General Matters: Judge's Courtesy Copy Policy

Until further notice, courtesy copies shall not be submitted unless specifically requested by the Court. Parties will be contacted directly by chambers if a courtesy copy is required. In general, parties representing themselves are never required to file extra copies of their materials.

General Matters: Admission of Out of State Counsel

The court generally follows the requirements set forth in E.D. Mich. LR 83.20.

Once counsel is eligible to take the oath of office, counsel need not personally appear before the Court to take the oath; the Court has designated the clerk of the court to administer the oath. Counsel may contact chambers and be administered the oath of office telephonically by the deputy clerk. See Local Rule 83.20(d)(4).

General Matters: Case Management and Scheduling Order – Civil and Criminal

A. CIVIL CASES

1. SCHEDULING AND CASE MANAGEMENT CONFERENCE

Two to four weeks after the Answer is filed, the Court will issue its Notice of Scheduling and Case Management Conference. If there is more than one named Defendant, the court typically schedules the conference after all the Defendants have filed Answers, unless doing 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 **one business day prior** to the initial scheduling conference. Parties should strive to make the plan truly "joint" and make every effort to resolve disputes before the call. If there are points of disagreement remaining in the Rule 26(f) Plan, parties should clearly indicate that in the submission and be prepared to resolve them on the conference.

If a dispositive motion is filed in lieu of an Answer, the Court generally will hold the initial scheduling conference after the motion is ruled upon. This may occur the same day as the motion hearing if the Court 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 such as case management dates. The Court expects counsel to discuss alternative dispute resolution (ADR) options with their clients prior to the initial scheduling conference.

2. SETTLEMENT CONFERENCE

If a settlement conference is scheduled, either with Judge Berg or a magistrate judge, all parties must attend the settlement conference with their TRIAL attorneys. Both counsel and clients should be prepared for serious settlement discussions. Insurance representatives and other persons necessary to the resolution of the case must also attend. In non-jury cases, a settlement conference before a magistrate judge will ordinarily be scheduled before the final pretrial conference. If a case does not settle, the case manager will schedule the final pretrial conference and trial.

3. FINAL PRETRIAL CONFERENCE

At this conference, usually scheduled one week prior to trial, the Court will discuss trial procedures and final pretrial matters including the trial schedule, parties' proposed voir dire questions and jury instructions, as well as any issues related to witnesses and exhibits. Motions in limine will also be heard at the conference in order to avoid delay in the selection of the jury on the first day of trial. Unless the Court instructs otherwise, the parties must submit their witness lists one week prior to the final pretrial conference. In addition, the parties must also **jointly prepare** and submit their proposed voir dire questions, jury instructions, and verdict form. These jointly prepared documents must be submitted directly to chambers using the Proposed Orders function in CM/ECF and should NOT be filed on the docket.

4. **STATUS CONFERENCE**

The Court may schedule a status conference to facilitate the administration of a case when necessary. Counsel may request a status conference at any time during the litigation and **must request a status conference by contacting the case manager if there is a discovery dispute** prior to filing any discovery motion (see Discovery Section E). Any discovery motion filed without leave of court will be stricken. Additional conferences with the Court, including settlement conferences, can also be scheduled upon request.

B. **CRIMINAL CASES**

1. **SCHEDULING**

The Court will issue a scheduling order after the Defendant is arraigned. Requests to modify or enlarge the calendar dates shall be made by motion, or, more commonly via stipulation. Stipulations must be submitted along with a proposed order to extend time, and must a waiver under the Speedy Trial Act if the extension will affect the trial date. Stipulation and proposed orders shall be submitted in Word format via the Proposed Orders function in CM/ECF and should not be filed by parties on the docket.

2. **FINAL PRETRIAL CONFERENCE**

All pretrial materials, such as proposed voir dire questions, witness lists, exhibit lists, motions in limine, proposed jury instructions, and verdict form must be filed on the dates indicated in the Scheduling Order, or in the absence of a current Scheduling Order, must be filed no later than **one week before the Final Pretrial Conference**. The parties should jointly prepare the proposed jury instructions and verdict form. At the final pretrial conference, generally held one to two weeks prior to the start of trial, the Court will discuss trial procedures and other final pretrial matters with the parties including the trial schedule, parties' proposed voir dire questions and jury instructions, as well as any issues related to witnesses and exhibits. Motions in limine will also be heard at the conference in order to avoid delay in the selection of the jury on the first day of trial. These jointly prepared documents must be submitted directly to chambers using the Proposed Orders function in CM/ECF and should NOT be filed on the docket.

3. **RECUSAL**

The government shall immediately determine whether any portion of a criminal case or its previous investigation was opened in the United States Attorney's office for the Eastern District of Michigan between August 18, 2008 and January 4, 2010, and if it was, shall immediately inform the Court and defense counsel of both that fact and the date of the opening.

Upon its own initiative or by motion of any party, the Court shall recuse itself from any matter over which Judge Berg presided as interim United States Attorney for the Eastern District of Michigan, or in which he represented the United States as an Assistant United States Attorney.

General Matters: Internships and Clerkships

A. INTERNSHIP APPLICATIONS

1. GENERAL INFORMATION

Our Chambers welcomes applications from law students for semester or summer internships, and we generally bring on as many interns as we have the capacity to manage and mentor. We view our Chambers as a court family and work closely together as a team, committed to a shared set of values that focuses on administering justice in a fair, impartial, and efficient manner. We view our mission as one of providing service to the public, the attorneys, the parties, the witnesses and the victims. Within Chambers, we work as colleagues toward this common goal in an environment that encourages communication, dialogue, discussion, and mutual assistance, and we try to have fun and make friendships along the way. Interns should be prepared to work extremely hard to meet deadlines with high-quality written work. Students with diverse backgrounds, as well as those from local law schools, are particularly encouraged to apply. All internships are currently remote.

2. TIMELINE

Internship applications will be accepted within the following windows each year. Applicants will be contacted regarding next steps shortly after the application period closes.

- Fall internships: March 15 - April 15
- Spring internships: October 15 - November 15
- Summer internships: January 2 - January 31

3. PROCESS

To apply, email a cover letter, resume, transcript, and writing sample as one PDF file to efile_berg@mied.uscourts.gov. Please indicate the number of hours you expect to be able to work per week based on classes or other commitments. We encourage cover letters that go beyond the generic and explain a bit about who you are, your career aspirations, your goals in seeking a judicial internship, and any reasons you may have for wanting to work in this Court or for Judge Berg in particular.

B. CLERKSHIP APPLICATIONS

Judge Berg follows the Hiring Plan and **only** accepts clerkship applications through the OSCAR platform. Applications submitted by postal mail or another format outside of OSCAR will not be considered, and applicants are discouraged from submitting unsolicited applications. Interested applicants should check Judge Berg's OSCAR profile, which will indicate whether there are current open clerkship postings.

General Matters: Practice Guidelines for Filing Materials Under Seal in Civil and Criminal Cases

When parties in a civil or criminal case seek to file materials under seal, they must file a motion to request an order from the Court permitting sealing—unless sealing is otherwise authorized by statute or rule.

Local Rule 5.3 outlines the applicable procedures for requesting permission to file materials under seal. As noted in the comments to the rule, "[a]ttorneys are cautioned that attempts to circumvent this rule may result in the imposition of sanctions."

A sample motion to seal for civil and criminal cases is available here.

Parties that file a motion to seal must also file redacted and unredacted versions of the materials sought to be filed under seal as set forth in Local Rule 5.3(b)(3)(A)(v)–(vi).

Local Rule 5.3 applies when parties request that the Court seal materials in criminal cases. See E.D. Mich. LCrR 1.1; E.D. Mich. LR 1.1(c).

However, when materials in a criminal case relate to cooperation, a combined motion and proposed order to seal must be submitted in Word format as a proposed order via the link located under the Utilities section of ECF.

Criminal Cases: Criminal Practice and Trial Procedure

A. ATTORNEY CONFERENCE AND DISCLOSURE

Within ten (10) 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.

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 disclosed shall be initialed or otherwise marked.

B. 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 outlined in the Court's Scheduling Order seeking relief from this requirement and setting forth the specific reasons therefore.

C. CONTINUING DUTY

The duty to disclose is continuing, even throughout trial.

D. DISCOVERY BY THE GOVERNMENT

Nothing in these procedures is designed to preclude discovery by the government under the Federal Rules of Criminal Procedure, or to alter the Defendant’s obligation, if any, under Rule 16(b).

E. PRE-TRIAL MOTIONS

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

F. EXHIBITS

1. Agreement as to Admissibility

Counsel for the government is urged to make reasonable efforts to reach agreement with defense counsel concerning the admissibility of each intended physical exhibit prior to trial. When such agreement is reached, a list of the exhibits in question will be prepared by government counsel and entered at the opening of trial. The exhibits will be considered admitted at the outset.

2. Marking of Exhibits

Counsel are required to mark all proposed exhibits in advance of trial. The Government's

exhibits shall use consecutive numbers and Defendant's exhibits shall use consecutive letters.

3. **List of Exhibits**

   A list of proposed exhibits shall be submitted directly to Judge Berg's chambers by each of the parties by the deadline established at the final pretrial conference. No later than one (1) 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.

4. **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 pretrial 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.

5. **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.

6. **Custody and Record of Admitted Exhibits**

   Counsel should refer to and comply with the Standing Order of Discovery for this District.

7. **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, 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 any witness who is to be questioned about an exhibit.

8. **Preparing Exhibits for Jury Deliberation**

   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. Prior to submitting exhibits to the jury for deliberations, counsel must confer and purge from one set of binders or files all exhibits not admitted during trial.

9. **Filing Exhibits**

   It is the responsibility of the parties to ensure that the record is complete. All proposed exhibits are to be filed in the record within five business days of the verdict.

10. **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.

11. **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.

G. **WITNESS LIST**

By the deadline established in the Scheduling Order, or in the absence of a current Scheduling order, no later than **one week before the Final Pretrial Conference**, and to enable the Court to better estimate the length of trial, each party shall submit directly to Judge Berg's chambers a list of witnesses by name and agency (if appropriate) whom it reasonably anticipates it will call to testify at trial, noting the approximate amount of time the party anticipates will be needed for 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. Parties should submit their lists to chambers via the Proposed Orders function in CM/ECF.

H. **EARLY DISCLOSURE OF JENCKS MATERIAL**

The Court urges the government to disclose *Jencks* materials well in advance of the trial, and in the event that some of the information is not disclosed pursuant to the Act until the witness testifies, the Court will allow a reasonable amount of additional time during trial for the defense to prepare before proceeding.

I. **JURY INSTRUCTIONS**

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in the Scheduling Order, or in the absence of a current Scheduling order, no later than **one week before the Final Pretrial Conference**, the parties must submit to chambers a single set of proposed, stipulated jury instructions via the Proposed Orders function. Counsels are responsible for submitting all instructions related to their specific claims or defenses, and special instructions related to evidence.

All such instructions are to be submitted in Word format via the Proposed Order function. Each instruction shall be presented on a separate page and contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"). In addition, each party must submit separately to chambers all additional proposed instruction (in the same form) to which any other party objects. 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 an agreement as to an acceptable form. Disputes between the government and defense counsel regarding proposed jury instructions will be settled at a hearing on the record.

The Court has its own standard introductory and concluding instructions, and therefore counsel are 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 before final argument.

J. **JURY SELECTION**

The Court uses a "struck jury" system for jury selection. In most cases, the government is allowed six peremptory challenges and the defendant is allowed ten 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.

Voir dire will be conducted by the Court using its standard questions. Counsel should submit proposed additional voir dire questions in writing at least three days in advance of the final

pretrial conference via the Proposed Order function, and the Court will add those questions it deems appropriate. The Court will provide parties with the final list of questions before jury selection begins. During jury selection, parties will be permitted to submit additional questions to be asked by the court, or may be permitted to ask questions directly, as provided by Fed. R. Crim. P. 24(a).

K. NOTE TAKING & 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. Jurors will also be permitted to question witnesses by submitting questions to be asked by the Court. Before a witness is excused, the Court will ask whether any jurors have any questions. If so, the questions will be submitted to the Court on paper and the Court, after conferring with counsel at sidebar, will ask those questions it deems appropriate.

L. MULTI-DEFENDANT OR MEGA TRIALS

The Court does not have a general procedure for handling multi-defendant criminal "mega trials." Instead, 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.

M. CONTINUANCES

Continuances of trial dates or continuances during trial will not be granted because of unavailability of witnesses. Please notify the Court if its intervention is necessary to secure witness attendance. Otherwise, witnesses will be expected to be available when called.

N. 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.

O. TIMING FOR FILING OF SENTENCING MEMORANDA

The Court requires counsel for the government and defendant to file Sentencing Memoranda in all criminal cases prior to sentencing. Such Sentencing Memoranda should be filed with the Court no later than seven days before the sentencing hearing.

Criminal Cases: Letters of Support/Character Letters

Letters submitted by counsel in support of clients in criminal cases (often referred to as "letters of support" or "character letters") should be personally written by the individual who signs the letter. If AI is used to write such a letter, it is possible that the letter will not appear to be as sincere and will not convey the heart-felt statements and experiences of family members and friends that are most helpful to the Court in learning about the defendant at sentencing. Letters fully generated by AI may not be given the same weight as letters authored by an individual. Handwritten and typed letters are both equally acceptable.

Criminal Cases: Motions or Requests for Early Termination of Supervised Release

Any motion or request for early termination of a term of supervised release pursuant to 18 U.S.C. § 3583(e) must contain (1) a statement that the defendant's supervising probation officer has been contacted regarding the defendant’s request, and (2) a summary of the probation officer’s recommendation regarding the request for early termination of supervised release.

Any request or motion that does not comply with this requirement will be stricken by the Court, but may be refiled with the required information.

Criminal Cases: Requirement to Notify Court of Any Request for Evidentiary Hearings

In any criminal motion in which a party believes an evidentiary hearing is necessary, the party shall include within the motion and/or response a written request for an evidentiary hearing stating the reasons therefor and, no later than one week before the hearing, shall submit to the Court a witness list identifying each witness that party intends to call at the evidentiary hearing, along with each witness's anticipated length of testimony. And, to the extent any proposed exhibit has not been attached to the pleadings, the party shall also submit a list of any proposed exhibits. These documents should be emailed to: efile_berg@mied.uscourts.gov.

Criminal Cases: Supervised Release Violation Hearings

If the parties anticipate that a hearing on a supervised release violation will be contested, with the presentation of evidence to the Court, the parties must notify the Court at least one business day prior to the hearing and submit a proposed witness list that includes an estimation of each witness's anticipated length of testimony.

Civil Cases: Civil Practice and Trial Procedure

A. **TRIAL DATE**

The Court will set a date certain for the trial after ruling on dispositive motion, or at the conclusion of any settlement conference in which the parties participate.

B. **ADJOURNMENTS**

Because the court consults with the attorneys before setting a trial date, adjournments are rarely granted. **Counsel should not wait until an issue becomes an emergency before seeking the Court's assistance.** Judge Berg is available for status conferences, either telephonically or in person, by arrangement with the case manager.

C. **JOINT FINAL PRETRIAL ORDER**

The proposed Final Pretrial Order **shall strictly comply with the requirements of Local Rule 16.2.**

The 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.

Pursuant to Local Rule 16.2(b)(9), any objection based on foundation or authenticity will be deemed waived if not raised before trial.

D. **FINAL PRETRIAL CONFERENCE ATTENDANCE**

Unless otherwise instructed by the Court, the following individuals shall personally attend the final pretrial conference:

i. Trial counsel for each party;
ii. All parties who are natural persons;
iii. A representative on behalf of any other party who has full settlement authority for the party;
iv. 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.

E. **EXHIBITS**

1. **Marking of Exhibits**

   Counsel are required to mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use consecutive numbers and Defendant's exhibits shall use consecutive letters.

2. **List of Exhibits**

Each party shall submit a list of proposed exhibits directly to chambers via the Proposed Orders function by the deadline established at the final pretrial conference. However, no later than one (1) 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.

3. **Foundation for Exhibits**

   When a party has inspected an exhibit that the opposing party intends to introduce in evidence, the authentication of that exhibit will be deemed established unless the objecting party files a notice with the Court at or before the final pretrial conference that the foundation for admission into evidence of the exhibit will be contested. See Local Rule 16.2(b)(9).

4. **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.

5. **Custody and Record of Admitted Exhibits**

   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.

   Exhibit Form

6. **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 the exhibit simultaneously. Parties are responsible for providing, setting up, and testing their own 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 any witness who is to be questioned about an exhibit.

7. **Preparing Exhibits for Jury Deliberation**

   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. Prior to submitting trial exhibits to the jury for deliberations, counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial.

8. **Filing Exhibits**

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

9. **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.

10. **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.

F. JURY INSTRUCTIONS

By the deadline established in the Scheduling Order, the parties must submit to chambers a single set of proposed, stipulated jury instructions via the Proposed Orders function. Counsel are 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 Word format via the Proposed Order function. Each instruction shall be presented on a separate page and contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"). In addition, each party must submit separately to chambers all additional proposed instruction (in the same form) to which any other party objects. 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 an agreement as to an acceptable form. Any disputes regarding proposed jury instructions will be settled at a hearing on the record.

The Court has its own standard introductory and concluding jury instructions, and therefore counsel are directed to concentrate on the elements of the claims, the defense(s), etc. The jury will be charged before final argument.

G. JURY SELECTION

Voir dire will be conducted by the Court using its standard questions. Counsel should submit proposed additional voir dire questions in writing at least three days in advance of the final pretrial conference via the Proposed Orders function, and the Court will add those questions it deems appropriate. The Court will provide parties with the final list of questions before jury selection begins. During jury selection, parties will be permitted to submit additional questions to be asked by the court, as provided by Fed. R. Civ. P. 47(a). Jurors will be excused without disclosing which side excused them.

H. NOTE TAKING & 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 evidence, but are merely aids to the jurors' memory of the evidence presented at trial. Jurors will also be allowed to pose questions to witnesses, after attorney examination is completed, by submitting written questions to the Court. The Court will then review the proposed questions at side bar with counsel and, if permissible, will ask the questions of the witness. Attorneys will be allowed the opportunity to ask follow up questions if they desire.

I. 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 resolved.

J. 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.

Magistrate Judges do not conduct trials in felony cases. Accordingly, if the parties consent to

the exercise of jurisdiction by the Magistrate Judge, major criminal cases will not interfere with the scheduling of a civil action. Therefore, consenting to have a Magistrate Judge handle a case may mean that the case will be resolved sooner, or that the Magistrate Judge will be able to give the parties a date certain for trial. Furthermore, depending on which Magistrate Judge is assigned to the case, proceedings could be held in the Detroit, Ann Arbor, or Flint courthouses.

Civil Cases: ADR - 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 refer a case for evaluation, to either a private mediator, or to a Magistrate Judge for a settlement conference, after the completion of discovery. Early referral to mediation or settlement conference is available upon the joint request of parties. The court will also facilitate pretrial resolution in appropriate cases.

Civil Cases: Motion Practice

A. CONCURRENCE

The Court requires strict compliance with Local Rule 7.1(a) regarding concurrence, and the Court will impose costs for failure to comply with the Local Rule. If a party fails to properly seek concurrence before filing a motion as required by Local Rule 7.1(a), and the opposing party wishes to bring it to the Court's attention, that party may email the Court, including opposing counsel or party, to notify the Court of opposing counsel's failure and need not wait until the filing of a responsive pleading. The email should be sent to the Case Manager and include efile_berg@mied.uscourts.gov.

B. FORMAT AND PAGE LIMITATIONS

All briefs must comply with Local Rules 5.1 and 7.1, and must contain citation to appropriate authorities within the text of the brief. Citations must conform to the latest edition of The Bluebook: A Uniform System of Citation published by the Harvard Law Review.

The Court enforces the page limit set forth by E.D. Mich. LR 7.1(d)(3) and the formatting/type size requirements set forth by E.D. Mich. LR 5.1(a) (14 point font, double spaced). The Court does not routinely grant requests to file longer briefs. Requests to file an oversized brief must be made by motion, at least two days in advance of the motion due date, in which the moving party sets forth specific reasons justifying the need for additional pages and states the number of additional pages requested.

If a brief and its accompanying exhibits exceed twelve pages in total length, the filing must contain a table of contents, a table of authorities, and an index of exhibits. Briefs and accompanying exhibits that exceed twelve pages must comply with the requirements of length set forth in Local Rule 7.1(d)(3). References in briefs to an argument or statement made by an opposing party must include a specific citation to the docket and page numbers of the matter referenced.

Captions of motions, briefs, and proposed orders may never contain extraneous matters such as a listing of counsel or other language commonly found in state court filings.

C. BRIEFING SCHEDULE AND ORAL ARGUMENT - DISPOSITIVE MOTIONS

The Court does not issue a briefing schedule; rather, it follows the time limits set forth in E.D. Mich. LR 7.1(e) and Fed. R. Civ. P. 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. 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 schedule hearings on most dispositive motions made before or during trial. The Court will occasionally cancel oral argument when, after a review of the briefs, the Court finds that argument would be neither necessary nor helpful. See E.D. Mich. LR 7.1(e)(2).

The parties are encouraged to prepare a proposed order. The proposed order may be submitted prior to the hearing via the Proposed Order function or at the hearing.

D. BRIEFING SCHEDULE AND ORAL ARGUMENT - NON-DISPOSITIVE MOTIONS

As stated previously, Counsel must comply with the time limits set forth in E.D. Mich. LR 7.1(e) and Fed. R. Civ. P. 6.

The Court will at its discretion schedule a hearing on post-trial and non-dispositive motions (including motions for temporary restraining orders), except motions for reconsideration and prisoner *pro se* motions. When permission is granted to file a discovery motion, however, it is generally referred to a Magistrate Judge (see Discovery Section E).

The parties are encouraged to prepare a proposed order. The proposed order may be submitted prior to the hearing via the Proposed Order function or at the hearing.

E. SEPARATE MOTION AND BRIEF

E.D. Mich. LR 7.1(c) requires that motions and responses are 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.

F. SUMMARY JUDGMENT

No party may file more than one motion for summary judgment without obtaining leave of court.

1. SUMMARY JUDGMENT STANDARD

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).

2. FORMAT FOR MOTIONS

In lieu of a narrative facts section, a Rule 56 motion **must begin in its first section with a "Statement of Material Facts"**. The Statement must consist of separately-numbered paragraphs that each briefly describe a material fact underlying the motion. Proffered facts must be supported by citations to the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. Citations should contain page and line references, as appropriate. **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 "Counter-Statement of Material Facts"** stating (1) which facts from the motion are admitted and which are contested, and (2) any additional facts, disputed or undisputed, that require a denial of the motion. The Counter-Statement must be similarly numbered, with each paragraph number corresponding to the 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.

For example, if the moving party's Statement of Material Facts includes the following paragraphs:

1. Plaintiff Jones worked for ABC Corp. in an at-will position from 1999 until his termination in 2005. Jones dep., Ex. 4, p. 10.

25. ABC Corp. Human Resources Director Smith testified that the only reason Jones was terminated was repeated tardiness. Smith dep., Ex. 15, p. 5.

The non-moving party's corresponding Counter-statement factual statements should include the following paragraphs in response:

1. Plaintiff admits that he worked for ABC Corp. in an at-will position, but states that the commencement of employment was in 1997. Jones dep., Ex. 4, p. 22.

25. Plaintiff admits that Human Resources Director Smith testified at page 5 that Jones was terminated for tardiness, however Smith also agreed that he said in an email to ABC Corp. Vice President Brown that Jones should "move out" since he was "getting along in years." Smith dep., Ex. 15, p. 39.

Motions and response briefs that do not conform to this format may be stricken from the record without notice.

3. **FACT APPENDIX**

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. All pages from the same deposition or document should be submitted as one document.

It is not necessary to include a copy of any supporting unpublished case unless the case is unavailable in a widely-used electronic database such as Westlaw or Lexis.

4. **CASE CITATIONS**

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

G. TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

In addition to the requirements of Fed. R. Civ. P. 65 and E.D. Mich. LR 65.1, all temporary restraining order requests, including those considered ex parte, must involve 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 with both parties before hearing any request for a TRO or preliminary injunction. Parties are encouraged to notify the case manager by telephone upon filing a motion for an injunction so that appropriate scheduling issues can be discussed.

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 less than prescribed by E.D. Mich. LR 7.1. The court strongly encourages parties to confer ahead of any preliminary injunction hearing in an attempt to reach an agreement with respect to the

injunction.

H. **PRIVACY**

Counsel should be vigilant regarding the use of private information in any filings and should redact such information where required or prudent. For further information, counsel should refer to the appropriate Federal Rules regarding privacy protection.

Civil Cases: Discovery

A. **EXCLUSIONS**

These discovery rules do not apply to the following types of actions: ERISA or other action for review on an administrative record; petition for habeas corpus; prisoner civil case where the prisoner is self-represented; an action to enforce or quash an administrative summons or subpoena; an action by the United States to recover benefit payments or student loans; and an action 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/or case summary no later than one business day prior to the initial scheduling conference. **It is expected that all parties and all counsel will conduct discovery in a cooperative way, consistent with Fed. R. Civ. P. 1: "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 disclosure requirements of Rule 26(a)(1) generally will be required by the Court fourteen 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.

C. **EXTENSIONS OF TIME**

The court will not approve stipulated extended discovery periods or extensions of cut-off dates which (1) are longer than necessary or (2) are filed without good cause being shown. Filing a motion for an extension does not change discovery deadlines until the motion is approved. Parties are encouraged to contact the Court as soon as they anticipate difficulties with meeting their discovery deadlines.

D. **FIRM DISCOVERY CUTOFF**

The Court will set the discovery period cutoff date in its Scheduling Order that is entered in each case following the initial scheduling conference. Discovery must be served sufficiently in advance of the discovery cutoff so as to allow the opposing party sufficient time to respond before discovery closes. Unless it has approved an extension for good cause, the Court will not order discovery to take place after the cutoff date. Extensions or adjournments of will only be considered upon the timely filing of a written motion for good cause shown.

E. **DISCOVERY DISPUTES**

DO NOT FILE ANY DISCOVERY MOTIONS WITHOUT LEAVE OF THE COURT. SUCH MOTIONS WILL BE STRICKEN WITHOUT NOTICE. CALL THE COURT TO SCHEDULE A STATUS CONFERENCE TO DISCUSS ANY DISCOVERY DISPUTE THAT COUNSEL BELIEVES MUST BE RESOLVED BY THE COURT.

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 to resolve discovery matters themselves. Email correspondence alone is insufficient--counsel must speak to one another, either in person or via telephone.

If counsel have conferred and made every effort to reach an agreement but without success, the Court will make itself available by telephone, on relatively short notice, in order to resolve any discovery disputes expeditiously and without the need for motion practice. In order to facilitate this process, parties are **REQUIRED** to contact the Court prior to filing any discovery motions. Again, discovery motions filed without leave of Court will be stricken.

Discovery disputes unable to be resolved in the manner described above will either be resolved by the Court or will be referred to a Magistrate Judge, possibly with instructions to brief the dispute. Once a motion has been referred, all communication regarding that motion should be directed to the Magistrate Judge's chambers. Improper delays or uncooperativeness in discovery will result in assessments of costs. The inability of a Magistrate Judge to resolve a discovery dispute, and the need for the court to involve itself in such, will be regarded as an indication of impropriety or uncooperativeness on the part of counsel. Note that represented parties will rarely be granted permission to file discovery motions, including motions to compel, against a self-represented party.

F. DEPOSITIONS

Parties are bound by Fed. R. Civ. P. 30(d)(2) concerning depositions. Objections to deposition questions, other than those that are not preserved for trial if not made at the deposition, should be made very concisely, or omitted entirely, until trial. The questioning attorney should be respectful of the witness, confine questions to subjects that are discoverable under FRCP 26(b), and spend no more time than is reasonable in questioning the witness. All attorneys are expected to conduct themselves in a polite and professional manner. The lawyer defending a witness at a deposition should not impede legitimate questioning of that witness. Since all objections, other than as to form or dealing with privilege, are preserved for trial, objections should be few in number and not be argumentative, suggestive of an answer, or intended to frustrate the fair examination of the deponent. See Fed. R. Civ. P. 30(d)(i) and 32(d)(3). Sufficient time must be given to complete depositions prior to the discovery cutoff date.

G. PROTECTIVE ORDERS

Protective orders will not be entered routinely unless parties stipulate to their entry. In addition to the requirements under E.D. Mich. LR 5.3, which are to be strictly followed, a protective order including a provision for filing a pleading, paper or exhibit, etc. under seal shall be subject to the following limitations: The entire pleading, paper, exhibit, etc. may not be filed under seal. Only the portion of the document(s) which are not to be publicly disclosed may be filed under seal. In such instances, the portion to be filed under seal requires an endorsement by the Court on a cover page. A party's presentment to the Court for the endorsement shall be accompanied by an explanation why the portion of the document(s) is confidential

H. DOCUMENT REQUESTS AND INTERROGATORIES

Parties are bound by Fed. R. Civ. P. 33(a) limiting the number of interrogatories. Document requests and interrogatories should be reasonable in scope. Responses should be complete and responsive. If there are doubts as to definitions or scope, they should be raised promptly with the requesting party. Sufficient time must be given to answer interrogatories and document requests prior to the discovery cutoff date.

I. CLAIMS OF PRIVILEGE

Documents withheld on the basis of privilege should be listed on a privilege log with sufficient information to enable the requesting party to understand the nature of the documents and the basis of the privilege claim; for claims of privilege over Electronically Stored Information

(ESI), such information should include standard metadata fields.

Civil Cases: Diversity Jurisdiction

If the Court has a concern regarding the propriety of removal, venue, or subject matter jurisdiction, an Order to Show Cause will be issued. 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. Motions to remand for procedural defects must be filed within thirty (30) days from the notice of removal.

Civil Cases: Patent Cases

In order to efficiently manage patent infringement actions, this Court has adopted a Model Rule 26(f) Report and Proposed Scheduling Order.

- Notice and Order Setting Scheduling Conference in a Patent Infringement Case
- Model Rule 26(f) Report and Proposed Scheduling Order for Patent Infringement Cases
- Timeline of Model Scheduling Order
- Default Protective Order