

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**



**A PRIMER ON THE LIFECYCLE OF A CIVIL CASE IN THE FEDERAL
DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE**

The clerk's office regularly receives basic practice and procedural questions from new attorneys or attorneys who do not practice frequently in the federal district. We are pleased to respond to those inquiries and certainly understand that it is an important service the clerk's office provides to the public and the bar. These basic questions, however, demonstrate the need to disseminate some general information on the practice in this district that less experienced attorneys can reference when they find themselves involved in a case in this district.

To that end, below is the text of a presentation made in the fall of 2007 at the Federal Practice Institute by Maryanne Michaelis, case manager for Judge Paul Barbadoro, outlining in general terms the lifecycle of a civil case in the District of New Hampshire. While her comments may vary slightly depending on the judge assigned to the case and the specifics of a particular case, it provides a solid primer on how a civil case typically progresses from the filing of a complaint to judgment in this district.

Welcome. My name is Maryanne Michaelis and I am a Case Manager/Courtroom Deputy for Judge Barbadoro.

I am here today to talk about the life of a civil case filed in federal court.

To begin with, if you have a login and password for ECF and you are comfortable paying the filing fee by credit card, you can file your complaint electronically by filing:

- *A Complaint;
- *A Civil Cover Sheet;
- *Summonses/Waiver of Service Forms; and

*If a non governmental, corporation/partnership you will need to file a disclosure statement.

Because you are using a credit card during e- filing, your account will be charged for the \$350 filing fee.

If you are not ECF registered or do not want to use your credit card on-line, then you may file your documents in paper format as well as on a CD or floppy disk. Because we are a mandatory electronic filing court, if you are not ECF registered you will be required to do so within 30 days.

With regard to electronic filings, you should note that all pleadings that you create on your word processor must be converted to PDF in a text searchable format; other documents may be scanned and need not be text searchable.

After the complaint is filed, Intake will issue the summonses in the same manner in which they were filed (for instance, if they were filed electronically they will be issued to you electronically, by e-mail, through our electronic case filing system), along with any forms that need to be served with the complaint.

Our Magistrate Judge receives a certain percentage of civil case assignments just as our District Judges do. If your case is assigned to the Magistrate Judge and you want to object to that assignment, you will need to file your objection within 20 days from the notice/service of the assignment. This objection **MUST** be filed in paper and it must be filed within the 20 days time frame; otherwise the parties are deemed to have waived their right to object. Do **NOT** e-file your objection - it will appear on the docket sheet for all to see, including the Magistrate Judge, and Federal Rule of Civil Procedure 73(b) requires any objection not be disclosed to a district or magistrate judge unless all parties consent to that disclosure. Upon receipt of an objection, the case will be reassigned to a district judge.

Now, after the complaint is served and a 12(b)(6) Motion or an Answer is filed within the 20 days after service (or 60 days if the defendant waived service), it is time to set the preliminary pretrial conference. A notice will be issued setting the date for the conference, indicating which judge will hold the conference and when the discovery plan is due. A sample discovery plan is located on the Frequently Used Forms section of the court's website and is available in the appendix section of the court's Local Rules .

Let's take a minute to review a few key provisions in the discovery plan; key in my opinion since I have to set the deadlines if the plan is approved. Prior to filing the discovery plan the parties are to talk and agree on the issues in the plan, if possible. The discovery plan should include:

- *A Statement of Agreed upon Facts;

- *The Type of Trial - Bench or Jury;

- *The Trial Track

 - Expedited (within 6 months of pretrial)

 - Standard (within 12 months of pretrial)

 - Complex (within 24 months of pretrial)

- *Motions Deadlines

 - Motion to Dismiss due 90 days after the pretrial; and

 - Motion for Summary Judgment due 120 before the trial.

- *Mediation - LR 53.1. You can choose private mediation, indicating when you hope to conduct the mediation or you can use the court's mediation program. If you decide on the court's program, you will need to file, within 48 hours of filing your discovery plan, a list of 5 possible mediators starting with your first choice. This list must be filed in paper and not electronically. If the judge approves your selection, you will get an order appointing the mediator. Information on the court's mediation program, including a listing of approved court mediators, can be found on the court's webpage.

- *Trial date – The trial weeks available for each judge is listed on the courts' website. Chief Judge McAuliffe and Judge Barbadoro typically have the first two-week trial period in a month and Judge DiClerico and Magistrate Judge Muirhead typically have the second two-week period each month. NB- After this presentation, Chief Judge McAuliffe's trial period for 2009 was switched to the second two-week period. The trial period for Judge Laplante, who was appointed after this presentation, is in the second two-week period in 2008 but switches to the first two-week period in 2009.

- *Length of trial – You should indicate the estimated duration of trial.

- *Waiver of Pretrial Conference - You should also indicate in the plan if the parties want the pretrial conference or prefer to have the plan approved as filed without the conference.

If the discovery plan is approved an endorsed order will issue cancelling the pretrial conference and a trial notice will go out. Anecdotally, about 90 % of the pretrial

conferences are cancelled. Okay, back to the trial notice. This notice will list the deadlines for:

- *Filing of pretrial material (30 days before trial);
- *Objections to pretrial materials (14 days after filing of pretrial material);
- *Date for final pretrial conference (10 days before trial); and
- *Trial date

Let's assume discovery proceeds in the normal course and the case doesn't settle; typically motions for summary judgment are filed. Summary Judgment motions are a little more involved than the average motion. The page limit for the memorandum of law is 25 pages instead of the 15 pages for non-dispositive motions and the time allowed for filing an objection is 30 days from service instead of the usual 10 days. Additionally, there are usually several attachments to summary judgment motions and the objections, thus complicating the electronic filing process. The court has assembled some great reference guides for you to use when filing these motions entitled "How to Properly Attach Exhibits to Pleadings in ECF" and "How to File Large Documents and Pleadings Having More Than 20 Exhibits," both of which are available on the CMECF section of the court's webpage. Also our LR 7.1(d) refers to requests for oral argument. Parties can file such a request indicating why they think it would be beneficial to the court and, if the judge agrees, a hearing will be set.

And after all of that, if the case still doesn't settle or isn't resolved by Summary Judgment, then it goes to trial. I stated before that your pretrial materials are due 30 days prior to the trial and that deadline is listed in the trial notice. According to LR 16.2(c), some of the things to be included in the pretrial materials are:

- *An agreed upon statement of the case;
- *A list of witnesses;
- *A list of exhibits;
- *A list of depositions to be read into the record;
- *An itemized statement of special damages, if any;
- *If it's a jury trial, the latest demand and offer;
- *Any claim for attorney fees;
- *Any request for a view and who will pay (LR 39.3); and
- *The estimated length of trial.

In addition to the pretrial statement, but filed as separate documents, the following are also due on the same date the pretrial statement is due:

- *Motions in limine;
- *Proposed voir dire;
- *Proposed jury instructions; and
- *Trial memoranda and requests for finding of facts.

Any objections to these documents are due 14 days after date of service; again this date is contained in the trial notice.

Now, after you have filed your pretrial materials the next event is the final pretrial conference. Refer to LR 16.3(c) for the issues that may be discussed at the final pretrial conference. The plaintiff and defendant have to attend the final pretrial conference as well as anyone else with settlement authority. A few of the typical issues discussed at the final pretrial are: evidentiary issues; order of witnesses; availability of witness problems; length of trial; and settlement.

It is now 7 days before the trial, so you will have to file your exhibits. Prior to filing the exhibits with the court, counsel should review each other's exhibits and agree to the extent possible. The original exhibits are filed in paper along with the exhibit list with the court. LR 83.13 sets forth the procedure for properly marking and filing your exhibits.

If one of the parties has requested a jury trial, the jury questionnaires will be available for review 5 days prior to the trial if it's a new panel. You cannot copy the questionnaires or take them from the clerk's office but you can review them. We will provide the parties with a list of the potential jurors that you can take with you back to your office.

Jury selection usually starts around 9:30 a.m. In a civil case we typically sit 14 potential qualified jurors with each side having 3 peremptory challenges. Ultimately we usually sit a final panel of 8 jurors. All 8 jurors will deliberate. For longer trials the judge may decide to have more jurors sit on the case and will usually increase the number of peremptories accordingly. That's another issue that you would want to discuss at the final pretrial conference.

If you are dissatisfied with the order disposing of the case or a jury verdict and you intend to appeal, the notice of appeal must be filed within 30 days from the date the judgment is entered on the docket. The fee for the appeal is \$455. Again, if you are using a credit card then you can electronically file your appeal; otherwise it will have to be filed conventionally along with your check.

That, in a nutshell, outlines how a civil case is handled in this district.

You might have noticed that I referred to the Local Rules and our Administrative Procedures for ECF several times during this presentation. Our Local Rules and Administrative Procedures for ECF can be downloaded from our website and the Local Rules can be purchased in hard copy in the clerk's office. You will want to review those rules closely whenever you find yourself involved in a civil case in our court.

Thank you for your attention and good luck litigating your next civil case in our court.