General Policies

Judge Behm accepts no *ex parte* communications. Counsel may contact the Case Manager, or Judicial Assistant, regarding procedural and scheduling matters only. Although chambers staff is happy to answer questions about chambers procedures, please consult these guidelines, the Electronic Filing Policies and Procedures, the Local Rules, the case docket (if applicable), and the information on this website before contacting Chambers with a question. Contact by counsel or parties with the law clerks is discouraged.

Judge Behm prefers that papers submitted electronically to chambers be in the current version of Word.

Local Rules are enforced. Please pay particular attention to Local Rule 7.1, Local Rule 5.3, and Electronic Filing Rules 5 and 10(d).

The Court encourages the use of modern technology to display exhibits and demonstrative aides during trial. However, parties must make prior arrangements with Chambers staff. Requests for interpreters and accommodations for witnesses with disabilities should be made with Chambers at least ten days before needed.

If a case is settled, the parties must notify Chambers in writing via email by the next business day.

If you do not have the current version of Adobe, please download it.

Judge Behm encourages parties to attempt to resolve any disputes that arise through communication before resorting to motion practice. To facilitate this, parties may request a status conference with Judge Behm at any time. Status conferences may be conducted telephonically, via video conference, or in person.

Courtesy Copies

A courtesy copy of ALL DISPOSITIVE MOTION PAPERS, including responses and replies, and all accompanying exhibits should be submitted in chambers. Exhibits must have labels attached which extend beyond the side of the paper. Motions must be permanently secured on the left side--the Court will not accept documents loosely secured with a rubber band or binder clip. A printed copy of the Notice of Electronic Filing must be attached to the front of the paper. The chambers copy must be sent via first class mail the same day the document is e-filed, unless it relates to a court proceeding scheduled within the next five days or otherwise requires the immediate attention of the Court, in which case the chambers copy must be hand-delivered to chambers no later than the morning of the next business day after the document is e-filed.

Courtesy copies are similarly required for any non-dispositive motion papers where the brief and its accompanying exhibits exceed twenty pages in total length. Unless specifically requested, courtesy copies are not required for filings of shorter length.

Stipulations and Proposed Orders

Parties must file a Proposed Order along with any Stipulation. Stipulations and Proposed Orders should not be e-filed. Rather, they should be submitted to Chambers through the Utilities feature of CM/ECF. Please see Rule 12 of the Electronic Filing Policies and Procedures for additional information regarding Proposed Orders. Submissions must be in Microsoft Word format. Additionally, 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 be rejected, and the submitting party will be required to refile a properly formatted Order.

Electronic signatures must conform to Rule 10 of the Electronic Filing Policies and Procedures. If either party is *pro se*, and that party is not an e-filer, then the *pro se* party's original wet signature must be on the stipulation.

Admission of Out of State Counsel

Local Rule 83.20 requires that an attorney must be a member of the bar of the Eastern District of Michigan in order to practice in this Court, with certain limited exceptions. Inquiries regarding admission to the Court bar must be directed to the Clerk's Office at (313) 234-5005. Additional information can be found on the Attorneys section of the Court's website.

Pro hac vice admission is not permitted. In addition, this Court strictly enforces Local Rule 83.20(f), which provides that any member of the Court bar who is not an active member of the State Bar of Michigan must have local counsel.

Counsel do not need to appear personally before the Court to take the oath of admission and be admitted to practice in the Eastern District of Michigan. The Court has designated the Clerk of the Court to administer the oath. *See* E.D. Mich. L.R. 83.20(d)(4). In addition, pursuant to the Local Rule, an applicant without an office in the district may take the oath by telephone or video conference. *Id*.

Case Management Orders and Scheduling

A. CIVIL CASES

1. SCHEDULING AND CASE MANAGEMENT CONFERENCE

The Court routinely issues its Notice of Scheduling and Case Management Conference after the Answer is filed. If there is more than one named Defendant, the Court typically schedules the conference after all Defendants have filed Answers, unless doing so will cause significant delay. A notice generally will be sent within two to four weeks after a responsive pleading is filed. The parties are required to submit a Rule 26(f) plan and/or a Case Summary as described in the Notice no later than seven days before the initial scheduling conference.

If a dispositive motion is filed in lieu of an Answer, the Court generally will hold the initial scheduling conference after the motion is ruled upon. This may occur the same day as the motion hearing if the Judge rules from the bench.

At the initial scheduling conference, the Court expects lead counsel to attend (regardless of whether the conference is held in person, telephonically, or via video conference). The parties should be prepared to discuss the case and the issues, the Court's subject matter jurisdiction, the parties' interest in state court evaluation and/or facilitation, and any other standard procedural/scheduling issues. The Court expects counsel to discuss alternative dispute resolution (ADR) options with their clients in advance of the conference.

Unless otherwise decided at the initial scheduling conference, the Court will issue a global referral of all discovery matters to the assigned Magistrate Judge.

- Notice of Scheduling Conference
- Civil Case Management Order - Phase I
- Civil Case Management Order - Phase II

2. SETTLEMENT CONFERENCE

All parties must attend the settlement conference with the trial attorneys. Both counsel and clients must be prepared for serious settlement discussions. Insurance representatives with *full* settlement authority, 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. The parties must notify chambers in writing within one business day of the case settling by sending an email to the Case Manager. If a case does not resolve, the Case Manager will schedule the final pretrial conference and trial.

3. FINAL PRETRIAL CONFERENCE

Trial procedures and final pretrial matters are discussed with the Court at this conference. Motions *in limine* may also be heard at the conference in order to avoid delay on the first day of trial.

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. These may be conducted by conference call upon request and should be scheduled through the Case Manager. Additional conferences with the Court, including settlement conferences, will be scheduled upon request.

5. **SPECIAL CASES**

Social Security appeals and *pro se* prisoner civil rights cases are generally referred to the Magistrate Judge for case management.

B. **CRIMINAL CASES**

1. **SCHEDULING**

The Court will issue a scheduling order. Requests to modify or enlarge the calendar dates shall be made by motion and must include a stipulation to extend time and a waiver under the Speedy Trial Act if they affect the trial date.

2. **FINAL PRETRIAL CONFERENCE**

A final pretrial conference is conducted by the Court. The final pretrial conference is generally held one to two weeks prior to the start of trial. Motions *in limine* may also be heard at the conference in order to avoid delay on the first day of trial.

3. **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 proceedings. These may be conducted by conference call upon request and should be scheduled through the Case Manager. Additional conferences with the Court, including settlement conferences, will be scheduled upon request.

- Criminal Case Management Order

Criminal Practice and Trial Procedure (parts A-H)

A. ATTORNEY CONFERENCE AND DISCLOSURE

Within ten 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, or government counsel shall file the Discovery Notice attached to E.D. Mich. Administrative Order No. 03-AO-027.

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 which have been 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 seeking relief from this Order and setting forth the specific reasons for its request.

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, nor to alter the Defendant's obligation, if any, under Rule 16(b).

E. EARLY DISCLOSURE OF *JENCKS* MATERIAL

The Court encourages the government to disclose *Jencks* Act (18 U.S.C. § 3500) materials well in advance of the trial. In the event that some *Jencks* Act materials are not disclosed sufficiently in advance of a government witness' testimony, the Court will allow a reasonable amount of additional time during trial for the defense to prepare before proceeding.

F. PRESENCE OF THE DEFENDANT

The defendant must be present at all court hearings unless the Court has granted prior approval for the defendant's absence. If a writ is required, it must be submitted four weeks before the court date.

G. PRE-TRIAL MOTIONS

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

H. **EXHIBITS**

1. **Agreement as to Admissibility**

   Counsel for the government is urged to make reasonable efforts to reach agreement with counsel for the defense concerning the admissibility of each intended physical exhibit prior to trial. In the event such agreement is reached, a list of such exhibits is to be prepared by government counsel for entry at the opening of trial, and 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 numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used by each party.

3. **List of Exhibits**

   A list of proposed exhibits shall be submitted directly to Judge Behm's chambers by each of the parties by the deadline established at the final pretrial conference. However, no later than one 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 pre-trial 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 a witness who is to be questioned about an exhibit.

   NOTE: please make arrangements with court staff to test equipment ahead of the trial to avoid technical issues and delays.

8. **Preparing Exhibits for Jury Deliberation**

Counsel 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.

9. **Filing Exhibits**

   It is the responsibility of the parties to ensure that the record is complete. All proposed jury instructions 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.

Criminal Practice and Trial Procedure (parts I-O)

I. WITNESS LISTS

By the deadline established in the Scheduling Order, and to enable the Court to better estimate the length of trial, each party shall submit directly to Judge Behm's chambers a list of witnesses, by name and agency (if appropriate), whom it reasonably anticipates it will call to testify at trial. This list shall note the approximate amount of time needed for the 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.

J. JURY INSTRUCTIONS

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in the Scheduling Order, the parties must submit directly to Judge Behm's chambers a single set of proposed, stipulated jury instructions. 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 typewritten form, double spaced, and on a USB drive compatible with Microsoft Word version 12.0; each instruction shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"); and each instruction shall be on a separate page. In addition, each party must submit separately to Judge Behm's chambers all additional proposed instructions to which any other party objects. These should be submitted in the same form as proposed stipulated instructions. 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 agreement as to an acceptable form. Disputes between the government and defense counsel regarding proposed jury instructions are initially settled at a hearing on the record.

The Court has its own standard introductory and concluding instructions, and 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.

K. JURY SELECTION

The Court uses a "struck jury" system for jury selection. In most cases, the government is allowed 6 peremptory challenges and the defendant is allowed 10 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.

The Court will conduct general *voir dire*, but counsel may conduct their own inquiries of prospective jurors. Contentious or questionable voir dire questions must be submitted to the Court in writing at least three days before the start of *voir dire*.

L. NOTE TAKING AND 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. The Court will consider, on a case-by-case basis, whether jurors will be permitted to

question witnesses, either directly or through submission of questions to be asked by the Court.

M. **MULTI-DEFENDANT OR MEGA TRIALS**

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

N. **CONTINUANCES**

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

O. **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.

Civil Practice and Trial Procedure (parts A-E)

A. **TRIAL DATE**

The Court sets a date certain for trial following the parties' conclusion of ADR efforts or resolution of all dispositive motions, whichever is later, after consultation with counsel. Attorneys must bring their schedules to the conference to avoid conflicts.

B. **ADJOURNMENTS**

Because the Court consults with the attorneys before setting a trial date, adjournments are rarely granted.

C. **STATUS CONFERENCES**

Judge Behm is available for status conferences, either telephonically, via video conference or in person, by arrangement with the Case Manager. Do not wait until an issue becomes an emergency before seeking the Court's assistance.

D. **FINAL PRETRIAL ORDERS**

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.

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

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

E. **FINAL PRETRIAL CONFERENCE ATTENDANCE**

The following persons shall 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 who has full settlement authority for the party;
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. The personal attendance requirement 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, unless the party has obtained prior permission from the Court. The Court will generally only grant such permission upon consent of counsel for all parties.

Civil Practice and Trial Procedure (parts F - K)

F. EXHIBITS

1. **Marking of Exhibits:**

   Counsel are required to mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used by each party.

2. **List of Exhibits:**

   A list of proposed exhibits shall be submitted directly to Judge Behm's chambers by each party by the deadline established at the final pretrial conference. However, no later than one 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 will be deemed established unless the objecting party files a notice with the Court at or before the final pretrial conference that the foundation of the exhibit will be contested. *See* E.D. Mich. L.R. 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 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 a witness who is to be questioned about an exhibit. **NOTE:** please make arrangements with court staff to test equipment ahead of the trial to avoid technical issues and delays.

7. **Preparing Exhibits for Jury Deliberation:**

   Counsel 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.

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.

G. **JURY INSTRUCTIONS**

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in the Scheduling Order, the parties must submit directly to Judge Behm's chambers a single set of proposed, stipulated jury instructions. 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 typewritten form, double spaced, and on a USB drive compatible with Microsoft Word version 12.0; each instruction shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"), and each instruction shall be on a separate page. In addition, each party must submit separately to Judge Behm's chambers all additional proposed instructions to which any other party objects. These should be submitted in the same form as proposed stipulated instructions. 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 agreement as to an acceptable form. Disputes between counsel regarding proposed jury instructions are initially settled at a hearing on the record.

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

H. **JURY SELECTION**

The Court will conduct general *voir dire*, but counsel may conduct their own inquiries of prospective jurors. Contentious or questionable *voir dire* questions must be submitted to the Court in writing at least three days before the start of *voir dire*.

I. **NOTE TAKING AND 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 jurors' memory of the evidence presented at trial. The Court will consider, on a case-by-case basis, whether jurors will be permitted to question witnesses, either directly or through submission of questions to be asked by the Court.

J. **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 solved.

K. 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. Consenting to have a Magistrate Judge handle a case may therefore 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 or Ann Arbor courthouse, and not necessarily in the Flint courthouse.

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 usually refer a case for evaluation by a state tribunal, or to a Magistrate Judge or an outside facilitator for mediation, after the completion of discovery. Parties may request a referral to evaluation or mediation prior to the close of discovery. The Court will also facilitate pretrial resolution in appropriate cases.

Motion Practice (parts A - E)

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.

B. FORMAT AND PAGE LIMITATIONS

All briefs must comply with Local Rules 5.1 and 7.1, and must contain citations 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. All citations to documents already in the record must be in the following format: ECF No. 1-2, PageID.1234

The Court enforces the page limit set forth by Local Rule 7.1(d)(3) and the formatting/type size requirements set forth by Local Rule 5.1(a). The Court does not routinely grant requests to file longer briefs. Requests to file an oversized brief must be made by motion, in which the moving party sets forth specific reasons justifying the need for additional pages.

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. 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. Documents must be prepared in 14-point type and double spaced.

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. Pleadings containing such extraneous matters will not be filed by the deputy clerk.

C. BRIEFING SCHEDULE AND ORAL ARGUMENT - DISPOSITIVE MOTIONS

The Court does not typically issue a briefing schedule; rather, it follows the time limits set forth in Local Rule 7.1(e) and Federal Rule of Civil Procedure 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. L.R. 7.1(e)(2).

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

As stated previously, Counsel must comply with the time limits set forth in Local Rule 7.1(e) and Federal Rule of Civil Procedure 6.

The Court will generally 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. The parties are encouraged to present a proposed order at the hearing.

If the parties resolve a pending motion before the hearing date, they must notify chambers within one business day by sending an email to the Case Manager. The movant must then file a notice withdrawing the pending motion.

Under the Court's global discovery referral, discussed below, discovery motions are to be filed according to the procedures adopted by the assigned Magistrate Judge. The Court does not generally refer other individual motions, except as required by Court procedure.

E. **SEPARATE MOTION AND BRIEF**

Local Rule 7.1(c) requires that motions and responses to be 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.

Motion Practice (parts F - H)

F. SUMMARY JUDGMENT

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

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).

A Rule 56 motion must begin with a "Statement of Material Facts." The Statement must consist of separately numbered paragraphs briefly describing the material facts underlying the motion, sufficient to support judgment. Proffered facts must be supported with citations to the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. Citations should contain page and line references, as appropriate. 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. Chambers' copies of Fact Appendices of more than 20 pages must be separately bound and include a cover sheet identifying the motion to which they are appended. All pages from the same deposition or document should be at the same tab. 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 "Counterstatement of Material Facts" stating which facts are admitted and which are contested. The paragraph numbering must correspond to 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. In similar form, the counterstatement may also include additional facts, disputed or undisputed, that require a denial of the motion.

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.

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

If necessary, the Court will set a time schedule for motion and briefing requirements relating to requests for temporary restraining orders ("TRO") and preliminary injunctions which is shorter than prescribed by Local Rule 7.1. In addition to the requirements of Federal Rule of

Civil Procedure 65 and Local Rule 65.1, the Court requires that all temporary restraining orders, including those considered ex parte, require 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 before hearing any request for a TRO or preliminary injunction. Parties must notify the case manager by email upon filing a motion for an injunction so that appropriate scheduling issues can be discussed. 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 when required. For further information, counsel should refer to the appropriate Federal Rules regarding privacy protection.

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 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; or 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 seven 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 Federal Rule of Civil Procedure 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. DISCOVERY DISPUTES

Unless otherwise decided at the initial scheduling conference, the Court will issue a global referral of all discovery matters to the assigned Magistrate Judge. This includes motions to compel, motions for protective orders, motions to quash, and motions for sanctions related to discovery. Before moving for an order relating to discovery, the movant should consult with the assigned Magistrate Judge's chambers on its discovery motion procedures.

For discovery matters addressed by Judge Behm, the Court expects counsel to make every effort to comply with Local Rule 37.1 to confer with one another, and to resolve discovery matters themselves. Before moving for an order relating to discovery, a movant must first confer with opposing counsel and then file a request for a conference with the Court, stating that a conference was held with opposing counsel, and outlining the nature of the unresolved dispute. Sanctions may be imposed against any party who unreasonably refuses to resolve a discovery dispute.

D. DISCOVERY DEADLINES AND EXTENSIONS OF TIME

The Court's Case Management Order sets the discovery cutoff date. Discovery must be served sufficiently in advance of the discovery cutoff to allow the opposing party enough time to respond under the Federal Rules of Civil Procedure prior to the discovery deadline. All discovery motions must be filed prior to the discovery deadline. The only discovery that may be conducted after the discovery cutoff date without leave of the Court is discovery ordered by the Magistrate Judge for which a timely-filed motion was pending before the discovery cutoff date. Scheduling issues concerning the discovery cutoff date remain before Judge Behm. Stipulated discovery periods or extensions of the discovery deadline which affect other dates

or are longer than necessary without a showing of good cause are not permitted. Filing a motion does not change discovery deadlines. This Court will consider extensions or adjournments of all other dates upon the timely filing of a written motion for good cause shown.

Diversity Jurisdiction

Local Rule 81.1, oral argument will typically be held on Motions to Remand regarding the propriety of removal. Motions to remand for procedural defects must be filed within thirty days from the notice of removal.

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.

Patent Cases

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

- Model Scheduling Order
- Notice and Order Setting Scheduling Conference in a Patent Infringement Case
- Timeline of Model Scheduling Order

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