

THE HONORABLE PHILLIP C. CARRUTHERS
FOURTH JUDICIAL DISTRICT
CIVIL PRACTICE POINTERS & PREFERENCES

I. Contact with Chambers

- Parties and their attorneys may contact the chambers by telephone, email or letter on non-substantive matters, such as scheduling, but the opposing party and/or counsel should be included on correspondence and emails. Judge Carruthers will not consider correspondence from a party on a substantive matter related to the case, in order to avoid problems with ex parte communications and in the interest of fairness to the other party or parties. Any request for relief or any other substantive request should be by stipulation or by motion in accordance with the Minnesota Rules of Civil Procedure and the Minnesota General Rules of Practice—District Courts.
- Judge Carruthers will conduct informal discussions with attorneys by telephone if all attorneys are present, but Judge Carruthers does not conduct motions by telephone except in unusual circumstances, and then prefers to do them in the courtroom so the matter can be held on the record.

II. Motion Practice

- There are no restrictions on when or under what circumstances certain types of motions may be filed (e.g., motions to strike, motions for sanctions).
- Judge Carruthers expects the attorneys to meet and confer before a hearing on a contested motion and notify the court in advance if the dispute is resolved or partially resolved.
- Judge Carruthers currently sits in Family Court. Rule 310 of the General Rules of Practice for the District Courts requires that an alternative dispute resolution process be used in all family court matters except where a party is a victim of domestic abuse by the other party, or in contempt actions or public agency cases. As to post-decree matters, the Judgment and Decree or Final Order frequently contains a mediation requirement.
- Counsel are required to "meet and confer" before bringing discovery disputes to a hearing. Also, if there is a mediation requirement in the contract or Judgment and Decree, Judge Carruthers will require mediation beforehand.
- Telephone calls from attorneys to rule on discovery disputes that occur during the course of a deposition may be accepted, if Judge Carruthers is available and if all the attorneys participate in the telephone conference.

- Motion hearings are scheduled according to Judge Carruthers and the attorneys' availability. In family court matters, mediation is expected to be utilized and the parties shall try to resolve the matter before the hearing.
- Motions are heard in any day/time of the week that there is availability.
- Judge Carruthers will generally set up a hearing upon request. In family court, requests for temporary relief need Judge Carruthers' permission before they are scheduled.
- Please make sure the time requirements are met for serving the other party in scheduling cross motions for summary judgment.
- Filing documents under seal should be done according to the Rules of Civil Procedure. If there are cases where parties want to seal documents to be filed that are beyond those provided for in the Rules, or if a party or parties want to close a hearing in situations other than those provided in the Rules or statutes, then the party or parties need to file a motion pursuant to *Minneapolis Star and Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). As to protective orders, please make sure the proposed protective order does not restrict the court and its staff from reviewing or citing documents filed with the court and that it does not restrict the ability of witnesses and attorneys to discuss the document and offer it in a hearing or trial.
- Please check with the other party before requesting a continuance or change in the scheduling order. Judge Carruthers does not automatically approve changes in scheduling orders, as changes may affect other cases or the trial calendar. Changes to trial dates are rarely granted if not done right away upon receiving a trial date.
- As it relates to stipulations or proposed orders, Judge Carruthers does read them and does not automatically sign them, even if they are agreed-upon by the parties. If Judge Carruthers has a question or concern, he will let the attorneys or parties know and a telephone conference will be scheduled to confer about it.

III. Written Submissions

- Motions and requests for word/page enlargements are disfavored.
- Variations and/or extensions from the briefing schedule are generally permissible if agreed upon by the attorneys.
- Written submissions do not need to be filed during business hours on the due date with eFiling.
- Courtesy hard copies of motions and supporting documents are not required but if you do send them to chambers please provide two copies: one for the law clerk and one for me.

- Judge Carruthers requires attorneys to submit courtesy copies of case authority along with their written submissions for unpublished opinions.
- For preliminary injunction/temporary restraining order motions, the papers need to be filed before scheduling a hearing. In addition, the moving party is expected to serve the other party and at least give the other party notice, unless there are unusual circumstances, such as a risk of the other party fleeing or hiding assets

IV. In-Court Proceedings

- Arrival by attorneys before a hearing at least fifteen minutes early is best so the attorneys and parties can confer before the hearing.
- Parties may use the podium if one is available. The Family Court courtrooms generally do not have podiums. With most of the hearings now being taped through Court Smart, generally Judge Carruthers does not want counsel to stand at counsel table because then the attorney's voice is not picked up as well. Parties and attorneys, of course, are expected to be polite to one another, not raise their voices and not interrupt. Gum chewing by a party or witness is not allowed because it interferes with a party being clearly heard.
- There is no preference for which table/side of the courtroom each party sits at.
- For arguing motions, time allocated depends on how much time is had for the motion, which is usually 10-15 minutes total per side. Allow time for questions (Judge Carruthers likes to ask questions to help him understand and narrow the issues).
- Often bifurcation of oral argument (i.e. where different attorneys address different issues) works best but it depends on the case and how much time is had.
- Judge Carruthers carefully reads the briefs before the oral argument. Judge Carruthers does not use oral argument to listen to attorneys summarize what is in the briefs.
- If appropriate, live witness testimony is allowed during hearings on preliminary injunction/temporary restraining order motions.
- If an attorney intends to present new case authority at oral argument, i.e. cases not cited in the papers, a copy for the court and opposing counsel should be provided.
- Attorney use of technology in the courtroom during motion hearings is permissible, time permitting.
- Judge Carruthers usually asks questions of the attorneys in a motion hearing, to help him understand and refine the issues.

V. Pretrial Procedures

- Judge Carruthers issues a pretrial and trial order with detailed deadlines and preferences, including for a joint exhibit book for trial.
- In conducting *voir dire*, Judge Carruthers begins with extensive questions. Attorneys may question potential jurors to receive information from them. Attorneys should not give information about the facts or the law, or talk about themselves.
- Witness lists and proposed jury instruction should be submitted prior to trial.
- There is no limit on number of in limine motions. With a jury trial, generally they are argued a week or two before the scheduled trial date, if possible. In a court trial, if there are major issues, Judge Carruthers may ask that they be discussed a week or two before trial.
- The pretrial conference is set about two to three months before trial. The purpose of the pretrial is to resolve the case or at least simplify the issues for trial. Issues to be tried, names of witnesses and length of the trial will also be discussed.
- Schedules and procedures at pre-trial settlement discussions: If the parties have attorneys, Judge Carruthers usually meets with them in chambers first. Judge Carruthers expects the attorneys and parties to stay all day if necessary to try to resolve the case or resolve as many issues as possible and also plan for the trial. Judge Carruthers considers the pretrial to be very important and expects that the attorneys who will try the case and the parties themselves to be personally present.
- Judge Carruthers normally has pretrials in any case set for trial, therefore requesting a settlement conference is unnecessary.

VI. Trial

- A typical trial day goes from 8:30 or 9:00 a.m. to 4:30 or 5 p.m., with a lunch break and a morning and afternoon break.
- There are no formal requirements about how much notice counsel must give the opposing side about which witnesses will be testifying on a particular trial day but the attorneys should discuss this among themselves and with the court, to avoid surprises.
- Judge Carruthers requests a one, two or three word statement of the objection (“hearsay,” “lack of foundation”), without arguing it. You do not need to stand. Usually Judge Carruthers will not need you to approach but may ask you to do so.
- When examining witnesses or addressing the jury, you may use a podium but it is not required.

- Time limits on opening statements or closing arguments are not usually imposed, but use care not go on too long or cut into the jury's break or lunch time.
- Attorneys must ask the Court's permission before approaching a witness.
- Witnesses and opposing counsel must be addressed formally during trial.
- Trial exhibits should be pre-marked and there should be a joint exhibit book. The attorneys or parties should provide hard copies of exhibits or a disc with electronic evidence, so that exhibits can be properly preserved if there is an appeal.
- There are no specific requirements for how video or audio recordings may be presented at trial, but please make sure the audiovisual system works.
- Attorneys may use actors to read deposition transcripts during trial if necessary.
- Technology in the courtroom during trial can be helpful for the jury but please make sure the technology works and have a back-up plan if it doesn't.
- Attorneys must make their own arrangements if they want daily transcripts during trial.
- If attorneys wish to contact jurors after the conclusion of trial, they may do so.