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.