

# Standing Orders

## a. Standing Orders

Shortly after the Complaint is answered in civil cases, the Court issues a Notice of Fed.R.Civ.P. 16(b) Status and Scheduling Conference. One of the outcomes of that conference is the issuance of a Scheduling Order, as well as an Order Regarding Joint Final Pretrial Order and Final Pretrial Conference.

## b. RICO

The Court does not have a standing order or other special pleading requirement for RICO actions.

## c. Standard Orders Used by the Court

The Court has standard orders that it uses to: assign counsel; refer cases for mediation; refer cases or motions to a magistrate judge; notify counsel of conferences and hearings; and, to strike motions and briefs that do not conform to the requirements of [E.D. Mich. LR 5.1](#) and [E.D. Mich. LR 7.1](#).

# Motion Practice

\* **NOTE:** All briefs shall comply strictly with [E.D. Mich. LR 7.1](#) (Statement of Issues, Statement of Controlling/Most Appropriate Authority), and, in addition, must contain a Table of Contents, an Index of Authorities and an Index of Exhibits. The Exhibits must be tabbed. Furthermore, the format requirements as set forth in [E.D. Mich. LR 5.1](#) must be strictly adhered to. Relevant passages of exhibits must be highlighted on the Judge's copy.

## a. Notice of Hearing

Law clerks schedule motion hearings. The Court will send out a notice with the specific date and time. Thus, notices of hearings filed by parties should indicate that the hearing will be held "at a time and date to be set by the Court". Nevertheless, the filing of a notice of hearing does not guarantee that the Court will hold a hearing on the motion.

## b. Briefing and Oral Argument

The Court requires strict adherence to the requirements of [E.D. Mich. LR 5.1](#) and [7.1](#) with respect to format and form, and with respect to the briefs required and permitted.

The Court generally schedules oral argument on all motions except for motions for reconsideration. However, the Court may cancel a scheduled hearing if it appears after a review of briefs that the issues can be decided without a hearing.

Motions *in limine* must be filed in accordance with the Court's Scheduling Order, ordinarily three weeks before trial.

## c. Concurrence

The Court requires adherence to [E.D. Mich. LR 7.1\(a\)](#). And, where defects are readily curable, the Court strongly discourages motions unless the curable defect has been brought to opposing counsel's attention.

## d. Length of Briefs

The Court requires strict compliance with the page limits set forth in [E.D. Mich. LR 7.1](#). If a party has a genuine need to file a motion or response in excess of the page limits, an *ex parte* motion explaining the need to do so must be filed. A party may not circumvent page limit requirements by changing font size or by briefing distinct issues separately. For example, the Court will construe two separately briefed motions for summary judgment as one motion. As a result, the supporting briefs may not exceed a total of 25 pages unless permission has been given by the Court.

## e. Referrals

The Court refers most discovery motions to the Magistrate Judges. Other civil motions are referred from time to time, at the Court's discretion, and most criminal motions are referred to the Magistrate Judges. The Court also refers most criminal, and some civil cases, to the Magistrate Judge for pretrial management.

## f. Orders on Motions

As a general rule, the Court prepares its own orders following oral argument.

# **Temporary Restraining Orders and Injunctions**

In most instances, the Court requires that an ex parte motion for a temporary restraining order be served on the opposing party. The Court will attempt to hold a telephone conference within a day or two if service is effectuated. In truly extraordinary circumstances, the Court may sign the proposed order without notice to the other party.

On the other hand, a motion for preliminary injunction will not be treated as requiring an expedited response from the Court unless the moving party requests expedited consideration, and sets forth compelling reasons for doing so.

## **Class Actions**

The Court does not impose any requirements for class certification other than those set forth in Fed.R.Civ.P. 23.

# Discovery

The Court sets discovery deadlines on a case-by-case basis at the initial Status Conference, but generally allows six to nine months for discovery after the Answer is filed.

The parties can stipulate to extend discovery if it does not impact other dates set by the Court. Otherwise, a motion is required.

The Court will make itself available by telephone, on short notice, in order to resolve discovery disputes expeditiously and without the need for motions.

Most discovery motions are referred to the Magistrate Judges.

## Mediation and Summary Jury Trials

The Court will send most civil cases to state court evaluation under the authority of [E.D. Mich. LR 16.3](#). At the initial Fed.R.Civ.P. 16(b) conference, the Court will ask counsel whether his/her client evaluation. The failure of a party to give such consent, however, will not deter the Court from referring the case.

The Court will consider holding a summary jury trial if requested by the parties.

# Pretrial

The Court has a standing Order Regarding Joint Final Pretrial Order (Joint Final Pretrial Order) and Final Pretrial Conference. The proposed Joint Final Pretrial Order, along with motions *in limine*, are generally due three to four weeks before trial. Responses to motions *in limine* are due one week after that, and the Final Pretrial Conference and hearing on motions in limine are generally one to two weeks before trial is to commence.

At this conference, the Court will rule on motions in limine; review proposed witnesses' testimony, set a trial schedule; discuss *voir dire*; and, resolve disputes over exhibits and jury instructions, to the extent possible.

Trial counsel must be present at the Final Pretrial Conference and have settlement authority.

## Settlement

The Court routinely holds one settlement conference. At the parties' request, or, on the Court's own initiative, additional settlement conferences may be held, including half or full day conferences. Clients with full settlement authority must be present at the settlement conferences. If an attorney must consult with an insurance company agent in order to participate meaningfully in settlement discussions, such agent must be present as well.

Cases to be tried to the bench are referred to the assigned Magistrate Judge for settlement, or to another Article III Judge, if the parties so request.



# Trials

Trials are scheduled for dates certain. The Court makes every effort to conduct trials expeditiously. Motions *in limine* will be decided in advance of the first day of trial whenever possible. The Court will also attempt to resolve all exhibit disputes at the Final Pretrial Conference. Thus, counsel must appear for trial promptly, set to begin jury selection at 9:00 a.m. on the first day of trial. The Court will not engage in settlement discussions once trial has commenced.

On the first day of trial, counsel must furnish trial briefs and all exhibits marked, to opposing counsel and the Court.

Sufficient copies of exhibits must be provided by counsel for the jurors.

## a. Non-Jury Trials

The parties must file proposed findings of fact and conclusions of law two days before trial is to begin, along with trial briefs. Proposed findings and conclusions can be supplemented or amended at the conclusion of trial. These are to be submitted on discs compatible with WordPerfect 8.1.

## b. Jury Trials

The Court conducts *voir dire*, but allows counsel to conduct follow-up *voir dire*. A modified strike method is used for jury selection. The process is as follows. Once all challenges for cause are made, the Court will have 16 potential jurors seated for civil trials. Then, outside of the jurors' presence, the parties can exercise their peremptory challenges. The court will conduct four rounds of strikes. Each side gets four strikes.

Eight jurors will consider the evidence, and all will deliberate.

In criminal cases, the Court will seat 32 potential jurors after challenges for cause. Then, outside of their presence, counsel will engage in six rounds of strikes. The Government will get seven peremptory strikes and the defendant will get 11. Fourteen jurors will consider the evidence, and 12 will deliberate.

In civil cases only, jurors are allowed to submit written questions to the Court, which will be reviewed with counsel. If appropriate, the questions will be read to the witnesses. In all cases, jurors are allowed to take notes, and to take their notes and jury instructions into the jury room.

Proposed jury instructions, voir dire questions and verdict forms, both in hard copy and saved on computer diskettes, must be submitted as part of the Joint Final Pretrial Order in civil cases, and three days before trial in criminal cases.

The Court generally will charge the jury before counsel deliver their closing arguments.

The trial schedule will vary from case to case, but generally the Court will start between 8:30 and 9:00 a.m., and go until 4:00 to 5:00 p.m. An hour is provided for lunch, and several breaks are held during the course of the day. The Court will provide a written schedule of the time and days set aside for trial, on the first day. Since a written schedule is provided, the Court expects that counsel will plan the availability of their witnesses accordingly, so that the trial can move expeditiously.

Matters to be taken up outside of the presence of the jury will not be taken up during the written schedule, so as to avoid bench conferences and other interruptions. Thus, counsel is cautioned to alert the Court of matters that should be addressed before or after the trial day, or over lunch breaks.

### c. Miscellaneous

At the Initial Status Conference in civil cases, the Court furnishes the parties with a "Notice of Availability of A United States Magistrate Judge to Exercise Jurisdiction". With the consent of all parties, all proceedings in the case, including the trial, can be handled by the Magistrate Judge assigned to the case. If this is done, all appeals from a judgment by a Magistrate Judge, are taken directly to the Sixth Circuit, in the same manner as an appeal from a judgment of this Court.

# Special Notes-Criminal Cases

## a. Status Conferences

The Court does not hold initial status conferences in criminal cases. Rather, about seven to ten days after arraignment, the Magistrate Judge will hold a pretrial conference and set a motion cutoff date.

## b. Exhibits

Exhibits must be premarked and lists of exhibits must be exchanged three days before trial. Actual copies of exhibits must be exchanged the morning of trial. Counsel must provide copies of exhibits for all jurors.

## c. *Alford* Pleas and *Nolo Contendere*

The Court understands that the United States Attorney's office has a policy against *Alford* pleas and, for that reason, would not accept such a plea. A *nolo contendere* plea will be accepted by the Court.

## d. Presentence Investigation and Report

The Court will not sentence a defendant until the Probation Department has prepared a Presentence Investigation Report (PIR) and the parties have had an opportunity to review it and voice any objections to the PIR.

## e. Sentencing Guidelines

The Court will give notice if it intends to sentence above the applicable guideline range. If there are disputes concerning the applicable guideline range, the Court will generally request sentencing memoranda from the parties.

## f. Sentencing Council and Sentencing Memoranda

The Court participates in Sentencing Council, and will request sentencing memoranda on matters in contention.

## g. Probation Officer

The Court meets with the probation officer before imposing sentence, and requires that the probation officer be present in Court at the sentencing hearing.

## h. Self-Reporting

The Court will often allow non-custodial defendants to self report, if there is no objection from the prosecutor.

## i. Rule 11 Plea Agreements

The Court requires that the Rule 11 Agreement include a specific, negotiated term of imprisonment, rather than a reference to "the midpoint of the applicable guideline range". The defendant will be allowed to withdraw his/her plea if the actual guideline range or the criminal history category is higher than the parties believed them to be at the time the Rule 11 was negotiated.

## j. Plea Cutoff

The plea cutoff date is generally one week before the date set for trial. Then, the Court will use the date set for the Final Pretrial Conference as the date and time to accept the plea.

k. Trial Briefs

Trial briefs must be filed three days before the commencement of trial.

l. Witness Lists

Witness lists must be filed three days before the commencement of trial.

m. *Jencks* Materials

While the Court encourages the early disclosure of *Jencks* material, it does not require disclosure sooner than is required by law.

n. Peremptory Challenges in Multiple Defendant Trials

The number of peremptory challenges in such cases may vary, depending on the number of defendants. The Court will seek the advice of counsel as to the number of peremptories and how they will be divided.

o. Jury Instructions

Jury instructions must be filed three days before the commencement of trial.

p. Bench Conferences

The Court makes every effort to minimize bench conferences. It will give counsel ample opportunity to bring matters to the Court's attention and make a record during periods when the jurors are on break, lunch, or at the beginning or end of the day.

q. Magistrate Judges

Motions are referred to the Magistrate Judges for handling. Also, Initial Status Conferences are conducted by the Magistrate Judges. When the parties consent, the Court will allow the Magistrate Judges to conduct jury selection.

r. Cutoff Dates

Three days before trial is to commence, counsel shall submit witness lists, exhibit lists, proposed *voir dire* and jury instructions. On the first day of trial, actual exhibits are to be exchanged.

s. General Comments

All counsel, but particularly those from outside of Michigan are strongly urged to familiarize themselves with the local court rules.

The Court strictly adheres to common rules of decency and civility and will not tolerate anything less than that on the part of counsel, in their treatment of staff, witnesses, jurors and opposing counsel and parties.

# Case Management Orders

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

- [Criminal Trial Notice and Standing Order](#)
- [Notice of Scheduling Conference and Exchange of Initial Disclosures](#)
- [Order Regarding Joint Final Pretrial Order](#)
- [Scheduling Order - Phase I](#)
- [Scheduling Order - Phase II](#)
- [Scheduling Order - ERISA](#)
- [Scheduling Order - Patent Cases](#)
- [Standard Jury Instructions](#)
- [Voir Dire Questions](#)

# Conferences

The Court holds a Status and Scheduling Conference after a Complaint has been answered to discuss future proceedings and possible amendments to the pleadings; to determine an appropriate schedule for the case; to help define the issues in dispute; and, to determine the discovery necessary to address those issues. If there are then outstanding discovery disputes, the Court may enter an order which moots pending motions or negates the necessity of filing a discovery motion over matters then contested. The Court also uses the conference to identify discovery that must precede a motion, in an effort to avoid premature motions.

One settlement conference is set as a matter of course. However, at the request of counsel, the Court will hold additional settlement conferences, and will hold half or full day conferences to facilitate a resolution of the matter.

Joint final pretrial conferences are usually held one to two weeks before trial is scheduled to begin.

## Removal

The Court will *sua sponte* remand a case that has been removed, if it appears that the Court lacks subject matter jurisdiction. In other instances when removal is questionable, the Court will hold a show cause hearing.

