MAGISTRATE JUDGE GABRIEL A. FUENTES
219 South Dearborn Street
Chicago, IL 60604

Courtroom 2266 **Telephone: (312) 435-7570**
Chambers 2270
Web Site: http://www.ilnd.uscourts.gov

Courtroom Deputy – Lauren Knight
(312) 818-6514
lauren_knight@ilnd.uscourts.gov

STANDING ORDER FOR CIVIL CASES BEFORE MAGISTRATE JUDGE FUENTES

Please review this order in its entirety at the outset of a district court referral of your case to U.S. Magistrate Judge Fuentes for discovery supervision or for other civil litigation case management, or at the outset of your consent to proceed before the magistrate judge. A separate standing order is on the Court's website for settlement conference referrals. This Standing Order will be revised continually, so counsel may want to re-review it from time to time.

Introduction

Civil matters come before U.S. Magistrate Judge Fuentes in one of two ways. First, the parties may consent to have Judge Fuentes, as the assigned magistrate judge, preside over all aspects of the case. 28 U.S.C. § 636(c). Second, in matters not before Judge Fuentes on consent, the assigned U.S. district judge may refer a matter to Judge Fuentes, also as the assigned magistrate judge, for a specific purpose. 28 U.S.C. § 636(b). Usually, the scope of these referrals is for supervision of discovery and/or for settlement including conducting a settlement conference. This standing order is meant to give the parties guidance in civil matters before Judge Fuentes. It sets forth the practices the Court expects itself and the parties will follow in these cases, but the practices may vary to suit the peculiarities of any given case. Judge Fuentes is open to a continuing discussion in any case about the best, most efficient way to proceed. In the absence of such a discussion, this standing order should be treated as a set of default rules. This order applies to all matters pending before Judge Fuentes on consent or referral. Litigants should review the federal rules and the procedures of their assigned district judge(s), and in the case of any conflict, the federal rules generally govern. The Court's goal in this order is not to create a separate overlay of additional rules calling for compliance on pain of being accused of "violating

the Court's standing order." The Court will not generally entertain such arguments, as the Standing Order is here to help litigants, and not to burden them or to add more grounds for satellite litigation. The Court's goal for each case is to promote the just, speedy and inexpensive determination of the matter. Fed. R. Civ. P. 1. In pursuit of that goal, the Court will exercise the broad discretion afforded it under the applicable rules and the common law. *See Jones v. City of Elkhart, Ind.*, 737 F.3d 1107, 1115 (7th Cir. 2013).

Motion Practice Guidelines

- On April 2, 2024, the Court revised its standing order to provide greater clarity about the Court's practices for setting motion hearings after the easing of pandemic conditions.

    - The Court has continued its practice, adopted during the COVID-19 pandemic, of not having parties notice their discovery motions for presentation or for motion hearing at the time of filing of the motion.

    - The Court has not set aside standing dates and times for the hearing of discovery motions because the Court's practice is to determine on its own whether a hearing is even necessary. From time to time, the Court may schedule multiple motions for a motion call on a given weekday. The Court's current preference is for in-person hearings, which offer more opportunities for the Court and counsel to pick up on non-verbal cues and to know when a party or counsel wants to be heard further or wants an attorney-client communication out of earshot of the Court. The Court will accommodate requests, made reasonably in advance of a scheduled hearing, for telephonic participation based on substantial expense, medical necessity, or other hardship, although out-of-town counsel making such requests can expect the Court to require in-person attendance by local counsel.

    - For agreed or unopposed motions, the movant should file the motion and indicate in the title that it is agreed or unopposed. Most of these motions will be granted promptly without a hearing. If the Court has a question, the Court will schedule a hearing at a date and time when the Court is available.

    - For contested motions, after required conferral, the movant should file the motion without noticing it for a hearing date. The Court will review the motion promptly, and one of the following scenarios will occur:

        - If the contested motion does not comply strictly with Rule 37.2 (all counsel are advised to review that rule carefully), the motion may be denied without prejudice.

        - If the Court determines that the contested motion does not state grounds for relief, or that the requested relief is somehow unwarranted under the circumstances of the case at that time and in the Court's substantial discretion, *see Jones v. City of Elkhart, Ind.*, 737 F.3d 1107, 1115 (7th Cir.

2013), the Court may deny the motion promptly without a hearing and without any further briefing. The Court's goal is to manage discovery to promote the just, speedy and inexpensive determination of the matter. *See* Fed. R. Civ. P. 1.

- If the contested motion states grounds for relief and the Court deems the disputed issue straightforward, the Court may order a prompt hearing with oral argument and no further briefing, so that the parties may present their positions more efficiently and inexpensively simply by appearing for a brief in-person or telephonic motion hearing. If the motion cannot be heard reasonably promptly, the Court may order prompt additional briefing and decide the motion on the papers. If during the hearing the Court is persuaded that additional briefing is necessary before a decision, the Court may order additional briefing. With respect to these less-complex motions, the non-movant should consider whether to seek an agreed resolution that avoids a hearing and a judicial resolution; in those cases, counsel need only notify the courtroom deputy, before the hearing, that the motion has been resolved and is either withdrawn or should be denied as moot.

- If the Court's review of the motion indicates that it raises more complex issues that will not lend themselves to a fair airing at a motion hearing without additional briefing, the Court may order additional briefing and may set the motion for a hearing after briefing is completed.

- If counsel communicates to the courtroom deputy a scheduling conflict with a date the Court selects for a hearing, the Court will do its best to accommodate the parties by rescheduling the hearing. Counsel should not hesitate to raise scheduling issues arising from health or family commitments, as the Court views those issues as important.

SO ORDERED.

ENTER:

GABRIEL A. FUENTES
United States Magistrate Judge

Dated: April 2, 2024

APPENDIX

The following appendix to the Court's Standing Order for Civil Cases Before Magistrate Judge Fuentes is not a part of the Standing Order and is included here to provide attorneys with helpful background information and with the Court's general requests and preferences.

Initial Status Reports and Hearings

If a recent status report is on file, the Court will not require an additional report and will rely on the previously filed report. Where the Court orders an initial joint status report upon referral, the report is requested to contain the below information, included here as guidance. Where the Court orders a joint status report to address identified issues during the Court's ongoing management of a case, the parties may limit their report to those identified issues.

1. Description of Claims and Relief Sought.

a. Describe the claims and defenses raised by the pleadings, including the basis for federal jurisdiction. Include enough detail to color in the nature of the key factual allegation(s) and dispute(s). In other words, a bare statement to the effect of "this is a Title VII employment discrimination lawsuit in which the plaintiff alleges a hostile work environment and a retaliatory discharge" is not very helpful to the Court.

b. State the relief sought, including an itemization of damages.

2. Referral Cases.

Describe the matter(s) referred to the magistrate judge.

3. Discovery Schedule.

Identify any existing discovery cut-off dates. If no discovery schedule has yet been set, and the case has been referred for discovery supervision, the parties should confer and submit the following information:

a. Initial Disclosures

i. The due date for Fed. R. Civ. P. 26(a)(1) disclosures.

ii. A date to issue written discovery requests.

iii. (The Court's Mandatory Initial Discovery Pilot Program expired on June 1, 2020. The program is no longer in effect as to cases filed after June 1, 2020. As to cases filed

before June 1, 2020, if an order has been entered requiring MIDP disclosures, parties should abide by that order or seek relief as appropriate by motion.)

b. A fact discovery completion date. For claims involving medical conditions, fact discovery ordinarily includes treating physician depositions.

c. If there will be expert discovery, proposed dates for Rule 26(a)(2) expert disclosure reports and depositions, with an expert discovery completion date.

4. Consideration of Issues Concerning ESI.

State whether the parties anticipate or are engaged in discovery of ESI in this case, and, if so, what agreements have been reached regarding ESI and whether there are any areas of disagreements.

Please note the Court has adopted the Principles of the Seventh Circuit Electronic Discovery Pilot Program and the parties should be familiar with them. In a patent case, the Court will apply the Local Patent Rules for Electronically Stored Information. In addition, all counsel should have a thorough understanding of their ESI discovery obligations under Federal Rule of Civil Procedure 26 and their related ethical obligations including but not limited to the requirements of Rules of Professional Conduct 1.1, 3.3, 3.4, and 8.4. *See generally DR Distributors, LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 923-49 (N.D. Ill. 2021) (containing detailed outline of the obligations of parties and counsel with respect to ESI discovery).

5. Settlement.

a. Describe the status of settlement discussions.

b. State whether all parties wish to participate in a settlement conference or believe such a conference would be productive.

6. Magistrate Judge Consent.

State whether all parties will consent to have Judge Fuentes conduct all further proceedings in this case, including trial and entry of final judgment, in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73.

7. Pending Motions.

Indicate the status of any pending motions.

8. Trial.

In consent cases, state whether a jury trial is requested, the date when the parties expect to be ready for trial, and the probable length of trial.

9. Other Matters.

State any other matters that should be brought to the Court's attention for scheduling purposes.

10. Standards for Professional Conduct.

The Court calls all counsel's attention to the Seventh Circuit's "Standards for Professional Conduct," available on the Seventh Circuit's website at http://www.ca7.uscourts.gov/rules-procedures/rules/rules.htm#standards. At the outset of each case assigned to Judge Fuentes, counsel for each of the parties should review the standards and make a good-faith effort to abide by them during the litigation of the case and during any settlement discussions. Counsel should pay particular attention to the statement in the preamble of the Standards, stating that "[a] lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms," and to the first of the listed "Lawyers' Duties to Other Counsel," stating that although the lawyers' role is to advance the legitimate interests of their clients, "[i]n our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications." Lawyers practicing in Illinois are reminded that their conduct is subject to the Illinois Rules of Professional Conduct, including but not limited to Rules 3.1, 3.2, 3.3, 3.4, 3.5, and 8.4. In particular, Rule 3.5(d) broadly prohibits conduct that is "intended to disrupt a tribunal." As the commentary to Rule 3.5 states, "[a]n advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics," and "[t]he duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition."

Depositions

Resolving disputes

The Court generally prefers that parties resolve their deposition disputes consistent with Local Rule 37.2 and then present the dispute to the Court by motion if the dispute cannot be resolved. On the other hand, the Court recognizes that in some circumstances, a same-day resolution to a dispute during a deposition can save the litigants time and fees, in that a deposition might be completed on that day instead of being reconvened after a judicial ruling. The costs of reconvening the deposition can be substantial, particularly where the witness or the attorneys must travel. If, in the judgment of at least one of the parties at the deposition, the Court's same-day intervention

would further the just, speedy and inexpensive determination of the matter, and if the dispute reasonably can be presented briefly and orally, such party is welcome to telephone chambers to request a same-day hearing. Again, the Court expects that this will be the exception and not the rule, but the Court will make every attempt to make itself available on that same day. The Court cannot promise that it will be available. If a hearing is not conducted at the time of the call or later in the day, the parties should continue the deposition and reserve the disputed issue for determination. *See* Fed. R. Civ. P. 30(c)(2). All same-day hearings shall be conducted on the record as transcribed by the retained private court reporter, with the hearing transcript prepared and filed on an expedited basis to ensure public access. In rare cases, the Court may supervise a deposition remotely.

Technology and cost management

Even before the COVID-19 public health emergency, many litigants were gravitating toward video depositions in the interest of efficiency and cost savings. They are encouraged to continue doing so. The Court directs the parties to Judge Gilbert's well-reasoned approach to video depositions as set forth in *In re Broiler Chicken Antitrust Litig.*, No. 16 C 8637, 2020 WL 3469166, at *4-5, 11-12 (N.D. Ill. June 25, 2020), and to Judge Gilbert's protocol for such depositions at Docket Entry 3729 of that matter. The Court views the *Broiler Chicken* protocol as the starting point for a discussion of an applicable protocol, subject to proposed, tailored revisions in individual cases.

Rule 30(b)(6) Depositions

Rule 30(b)(6) deposition notices generate much motion practice that arises from some fundamental misunderstandings of the rule. Rule 30(b)(6) permits a party to bind another party, through the testimony of one or more representative deponents, to testimony given on the topics contained in the notice of deposition. *See* Fed. R. Civ. P. 30(b)(6). The rule is intended to streamline the discovery process and to do away with the practice of "bandying," in which business entities would present individual witnesses who would disclaim knowledge of particular issues and put the other party to a costly and burdensome task of determining which individual witnesses might be competent to testify to a variety of relevant issues. *Fed. Deposit Ins. Corp. v. Giancola*, 13 C 3230, 2015 WL 5559804, at *2 (N.D. Ill. Sept. 18, 2015), citing *SmithKline Beecham Corp. v. Apotex Corp.*, No 98 C 3952, 2000 WL 116082, at *8 (N.D. Ill. Jan. 24, 2000).

Here are some pointers on the rule:

- The rule does not require the noticed party to produce a witness "most knowledgeable" about the topics. The rule provides that the noticed party must designate representative deponents who "must testify about information known or reasonably available to the organization." Fed. R. Civ. P. 30(b)(6).

- By its terms, the rule recognizes that the task of educating and presenting a representative deponent to testify on the topics in the notice can be burdensome, and thus the rule requires the "matters for examination" to be "describe[d] with reasonable particularity." *Id.* Courts have limited or narrowed Rule 30(b)(6) topics that were found not to describe the matters for examination with reasonable particularity. *See Ball Corp. v. Air Tech of Mich., Inc.*,

329 F.R.D. 599, 604-05 (N.D. Ind. 2019). This Court also frowns upon 30(b)(6) notices that describe the topics with the vague term "including but not limited to." *See Winfield v. City of New York*, No. 15-cv-05236 (LTS)(KHP), 2018 WL 840085, at *5 (S.D.N.Y. Feb. 12, 2018) ("The Court must evaluate 'reasonable particularity' [of Rule 30(b)(6) topics] based on the nature of the topics listed in the deposition. 'Reasonable particularity' requires the topics listed to be specific as to subject area and to have discernible boundaries …. This means that the topics should not be listed as 'including but not limited to;' rather, they must be explicitly stated.").

- The 2015 amendments to Rule 26(b)(1) provide that the scope of permissible discovery is not only relevance to claims or defenses in the action but also proportionality to the needs of the case. Fed. R. Civ. P. 26(b)(1). This Court generally agrees with courts that, after the 2015 amendments, have applied the proportionality limitation on discovery under Rule 26(b)(1) to overbroad Rule 30(b)(6) notices. *See Schyvincht v. Menard, Inc.*, 18 C 50286, 2019 WL 3002961, at *2 (N.D. Ill. July 10, 2019); *Ball*, 329 F.R.D. at 602. But proportionality should be considered on an individualized basis with attention to the needs of the particular case. The amended rule dictates that judicial consideration of the needs of a particular case includes consideration of "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). As former U.S. Magistrate Judge Schenkier of this district has stated, "the factual nuances of each case are what guide the courts." *Giancola*, 2015 WL 5559804, at *3, citing cases.

- Rule 30(b)(6) topics calling for representative deponents to address legal contentions or conclusions are disfavored. *See Schyvincht,* 2019 WL 3002961, at *3 (holding that legal conclusions, legal opinions, and legal positions in the case are outside the scope of permissible Rule 30(b)(6) discovery). Some courts have exercised their discretion to determine that written interrogatories (directed at a party's contentions or bases for those contentions) are a more efficient means of obtaining discovery than a 30(b)(6) deposition, while others have viewed the circumstances as making the 30(b)(6) deposition the better vehicle. *Compare Clauss Constr. v. UChicago Argonne LLC*, 13 C 5479, 2015 WL 191138, at *5 (N.D. Ill. Jan. 1, 2015) (allowing 30(b)(6) testimony where court determined that written interrogatories would not be efficient) *with Schyvincht*, 2019 WL 3002961, at *3 (concluding that inquiry into the legal bases for certain contentions is better suited to contention interrogatories than to Rule 30(b)(6) testimony). The outcome of such an analysis inevitably will depend on the factual nuances of each case.

Counsel's conduct during depositions

"Litigation is not a contest to see how much trouble you can cause your opponents. Those who treat it as such do so at their peril." *Hal Commodity Cycles Mgmt. Co. v. Kirsh*, 825 F.2d 1136, 1139 (7th Cir. 1987). Depositions must be conducted in a manner that avoids wasting time and protects witnesses from harassment and undue embarrassment. Fed. R. Evid. 611(a); Fed. R. Civ. P. 30(d)(3). Borrowing heavily from U.S. District Judge Steven C. Seeger's standing order on

depositions (available on the Court's website at https://www.ilnd.uscourts.gov/judge-info.aspx?+q7AroZFqQJxIXbDV5X8oQ==), the Court sets forth the following for informational purposes:

- Counsel should behave professionally at all times during depositions. Depositions should be civil, and attorneys should be respectful to witnesses, to the court reporter, and to other attorneys. Counsel should conduct themselves as if the Court were present, and as if the jury were watching. *See* Fed. R. Civ. P. 30(c)(1).

- Objections should be stated concisely and in a nonargumentative and nonsuggestive manner. Fed. R. Civ. P. 30(c)(2); *LM Ins. Corp. v. ACEO, Inc.*, 275 F.R.D. 490, 491 (N.D. Ill. 2011). Interruptions, by counsel defending a deposition, with words such as "if you know," or "if you remember," are considered by some to be improper attempts to coach witnesses or influence their testimony. The same goes for "speaking objections" that go beyond a short and nonsuggestive statement of the basis for the objection. Objections to relevance during a deposition generally are not waived if not made at the deposition. Fed. R. Civ. P. 32(d)(3)(A).

- There has been some confusion around when counsel might permissibly confer with the deponent during the course of questioning. In some jurisdictions, a "break" or a conference is permitted so long as it occurs when no question is pending. But in federal deposition practice, courts have construed Rule 30 to bar interruptions that reasonably may be read as an attempt to influence the witness's testimony as to a particular topic or line of questions. *ACEO*, 275 F.R.D. at 491-92. Instead of interrupting the deposition, counsel may make an appropriate, nonspeaking objection and should consider how the testimony might be supplemented during counsel's further examination later in the deposition. Counsel may also seek a protective order under appropriate circumstances as discussed below.

- Such interruptions are sometimes occasioned by examining counsel's unfair treatment of the witness. For example, the examiner may use a set of documents to induce a careless witness to acknowledge or admit facts that are stated in documents but are outside the witness's personal knowledge. Or the examiner may attempt to mislead the witness with false information. The proper objections here include lack of foundation, assumption of facts not in evidence, misstatement of facts, or even harassment of the witness. But, usually, nothing further need be said or done by defending counsel by way of interruption. Defending counsel may also maintain a standing objection to this manner of examination and may call it to the Court's attention at an appropriate time, or through a Rule 30(d)(3) motion.

- Counsel need not, and should not, state *every* ground for objection by articulating a string of grounds that turns the objection into an improper speaking objection. In those instances, counsel may pick a ground. Objections to "form" may not be clear enough to preserve anything, and counsel should take care not to use this vague objection incessantly to interrupt the flow of an examination.

- "Asked and answered" is not an appropriate objection during depositions, absent truly abusive conduct in extraordinary cases. It coaches the witness to say nothing more than "I incorporate what I said earlier," or "I already answered." All too often, when an attorney makes an "asked and answered" objection during a deposition, the witness has not actually answered the question, and the witness shuts down instead of answering the question or appropriate follow-up questions. The remedy when examining counsel crosses the line from appropriate follow-up questions into harassment and undue annoyance of the witness is to seek a protective order. *See* Fed. R. Civ. P. 26(c); Fed. R. Evid. 611.

- An objection that "the document speaks for itself" also is disfavored. The Court has yet to hear a document actually speak.

- Counsel generally should not instruct a witness not to answer a question except to preserve a privilege, to enforce a limitation necessary to preserve a privilege, or to present a motion under Rule 30(d)(3). Fed. R. Civ. P. 30(c)(2). In the third of those circumstances, the Court of Appeals has held that even when counsel concludes that his or her witness has been asked the most outrageous of deposition questions, counsel may not simply instruct the witness not to answer without bringing a motion for protective order under Rule 26(c). *Redwood v. Dobson*, 476 F.3d 462, 468 (7th Cir. 2007). The disputed matter may be reserved for the end of the deposition so that the deposition may otherwise continue, and counsel then may resort to the Court for intervention, but an instruction not to answer does not comply with the third circumstance stated in Rule 30(c)(2) if it not coupled with a motion for a protective order. Our Court of Appeals has spoken harshly of counsel who have not abided by this rule. *See id.* at 468-69.

- Witnesses who turn their testimony into a narrative filibuster, and counsel who encourage or permit this conduct by the witness, do so at the peril of being deemed to have obstructed the deposition, and in that event, the Court may, in its discretion, allow additional deposition time. *See Flores v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, No. 14 C 7905, 2015 WL 7293510, at *2 (N.D. Ill. Nov. 19, 2015).

- On occasion, counsel in a deposition may resort to conduct that is downright insulting, or that conveys some form of insult, including the making of faces, the rolling of the eyes, laughter, editorial comments, or other conduct that is not only unbecoming, but is flat-out improper. *See Redwood*, 476 F.3d at 491 (citing "the insult-riddled performance . . . that incensed the Supreme Court of Delaware" in *Paramount Communications Inc. v. QVC Network Inc.,* 736 A.2d 34, 52-57 (De. 1994)). Counsel must not engage in the sort of conduct of the sort exhibited in the Addendum to the *Paramount Communications* opinion.

Discovery Motions

Generally speaking, the parties are directed to the federal rules and the local rules with respect to the filing of discovery motions. Magistrate Judge Fuentes has expressed that he believes relevance under Rule 26(b)(1) is broad. *See Coleman v. Illinois*, No. 19 C 3789, 2020 WL 5752149, at *3-4 (N.D. Ill. Sept. 25, 2020). He also has expressed that Rule 26(b)(1)'s proportionality concept

may also be broad, so that courts should consider the "burden" associated with a particular discovery issue in contexts beyond the mere cost in effort and expense. *See Johnson v. Soo Line R.R. Co.,* No. 17 C 7828, 2019 WL 4037963 at *2-3 (N.D. Ill. Aug. 27, 2019) (applying proportionality concept to assess burdens that compelled production of federal income tax returns in civil discovery could place on system of voluntary tax compliance); *Washtenaw County Employees' Retirement Sys. v. Walgreen Co., et al.*, No. 15 C 3187, 2019 WL 6108220, at *5-6 (N.D. Ill. Nov. 15, 2019) (applying proportionality concept to assess burden that compelled production of settlement-related materials could place on the social policies underlying Federal Rule of Evidence 408).

Local Rule 37.2 Compliance

Local Rule 37.2 provides that the Court shall not hear a discovery dispute unless the movant certifies that it has complied with the rule. The plain language of Local Rule 37.2 requires more than an exchange of emails. *See BankDirect Capital Fin., LLC v. Capital Premium Fin., Inc*., 343 F. Supp. 3d 742, 743-44 (N.D. Ill. 2018) (collecting cases). The Court does not consider an unanswered email, where no face-to-face or telephonic conference was requested, to be in compliance with the local rule. Nor does a motion comply with the rule if it does not identify the time, manner and persons who participated in the Local Rule 37.2 conference. Nonetheless, in some cases, the Court may exercise its discretion in favor of deciding a discovery dispute where requiring Local Rule 37.2 compliance may be futile, or where doing so may be inefficient. *See In re Fluidmaster, Inc., Water Connector Components Prod. Liab. Litig*., No. 14 C 5696, 2018 WL 505089, at *3 (N.D. Ill. Jan. 22, 2018) (internal citations and quotations omitted); *Munive v. Town of Cicero*, No. 12 C 5481, 2016 WL 8673072, at *1 (N.D. Ill. Oct. 14, 2016), report and recommendation adopted *sub nom. Colon v. Town of Cicero*, No. 12 C 5481, 2017 WL 164377 (N.D. Ill. Jan. 17, 2017). But filing a motion not in compliance with Local Rule 37.2 risks having the motion denied without prejudice.

Summary Judgment Motions

Parties should be mindful of the legal standards under which federal summary judgment motions are decided per Rule 56. No party should undertake the expense and effort involved in filing a summary judgment, and in complying with the procedural requirements of these motions, without considering carefully whether discovery in the case supports a colorable argument that there is no genuine issue of material fact. For example, in any case turning on the resolution of factual disputes over the statements or conduct of the parties or others, courts will have difficulty granting summary judgment, and a Rule 56 motion may not be a productive use of the Court's time or the parties' resources. Moreover, some attorneys believe that even a losing summary judgment motion may be productive if it "educates the judge" for purposes of a later trial. The Court does not need to review meritless summary judgment motions to become "educated" about a case.

In the event a litigant decides that a summary judgment motion is appropriate, the Court prefers strict compliance with Local Rules 56.1(a) and 56.1(b) in the briefing of all summary judgment

motions. In addition, to assist the Court in reviewing the factual record submitted in connection with summary judgment motions, the Court prefers the following:

- A courtesy copy of the memorandum of law, depositions and other materials relied upon in support of the motion (as required by Local Rule 56.1(a)(1)-(3) or in opposition to the motion (as required by Local Rule 56.1(b)(1)-(3)) may be requested by court staff. If so, the courtesy copy of the compendium must be securely bound, must separately tab each document, and must contain an index identifying what document is contained under each tab. It must also have the CM/ECF header.

- All statements of undisputed material facts offered by the moving party under Local Rule 56.1(a)(3) or statements of additional facts offered by the opposing party under Local Rule 56.1(b)(3)(C), must list the facts in short, numbered paragraphs that refrain from argument. Argument must be reserved for the moving party's memorandum of law. Each numbered fact statement must contain a specific citation to affidavits, depositions or other materials that support the fact statement, as well as to the tab(s) in the compendium where those materials may be found. Failure to provide support for a statement of fact may result in that alleged "fact" being disregarded. *Friend v. Valley View Cmty. Unit Sch. Dist. 365U*, 789 F.3d 707, 710-11 (7th Cir. 2015).

- All responses to statements of undisputed material facts offered by the opposing party under Local Rule 56.1(b)(3)(B), or responses to statements of additional facts offered by the moving party under Local Rule 56.1(a), shall be in a format similar to that used in answering a complaint: that is, the response must repeat each numbered paragraph of the fact statement, and then immediately following each numbered statement must state whether the alleged fact is "undisputed" or "disputed." As with the fact statements submitted under Local Rules 56.1(a)(3) and 56.1(b)(3)(C), the responses to those fact statements must refrain from argument. The significance or lack of significance of a disputed or undisputed fact may be argued in the respondent's legal memorandum. If a particular fact is "undisputed," nothing more should be said in the response. If a particular fact assertion is "disputed" in whole or in part, the response must state what part of the assertion is disputed and must contain a specific citation to the supporting affidavits, depositions or other materials as well as to the tab(s) in the compendium where those materials may be found. Failure to provide support for an alleged fact dispute may result in that fact being deemed admitted. *Curtis v. Costco Wholesale Corp.*, 807 F.3d 215, 218-19 (7th Cir. 2015).

- In accord with Local Rule 56.1, absent prior leave of Court, the Court prefers that the movant not file more than 80 separately numbered statements of undisputed material fact, and a party opposing a summary judgment motion should not file more than 40 separately numbered statements of additional facts under Local Rule 56.1(b)(3)(C). The Court reminds parties that the fact statements under Local Rule 56.1(a)(3) and Local Rule 56.1(b)(3)(C) "shall consist of short numbered paragraphs."

- Motions to strike or to have Local Rule 56.1 statement of facts deemed admitted are disfavored. These concerns should be raised in the parties' briefs.

Privilege Logs

If a party withholds otherwise discoverable information on the ground of privilege, the withholding party generally should provide a log of the documents withheld. *See* Fed. R. Civ. P. 26(b)(5)(A) and Advisory Committee Comments to 1993 Amendments. Any privilege log should be detailed enough to enable other parties to assess the applicability of the privilege asserted, and should include: (1) the name and capacity of each individual from whom or to whom a document and any attachments were sent (including which persons are lawyers); (2) the date of the document and any attachments; (3) the type of document; (4) the Bates numbers of the documents, (5) the nature of the privilege asserted; and (6) a description of the subject matter in sufficient detail to determine if legal advice was sought or revealed, or if the document constitutes work product. *See RBS Citizens, N.A. v. Husain*, 291 F.R.D. 209, 218 (N.D. Ill. 2013).

The Court reminds the parties that the meet and confer requirements of Local Rule 37.2 apply to privilege disputes, just as they do to other discovery disputes. In addition, the Court wishes the parties to be aware that it understands the burdens and high costs associated with preparing detailed privilege logs in very complex cases in which discovery, and privileged materials, may be voluminous. The Court is open to a discussion with the parties about developing creative ways to reduce this burden or to streamline the preparation process. Parties should feel free to address these issues themselves in complex cases, or, if no resolution can be reached, to bring their proposals to the Court.

Finally, the Court also is aware that attorneys may have different approaches to preparing privilege logs. They may tend to claim privilege whenever a document is to or from an attorney, but without sufficient attention to whether the communication related to the rendering of legal advice or services. They may have varying conceptions of the degree of detail needed in the log's description of the document over which they are asserting a privilege claim. Parties should be mindful that "[t]oo many lawyers think that they can paint claims of privilege with a broad brush and sweat the details later. But some courts have been troubled with that approach, and counsel may face arguments that genuine privileges have been waived by asserting dubious ones. The Seventh Circuit has made clear that "blanket" waiver of privileges based on the technical inadequacy of a privilege log is generally disfavored, absent bad faith. *See Am. Nat'l Bank & Trust Co. v. Equitable Life Assurance Soc'y of U.S.*, 406 F.3d 867, 879 (7th Cir. 2005). Nonetheless, parties are advised to make their privilege log entries specific enough to allow the Court to determine whether the document contains a privileged communication and whether the confidentiality of that communication has been maintained. *See* David M. Greenwald, Michele L. Slachetka, & Caroline L. Meneau, 1 Testimonial Privileges § 1.69 (Thomson Reuters 2023 ed.) ("A party asserting privilege may not meet its burden through conclusory statements that the materials in question are privileged, but instead must supply sufficient information upon which to make a determination as to each assertion of privilege."). For further guidance on the views of Judge Fuentes on privilege log content, see *Washtenaw County Employees' Retirement Sys. v. Walgreen Co., et al.*, No. 15 C 3187, 2020 WL 3977944 (N.D. Ill. July 14, 2020) and *Williams v. City of Chicago*, No. 22 C 1084, 2023 WL 3387915, at *6 & n.7 (N.D. Ill. May 11, 2023). Finally, the Court wishes to be sensitive to the costs involved in preparing detailed privilege logs in modern discovery, and it is open to the parties' suggestions about ways to reduce or minimize those costs.

Matters Before the Magistrate Judge on Consent

Judge Fuentes encourages parties to consent to his jurisdiction so that he may preside over the entirety of the case, including ruling on dispositive motions and presiding over any trial and the entry of a final, appealable judgment. Because Judge Fuentes does not handle felony criminal cases, he generally is able to accommodate the requests of counsel for particular (and firm) trial dates. Parties are encouraged to read 28 U.S.C. § 636 and Fed. R. Civ. P. 73 regarding trial by consent and discuss this option with their clients and opposing counsel.

Civility

Civility is important to the Court. The Seventh Circuit's Standards for Professional Conduct are a starting point. All counsel are referred to those standards, and it is the Court's aspiration that counsel will comply with them. Counsel should take care to treat all persons with courtesy and respect. The Court will do so as well. Further, out-of-town counsel are advised that they will be treated no differently than Illinois- or Chicago-based counsel. Counsel will not be "hometowned."

Inclusive Language

Counsel, on behalf of themselves and/or their clients, are invited to communicate to the courtroom deputy the pronouns and honorifics they or their clients use, if they wish. The Court may also discern gender from usages in the parties' public filings. Where the Court is unaware of a person's pronouns, the Court may use they/their/theirs to avoid inadvertent misgendering. *See* American Bar Assn. ("ABA") Resolution No. 604 (Aug. 8, 2023) ("encourag[ing] respectful use of language (including pronouns, honorifics, salutations, and titles) consistent with a person's gender identity within law schools, the bar admissions process, the legal profession, and the justice system generally" (https://www.americanbar.org/content/dam/aba/directories/policy/annual-2023/604-annual-2023.pdf); ABA Resolution 401 (Feb. 5, 2023) (supporting judicial implementation of N.Y. State Unified Court System's "bench card" outlining inclusive language practices "to foster an environment free of bias, prejudice, and harassment") (https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2023-midyear-supplemental-materials/401-midyear-2023.pdf); N.Y. Advisory Comm. on Judicial Ethics Op. 21-09 (2021) ("That is, 'they' has been recognized as a grammatically correct use for an individual."), citing Merriam-Webster, *2019 Word of the Year: They* (https://www.merriam-webster.com/words-at-play/word-of-the-year-2019-they/they); Rules of the Chief Administrative Judge, New York State Unified Court System, 22 NYCRR 100.3(B)(4) ("A judge …. shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability, marital status or socio-economic status ….") (June 25, 2018). The judge's pronouns are "he/him/his." In addition, the Court will make efforts to avoid using certain terms that may have taken on a loaded or offensive meaning to some in the community, no matter their historical use, meaning or accuracy. For example, the Court uses terms such as "person without status," "person unlawfully in the country," or "unauthorized immigrant" to describe a human being whose presence in the United States is subject to civil enforcement of the

Immigration and Nationality Act. Except in quoted material, the Court ordinarily uses such language in lieu of terms such as "illegal" or "alien," which the Court views as imprecise, insufficiently descriptive and potentially dehumanizing. *See generally United States v. Valdez-Hurtado*, 638 F. Supp. 3d 879 (N.D. Ill. 2022) (referring to "immigrants without status"). The Court also encourages all litigants and counsel to choose inclusive language. For more on the choice of inclusive language generally in the legal profession, see Jennifer Salstrom & Joseph Mead, "Developing Inclusive Language Competency in Clinical Teaching," 29 Clinical L. Rev. 349 (Spring 2023).

> Words have power, including the power to persuade or offend. They influence how we think about the world and ourselves, how we communicate, and how we effect change. Choosing appropriate language communicates respect. It can also amplify understanding; as we take the time to learn why people prefer some labels to others, we gain a window into how they view themselves, as well as their concerns, motivations, and histories.
>
> *Id.* at 350.

Professional Development of Attorneys

The Court continues its practice of encouraging (but not requiring) the parties to foster the professional development of less experienced attorneys or attorney who may have unique experiences, character traits or qualities such as an ability to overcome adversity, including how race may have affected the person's life, "be it through discrimination, inspiration, or otherwise," *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* 600 U.S. 181, 143 S. Ct. 2141, 2176 (2023).[1] Parties at their discretion may do so by permitting such attorneys a greater speaking role at motion hearings or settlement conferences, and in that event, the Court will permit more experienced attorneys to supervise to the full extent they wish. The Court's experience has been that when parties and senior counsel have offered such attorneys these opportunities, the attorneys and their supervising counsel have delivered excellence and have furthered the Court's goal of getting to the correct result in every case.

Artificial Intelligence

The Court kindly requests that any party using any generative AI tool in the preparation or drafting of documents for filing with the Court must disclose in the filing that generative AI was used to conduct legal research and/or to draft the document. Further, Rule 11 of the Federal Rules of Civil Procedure continues to apply, and the Court will continue to construe all filings as a certification, by the person signing the filed document and after reasonable inquiry, of the matters set forth in the rule, including but not limited to those in Rule 11(b)(2). Parties should not assume that mere

[1] The Court previously revised its Standing Order to address *Students for Fair Admissions* on January 9, 2024. The foregoing paragraph on professional development of attorneys is included here in this Appendix to reiterate and refine the Court's encouragement in this regard.

reliance on an AI tool will be presumed to constitute reasonable inquiry. Just as the Court did before the advent of AI as a tool for legal research and drafting, the Court will continue to presume that the pre-existing Rule 11 certification is a representation by filers, as living, breathing, thinking human beings, that they themselves have read and analyzed all cited authorities to ensure that such authorities actually exist and that the filings comply with Rule 11(b)(2)." The Court asks for this disclosure to aid the Court in its duty to confirm the accuracy of the parties' legal research. It is not intended to discourage use of generative AI. It is not intended to trigger greater judicial scrutiny of any brief containing such a disclosure. It is intended only as a guardrail. The Court does not attempt here to define "generative AI" as applied to legal research and drafting, but nor is such a definition necessary. Since the Court first sought such AI disclosure in May 2023, no party has yet expressed any confusion about what the Court would like to know to ensure the integrity of legal research underlying filed briefs; it is clear that attorneys know exactly what the Court intends here.