

Civil Practice and Trial Procedure

A. TRIAL DATE

The Court will set a date certain for the trial after ruling on dispositive motion, or at the conclusion of any settlement conference in which the parties participate.

B. ADJOURNMENTS

Because the court consults with the attorneys before setting a trial date, adjournments are rarely granted. **Counsel should not wait until an issue becomes an emergency before seeking the Court's assistance.** Judge Berg is available for status conferences, either telephonically or in person, by arrangement with the case manager.

C. JOINT FINAL PRETRIAL ORDER

The proposed Final Pretrial Order **shall strictly comply with the requirements of Local Rule 16.2.**

The Final Pretrial Order must be submitted electronically through CM/ECF on or before the date set by the scheduling order.

Counsel is directed to consult and comply with Local Rule 16.2 governing the Joint Final Pretrial Order.

Pursuant to Local Rule 16.2(b)(9), any objection based on foundation or authenticity will be deemed waived if not raised before trial.

D. FINAL PRETRIAL CONFERENCE ATTENDANCE

otherwise instructed by the Court, the following individuals shall personally attend the final pretrial conference:

- i. Trial counsel for each party;
- ii. All parties who are natural persons;
- iii. A representative on behalf of any other party who has full settlement authority for the party;
- iv. A representative of any insurance carrier that has undertaken the prosecution or defense of the case and has contractually reserved to itself the ability to settle the action.

Representatives must possess full authority to engage in settlement discussions and to agree upon a full and final settlement. "Personal attendance" by each party is not satisfied by (1) trial counsel professing to have full authority on behalf of the client or (2) a party being available by telephone.

E. EXHIBITS

1. **Marking of Exhibits:** Counsel are required to mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use consecutive numbers and Defendant's exhibits shall use consecutive letters.
2. **List of Exhibits:** Each party shall submit a list of proposed exhibits directly to chambers via the Proposed Orders function by the deadline established at the final pretrial conference. However, no later than one (1) week before the final pretrial conference, each party shall make available for inspection all exhibits which that party will introduce at trial. This provision shall not extend the time for disclosure and inspection of material previously ordered herein.
3. **Foundation for Exhibits:** When a party has inspected an exhibit that the opposing party intends to introduce in evidence, the authentication of that exhibit will be deemed established

unless the objecting party files a notice with the Court at or before the final pretrial conference that the foundation for admission into evidence of the exhibit will be contested. See [Local Rule 16.2\(b\)\(9\)](#).

4. **Objections to Exhibits:** These guidelines shall not affect the right of a party to object at the time of trial to the introduction of an exhibit other than on the basis of authentication and foundation.
5. **Custody and Record of Admitted Exhibits:** Counsel are required to maintain a record of all admitted exhibits during trial. Counsel for each party must keep custody of that party's admitted exhibits during trial. A party who objects to this provision must file a written objection prior to jury selection.

[Exhibit Form](#)

6. **Publication of Exhibits during Trial:** The Court encourages parties to use electronic projection to publish exhibits during trial in a manner that allows the jury, court, attorneys, and parties to view the exhibit simultaneously. Parties are responsible for providing, setting up, and testing their own equipment for such purpose. If photographs and documentary exhibits are not published electronically, then the party must prepare exhibit books for the Court and each juror. Whether or not exhibits are published electronically, a separate exhibit book should be prepared and made available to any witness who is to be questioned about an exhibit.
7. **Preparing Exhibits for Jury Deliberation:** Originals of all exhibits admitted at trial should be ready to be turned over to the jury foreperson prior to closing jury instructions so that jury deliberations are not delayed. Prior to submitting trial exhibits to the jury for deliberations, counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial.
8. **Filing Exhibits:** It is the responsibility of the parties to ensure that the record is complete.
9. **Full Disclosure:** Computer generated visual or animated evidence, together with underlying data, must be disclosed to opposing counsel at least one week before the start of trial.
10. **Penalty:** A party who does not abide by these provisions may be subject to sanctions, including preclusion of the introduction of exhibits at trial by the offending party.

F. JURY INSTRUCTIONS

By the deadline established in the Scheduling Order, the parties must submit to chambers a single set of proposed, stipulated jury instructions via the Proposed Orders function. Counsel are responsible for submitting all instructions related to their specific claims or defenses, and special instructions relating to evidence.

All such instructions are to be submitted in Word format via the Proposed Order function. Each instruction shall be presented on a separate page and contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"). In addition, each party must submit separately to chambers all additional proposed instruction (in the same form) to which any other party objects. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching an agreement as to an acceptable form. Any disputes regarding proposed jury instructions will be settled at a hearing on the record.

The Court has its own standard introductory and concluding jury instructions, and therefore counsel are directed to concentrate on the elements of the claims, the defense(s), etc. The jury will be charged before final argument.

G. JURY SELECTION

Voir dire will be conducted by the Court using its standard questions. Counsel should submit proposed additional voir dire questions in writing at least three days in advance of the final pretrial

conference via the Proposed Orders function, and the Court will add those questions it deems appropriate. The Court will provide parties with the final list of questions before jury selection begins. During jury selection, parties will be permitted to submit additional questions to be asked by the court, as provided by Fed. R. Civ. P. 47(a). Jurors will be excused without disclosing which side excused them.

H. NOTE TAKING & JUROR INVOLVEMENT

Jurors will be permitted to take notes during trial. The Court specifically instructs the jury in advance on this issue. Jurors who choose to take notes will be instructed that such notes are not evidence, but are merely aids to the jurors' memory of the evidence presented at trial. Jurors will also be allowed to pose questions to witnesses, after attorney examination is completed, by submitting written questions to the Court. The Court will then review the proposed questions at side bar with counsel and, if permissible, will ask the questions of the witness. Attorneys will be allowed the opportunity to ask follow up questions if they desire.

I. PROPER USE OF JURY TIME

Although counsel is expected to raise foreseeable evidentiary issues by motions *in limine* before trial, if evidentiary problems arise during trial, counsel should raise them before or after the trial day, or during the break, to avoid jury down time while such problems are resolved.

J. VOLUNTARY CONSENT TO PROCEED BEFORE MAGISTRATE JUDGE

In accordance with 28 U.S.C. §636(c) and pursuant to Rule 73(b) of the Federal Rules of Civil Procedure, the parties may consent to have a Magistrate Judge conduct all proceedings in their case, including a bench or jury trial, and order the entry of final judgment.

Magistrate Judges do not conduct trials in felony cases. Accordingly, if the parties consent to the exercise of jurisdiction by the Magistrate Judge, major criminal cases will not interfere with the scheduling of a civil action. Therefore, consenting to have a Magistrate Judge handle a case may mean that the case will be resolved sooner, or that the Magistrate Judge will be able to give the parties a date certain for trial. Furthermore, depending on which Magistrate Judge is assigned to the case, proceedings could be held in the Detroit, Ann Arbor, or Flint courthouses.