

## **Out of State Counsel**

In order to practice in this Court, an attorney must be a member of the bar of the Eastern District of Michigan, as provided by [Local Rule 83.20](#). 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 bar of this Court who is not an active member of the State Bar of Michigan must have local counsel.

# Removal

Generally, if questions exist as to the propriety of removal, the Court will issue an order to show cause.

# Conferences

The Court schedules an initial status conference within 30 days after the Answer is filed. At the first conference the Court sets the dates for the motion cutoff, discovery cutoff, final pretrial conference, the trial, settlement conference, witness lists, expert witnesses and preliminary pretrial conference. The scheduling of other status conferences is determined on a case-by-case basis. The Court will sometimes allow status and/or pretrial conferences to be conducted by phone on occasion, particularly for out-of-state counsel. Telephone conferences are never permitted for the final pretrial conference, and clients with settlement authority must be present. Conferences addressing discovery disputes and settlement can be scheduled upon request.

## Motion Practice

Pursuant to [L.R. 7.1\(f\)\(2\)](#), the Court will decide motions on the briefs filed, unless the Court issues a Notice of Motion Hearing. The Court generally adheres to [E.D. Mich. LR 7.1\(e\)](#) with respect to the filing of responses to motions and reply briefs. The imposition of sanctions for failure to comply with the timing requirements regarding briefs is determined on a case-by-case basis. The Court, on a case-by-case basis, will generally grant an ex parte application pursuant to [E.D. Mich. LR 7.1\(d\)\(3\)\(A\)](#) to file a brief longer than 25 pages if the request is not excessive. The Court requires strict compliance with [E.D. Mich. LR 7.1\(a\)](#) regarding seeking concurrence in motions and may impose fines or other sanctions for failure to comply with the rule in the absence of a showing of good cause. The Court determines on a case-by-case basis whether to refer motions to a Magistrate Judge.

# Discovery

The Court has a standard pretrial or scheduling order that is entered in each case. The scheduling order requires that the parties exchange witness lists prior to the close of discovery. Upon request or on its own initiative, the Court will convene scheduling conferences. In routine cases, the Court allows 120 days from the date the Answer is filed as a discovery cutoff. The Court requires the disclosure of all witnesses, including experts, prior to the discovery cutoff. With respect to discovery motions, the Court strictly adheres to the requirements of [E.D. Mich. LR 37.1](#) concerning narrowing the areas of disagreement. Discovery motions are often referred to a Magistrate Judge, although the Court does not use a blanket referral order regarding all discovery motions. Generally, if disputes arise during a deposition, counsel may call the Court for resolution with the caveat that frivolous or abusive discovery tactics will be sanctioned pursuant to the Court's Scheduling Order. The discovery cutoff can be extended only on motion before the cutoff date and rarely after the cutoff date.

The Court adheres to the initial disclosure requirements of Fed.R.Civ.P. 26(a)(1). The Court has had occasion to strike an expert witness or limit an expert witness' trial testimony as a result of party's failure to provide a report, or to properly list an expert. The Court has not had occasion to impose any other type of sanction as a result of a party's failure to comply with Fed.R.Civ.P.26(a)(2). The Court has had occasion to strike a lay witness or limit a lay witness' trial testimony as a result of a party's failure to comply with Fed.R.Civ.P.26(a)(3). The Court has had occasion to strike interrogatories served by parties, that exceed the allotted number. The Court has had occasion to grant leave to a party to serve more than 25 interrogatories or exceed 10 depositions upon request and a showing of reasonableness.

# Temporary Restraining Orders and Injunctions

Although generally the Court does not set override the time limits prescribed in [E.D. Mich. LR 7.1](#) for motion briefing and adheres to this Local Rule with respect to requests for temporary restraining orders and preliminary injunctions, the Court may set different deadlines on a case by case basis. The Court does not impose any other requirements with relation to requests for temporary restraining orders and injunctions other than those indicated in [E.D. Mich. LR 65.1](#). TRO pleadings must strictly comply with Fed.R.Civ.P.65. The Court will rarely grant a TRO without notice to the opposing parties.

## **Class Actions**

The Court does not generally impose any requirements beyond Fed.R.Civ.P.23.

## **Mediation**

The Court does not routinely refer all civil diversity cases to mediation/case evaluation pursuant to [E.D. Mich. LR 16.3](#). However, in appropriate cases, the Court will refer cases to mediation if the parties stipulate to be bound by the sanctions provided in the state rule regarding mediation/case evaluation. Generally, the Court requires that a stipulation to submit a case to mediation be filed on or before the discovery cut-off date. The Court does not use other types of alternative dispute resolution, unless proposed by the parties.

## **Pretrial**

The Court adheres to the provisions of [E.D. Mich. LR 16.2](#) regarding the requirements for the Joint Pretrial Order. The pretrial order is due at least one week prior to the Final Pretrial Conference. If a witness is not listed in the pretrial order, the witness cannot be called at trial unless ordered by the Court. The Final Pretrial Conference is typically held 4 to 6 weeks before the trial date.

## Settlement

Upon expiration of the discovery cut-off, the parties shall attempt to resolve the case. Unless the parties stipulate to a referral for mediation, case evaluation, or agree to use their own facilitator, the matter will be referred to the assigned Magistrate Judge to conduct a settlement conference. If the scheduled date of the settlement conference, mediation, etc., is within 30 days of the trial date, the parties shall inform the Court and the remaining dates in the scheduling order will be adjusted accordingly. Settlement negotiations in a non-jury matter will be referred to another Judge for a settlement conference if requested. Generally, settlement conferences occur at the Final Pretrial Conference. If counsel of record requests, the Court is amenable to scheduling (and, in jury cases, participating in) a settlement conference prior to the Final Pretrial Conference. Clients, with authority, must be present at the settlement conference. All settlements should be reported to Judge Rosen's Case Manager, Julie Owens at (313)234-5137, immediately as required in [E.D. Mich. LR 41.1](#). The Court will generally require the payment of jury costs for all settlements reached on the day of trial after a jury has been ordered.

## **Motions in Limine**

The Court does not require any special form for motions *in limine*. Any motions which are arguably *in limine* must be brought to the Court's attention prior to trial unless they could not reasonably have been foreseen. Otherwise, they will be denied. Generally, motions *in limine* must be filed one week before the Final Pretrial Conference and are generally scheduled for hearing on the morning of trial.

# **Trials**

The Court will allow an adjournment of a trial date only upon a showing of good cause submitted with a motion. If an attorney has a conflict with another trial, the attorney should advise the Court at the time of the Final Pretrial Conference or advise the Case Manager, Julie Owens at (313) 234-5137, as soon as the conflict arises. If an attorney is handling another trial the Court may, depending upon the nature of the case, require that another member of that attorney's firm conduct the trial. The Court requires exhibits to be exchanged prior to trial in exhibit books with a copy for the Judge. Plaintiff and defendant exhibits are numbered separately. The Court retains custody of exhibits during the trial, while the parties retain custody of exhibits after trial and pending appeal. The Court requires trial briefs to be exchanged one week prior to trial.

## **a. Non-Jury Trials**

In non-jury trials, proposed findings of fact and conclusions of law must be filed one week prior to trial.

## **b. Jury Trials**

The Court selects the jury by a modified strike method. In criminal cases, two alternate jurors are normally used, and they are not informed prior to the conclusion of trial that they are alternates. The Court will, at times, permit counsel to participate in voir dire to ask follow-up questions after the Court has concluded its voir dire. Requests for specific voir dire questions must be submitted in writing three days prior to trial and be numbered. The Court does not handle the exercise of challenges in such a manner that the jurors would not know which party had excused them. Jury instructions must be filed with the Court at the beginning of trial and will be read to the jury at the conclusion of closing arguments. In addition, a copy of the jury instructions will be provided to the jury during its deliberations. The Court typically charges the jury after final arguments although counsel may jointly request to do so before final arguments. The Court typically permits jurors to take notes and to submit questions to witnesses, which the Court screens to ensure evidentiary propriety.

## **c. Miscellaneous**

The Court generally conducts trials between the hours of 9:00 a.m. and 5:00 p.m. The Court does not allow multiple counsel for one party to interrogate the same witness or to give opening or closing statements. Generally, counsel are urged to limit opening statements to 20 minutes and closing arguments to 45 minutes. Generally, no other time limits are imposed during the trial. The Court prefers that counsel request permission to approach a witness and the bench.

# Pleas and Sentencing

## a. Pleas

The Court will not accept an *Alford* plea except under extenuating circumstances and never over Government objection. The Court will sometimes accept a *nolo contendere* plea over Government objections.

## b. Sentencing

The Court requires a presentence investigation and report prior to sentencing even if there is no custodial sentence imposed, although it may not be necessary for corporate defendants. A presentence investigation and report may be waived if both the Government and the defendant agree, for example, if the defendant is going to be immediately deported. If the Court waives preparation of a presentence report but the individual (whether individual or corporation) requests it, the Court will order it. Disputes between the Government and defense counsel relating to the computation of sentencing guidelines will typically be resolved by a hearing held prior to the sentencing. If the AUSA and defense counsel agree on the computation of sentencing guidelines, but the Probation Officer disputes their conclusion, a conference with all parties present will be used to resolve the issue. The Court meets with the Probation Officer prior to sentencing. Sentencing memorandums should be submitted to the Court one week prior to sentencing.

## c. Miscellaneous

Depending upon the individual defendant and the crime of conviction, the Court will typically permit a convicted individual to self-report to the custodial facility if the person has been on personal bond and has reported to all agencies and adhered to all Court dates as directed. If the Court rejects a Rule 11 plea agreement, it will inform the parties in open Court. The Court will determine on a case-by-case basis whether this occurs prior to the sentence date. Depending on the plea and the crime charged, a defendant may be allowed to withdraw a plea if the guideline range turns out to be higher than he or she argued it should be. The Court has a firm plea cutoff date that it enforces.

## **Criminal Trials**

The Court does not require submission of briefs in a criminal trial unless it is a bench trial. The Court requires submission of witness lists by all parties in criminal trials, and the witness list is disclosed to the jury during *voir dire*. The Court will generally urge the Government to disclose *Jencks* materials in advance of trial. The Court does not have a general procedure for handling multi-defendant criminal "mega trials." In multi-defendant criminal cases, the Court allocates peremptory challenges on a case-by-case basis. The Court will not permit jury questionnaires to be submitted to the venire in advance of jury selection for counsel's use in exercising peremptories and challenges for cause except in very unusual circumstances upon motion. The Court uses a peremptories alternate challenge and the two-pass rule. The Court follows the same procedures relative to jury selection in criminal trials as it uses in civil trials.

# Case Management Orders

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

- [Civil Scheduling Order](#)
- [Criminal Scheduling Order and Trial Notice](#)
- [Content of Joint Final Pretrial Order - LR 16.2](#)

