations for self-represented parties for procedure and use of technology.
- Include links to legal aid and other entities that can help self-represented parties, as well as forms and information packets on the court's website.
  - **Best Practice:** For additional information on best practices for cases involving self-represented parties, refer to the Supreme Court of Ohio's bench card: Ensuring The Right to Be Heard: Procedural Fairness for Self-Represented Litigants.

Punctual Decision Making

- Writing the decision is not going to be easier tomorrow. Set time aside shortly after hearing the evidence to write the decision while the recollection of evidence or testimony is still sharp.
- Follow Sup.R. 5.23 which requires a trial to be ruled upon within 90 days from the day the trial ended or after submission for a determination.
- Rule on motions within 120 days from the date the motion was filed, pursuant to Sup.R. 5.23.
- The case before the court is the most important case for each party that day.

Additional Resource:

Civil Caseflow Best Practices, an online course which is available on the Judicial College's webpage.

The information contained in this resource is a compilation of statutes, court rules, and court decisions in the State of Ohio, and it is intended as a summary of the law to assist judges, lawyers, and the general public. The information does not represent binding statements of law by the Supreme Court of Ohio.

Sample Civ.R. 4(E) Notice

IN THE COURT OF COMMON PLEAS

_____ COUNTY, OHIO

GENERAL DIVISION

_____,	:	Case No.: _____
(Plaintiff Full Name)	:	
	:	Judge _____
Plaintiff	:	
	:	Magistrate _____
v.	:	
	:	
_____,	:	
(Defendant Full Name)	:	NOTICE OF CASE MANAGEMENT CONFERENCE AND OHIO CIV.R. 4(E) NOTICE
Defendant		

Please take notice that a Case Management Conference is set to occur on _____ (date) at _____a.m./p.m.

The Court also hereby gives Plaintiff notice per Ohio Civ.R. 4(E) of its intent to dismiss the complaint without prejudice if service is not obtained or good cause is not shown as to why service is not made by the date of _____ (date of next case management conference).

IT IS SO ORDERED.

Date: _____ _____

JUDGE

Sample Case Schedule Order

IN THE COURT OF COMMON PLEAS

_____ COUNTY, OHIO

GENERAL DIVISION

_____,	:	Case No.: _____
(Plaintiff Full Name)	:	
	:	Judge _____
Plaintiff	:	
	:	Magistrate _____
v.	:	
	:	
_____,	:	
(Defendant Full Name)	:	CASE SCHEDULING ORDER
Defendant		

Pursuant to the Case Management Conference, the following schedule is established:

1. INITIAL DISCLOSURES: Will be exchanged on _____ (date).
2. PARTIES AND PLEADINGS:
    a. Any motion or stipulation to amend the pleadings or join new parties will be filed by _____ (date).
    b. Motions directed to the pleadings will be filed by_____ (date).
3. TRIAL: This case is scheduled for _____ (hearing type) on _____(date) at _____ (time).
4. PRETRIAL CONFERENCE: Is set for_____ (date).
    a. Counsel must be prepared to discuss settlement, trial procedures, proposed jury instructions, stipulations, expert witnesses, motions in limine, and use of depositions and exhibits at the Pretrial Conference. Clients are required to attend Pretrial Conference.
    b. Please see _____ (specify Courtroom Rules or Local Rules) for requirements regarding pretrial statements, proposed jury instructions, verdict forms, and interrogatories.
5. DISCOVERY CUTOFF DATE: All discovery shall be completed by _____ (date) except as otherwise provided by the Court.
6. PRETRIAL DISPOSITIVE MOTIONS DEADLINES: Dispositive motions shall be filed no later than _____ (date). Responses will be filed by_____(date). Dispositive motions should be fully briefed no later than _____(date). Any party wishing to file a motion after the above deadline must first receive permission from the Court.

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7. EXPERTS:

   a. Plaintiff's experts and written summaries of their opinions shall be disclosed by _____ (date). Expert reports and expert curricula vitae shall be produced no less than 30 days after identification.

   b. Defendant's experts and written summaries of their opinions shall be disclosed by _____ (date). Expert reports and expert curricula vitae shall be produced no less than 30 days after identification.

   c. Disclosure of lay witnesses are due by _____(date).

8. ALL MOTIONS: The moving parties are responsible to advise the Court when motions are ripe for decision. Motions will be set for a hearing only upon written request. All motions should have a proposed entry attached for consideration.

9. TRIAL MOTIONS: Filed no later than 28 days before Trial.

10. SETTLEMENT: Notify the Court as soon as possible of any settlement agreement. The Court adopts all dates proposed in the party's Civ.R. 26(F) report regarding settlement and settlement demand.

11. PROTECTIVE ORDER: _____ (yes or no).

12. MEDIATION REFERRAL: _____ (yes or no).

_____ _____
Counsel for Plaintiff (signature) Date

_____ _____
Counsel for Defendant (signature) Date

IT IS SO ORDERED.

Date: _____ _____

JUDGE

Sample Civ.R. 26 Discovery Plan

IN THE COURT OF COMMON PLEAS

_____ COUNTY, OHIO

GENERAL DIVISION

_____,	:	Case No. _____
(Plaintiff Full Name)	:	
	:	Judge _____
Plaintiff	:	
	:	Magistrate _____
v.	:	
	:	
_____,	:	
(Defendant Full Name)	:	RULE 26(F) CONFERENCE REPORT AND DISCOVERY PLAN
Defendant		

Parties shall comply with Civil Rule 26. Now come all parties to this case, by and through their respective counsel, and hereby jointly submit to the Court this Joint Discovery Plan, pursuant to Ohio Civ. R. 26(F)(3). The parties conducted their discovery conference on _____ (*date*).

1. RULE 26(B) DISCLOSURES

- □ The parties have exchanged initial disclosures required by Civ.R. 26(B)(3)(a).
- □ The parties will exchange such disclosures by _____ (*date*).
- □ The parties are exempt from disclosures under Civ.R. 26(B)(3)(b).

Note: Rule 26(B) disclosures are <u>not</u> to be filed with the Court.

2. MAGISTRATE CONSENT

The parties:

- □ unanimously consent to the jurisdiction of the Magistrate pursuant to Civ.R.53(C).
- □ do not unanimously consent to the jurisdiction of the Magistrate pursuant to Civ.R. 53(C).

3. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

- □ Yes, the parties agree motions related to venue or jurisdiction will be filed by _____ (*date*).
- □ No
- □ Not certain

Continued...

4. PARTIES AND PLEADINGS

a. The parties agree that any motion or stipulation to amend the pleadings or join new parties will be filed by _____ (*date*).

b. The parties agree that any motion directed to the pleadings will be filed by _____ (*date*).

5. PRETRIAL MOTIONS

a. Dispositive motions will be filed by _____ (*date*).

b. Responses will be filed by _____ (*date*).

c. Replies will be filed by _____ (*date*).

d. Do the parties anticipate requesting oral argument?

□ Yes

□ No

6. DISCOVERY ISSUES AND DATES

a. Parties need to conduct discovery on the issues of:

_____

_____

_____

_____

b. Recommended deadline for the disclosure and report(s) of plaintiff(s) expert(s) _____ (*date*).

c. Recommended deadline for the disclosure and report(s) of defendant(s) expert(s) _____ (*date*).

d. Recommended deadline for the disclosure of lay witnesses _____(*date*).

e. Anticipated discovery problems (if applicable):

_____

_____

_____

f. Claims of Privilege or Protection. The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, including whether the parties agree to a procedure to assert these claims after production or have any other agreements.

□ Yes

□ No

i. The case presents the following issues relating to claims of privilege or of protection as trial preparation materials:

_____

_____

_____

Continued...

ii. Have the parties agreed on a procedure to assert such claims AFTER production?

- □ Yes
- □ No
- □ Yes, and the parties ask that the Court include the following agreement in the scheduling order:

_____

_____

_____

7. DISCOVERY PROCEDURES

a. Recommended discovery date _____ (*date*).

b. Recommended limitations on discovery:

- □ Extension of number of interrogatories (currently 40) to _____ (number).
- □ None
- □ Other _____.

c. The parties anticipate production of Electronically Stored Information (ESI)?

- □ Yes
- □ No

d. What is the protocol for the production of ESI?

_____

_____

_____

e. Do the parties anticipate disagreements requiring court intervention over ESI claimed to not be reasonably accessible?

- □ Yes
- □ No

f. The case presents the following issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced:

_____

_____

_____

8. PROTECTIVE ORDER

- □ A protective order will likely be submitted to the Court on or before _____ (*date*).
- □ The parties currently do not anticipate the need for a protective order. If the parties determine that one is necessary, they will submit a joint proposed order to the Court.

Continued...

9. SETTLEMENT

a. The parties request that this matter be referred to the court's mediation service?

□ Yes

□ No

b. Plaintiff(s) will make an initial settlement demand by _____ (*date*).

c. Defendant(s) will respond by _____ (*date*).

A settlement demand has been made:

□ Yes

□ No

A response has been made:

□ Yes

□ No

10. OTHER MATTERS PERTINENT TO MANAGEMENT OF THIS LITIGATION

_____

_____

_____

SIGNATURES:

Attorney for Plaintiff

_____

Ohio Bar #_____

Attorney for _____

Attorney for Defendant

_____

Ohio Bar #_____

Attorney for _____

Date: _____