

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No.:

Plaintiff, HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

v.

Defendants.

ORDER RE:

1. SCHEDULING DISCOVERY;
2. SETTING DATE FOR FILING OF FINAL PRE-TRIAL ORDER;
3. SETTING DATE OF FINAL PRE-TRIAL CONFERENCE;
4. SETTING TENTATIVE TRIAL TERM;
5. PROVIDING FOR CONTENT OF FINAL PRE-TRIAL ORDER AND
DESCRIBING MATERIALS TO BE PREPARED AND TO BE MADE
AVAILABLE TO THE COURT AND COUNSEL.

IMPORTANT: YOU WILL RECEIVE NO FURTHER NOTICE OF THESE DATES

- I. Computation of time under this order and under any notice
of any scheduling order or notice in this cause shall be
in conformity and accordance with Federal Rule of Civil

Procedure 6(a) and Local Rule 6.1.

II. All DISCOVERY must be completed by _____

This Court will not order discovery to take place subsequent to that date, absent an adequate showing of extraordinary circumstances by motion submitted in accordance with LR 7.1.

III. Names of all witnesses, lay and expert, MUST BE EXCHANGED by: _____.

IV. Dispositive motions must be filed by _____

V. Referral to mediation panel will be made _____.

NOTE: ATTORNEYS MUST STIPULATE TO BE BOUND BY MICHIGAN COURT RULES RE: MEDIATION, I.E. PROVIDING FOR AWARD OF ATTORNEY FEES, OR MEDIATION WILL NOT BE ORDERED. (ORDINARILY, A CASE WILL NOT BE REFERRED TO MEDIATION IF ANY PARTY OBJECTS THERETO.)

VI. Also, a settlement conference may be subsequently scheduled if the court deems it appropriate.

VII. Date and time of final pre-trial conference: _____.

TRIAL COUNSEL MUST BE PRESENT AT THE FINAL PRE-TRIAL CONFERENCE AND HAVE SETTLEMENT AUTHORITY.

VIII. Final pre-trial order shall be submitted to the court not later than _____.

IX. Trial will be held in the trial term beginning _____. The court utilizes a trailing trial docket and it is the responsibility of counsel to maintain communication with the court's courtroom deputy clerk to ascertain the position of the case on the court's trial docket.

- X. Jury ____ Non-Jury ____ Estimated Length of Trial ____ days.
- XI. At least one week prior to beginning of trial term all counsel shall furnish to the court the following:
1. A trial brief.
 2. A list of all exhibits marked consecutively, as well as copies of all exhibits (to the extent possible) for use on the bench. All exhibits will be received prior to trial, except those to which an objection is noted. With reference to those exhibits, they will be received during trial at the proper time; if deemed admissible.
 3. In jury cases, any requests for voir dire.
 4. All motions in limine. Responses to motions in limine must be filed not later than 3 days prior to the first day of the trial term. Untimely motions in limine and responses thereto will not be considered.
 5. In non-jury cases, proposed findings of fact and conclusions of law.
- XII. At the commencement of all jury trials, each party shall file with the court, in duplicate, requested instructions and copies thereof shall be served on all other parties in accordance with LR 51.1(a).

Requested instructions shall be in compliance with LR 51.1(a), (b) and (c).

Counsel shall set forth a citation of authority for each requested instruction, which instructions shall be numbered sequentially in the order in which counsel requests that they be given. The full text of each requested instruction shall be submitted.

A reference to specific Sixth Circuit Pattern

Instructions, or Devitt, Blackmar, Wolff & O'Malley (4th Ed.) or, when appropriate, Michigan Standard Jury Instructions, shall be a sufficient citation of authority in all instances in which such standard instructions are utilized. Counsel for the parties shall also, prior to the time set for final arguments, and as far in advance thereof as is feasible, submit one unified set of instructions agreed upon, and shall submit separately those requested instructions which are disputed. The proponent and the opponent of any such disputed instruction shall submit therewith citations of authority for their respective positions.

XIII. Motion Practice Counsel shall comply with the provisions of LR 7.1, 5.1, 37.1 and 37.2. Insofar as page limitations of briefs and responses are concerned, each page shall contain no more than 25 lines of text exclusive of page numbers. Type size shall be no smaller than 10 letters to the inch.

XIV. Other matters: _____

XV. IT IS ORDERED that counsel for plaintiff(s) assume the responsibility for convening a conference for all parties to collaborate in the formulation of a short, concise pretrial order that is to be drafted by counsel for plaintiff(s), approved and signed by counsel for all parties, and submitted to the Court for approval and adoption. The order should provide for the signature of the court, which, when signed, will become an Order of the court. AN ORIGINAL AND ONE COPY IS TO BE FILED WITH THE COURT.

The proposed pretrial order shall strictly comply with the provisions and requirements of Local Rule 16.2, except as this court may otherwise provide.

LOCAL RULE 16.2

(a) Joint Final Pretrial Order.

The parties shall furnish a joint final pretrial order in every civil case at, or if the judge requires, before the final pretrial conference.* This joint final pretrial order shall fulfill the parties' disclosure obligations under Fed.R.Civ.P. 26(a)(3), unless the Judge orders otherwise. All objections specified in Rule 26(a)(3) shall be made in this order. Counsel for plaintiff(s) or a plaintiff without counsel shall convene a conference for all parties to confer and collaborate in formulating a concise joint final pretrial order. Counsel for plaintiff(s) or a plaintiff without counsel shall compile the order. Counsel for all parties and any party without counsel shall approve and sign the order. Counsel for plaintiff(s) or a plaintiff without counsel shall submit an original and one copy of the order to the assigned Judge for approval and adoption. The order shall provide for the signature of the Court and, when signed and filed in the Clerk's Office, becomes an order of the Court, superseding the pleadings and governing the course of trial unless modified by further order. The pretrial order shall not be a vehicle for adding claims or defenses. The order will not be filed in the Clerk's Office until the Judge has signed it.

*NOTE: THIS COURT REQUIRES THAT THE JOINT FINAL PRETRIAL ORDER BE FURNISHED AT LEAST ONE WEEK BEFORE THE TIME SET FOR THE FINAL PRETRIAL CONFERENCE.

(b) Contents of Order.

The joint final pretrial order shall contain, under numbered and captioned headings, the following:

- (1) Jurisdiction. The parties shall state the basis for Federal Court jurisdiction and whether jurisdiction is contested by any party.
- (2) Plaintiffs' Claims. The statement of the claim or claims of plaintiffs shall include legal theories.
- (3) Defendants' Claims. The statement of the defenses or claims of defendants, or third parties, shall include legal theories.
- (4) Stipulation of Facts. The parties shall state, in separately numbered paragraphs, all uncontested facts.
- (5) Issues of Fact to be Litigated.
- (6) Issues of Law to be Litigated.
- (7) Evidence Problems Likely to Arise at Trial. Include objections to exhibits and to the use of deposition testimony, including the objections required under Fed.R.Civ.P. 26(a)(3). The order shall list all motions *in limine* of which counsel or a party without counsel should reasonably be aware.
- (8) Witnesses. Each party shall list all witnesses whom that party will call and all witnesses whom that party may call. This listing shall include, but is not limited to, the disclosures required under Fed.R.Civ.P. 26(a)(3)(A) and (B). A party may, without further notice, call a witness listed by another party as a "will call" witness. Except as permitted by the Court for good cause a party may not list a witness unless the witness was included on a witness list submitted under a prior order or has been deposed. The list shall state whether the witness is an expert and whether testimony

will be offered by deposition. Only listed witnesses will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed.R.Civ.P. 37(c)(1) shall apply to a failure to list a witness.

(9) Exhibits. The parties shall number and list, with appropriate identification, each exhibit, including summaries, as provided in Fed. R. Civ. P. 26(a)(3)(C). Objections to listed exhibits must be stated in the joint pretrial order. Only listed exhibits will be considered for admission at trial, except for rebuttal exhibits which could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed.R.Civ.P. 37(c)(1) shall apply to a failure to list an exhibit.

(10) Damages. The parties shall itemize all claimed damages and shall specify damages that can be calculated from objective data. The parties shall stipulate to those damages not in dispute.

(11) Trial.

(A) Jury or non-jury.

(B) Estimated length of trial.

(12) Settlement. Counsel or a party without counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and state the current status of negotiations and any plans for further discussions. They may state that they wish the Court to schedule a settlement conference.

(c) Failure to Cooperate.

For failure to cooperate in preparing or submitting the joint final pretrial order or failure to comply strictly with the terms of the joint final pretrial order, the Court may dismiss claims, enter default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions.

(d) Filing of Trial Briefs, Findings and Instructions.

The joint final pretrial order shall further provide that trial briefs, proposed findings of fact and conclusions of law in nonjury cases or requests for instructions in jury cases shall be filed on the first day of trial.*

*NOTE: THIS COURT REQUIRES, IN ACCORDANCE WITH LR 16.2 (E), THAT TRIAL BRIEFS, MOTIONS IN LIMINE, REQUESTED VOIR DIRE QUESTIONS, EXHIBIT LISTS AND, IN NON-JURY CASES, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, SHALL BE FILED IN DUPLICATE AND SERVED ON OPPOSING COUNSEL AT LEAST ONE WEEK PRIOR TO FIRST DAY OF TRIAL TERM FOR THIS COURT, RATHER THAN AS PRESCRIBED IN LR 16.2 (D), SUPRA.

(e) Additional Requirements.

The Court, in an appropriate case, may add additional requirements to the joint final pretrial order, or may suspend application of this rule, in whole or in part.

(f) Juror Costs Attributable to Parties.

Each party shall also acknowledge that the Court may assess juror expenses under LR 38.2. (See also LR 40.2).

Dated: _____.

PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Copies to:

Revised 01/15/98

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HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF MICHIGAN

CIVIL CASES

PRETRIAL AND TRIAL PRACTICE

1. Standing Orders

After the Answer is filed, the Court notifies the parties of the date of a Scheduling Conference. The Court expects the parties to, prior to the Scheduling Conference, comply with the provisions of Fed. R. Civ. P. 26(f) and (d) by meeting for the purpose of formulating a discovery plan and complying with the various other provisions of those rules.

At the Scheduling Conference a Scheduling Order is issued which sets all of the significant dates in the case, including closing date for discovery, cut-off date for filing of Dispositive Motions, date for filing of Final Pre-Trial Order, required content of Final Pre-Trial Order and prescribing items and materials to be made available to the Court and to counsel, date of the Final Pre-Trial Conference, and setting trial term (month) for trial of the case.

2. Conferences

The Scheduling Order issued by the Court at the Scheduling Conference contains all cut-off dates. In the event that any such cut-off dates present problems, the Court expects prompt notification thereof. The Court will consider modification thereof only if the parties stipulate thereto or on motion in a matter of compelling circumstances.

The Court will permit the Scheduling Conference to be held by telephone if agreeable to all counsel or if otherwise deemed appropriate, or by correspondence if all parties are in complete agreement as to scheduling.

3. Attorneys

All attorneys, including out-of-state counsel, must be admitted to practice in the United States District Court for the Eastern District of Michigan, in accordance with Local Rule 83.20.

4. Filings

The Court requires strict compliance with the provisions of Local Rule 5.1 re: all filings of papers.

5. Removal

The Court will not remand a matter to state court sua sponte except under extraordinary circumstances. The court will, except under extraordinary circumstances, await a motion to remand or, if the Court has a concern regarding the propriety of removal, issue an order to show cause why the removed case should not be remanded. In cases removed to this Court on the basis of diversity of citizenship, the Court requires strict compliance with Local Rule 81.1.

6. General Motion Practice

The Court's deputy clerk schedules all dispositive motions for hearing. Oral arguments will be heard on such motions unless the Court, prior to the hearing, orders their submission and determination on the briefs without oral argument.

The Court will enforce Local Rule 7.1, 5.1, 37.1 and 37.2 relating to the filing of motions, briefs, responses and replies thereto. Absent extraordinary circumstances, counsel will be required to follow the briefing schedule set forth in Local Rule 7.1.

7. Temporary Restraining Order & Preliminary Injunction Motions

The Court generally sets a time schedule for a motion hearing and briefing requirements relating to requests for temporary restraining orders and preliminary injunctions which is less than that provided in Local Rule 7.1.

8. Class Actions

The Court does not impose any further requirements with respect to the certification of a class in addition to the requirements of Fed. R. Civ. P. 23.

9. Discovery Matters

The period for discovery is set forth in the Scheduling Order entered at the Scheduling Conference. Discovery time will vary depending upon the nature of a case. The Court requires that the identity of all witnesses (both expert and lay) be

disclosed well in advance of the discovery cut-off date, and this generally will require disclosure at least six (6) weeks prior to such date. The Court strictly adheres to the requirements of Local Rule 7.1, re: seeking concurrence, and Local Rule 37.1, re: "narrowing areas of disagreements", on discovery motions.

The Court does not, unless specifically otherwise ordered, require compliance with Fed. R. Civ. P. 26(a)(1). (See Local Rule 26.3). The provisions of Local Rule 26.1 and 26.2 will be enforced regarding discovery, as will Fed. R. Civ. P. 26(a)(2) through 26(g), inclusive.

The Court specifically directs the attention of counsel to the provisions of Fed. R. Civ. P. 26(f) and (d) relating to the required meeting of the parties to, among other matters, formulate a discovery plan. (See also Paragraph One, *supra*, regarding the responsibility of counsel to meet prior to the Scheduling Conference, to formulate a discovery plan and achieve the other objectives set forth in Fed. R. Civ. P. 26(f) and (d)).

Discovery Motions are generally referred to the Magistrate Judge including issues and questions involving ad hoc resolution of the disputes arising during depositions. The Court, in appropriate circumstances, is not averse to settling a dispute arising during a deposition by telephone, although generally it will be expected that such a dispute will first be submitted to the Magistrate Judge.

The Court generally will not permit discovery to be extended absent an adequate showing of extraordinary circumstances. It is therefore important that counsel request at the Scheduling Conference a sufficient period to complete discovery and set forth any special circumstances which may require a more lengthy than usual discovery period.

10. Mediation

The Court generally will refer civil cases to mediation only upon stipulation of the parties and only if the parties stipulate that mediation will be conducted in accordance with the mediation rules applicable to matters in courts of the State of Michigan, which provide for sanctions. These cases are referred to mediation after the discovery cut-off. The Court is amenable to other forms of alternative dispute resolution methods stipulated to by the parties. Mediation shall be conducted pursuant to the provisions of Local Rule 53.1 except as otherwise provided, *supra*.

11. Settlement

The Court will become involved in settlement negotiations if the parties consent thereto and request the Court's participation. If it appears to the Court that the Court's participation would be likely to have a salutary effect in achieving settlement, the Court may elect to become involved of its own volition.

If the Court schedules a Settlement Conference, the presence and participation of the parties themselves and of persons having settlement authority for insurers and corporate parties will be required.

12. Pretrial

The Joint Final Pretrial Order is due at least one week prior to the date set for the Final Pretrial Conference.

The parties shall strictly comply with the provisions of Local Rule 16.2 regarding the Final Pretrial Order except as hereinafter set forth.

In accordance with Local Rule 16.2(d) and (e) the following shall be filed in duplicate and served on opposing counsel at least one week prior to the first day of the trial term (i.e. first day of the month), in which trial is scheduled:

- (a) trial briefs
- (b) motions in limine
- (c) requested voir dire questions
- (d) exhibit lists
- (e) in non-jury cases, proposed findings of fact and conclusions of law

At the commencement of all jury trials, each party shall file with the court, in duplicate, requested instructions and copies thereof shall be served on all other parties in accordance with Local Rule 51.1(a).

Requested instructions shall be in compliance with Local Rule 51.1(a), (b) and (c).

Counsel shall set forth a citation of authority for each requested instruction, which instructions shall be numbered sequentially in the order in which counsel requests that they be given.

A reference to specific Sixth Circuit Pattern Instructions, or Devitt, Blackmar, Wolff & O'Malley (4th Ed.) or, when appropriate, Michigan Standard Jury Instructions, shall be a sufficient citation of authority in all instances in which such standard instructions are utilized. Counsel for the

parties shall also, prior to the time set for final arguments, and as far in advance thereof as is feasible, submit one unified set of instructions agreed upon, and shall submit separately those requested instructions which are disputed. The proponent and the opponent of any such disputed instruction shall submit therewith citations of authority for their respective positions.

Responses to Motions in Limine must be filed not later than 3 days prior to the first day of the trial term.

13. Trials

The Court follows a modified trailing/standby docket system. Parties are given a tentative date certain, within a trial term, the trial term consisting of a calendar month commencing on the first day of that month. If the case does not go on the date scheduled, the case is put on standby for two weeks. If the case is not called during the two-week standby period, the case will be rescheduled for another date certain within a subsequent trial term, usually within thirty to forty-five days thereafter. Adjournments of trials are rarely allowed. Where an attorney has a conflict with the trial date, the Judge's Court Clerk should be contacted immediately. In the event the named trial counsel is involved in another trial, the Court will require another member of that attorney's firm to proceed to trial unless it is clearly demonstrated that this would be inappropriate or would create a real hardship to counsel and/or litigants. Exhibits must be marked and exchanged prior to trial. Plaintiffs exhibits are to be numbered, and Defendants exhibits are to be alphabetized. The Court requires the use of a bench book. The Court retains custody of exhibits during trial. The parties retain custody of exhibits after trial pending appeal. The Court requires that trial briefs be filed and exchanged at least one week prior to the first day of the trial term. The Court prefers that trial briefs not exceed ten pages, except in highly complex or technical cases (e.g. patent infringement cases). In such cases, the Court encourages the attachment of a glossary containing terms of art.

a. Non-Jury Trials

The Court will require supplementation of the proposed findings of fact and conclusions of law at the end of the trial.

b. Jury Trials

The Court does not customarily permit counsel to participate in voir dire. Requests for specific voir

dire questions must be submitted in writing. The number of peremptory challenges is generally consistent with the number of challenges prescribed in Fed. R. Civ. P. and by 28 U.S.C. § 1870. The Court will handle challenges in such a manner that the jurors will not know which party has excused them. The Court follows the "Arizona Strike Method" of jury selection. Proposed jury instructions must be filed at the beginning of trial. The Magistrate Judge may select the jury in civil cases, with the consent of the parties, pursuant to Local Rule 72.1.

c. Miscellaneous

The Court generally conducts trial between the hours of 9:00 a.m. and 1:00 p.m. The Court does not allow multiple counsel for one party to interrogate the same witness or to give opening or closing statements. The Court places time limitations upon closing arguments. There may be other time limitations imposed during trial. The Court prefers that counsel request permission to approach the bench. Jurors are allowed to take notes.

The court charges the jury after final arguments. The Court generally allows the jury to take the instructions into the jury room during deliberations.

Dated: _____
Paul V. Gadola
United States District Judge

Revised 7/16/97

JUDGE PAUL V. GADOLA

Biographical Sketch

Judge Paul V. Gadola was born in Flint, Michigan on July 21, 1929. He was admitted to the State Bar of Michigan in 1953. Judge Gadola graduated from Michigan State University, with honors, in 1951, and received his Juris Doctor Degree from the University of Michigan Law School, in 1953.

He served in the U.S. Army from 1953 to 1955. Judge Gadola was in private practice in Genesee County, Michigan from 1955 to 1989. Judge Gadola was nominated by President Ronald Reagan to the U.S. District Court for the Eastern District of Michigan and took office on January 6, 1989. Prior to taking office, he was certified as a Diplomat in Civil Trial Advocacy by the National Board of Trial Advocacy, and as a Lifetime Fellow of the American Trial Lawyers Foundation, and served as an arbitrator for the American Arbitration Association and as a mediator for the Circuit Courts of Genesee and Shiawassee Counties. Judge Gadola is also a Fellow of the Michigan State Bar Foundation.

He is a member of the Executive Board of the Federal Bar Association - Detroit Chapter, and is former President of the Michigan Chapter of the Incorporated Society of Irish/American Lawyers, and is a member of the Board of Directors of the Historical Society for the U.S. District Court for the Eastern District of Michigan, and is also a member of the Michigan Supreme Court Historical Society.

Judge Gadola is a member of the Federalist Society for Law and Public Policy Studies, and of the Advisory Committee of its Michigan Chapter, and of the Board of Directors of the Mackinac Center for Public Policy. He is also a member of the Philadelphia Society, the Economic Club of Detroit, and the Committee of Sponsors of the Flint College and Cultural Development Fund.

He is a member of the Hannah Society and the President's Club of Michigan State University and has served as a member of the Board of Directors of the Michigan State University Development Fund and as a member of the national Board of Directors of the Michigan State University Alumni Association, and served as a member of the Board of Directors of the Mott Community College Foundation.

Prior to taking the bench, Judge Gadola was an elected member of the Board of Trustees of Mott Community College, located in Flint, from 1969 to 1989 and served as its Chairman from 1983 to 1989. He formerly served as President of the Urban League of Flint, President of the Cystic Fibrosis Research Foundation of Genesee County, Chairman of the March of Dimes of Genesee County and Vice-President of the Genesee County Legal Aid Society and as a Director

of the Flint Environmental Action Team. He also formerly served as a Director of the Flint Area Convention and Tourist Council.

PRETRIAL AND TRIAL PRACTICE

1. Standing Orders

After the Answer is filed, the Court notifies the parties of the date of a Scheduling Conference. The Court expects the parties to, prior to the Scheduling Conference, comply with the provisions of Fed. R. Civ. P. 26(f) and (d) by meeting for the purpose of formulating a discovery plan and complying with the various other provisions of those rules.

At the Scheduling Conference a Scheduling Order is issued which sets all of the significant dates in the case, including closing date for discovery, cut-off date for filing of Dispositive Motions, date for filing of Final Pre-Trial Order, required content of Final Pre-Trial Order and prescribing items and materials to be made available to the Court and to counsel, date of the Final Pre-Trial Conference, and setting trial term (month) for trial of the case.

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The Scheduling Order issued by the Court at the Scheduling Conference contains all cut-off dates. In the event that any such cut-off dates present problems, the Court expects prompt notification thereof. The Court will consider modification thereof only if the parties stipulate thereto or on motion in a matter of compelling circumstances.

The Court will permit the Scheduling Conference to be held by telephone if agreeable to all counsel or if otherwise deemed appropriate, or by correspondence if all parties are in complete agreement as to scheduling.

3. Attorneys

All attorneys, including out-of-state counsel, must be admitted to practice in the United States District Court for the Eastern District of Michigan, in accordance with Local Rule 110.1.

4. Filings

The Court requires strict compliance with the provisions of

Local Rule 5.1 re: all filings of papers.

5. Removal

The Court will not remand a matter to state court sua sponte except under extraordinary circumstances. The court will, except under extraordinary circumstances, await a motion to remand or, if the Court has a concern regarding the propriety of removal, issue an order to show cause why the removed case should not be remanded. In cases removed to this Court on the basis of diversity of citizenship, the Court requires strict compliance with Local Rule 81.1.

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The Court will enforce Local Rule 7.1 and 5.1 relating to the filing of motions, briefs, responses and replies thereto. Absent extraordinary circumstances, counsel will be required to follow the briefing schedule set forth in Local Rule 7.1.

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The Court does not impose any further requirements with respect to the certification of a class in addition to the requirements of Fed. R. Civ. P. 23.

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The period for discovery is set forth in the Scheduling Order entered at the Scheduling Conference. Discovery time will vary depending upon the nature of a case. The Court requires that the identity of all witnesses (both expert and lay) be disclosed well in advance of the discovery cut-off date, and this generally will require disclosure at least six (6) weeks prior to such date. The Court strictly adheres to the requirements of Local Rule 7.1, re: seeking concurrence, and Local Rule 37.1, re: "narrowing areas of disagreements", on discovery motions.

The Court does not, unless specifically otherwise ordered, require compliance with Fed. R. Civ. P. 26(a)(1). (See Local Rule 26.3). The provisions of Local Rule 26.1 and 26.2 will be enforced regarding discovery, as will Fed. R. Civ. P. 26(a)(2) through 26(g), inclusive.

The Court specifically directs the attention of counsel to the provisions of Fed. R. Civ. P. 26(f) and (d) relating to the required meeting of the parties to, among other matters, formulate a discovery plan. (See also Paragraph One, *supra*, regarding the responsibility of counsel to meet prior to the Scheduling Conference, to formulate a discovery plan and achieve the other objectives set forth in Fed. R. Civ. P. 26(f) and (d)).

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11. Settlement

The Court will become involved in settlement negotiations if the parties consent thereto and request the Court's participation. If it appears to the Court that the Court's participation would be likely to have a salutary effect in achieving settlement, the Court may elect to become involved of its own volition.

If the Court schedules a Settlement Conference, the presence and participation of the parties themselves and of persons having settlement authority for insurers and corporate parties will be required.

12. Pretrial

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The parties shall strictly comply with the provisions of Local Rule 16.2 regarding the Final Pretrial Order except as hereinafter set forth.

In accordance with Local Rule 16.2(d) and (e) the following shall be filed in duplicate and served on opposing counsel at least one week prior to the first day of the trial term (i.e. first day of the month), in which trial is scheduled:

- (a) trial briefs
- (b) motions in limine
- (c) requested voir dire questions
- (d) exhibit lists
- (e) in non-jury cases, proposed findings of fact and conclusions of law

At the commencement of all jury trials, each party shall file with the court, in duplicate, requested instructions and copies thereof shall be served on all other parties in accordance with Local Rule 51.1(a).

Requested instructions shall be in compliance with Local Rule 51.1(a), (b) and (c).

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Responses to Motions in Limine must be filed not later than 3 days prior to the first day of the trial term.

13. Trials

The Court follows a modified trailing/standby docket system. Parties are given a tentative date certain, within a trial term, the trial term consisting of a calendar month commencing on the first day of that month. If the case does not go on the date scheduled, the case is put on standby for two weeks. If the case is not called during the two-week standby period, the case will be rescheduled for another date certain within a subsequent trial term, usually within thirty to forty-five days thereafter. Adjournments of trials are rarely allowed. Where an attorney has a conflict with the trial date, the Judge's Court Clerk should be contacted immediately. In the event the named trial counsel is involved in another trial, the Court will require another member of that attorney's firm to proceed to trial unless it is clearly demonstrated that this would be inappropriate or would create a real hardship to counsel and/or litigants. Exhibits must be marked and exchanged prior to trial. Plaintiffs exhibits are to be numbered, and Defendants exhibits are to be alphabetized. The Court requires the use of a bench book. The Court retains custody of exhibits during trial. The parties retain custody of exhibits after trial pending appeal. The Court requires that trial briefs be filed and exchanged at least one week prior to the first day of the trial term. The Court prefers that trial briefs not exceed ten pages, except in highly complex or technical cases (e.g. patent infringement cases). In such cases, the Court encourages the attachment of a glossary containing terms of art.

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The Court does not customarily permit counsel to participate in voir dire. Requests for specific voir dire questions must be submitted in writing. The number of peremptory challenges is generally consistent with the number of challenges prescribed in Fed. R. Civ. P. and by 28 U.S.C. § 1870. The Court will handle challenges in such a manner that the jurors will not know which party has excused them. The Court follows the "Arizona Strike Method" of jury selection. Proposed jury instructions must be filed at the beginning of trial. The Magistrate

Judge may select the jury in civil cases, with the consent of the parties, pursuant to Local Rule 72.1.

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The court charges the jury after final arguments. The Court generally allows the jury to take the instructions into the jury room during deliberations.

14. Criminal Pretrial Proceedings

The Court generally refers discovery motions, pretrial conferences, arraignments on information and arraignments on indictment to the Magistrate Judge. The court generally follows the cut-off dates provided in the standing order on discovery except in large, multiple defendant cases. The parties are required to comply with the provisions of the standing order for discovery in criminal cases (#90-AO-0101) and Fed. R. Crim. P. 16.

15. Motions in Criminal Cases

The provisions of Paragraphs 4 and 6, supra, relating to filing and disposition of motions, will also be in effect in criminal cases and the parties will be required to comply with the provisions of Local Rule 5.1 and 7.1.

In criminal cases, Motions in Limine must be filed and served at least fourteen days prior to trial and responses thereto shall be filed no later than five days after service. The Court will not hear Motions in Limine on the day of trial.

Other Pretrial Motions shall be filed within twenty days of the date of arraignment of the defendant involved.

16. Criminal Trials

Witness lists are required from both parties at the beginning of trial and are disclosed to the jury during voir dire. The Court generally encourages the Government to disclose Jencks

material in advance of trial. The Court follows the Arizona Strike Method of jury selection for criminal trials. Where alternate jurors are used they are not informed prior to the conclusion of trial that they are alternates. The number of peremptory challenges is generally consistent with the number of challenges prescribed in Fed. R. Crim. P. The Court will handle peremptory challenges in such manner that the jurors will not know which party has excused them.

The provisions regarding requested jury instructions as set forth in Paragraph 12, *supra*, shall also be applicable in criminal trials. Requested voir dire questions shall be provided at least one week prior to trial and exhibit lists shall be provided at least three days prior to trial.

17. Pleas and Sentencing in Criminal Cases

The Court may accept an Alford plea, but not over the objection of the Government. The Court generally will accept a nolo contendere plea, under appropriate circumstances, sometimes over Government objection. The Court requires a pre-sentence investigation and report prior to sentencing for all defendants, even if the parties agree to waive it. Disputes relating to the computation of sentencing guidelines are generally resolved by hearing before the Court prior to sentencing. The court generally meets with the probation officer prior to sentencing. If the parties agree on computation of sentencing guidelines, but the probation officer disputes their conclusion, the Court will generally resolve the dispute by conference with the parties and the probation officer. The Court may allow a convicted individual to self-report to the custodial facility in an appropriate situation and generally will allow it if the Government so recommends. If the Court rejects a Rule 11 plea, it will inform the parties in open Court on or before sentencing date. The Court sets a firm plea cut-off date on a case-by-case basis. No Rule 11 Plea Agreements will be considered on or after the date set for commencement of trial. The Court will, in most instances, reject a Rule 11 Agreement which eliminates entirely the Court's discretion in determining the period of incarceration.