

# Civil Practice and Trial Procedure

## A. TRIAL DATE

The Court sets a date certain for the trial at the conclusion of the Settlement Conference 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, AMANDA CHUBB. 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.**

## D. FINAL PRETRIAL CONFERENCE ATTENDANCE

The following persons 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 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 Berg'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.

## **F. 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 Berg'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 Berg'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.

## **G. JURY SELECTION**

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.

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). 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 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.

## **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 solved.

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