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 citation to appropriate authorities within the text of the brief, and 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 E.D. Mich. LR 7.1(d)(3) and the formatting/type size requirements set forth by E.D. Mich. LR 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 Fed. R. Civ. P. 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. LR 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 E.D. Mich. LR 7.1(e) and Fed. R. Civ. P. 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. Most discovery motions, however, are referred to a Magistrate Judge. The Court does not generally refer motions other than discovery motions to a Magistrate Judge, except as required by Court procedure. 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.

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

E. **SEPARATE MOTION AND BRIEF**

E.D. Mich. LR 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." Such a Statement is to be included as the first section of the Rule 56 Motion. The Statement must consist of separately numbered paragraphs briefly describing the material facts underlying the motion, sufficient to support judgment. 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. No separate narrative facts section shall be permitted.

The response to a Rule 56 Motion must begin with a "Counterstatement of Material Facts" stating which facts are admitted and which are contested. The paragraph numbering must correspond to moving party's Statement of Material Facts. If any of the moving party's proffered facts are contested, the non-moving party must explain the basis for the factual disagreement, referencing and citing record evidence. Any proffered fact in the movant's Statement of Material Facts that is not specifically contested will, for the purpose of the motion, be deemed admitted. 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. Counsel are encouraged to supply the Court with copies of their main cases, with the relevant passages highlighted and tabbed. 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 and preliminary injunctions which is less than prescribed by E.D. Mich. LR 7.1. In addition to the requirements of Fed.R.Civ.P. 65 and E.D. Mich. LR 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 TRO or preliminary injunction. Parties are encouraged to notify the case manager by telephone 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. **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.

General Instructions

The judge's name should appear on documents you file with the court as Stephanie Dawkins Davis. It is not hyphenated.

Judge Davis accepts no *ex parte* communications. Counsel may contact the Case Manager regarding procedural and scheduling matters only. While chambers staff is happy to answer questions about chambers procedures, please consult the Electronic Filing Policies and Procedures, the Local Rules, the case docket (if applicable) and the information on this website before contacting Chambers with a question. Contact by counsel or parties with the law clerks is discouraged.

The Judge prefers that papers submitted electronically to chambers be in the current version of Word.

Local Rules are enforced - please pay particular attention to L.R. 7.1, L.R. 5.3, and Electronic Filing Rules 5 and 10(d).

Stipulations and proposed Orders regarding those Stipulations should be directed to Chambers via the link located under the Utilities section in CM/ECF. Please consult Rule 12 of the ECF Policies and Procedures for additional information regarding Proposed Orders. Stipulations combined with orders are discouraged. Additionally, proposed orders may not be submitted to the Court on the stationery or letterhead of any party or their counsel. Any proposed order so submitted will be rejected, and the submitting party will be required to refile a properly formatted order.

The Court encourages the use of modern technology to display exhibits and demonstrative aides during trial. However, parties must make prior arrangements with Chambers staff. Requests for interpreters and accommodations for witnesses with disabilities should be made with Chambers at least ten (10) days before needed.

If a case is settled, the parties must notify Chambers in writing via email by the next business day.

If you do not have the current version of Adobe, please download it.

Courtesy Copy Policy

A courtesy copy of ALL DISPOSITIVE MOTION PAPERS, including responses and replies, and all accompanying exhibits should be submitted in chambers. Exhibits must have labels attached which extend beyond the side of the paper. Motions must be permanently secured on the left side--the Court will not accept documents loosely secured with a rubber band or binder clip. A printed copy of the Notice of Electronic Filing must be attached to the front of the paper. The chambers copy must be sent via first class mail 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 no later than the morning of the next business day after the document is e-filed.

Courtesy copies are similarly required for any non-dispositive motion papers where the brief and its accompanying exhibits exceed twenty pages in total length. Unless specifically requested, courtesy copies are not required for filings of shorter length.

Admission of Out of State Counsel

Local Rule 83.20 requires that an attorney must be a member of the bar of the Eastern District of Michigan in order to practice in this Court, with certain limited exceptions. Inquiries regarding admission to the Court bar must be directed to the clerk's office at (313) 234-5005. Additional information can be found on the Attorneys section of the Court's website.

Pro hac vice admission is not permitted. In addition, this Court strictly enforces Local Rule 83.20(f) which provides that any member of the court bar who is not an active member of the State Bar of Michigan must have local counsel.

Counsel do not need to appear personally before the Court to take the oath of admission and be admitted to practice in the Eastern District of Michigan. The Court has designated the clerk of the court to administer the oath. See Local Rule 83.20(d)(4). In addition, pursuant to the Local Rule, an applicant without an office in the district may take the oath by telephone or video conference. *Id.*

Case Management and Scheduling Orders

A. **CIVIL CASES**

1. **SCHEDULING AND CASE MANAGEMENT CONFERENCE:** The Court routinely issues its Notice of Scheduling and Case Management Conference after the Answer is filed. If there is more than one named Defendant, the court typically schedules the conference after all of the Defendants have filed Answers, unless to do so will cause significant delay. A notice generally will be sent within two to four weeks after a responsive pleading is filed. The parties are required to submit a Rule 26(f) plan and/or a Case Summary as described in the Notice no later than five business days before the initial scheduling conference. If a dispositive motion is filed in lieu of an Answer, the Court generally will hold the initial scheduling conference after the motion is ruled upon. This may occur the same day as the motion hearing if the Judge rules from the bench.

   At the initial scheduling conference, the Court expects lead counsel to attend. The parties should be prepared to discuss the case and the issues, the Court's subject matter jurisdiction, the parties' interest in state court evaluation and/or facilitation, and any other standard procedural/scheduling issues. The Court expects counsel to discuss alternative dispute resolution (ADR) options with their clients in advance of the conference.

   Notice of Scheduling Conference

   Civil Case Management Order

2. **SETTLEMENT CONFERENCE:** All parties must attend the settlement conference with the TRIAL attorneys. Both counsel and clients should be prepared for serious settlement discussions. Insurance representatives and other persons necessary to the resolution of the case also must attend. In non-jury cases, a settlement conference before a magistrate judge will ordinarily be scheduled before the final pretrial conference. The parties must notify chambers in writing within one business day of the case settling by sending an email to the Case Manager. If a case does not resolve, the case manager will schedule the final pretrial conference and trial.
3. **FINAL PRETRIAL CONFERENCE:** Trial procedures and final pretrial matters are discussed with the Court at this conference. Motions in limine may also be heard at the conference in order to avoid delay in the selection of the jury on the first day of trial.
4. **STATUS CONFERENCE:** The Court may schedule a status conference to facilitate the administration of a case when necessary. Counsel may request a status conference at any time during the litigation. These may be conducted by conference call upon request and should be scheduled through the case manager. Additional conferences with the Court, including settlement conferences, will be scheduled upon request.

B. **CRIMINAL CASES**

1. **SCHEDULING:** The Court will issue a scheduling order. Requests to modify or enlarge the calendar dates shall be made by motion and must include a stipulation to extend time and a waiver under the Speedy Trial Act if they affect the trial date.
2. **FINAL PRETRIAL CONFERENCE:** A final pretrial conference is conducted by the Court. The final pretrial conference is generally held one (1) to two (2) weeks prior to the start of trial. Motions in limine may also be heard at the conference in order to avoid delay in the selection of the jury on the first day of trial.

Criminal Case Scheduling Order

3. **RECUSAL: The government shall immediately determine whether any portion of this criminal case or its previous investigation was opened in the United States Attorney's office for the Eastern District of Michigan during the period from February 10, 2010, until December 31, 2015 and if it was, shall immediately inform the Court and defense counsel of both that fact and the date of the opening.**

   Upon its own initiative or by motion of any party, the Court shall recuse itself from any matter in which Judge Davis conducted any level of review as Executive Assistant United States Attorney for the Eastern District of Michigan, or in which she represented the United States as an Assistant United States Attorney.

Criminal Practice and Trial Procedure

A. **ATTORNEY CONFERENCE AND DISCLOSURE**

Within ten (10) days of the date of arraignment, government and defense counsel shall meet and confer for the purpose of resolving or minimizing the issues in controversy, or government counsel shall file the Discovery Notice attached to E.D. Mich. Administrative Order No. 03-AO-027.

Upon the request of defense counsel, government counsel shall:

(A) provide defense counsel with the information described in Federal Rule of Criminal Procedure 16(a)(1); and

(B) permit defense counsel to inspect and copy or photograph any exculpatory/impeachment evidence within the meaning of *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), and Giglio v. United States, 405 U.S. 150 (1972).

A list of such evidence shall be prepared and signed by all counsel. Copies of the items which have been disclosed shall be initialed or otherwise marked.

B. **DISCLOSURE DECLINED**

If, in the judgment of government counsel, it would be detrimental to the government's interests to make any of the disclosures set forth in the paragraph above, the government shall file a motion within the ten-day period seeking relief from this Order and setting forth the specific reasons for its request.

C. **CONTINUING DUTY**

The duty to disclose is continuing, even throughout trial.

D. **DISCOVERY BY THE GOVERNMENT**

Nothing in these procedures is designed to preclude discovery by the government under the Federal Rules of Criminal Procedure, nor to alter the Defendant's obligation, if any, under Rule 16(b).

E. **EARLY DISCLOSURE OF JENCKS MATERIAL**

The Court encourages the government to disclose *Jencks* Act (18 U.S.C. § 3500) materials well in advance of the trial. In the event that some *Jencks* Act materials are not disclosed sufficiently in advance of a government witness' testimony, the Court will allow a reasonable amount of additional time during trial for the defense to prepare before proceeding.

F. **PRESENCE OF THE DEFENDANT**

The defendant must be present at all court hearings unless the Court has granted prior approval for the defendant's absence. If a writ is required, it must be submitted four (4) weeks before the court date.

G. **PRE-TRIAL MOTIONS**

Before any pre-trial motion is filed, compliance with Local Criminal Rule 12.1 must be observed.

H. **EXHIBITS**
   1. **Agreement as to Admissibility:** Counsel for the government is urged to make reasonable efforts to reach agreement with counsel for the defense concerning the admissibility of each intended physical exhibit prior to trial. In the event such agreement is reached, a list of such exhibits is to be prepared by government counsel for entry at the opening of trial, and the exhibits will be considered admitted at the outset.
   2. **Marking of Exhibits:** Counsel are required to mark all proposed exhibits in advance of trial. The Government's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used by each party.
   3. **List of Exhibits:** A list of proposed exhibits shall be submitted directly to Judge Davis's chambers by each of the parties 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.

I. **Foundation issues and Motions in Limine:** Motions in limine and any notices of intent to contest foundation, chain-of-custody, or scientific analysis shall be filed at or before the final pre-trial conference. Unless the items or exhibits are unusually voluminous, any notice of intent to contest foundation, chain-of-custody, or scientific analysis shall provide a brief item-by-item or exhibit-by-exhibit description of the good faith basis for any objection.

J. **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.

K. **Custody and Record of Admitted Exhibits:** Counsel should refer to and comply with the Standing Order of Discovery for this District.

L. **Presentation of Exhibits During Trial:** The Court encourages parties to use electronic projection to present exhibits during trial in a manner that allows the jury, court, attorneys, and parties to view the exhibit simultaneously. If photographs and documentary exhibits are not presented electronically, then the party must prepare exhibit books for the court and each juror. Whether or not exhibits are presented electronically, a separate exhibit book should be prepared and made available to a witness who is to be questioned about an exhibit.

M. **Preparing Exhibits for Jury Deliberation:** Counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. 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.

N. **Filing Exhibits:** It is the responsibility of the parties to ensure that the record is complete. All proposed jury instructions are to be filed in the record within five business days of the verdict.

O. **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.

P. **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.

- **WITNESS LISTS**

By the deadline established in the Scheduling Order, and to enable the Court to better estimate the length of trial, each party shall submit directly to Judge Davis's chambers a list of witnesses by name and agency (if appropriate), whom it reasonably anticipates it will call to testify at trial,

noting the approximate amount of time the party anticipates will be needed for examination of each such witness. The list must be served on opposing counsel; proof of service must be attached. This list and proof of service are NOT to be electronically filed or otherwise submitted to the Clerk's Office.

- **EARLY DISCLOSURE OF *JENCKS* MATERIAL**

The court urges the government to disclose Jencks materials well in advance of the trial, and in the event that some of the information is not disclosed pursuant to the Act until the witness testifies, the court allows a reasonable amount of additional time during trial for the defense to prepare before proceeding.

- **JURY INSTRUCTIONS**

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in the Scheduling Order, the parties must submit directly to Judge Davis's chambers a single set of proposed, stipulated jury instructions. 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 typewritten form (double spaced) and on computer disk compatible with Microsoft Word or WordPerfect version 12.0; each instruction shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"), and each instruction shall be on a separate page. In addition, each party must submit separately to Judge Davis's 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 agreement as to an acceptable form. Disputes between the government and defense counsel regarding proposed jury instructions are initially settled at a hearing on the record.

The court has its own standard introductory and concluding instructions, and counsel are directed to concentrate on elements of the offense, the defense(s), etc. In criminal cases, the Court will usually instruct the jury using the Sixth Circuit's pattern jury instructions when available. The jury is charged before final argument

- **JURY SELECTION**

The Court uses a "struck jury" system for jury selection. In most cases, the government is allowed 6 peremptory challenges and the defendant is allowed 10 peremptory challenges. The Court will select twelve regular and two alternate jurors. Alternate jurors are not told they are alternates; they are dismissed by random draw at the conclusion of the proofs.

Voir dire will be conducted by the court. Counsel should submit proposed *voir dire* questions in writing at least three days in advance and will be permitted to submit additional questions to be asked by the court, as provided by Fed. R. Crim. P. 24(a).

- **NOTE TAKING AND 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 themselves evidence but are merely aids to the juror's memory of the evidence presented at trial. The Court will consider, on a case by case basis, whether or not jurors will be permitted to question witnesses, either directly or through submission of questions to be asked by the Court.

- **MULTI-DEFENDANT OR MEGA TRIALS**

The Court does not have a general procedure for handling multi-defendant criminal "mega trials." For multi-defendant criminal trials the court encourages attorneys to work out procedure for peremptory challenges among themselves. In such trials, if counsel cannot agree among themselves, the court will allocate peremptory challenges depending on the circumstances of the case.

- **CONTINUANCES**

  Continuances of trial dates or continuances during trial will not be granted because of unavailability of witnesses. Please notify the Court if Court intervention is necessary to secure witness attendance. Otherwise, witnesses will be expected to be available when called.

- **TRIAL BRIEFS ENCOURAGED**

  The Court encourages, but does not require, the submission of a criminal trial brief. If a trial brief is submitted, it should, among other things, inform the court about the party's proposed resolution of anticipated evidence problems.

Civil Practice and Trial Procedure

A. **TRIAL DATE**

The Court sets a date certain for trial following the parties' conclusion of ADR efforts or resolution of all dispositive motions, whichever is later, after consultation with counsel. Attorneys must bring their schedules to the conference to avoid conflicts.

B. **ADJOURNMENTS**

Because the court consults with the attorneys before setting a trial date, adjournments are rarely granted.

THE JUDGE IS AVAILABLE FOR STATUS CONFERENCES, EITHER TELEPHONICALLY OR PERSONALLY, BY ARRANGEMENT WITH THE CASE MANAGER, TAMMY HALLWOOD. DO NOT WAIT UNTIL AN ISSUE BECOMES AN EMERGENCY BEFORE SEEKING THE COURT'S ASSISTANCE.

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.

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

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

- **FINAL PRETRIAL CONFERENCE ATTENDANCE**

The following persons shall personally attend the final pretrial conference:

1. Trial counsel for each party;
2. All parties who are natural persons;
3. A representative on behalf of any other party who has full settlement authority for the party;
4. 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.

- **EXHIBITS**

1. **Marking of Exhibits:** Counsel are required to mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used by each party.
2. **List of Exhibits:** A list of proposed exhibits shall be submitted directly to Judge Davis's chambers by each of the parties 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 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 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 a witness who is to be questioned about an exhibit.
7. **Preparing Exhibits for Jury Deliberation:** Counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. 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.
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.

- **JURY INSTRUCTIONS**

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in the Scheduling Order, the parties must submit directly to Judge Davis's chambers a single set of proposed, stipulated jury instructions. 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 typewritten form (double spaced) and on computer disk compatible with either Microsoft Word or WordPerfect version 12.0; each instruction shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"), and each instruction shall be on a separate page. In addition, each party must submit separately to Judge Davis's 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 agreement as to an acceptable form. Disputes between the government and defense counsel regarding proposed jury instructions are initially settled at a hearing on the record.

The court has its own standard introductory and concluding instructions, and counsel are directed to concentrate on elements of the offense, the defense(s), etc. The jury is charged before final argument.

- **JURY SELECTION**

  Voir dire will be conducted by the court. Counsel should submit proposed *voir dire* questions in writing at least three days in advance and will be permitted to submit additional questions to be asked by the court, as provided by Fed. R. Civ. P. 47(a).

- **NOTE TAKING AND 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 themselves evidence but are merely aids to the jurors' memory of the evidence presented at trial. The Court will consider, on a case by case basis, whether or not jurors will be permitted to question witnesses, either directly or through submission of questions to be asked by the Court.

- **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 solved.

- **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 or Ann Arbor courthouse, as opposed to in the Flint courthouse.

ADR - MEDIATION - CASE EVALUATION

The court welcomes and endorses agreements between parties to engage in alternative dispute resolution. Upon joint request of the parties, the court will usually refer a case for evaluation, to either a state tribunal or to a Magistrate Judge for mediation, after the completion of discovery. The court will also facilitate pretrial resolution in appropriate cases.

Discovery

A. EXCLUSIONS

These discovery rules do not apply to the following types of actions: ERISA or other action for review on an administrative record; petition for habeas corpus; prisoner civil case where prisoner is unrepresented; an action to enforce or quash an administrative summons or subpoena; an action by the United States to recover benefit payments or student loans; and, an action to enforce an arbitration award.

B. EFFICIENT DISCOVERY

The parties are required to conduct their Rule 26(f) discovery conference and submit a discovery plan and/or case summary no later than five (5) business days prior to the initial scheduling conference. **It is expected that all parties and all counsel will conduct discovery in a cooperative way, consistent with Fed. R. Civ. P. 1: "To secure the just, speedy, and inexpensive determination of every action."** Consequently, the parties should cooperate with each other to ensure that discovery progresses as rapidly and efficiently as is practical.

The disclosure requirements of Rule 26(a)(1) generally will be required by the Court 14 days after the case management and scheduling conference. Dates for disclosure of expert information contemplated by Rule 26(a)(2) generally will be established at the case management and scheduling conference.

C. EXTENSIONS OF TIME

The court will not accede to stipulated discovery periods or extensions of cut-off dates, which affect other dates, or that are longer than necessary or without a showing of good cause. Filing a motion does not change discovery deadlines.

D. FIRM DISCOVERY CUTOFF

The Court has a standard Case Management Order that is entered in each case following the initial scheduling conference, which sets the discovery cutoff date. Discovery must be served sufficiently in advance of the discovery cutoff to allow the opposing party enough time to respond under the Federal Rules of Civil Procedure prior to the discovery deadline. The Court will not order discovery to take place after the cutoff date.

The discovery deadline may be extended by filing a stipulation with the court only if the extension of time does not change the motion cutoff, final pretrial conference, or trial dates. Extensions or adjournments of all other dates will only be considered upon the timely filing of a written motion for good cause shown.

E. DISCOVERY DISPUTES

Local Rule 37.1 requires the parties to attempt to narrow their disagreements regarding discovery. The Court expects counsel to make every effort to comply with this Local Rule, to confer with one another and to resolve discovery matters themselves. Email correspondence alone is not sufficient--counsel must speak to one another, either in person or via telephone.

Once counsel have conferred and made every effort to reach an agreement, the Court will generally make itself available by telephone, on short notice, in order to resolve any remaining discovery disputes expeditiously and without the need for motion practice.

In order to facilitate this process, parties are REQUIRED to contact the Court before filing any discovery motions. Discovery motions filed without leave of Court will be stricken.

Discovery motions that cannot be resolved in the manner described above will generally be referred to a Magistrate Judge. Once a motion has been referred, all communication regarding that motion should be directed to the Magistrate Judge's chambers. Improper delays or uncooperativeness in discovery will result in assessments of costs. The inability of a Magistrate Judge to resolve a discovery dispute, and the need for the court to involve itself in such, will be regarded as an indication of impropriety or uncooperativeness on the part of counsel.

F. **DEPOSITIONS**

Parties are bound by Fed.R.Civ.P. 30(d)(2) concerning depositions. Objections to deposition questions, other than those which if not made at the deposition are not preserved for trial, should be made very concisely, or omitted entirely, until trial. The questioning attorney should be respectful of the witness, confine questions to subjects that are discoverable under FRCP 26(b) and spend no more time than is reasonable in questioning the witness. All attorneys are expected to conduct themselves in a polite and professional manner. The lawyer defending a witness at a deposition should not impede legitimate questioning of that witness. Since all objections, other than as to form or dealing with privilege, are preserved for trial, objections should be few in number and not be argumentative, suggestive of an answer, or intended to frustrate the fair examination of deponent. See Fed.R.Civ.P. 30(d)(i) and 32(d)(3). Sufficient time must be given to complete depositions prior to the discovery cutoff date.

G. **PROTECTIVE ORDERS**

Protective orders shall not be entered routinely. In addition to the requirements under E.D. Mich. LR 5.3, which are to be strictly followed, a protective order including a provision for filing a pleading, paper or exhibit, etc. under seal shall be subject to the following limitations: The entire pleading, paper, exhibit, etc. may not be filed under seal. Only the portion of the document(s) which are not to be publicly disclosed may be filed under seal. In such instances, the portion to be filed under seal requires an endorsement by the Court on a cover page. A party's presentment to the Court for the endorsement shall be accompanied by an explanation why the portion of the document(s) is confidential.

H. **DOCUMENT REQUESTS AND INTERROGATORIES**

Parties are bound by Fed.R.Civ.P. 33(a) limiting the number of interrogatories. Document requests and interrogatories should be reasonable in scope. Responses should be complete and responsive. If there are doubts as to definitions or scope, they should be raised promptly with the requesting party. Sufficient time must be given to answer interrogatories and document requests prior to the discovery cutoff date.

I. **CLAIMS OF PRIVILEGE**

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; for claims of privilege over Electronically Stored Information (ESI), such information should include standard metadata fields.

Diversity Jurisdiction

If the Court has a concern regarding the propriety of removal, an Order to Show Cause will be issued by the Court. Pursuant to E.D. Mich. LR 81.1, oral argument will typically be held on Motions to Remand regarding the propriety of removal. Motions to remand for procedural defects must be filed within thirty (30) days from the notice of removal.