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.