

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Plaintiff(s) Name],

Plaintiff(s),

v.

Case No. [2-digit Case Year]-CV-[5-Digit Case
No.]-DT

[Defendant(s) Name],

Defendant(s).

_____ /

SAMPLE
RULE 16 CASE MANAGEMENT CONFERENCE AND SCHEDULING ORDER

This case management order has been prepared after receipt and consideration of the Rule 26(f) plan submitted by the parties. THE COURT SELDOM EXTENDS DEADLINES.

If there has not been an in-person conference and this order is thought to deviate substantially from the Rule 26(f) plan suggested by counsel, a motion for deadline modification must be supported by good cause and submitted in writing to the court within 14 days from the date of the Order.

IT IS HEREBY ORDERED:

1. AMENDMENTS

Any motion to add an allegedly indispensable party under F.R.Civ.P. 19 must be filed not later than **date 1** or be deemed waived.

2. EXCHANGE OF WITNESS LISTS:

In order to properly orient each party to the expected trial position of the opposing side, each party must deliver a **preliminary witness list**, to the opposing party and file a copy with the court on or before **date 2**.

Each party must deliver a **final witness list** to the opposing party and file a copy with the court on or before j. The list must constitute a full good-faith disclosure of each witness who is both known to the party and intended at that time to be called at trial. In the event that

a party desires to supplement the list with additional witnesses, the party may do so by; after that date supplementation may done by stipulation or, if a stipulation is not forthcoming, by motion supported by a showing of good cause. Witness lists must include after each witness's name an informative synopsis (one or two sentences) outlining the witness's expected testimony.

3. EXPERT REPORTS REQUIRED BY RULE 26(A)(2)(B) F.R.CIV.P:

The report of a proposed expert witness for Plaintiff must be provided **not later than fifty-six days (eight weeks) before the end of discovery.** Plaintiff's expert must be available and prepared for deposition within **fourteen days** after the date the expert report is provided (i.e., not later than six weeks before the end of discovery).

The report of any proposed expert witness for Defendant must be provided **not later that twenty-eight days (four weeks) before the end of discovery.** Defendant's expert must be available and prepared for deposition within **fourteen days** after the date the expert report is provided (i.e., not later that two weeks before the end of discovery).

In the event that a 26(a)(2)(B) report and deposition availability is not provided within these time deadlines, the proposed expert testimony will not be admitted at trial.

4. DISCOVERY DEADLINE:

The deadline for completing (not simply scheduling) court-sanctioned discovery is **j**. The discovery cut-off provided for herein means that written discovery must be served in such a manner so that the responses are due by the above cut-off date in accordance with the time for response provided in the applicable Federal Rule. Extensions of court-supervised discovery are not ordinarily granted in the absence of unusual circumstances. Although unsupervised discovery is sometimes agreed to among counsel, court deadlines are not based upon mere agreement.

5. DISPOSITIVE MOTION DEADLINE:

The deadline for filing either Rule 56 or other pretrial motions requiring extensive briefing and consideration (such as a motion to exclude the testimony of a purported expert under the standards set forth in *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 U. S. 579 (1993)) is **date 3**. Please carefully note **Motion Guidelines**, section 14, below.

6. JOINT FINAL PRETRIAL STATEMENT:

Plaintiff's counsel must submit a *proposed* joint final pretrial order (JFPTO) pursuant to Local Rule 16.2 to court chambers on or before **date 4**.

7. FINAL PRETRIAL/SETTLEMENT CONFERENCE:

The court will ordinarily conduct in chambers a Final Pretrial Conference under the provisions of Rule 16(d), Federal Rules of Civil Procedure at 2:00 pm on **date 5**.

In the event that the parties wish to have another judicial officer conduct such a settlement conference, the court will assist but counsel must alert the court as early as possible.

8. MOTIONS IN LIMINE:

Motions in Limine must be filed on or before **date 6**. The court does not intend to hear any Motions in Limine filed on the day of trial without good cause shown for the delay. "Motions in Limine" as used here indicates the relatively uncomplicated cautionary motions often seen at the commencement of a case. A motion, even if labeled as one "in limine," which will require extensive briefing and consideration (such as a Daubert motion; see paragraph 5., above) must be filed in accordance with the deadline for filing dispositive motions.

9. EXHIBITS; EXAMINING, PRE-MARKING AND LISTING:

Plaintiff's counsel is hereby ORDERED to convene a meeting of the attorneys at which all counsel are ORDERED to meet and:

a) identify any objections as to authenticity, foundation, relevance, etc., of each

proposed exhibit and deposition.

Each party's exhibits and deposition must then be listed separately, first those as to which there are *no* objections, and second those as to which there *are* objections.

"Exhibits" includes both those items which the parties fully intend to introduce at trial, and those which the parties simply might introduce. "Depositions" includes redacted portions thereof intended for trial use, agreed-upon exhibits and depositions, identified on a separate listing and prepared for submission to the court as explained more fully below, will be considered admitted at the outset of trial and may be used by either party at any time.

b) supply to opposing counsel in writing the reason(s) for the withholding of such stipulation or assertion of such objection as to each exhibit proposed by the opposing party as to which counsel has objected or withheld stipulation.

c) arrange to pre-number all exhibits (both those agreed to and those objected to). EXHIBITS MUST BE MARKED BY COUNSEL IN ADVANCE OF TRIAL. Court time cannot be used for the labeling of exhibits. The court's reporter will not label exhibits for counsel. Plaintiff will use exhibit numbers beginning with 101, and Defendant will use numbers beginning with 501 (in the event of an extraordinary number of exhibits or if this case does not fit the standard one-plaintiff/one-defendant pattern, counsel may agree upon a reasonable alteration to the 101/501 numbering system).

10. FILING PROPOSED FINDINGS AND CONCLUSIONS AND OTHER MATTERS:

The parties are directed to submit a joint document containing proposed findings of fact and conclusions of law to court chambers not later than **date 7**.

Plaintiff's counsel is directed to draft an initial version of the proposal with numbered paragraphs. Plaintiff's draft is then to be circulated to counsel for each of the remaining parties, who are directed to indicate those paragraphs with which they agree and those with

which they disagree. Where there is disagreement, objecting counsel is directed to draft alternative or additional proposals reflecting the client's position. It is then the responsibility of Plaintiff's counsel to incorporate the suggested modifications into a single document to be submitted to the court in chambers both on computer disc and on paper. The exact format of this submission is left to the discretion of counsel, with the observation that ultimately it will be used by the court as a template for the consideration of evidence at trial and the construction of its own findings.

Plaintiff's counsel and counsel for the Defendant each are

ORDERED to file with the court by: **date 8**

- a) A trial brief¹², and
- b) A list of the party's own exhibits that have been objected to by opposing counsel and the reason (supplied by opposing counsel) for the objection.

11. LISTING AND SUBMISSION OF STIPULATED EXHIBITS AND DEPOSITIONS:

Counsel for the Plaintiff is ORDERED by **date 9**.

- a) To file with the Clerk and with the court in chambers a list of exhibits the admissibility of which is stipulated to by both parties, and a list of the depositions similarly stipulated to, and by the same date
- b) To submit to the court in chambers copies of the exhibits themselves, unless bulk or other considerations make such submission impractical.

12. TRIAL SCHEDULE:

This case is on the court's trailing docket for non-jury trial on **(docket) with trial expected to commence on date 10**. The court will prepare a printed docket containing the civil cases to be heard, in order, and the names and telephone numbers of the attorneys

¹²A good trial brief will do more than merely restate the case summary contained in the JFPTO, and assist the court by, for example, outlining counsel's intended position on anticipated evidence or witness problems.

responsible for each case on the docket. The docket should be in the hands of counsel by about one month before the docket begins. It is the responsibility of counsel to be in contact with each other to determine their place on the docket, as cases ahead of them may settle and a later case may thereby move up on the list.

13. DEPOSITION USE AT TRIAL:

Any deposition sought to be used at trial, including a discovery deposition must meet ordinary trial limitations, and will be limited to direct examination, cross examination on matters raised in direct, and possibly redirect. See, FRE 611. Extended rounds of questions and answers must be redacted unless the court is persuaded that unusual circumstances require the reading of such extended questioning.

14. MOTION GUIDELINES:

a) Concurrence. Before filing *any* motion, read and closely follow Rule 7.1(a)(2) in seeking concurrence and specifically reporting negative results.

b) Form.

i) Face sheets to be color-coded. Please print the face sheet on the *judge's copy only* as follows: **BLUE** for the moving party's brief; **RED** for the non-moving party's response brief; and **GREY** for any reply.

ii) Binding; avoid top-punching. Please bind the judge's copies of briefs and appendices with a staple in the upper left corner unless more than 20 pages are presented, in which case please bind in "book form" along the left margin. The "text" of a brief as discussed in Local Rule 7.1(c)(3) includes things such as the statement of facts, case summary and argument, but does not apply to the table of contents, index of authorities, etc.

iii) Avoid "Notice of hearing." The court will set its own hearing dates, thus it is a waste of time and paper to include a "notice of hearing" form in your motion. Such

notices are not required by Eastern District Local Rules, and actively discourages by this chambers.

c) Time of Filing. Dismissal Motions may be filed at any time. Summary Judgment Motions usually are filed closely following the end of discovery; those filed earlier often must wait for discovery to be completed.

d) Briefing and Hearings. When a motion is filed, the court usually sets the dates for responses and replies and announces a date for argument. Such a notice, however, is not always sent; in the absence of such specified dates, counsel are governed by the Local Rules. An oral argument date is an internal court scheduling device, and not a guarantee that argument will be conducted. A motion may be decided on the briefs only, sometimes just days before argument. Short extensions of hearing dates may be granted by Case Manager Lisa Teets.

e) Hearings by telephone. The court will entertain requests to conduct some hearings by conference call and other reasonable suggestions that may reduce time, expenses and inconvenience required to resolve a case.

f) Rule 56 Motion Standards. Before filing or responding, counsel must be familiar with the Rule 56 Standards as set forth by the United States Supreme Court in the "Celotex trilogy."¹³ However, avoid lengthy boilerplate recitations of those standards or lengthy "string cites" in support of well-established principles. On the merits, please focus your analysis on a few well-chosen cases, preferably recent and from controlling courts. You are encouraged to supply the court with copies of your main cases, with the relevant passages(s) highlighted and tabbed. If you cite an opinion published only in a

¹³ *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co., Ltd v. Zenith Radio Corp.*, 475 U.S. 574 (1986). See also *Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989); and Schwarzer, *Summary Judgment under the Federal Rules; Defining Genuine Issues of Material Fact*, 99 F.R.D. 465 (1984).

specialty reporter, submit a copy of the +case itself. Copies of cases are to be submitted in a separate "case appendix" beginning with an index.

g) Statement of Material Facts, format. A "Statement of Material Facts" should also be included as part of your brief, but will not count against the briefing page limits. The "Statement" should consist of numbered paragraphs describing - with specific citations to the evidentiary record - the material facts of the case. The response should contain corresponding numbered paragraphs that admit, or provide alternative facts to that proffered in the motion. A response may include additional numbered paragraphs that provide additional material facts not raised in the motion.

The factual record should be contained in a "fact appendix." Begin the appendix with an index, followed by the tabbed exhibits. Submit enough of a document or deposition to allow it to be read in context, but avoid unnecessarily submitting things *in toto*, Documents and exhibits such as interrogatories, deposition, and affidavits provided in the appendix should be highlighted to focus attention on your point.

Appendices of more than 20 pages should be separately bound and include a cover sheet identifying the motion to which they are appended. All pages from the same deposition or document should be at the same tab.

RULE 56 MOTION FORMAT SUMMARY: Present a Rule 56 motion with

- (1) a tabbed "fact Appendix," that
 - (a) begins with an index and is followed by
 - (b) tabbed exhibits;
- (2) a brief, including a Statement of Material Facts; and perhaps
- (3) an indexed, tabbed "case appendix."

IT IS SO ORDERED.

August _____, 2003

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE