Case Management Orders

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- Scheduling Order

Class Actions

The Court does not impose any requirements with respect to the certification of a class other than the requirements of Federal Rule of Civil Procedure 23.

Conferences

The Court routinely schedules a scheduling conference at which the motion cutoff, discovery cutoff, final pretrials and trials dates are set in addition to due dates for the final pretrials order and jury instructions. Other status conferences are held if requested by attorneys, if an unusual number of discovery problems arise, or if there is a need to resolve procedural or legal issues. Status and/or pretrials conferences can be conducted by telephone with out-of-town counsel and occasionally in other appropriate cases with the prior approval of the Court.

Settlement is discussed at the final pretrials conference. Also, settlement conferences are conducted upon request. Amendments to pleading are permitted rather than dismissal for lack of particularity, and no particularized calculations of damages are required.

The Court's Scheduling Order is issued at the initial pretrials conference with input from the attorneys regarding the cutoff dates.

Criminal Trials

The Court uses 1-2 alternate jurors in criminal cases. The defendant is allowed ten peremptory challenges while the Government is allowed six peremptory challenges. The Court does not require the submission of briefs in criminal trials, but they are helpful and the Court will accept them. The Court generally urges the Government to disclose *Jencks* materials in advance of trial. The Court does not currently have a general procedure for handling multi-defendant criminal "mega trials" or allocating peremptory challenges in multi-defendant criminal trials.

Upon motion and for good cause shown, the Court will permit jury questionnaires to be submitted to the venire in advance of jury selection for counsels' use in exercising preemptions and challenges for cause. A pass of the challenge is considered an exercise, and challenges may not be saved up to be exercised at the end. Typically, disputes between the Government and defense counsel regarding proposed jury instructions are first resolved in a conference and then the Court goes on the record. The Court follows the same procedure relative to jury selection in both criminal and civil trials.

The Court discourages bench conferences during trial. Pretrial conferences and arraignments on information are pretrial matters that are typically referred to a Magistrate Judge. If a defendant under indictment is arrested on the Court's bench warrant for an alleged bond violation, the defendant should be brought up to the Presiding Judge if the Court is unavailable. The Court's clerk should be consulted to determine whether another Judicial Officer should conduct the bond revocation hearing. The Court enforces its Standing Order regarding discovery and motion cutoff dates.

Discovery

Depending on the complexity of the case, the Court will generally allow 3-6 months from the date of the answer for discovery. The Court strictly adheres to the requirements of E.D. Mich. LR7.1 concerning "narrowing areas of disagreement". Discovery motions are generally referred to the Magistrate Judge, and the Court does not use a blanket order regarding all discovery motions. If available, the Court will respond to telephone requests for the resolution of disputes arising during a deposition or will refer the disputes to a Magistrate Judge for immediate resolution. Discovery can be extended both before and after the discovery cutoff date by stipulation only if the extension of time does not affect the motion cutoff, final pretrials conference, or trials dates. The Court has a standard pretrial or scheduling order that is entered in each case. The scheduling order requires that witness lists be exchanged by the parties prior to the close of discovery.

Mediation

The Court does not routinely refer all civil diversity cases to mediation pursuant to E.D. Mich. LR 16.3. Cases are not referred if the parties do not stipulate that mediation sanctions will apply or if the parties agree that they do not want to mediate the case. Cases are referred to mediation after the discovery cutoff. On rare occasion, the Court will appoint a Special Master. Upon request of counsel, the Court allows the use of other methods of ADR to resolve a pending case.

Motion Practice

The Court Clerk will send out a notice of the hearing date. The Court will consider ex parte applications to file a brief longer than 25 pages based upon the complexity and number of the issues. Copies of the proposed brief must be provided to the Court along with the ex parte application. The page limits are rarely extended more than five pages for responses and two pages for replies. Motions currently are heard two months after they are filed. The Court enforces E.D. Mich. LR 7.1(d) with respect to the filing of responses to motions, even when the motion hearing is set far in advance, although the Court routinely grants extension requests if they are timely filed. Attorneys who do not respond to motions in a timely fashion are not permitted to argue before the Court during oral argument. The Court will accept reply briefs if filed pursuant to E.D. Mich. LR 7.1. Sur-replies are not permitted. The Court requires strict compliance with E.D. Mich. LR 7.1(a) regarding concurrence, and the Court may impose costs for failure to comply with the Local Rule. The Court does not generally refer motions other than discovery motions to the Magistrate Judge except as required by Court procedure.

Motions in Limine

The Court does not require a special form for motions *in limine*. Motions *in limine* must be filed at the Final Pretrial Conference or two weeks prior to trial, whichever occurs first, and are generally scheduled for hearing prior to trial, if possible.

Out of State Counsel

Contact the Clerk's Office at (313) 234-5005 to receive information regarding admittance procedures.

Pleas and Sentencing

a. **Pleas**

The Court will rarely accept an *Alford* plea and never over Government objection. The Court will rarely accept a *nolo contendere* plea and never over Government objection.

b. **Sentencing**

The Court requires a presentence investigation and report prior to sentencing. Disputes between the government and defense counsel relating to 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. The Court meets with the Probation Officer prior to sentencing.

c. **Miscellaneous**

The Court will typically permit a convicted individual to self report to the custodial facility unless there are extenuating circumstances. If the Court rejects a Rule 11 plea agreement, it will inform the parties prior to the sentencing date.

Pretrials

In addition to the provisions of E.D. Mich. LR 16.2, the Court sets forth its other requirements for the Joint Pretrial Order in its Scheduling Order. The Pretrial Order is due prior to the Final Pretrial Conference. The Court will allow additions to the witness list contained in the Pretrial Order only in exceptional circumstances. The Final Pretrial Conference is typically held 1-2 weeks in advance of the trial date.

Removal

If the Court has a concern regarding the propriety of removal, an Order to Show Cause will be issued by the Court. Pursuant to E.D. Mich. LR 81.1, the Court does not *sua sponte* remand a case to State court. Oral argument will typically be held on Motions to Remand regarding the propriety of removal.

Settlement

The Court routinely becomes involved in settlement negotiations in jury cases and will refer a non-jury matter to another Judge for a settlement conference. Settlement is routinely discussed at the Final Pretrial Conference. If counsel of record request, the Court is amenable to scheduling (and, in jury cases, participating in) a settlement conference at any stage of the action.

Standing Orders

The Court's Scheduling Order is issued at the initial pretrials conference with input from the attorneys regarding the cutoff dates.

Temporary Restraining Orders and Injunctions

The Court normally sets a time schedule for motion and briefing requirements relating to requests for temporary restraining orders and preliminary injunctions which is less than that prescribed by E.D. Mich. LR 7.1, but the Court consults with counsel to establish this time schedule. The Court will issue a written Order setting forth all dates.

Trials

The Court uses a trailing docket. If an attorney has a conflict with another trial, the attorney should advise the Court as soon as the conflict is discovered. The Court's policy is the court with the earliest date of notice has precedence, and the Court will try to accommodate scheduling conflicts whenever possible.

The Court requires exhibits to be exchanged one week prior to trial, and the plaintiff and defendant exhibits are numbered separately; the preferred method is to use the traditional "Plaintiff's Exhibit __" and "Defendant's Exhibit __" stickers, but any clearly marked method is acceptable. A consecutive numbering system should be used, Plaintiff starting with Exhibit 1, Defendant starting with Exhibit 500. The Court requires the use of a bench book of exhibits. Both during and after trial, pending appeal, the parties retain custody of the exhibits. The Court does not require that trial briefs be exchanged prior to trial. The only limitations on trial briefs are those dictated by prudence and good sense.

a. **Non-Jury Trials**

In non-jury trials, proposed findings of fact and conclusions of law must be filed prior to trial unless the Court sets a later date at the final pretrial conference. In all cases, the proposed findings of fact and conclusions of law must be submitted in writing and in electronic form. In a non-jury trial, the Court attempts to provide the findings of fact orally. The findings of fact are provided in writing for longer, more complex cases.

b. **Jury Trials**

The strike method, as described in the Court's Order Re: Jury Selection, is used to select jurors. Alternate jurors are no longer used in civil trials since all sitting jurors participate in deliberations. The Court conducts the *voir dire* and may, in some circumstances, permit brief follow-up questions by counsel. Counsel may not ask questions related to the amount of damages they are seeking. Requests for specific *voir dire* questions, if desired, must be submitted to the Court at least one week prior to the start of trial. Three peremptory challenges are permitted per party in civil cases. The Court has counsel exercise preemptions in open court.

On the first day of trial, counsel must submit a joint set of jury instructions and a joint verdict form. The instructions and the verdict form must be submitted on paper and in electronic form. At the final pretrial conference, the Court will provide counsel with an electronic version of the Court's standard opening and closing jury instructions. Counsel should return the joint set of instructions and verdict form on paper and in electronic form on the first day of trial. Any disputed instructions must be submitted separately, on paper and in electronic form, also on the first day of trial, including each side's support for or objection to the disputed instructions. Toward the end of trial, the Court will instruct counsel to meet with her law clerk in order to review the instructions, and delineate any remaining disputes. Disagreements regarding the instructions will be resolved by the Court, and preserved for the record.

c. **Miscellaneous**

The hours for trial are set by the Court on a week-by-week basis. A time limitation of 30-60 minutes is imposed on opening statements and closing arguments depending on the complexity of the case. In addition, the Court has occasionally limited counsel who are repetitious or

whose evidence is merely cumulative. The Court prefers that counsel request permission to approach a witness and the bench. The Court typically charges a jury before final arguments.

Jurors are allowed to take the instructions into the jury room during deliberations, and the Court gives jurors copies of the jury instructions to follow along while the Court is reading. In addition, jurors may be allowed to take notes during trial. Evidentiary matters, including foundation for reports, etc., must be resolved prior to trial. The Court does not want record keepers brought in when there is no real dispute as to the authenticity of business records. The Court will not adjourn trial so that counsel can take last minute depositions. Counsel should be prompt for all court appearances.