

Chambers and Case Management^{*}

Introduction

This paper gives you a broad overview of some of your responsibilities as law clerks related to maintaining a well-run chambers. Such responsibilities include helping to ensure chambers security; answering telephones and mail; maintaining the judge's motion, hearing, and trial calendars; and other miscellaneous matters. Discussing all such duties would, of course, be impossible, and some judges have chambers manuals detailing how they expect their chambers to operate. Understanding and accommodating the judge's preferences is key to maintaining an efficient chambers, and notwithstanding the general guidance offered in this paper, you should always follow the particular policies and practices of your judge.

I. Chambers Administration

Effective management is essential to the efficient administration of justice. While judicial assistants usually have principal responsibility for managing various aspects of chambers administration, you should be familiar with the standard operating procedures in your chambers and be available to pitch in when needed. You should be aware of the following information to help chambers operate smoothly.

A. Security

The safety and security of federal buildings and the people who work in and visit them is a major concern. Attorneys and other members of the public must display valid identification and pass through magnetometers to enter most courthouses and other federal buildings. Courthouse employees may be issued passkeys, enabling them to enter the courthouse without passing through metal detectors and to access secured, nonpublic sectors of the building, including judges' chambers. Employees may also have after-hours and weekend access to the building through use of such passkeys, which should be kept in a secure place and reported immediately if lost. All courthouse employees should carefully follow security procedures and report potential problems to appropriate authorities.

^{*}This paper is based on portions of the *Chambers Handbook for Judges' Law Clerks and Secretaries* (Federal Judicial Center 1994). It was adapted by Judge Barbara J. Rothstein, the Center's director, in 2005 and updated in January 2009.

The U.S. Marshals Service is principally responsible for security of the court and its personnel, though some courthouse security functions are performed by court security officers and by the Federal Protective Service. Become familiar with the marshals' court security plan in your courthouse, and help to maintain a secure chambers. Do not let unauthorized strangers into secure areas of the courthouse, and report suspicious mail or threatening telephone calls. During security-sensitive proceedings, a judge may request that a deputy from the Marshals Service be present in the courtroom.

Because federal judges are occasionally the targets of terrorists or disgruntled litigants, be careful when opening mail. Common recognition points for letter and package bombs include

- foreign mail, air mail, and special delivery;
- restrictive markings (e.g., confidential, personal);
- excessive postage;
- handwritten or poorly typed addresses;
- incorrect titles;
- titles but no names;
- misspellings of common words;
- oily stains or discolorations;
- no return address;
- rigid envelope;
- lopsided or uneven envelope;
- protruding wires or tinfoil;
- excessive securing material, such as masking tape or string; and
- drawings, diagrams, or illustrations.

If a letter or package arouses attention, do not attempt to open it. Instead, immediately notify the marshals' office or a court security officer.

B. Telephone

Practices for dealing with incoming calls (e.g., how to answer the telephone, how to take messages, and when and if to transfer a call to the judge) will vary from chambers to chambers. In general, however, answer calls promptly, identify the office (e.g., "Judge Smith's chambers"), and treat all callers courteously. And, of course, hold personal calls to a minimum, both in length and in number.

C. Correspondence, E-mail, and Other Mail

In addition to correspondence by U.S. postal and messenger service, many chambers correspond by e-mail with a wide variety of people, including counsel. While e-mail has in some ways made communicating easier and more efficient, it has also made it even more important to stay on top of organizing and processing the mail. E-mail also presents serious potential problems relating to the accidental forwarding of messages, either to unintended parties or containing information not intended for the recipient. Take special care to avoid forwarding e-mail messages that may result in embarrassment, a breach of confidence, or worse, and review and proofread any outgoing messages.

Most chambers have practices and procedures for handling incoming and outgoing mail, including e-mail (e.g., whether and when to delete e-mail messages, how to store important messages for future reference, and other matters of e-mail retention and organization). Become familiar quickly with these practices to help mitigate complications arising from the enormous volume of e-mail that many chambers receive.

Depending on office procedure, either a judicial assistant or a law clerk will open and review correspondence and make an initial decision concerning how it should be handled. Many judges receive their own e-mail messages directly, though some may ask staff to review messages first. Incoming mail and e-mail should be reviewed as soon as it is received because it may relate to matters scheduled for that day. When correspondence referring to a pending suit is forwarded to any counsel of record over the signature of the judge, law clerk, or judicial assistant, copies should be sent to all other counsel of record to avoid inappropriate *ex parte* contact. Appellate judges seldom correspond directly with counsel on case-related matters, because appellate judges write for a panel or for the court rather than individually. Instead, appellate judges will send instructions to the clerk of court on how to respond to counsel.

Non-case-related correspondence from the general public is important because citizens have a right to courteous treatment. Also, the public's opinions about the fairness, responsiveness, and effectiveness of the judiciary are influenced by the promptness and appropriateness of the court's answers. In the district court, some of the correspondence from the public involves requests to be excused from jury duty. That subject is dealt with in section III.D.2, *infra*. Some correspondence contains character references on behalf of an offender who is scheduled for sentencing. Judges differ in their handling of such correspondence. Many simply acknowledge receipt of the letter and refer the letter to the probation office.

Other correspondence from the public may express a reaction to a ruling of the judge. Whether positive or negative, expressions of opinion by members of the public generally call only for courteous acknowledgment, not for an explanation or

justification of the judge's action. If a letter requests information about a ruling, many judges simply acknowledge receipt of the letter and send a copy of the opinion, if there is one. If more information is requested, many judges refer the writer to the record in the clerk of court's office. (See *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks* (Federal Judicial Center 2002), at 7–8, for comments regarding the relationship between chambers staff and the media.)

Some judges may wish to respond to a letter that indicates a misunderstanding concerning a significant fact, proceeding, or legal conclusion. Judges who adopt this policy may ask you to prepare a draft of a response for the judge to review. The response should not be argumentative or defensive; it should merely state the relevant facts or legal conclusion as necessary to alleviate the misunderstanding.

Prisoners and persons who have been convicted and are awaiting sentence frequently write district and appellate judges. Handle the correspondence of a prisoner represented by counsel the same way as that of any other litigant. Ask your judge how to handle correspondence from prisoners who are proceeding pro se. In some instances, this correspondence may be handled by district court pro se law clerks or, in the appellate courts, either the clerk's office or staff attorney's office. In other instances, your judge may have form letters explaining, for example, that federal law prohibits judges from giving legal advice and suggesting that the prisoner communicate with a lawyer, or a form letter for responding to requests for transfers to another penal institution (which only the Bureau of Prisons can grant). You should *never* write anything in a letter that would give a prisoner false hope or compromise the position of the court.

D. Internet and Electronic Research

Computer-assisted legal research (CALR) has had an enormous impact on the operation of judicial chambers. The electronic databases Westlaw and Lexis/Nexis have made researching the universe of cases, treatises, statutes, and other legal reference material an immediate and potentially infinite task. Most new law clerks will receive a Westlaw and/or a Lexis/Nexis password, which may come with additional electronic research training and certain usage guidelines. All CALR use via judiciary contracts is to be limited to official judiciary-related research purposes. In addition to these research services, the Internet also offers more informal avenues of research, including access to nearly every newspaper and magazine in the country, as well as to government and law school websites, Internet search engines, and myriad other sources. You should contact the circuit library CALR coordinator for assistance with CALR access or training. The CALR coordinators and reference librarians are also available to assist with your research questions.

Become familiar also with the J-Net, which is the site maintained by the Administrative Office of the U.S. Courts on the judiciary's intranet. The J-Net offers

information and forms on a range of topics relevant to judicial employees, including benefits, court security, emergency preparedness, human resources, information technology, legal and general research, and travel. The address for the J-Net is <http://jnet.ao.dcn>. Similarly, the Federal Judicial Center's site on the judiciary's intranet, called FJC Online, provides access to manuals, monographs, desk references, and other publications; to Web-based training and educational media programs, including streaming audio and video; to Federal Judicial Television Network (FJTN) broadcast schedules and program information; and to other resources. FJC Online's address is <http://cwn.fjc.dcn>.

The Internet has also posed some serious security and usage challenges for employees and information technology departments in courthouses across the country. The judiciary provides you with a computer and Internet access to help you do your work. Depending on the policy in your court or chambers, you may use it on a limited basis for personal needs if doing so does not interfere with your work and does not cause congestion, delay, or disruption of service to any government system. Moreover, you should not do anything on your office computer that would embarrass you or the court if it were made public.

E. Electronic Filing

The federal judiciary's Case Management and Electronic Case Files (CM/ECF) system is operational in most courts. It not only replaces the courts' electronic docketing and case-management systems, but also provides courts the option to have case file documents in electronic format and to accept filings over the Internet.

CM/ECF uses an Internet connection and a browser and accepts documents in Portable Document Format (PDF). It is easy to use. Filers prepare documents using conventional word processing software and save them as PDF files. After logging on to the court's website with a court-issued password, the filer enters basic information relating to the case and document being filed, attaches the document, and submits it to the court. CM/ECF automatically generates a notice verifying court receipt of the filing and also sends an e-mail to other parties in the case notifying them of the filing.

There are no added fees for filing documents using CM/ECF, but existing document filing fees do apply. Electronic access to court data is available through the Public Access to Court Electronic Records (PACER) program. Litigants receive one free copy of documents filed electronically in their cases, which they can save or print for their files. For a small fee, additional copies are available to attorneys and the general public for viewing or downloading.

The process for receiving and reviewing daily filings in the cases filed before the judge may vary from chambers to chambers; you should quickly learn the process in

your chambers and your role in implementing and maintaining it. Although familiarity with the workings of the system is helpful, you should refer counsel's questions to docketing clerks or others in the clerk's office who deal with the system on a daily basis.

F. Judge's Chambers Calendar

The judicial assistant is usually in charge of maintaining the chambers calendar covering the judge's scheduled court proceedings and other activities. If the calendar is maintained on-line, other staff on the chambers network may also have limited access to the judge's schedule. In appellate courts, the clerk of court advises the judge of panel assignments and hearing dates. The judicial assistant will then schedule all other engagements and commitments, in consultation with the judge, around the hearings. In trial courts, the judicial assistant usually confers with the judge and then typically advises the courtroom deputy in charge of scheduling as to the dates on which trials and hearings are to be set. The judicial assistant will then schedule the judge's remaining commitments around the trials and hearings. Some judges choose not to have a judicial assistant, which allows them to have an additional law clerk. For these judges, a law clerk may maintain the chambers calendar.

G. Opening Court

In district courts, a law clerk or courtroom deputy usually opens court. One common method is for the clerk or deputy to rap on the door before the judge enters, open the door, then call out "All rise." The judge then enters and walks to the bench. The law clerk or deputy walks to the front of the bench and says: "The Honorable United States District Court for the ____ District of ____ is now in session." The judge usually stands during this call, then says "Please be seated," and sits.

H. Maintaining the Library; Office Supplies, Equipment, and Furniture

Many chambers maintain their own libraries, though electronic databases and Internet research reduce the need for access to hard-copy sources and let chambers in the same courthouse share libraries. In any event, the employee who maintains the library, either a law clerk or a judicial assistant, should regularly file any advance sheets, pocket parts, slip opinions, replacement volumes, and inserts for loose-leaf services that arrive in the mail. File materials daily so that library maintenance does not become burdensome and the materials are current.

Promptly rubber-stamp every incoming library book to identify it as United States property. (Procurement and ordering of all law books are done by the circuit library; contact the librarian if you have questions.) Keep track of books borrowed by attorneys for courtroom use and make sure that books are not taken outside the

chambers and courtroom. Promptly reshelve books used during the course of research. They will then be easier to find, and the library will be neater. Also be sure that legal pads, book markers, pencils, and pens are always available in the library.

Generally, give requests for supplies, equipment, and furniture to the court's procurement officer, usually someone in the clerk's office.

I. Maintaining Office Records and Files

You may have to maintain some of the records in the judge's office, including

- case files;
- trial schedules or calendars;
- “tickler” records to remind the judge about future case activities;
- indices to the judge's prior decisions;
- indices to slip opinions; and
- work papers relating to cases in progress.

Such materials may be stored in hard copy, electronically, or both. Some chambers may also maintain office form books, either in hard copy or electronically. The form books may contain office procedure checklists and frequently used forms, such as samples of letters, orders, opinions, jury charges, minute entries, and office or file memoranda written by prior law clerks. The books describe the format and method of presentation of written documents issued by the judge or presented to the judge by the law clerk. The form books can help educate new chambers staff and provide continuity and consistency in office administration.

If case records are being used in the judge's chambers, be certain that the records are not misplaced and are returned to the office of the clerk of court as soon as the judge or staff member has finished with them.

J. Out-of-Town Trips

Some judges must travel to other cities to attend court sessions and may require a chambers staff member to travel with them if the court to which they are traveling does not provide staffing. Judges may also travel on court-related business. Judicial assistants usually arrange travel (although when the judge has chosen to have an additional law clerk in lieu of a judicial assistant, a law clerk may have to make travel arrangements).

If the judge is traveling to hold court in another location, prepare for the judge to take along necessary case files and materials; any personal notes or memoranda relating to the cases to be heard; the judge's robe; paper, pencils, stationery, and other needed supplies (if the site for the out-of-town session is one frequently used by the court, there may be a permanent stock of stationery and supplies); necessary

equipment such as a gavel, recording or dictating equipment, and a laptop; the briefs and any other case materials; and mailing labels and envelopes for returning material that the judge does not wish to carry back.

Judges and chambers staff who travel on court business will be reimbursed for transportation, food, lodging, and related expenses according to the detailed rules set forth in the *Guide to Judiciary Policies and Procedures*. These rules generally reimburse either a flat dollar amount per day, regardless of actual expenses, or itemized actual expenses not in excess of a fixed dollar amount. The judicial assistant should have forms for travel reimbursement—these forms can also be found on the J-Net.

K. Assisting with Judges' Extrajudicial Activities

Many judges engage in teaching, writing, lecturing, and other extrajudicial activities. While chambers staff may be called on to assist judges in these activities, the Code of Conduct for United States Judges says that judges should not use staff “to any substantial degree” to engage in extrajudicial activities to improve the law, the legal system, and the administration of justice; and judges should not use staff to engage in other extrajudicial activities, “except for uses that are de minimis.”

L. Preserving Chambers Papers for Historical Purposes

The chambers papers of a district or circuit court judge have historical significance as an essential supplement to the official court record. Many papers in judges' chambers are widely considered valuable, such as correspondence and background material concerning a case, including memoranda between judges and law clerks and judges on an appeals panel; drafts of orders and opinions (particularly draft opinions that have handwritten comments on them, or that have been circulated to other judges and returned with their comments); and correspondence or memoranda concerning court administration, legal activities in the community, and issues of governance, politics, and law.

Chambers papers are the personal property of the judge. Each judge retains the prerogative to make final decisions about the preservation of chambers papers and the terms of access. Judges can preserve their personal papers and make those papers available for eventual study by donating them to a manuscript repository.

An FJC publication, *A Guide to the Preservation of Judges' Papers* (1996), reviews the organization and preservation of historically significant records created by federal judges. The Federal Judicial History Office at the Center ((202) 502-4180) will also provide assistance on all issues concerning judges' papers.

II. Local Court Rules and Administrative Policies

Section 2071 of title 28 of the United States Code authorizes federal courts to adopt their own rules, which must be consistent with the national rules and available to the public; it also authorizes the circuit judicial council to abrogate district and bankruptcy courts' local rules, and authorizes the Judicial Conference to abrogate rules of courts of appeals. Federal Rules of Appellate Procedure 47, Bankruptcy Procedure 9029, Civil Procedure 83, and Criminal Procedure 57 provide additional requirements for local rule adoption and characteristics. The local rules of almost all courts follow the same numbering sequence as the corresponding national rules.

These local rules include the procedures for setting cases for trial, scheduling pretrial conferences, setting motions for oral argument, serving memoranda of law, and other details relating to trial. They may also state the procedure for admission of attorneys to practice in the specific district or circuit, the term of the court, the functions of the clerk of court, the rules regarding the filing of motions, and more specific data, such as the number of copies required to be filed, limitations on the length of memoranda, the time within which memoranda must be filed, and restrictions on page length, typeface, and margin size.

Each court of appeals has local rules concerning procedures for ordering transcripts; filing and docketing the appeal; calendaring; motions; summary disposition of appeals; setting cases for oral argument; time limitations on oral argument; petitions for rehearing; petitions for en banc consideration; and stay of mandate. The local rules and internal operating procedures of the courts of appeals are printed in the *United States Code Annotated* following title 28 of the Judicial Code and are available on the courts' websites.

A court's local rules, and any internal operating procedures it adopts in addition, establish specific procedures for the court and litigants to follow. Promptly get these rules and procedures from the court's website or the clerk's office and become familiar with them. Keep them available for reference and be alert for any modifications the court may adopt.

III. Case Management: The Trial Court

Many judges believe that the responsibility for moving a case through the trial court is not solely that of the attorneys, and the function of the court is not simply to be available if and when counsel want a hearing. The disposition of all cases as speedily and economically as is consistent with justice is of paramount importance. Private counsel have many reasons to delay proceedings: other clients, relative fees to be earned, procrastination, or lack of familiarity with procedures, to name but a few. Litigants whose cases are not promptly adjudicated may conclude that the fault lies

entirely with the courts. The Federal Rules of Civil Procedure are to be “construed to secure the just, speedy, and inexpensive determination of every action” (Fed. R. Civ. P. 1), and many judges consider this not only an instruction for interpreting the rules but a mandate to these goals in criminal and civil cases. These judges believe that it is the duty of the courts to protect the public interest by participating actively in the process of moving cases from filing to determination. To this end, all courts adopted civil justice expense and delay reduction plans under the Civil Justice Reform Act of 1990 (and many courts have incorporated provisions from these plans into their local rules). The courts are also required to report semiannually for each judge, for publication by the Administrative Office, motions that have been pending and bench trials that have been submitted for more than six months and cases that have not been terminated within three years of filing (28 U.S.C. § 476).

Effective docket control means that, early in a case, the judge assumes responsibility for guiding the case to a conclusion. This may include establishing deadlines for filing motions, a time limit for discovery, a date for counsel to take the next step in its prosecution, and a trial date. For specific techniques of case management, consult the *Civil Litigation Management Manual* (2001), which was prepared under the direction of the Judicial Conference Committee on Court Administration and Case Management, with substantial contributions from the Administrative Office of the U.S. Courts and the Federal Judicial Center. Note that many of the same considerations apply in criminal cases with the additional complication of computations required by the Speedy Trial Act (18 U.S.C. §§ 3161–3174). You should be familiar with the requirements of the Act, since failure to bring a case to trial within the Act’s time limits can have serious repercussions.

A. Office Status Sheets

Some judges maintain an office status sheet on a bulletin board in the chambers library or some other convenient location. Its purpose is to keep the judge, the law clerks, and judicial assistants apprised of legal matters under advisement and awaiting disposition. When a matter has been taken under advisement, the assistant or law clerk assigned to the case should indicate it on the status sheet.

Keep a personal status sheet, which can be revised each week, listing all matters for which you have responsibility. It will help you make effective use of time and remember all pending assignments. Some judges require weekly submission of personal status sheets.

Some judges require their judicial assistants to keep a computerized list of all pending matters, the initials or name of the law clerk assigned to work on the

matter, and any other pertinent information. If so, keep the assistant advised of all matters assigned, matters completed, and other relevant status information.

Many judges use computers for docket control and to maintain case inventories and case-status records. Other systems may also be employed. Regardless of which system is used, it is important that it be regularly maintained and continually monitored.

B. Calendaring Systems

Multijudge trial courts need a system for determining which judge is responsible for each case. In an individual calendar system, each case is randomly assigned to a particular judge at the time it is filed, or soon thereafter, and that judge has complete responsibility for the case until it is terminated. There are also standard procedures for reassigning cases in which the original judge is disqualified, for ensuring that related cases are all assigned to the same judge, and for special assignment of unusual and protracted cases. Local rules usually describe these procedures.

C. Trial Scheduling and Preparation

A single trial may be set for a specific date, or the court may set multiple cases for trial on the same day. Some courts use the “trailing calendar” or “trailing docket,” in which the court schedules a number of cases for trial beginning on a stated date. The cases are tried in the order reflected by the schedule. Counsel must obtain information from the court and from the attorneys whose cases precede theirs on the calendar about the progress of those cases, so that they can go to trial whenever the court reaches their case.

Most civil cases do not go to trial; rather, they are disposed of in some other manner, including settlement. Judges differ in their approach to encouraging settlement or moving a case to what they believe will be an eventual settlement; all judges recognize that settlement may be inappropriate for cases involving principles of importance to the parties or to guide the conduct of others. If settlement is to be reached, negotiations should be timely completed. Last-minute settlements may disrupt the court’s schedule, leaving the judges, and sometimes jurors, with unscheduled time. The trailing calendar and other multiple-case-setting devices alleviate some problems caused by last-minute settlement by providing substitute cases to replace those that do not go to trial. Although these devices relieve the court’s problems, they do not reduce the problems caused to litigants and counsel by eve-of-trial settlements.

Criminal cases take priority on the court’s calendar, since they must be tried within the time limits set forth in the Speedy Trial Act. While criminal cases do

not “settle,” the vast majority of them are disposed of by way of guilty pleas, which again make multiple-case-setting an important calendaring device.

D. Jury Management

1. Random Juror Selection

The selection of grand and petit jurors in both criminal and civil cases is governed by 28 U.S.C. §§ 1861–1878, under which each district must have a jury selection plan that has been approved by a panel comprising the circuit judicial council and the chief district judge or the chief judge’s designee.

The statutory goal of the selection process is to ensure “grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes” (28 U.S.C. § 1861), and to avoid excluding any citizen “from service as a grand or petit juror . . . on account of race, color, religion, sex, national origin, or economic status” (28 U.S.C. § 1862).

The clerk of court usually manages the process of selecting prospective jurors, under the supervision and control of the court. Although jury selection processes may differ slightly in each district, the process is generally as follows:

- The clerk’s office performs a random selection of prospective jurors’ names by computer or manually, using voter registration lists or other sources specified by the court’s plan, and places the names selected in a master “jury wheel,” which is usually a computer file. The minimum number of names in the master jury wheel must be one-half of 1% of the number on the source lists, or 1,000, whichever is less.
- As needed by the court, the clerk’s office draws names publicly at random from the master jury wheel and sends jury-qualification questionnaires to those persons whose names are drawn.
- From the responses to the questionnaires, a determination is made as to which persons are qualified for jury service and which persons are disqualified, exempt, or excused.
- The names of those determined to be qualified are placed in a second jury wheel consisting of qualified jurors.
- As needed, the clerk’s office selects names from the qualified jury wheel and prepares lists of the names selected.
- The clerk’s office issues summonses to the necessary number of persons needed for the jury venire several weeks in advance of each trial calendar advising those summoned of the time and place to report for jury service.

Note that some district courts qualify and summons jurors in one step and do not establish a qualified jury wheel.

2. Exemptions, Disqualifications, and Excuses

A person is qualified for jury service unless the person is

- not a citizen of the United States;
- unable to read, write, and understand English with a degree of proficiency sufficient to complete the juror qualification form satisfactorily;
- incapable of rendering satisfactory service because of mental or physical infirmity; or
- charged with (or has been convicted in a state or federal court of record of) a crime punishable by imprisonment for more than one year without subsequent restoration of civil rights (28 U.S.C. § 1865).

Some district courts have adopted other grounds for exemptions, which are specified in the court's jury selection plan. Section 1863 of title 18 requires the plan to provide for the exemption of members of the armed forces in active service; members of state or local fire or police departments; and public officers of the federal, state, and local governments who are actively engaged in the performance of official duties.

Jury service is a citizen's duty as well as a privilege, and courts do not readily grant excuses. A person may, however, be excused from jury service temporarily if the plan states that such service would result in undue hardship or extreme inconvenience. In such a case, the name of an excused juror is placed back in the qualified jury wheel. If a prospective juror approaches you about an excuse, do not express any opinion regarding the request, but simply transmit it to the clerk's office or jury administrator for action or inform the individual of the court's procedure for handling such requests. Treat those called for jury service with courtesy; they did not ask to be there.

Judges in multijudge courthouses often begin jury trials at different hours to obtain maximum use of people summoned for jury duty, sending persons examined and not selected to another courtroom so they can be examined for selection on another jury, and sometimes using jurors who have served in one trial in a succeeding trial. When prospective jury panels report for possible selection in a case, they should be segregated from other people in the courtroom. You may be responsible for clearing a portion of the spectator section for the jury panel's exclusive use.

3. Juror Orientation

Most courts conduct a juror orientation program to inform jurors of their responsibilities and to explain the trial process. Orientation videos are available in most courts.

4. Voir Dire

In most courts, the judge personally conducts voir dire examination. Federal Rule of Civil Procedure 47 and Federal Rule of Criminal Procedure 24, however, authorize the judge to permit the lawyers to conduct voir dire. If the judge conducts voir dire, the rules authorize counsel to submit specific questions or areas of inquiry that they want the judge to probe. In some courts, magistrate judges conduct voir dire. The law in most circuits permits this in civil cases, though some require consent of the parties. The Supreme Court has held that a magistrate judge may conduct voir dire in a criminal case if the defendant consents (*Peretz v. United States*, 501 U.S. 923 (1991)), but not if the defendant objects (*Gomez v. United States*, 490 U.S. 858 (1989)).

Jurors are usually free to go where they wish during recesses, and they may go home at night. Occasionally, however, when there is unusual publicity about the trial or there is reason to believe that someone will attempt to exert improper influence on jurors, the judge may direct that the jury be sequestered. When this occurs, deputy marshals keep the jurors together at all times and supervise them when court is not in session. Jurors in criminal and civil cases are sometimes sequestered from the time they begin deliberating until they reach a verdict.

5. Jury Supervision

In most courts, a deputy clerk is responsible for jury supervision. However, sometimes law clerks have this responsibility. If so, you should be present in the chambers early enough in the morning to accommodate those members of the jury who arrive before the normal court time. The jury room should be open and available for use by the jurors as they arrive.

If the judge permits the jury to take notes, either you or the deputy clerk should, before the trial begins, provide pads of paper and pencils for distribution to the jurors. Extra pads and pencils should also be placed in the jury room for use during deliberations.

If you are responsible for jury supervision, ensure that there is no communication—in the courtroom, jury room, or hallways adjacent to the courtroom and chambers—between jurors and litigants, lawyers, witnesses, or others attending court.

Judges sometimes have law clerks steward the jury during deliberations. Some judges require the law clerk to take a special oath with respect to this duty just before the jury retires. Once the oath is taken, the law clerk assumes primary responsibility for guarding the jury until relieved of this duty by the judge. Remain outside the jury-room door during the entire deliberation process and take every reasonable precaution to ensure that the jurors do not come into contact with other people, especially the litigants, their attorneys, or any witnesses. You must

never comment on the evidence, the litigants, the attorneys, or the witnesses to any juror (or, for that matter, to anyone else). If a juror has any questions about the trial, at any stage, you should simply state that such questions should be addressed to the judge in writing. Do not answer the question, however simple it may appear.

E. Distributing Opinions

Federal Rule of Civil Procedure 52(a) requires the judge to make findings of fact and conclusions of law in all actions tried without a jury or with only an advisory jury. The rule permits the judge to do this orally on the record or in writing in an opinion or memorandum. The judge may also write a formal opinion to explain rulings on particular motions. The judicial assistant sends the original of the findings or the opinion and the original of any order for judgment to the docket clerk for filing in the official record. Then the judicial assistant or clerk of court sends a copy of each set of findings or the opinion to each counsel of record, making and distributing other copies in accordance with the judge's instructions. In most district courts, the clerk of court handles the distribution of opinions, but in a few district courts, this responsibility falls to the law clerk or judicial assistant. The judge decides whether the opinion or findings are to be published. If you are responsible for distributing opinions, check with the judge to determine whether the judge wishes the opinion to be published and make such distribution as the judge directs. In each case, the opinion should be accompanied by a cover letter from the judge; the judge may have a form letter for this purpose.

IV. Special Duties of Law Clerks to Bankruptcy Judges

The duties of law clerks to bankruptcy judges are generally similar to the duties of those working for district judges. Of course, the subject matter of bankruptcy courts is limited to civil proceedings and most trials are bench trials.

Because the volume of cases and proceedings in bankruptcy court is generally greater than in other trial courts, you must be especially organized and efficient. (Of course, effective time management is critical to all law clerks; there is almost always more work than can readily be done.) Bankruptcy judges hold more, and faster, hearings than district judges do. For the chambers staff, that means more scheduling problems, more substantial prehearing preparation of memoranda, and shorter time limits. It also means more pressure from attorneys telephoning to ask about procedures, for expedited schedules, about the disposition of motions, and various other questions. Like district judges, bankruptcy judges differ in their attitudes about direct contact between chambers staff and attorneys.

Some bankruptcy judges hold court in more than one place. Law clerks to those judges usually have substantial duties in preparing for travel, including assembly of

materials (such as appropriate portions of case records necessary for the trip). The law clerk will usually have extra duties in the additional places of holding court because the other staff available may not be as complete as in the home court.

V. U.S. Magistrate Judges

The authority of magistrate judges derives primarily from the Federal Magistrates Act of 1968 (28 U.S.C. §§ 631–639), and as amended numerous times since. Significant Supreme Court cases interpreting the Act include *Mathews v. Weber*, 423 U.S. 261 (1976) (upholding magistrate judge authority to hear social security appeals on a report and recommendation basis); *United States v. Raddatz*, 447 U.S. 667 (1980) (upholding magistrate judge authority to conduct hearings on motions to suppress evidence in felony cases on a report and recommendation basis); *Peretz v. United States*, 501 U.S. 923 (1991) (upholding magistrate judge authority to conduct felony voir dire proceedings with the parties' consent); and *Roell v. Withrow*, 538 U.S. 580 (2003) (holding that parties' consent to disposition of a civil case by a magistrate judge under 28 U.S.C. § 636(c) could be inferred from the parties' conduct during the case). A general outline of the duties performed by magistrate judges is set forth below.

A. Initial Proceedings in Criminal Cases

Under 28 U.S.C. § 636(a), a magistrate judge may perform various duties and conduct proceedings in criminal cases, including the following:

- accept criminal complaints;
- issue arrest warrants and summonses;
- issue search warrants;
- conduct initial appearance proceedings and detention for criminal defendants, informing them of the charges against them and of their rights;
- set bail or other conditions of release or detention under the Bail Reform Act, 18 U.S.C. §§ 3141–3145;
- appoint attorneys for defendants who are unable to afford or obtain counsel;
- hold preliminary examinations, or “probable cause” hearings;
- administer oaths and take bail, acknowledgments, affidavits, and depositions; and
- conduct extradition proceedings.

B. References of Pretrial Matters from District Judges

Under 28 U.S.C. § 636(b), district judges may delegate a wide variety of duties to magistrate judges that will assist the district judges in expediting the disposition of civil and criminal cases, including the following:

- hearing and determining any non–case-dispositive pretrial matters, such as procedural and discovery motions;
- hearing case-dispositive motions (such as motions for summary judgment or dismissal, or for suppression of evidence), and submitting findings and a recommended disposition of such motions to a district judge;
- reviewing and recommending disposition of social security appeals and prisoner litigation (including state habeas corpus petitions under 28 U.S.C. § 2254, federal habeas corpus matters under 28 U.S.C. §§ 2241 and 2255, and prisoner civil rights actions under 42 U.S.C. § 1983), and conducting necessary evidentiary hearings in prisoner cases;
- conducting calendar calls, pretrial conferences, and settlement conferences; and
- serving as a special master in complex cases under Fed. R. Civ. P. 53.

C. Disposition of Petty Offense and Class A Misdemeanor Cases

Under 28 U.S.C. § 636(a) and 18 U.S.C. § 3401, magistrate judges have the authority to dispose of all federal petty offense (maximum term of imprisonment is six months or less) and Class A misdemeanor (maximum term of imprisonment is one year) cases. In all petty offense cases, including cases involving juveniles, a magistrate judge may conduct the trial and impose the sentence without the consent of the defendant. In a Class A misdemeanor case, the magistrate judge may conduct the trial, either with or without a jury, and impose the sentence only when the defendant has consented to disposition of the case by a magistrate judge and waived his or her right to disposition of the case by a district judge.

D. Disposition of Civil Cases

Under 28 U.S.C. § 636(c), a full-time magistrate judge may conduct the trial, either with or without a jury, and dispose of any federal civil case with the consent of the litigants. In such cases, a magistrate judge sits in lieu of a district judge on stipulation of the parties and on reference from a district judge. In this capacity, a magistrate judge exercises case-dispositive authority and may order the entry of a final judgment.

E. Additional Duties

Under 28 U.S.C. § 636(b)(3), a magistrate judge may also be assigned any “additional duties as are not inconsistent with the Constitution and the laws of the United States.” Pursuant to this provision, several courts have authorized magistrate judges to conduct allocution proceedings to accept felony guilty pleas under Fed. R. Crim. P. 11. A magistrate judge may also be called on to assist the district court in administrative matters.

For additional information on matters that may be referred to magistrate judges, see *Benchbook for U.S. District Court Judges* (Federal Judicial Center, 5th ed., 2007), at sections 1.13 and 6.08; *Legal Manual for United States Magistrate Judges*, Chapter 3, Jurisdiction of United States Magistrate Judges (Administrative Office of the U.S. Courts, August 1999); and *Inventory of United States Magistrate Judge Duties* (Administrative Office of the U.S. Courts, 3d ed., December 1999).

Under 28 U.S.C. § 636(b)(4), each district court is required to “establish rules pursuant to which the magistrate judges shall discharge their duties.” In some courts, magistrate judges are used to the full extent permitted by the Federal Magistrates Act. For example, many courts delegate pretrial management of all civil cases to magistrate judges, while in other courts matters may be referred to magistrate judges on a case-by-case basis.

VI. Case Management: The Appellate Court

Each appellate court has a system for assigning cases, managing motions, and scheduling hearings. In contrast to district court practices, most appellate case-management functions are performed in the clerk’s office, not in judges’ chambers. Check your court’s specific procedures and internal operating procedures.

A. Motions

The processing of motions on appeal is described in the appellate court’s internal operating procedures. Federal Rule of Appellate Procedure 27 describes the prescribed form for motions. Some motions are decided by a panel of judges, some by a single judge, and some are delegated by court rule to the clerk of court or another court officer. The local rules list those motions on which a single judge or the clerk of court may act. Courts of appeals differ on procedures for deciding motions. Some courts assign panels specifically to decide motions. Although the court may hear oral presentation on motions, more commonly motions are decided on the papers. Each court has procedures for handling emergency motions exigently.

B. Screening

Federal Rule of Appellate Procedure 34(a) allows oral argument in all cases unless, pursuant to local rule, a panel of three judges, after examination of the briefs and record, unanimously decides that oral argument is not needed. The rule provides that oral argument is to be allowed unless (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. Pursuant to this rule, most courts employ a procedure known as “screening” to review jurisdictional issues and to select those appeals to be decided without oral argument (i.e., on the briefs and written record alone). Screening may be done within the clerk’s office, by staff attorneys, or by a judge.

Other methods are used to manage the court’s caseload. Every court of appeals has a circuit mediation program. The circuit mediators (also referred to as conference attorneys or settlement counsel) assist the court in settling cases on appeal, thereby conserving judicial resources. Court local rules outline the practices of each mediation office. See *Mediation and Conference Programs in the Federal Courts of Appeals: A Sourcebook for Judges and Lawyers* (Federal Judicial Center, 2d ed., 2006).

C. Order of Assignment of Appeals for Oral Argument: Calendar Preparation

Once an appeal is assigned to a panel, that panel acts on all motions.

There are two separate procedures in the assignment of cases to panels of judges that together maintain the integrity of the case-assignment process. Typically, the clerk of court or the circuit executive sets up a calendar of three-judge panels, generally a year or more in advance. Independent of the assignment of judges to panels, there is a separate process for the assignment of cases to particular panels for oral argument or summary disposition. Generally, once a case has been designated for panel disposition, someone in the clerk’s office (e.g., a “calendar clerk”) will randomly assign the case to a panel. Court practices vary as to the timing of the announcement of panel members and the assignment of cases to particular panels. Typically, this information is disclosed to the litigants and the public a short time prior to the date of oral argument. Courts that sit in more than one location try to schedule an appeal for hearing at the location most convenient to counsel.

Whoever makes the assignments for a particular session operates under court guidelines as to the number and kinds of appeals to be scheduled for each day. Some courts try to equalize the workload for each day of the session and, if more than one panel is sitting, to equalize the workload among the panels. Others try only to equalize the workload for a week of sitting. In some courts, the person making the assignments also schedules appeals with related issues or facts for the

same panel. Alternatively, if a controlling appeal is awaiting decision by another panel in the court, the hearing may be delayed until the other panel decides the controlling appeal. In most courts, the fact that the Supreme Court has granted certiorari in an appeal presenting the same issue is not sufficient reason to postpone assignment, although panels, after hearing argument, often await the Supreme Court's decision before preparing an opinion.

The senior active judge on the panel is the panel's presiding judge and controls the proceedings during the hearing. The courtroom deputy, under the supervision of the judge, opens and closes court and maintains order and decorum. Each judge's law clerk or the courtroom deputy has responsibility for supplying the courtroom with supplies and materials needed by the judge and counsel.

Each court has its own rules and customs regarding protocol, dress, and courtroom behavior.

Courts of appeals do not have reporters, although they record oral argument for the use of the court. Litigants who want transcripts must request court approval and arrange for a reporter or some other person to prepare the transcript. Many courts maintain lists of qualified persons for this purpose.

D. Order of Opinion Writing

Courts issue signed opinions in only a minority of cases. Although there is no statutory requirement that opinions be issued within a fixed time or in any particular order, judges generally determine priority based on three criteria: the importance and urgency of the decision; the nature of the appeal, giving direct criminal appeals priority over civil cases; and the order in which appeals were argued to the court (or in which briefing was completed).

At any time, each judge will have drafts of opinions in various stages of preparation. The length of time between preparation of the initial draft and issuance of the final opinion varies greatly depending on the number and complexity of issues that must be treated, the extent of suggested revisions and additions by other members of the appellate panel, and whether concurring or dissenting opinions are also issued.

E. Distributing Opinions

After an opinion is issued, the original is filed with the clerk of court. When the opinion is filed, the clerk of court prepares a judgment in accordance with the operative language of the opinion (Fed. R. App. P. 36). The judgment is usually quite simple, merely stating whether the judgment of the trial court is affirmed, reversed, or otherwise modified, and giving directions on remand.

The clerk of court arranges for posting the opinion on the court's website and distributes copies, in accordance with court procedures, to attorneys and parties.

The public availability of the opinions on the Internet offers access to the posted opinions to legal publishers and interested parties. In addition, each court has its own practices for printing opinions, either in-house or through a contract printer.

You may be responsible for assisting the judge in proofreading and editing opinions prior to publication. The judge may also direct you to submit opinions to publishers or other individuals in accordance with local practices and procedures. Sometimes circuit judges, in their opinions, call attention to apparent technical problems in statutes, such as grammatical problems that can affect meaning, or ambiguity as to whether Congress intended the statute to be retroactive. In 1995, the Judicial Conference endorsed a protocol by which circuit judges or courts of appeal can send such statutes to Congress, for any action it may wish to take, as well as to inform statutory drafters of how courts are reading their work product. In 2007, the Director of the Administrative Office reminded judges of this program and described the proper form for such communications. Of course, it is for the judge, not a law clerk, to decide whether to transmit an opinion, but clerks may wish to remind judges of this option in the case of an opinion that seems relevant.