

## Standing Orders

- [Notice of Status Conference to Schedule: Discovery, Final Pretrial Order And Final Pretrial Conference](#)
- [Scheduling Order](#)

# Conferences

The Court routinely issues the notice scheduling a status conference three to five weeks after the Answer is filed. **Please notify the court if you have not received a notice of scheduling conference after five weeks.** At the initial scheduling conference the parties are expected to be prepared to summarize the case and the issues, and to discuss the Court's subject matter jurisdiction. The parties are encouraged to exchange information informally, and to explore settlement and the possible value of facilitation/mediation. Attendance by counsel by telephone is discouraged and seldom permitted. **Parties must attend.** Each side starts with a cup of credibility.

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Also at the initial scheduling conference, the Court's standing Scheduling Order is completed with the parties' involvement. Typically, the parties are required to exchange witness lists within two months. The deadline for the filing of dispositive motions is typically set at one month after the discovery cutoff.

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Stipulated requests to extend the scheduling deadlines are liberally granted. Counsel must electronically file a stipulation to extend the deadlines as well as a proposed order.

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The Final Pretrial and Settlement Conference is set approximately three months after the close of discovery. If a dispositive motion is pending, the Final Pretrial Conference is postponed until after the decision on the dispositive motion. The Final Pretrial Order is due one week before the Final Pretrial and Settlement Conference. A trial date is set at the Final Pretrial Conference. Case evaluation is ordered only if all parties agree.

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Additional conferences with the Court, including settlement conferences, will be scheduled upon request. **The Court encourages the parties to continue settlement discussions throughout the case.**

## **Removal**

All removal cases are reviewed. If it appears that the Court does not have subject matter jurisdiction, an Order to Show Cause is issued. If jurisdiction is questionable, the Court will address the issue at the Scheduling Conference. Oral argument may be requested on Orders to Show Cause and Motions to Remand.

## **Motion Practice**

Non-dispositive motions, and particularly discovery-related motions, typically are referred to a Magistrate Judge. The Court, if available, will accept conference calls regarding disputes arising during depositions. See [Discovery](#) page.

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The Court follows the general rules concerning dispositive motions, including courtesy copies. The Court will typically contact counsel by e-mail to schedule oral argument.

# Discovery

The Court has a standing scheduling order that is entered in each case following the initial scheduling conference, which sets the discovery cut off date. Parties may request an extension of the discovery cutoff date by submitting a proposed stipulated order. [E.D. Mich. LR 37.1](#) is enforced. **If the circumstances warrant, the Court will entertain telephone conferences, if available, to resolve pressing discovery disputes.**

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The initial disclosure requirements of Rule 26(a)(1) will be addressed at the scheduling conference. However, parties are welcome and encouraged to meet and discuss Rule 26(a)(1) prior to the initial scheduling conference. Infrequently, the Court has limited or not permitted expert testimony as a result of a party's failure to comply with Rule 26(a)(2). The Court does not enforce the stay of discovery contemplated by Rule 26(d) pending the conference contemplated by Rule 26(f).

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**It is expected all parties and all counsel will conduct discovery in a cooperative way, consistent with FRCP 1: "To secure the just, speedy, and inexpensive determination of every action."** An annual award for civility has been established.

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Counsel are encouraged to communicate early, often and informally in dealing with discovery problems. If they can't resolve them, don't hesitate to bring them to my attention. While you can always file a motion, I'm also available to conduct an informal discovery conference, either in person or by telephone. To arrange for such a conference, email Mike Lang ([Mike\\_lang@mied.uscourts.gov](mailto:Mike_lang@mied.uscourts.gov)) or in emergency call Mike Lang at (313) 234-5182.

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The questioning attorney at depositions is to be respectful of the witness, to confine questions to subjects that are discoverable under FRCP 26(b) and to spend no more time than is reasonable in questioning the witness. All attorneys are to be polite and professional.

The lawyer defending a witness at a deposition should not impede the legitimate interrogation of that witness. Since all objections, other than as to form or dealing with privilege, are preserved for trial, I expect that objections will be few in number and will not be "speaking objections;" i.e., those calculated to suggest an answer to the witness or impede legitimate questions. See FRCP 30(d)(i) and 32(d)(3).

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If problems arise in a deposition and counsel need immediate guidance from the Court, you may call me at (313) 234-5180, fax (313) 234-5492.

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Document requests and interrogatories should be reasonable in scope. Responses should be complete and, in fact, responsive. If there are doubts as to definitions or scope, they should be raised promptly with the requesting party.

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Documents withheld on the basis of privilege should be listed on a privilege log with sufficient information to enable the requesting party to understand the nature of the documents and the basis of the privilege claim.

# Pretrial

Social Security, some *habeas corpus* cases, and some prisoners' rights cases, are referred to a Magistrate Judge for report and recommendation. In all other cases, only discovery matters are typically referred to a Magistrate Judge.

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The Final Pretrial and Settlement Conference is typically scheduled to take place approximately two months after the close of discovery. The Court enforces the requirements of [E.D. Mich. LR 16.2](#) for the pretrial order, which is due one week before the Final Pretrial and Settlement Conference. Extensions of time for submission of the pretrial order are granted only upon a showing of good cause.

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All proposed trial exhibits are required to be marked before the Final Pretrial Conference, and listed in the Final Pretrial Order. Objections to proposed exhibits also must be stated in the Final Pretrial Order.

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Motions *in limine* must be filed by the date of the Final Pretrial Conference, and are decided at trial.

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The trial date is set at the Final Pretrial Conference. Attorneys having conflicts with another trial are expected to address them at the Final Pretrial Conference.

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Requests for AV equipment, easels, chalkboards, etc., should be made at the Final Pretrial Conference. Letters permitting attorneys to bring laptop computers or other electronics should be requested at the Final Pretrial Conference.

## **Non-Jury Trials**

Proposed findings of fact and conclusions of law are required to be submitted at the commencement of trial. The parties are encouraged to provide to the Court a copy on disk in WordPerfect or Word format.

## Jury Trials

The parties are required to exchange proposed jury instructions prior to the final pretrial conference. Also, attorneys should submit a stipulated set of instructions at the commencement of trial. The parties shall provide a copy for each juror. If the parties are unable to stipulate to all proposed instructions, disagreements will be discussed and resolved by the Court at the final pretrial conference. Instructions are submitted in 14 point type, with each instruction on a separate page.

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Trial briefs are submitted and exchanged no later than the commencement of trial.

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The parties conduct their own *voir dire* of prospective jurors after preliminary screening by the Court. Two alternates are used in criminal trials, so that a jury will be comprised of either 8 persons or 14 persons. However, no juror is designated as an alternate until the trial is concluded. At that point, in criminal trials, two jurors are selected as the alternates by blind draw and are excused from the deliberations. The number of peremptory challenges allowed is provided for by Rule 47(b). The JMS system is utilized.

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The jury is charged after closing arguments. However, at the beginning of trial, before opening statements, the Court will give preliminary short form jury instructions. Jurors are allowed to take notes.

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Jurors also may ask questions of witnesses, by submitting proposed questions in writing to the Court, for review and discussion with counsel with an opportunity to object. Jurors are allowed to take instructions into the jury room during deliberation.



## **Pleas**

There is no plea cutoff date. If appropriate, a defendant will be permitted to withdraw a plea. A presentencing investigation and report is required. Disputes concerning sentencing guidelines are resolved following an exchange of sentencing memoranda, and a hearing. Sentencing memoranda should be case specific and emphasis on 18 U.S.C. § 3553(a) factors.

# Special Notes-Criminal

## Preamble

Sentencing is the culmination of a criminal charge. It is also the decision that will both impact and protect the community as well as determine the future of the convicted citizen. The Guidelines take into consideration the community. The probation officers, in addition to considering the Guidelines, also consider the human characteristics of each defendant to properly analyze that person's possible future. To do that, the officer must have the relevant experiences, goals, and expectations from Government and the citizen. Given there is no single answer to the question of what is "a sentence sufficient, but not greater than necessary" (*Kimbaugh v. U.S.*, 128 S.Ct. 558, 570 (2207)), the more relevant the information, the greater the chances the sentence will protect the public and reduce recidivism.

## PRACTICE GUIDELINES

- I. Goal: The goal is to work from the start with the Probation Department to provide relevant information to the Court to fashion an appropriate sentence recommendation. The ultimate goal is appropriate sentence.
- II. Post-conviction duties of defense counsel: Discussion with presentence report writer at interview:
  - A. Defense attorney required to attend interview with Presentence Report (PSR) writer.
  - B. Defendant is required to bring appropriate documentation supporting mitigating factors.
  - C. Discuss with the PSR writer any 3553 factors they believe to be relevant. Help facilitate family contact if necessary.
  - D. Defense attorney will help attain the appropriate documents.
  - E. Suggestion of appropriate prison or camp location and why.
  - F. Appropriate programs, classifications while in prison.
  - G. Suggestion of appropriate programs for supervised release.
  - H. Discuss any factors, including post-offense conduct.
  - I. Both prosecutor and defendant should present the status of any active pending cases, including state circuit court cases. Defense attorney should speak to any other defense attorney representing defendant, and the prosecutor should speak to the prosecutor on any other cases involving defendant.
- III. Presentence duties of prosecutor and defense counsel: Memorandums of Law required by each.
  - A. Defendant should include:
    1. Agree or disagree with Guidelines as computed by Presentence Report.
    2. Discussion of Congressional factors. See, 18 U.S.C. § 3553(a)
    3. Statement of status of outstanding warrants, if any. Resolve old ones.
    4. Suggestion of appropriate prison or camp location and why.
    5. Appropriate programs, classifications while in prison, including re-entry.
    6. Suggestion of appropriate programs for supervision.
    7. Discuss any factors, including post-offense conduct.
  - B. Prosecutor should include:
    1. Suggestion of appropriate sentence and why. Focus on Congressional Factors. See 18 U.S.C. § 3553(a).
    2. Classification in terms of dangerousness and the like.
- IV. Sentencing Memorandum is due at least two weeks before the sentencing. A Motion by the Government under 5K1 is also due at least two weeks prior to the sentencing date.

V. Sealed Memos: Hard copy needs to be delivered to the U.S. Probation Officer.

# Case Management Orders

In order to view and print the order(s), Adobe Acrobat Reader is required. To download Adobe Acrobat [click here](#).

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## Judges' Courtesy Copy Policy

One "courtesy" or "chambers copy" of all motions, responsive pleadings, briefs, and exhibits—where the cumulative page number of the entry exceeds 25 pages, or the number of exhibits exceeds 5—must be submitted directly to the judge's chambers on paper. **This requirement is waived while state stay-at-home orders are in effect.**

The courtesy copy should be **double-sided**.

The first page of a plaintiff's filing must be printed on **pink paper**. Correspondingly, the first page of a defendant's filing must be printed on **light-blue paper**.

**Any exhibits must be properly tabbed.**

**All papers must be firmly bound**, usually along the left margin ("book-style" or spiral bound).

Good practice requires that in appropriate cases, relevant portions of lengthy documents be highlighted.

The chambers copy must be sent via first-class mail or hand delivered (to Judge Tarnow's attention) the same day the document is e-filed, unless it relates to a court proceeding scheduled within the next five days or otherwise requires the immediate attention of the Court, in which case the chambers copy must be hand-delivered to chambers not later than the morning of the next business day after the document is e-filed. **Proposed Orders** are preferred in MS Word format.

Revised April 17, 2020.

# Communication

To avoid ex parte contact, email, with copy to all counsel, is the preferred method of communication with the court.

## **Case-related communications should be addressed to:**

Mike Lang, Case Manager

[Mike\\_Lang@mied.uscourts.gov](mailto:Mike_Lang@mied.uscourts.gov)

## **Administrative matters should be addressed to:**

Natie McColley, Judicial Assistant

[natie\\_mccolley@mied.uscourts.gov](mailto:natie_mccolley@mied.uscourts.gov)

