Motion Practice

Discovery motions may be referred to the magistrate judge. Once a motion has been referred, all communication regarding that motion should be directed to the magistrate judge's chambers.

The Court strictly enforces the requirements of Eastern District of Michigan Local Rule 5.1 and Local Rule 7.1 and the Electronic Filing Policies and Procedures for all motions. Failure to follow these rules likely will result in a denial of the motion and may lead to sanctions.

The Court requires strict compliance with LR 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 voice contact with opposing counsel. 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. Failure to comply with LR 7.1 (a) usually results in dismissal of the motion.

Motions must be clear and succinct without extensive factual development. All briefs must comply with Eastern District of Michigan Local Rule 5.1 and Local Rule 7.1, and must contain citation of appropriate authorities within the text of the brief (not in footnotes), and citations must conform to the latest edition of The Bluebook: A Uniform System of Citation published by the Harvard Law Review. In addition, briefs must contain a concise statement of facts supported by references to the record. References to the record must conform to Rule 6 of the Electronic Filing Policies and Procedures. Footnotes are discouraged, but if they are utilized they must be printed in the same font size as the text, which may be no smaller than 10-1/2 characters per inch (non-proportional) or 14 point (proportional).

Answers to motions and supporting briefs must be filed according to the schedule set forth in Local Rule 7.1(d). Note that Rule R5(e) of the Electronic Filing Policies and Procedures prohibits combining an answer to a motion with a counter-motion in the same filing. The Court normally does not issue a briefing schedule for motions. The Court enforces the response and reply due dates as set forth in LR 7.1(d) and Fed. R. Civ. P.6, even when the motion hearing is set far in advance. Attorneys who do not respond to motions in a timely fashion are not permitted to argue before the Court during oral argument, if oral argument is scheduled.

Counsel are discouraged from employing elaborate boilerplate recitations of the applicable motion standards and lengthy string citations in support of well-established legal principles. Instead, counsel should focus their analysis on a few well-chosen cases, preferably recent, published, and from controlling courts. When citing unpublished sources, Westlaw references are preferred.

Facts stated in the statement of facts must be supported with citations of either the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. Exhibits not previously filed should be included with an appendix. The appendix must contain an index. As to cited deposition testimony, counsel are also encouraged to supply the Court with a transcript of cited page(s) together with sufficient accompanying pages to provide context. All citations must have page references. Other documents referred to in the briefs should be included in the appendix. Counsel may highlight their submissions.

When filing a paper in a criminal case through CM/ECF, select **ONLY** your individual client. Do **NOT** select all defendants.

Courtesy copies of motions and briefs for motions listed in LR 7.1 (e)(2)(A) must be provided to Chambers. Parties may submit courtesy copies of other motions, exhibits, responses and replies to

Chambers. All papers must be firmly bound along the left margin (by binding or in a 3-ring binder) and any exhibits must be properly tabbed.

If a hearing is scheduled, the Court's Case Manager will docket a notice of the hearing date.

The Court endeavors to decide pending motions promptly, ordinarily within six weeks after a hearing, or within three 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 by telephone or in writing (jointly if possible) as to the status of the motion. Such notification is a service that is appreciated by the Court and is not viewed by the Court as inappropriate or impertinent.

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

Local Rule 5.3 sets forth in detail the procedure that must be followed before any item may be filed on the docket under seal.

Before docketing any paper under seal, whether it is a motion, an exhibit, or any other item, you must file a motion requesting the Court's permission to file the item under seal. Also, as with any motion, before filing a motion to seal you must seek concurrence from counsel for all other parties, unless the applicable rules of court allow you to seek relief *ex parte*. Local Rules 5.3 and 7.1 apply in the usual manner to all motions seeking leave for filing items under seal.

If you are seeking to file papers such as certain exhibits with medical or other personal information under seal, but the motion for leave to file under seal does not itself disclose any information that needs to be maintained under seal, then you may e-file the motion for leave (NOT under seal), with the items that you want to have sealed as separately docketed exhibits (under seal), according to the procedure outlined in Local Rule 5.3. Again, keep in mind that you also must comply in the usual way with all other applicable rules of court, such as Local Rule 7.1.

If the motion to seal itself contains information that you believe should be sealed, or if you need to file information under seal that by its nature should not be revealed to opposing counsel (e.g., motions to authorize fees or services in a criminal matter), then you should **email** the case manager (*not docket*) the motion or other papers that you want filed under seal, and a motion for leave to file all of the items under seal, each as separate files in Microsoft Word format, using the Utilities function of CM-ECF, which goes directly to the case manager. In this case you SHOULD NOT e-file any of the items in any form, either sealed or unsealed, before sending them via Utilities. The items will be docketed appropriately by the case manager.

In either case, when a motion to seal is docketed or received via Utilities, then the Court will consider whether it should be granted and issue an appropriate order. If you believe that the order granting the motion also should be sealed, then your motion to seal should so state.

Note that in the usual case the Court will not grant requests to seal an entire motion and brief or all associated exhibits where only limited portions of certain exhibits contain sensitive information. The Court also will not grant “sealed motions to seal” where the motion for leave to file under seal does not itself disclose sensitive information or information that should not be divulged to other parties or their counsel. Orders granting motions to seal also typically will not be filed under seal unless docketing the order on the public docket would defeat the purpose of the confidential filing.