Motion Practice (part 2/2)

SUMMARY JUDGMENT

No party may file more than one motion for summary judgment without obtaining leave of the 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." 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. The Counterstatement of Material Facts counts against the page limit for the brief. No separate narrative facts section shall be permitted.

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 is 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. Where unpublished opinions or opinions published only in a specialty reporter are cited, copies of these cases must be submitted with the briefs.

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 and Local Rules regarding privacy protection.

WITNESSES FOR HEARINGS/SENTENCINGS

If a party intends to call a witness at a motion hearing, the party must notify Chambers at least 10 days in advance of the hearing date and inform the Case Manager of the anticipated length of time needed for testimony.

Motion Practice (part 1/2)

CONCURRENCE

The Court requires strict compliance with **Local Rule 7.1(a)** regarding concurrence, and the Court may impose costs for failure to comply with the Local Rule.

BRIEFS AND BRIEFING SCHEDULE

Local Rule 7.1(c) requires that motions and responses 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.

The Court does not typically issue a briefing schedule; rather, it follows the time limits set forth in **Local Rule 7.1(e)** and Federal Rule of Civil Procedure 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.

The Court adheres to E.D. Mich. LR 5.1 and 7.1 regarding format and form of motions and briefs, the type of briefs required and permitted, and page limitations. All briefs must contain an index of exhibits, and the Court suggests a table of contents for briefs over ten pages. Deviations from the length and/or timing of briefs under these Rules must be by leave of Court and will rarely be granted. The parties must index and tab their exhibits. Failure to file timely briefs may result in those briefs being stricken, and untimely reply briefs may not be considered.

Citations in motions and briefs must comply with the current Bluebook rules for federal court, and controlling authority must be cited in the text of the brief, not in footnotes.

HEARINGS/ORAL ARGUMENT ON MOTIONS

Except in pro se prisoner cases and on motions for reconsideration, the Court often hears oral argument on civil motions. Upon filing or referral, the Court will notify the parties of the date and time of a hearing. However, pursuant to E.D. Mich. LR 7.1(f), the Court may cancel a scheduled hearing or decide the matter without a hearing where the issues can be decided on the briefs.

Each side generally will be limited to an aggregate of 15 minutes of argument, as the Court will have reviewed the parties' briefs prior to the hearing.

COURTESY COPIES

If a motion, response, or reply (including exhibits) totals more than 20 pages, a courtesy copy of the motion and exhibits shall be provided to the Court's Chambers, either by hand delivery or by mail within five days of the date it was electronically filed. Exhibits on the courtesy copy must be separated by protruding tabs, and relevant portions of exhibits must be highlighted. The courtesy copy should be a filed copy containing the electronic date stamp on the top of the page. Where a filing relates to a court proceeding scheduled within the next five days or otherwise requiring the immediate attention of the Court, the Chambers copy must be hand-delivered to Chambers no later than the morning of the next business day after e-filing the document(s).

Pleas and Sentencing

The Court may 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 or at a status conference prior to the sentencing date. The Court will set a firm plea cutoff date for each case, which will be at the time of the final pretrial conference/plea cutoff hearing. No negotiated pleas will be accepted after that date, unless extraordinary circumstances exist.

Prior to sentencing, the Court requires a presentence investigation and report. Disputes between the government and defense counsel relating to the computation of sentencing guidelines are resolved by hearing prior to or at sentencing. Sentencing memoranda must be filed by the government and defense counsel at least seven days prior to the sentencing. If the government intends to seek remand at sentencing, it should advise the Court at least one day before the sentencing.

Removal/Remand

If the Court has a concern regarding the propriety of removal, an Order to Show Cause will be issued by the Court. Pursuant to Local Rule 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 30 days from the notice of removal.

General Policies

Judge Grey expects traditional courtroom civility and full compliance with the Civility Principles adopted by the Court.

Judge Grey accepts no ex parte communications. Counsel may only contact the Case Manager or Career Law Clerk regarding procedural and scheduling matters. Although Chambers staff is happy to answer questions about Chambers procedures, please consult these guidelines, 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 term 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 Local Rule 7.1, Local Rule 5.3, and Electronic Filing Rules 5 and 10(d). All filings must comply with the current Bluebook rules. All controlling authority must be cited in the body text and not in footnotes.

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 at the Final Pretrial Conference or at least 10 days prior to any hearing regarding the use of technology in the courtroom. Requests for interpreters and accommodations for witnesses with disabilities should be made with Chambers at least 10 days before needed.

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

Judge Grey encourages parties to attempt to resolve any disputes that arise through communication before resorting to motion practice, especially discovery disputes before Judge Grey. To facilitate this, parties may request a status conference with Judge Grey at any time. Status conferences may be conducted telephonically or in person.

Discovery

The Court expects parties and counsel to conduct discovery cooperatively and fairly, consistent with Federal Rule of Civil Procedure 1: "To secure the just, speedy, and inexpensive determination of every action." The Court expects counsel to resolve discovery matters themselves.

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.

Unless otherwise decided at the initial scheduling conference, the Court may issue a blanket referral of all discovery matters to the assigned Magistrate Judge. This includes motions to compel, motions for protective orders, motions to quash, and motions for sanctions related to discovery. Before moving for an order relating to discovery, in a case where discovery matters are assigned to a Magistrate Judge, the movant should consult with the assigned Magistrate Judge's chambers on its discovery motion procedures.

For any discovery motions before Judge Grey, counsel is required to meet and confer in accordance with E.D. Mich. LR 37.1 in an attempt to resolve, or at least narrow, the disputed issues. Accordingly, parties are directed to meet and confer either in person or by videoconference or teleconference in advance of the hearing for **an item-by-item discussion of each issue in dispute**. If unresolved issues remain, the parties shall file a Joint List of Unresolved Issues setting forth the issues that remain unresolved. The Joint List shall not exceed five pages, and should be structured as follows:

Unresolved Issue No. 1: [Recite Issue]

- Movant's position
- Respondent's position (including any proposal made to resolve movant's request)

No exhibits or attachments shall be filed with the Joint List. The list must be e-filed at least five business days prior to the hearing.

This meet-and-confer requirement is not satisfied by an email exchange or messages left unanswered, or by mere compliance with LR 7.1, which requires the moving party to seek concurrence in a motion. Where a conference has not been conducted, the moving party is to submit a written statement to the Court outlining all steps taken to undertake a conference with the opposing party. Any party refusing to appear for the conference or to confer as the Court directs may be subject to costs and/or sanctions.

In responding to discovery requests, form or boilerplate objections shall not be used and, if used, may subject the party and/or its counsel to sanctions. Objections must be specific and state an adequate individualized basis. *See Wesley Corp. v. Zoom T.V. Products, LLC*, No. 17-10021, 2018 WL 372700, at *4 (E.D. Mich. Jan. 11, 2018) (Cleland, J.); *Siser N. Am., Inc. v. Herika G. Inc.*, 325 F.R.D. 200, 209-10 (E.D. Mich. 2018) ("Boilerplate objections are legally meaningless and amount to a waiver of an objection."); *accord Strategic Mktg. & Research Team, Inc. v. Auto Data Sols., Inc.* , No. 2:15-CV-12695, 2017 WL 1196361, at *2 (E.D. Mich. Mar. 31, 2017) ("Boilerplate or generalized objections are tantamount to no objection at all and will not be considered by the Court.").

Finally, a party objecting to a request for production of documents as unduly burdensome must submit affidavits or other evidence to substantiate its objections. *In re Heparin Prods. Liab. Litig.*,

273 F.R.D. 399, 410-11 (N.D. Ohio 2011); span style = "font-style: italic;">Sallah v. Worldwide Clearing, LLC, 855 F. Supp. 2d 1364, 1376 (S.D. Fla. 2012); *Convertino v. U.S. Dep't of Justice*, 565 F. Supp. 2d 10, 14 (D.D.C. 2008).

DISCOVERY DEADLINES AND EXTENSIONS OF TIME

The general timeline for discovery will be four to six months and experts are to be disclosed one to two months prior to close of discovery.

The Court's Case Management Order sets the discovery cutoff date, and Judge Grey will set a discovery cutoff date that is a firm deadline. 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. All discovery motions must be filed prior to the discovery deadline. The only discovery that may be conducted after the discovery cutoff date without leave of the Court is discovery ordered by the Magistrate Judge for which a timely-filed motion was pending before the discovery cutoff date. Scheduling issues concerning the discovery cutoff date remain before Judge Grey.

Stipulated discovery periods or extensions of the discovery deadline which affect other dates or are longer than necessary without a showing of good cause are not permitted. Filing a motion does not change discovery deadlines. This Court will consider extensions or adjournments of all other dates in limited circumstances for good cause shown upon the timely filing of a written motion.

Criminal Practice and Procedure

ATTORNEY CONFERENCE AND DISCLOSURE

Within ten 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.

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.

CONTINUING DUTY

The duty to disclose is continuing, even throughout trial.

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).

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 may allow a reasonable amount of additional time during trial for the defense to prepare before proceeding.

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 30 days before the court date.

PRE-TRIAL MOTIONS

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

Civil Practice and Trial Procedure

FINAL PRETRIAL ORDERS

The Joint 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 Joint Final Pretrial Order shall strictly comply with the requirements of Local Rule 16.2. All witnesses expected to be called at trial, and all exhibits to be used at trial, must be listed in the Joint Final Pretrial Order, and the exhibits must be exchanged prior to trial. Any witness or exhibit not identified in the Joint Final Pretrial Order shall not be allowed or admitted at trial, absent a showing of good cause.

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 with 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.

A settlement conference is held concurrent with the pretrial conference. Representatives must possess full authority to engage in settlement discussions and to agree upon a full and final settlement. The personal attendance requirement is not satisfied by (a) trial counsel professing to have full authority on behalf of the client, or (b) a party being available by telephone, unless the party has obtained prior permission from the Court. The Court will generally only grant such permission upon consent of counsel for all parties.

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 shorter than prescribed by **Local Rule 7.1**. In addition to the requirements of Federal Rule of Civil Procedure 65 and **Local Rule 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 a TRO or preliminary injunction. Parties must notify the Case Manager and Career Law Clerk via email 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 desired injunction.

Adjournments, Stipulations and Proposed Orders

To the extent that a party desires to adjourn a date set by the Court, the party should obtain a stipulation from the other party(ies), then file the stipulated request and proposed order via the Utilities feature of CM/ECF. The proposed order should include three (3) proposed dates and times all parties are available.

Parties must file a Proposed Order along with any Stipulation. Stipulations and Proposed Orders should not be e-filed. Rather, they should be submitted to Chambers through the Utilities feature of CM/ECF. Please see Rule 12 of the Electronic Filing Policies and Procedures for additional information regarding Proposed Orders. Submissions must be in Microsoft Word format.

Proposed Orders may not be submitted to the Court on the stationery or letterhead of any party or their counsel. Any such Proposed Order will be rejected, and the submitting party will be required to refile a properly formatted Order.

Electronic signatures must conform to Rule 10 of the Electronic Filing Policies and Procedures. If either party is pro se, and that party is not an efiler, then the pro se party's original wet signature must be on the stipulation.

Case Management and Scheduling Orders

A. CIVIL CASES

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 Defendants have filed Answers, unless to do so will cause significant delay. 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.

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.

FINAL PRETRIAL CONFERENCE: Trial procedures and final pretrial matters are discussed with the Court at this conference. Motions in limine also may be heard at the conference in order to avoid delay on the first day of trial.

STATUS CONFERENCE: Upon request or sua sponte, the Court may schedule a status conference to facilitate the administration of a case when necessary.

SPECIAL CASES: Social Security appeals and pro se prisoner Civil Rights cases are generally referred to the magistrate judge for case management.

B. CRIMINAL CASES

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.

FINAL PRETRIAL CONFERENCE: A final pretrial conference is conducted by the Court. The final pretrial conference is generally held two weeks prior to the start of trial. Motions in limine may also be heard at the final pretrial conference in order to avoid delay on the first day of trial.

STATUS CONFERENCE: Upon request or when necessary, the Court may schedule a status conference to facilitate the administration of a case.

Protective Orders

Proposed protective orders may be entered into pursuant to a stipulation of the parties, and such stipulations are encouraged. However, protective orders may not contain language that authorizes in advance the filing of documents under seal. Filings under seal are governed by Local Rule 5.3. Therefore, proposed protective orders MUST contain the following language:

> This order does not authorize the filing of any documents under seal. Documents may be sealed only if authorized by statute, rule, or order of the Court. A party seeking to file under seal any paper or other matter in any civil case pursuant to this section shall file and serve a motion or stipulation that sets forth (i) the authority for sealing; (ii) an identification and description of each item proposed for sealing; (iii) the reason that sealing each item is necessary; (iv) the reason that a means other than sealing is not available or unsatisfactory to preserve the interest advanced by the movant in support of the seal; and, if a party files a motion only, (v) a memorandum of legal authority supporting the seal. See Local Rule 5.3. No party shall file or otherwise tender to the Clerk any item proposed for sealing unless the Court has entered an order allowing filing under seal.

Whenever a motion or stipulation to seal is filed, the party seeking to file under seal shall submit a proposed order which states the particular reason the seal is required. The proposed order shall be submitted via the link located under the "Utilities" section of CM/ECF.

Alternative Dispute Resolution, 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 by a state tribunal, or to a Magistrate Judge or an outside facilitator for mediation, to be conducted after the completion of discovery. Parties may request a referral to evaluation or mediation prior to the close of discovery. The Court will also facilitate pretrial resolution in appropriate cases.

Practicing Before This Court

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 E.D. Mich. L.R. 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.

Criminal Trials (part 1/2)

TRANSCRIPT ORDERS

If you would like daily copy or real-time services from a court reporter at trial, you must seek permission from the Court before or during your Final Pretrial Conference.

EXHIBITS

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.

Marking of Exhibits: Counsel is 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.

List of Exhibits: A list of proposed exhibits shall be submitted directly to Chambers by each of the parties by the deadline established at the final pretrial conference. However, no later than one 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.

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.

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.

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

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, the 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.

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.

Filing Exhibits: It is the responsibility of the parties to ensure that the record is complete.

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.

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 Chambers via the Utilities feature of CM/ECF a list of witnesses, by name and agency (if appropriate), whom it reasonably anticipates it will call to testify at trial. This list shall note the approximate amount of time needed for the examination of each 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.

Criminal Trials (part 2/2)

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 Chambers a single set of proposed, stipulated jury instructions. Counsel is 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 a USB drive compatible with Microsoft Word; 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 Chambers all additional proposed instructions to which any other party objects. These should be submitted in the same form as proposed stipulated instructions. 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 is 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 after final argument, but upon a joint request by the parties, the Court will charge the jury before final argument.

TRIAL

Jury trials generally will commence at 8:30 a.m. and continue to approximately 2:30 p.m., with two short breaks (one in the morning, one in the afternoon) and a half-hour break for lunch.

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.

The Court will conduct general voir dire, but counsel may conduct their own inquiries of prospective jurors with the Court's permission. All proposed voir dire questions must be submitted to the Court in writing at least 10 days before the start of voir dire.

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 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 “megatrials." 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 Trials (part 1/2)

TRIAL DATE

The Court sets a date certain for trial that contemplates the parties' conclusion of Alternative Dispute Resolution 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.

ADJOURNMENTS

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

STATUS CONFERENCES

Judge Grey is available for status conferences, either telephonically or in person, by arrangement with the Case Manager. Do not wait until an issue becomes an emergency before seeking the Court's assistance.

TRANSCRIPT ORDERS

If you would like daily copy or real-time services from a court reporter at trial, you must seek permission from the Court before or during your Final Pretrial Conference.

EXHIBITS

Marking of Exhibits: Counsel is 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.

List of Exhibits: A list of proposed exhibits shall be submitted directly to Chambers by each party by the deadline established at the final pretrial conference. However, no later than one 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.

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 of the exhibit will be contested. See E.D. Mich. **L.R. 16.2(b)(9)**.

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.

Custody and Record of Admitted Exhibits: Counsel is 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.

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, the 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.

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.

Filing Exhibits: It is the responsibility of the parties to ensure that the record is complete.

Post-Trial: After trial pending appeal, the parties retain custody of their respective exhibits.

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.

Civil Trials (part 2/2)

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 Chambers a single set of proposed, stipulated jury instructions. Counsel is 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 a USB drive compatible with either Microsoft Word; 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 Chambers all additional proposed instructions to which any other party objects. These should be submitted in the same form as proposed stipulated instructions. 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 plaintiff 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 is directed to concentrate on elements of the offense, the defense(s), etc. The jury is instructed after final argument, but upon a joint request by the parties, the Court will instruct the jury before final argument.

JURY SELECTION

The Court uses a "struck jury" system for jury selection.

The Court will conduct general voir dire, but counsel may conduct their own inquiries of prospective jurors with the Court's permission. All proposed voir dire questions must be submitted to the Court in writing at least three days before the start of voir dire.

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 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.

Settlement Conferences Conducted by Judge Grey

The Court encourages parties and counsel to consider voluntary settlement conferences when and where appropriate. The Court is willing to serve as a facilitator upon the parties' request. Based on the nature of the case and the state of settlement negotiations, the Court will be prepared to devote the entire day for the conference, and all parties should clear their schedules for the entire day.

FIRST: SEVEN CALENDAR DAYS before the settlement conference, each party shall submit by hand, fax, or email efile_grey@mied.uscourts.gov a confidential, ex-parte settlement statement directly to Chambers.

PLEASE DO NOT FILE THESE STATEMENTS WITH THE COURT. The statements shall be limited to ten pages with exhibits that total no more than ten pages, and shall include the following clearly marked sections:

1. A brief description of the background and nature of the case;
2. The party's perceived strengths;
3. The party's perceived weaknesses;
4. A statement identifying each cause of action at issue, and the remedies available under each of those causes of action;
5. A summary of all settlement discussions that have taken place to date, including the specific amount of any offers and counteroffers that have been made; and
6. A statement of why the most recent demand or offer was rejected.

SECOND: Individuals with full settlement authority shall be personally present at settlement conferences. For the plaintiff(s), "full settlement authority" means the authority to dismiss the complaint with prejudice in exchange for a settlement. For the defendant(s), "full settlement authority" is defined as the full relief requested in the lawsuit and/or the relief requested by the last settlement demand. If an insurance company agent holds the full settlement authority, such agent must be present at the conference. **If a party appears at the conference with authority to settle for only less than full settlement authority, the conference will be rescheduled.**

THIRD: At the settlement conference, the parties and their attorneys are expected to conduct themselves in a business-like manner and to negotiate in good faith.

The Court sends a Notice with detailed information regarding attendance and other matters. Scheduling and all other contact regarding settlement conferences is handled by Sandra Osorio, Case Manager.