General Instructions

Please consult the Electronic Filing Policies and Procedures, the Local Rules, the case docket (if applicable) and the information on this website prior to contacting chambers with a question. The Court requires strict compliance with E.D. Mich. L.R. 5.1(a)(3) which states that "type size of all text and footnotes must be no smaller than 10-1/2 characters per inch (non-proportional) or 14 point (proportional)." Any filings that fail to comply with Local Rule 5.1(a)(3) will be immediately stricken.

The Court encourages the use of modern technology to display exhibits and demonstrative aids during trial. However, prior arrangements must be made with chambers staff. Requests for interpreters and accommodation for witnesses with disabilities should be made with chambers at least one week prior to the scheduled event.

Counsel shall deliver a copy of the Complaint, Answer, any motions, briefs, and responses directly to Chambers.

If a case has settled, the parties must notify chambers in writing by the next business day. The parties may either email Judge Drain's case manager or send a fax to chambers indicating that the matter has been resolved. Similarly, if the parties resolve a pending motion prior to the hearing date, they must notify chambers. The movant should thereafter file a notice of withdrawal as to the pending motion.

Conferences

Civil Cases

The Court routinely issues its Notice of Scheduling Conference after the Answer is filed. If there is more than one named Defendant, the court typically schedules the conference after all of the Defendants have filed Answers, unless to do so will cause significant delay. The parties are required to submit a Rule 26(f) plan no later than one week prior to the initial scheduling conference. If a dispositive motion is filed in lieu of an Answer, the Court generally will hold the initial scheduling conference after the Judge issues his ruling on the motion, this may occur the same day as the motion hearing if the Judge rules from the bench.

At the initial scheduling conference, the Court expects the parties to 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 and to agree to some form of ADR. The Court's standing scheduling order is completed at the initial scheduling conference based on counsels' input. Typically, the parties are expected to exchange witness lists six (6) weeks prior to the close of discovery, which is usually set at four (4), six (6) or nine (9) months after the initial scheduling conference. The deadline for filing dispositive motions is generally set at three (3) weeks after the close of discovery. The Final Pretrial Order is usually due twelve (12) weeks after the dispositive motion cutoff date. The Final Pretrial Order must be submitted through the document utilities function of the CM/ECF (Case Management/Electronic Case Filing) system. The final pretrial conference is generally scheduled one (1) week after the Final Pretrial Order is due, and trial is scheduled two (2) weeks from the final pretrial conference.

Subsequent status conferences are held as needed or at the request of the parties. In jury cases, settlement conferences are held upon the parties' request and at the final pretrial conference. The Court requires the parties to attend settlement and pretrial conferences. Settlement conferences requested in non-jury cases are referred to a different district judge or to the magistrate judge assigned to the case.

Scheduling and status conferences are generally held on Wednesdays. Scheduling and status conferences may be conducted by telephone for out of state counsel only, if arranged in advance. All final pretrial conferences are typically held on Mondays.

Criminal Cases

The Court will issue a scheduling order. Requests to modify or enlarge the calendar dates shall be made by motion. A final pretrial conference is conducted by the Court. The final pretrial conference is generally held one (1) week prior to the start of trial.

Removal

All cases removed from state court are reviewed. The Court will issue an Order to Show Cause if jurisdiction is questionable. The Court will not remand sua sponte for procedural defects in the removal procedure. Motions to remand for procedural defects must be filed within thirty (30) days from the notice of removal.

Temporary Restraining Orders

The Court adheres to Fed. R. Civ. P. 65. The Court will grant ex parte relief in extraordinary circumstances. The normal briefing schedule is typically accelerated. Hearings are scheduled as required by urgency of the matter.

Discovery

The Court has a standing Scheduling Order that is entered in each case following the initial scheduling conference, which sets the discovery cutoff date. The Court will not order discovery to take place after the cutoff date. The discovery deadline may be extended by filing a stipulation with the court only if the extension of time does not change the motion cutoff, final pretrial conference, or trial dates. Extensions or adjournments of all other dates will only be considered upon the timely filing of a written motion for good cause shown. Discovery motions are generally referred to a Magistrate Judge. Local Rule 26.2 generally prohibits filing discovery materials with the Clerk. Violation of this rule may result in sanctions.

The Court requires the initial disclosures described in Fed. R. Civ. P. 26(a)(1). The Court's standing Scheduling Order includes the Court's requirements concerning the final pretrial order and provides that a party's failure to comply with the disclosure requirements of Fed. R. Civ. P. 26(a)(2) and (3) may result in the exclusion of testimony and/or exhibits at trial. The Court does not enforce the stay of discovery contemplated by Fed. R. Civ. P. 26(d) pending the conference contemplated by Fed. R. Civ. P. 26(f).

Motion Practice

The Court will issue the Notice of Hearing and briefing schedule upon receipt of the motion and supporting brief; the movant need not submit a Notice of Hearing. Courtesy copies are required for all motions, briefs, responses and replies. If the filing contains more than ten exhibits, counsel must provide two courtesy copies. Courtesy copies must be properly bound. The Court will not accept documents loosely secured with a rubber band or binder clip. Hearings are held on most motions. Discovery related motions are generally referred to the magistrate judge assigned to the case.

The court requires strict compliance with Local Rules 5.1 and 7.1, as well as the Electronic Filing Policies and Procedures for all motions. Failure to comply with these rules may result in the denial of the motion. Extensions of the page limit set forth in Local Rule 7.1 are not allowed and may only be permitted upon the filing of a timely motion to extend the page limit. The Court may grant the motion if the request for additional pages is warranted and reasonable. The Court will STRIKE any filing that is not in compliance with the page limit. The Court will likewise STRIKE any filing that does not comply with the font requirements set forth in Local Rule 5.1(a)(3).

Counsel are discouraged from employing elaborate boilerplate recitations of the applicable standard of review 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 and from controlling courts. Facts must be supported with citations to either the pleadings, interrogatories, admissions, depositions, affidavits or documentary exhibits. Where unpublished opinions or opinions published only in specialty reporters are cited, copies of the cases must be submitted as an exhibit. As to citation of deposition testimony, counsel should supply the Court with a transcript of the cited page(s) together with sufficient accompanying pages to provide context. Other documents referred to in the brief should be included as an exhibit.

Case Management Orders

- Bankruptcy Appeal Scheduling Order
- Civil Scheduling Order
- Criminal Scheduling Order
- Wilkins Scheduling Order

Pretrial

The final pretrial conference is typically held two (2) weeks prior to the start of trial. Counsel must submit the final pretrial order using the utilities function of the CM/ECF no later than one week prior to the final pretrial conference. The Court's requirements for the final pretrial order, including compliance with Local Rule 16.2(b), and the final pretrial conference are set forth in the Court's standing scheduling order which is provided to counsel at the initial scheduling conference. The disclosure requirements set forth in Federal Rule of Civil Procedure 26(a)(3) are to be made in the final pretrial order. Parties or persons with full settlement authority must be present at the final pretrial conference.

Objections to proposed exhibits must be contained in the final pretrial order. All witnesses must be listed on the final pretrial order as well. Witnesses and exhibits not listed on the final pretrial order will not be admitted at trial without a showing of good cause; otherwise they will be admitted by stipulation only.

Parties are required to meet and confer prior to the final pretrial conference to discuss jury instructions and a verdict form. At least one (1) week prior to the commencement of trial, the parties must submit a single set of proposed, stipulated jury instructions and a single, proposed verdict form. Each party shall also submit any additional proposed instructions to which any other party objects.

In civil actions, motions *in limine* must be filed no later than four weeks prior to the final pretrial conference so that responses can be filed in accordance with L.R. 7.1. In criminal cases, motions *in limine* must be filed no later than one week prior to the start of trial. The Court will rule on any pending motions *in limine* either at the time of the final pretrial conference or on the first day of trial.

Trials

All jury cases

Trial hours are generally 9:00 a.m. to 4:00 p.m. All persons must be prompt. Counsel are 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 number and lettering system should be used by each party. Marked exhibits must be exchanged three (3) days prior to trial. Counsel are 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. A benchbook of exhibits is required.

Also within three (3) days prior to the start of trial, counsel for each party must submit a Witness Synopsis List. The Witness Synopsis List shall list all of the witnesses who will be called at trial, a synopsis of their testimony, and the anticipated length of time the direct and cross examination will take. The Witness Synopsis List does not alter the obligation of each party to file witness lists, lay and expert, by the deadline contained in the scheduling order.

If depositions are to be read into evidence, they must be reviewed by all of the attorneys. If the attorneys have not resolved objections, a copy of the deposition transcript must be delivered to the Court. Counsel shall attach a statement indicating the date they met to resolve the objections and the page and line number of the objections on which the Court is to rule. This statement must be filed no later than three (3) days prior to the start of trial.

Voir dire is conducted by the court. Requests for voir dire generally must be submitted at least one (1) week prior to the start of trial. The court may allow the attorneys to present follow up questions at a sidebar conference, and when appropriate, the court will also ask the requested follow up questions.

Jurors are allowed to take notes. The court typically charges the jury after closing arguments. Jurors are permitted to take written instructions into the jury room.

Civil jury cases

The parties are required to submit a statement of claims or defenses, no longer than two (2) pages, suitable to be read to the jury during opening instructions.

If trial briefs are required by the court, they must be filed one (1) week prior to trial.

Because of the substantial costs incurred in convening jurors, juror costs typically will be assessed in civil cases which settle on the day of jury selection/trial.

Criminal jury cases

Trial in criminal cases are scheduled pursuant to the Speedy Trial Act of 1974.

Non-jury trials

Proposed findings of fact and conclusions of law are required to be submitted one (1) week prior to the commencement of trial.

Criminal Matters

Pleas

If the parties intend for the case to be resolved by a plea agreement pursuant to Federal Rule of Criminal Procedure 11, the parties must submit a signed, written plea agreement no later than forty-eight (48) hours prior to the plea hearing date. The Court will consider *Alford* and nolo contendere pleas. In the criminal trial notice and scheduling order, the court will establish a plea cutoff date approximately three weeks prior to the start of trial.

Discovery Procedures

Unless there is a well-founded concern for the safety of the witness, the parties are strongly encouraged to provide *Jencks* and reciprocal *Jencks* material no later than the day before the final pretrial conference, or sooner if the parties agree.

Sentencing

Sentencing recommendations of the probation officer are not divulged. Counsel may raise objections to the presentence report in writing prior to sentencing in accordance with Federal Rule of Criminal Procedure 32(f). The procedure for filing objections and a sentencing memorandum are set forth in the Court's Standing Order Setting Sentencing and Deadline Dates.