General Matters: Courtesy Copy Policy

The Court does **not** require courtesy copies.

General Matters: Out of State Counsel

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

Counsel need not personally appear before the Court to take the oath of office; the Court has designated the Clerk of the Court to administer the oath. See Local Rule 83.20(d)(4). Contact the Clerk's Office for further information at (313) 234-5005.

Criminal Cases: Criminal Matters

Status Conference

The Court does not hold initial status conferences in criminal cases. Rather, approximately seven days after arraignment, the Court will issue a Criminal Trial Notice and Scheduling Order. The Court's requirements and standard practices for criminal matters are outlined in that order.

Pleas

If the parties intend for the case to be resolved by a plea agreement pursuant to Federal Rule of Criminal Procedure 11, they must submit a signed copy of the written plea agreement to chambers at least two business days before the plea hearing date. The Court sets a plea cut-off date in its scheduling order. The Court will rarely accept an *Alford* plea and never over government objection. The Court may consider a nolo contendere plea.

Sentencing

The Court requires a presentence investigation and report prior to sentencing. Disputes between the government and defense counsel relating to information in the report and/or computation of sentencing guidelines are typically resolved during the sentencing hearing. If the AUSA and defense counsel agree on the computation of sentencing guidelines, but the probation officer disputes their conclusion, the Court will use a conference or hearing to resolve the conflict. Any disputes should be submitted to the Court in writing in accordance with Federal Rule of Criminal Procedure 32(f). The Court generally meets with the probation officer prior to sentencing.

Civil Cases: Temporary Restraining Orders & Injunctions

Generally, the Court requires that an ex parte motion for a temporary restraining order be served on the opposing party. The Court grants ex parte relief only in extraordinary circumstances. The movant must contact the Court's Case Manager to schedule a hearing and should do so only once the opposing party has been served with the Complaint and motion, unless extraordinary circumstances warrant ex parte relief. The Court then will request expedited briefing by the parties.

On the other hand, a motion for preliminary injunction will not be treated as requiring an expedited response from the Court unless the moving party requests expedited consideration and sets forth compelling reasons for doing so. **Motions for preliminary injunction may not be filed until the opposing party is served with the summons and complaint** and will be stricken or denied without prejudice if prematurely filed.

When a party files a motion for temporary restraining order, or a preliminary injunction in which expedited consideration is requested, that party must contact the Court's Case Manager by telephone (313) 234-5525 so the appropriate scheduling issues can be discussed.

Civil Cases: Case Management & Scheduling Orders

The Court generally schedules a scheduling conference after the Answer is filed. If more than one defendant is named in the Complaint, the Court typically schedules the conference after all defendants have filed Answers, unless to do so will cause significant delay. If a dispositive motion is filed in lieu of an Answer, the Court generally will hold the Case Management Status and Scheduling Conference (when necessary) after the motion is decided. This may occur the same day as the motion hearing if the Court rules from the bench. A notice generally will be sent within one to two weeks after a responsive pleading is filed. **No later than four (4) business days prior to the scheduling conference**, the parties must submit a Rule 26(f) plan as described in the Notice.

At the Case Management Status and Scheduling Conference the Court will issue a phase one Phase I Scheduling Order.pdf. If a dispositive motion is filed after the close of discovery and the case survives the motion, the Court will issue a Phase II Scheduling Order.pdf with trial-related dates. The parties should refer to the other areas of this Court's Practice Guidelines for information relevant to the dates/activities set forth in the Court's Scheduling Orders.

Civil Cases: Discovery

A. EXCLUSIONS

These discovery guidelines do not apply to the following: ERISA or other actions for review on an administrative record, petitions for habeas corpus, prisoner civil cases where the prisoner is unrepresented, actions to enforce or quash an administrative summons or subpoena, actions by the United States to recover benefit payments or student loans, and actions 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 case summary no later than four (4) business days prior to the Case Management Status and Scheduling Conference. It is expected that all parties and all counsel will conduct discovery in a cooperative manner, consistent with Rule 1 of the Federal Rules of Civil Procedure: "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 Court advises that it is generally liberal regarding discovery issues.

C. EXTENSIONS OF TIME

With the exception noted below, the parties may stipulate to extend discovery. If such an agreement is reached, the parties should submit a stipulated order, signed by the parties or counsel and with a signature line for the Court, via the utilities function of CM/ECF. Any agreement by the parties to the request should be indicated. If one or more stipulations already have been entered extending deadlines more than 90-days beyond the deadlines in the initial Scheduling Order, any request to extend scheduling order dates must be requested by motion.

D. DISPUTES CONCERNING DISCOVERY, CONFIDENTIAL INFORMATION, AND ELECTRONIC MATERIALS

Local Rule 37.1 requires the parties to attempt to narrow their discovery disagreements. The Court expects the parties to make every effort to comply with this Local Rule, to confer with one another and resolve discovery matters themselves. However, if the parties have conferred and made every effort to reach an agreement but have been unsuccessful, the Court will be available to conduct a telephone conference on short notice to resolve discovery disputes expeditiously and without the need for motions. **No discovery motion may be filed before the Court is contacted**. The parties should contact the Court's Case Manager to schedule a conference call at (313) 234-5525.

When the process described above does not resolve a discovery dispute, the Court generally will decide the related motion; however, the Court may refer the motion to the magistrate judge assigned to the case. Where a motion has been referred, all communication regarding the motion must be directed to the magistrate judge's chambers. Improper delays or uncooperativeness in discovery will result in assessments of costs.

This process also applies to disputes concerning the designation of information as confidential, whether or not pursuant to a protective order, and electronic discovery materials.

E. PROTECTIVE ORDERS

Protective orders shall not be entered routinely. The requirements for protective orders are set forth in Local Rules 5.3 and 26.4, which are to be strictly followed. Pursuant to these rules, only the portion of a pleading, paper, exhibit(s), or document(s) subject to the protective order may be filed under seal.

F. **ELECTRONIC DISCOVERY**

The Judges of the United States District Court for the Eastern District of Michigan have approved, on a pilot period basis, the use of a Model Electronically Stored Information (ESI)Discovery Order and Rule 26(f) checklist in appropriate cases. See ESI Order Checklist. In cases where substantial ESI discovery is expected, the Court encourages the parties to review the order and Rule 26(f) checklist, use the Rule 26(f) checklist when preparing their Rule 26 plan, and to be prepared to inform the Court at the Case Management Status and Scheduling Conference whether an order incorporating all or portions of the model order would be useful.

Civil Cases: Motion Practice

A. CONCURRENCE

With the exception of the courtesy-copy requirement, the Court requires strict compliance with the Local Rules for the Eastern District of Michigan, including the District's Electronic Filing Policies and Procedures, for all filings. The parties must familiarize themselves, in particular, with the requirements of Local Rules 5.1 and 7.1 and Rule 5 of the Electronic Filing Policies and Procedures. Failure to comply with these rules may result in the Court striking the filing.

As required by Eastern District of Michigan Local Rule 7.1(a), the parties must seek concurrence before filing a motion. Failure to adhere to this requirement will result in the filing being stricken. The Court requires that a good-faith effort be made to obtain concurrence, which normally involves actual contact with the opposing side and conveyance of the specific issues the party intends to raise in the motion. **It is not sufficient simply to inform the opposing side that you intend to file, for example, a motion to dismiss. Adequate time to respond to the request for concurrence must also be provided. Filing the motion on the same day that a message is left for the other side is not sufficient.**

The purpose of this process is to, at a minimum, narrow the issues raised in any subsequently filed motion. 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.

B. BRIEFING

1. Exhibits

As set forth in the District's Electronic Filing Policies and Procedures, an exhibit available in original electronic format must be converted to PDF, made text-searchable and filed electronically. An exhibit available in paper must be scanned as an electronic image, converted to PDF, made text-searchable and filed electronically. If an individual exhibit's file size is larger than 50 megabytes, filing users must divide the exhibit into separate files, each smaller than 50 megabytes, and upload the files.

Filing users must not include any paper that is already part of the record. Previously filed papers should be referenced using the CM/ECF docket number PageID number(s). In other words, if an exhibit has been already filed by any party, a second copy should not be filed and all citations must be to the original filing.

Each exhibit must be filed and identified as a separate attachment to the paper and must be labeled in the electronic record with an exhibit identifier and brief narrative description.

2. Schedule and Page Limits

The Court adheres to the briefing schedule and page limits set forth in Local Rule 7.1. A party should contact the other side when seeking extensions of the page limit and/or deadlines set forth in the rules prior to submitting a request to chambers. If an agreement is reached, the parties should file a signed stipulated order, containing a signature line for the Court, reflecting the agreement. Where an agreement cannot be reached, extensions may be obtained by filing a motion, which the Court will grant if the request

is warranted and reasonable . The Court expects the parties to be reasonable when consent is first sought.

C. **PRIVACY**

The parties must be vigilant regarding the use of private information in any filings (including deposition transcripts). **Certain private information must be redacted**, as set forth in Federal Rule of Civil Procedure 5.2. Non-compliant filings will be stricken.

D. **HEARINGS**

The Court schedules motion hearings unless it believes a hearing will not aid in its disposition of the motion. The Court will issue a notice of hearing with a specific date and time if it believes a hearing is necessary. Therefore, the parties need not file notices or requests for hearing, and should not contact chambers to schedule a hearing.

A party that fails to timely respond to a motion will not be permitted to argue at any hearing on the motion.

E. **MOTIONS FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

Please refer to the Court's specific practice guidelines and procedures addressing motions for temporary restraining order or preliminary injunction.

F. **DISCOVERY MOTIONS**

As set forth in the Court's discovery practice guidelines and procedures, the parties may not file a discovery motion without first contacting the Court's Case Manager.

G. **MOTIONS FOR SUMMARY JUDGMENT**

When filing motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, parties must proceed in accordance with the following:

- Statement of Material Facts on Motion for Summary Judgment

  a. The maker of the motion must include a Statement of Material Facts. In short, concise, and numbered paragraphs, the maker of the motion must set forth the material facts that the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for striking the motion or denying it.

  b. The party opposing the motion must respond to each numbered paragraph in the moving party's statement. The numbering in the opposing party's response should correspond to the numbering in the motion. The opposing party may add additional paragraphs containing separate, short, and concise statements of additional material facts, if this is necessary to demonstrate there exists a genuine issue to be tried.

  c. Each numbered paragraph in the moving party's Statement of Material Facts will be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement served by the opposing party.

  d. Each Statement of Material Fact – whether set forth by the maker of the motion or the party opposing the motion – must be followed by citation to interrogatory

answers, depositions, documents, affidavits, declarations, stipulations, admissions, electronically stored information, or other information which would be admissible under Federal Rules of Civil Procedure 56(e), in support of each claim or defense asserted

- Attached appendices must contain an index and be tabbed.

1. 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. Counsel are encouraged to supply the Court with copies of their main cases, but must provide courtesy copies of any cited unpublished decisions.
2. It is not the Court's function to "figure out" or to search the record to determine what evidence the parties rely upon in support of claims or defenses. It is incumbent upon the parties to make substantive arguments, with specific references to the record in support of each claim or defense asserted.

H. ORDERS ON MOTIONS

As a general rule, the Court prepares its own orders following oral argument or, where oral argument is disposed of, after reviewing the pleadings. However, a party moving for default judgment should submit a proposed order and judgment when filing the motion.

I. SETTLEMENT AND RESOLUTION OF MOTIONS

The parties must notify chambers in writing within one (1) business day of the case settling. The parties may accomplish this by sending an email to the Case Manager. Similarly, if the parties resolve a pending motion prior to the hearing date, they must notify chambers within the same time frame. The movant must then file a notice withdrawing the pending motion.

If the plaintiff files an amended complaint in response to a motion to dismiss and the movant concludes that the amendment moots the motion (or requires different arguments in support of dismissal), the movant should file a notice withdrawing the initial motion, and if desired, file a new motion to dismiss.

Civil Cases: Settlement

The Court routinely holds a settlement conference after the discovery cut-off. The requirements for the settlement conference are set forth in the Court's Settlement Conference Notice. If the parties believe an earlier settlement conference will be productive, they should notify the Court in the Rule 26(f) plan or contact the Court's Case Manager.

The Court welcomes and endorses agreements between parties to engage in case facilitation or evaluation. The Court sets a deadline to request facilitation or evaluation in its Scheduling Order. A proposed stipulated order referring the case to facilitation shall be submitted to the Court via the CM/ECF utilities function, identifying the facilitator and the date set for facilitation. To request case evaluation, the parties should file a Stipulated Request for Case Evaluation.

At the parties' request, the Court will schedule additional settlement conferences. The Court routinely becomes involved in settlement negotiations in jury cases and refers non-jury matters to a magistrate judge or another judge for settlement discussions.

Civil Cases: Final Pretrial Conference, Final Pretrial Order, Jury Insructions, & Verdict Form

A. FINAL PRETRIAL CONFERENCE & FINAL PRETRIAL ORDER

The Court's phase two Scheduling Order, issued after the dispositive motion deadline and any decision on any dispositive motion(s), establishes a due date for the parties' **joint** Final Pretrial Order and the date of the Final Pretrial Conference. The parties' proposed Final Pretrial Order must be submitted through the document utilities function of CM/ECF on or before the deadline. The parties must bring at least three (3) copies to the Final Pretrial Conference. The parties shall follow the procedure outlined below to prepare for the Final Pretrial Conference and the Final Pretrial Order:

1. The parties must confer in person (face-to-face virtually or in person) at their earliest convenience to: (1) reach any possible stipulations narrowing the issues of law and fact; (2) deal with non-stipulated issues in the manner stated in this paragraph; and (3) exchange documents that will be offered into evidence at trial. It shall be the plaintiff's duty to initiate the meeting and the defendant's duty to respond and offer full cooperation and assistance. If, after reasonable effort, any party cannot obtain the cooperation of the other side, it shall be his or her duty to relay this information to the Court via the Case Manager. The Final Pretrial Order shall fulfill the parties' disclosure obligations under Federal Rule of Civil Procedure 26(a)(3), unless the Court orders otherwise. All objections specified in Rule 26(a)(3) shall be made in this order. The plaintiff is responsible for preparing a draft Final Pretrial Order and submitting it to the other side, after which all parties will submit a joint proposed order. The Final Pretrial Order should provide for the signature of the Court, which when signed will become an Order of the Court.
2. The proposed Final Pretrial Order shall strictly comply with the requirements of Local Rule 16.2, except as this Court may otherwise provide. All witnesses must be listed in the Final Pretrial Order. Witnesses not identified on a party's witness list may only be added to the Final Pretrial Order by stipulation of the parties or leave of Court. The parties are cautioned not to reiterate the long list of witnesses from their earlier submitted witness lists, and to list only those witnesses reasonably expected to be called.
3. The following persons must personally attend the Final Pretrial Conference:
    1. Trial counsel for each party;
    2. All parties who are natural persons;
    3. A representative on behalf of any other party; and
    4. 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.

B. JURY INSTRUCTIONS AND VERDICT FORM

Prior to the Final Pretrial Conference, the Court will send the parties its standard preliminary and final jury instructions. **On or before the date of the Final Pretrial Conference**, the parties shall submit jointly-proposed modifications to the instructions via email to the Court's

Case Manager. With this submission, the parties also must include joint proposed instructions for all instructions related to their specific claims or defenses, and special instructions relating to evidence. If the parties are unable to reach agreement on any particular instruction(s), they shall submit separate proposed instruction(s) with the parties' joint submission. **All submitted instructions must be in Word format.**

On or before the date of the Final Pretrial Conference, the parties also must submit their proposed jury verdict form via email to the Case Manager.

Civil Cases: Trials - Civil & Criminal Matters

Trials - Civil & Criminal Matters

A. TRIAL DATE AND TIME

The Court sets a date certain for the trial in the phase two Scheduling Order.

Trial hours generally are 9:00 a.m. to 4:00 p.m. At the end of the day, the Court will inform the parties and jurors of the following day's schedule. The parties must appear for trial promptly, ready to begin. If problems arise during trial, they should be raised with the Court at the end of each day or during a break. They should not be raised at the start of the day, or otherwise while the jury is waiting, unless absolutely necessary.

B. SETTLEMENT IN CIVIL PROCEEDINGS

The Court will engage in settlement discussions once trial has commenced, but outside trial hours. The parties, however, will be assessed juror costs in cases which settle on or after the day of jury selection and/or trial.

C. NON-JURY TRIALS

The parties must file proposed findings of fact and conclusions of law two (2) business days before trial is to begin. These can be supplemented or amended at the conclusion of trial. At the conclusion of trial, the parties must submit final proposed findings of fact and conclusions of law via email to the Court's Case manager, in Word format. Proposed findings of fact must include citations to the trial transcript. A deadline for the submission of final proposed findings of fact and conclusions of law will be discussed at the close of trial.

D. JURY TRIALS

1. Jury Selection

At least three business days before the start of trial, the parties shall submit a statement of claims and defenses, no longer than one page, suitable to read to the jury during opening instructions. The Court will have counsel introduce themselves and their clients, as well as identify expected witnesses.

The Court conducts voir dire. At least two business days before the start of trial, the parties must submit any requests for voir dire to the Court, indicating any objection by the opposing side. The parties must meet and confer in advance of this deadline in order to meet it. The Court may allow counsel to present follow up questions at a sidebar conference, and when appropriate, the Court will also ask the requested follow up question(s).

A modified strike method is used for jury selection. Once all challenges for cause are made, the Court will have the necessary number of potential jurors seated (10 for a civil case and 14 for a criminal case). At sidebar, the parties then can exercise their peremptory challenges. The Court excuses jurors without disclosing which side excused them. In a civil case, eight jurors will consider the evidence and deliberate, unless the parties stipulate to a different number. In criminal trials, twelve jurors will consider the evidence and deliberate, unless the parties stipulate in writing to a different number or a different number is ordered by the Court, as provided for in Federal Rule of Criminal Procedure 23(b).

In criminal trials, consistent with Federal Rule of Criminal Procedure 24(c), alternate jurors will be identified to counsel and the parties, only, prior to jury selection. Each side will have separate additional peremptory challenges for prospective alternate jurors as set forth in the rule.

2. **Jury Instructions**

   The jury is charged before final argument and will be provided a copy of the final instructions to take into the jury room.

3. **Note Taking and Juror Involvement**

   The Court advises jurors before trial begins that they will be permitted to take notes during trial. The Court instructs jurors that if they take notes, such notes are not evidence and should not be shared with other jurors. The notes are merely aids for the individual juror's memory of the evidence presented.

E. **EXHIBITS**

The Court generally resolves disputes about exhibits at the Final Pretrial Conference.

1. **Marking Exhibits**

   The parties must mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used. The Court requires the use of a bench book of exhibits. For non-jury trials, the Court requires two (2) copies of the bench book of exhibits.

2. **List of Exhibits**

   A list of proposed exhibits shall be submitted directly to chambers by each of the parties on or before the first day of trial.

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

   The parties must maintain a record of all admitted exhibits during trial. During trial and after trial pending any appeal, the parties will maintain custody of their admitted exhibits. The Court's Case Manager will take custody of the parties' exhibits during jury deliberation and provide the exhibits to the jury.

4. **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 an exhibit simultaneously. Parties are responsible for providing equipment for such purpose and should contact the Court's Case Manager to obtain permission to bring such equipment into the courthouse. If photographs and documentary exhibits are not published electronically, then the party must prepare exhibit books for the Court and each juror. Regardless of whether exhibits are published electronically, a separate exhibit book should be prepared and made available to a witness who is to be questioned about an exhibit.

   The parties are encouraged to contact the Case Manager to schedule a time prior to trial to test their equipment for publishing exhibits.

5. **Preparing Exhibits for Jury Deliberation**

The parties must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. 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.

F. **DEPOSITION EVIDENCE**

If depositions are to be read into evidence, the transcripts should be reviewed by both parties, and an agreement must be reached on which portions of the deposition are to be presented. At least seven (7) business days before trial, the parties must notify the Court if they are not able to reach an agreement. Parties must prepare redacted portions of the deposition transcript prior to the first day of trial and provide a copy to the Court three (3) business days before the first day of trial.

G. **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 a magistrate judge conducting all proceedings in their case, including a bench or jury trial, and ordering the entry of final judgment.