

# Case Evaluation

The Court refers most cases to evaluation with a local state court case evaluation tribunal. If the parties both agree to be bound by the case evaluation sanctions set forth in Michigan Court Rule 2.403, then the parties should submit a stipulation so providing by the date designated in the Scheduling Order. If the court orders case evaluation, the case will still proceed to case evaluation, even if the parties do not agree to be bound by MCR 2.403.

The Court typically issues the order referring the case to case evaluation after discovery has concluded. The local case evaluation tribunal will then schedule the case evaluation and advise the parties of the requirements for same. The case evaluation may occur before, during, or after dispositive motions.

The Court also utilizes other types of alternative dispute resolution techniques, where appropriate, such as facilitation or arbitration.

# Patent Cases

In order to efficiently manage patent infringement actions, this Court has adopted a Model Rule 26(f) Report and Proposed Scheduling Order.

- [Default Protective Order](#)
- [Model Rule 26\(f\) Report and Proposed Scheduling Order](#)
- [Notice and Order Setting Scheduling Conference in Patent Infringement Case](#)
- [Timeline of Model Scheduling Order](#)

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

# **Criminal Conferences**

Defendants must be present for all conferences.

## **Practicing Before This Court**

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.

## **Standing Orders**

Once the answer is filed, the Court sends out a notice of scheduling conference. All dates are set by the scheduling order at the scheduling conference. In most RICO cases, the Court requires the completion of a RICO case statement.

## **Removal**

If a motion to remand has not been filed and the Court has a concern regarding the propriety of removal, the Court will issue an order to show cause and give the parties an opportunity to address the issue.

# Motion Practice

## A. Scheduling

1. Motions to dismiss may be filed at any time. Motions for summary judgment should generally be filed following the close of discovery. The court will issue a filing date for motions in limine at the final pretrial conference.
2. After a motion is filed, the case manager will generally set a date for a hearing. The dates are firm and extensions will be granted only for good cause shown. Again, counsel desiring an extension should contact the case manager.

## B. Protective Orders

Protective orders shall not be entered routinely. In addition to the requirements under [E.D. Mich. Local Rule 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 publically 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.

## C. Briefing Guidelines

### 1. Requirements for All Motions.

The parties must index and tab their exhibits. The two or three most relevant cases must be attached as exhibits. Briefs must contain a table of contents and an index of authorities.

The parties must provide the Court with a Judge's Copy of all motions and briefs filed in support of and in opposition to motions. The parties must also provide the Court with a Judge's Copy of all exhibits filed in relation to a motion. The Judge's Copy of Exhibits should also be indexed and tabbed. In addition, on the Judge's Copy of the Exhibits the relevant parts of all exhibits, including deposition transcripts and cases, must be **highlighted**

### 2. Motions for Summary Judgment

Before filing or responding to motions for summary judgment, the parties are 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)

- a. The moving party's papers shall include a separate document entitled **Statement of Material Facts Not in Dispute**. The statement shall list in separately numbered paragraphs concise statements of each undisputed material fact, supported by appropriate citations to the record. The Statement shall include all necessary material facts that, if undisputed, would result in summary judgment for the movant. [SAMPLE](#)
- b. In response, the opposing party shall file a separate document entitled **Counter-Statement of Disputed Facts**. The counter-statement shall list in separately numbered paragraphs following the order of the movant's statement, whether each of the facts asserted by the moving party is admitted or denied and

shall also be supported by appropriate citations to the record. The Counter-Statement shall also include, in a separate section, a list of each issue of material fact as to which it is contended there is a genuine issue for trial.

SAMPLE

- c. All material facts as set forth in the Statement of Material Facts Not in Dispute shall be deemed admitted unless controverted in the Counter-Statement of Disputed Facts.
- d. The statements shall be non-argumentative and avoid the use of color words or distortions of the record in a party's favor. Conclusory, speculative, or conjectural statements in support of a position shall be avoided. Hearsay statements and other inadmissible evidence cannot be considered.
- e. Facts stated in the Statement of Material Facts Not In Dispute and Counter-Statement of Disputed Facts shall be supported with appropriate citations to the record, including but not limited to the pleadings, interrogatories, admissions, depositions, affidavits and documentary exhibits. Citations to the record must be **specific** *i.e.*, cite to a discrete page or portion of deposition testimony or page(s) of documentary evidence, not simply the entire deposition or document. The appropriate portion of the text of a source cited shall be highlighted and filed with the Court as part of an appendix separate from the brief. It is preferred that only the cited excerpts of depositions, as opposed to the entire deposition, be filed. **The text cited shall be placed in proper context.** The appendix shall contain an index and shall be tabbed.
- f. The Statement of Material Facts Not In Dispute and Counter-Statement of Disputed Facts are not included in calculating the length of the brief.
- g. 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 passage highlighted and tabbed. Further exhibits should be highlighted and tabbed (deposition transcripts, documents).

### 3. Other Motions

Although the above requirements are for motions for summary judgment, counsel are strongly encouraged to follow them to the fullest extent possible for other motions, such as motions for entry of judgment and motions to dismiss.

### 4. Motions in Limine.

Do not file motions in Limine until instructed by court.

### 5. Ruling on Motions.

The court endeavors to decide pending motions promptly, ordinarily within three weeks after a hearing, or within two weeks after the time for a response has passed without a response being filed. Complex motions or those raising novel issues may require additional time to conclude. If a motion has been pending in chambers without resolution for an apparently inordinate time, counsel are asked to notify the court's case manager, in writing (jointly if possible), as to the status of the motion. Such notification is a service that is appreciated by the court.

### 6. Page Limits for Briefs.



The court does not grant motions to extend the page limits for briefs provided under the local court rules, unless warranted by a unique/novel question of law or other extraordinary circumstances.

Any briefs filed in excess of the page limitations set forth in [E.D. Mich. Local Rule 7.1](#) will be stricken.

# Temporary Restraining Orders and 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 [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.

# Discovery

Early discovery: The Court expects the parties to conduct early discovery by agreement although Rule 26(d) does not authorize court-sanctioned discovery prior to the initial attorney conference.

The scheduling order sets forth:

1. The time for filing witness lists (which are to be exchanged at least 30 days prior to the close of discovery); and
2. The discovery cutoff dates.

Discovery motions are sometimes referred to the Magistrate Judge. The Court expects counsel to resolve discovery matters themselves. If the Court is unnecessarily involved in a discovery dispute, costs will be assessed against the unsuccessful party. The Court adheres strictly to the requirements of [E.D. Mich. LR 37.1](#) concerning narrowing areas of disagreement and will hear no discovery motions unless the parties have conferred regarding their discovery disputes.

The Court will convene a conference for scheduling discovery under Fed.R.Civ.P. 26(f) upon informal request of the parties. Generally, the Court allows four to six months for discovery and requires, if possible, disclosure of all witnesses, including experts, one to two months prior to discovery cutoff. The Court has had occasion to strike interrogatories served by the parties that exceed the authorized number. The parties may stipulate to conducting more than 10 depositions.

Motions seeking amendment of the scheduling order or extension of discovery should not be combined with motions to compel or any other motions. Such motions must be filed separately.

# Pretrial and Trials

## Pretrial and Settlement

1. The Court adheres to the requirements of [E.D. Mich. LR 16.2](#) regarding the joint final pretrial order. The joint final pretrial order is due at the final pretrial conference as set forth in the initial scheduling order. The Court requires the parties to list in the joint final pretrial order the witnesses they expect to call at trial. Any witness that is not named will not be allowed to testify at trial, absent a showing of good cause. The final pretrial conference is usually held two to four weeks before trial. The pretrial conference must be attended by an attorney familiar with the case.
2. A settlement conference, at which the parties and representatives with full authority to settle must be present, is held concurrent with the pretrial conference. The Court routinely becomes involved in settlement negotiations in jury cases and will refer a non-jury matter to a Magistrate Judge or another Judge for settlement conference.

## Trials

1. The Court uses a two-month trailing docket. The Court will allow adjournments of a trial date only upon extenuating circumstances. Upon learning of a conflict in trial dates, the attorney should immediately call the Court Clerk and explain the situation. The Court will generally not require another member of an attorney's firm to handle the trial in the event of a conflict.
2. All exhibits must be listed in the joint final pretrial order and exchanged prior to trial. At the pretrial conference, each party will be assigned the numbers to be used for exhibits. Parties are encouraged to use a bench book of exhibits in non-jury cases. During trial, the Court Reporter retains custody of the exhibits. After trial pending appeal, the parties retain custody of the exhibits.
3. **Non-Jury Trials:** Proposed findings of fact and conclusions of law are to be submitted prior to and at the conclusion of trial.
  - a. Non-Jury Trials: Proposed findings of fact and conclusions of law are to be submitted prior to and at the conclusion of trial.
  - b. Jury Trials: The Court uses the standard method of jury selection. The Court will permit counsel a limited participation in the voir dire at the conclusion of the Court's questions. Specific requests for voir dire questions must be submitted in writing to the Court.
  - c. Miscellaneous: The Court generally conducts trials between the hours of 8:30 a.m. and 1:00 p.m. The Court will, however, conduct trials in the afternoon if the schedule permits. The Court does not require counsel to request permission to approach a witness, but does prefer that counsel request permission to approach the bench. Multiple counsel may not interrogate the same witness; however, counsel who gave the opening statement need not give the closing argument. The Court usually finds it necessary to impose agreed upon limitations on opening and closing arguments.
  - d. Jury Instructions: Joint jury instructions with verdict form are to be submitted one week before trial. Jurors are allowed to take the instructions to the jury room during deliberation. Depending on the circumstances, jurors may be permitted to take notes during a trial. Counsel are to make every effort to agree on jury instructions and to submit to the Court a joint set of agreed upon jury instructions prior to the start of trial.

## **Pleas and Sentencing**

Prior to sentencing, the Court requires a presentence investigation and report unless the defendant is a corporation and, if so, then the Court will handle on a case-by-case basis. Disputes between the Government and defense counsel relating to the computation of sentencing guidelines are resolved by hearing prior to or at sentencing. Sentencing memorandums must be filed by the Government and defense counsel at least seven days prior to the sentencing.

The Court will reserve its decision on whether to accept a Rule 11 agreement. The Court will then refer the matter to probation for a presentence report. If the Court decides to reject a Rule 11 plea agreement, it will inform the parties in open court, but will do so on the sentencing date unless the parties request otherwise. The Court does have a firm plea cutoff date, which is at the time of the final pretrial conference/plea cutoff hearing. No negotiated pleas will be accepted after that date unless extraordinary circumstances exist.

# **Criminal Trials**

The Court does require submission of briefs in criminal trials and does require submission of witness lists from the Government. Such witnesses are then disclosed to the jury during voir dire. The Court also requires jury instructions and proposed verdict form, prior to trial. Attorneys may exercise multiple peremptory challenges, and the Court alternates between Government and defense attorneys for opportunity to exercise. If all attorneys pass, a jury has been selected. Disputes between the Government and defense counsel regarding proposed jury instructions are resolved in chambers then, if necessary, on the record. The Court follows the same procedures relative to jury selection in criminal trials as in civil trials. Generally, the Court permits bench conferences during trial, depending upon the circumstances.

# Case Management Orders

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

- [Scheduling Order](#)

## **Conferences**

The Court schedules a scheduling conference within approximately two weeks after the answer is filed. At the scheduling conference, the Court establishes dates for motion cutoff, discovery cutoff, witness list deadline, final pretrial conference, and trial. Under unusual circumstances, or upon special request by an out-of-town counsel (provided that local counsel is present), a status or pretrial conference may be conducted by telephone. Other conferences regarding special problems or a settlement conference may be scheduled upon request.



## Courtesy Copies

The parties must provide the Court with a Judge's Copy of all motions and briefs filed in support of and in opposition to motions. The parties must also provide the Court with a Judge's Copy of all exhibits filed in relation to a motion. The Judge's copy of exhibits should also be index and tabbed. In addition, on the Judge's copy of the exhibits the relevant parts of all exhibits, including depositions transcripts and cases, must be **highlighted**.

Copies must be appropriately bound, with the electronic file stamp (CM/ECF header) fully visible on each page, i.e. do not bind the courtesy copy with a top fastener. No loose or single binder metal clip bound copies or rubber banded copies will be accepted by the Court. **No prong fasteners may be used. No side staples please.**

Please note: depending on the size of the complete document plus exhibits, a short filing may be stapled in the top left corner or bound on the side. **A THREE RING BINDER, COMB, SPIRAL or THERMAL BINDING ARE ACCEPTABLE.**

