

Motion Practice

A. CONCURRENCE

The Court requires strict compliance with [Local Rule 7.1\(a\)](#) regarding concurrence, and the Court will impose costs for failure to comply with the Local Rule.

B. FORMAT AND PAGE LIMITATIONS

All briefs must comply with Local Rules [5.1](#) and [7.1](#), and must contain citations to appropriate authorities within the text of the brief. Citations must conform to the latest edition of *The Bluebook: A Uniform System of Citation* published by the Harvard Law Review. All citations to documents already in the record must be in the following format: ECF No. 1-2, PageID.1234.

The Court enforces the page limit set forth by [Local Rule 7.1\(d\)\(3\)](#) and the formatting/type size requirements set forth by [Local Rule 5.1\(a\)](#). The Court does not routinely grant requests to file longer briefs. Requests to file an oversized brief must be made by motion, in which the moving party sets forth specific reasons justifying the need for additional pages.

If a brief and its accompanying exhibits exceed twelve pages in total length, the filing must contain a table of contents, a table of authorities, and an index. Briefs and accompanying exhibits that exceed twelve pages must comply with the requirements of length set forth in [Local Rule 7.1\(d\)\(3\)](#).

References in briefs to an argument or statement made by an opposing party must include a specific citation to the docket and page numbers of the matter referenced. Documents must be prepared in 14-point type and double spaced.

Captions of motions, briefs and proposed orders may never contain extraneous matters such as a listing of counsel or other language commonly found in state court filings. Pleadings containing such extraneous matters will not be filed by the deputy clerk.

C. BRIEFING SCHEDULE AND ORAL ARGUMENT - DISPOSITIVE MOTIONS

The Court does not typically issue a briefing schedule; rather, it follows the time limits set forth in [Local Rule 7.1\(e\)](#) and Federal Rule of Civil Procedure 6.

The Court enforces the response and reply due dates as set forth in [Local Rule 7.1\(3\)](#), even when the motion hearing is set far in advance. Attorneys who do not respond to motions in a timely fashion are not permitted to argue before the Court during oral argument.

The Court will schedule hearings on most dispositive motions made before or during trial. Oral argument is scheduled approximately 10 weeks from the date of filing. The Court will occasionally cancel oral argument when, after a review of the briefs, the Court finds that argument would be neither necessary nor helpful. See [E.D. Mich. L.R. 7.1\(e\)\(2\)](#).

The parties are encouraged to present a proposed order at the hearing.

D. BRIEFING SCHEDULE AND ORAL ARGUMENT - NON-DISPOSITIVE MOTIONS

As stated previously, Counsel must comply with the time limits set forth in [Local Rule 7.1\(e\)](#) and Federal Rule of Civil Procedure 6.

The Court will generally schedule a hearing on post-trial and non-dispositive motions (including motions for temporary restraining orders), except motions for reconsideration and prisoner *pro se* motions. The parties are encouraged to present a proposed order at the hearing.

If the parties resolve a pending motion before the hearing date, they must notify chambers

within one business day by sending an email to the Case Manager. The movant must then file a notice withdrawing the pending motion.

Under the Court's blanket discovery referral, discussed below, discovery motions are to be filed according to the procedures adopted by the assigned Magistrate Judge. The Court does not generally refer other individual motions, except as required by Court procedure.

E. SEPARATE MOTION AND BRIEF

[Local Rule 7.1\(c\)](#) requires that motions and responses to be accompanied by a separate brief. Motions may not be included within or appended to a response or a reply, and under no circumstances may a motion be included within the text or footnotes of another motion.

F. SUMMARY JUDGMENT

No party may file more than one motion for summary judgment without obtaining leave of court.

Before filing a motion for summary judgment or responding to such motion, the parties are strongly urged to familiarize themselves with *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). An excellent summary of these cases appears in *Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989). See also *Schwarzer, Summary Judgment under the Federal Rules: Defining Genuine Issues of Material Fact*, 99 F.R.D. 465 (1984).

A Rule 56 motion must begin with a "Statement of Material Facts." Proffered facts must be supported with citations to the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. Citations should contain page and line references, as appropriate. The full text of any source cited should be filed with the Court in a Fact Appendix. The Fact Appendix shall contain an index, followed by the tabbed exhibits. Chambers' copies of Fact Appendices of more than 20 pages must 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. The Statement of Material Facts counts against the page limit for the brief.

The response to a Rule 56 Motion must begin with a "Counterstatement of Material Facts" identifying facts the non-moving party disputes. The non-moving party must explain the basis for the factual disagreement, referencing and citing record evidence. In similar form, the counterstatement may also include additional facts, disputed or undisputed, that require a denial of the motion.

It is not the Court's function to "figure out" or to search the record to determine what evidence the parties rely upon in support of claims or defenses. It is incumbent upon the parties to make substantive arguments, with specific references to the record in support of each claim or defense asserted.

Counsel are discouraged from employing elaborate boilerplate recitations of the summary judgment standard or lengthy string citations in support of well-established legal principles. Instead, counsel should focus their analysis on a few well-chosen cases, preferably recent and from controlling courts. Where unpublished opinions or opinions published only in a specialty reporter are cited, copies of these cases must be submitted with the briefs.

G. TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

If necessary, the Court will set a time schedule for motion and briefing requirements relating to requests for temporary restraining orders ("TRO") and preliminary injunctions which is shorter than prescribed by [Local Rule 7.1](#). In addition to the requirements of Federal Rule of

Civil Procedure 65 and [Local Rule 65.1](#), the Court requires that all temporary restraining orders, including those considered *ex parte*, require some notice to the opposing party and an opportunity for the Court to hear both sides, unless the moving party can demonstrate good cause for failing to give notice to the opposing party. Usually, the Court will schedule a conference before hearing any request for a TRO or preliminary injunction. Parties must notify the Case Manager and Judicial Assistant via email upon filing a motion for an injunction so that appropriate scheduling issues can be discussed. The Court strongly encourages parties to confer ahead of any preliminary injunction hearing in an attempt to reach an agreement with respect to the injunction.

H. MOTIONS TO SEAL

Local Rule 5.3 sets forth in detail the procedure that must be followed before any item may be filed on the docket under seal. Further, the Court will not accept motions to seal that do not demonstrate compelling reasons which would justify sealing the motion. "The proponent of sealing...must analyze in detail...the propriety of secrecy, providing reasons and legal citations." *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305-06 (6th Cir. 2016).

Before docketing any submission under seal, whether it is a motion, an exhibit, or any other item, you must file a motion requesting the Court's permission to file the item under seal. Also, as with any motion, before filing a motion to seal you must seek concurrence from counsel for all other parties, unless the applicable rules of court allow you to seek relief *ex parte*. Local Rules 5.3 and 7.1 apply in the usual manner to all motions seeking leave for filing items under seal.

If you are seeking to file submissions such as certain exhibits with medical or other personal information under seal, but the motion for leave to file under seal does not itself disclose any information that needs to be maintained under seal, then you may e-file the motion for leave (NOT under seal), with the items that you want to have sealed as separately docketed exhibits (under seal), according to the procedure outlined in Local Rule 5.3. Again, keep in mind that you also must comply in the usual way with all other applicable rules of court, such as Local Rule 7.1.

If the motion to seal itself contains information that you believe should be sealed, or if you need to file information under seal that by its nature should not be revealed to opposing counsel (e.g., motions to authorize fees or services in a criminal matter), then you should **email** the case manager (*not docket*) the motion or other papers that you want filed under seal, and a motion for leave to file all of the items under seal, each as separate files in Microsoft Word format, using the Utilities function of CM-ECF, which goes directly to the case manager. In this case you SHOULD NOT e-file any of the items in any form, either sealed or unsealed, before sending them via Utilities. The items will be docketed appropriately by the case manager.

In either case, when a motion to seal is docketed or received via Utilities, the Court will consider whether it should be granted and issue an appropriate order. If you believe that the order granting the motion also should be sealed, then your motion to seal should so state.

Note that in the usual case the Court will not grant requests to seal an entire motion and brief or all associated exhibits where only limited portions of certain exhibits contain sensitive information. The Court also will not grant "sealed motions to seal" where the motion for leave to file under seal does not itself disclose sensitive information or information that should not be divulged to other parties or their counsel. Orders granting motions to seal also typically will

not be filed under seal unless docketing the order on the public docket would defeat the purpose of the confidential filing.

I. PRIVACY

Counsel should be vigilant regarding the use of private information in any filings and should redact such information when required. For further information, counsel should refer to the appropriate Federal Rules regarding privacy protection.

J. NOTICES OF SUPPLEMENTAL AUTHORITY

The Court does not require motions for leave to file notices of supplemental authority.