Character/Support Letters in Criminal Cases

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.

The letters should not be entirely written by AI. 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.

Civil Trial Practice

A. TRIAL DATE

The Court sets a date certain for the trial at the initial Scheduling Conference after consultation with counsel. Attorneys must bring their schedules to the conference to avoid conflicts. Because the Court consults with the attorneys before setting a trial date, adjournments are rarely granted.

If issues arise regarding the date set for trial, the Court is available to conduct a status conference, either by telephone or in person, by contacting the case manager.

B. BENCH TRIALS

The Court may conduct a status conference with the parties to discuss the structure and expectations in advance of the bench trial.

For bench trials, each party should submit, through the Utilities function in CM/ECF, proposed Findings of Fact and Conclusions of Law at least one week before the first day of trial. The proposed findings of fact and conclusions of law should be clearly numbered and contain only one fact or legal element per number. Findings of fact and conclusions of law should be clear and concise.

The Court may make findings of fact and law orally from the bench, or may take the matter under advisement and issue a written opinion and order at a later date.

C. JURY TRIALS

1. JOINT FINAL PRETRIAL ORDER

Proposed Joint Final Pretrial Orders should not be filed on the docket. Rather, the proposed Joint Final Pretrial Order must be submitted through the Utilities function in CM/ECF on or before the date set forth in the scheduling order.

Counsel is directed to consult and strictly comply with Local Rule 16.2 governing the proposed Joint Final Pretrial Order.

If plaintiffs do not convene a conference or initiate the process of completing the Joint Final Pretrial Order, or if defendants fail to respond, either party may file a Notice of Failure to Complete the Joint Final Pretrial Order on or after the date the Order is due to be filed on the docket. The Notice must indicate that the party filing the Notice attempted to communicate with the other parties prior to filing the Notice. Counsel must separately submit, through the Utilities function in CM/ECF, its own proposed Final Pretrial Order.

2. FINAL PRETRIAL CONFERENCE ATTENDANCE

The following persons 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.

If a governmental entity is a party, then agency counsel or another person with settlement authority must attend along with counsel for the government, unless counsel for the government has settlement authority and has requested leave of the Court to attend without a client representative.

3. **JURY INSTRUCTIONS**

The parties must meet and confer before trial to discuss jury instructions. The parties must submit, through the Utilities function in CM/ECF, a single set of all stipulated proposed jury instructions and a verdict form no later than the date set forth in the Scheduling Order.

The parties must also submit any instructions they cannot agree on by the same date. All such instructions are to be submitted in Microsoft Word and each instruction shall contain references to authority.

The Court has its own standard introductory and concluding instructions.

4. **JURY SELECTION**

Voir dire will be conducted by the Court with follow-up questions permitted by counsel. Counsel should submit proposed voir dire questions, through the Utilities function in CM/ECF or in person, at least five days in advance of the trial. Jurors will be excused without disclosing which side excused them.

5. **NOTE TAKING & JUROR QUESTIONS**

Jurors will be permitted to take notes during trial. The Court will discuss this at the Final Pretrial Conference and any objections will be addressed at that time.

The Court specifically instructs the jury in advance on this issue. The Court will consider, on a case by case basis, whether or not jurors will be permitted to submit questions to be asked by the Court.

6. **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 a break, to avoid jury down time while such problems are solved.

D. **EXHIBITS**

1. **Marking and List of Exhibits**

A list of proposed and marked exhibits shall be submitted directly to the Court by each party by the deadline established at the Final Pretrial Conference or, for bench trials, per

the Court's order. Generally exhibits are to be submitted in a three-ring binder one week in advance of trial. The Court may order that exhibits be submitted electronically.

No later than one week before the Final Pretrial Conference, each party shall make available for inspection all exhibits the party anticipates introducing at trial. This provision shall not extend the time for disclosure and inspection of material previously ordered.

2. **Foundation for Exhibits**

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

3. **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.

4. **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. Exceptions will be made for exhibits that may pose a threat or danger if transported to and from the Court, or exhibits that are delicate and otherwise unable to be moved without risk. In those instances, with advance warning, the Court will make arrangements to ensure the integrity of the evidence.

5. **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.

6. **Filing Exhibits**

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

E. **TRIAL START TIME**

The time for trial each day will be set by the Court on a case-by-case basis. In general, however, jury trials begin at 9:00 and bench trials begin at 10:00 each day.

Courtesy Copy Policy

Courtesy copies should not automatically be mailed or otherwise provided to chambers. Judge Levy will request courtesy copies as needed.

Discovery in Civil Cases

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 prisoner is unrepresented; 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**

Parties are required to conduct a Rule 26(f) discovery conference and file their joint Rule 26 discovery plan on the docket via the CM/ECF system no later than three business days 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."

The disclosure requirements of Rule 26(a)(1) generally will be required by the Court 14 days after the case management and scheduling conference. Dates for disclosure of expert information contemplated by Rule 26(a)(2) will be established at the case management and scheduling conference.

C. **FIRM DISCOVERY CUTOFF**

The Court has a standing Scheduling Order that is entered in each case following the initial scheduling conference, which sets the discovery cutoff date. Sufficient time must be given to answer interrogatories and complete depositions and all other discovery by the discovery cutoff. Counsel may agree, in writing, to hold depositions or accept responses to written discovery after the discovery cutoff without involvement of the Court.

The discovery deadline may be extended only by filing a motion or by submitting a stipulation through the Utilities function in CM/ECF, and then 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. Filing a motion does not change discovery deadlines.

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 to resolve discovery matters themselves.

Discovery motions filed without leave of Court will be stricken.

For discovery disputes to be addressed by Judge Levy, counsel must follow the protocol set forth below.

First, counsel must confer and make every effort to reach an agreement. If the discovery dispute cannot be resolved, the parties shall e-mail Judge Levy's case manager William Barkholz at william_barkholz@mied.uscourts.gov. The email must provide a short five-sentence maximum description of the nature of the parties' dispute. The Court will then

schedule a conference with the parties.

If the dispute is unable to be resolved via conference with Judge Levy, a briefing schedule may be ordered and the motion may be referred to a Magistrate Judge. Once a motion has been referred, all communication regarding that motion should be directed to the Magistrate Judge.

Improper delays or uncooperativeness in discovery may result in assessments of costs.

Electronic Service and Virtual Testimony During the COVID-19 Pandemic

In an effort to reduce expenses and the potential spread of the COVID-19 virus through in-person contact, Judge Levy encourages parties to stipulate to the use of electronic service of a summons and complaint under Federal Rule of Civil Procedure 4(d).

Additionally, the parties are encouraged to stipulate to the taking of depositions and testimony virtually, whenever possible, under Federal Rule of Civil Procedure 29.

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.

Guideline Regarding Court Appearances

Today there are fewer opportunities for lawyers to speak in court. This is particularly true for lawyers with less than five to seven years of experience. The Court strongly encourages more experienced senior lawyers and their clients to allow less experienced lawyers to have the primary speaking roles in pretrial conferences, oral arguments, and during trials. This opportunity is particularly important and appropriate when the less experienced lawyer has drafted or contributed significantly to the underlying motion or response or to the trial or hearing preparation.

The Court understands that in some circumstances, clients may not wish to have a less experienced lawyer argue the issue or lead the trial. If the only lawyer who drafted or substantially prepared the motion, brief, or evidentiary presentation is the senior lawyer, or if the motion is dispositive in a "bet-the-company" case, litigants may justifiably want the senior lawyer to do all or most of the in-court talking. But in all but these cases, it is crucial to provide substantive speaking opportunities to less experienced lawyers. The Court encourages all lawyers and their clients to do so.

Motion Practice

The Court requires compliance with Local Rule 7.1(a) regarding seeking concurrence in all motions.

LR 7.1(a) requires that a moving party conduct a meaningful and timely conference with other parties to explain the nature of the relief sought and the grounds for the motion, to seek concurrence, and to narrow the issues. The Court's strong preference is for conferences held in a manner that facilitates discussion and debate, such as in person, by video or by telephone. Sometimes, email exchanges may suffice if the motion is rudimentary and uncomplicated, or to document conversations. But sending an email without engaging the other parties will not satisfy this rule.

After a motion is filed, the Court Clerk will issue 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 of the case and the number of issues to be covered. Copies of the proposed brief must be provided to the Court along with the *ex parte* application. Page limits are rarely extended more than five pages for responses and two pages for replies.

The Court enforces Local Rule 7.1(d) with respect to responses to motions, even when the motion hearing is set far in advance, although the Court may grant an extension if requests are timely filed. Attorneys who do not respond to motions in a timely fashion may not be permitted to argue before the Court during oral argument. The Court will accept reply briefs if filed pursuant to Local Rule 7.1. Sur-replies are not permitted unless new law has emerged since the response was filed.

Parties must follow the citation form set forth in Eastern District of Michigan Electronic Filing Policies and Procedures R6 when referring to a portion of the record that has previously been filed. Parties should refrain from re-filing items, as exhibits or otherwise, that already appear elsewhere on the docket.

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

For citations to unpublished cases, Judge Levy prefers Westlaw citations. There is no need to attach unpublished cases as an exhibit unless the case is unavailable on Westlaw.

Proposed Orders

Proposed orders may not be submitted to the Court on the stationery or letterhead of any party or their counsel. Any proposed order so submitted will not be accepted, and the submitting party will be required to resubmit a properly formatted order.

Protective Orders

Proposed protective orders may be submitted through the Utilities function in CM/ECF pursuant to a stipulation of the parties, and such stipulations are encouraged. However, protective orders may not contain language that authorizes in advance the filing of documents under seal. Filings under seal are governed by Local Rule 5.3.

No party shall file or otherwise tender to the Clerk any item proposed for sealing unless the Court has entered an order allowing filing under seal.

Proposed protective orders submitted to the Court for entry should not contain any language that conflicts with the foregoing provision.

- Sample Standard Protective Order

In order to view and print the order(s), Adobe Acrobat Reader is required. To download Adobe Acrobat click here.

Temporary Restraining Orders and Preliminary Injunctions

If necessary, the Court will set a time schedule for briefing related to requests for temporary restraining orders and preliminary injunctions which is less than prescribed by Local Rule 7.1. In addition to the requirements of Fed.R.Civ.P. 65 and Local Rule 65.1, the Court requires that all applicants for a temporary restraining order attempt to notify the opposing party so that the Court has an opportunity to hear both sides unless the moving party can demonstrate good cause for failing to give notice to the opposing party. If practicable, the Court will schedule a conference before hearing any request for a temporary restraining order or preliminary injunction. Parties must notify the case manager by telephone upon filing an application for a temporary restraining order or preliminary injunction so that appropriate scheduling issues can be discussed.

Zoom Video Conference Policies and Guidelines

General Court Policies

- All in-court proceedings will be considered the same as if held in the courtroom and an official record will be made. Appropriate attire is required.
- The judge has authority over the proceeding and participants as if they were physically present in chambers or the courtroom.
- The judge may terminate the proceeding if the video conference experience is not acceptable.
- Appropriate conduct is required. Be courteous and patient.
- For in-chambers conferences, an official record will not be made, unless the judge determines one is necessary. Connection information may not be forwarded, distributed or shared with non-parties without the Court's advance approval.
- Broadcasting, recording or photographing, including "screenshots" or other visual copying of a proceeding, is strictly prohibited.

Technical Responsibilities

- The court will not provide technical assistance for testing or troubleshooting equipment or connections, nor provide time during the proceeding to troubleshoot issues.
- Participants should take time prior to the proceeding to become familiar with Zoom. Directions, tutorials and support can be found at https://zoom.us. Devices and connections can be tested at https://zoom.us/test.
- Participants should use a good LAN, WiFi, or substantial LTE connection to ensure a quality connection.

Connecting to the Proceeding

- If a connection link has been provided, click the link to join (or copy and paste the link into a web browser). If prompted, download or launch Zoom and join with video and audio.
- Alternatively, visit https://zoom.us/join from a computer and enter the Meeting or Webinar ID. If prompted, download or launch Zoom and join with video and audio.
- For Apple/Android tablets and phones, install the Zoom App from the Apple or Android Store prior to the proceeding. Launch the Zoom App and join using the Meeting or Webinar ID.

Best Practices

- Use your full name in the display of the video window.
- Mute sound when not speaking to eliminate background noise.
- Unmute only when necessary to speak. Press the space bar to temporarily unmute.
- Avoid rustling papers and other extraneous noises.
- Speak one at a time.
- Spell proper names.
- Position the camera at eye level or slightly above eye level.
- Remember to look directly at the camera, not at the screen.
- Be mindful of what is behind you. Choose a solid neutral wall, if possible.
- Have proper lighting, ideally where light is directly on your face.