

# Motion Practice

## A. Authority to Hear Motions

Pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and upon an order of reference from the District Judge assigned to the case, motions will be decided either by report and recommendation or order. Dispositive motions may be referred by the District Judge for opinion and order on consent of the parties. 28 U.S.C. § 636(c).

## B. Meet and Confer Requirement

Except in *pro se* prisoner cases, no motion shall be filed or considered unless the moving party or counsel has conferred in good faith by telephone or in-person with all other relevant parties or counsel in an effort to resolve the dispute, or has made a reasonable attempt to so confer. If the conference with the relevant parties or counsel has not resolved the dispute, the moving party or counsel must inform the opposing parties or counsel during the conference that the moving party intends to seek relief from the Court regarding the dispute. If the conference cannot reasonably be held, then the moving party must inform all opposing parties or counsel by letter, prior to filing a motion, that the moving party intends to seek relief from the Court. The letter must be attached to the motion. Any motion filed must state the date of the conference or list all reasonable efforts to hold the conference and indicate the reason(s) why the conference was not held. The motion must also include a statement of the unresolved issues and provide the adversary's position to each statement of the unresolved issues and provide the adversary's position as to each issue in controversy as stated by the adversary during the pre-motion conference.

## C. Briefs, Briefing Schedule, Withdrawal or Resolution of Motions

The Court adheres to E.D. Mich LR 5.1 and 7.1 regarding format, length, and form of motions and briefs, and the type of briefs required and permitted. Additional briefing, including sur-replies, will NOT be permitted unless requested by the Court. The Court will strike any improperly filed sur-replies or other briefing not contemplated by the Local Rules. In addition, all briefs must contain an index of exhibits, and the Court requires a table of contents for briefs over ten pages.

In instances where the Court has issued a briefing schedule on a motion, that schedule applies. In all other instances, the parties should follow Local Rule 7.1(e).

Where no Court Order as to a briefing schedule is in effect, leave of the Court is not required to effectuate an agreement between the parties to extend the response/reply deadlines once for no more than fourteen days for filing papers. Such agreements, however, must be disclosed to the Court by submission of a Stipulation and Order. Otherwise, extensions must be by leave of the Court. In the event that a motion has been fully or partially resolved or mooted, or that a party intends to withdraw a motion or refrain from proceeding with it, the moving party must so inform the Court, in writing, with all due haste, least the Court unnecessarily begin to review the motion or waste time drafting an opinion or order. See also, subsections "E" and "G" below.

## D. Courtesy Copies

In addition to the electronically filed copy, parties shall provide one courtesy paper copy to the Magistrate Judge's chambers. Exhibits on the courtesy copy must be separated by protruding tabs, and relevant portions of exhibits must be highlighted. The courtesy copy should be filed document(s) containing the electronic date stamp, ECF pagination, and docketing information on the top of the page.

If not hand-delivered to chambers within three days of the filing, the chambers copy must be sent via first class mail the same day the document is filed. Where a filing relates to a Court proceeding scheduled within the next two days or otherwise requires the immediate attention of the Court, the chambers copy must be hand-delivered to chambers not later than the morning of the next business day after document is filed.

#### **E. Statement of Resolved and Unresolved Issues**

Except in Social Security and *pro se* prisoner cases, the parties and counsel are expected to continue to discuss resolution of their dispute after the motion is filed. If the parties are unable to resolve their differences prior to oral argument, the moving party shall prepare a written statement of Resolved and Unresolved Issues, of no more than five pages, certifying that good-faith efforts to resolve the matters in controversy have been undertaken and listing the issues with respect to which an agreement has been reached, as well as the issues yet to be resolved. This statement must be filed with the court clerk with a copy faxed or hand-delivered to the Magistrate Judge's chambers no later than three business days prior to the scheduled hearing date. Failure to timely submit the statement may result in adjournment or dismissal of the motion, as appropriate. In the event that all disputed issues are resolved prior to the hearing, the parties shall file a stipulation incorporating the agreement of the parties and proposed order prior to the scheduled hearing date.

#### **F. Hearing/Oral Argument**

The Court generally hears oral argument on non-dispositive civil motions, except in *pro se* prisoner cases. *See Pro Se Prisoner and Habeas Practice Guideline*. Motions hearings are usually set at 10:00 a.m. and 2:00 p.m., and the Court will send notice of hearing with a specific date and time. Motions requiring protracted arguments may be set separately if requested by counsel in advance. Motions requiring an evidentiary hearing will also be heard separately. The Court may cancel a scheduled hearing if it appears, after a review of the briefs, that the issues can be decided without a hearing pursuant to LR 7.1(f).

In general, out of town counsel may not appear by telephone. In the event of inclement weather or other circumstances, counsel should contact the Court.

#### **G. Orders**

While the Court will generally issue its own orders, counsel may bring to the hearing an appropriate order granting or denying the motion. Proposed orders should not be e-filed. If a motion is resolved prior to hearing or decision, the parties shall file a stipulation and proposed order or withdraw the motion through the "Utilities" menu on CM/ECF.

#### **H. Special Requirements for Discovery Motions**

These requirements are set forth under the Discovery section of these Practice Guidelines.

#### **I. Special Requirements for Dispositive Motions**

The Court often implements additional requirements for dispositive motion practice. Parties will be informed of the requirements via scheduling order or by separate notice.

#### **J. Special Requirements for Motions to Amend Pleadings**

These requirements are set forth under the Amended Pleadings section of these Practice Guidelines.

#### **K. Special Requirements for Motions to Withdraw as Counsel**

All motions to withdraw as counsel must contain a written certification that the motion was served

upon the client(s) of the withdrawing attorney. If the Court issues an order/notice setting a motion to withdraw for hearing, the attorney seeking to withdraw must certify to the Court in writing that he/she served a copy of the order/notice upon the client(s) or has otherwise timely informed the client of the date, time and place of the hearing by reliable means. Simply stating that the motion or order has been placed in the Court's electronic filing system is insufficient. Counsel seeking to withdraw must also certify to the Court in writing that any opinion and/or order granting, denying or holding the motion in abeyance has been served upon the client.