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.