

## Courtesy Copy Policy

In accordance with the rules, the Court requires courtesy copies of all dispositive motion papers. The Court also requests courtesy copies of all lengthy pleadings or pleadings to which multiple exhibits are attached thereto. Courtesy copies should be provided with the .pdf header printed across the top of the page. Exhibits must have labels attached that extend beyond the right hand side of the paper. Motion papers must be bound along the left margin (“Book-style”) with binding combs. Courtesy copies that do not comply with the formatting requirements, including exhibit tabs and book-style binding, will be returned for reformatting before they will be considered. When citing deposition testimony, counsel should supply the Court with a transcript of the cited page(s), together with sufficient accompanying pages to provide context. Full transcripts will be accepted and are preferred unless they are unusually long; transcript indexes also are preferred. Courtesy copies must be submitted promptly after the pleading is filed.

## **Out of State Counsel**

The Court generally follows the requirements set forth in [E.D. Mich. LR 83.20](#).

Counsel need not personally appear before the Court to take the oath of office; the Court has designated the Clerk of the Court to administer the oath. See Local Rule 83.20(d)(4). Contact the Clerk's Office for further information at (313) 234-5005.

# **Temporary Restraining Orders & Injunctions**

Generally, the Court requires that an ex parte motion for a temporary restraining order be served on the opposing party. The Court grants ex parte relief only in extraordinary circumstances. The movant should contact chambers to schedule a hearing once the opposing party has been served with the Complaint and motion. The Court then will request expedited briefing by the parties.

On the other hand, a motion for preliminary injunction will not be treated as requiring an expedited response from the Court unless the moving party requests expedited consideration and sets forth compelling reasons for doing so.

When a party files a motion for temporary restraining order, or a preliminary injunction in which expedited consideration is requested, that party must contact the Court's Case Manager by telephone so the appropriate scheduling issues can be discussed.

## Case Management & Scheduling Orders

The Court generally issues its [Notice to Appear for Case Management Status and Scheduling Conference](#) after the Answer is filed. If more than one Defendant is named in the Complaint, the Court typically schedules the conference after all Defendants have filed Answers, unless to do so will cause significant delay. A notice generally will be sent within one to two weeks after a responsive pleading is filed. The parties are required to submit a Rule 26(f) plan as described in the Notice, no later than four (4) business days prior to the conference. If a dispositive motion is filed in lieu of an Answer, the Court generally will hold the Case Management Status and Scheduling Conference (when necessary) after the motion is decided. This may occur the same day as the motion hearing if the Court rules from the bench.

At the Case Management Status and Scheduling Conference the Court will issue a [Scheduling Order](#). The parties should refer to the other areas of this Court's Practice Guidelines (e.g., Settlement Conferences; Pretrial; Trials) for information relevant to the dates/activities set forth in the Court's Scheduling Order.

The Judges of the United States District Court for the Eastern District of Michigan have approved, on a pilot period basis, the use of a Model Electronically Stored Information (ESI) Discovery Order and Rule 26(f) checklist in appropriate cases. See [ESI Order Checklist](#). The Court encourages the parties in cases where substantial ESI discovery is expected to review the order and Rule 26(f) checklist, use the Rule 26(f) checklist when preparing their Rule 26 plan, and be prepared to inform the Court at the Case Management Status and Scheduling Conference whether an order incorporating all or portions of the model order would be useful in the particular case.

# Discovery

## A. EXCLUSIONS

These discovery guidelines do not apply to the following: ERISA or other actions for review on an administrative record, petitions for habeas corpus, prisoner civil cases where the prisoner is unrepresented, actions to enforce or quash an administrative summons or subpoena, actions by the United States to recover benefit payments or student loans, and actions to enforce an arbitration award.

## B. EFFICIENT DISCOVERY

The parties are required to conduct their Rule 26(f) discovery conference and submit a discovery plan and case summary no later than four business days prior to the Case Management Status and Scheduling Conference. It is expected that all parties and all counsel will conduct discovery in a cooperative way, consistent with Rule 1 of the Federal Rules of Civil Procedure: "To secure the just, speedy, and inexpensive determination of every action." Consequently, the parties should cooperate with each other to ensure that discovery progresses as rapidly and efficiently as is practical. The Court advises that it generally is very liberal on discovery issues.

## C. EXTENSIONS OF TIME

The parties can stipulate to extend discovery if it does not impact subsequent dates set by the Court. If such an agreement is reached, the parties should submit a stipulated order, signed by counsel and with a signature line for the Court, via the utilities function of CM/ECF. Requests to extend discovery impacting other dates must be sought via motion. Any agreement by the parties to the request should be indicated.

## D. DISCOVERY DISPUTES

[Local Rule 37.1](#) requires the parties to attempt to narrow their disagreements in regard to discovery. The Court expects counsel to make every effort to comply with this Local Rule, to confer with one another and resolve discovery matters themselves. However, if counsel have conferred and made every effort to reach an agreement but have been unsuccessful, the Court will be available to conduct a telephone conference on short notice in order to resolve discovery disputes expeditiously and without the need for motions. **No discovery motion may be filed before the Court is contacted.** Counsel should contact the Court's Case Manager to schedule a conference call at (810) 341-7064.

The Court generally will decide motions filed when discovery disputes are not resolved in the manner described above; however, the Court may refer motions to the magistrate judge assigned to the case. Where a motion has been referred, all communication regarding the motion should be directed to the magistrate judge's chambers. Improper delays or uncooperativeness in discovery will result in assessments of costs.

## E. PROTECTIVE ORDERS

Protective orders shall not be entered routinely. The requirements for protective orders are set forth in [Local Rules 5.3](#) and [26.4](#), which are to be strictly followed. Pursuant to these rules, only the portion of a pleading, paper, exhibit(s), or document(s) subject to the protective order may be filed under seal.

## F. ELECTRONIC DISCOVERY

The Judges of the United States District Court for the Eastern District of Michigan have approved,

on a pilot period basis, the use of a Model Electronically Stored Information (ESI) discovery order and Rule 26(f) checklist in appropriate cases. See [ESI Order Checklist](#). In cases where substantial ESI discovery is expected, the Court encourages the parties to review the order and Rule 26(f) checklist, use the Rule 26(f) checklist when preparing their Rule 26 plan, and to be prepared to inform the Court at the Case Management Status and Scheduling Conference whether an order incorporating all or portions of the model order would be useful in the particular case.

# Motion Practice

## A. CONCURRENCE

The Court requires adherence to [Eastern District of Michigan Local Rule 7.1\(a\)](#), which requires moving parties to seek concurrence before filing a motion. The Court requires that a good-faith effort be made to obtain concurrence, which normally involves actual contact with opposing counsel and conveyance of the specific issues the party intends to raise in the motion. **It is not sufficient simply to inform opposing counsel that you intend to file, for example, a motion to dismiss.** The purpose of this process is to, at a minimum, narrow the issues raised in any subsequently filed motion. If no actual conversation occurs, the moving party must show that reasonable efforts were undertaken to conduct a conference and specifically describe those efforts in the motion papers. The outcome of the conference must be stated. All of this must be documented specifically in the motion papers.

## B. BRIEFING AND COURTESY COPIES

For all pleadings, the Court requires strict compliance with the Local Rules for the Eastern District of Michigan, including the District's Electronic Filing Policies and Procedures. Counsel must familiarize themselves, in particular, with the requirements of [Local Rules 5.1](#) and [7.1](#) and [Rule 5 of the Electronic Filing Policies and Procedures](#). Failure to comply with these rules may result in the Court striking the pleading.

### 1. Courtesy Copies

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### 2. Schedule

The Court adheres to the briefing schedule and page limits set forth in [Local Rule 7.1](#). Counsel should contact the other side when seeking extensions of the page limit and/or deadlines set forth in the rules prior to submitting a request to chambers. If an agreement is reached, the parties should file a stipulated order, signed by counsel for each side and containing a signature line for the Court, reflecting the agreement. Where an agreement cannot be reached, extensions may be obtained by filing a motion, which the Court will grant if the request is warranted and reasonable. Counsel are advised to be reasonable when consent is first sought.

## C. PRIVACY

Counsel must be vigilant regarding the use of private information in any filings (including deposition transcripts). Counsel must redact certain private information as set forth in Federal Rule of Civil Procedure 5.2.

## **D. HEARINGS**

The Court schedules motion hearings unless it believes a hearing will not aid in its disposition of the motion. The Court will issue a notice of hearing with a specific date and time or a "no hearing" notice. Therefore, the parties need not file notices or requests for hearing, and should not contact chambers to schedule a hearing.

A party that fails to timely respond to a motion will not be permitted to argue at any hearing on the motion.

## **E. MOTIONS FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

The Court has specific practice guidelines and procedures addressing motions for temporary restraining order or preliminary injunction.

## **F. DISCOVERY MOTIONS**

As set forth in the Court's discovery practice guidelines and procedures, the parties may not file a discovery motion without first contacting the Court's Case Manager.

## **G. SUMMARY JUDGMENT MOTIONS**

When filing motions for summary judgment, the parties shall proceed in accordance with the following:

1. Facts stated in the statement of material facts must be supported with citations to specific parts of materials in the record, such as interrogatories, admissions, depositions, affidavits, or documents. The text of any source cited should be filed with the Court as an appendix. The appendix shall contain an index and be tabbed (see paragraph B above).
2. 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, but must provide courtesy copies of any cited unpublished decisions.
3. 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.

## **H. ORDERS ON MOTIONS**

As a general rule, the Court prepares its own orders following oral argument or, where oral argument is disposed of, after reviewing the pleadings. However, a party moving for default judgment should submit a proposed order and judgment when filing the motion.

## **I. SETTLEMENT AND RESOLUTION OF MOTIONS**

The parties must notify chambers in writing within one business day of the case settling. The parties may accomplish this by either sending an email to the Case Manager or sending a fax to chambers. Similarly, if the parties resolve a pending motion prior to the hearing date, they must notify chambers within the same time frame. The movant must then file a notice withdrawing the pending



motion.

If the plaintiff files an amended complaint in response to a motion to dismiss and the movant concludes that the amendment moots the motion (or requires different arguments in support of dismissal), the movant should file a notice withdrawing the initial motion, and if desired, file a new motion to dismiss.

## Settlement

The Court routinely holds a settlement conference after the discovery cut-off. The requirements for the settlement conference are set forth in the Court's [Settlement Conference Notice](#).

The Court welcomes and endorses agreements between parties to engage in case facilitation or evaluation. The Court sets a deadline to request facilitation or evaluation in its Scheduling Order. A proposed stipulated order referring the case to facilitation shall be submitted to the Court via the CM/ECF utilities function, identifying the facilitator and the date set for facilitation. To request case evaluation, the parties should file a [Stipulated Request for Case Evaluation](#).

At the parties' request, the Court will schedule additional settlement conferences. The Court routinely becomes involved in settlement negotiations in jury cases and refers non-jury matters to a magistrate judge or another judge for settlement discussions.

# Final Pretrial Conference & Final Pretrial Order

The Court's Scheduling Order, issued at the Case Management Status and Scheduling Conference, establishes a due date for the Final Pretrial Order and the date of the Final Pretrial Conference. The parties' proposed Final Pretrial Order must be submitted through the document utilities function of CM/ECF on or before the deadline. Counsel should bring at least three copies to the Final Pretrial Conference. Counsel shall follow the procedure outlined below to prepare for the Final Pretrial Conference and the Final Pretrial Order:

A. Counsel for all parties must confer in person (face-to-face) at their earliest convenience to: (1) reach any possible stipulations narrowing the issues of law and fact; (2) deal with non-stipulated issues in the manner stated in this paragraph; and (3) exchange documents that will be offered into evidence at trial. It shall be the duty of plaintiff's counsel to initiate the meeting and the duty of opposing counsel to respond and offer full cooperation and assistance. If, after reasonable effort, any party cannot obtain the cooperation of opposing counsel, it shall be his or her duty to relay this information to the Court. The Final Pretrial Order shall fulfill the parties' disclosure obligations under Federal Rule of Civil Procedure 26(a)(3), unless the Court orders otherwise. All objections specified in Rule 26(a)(3) shall be made in this order. Counsel for plaintiff then will prepare a draft Final Pretrial Order and submit it to opposing counsel, after which all counsel will submit a joint proposed order. The Final Pretrial Order should provide for the signature of the Court, which when signed will become an Order of the Court

B. The proposed Final Pretrial Order shall strictly comply with the requirements of Local Rule 16.2, except as this Court may otherwise provide. All witnesses must be listed in the Final Pretrial Order. Witnesses not identified on a party's witness list may only be added to the Final Pretrial Order by stipulation of the parties or leave of Court. Counsel are cautioned not to reiterate the long list of witnesses from their earlier submitted witness lists, and to list only those witnesses reasonably expected to be called.

C. The following persons must 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;
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

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.

# **Trials**

## **A. TRIAL DATE AND TIME**

The Court sets a date certain for the trial at the Case Management Status and Scheduling Conference after consultation with counsel. Because the Court consults with the attorneys before setting a trial date and sets the date early, adjournments are rarely granted.

Trial hours generally are 9:00 a.m. to 1:00 p.m., although the Court may occasionally continue into the later afternoon. The Court will inform the parties and jurors at the end of each day of the following day's schedule. Counsel must appear for trial promptly, ready to begin. If problems arise during trial, they should be raised with the Court at the end of each day or during a break. They should not be raised at the start of the day, or otherwise while the jury is waiting, unless absolutely necessary.

## **B. SETTLEMENT**

The Court will engage in settlement discussions once trial has commenced, but outside trial hours. Counsel, however, will be assessed juror costs in cases which settle on or after the day of jury selection and/or trial.

## **C. NON-JURY TRIALS**

The parties must file proposed findings of fact and conclusions of law two days before trial is to begin. These can be supplemented or amended at the conclusion of trial. At the conclusion of trial, counsel must submit final proposed findings of fact and conclusions of law to chambers on a disc or flash drive, in a format compatible with Word 2010 or WordPerfect X5.

## **D. JURY TRIALS**

### **1. Jury Selection**

The parties shall submit a statement of claims or defenses, no longer than one page, suitable to read to the jury during opening instructions. The Court will have counsel introduce themselves and their clients and identify expected witnesses.

The Court conducts voir dire. At least one week prior to the start of trial, requests for voir dire should be exchanged by counsel. At least two days prior to the start of trial, requests for voir dire should be submitted to the Court, indicating any objection by the opposing side. The Court may allow counsel to present follow up questions at a sidebar conference, and when appropriate, the Court will also ask the requested follow up question(s).

A modified strike method is used for jury selection. Once all challenges for cause are made, the Court will have 16 potential jurors seated. At sidebar, the parties then can exercise their peremptory challenges. The Court will conduct four rounds of strikes. Each side gets four strikes. The Court excuses jurors without disclosing which side excused them. Eight jurors will consider the evidence and deliberate.

### **2. Instructions and Verdict Form**

The Court will provide proposed opening and closing instructions. Counsel are

responsible for all instructions related to their specific claims or defenses, and special instructions relating to evidence. The parties are required to meet and confer prior to the first day of trial to discuss jury instructions and the verdict form.

On or before the first day of trial, the parties must submit to chambers a single set of proposed, stipulated jury instructions on a disc or flash drive, in a format compatible with Word 2010 or WordPerfect X5. Each instruction should be contained on a separate page and must contain references to authority. The parties shall separately submit to chambers at the same time any additional proposed instruction (in the same form) to which any other party objects. Nevertheless, the parties must make a concerted, good faith effort to narrow the areas of dispute, and to discuss each instruction with the goal of reaching agreement as to an acceptable form. The parties should submit a hard copy of the agreed upon verdict form on or before the first day of trial.

The jury is charged before final argument, and will be provided a copy of the final instructions to take into the jury room.

### **3. Note Taking and Juror Involvement**

The Court advises jurors before trial begins that they will be permitted to take notes during trial. The Court instructs jurors that if they take notes, such notes are not evidence and should not be shared with other jurors. The notes are merely aids for the individual juror's memory of the evidence presented. The Court will consider, on a case by case basis, whether to allow the jurors to question witnesses, either directly or through submission of questions to be asked by the Court.

## **E. EXHIBITS**

The Court generally resolves disputes about exhibits at the Final Pretrial Conference.

### **1. Marking Exhibits**

Counsel must 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. The Court requires the use of a bench book of exhibits.

### **2. List of Exhibits**

A list of proposed exhibits shall be submitted directly to chambers by each of the parties on or before the first day of trial.

### **3. Custody and Record of Admitted Exhibits**

Counsel must maintain a record of all admitted exhibits during trial. During trial and after trial pending appeal, counsel for each party will maintain custody of that party's admitted exhibits. The Court Reporter will take custody of the parties' exhibits during jury deliberation.

### **4. 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 an exhibit simultaneously. Parties are responsible for providing equipment for such purpose and should contact the Court's Case Manager, to obtain permission to bring such equipment into the courthouse. If photographs and documentary exhibits are not published electronically, then the party must prepare exhibit books for the Court and each juror.

Regardless of whether 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.

### **5. 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.

### **F. DEPOSITION EVIDENCE**

If depositions are to be read into evidence, the transcripts should be reviewed by both parties, and an agreement must be reached on which portions of the deposition are to be presented. At least seven (7) days before trial, the parties must notify the Court if they are not able to reach an agreement. Parties must prepare redacted portions of the deposition transcript prior to the first day of trial, and provide a copy to the Court on or before the first day of trial.

### **G. 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 a magistrate judge conducting all proceedings in their case, including a bench or jury trial, and order the entry of final judgment

# Criminal Matters

## Status Conference:

The Court does not hold initial status conferences in criminal cases. Rather, approximately seven days after arraignment, the Court will issue a [Criminal Trial Notice and Scheduling Order](#). The Court's requirements and standard practices for criminal matters are outlined in that order.

## Pleas:

If the parties intend for the case to be resolved by a plea agreement pursuant to Federal Rule of Criminal Procedure 11, they must submit a signed copy of the written plea agreement to chambers at least two business days before the plea hearing date. The Court sets a plea cut-off date in its scheduling order. The Court will rarely accept an *Alford* plea and never over government objection. The Court may consider a nolo contendere plea.

## Sentencing:

The Court requires a presentence investigation and report prior to sentencing. Disputes between the government and defense counsel relating to information in the report and/or computation of sentencing guidelines are typically resolved by a hearing prior to sentencing. If the AUSA and defense counsel agree on the computation of sentencing guidelines, but the probation officer disputes their conclusion, the Court will use a conference or hearing to resolve the conflict. Any disputes should be submitted to the Court in writing in accordance with Federal Rule of Criminal Procedure 32(f). The Court generally meets with the probation officer prior to sentencing.

