General Matters: Contacting the Court

The Court accepts no *ex parte* communications. Counsel may contact the case manager or law clerks 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 E.D. Mich. Local Rules, the case docket (if applicable), and the information on the Court's website before contacting Chambers with a question.

General Matters: Courtesy Copies

The parties must provide the Court with a Judge's Copy of only dispositive motions and briefs, including all exhibits. The Judge's Copy should be indexed and tabbed and include copies of any case not available on Westlaw or LEXIS. In addition, on the Judge's Copy, the parties must highlight all relevant parts of the exhibits (e.g., deposition transcripts) and cases.

The Judge's courtesy copy can be sent through first class mail the same day that the document is e filed - unless it relates to a court proceeding scheduled within the next five (5) days or otherwise requires the Court's immediate attention, in which case the Judge's Copy must be hand delivered to chambers on or before the morning of the business day after the document is e-filed.

General Matters: TROs and Emergency Motions

The Court strictly follows Federal Rule of Civil Procedure 65 and E.D. Mich Local Rule 65.1. The Court rarely grants a temporary restraining order without notice to the opposing party.

The parties should notify the Court's case manager by telephone (313.234.5135) immediately upon filing a motion for a temporary restraining order or for a preliminary injunction. The Court will typically hold a status conference soon after receiving notice of such a motion to arrange a briefing schedule and hearing date.

General Matters: Status Conferences

The Court schedules frequent status conferences to facilitate efficient case management. Counsel are encouraged to contact the Court's case manager to schedule a status conference to try and resolve issues or disputes. *Do not wait* until an issue becomes an emergency before contacting the Court. Status conferences may be conducted via video conference or in person.

General Matters: Proposed and Stipulated Orders

Proposed and stipulated orders should not be e filed. Rather, they should be submitted to chambers through the document utilities feature of CM/ECF. *See* Rule R11 of the Electronic Filing Policies Procedures. Submissions must be in Microsoft Word format.

Electronic signatures must conform to Rule R9 of the Electronic Filing Policies and Procedures. However, stipulations involving a *pro se* party who is not an e-filer must be filed electronically on the docket, showing an **actual signature**, and only the proposed order should be submitted via document utilities. *See* EDMI Electronic Filing Policies and Procedures Rule 12(a)(2)(i).

Parties should expect that a stipulated order will not be entered for one to two days after submission, as the Court requires time to review them.

General Matters: Citations to the Court Record

Parties must strictly comply with the Electronic Filing Policies and Procedures of the Eastern District of Michigan regarding the required citation format for referencing the court record under Rule R6.

TO REFERENCE	CITATION FORM EXAMPLE
A single page	PageID.234
Multiple sequential pages	PageID.234-235
Multiple pages not in succession	PageID.234, 238, 245

The citation form for any filing that references a portion of a different case record within the Eastern District of Michigan shall be preceded with the 13-character case number for that other case (e.g., 1:19-cv-59999 PageID.234).

Criminal Cases: Case Management and Scheduling Orders

The Court does not hold initial status conferences in criminal cases. Rather, it will issue a Scheduling Order. Requests to modify or to enlarge the calendar dates must be made by motion or a stipulation and, if the proposed dates affect the trial date, a waiver under the Speedy Trial Act. The Court will routinely allow one extension but will often schedule a status conference before deciding any additional extensions.

Criminal Cases: Discovery

Within ten (10) days of the arraignment, the Government's counsel and defense counsel must meet and confer to resolve and to minimize the issues in the case and to agree on a timetable and procedures for the pretrial disclosures required under Federal Rule of Criminal Procedure 16. After the discovery conference, one or both parties may ask this Court to determine or to modify the time, place, manner, or other aspects of disclosure to facilitate trial preparation.

Criminal Cases: Pretrial

All pretrial motions, responses, and replies must be filed before the Final Pretrial Hearing, so counsel must closely follow the deadlines in E.D. Mich. Local Rule 7.1(e). *See also* E.D. Mich. Local Criminal Rule 12.1.

At the Final Pretrial Hearing, counsel must be prepared to discuss all matters that will promote a fair and expeditious trial, including but not limited to:

1. anticipated evidentiary issues,
2. length of trial,
3. stipulations that moot foundational witness testimony,
4. stipulations for uncontested facts,
5. stipulations for certain exhibits,
6. peremptory challenges, and
7. special arrangements (e.g., disability accommodation for witnesses, A/V needs, interpreters).

The Court will also request an outline of any effective plea offers from the Assistant United States Attorney and solicit the defendant's and defense counsel's confirmations that a plea offer was rejected.

Criminal Cases: Pleas

If the parties resolve a case by plea agreement under Federal Rule of Criminal Procedure 11, the parties must submit a signed plea agreement to chambers on or before the plea cutoff date.

At the plea hearing, the Court expects Defendants to orally describe the factual basis for their plea. This can be done by spontaneous statement, *voir dire* by defense counsel, reading the factual background contained in the Rule 11 agreement, or any other method preferred by the Defendant. Defense counsel should confer with the government on Defendant's method of choice and advise the court in advance of the hearing.

Criminal Cases: Trials

The Court sets a date certain for trial in consultation with counsel following the plea cutoff deadline. The first day of trial will usually commence at 9:00 a.m. ET. All other trial days will typically take place from 8:30 a.m. to 4:00 p.m. ET, with a lunch break.

Criminal Cases: Jury Selection

The Court will conduct the initial *voir dire*, but counsel will be permitted to question prospective jurors for a limited time. Any proposed juror questions that the parties want the Court to ask must be submitted at least one week before the Final Pretrial Hearing.

Criminal Cases: Alternate Jurors

If more than 12 jurors are impaneled, then the alternate jurors will be designated by random draw after the conclusion of closing arguments. *See* FED. R. CRIM. P. 23; FED. R. CRIM. P. 24(c). A sample Stipulation for Designating Alternate Jurors by Random Draw can be found here.

Criminal Cases: Sentencing

The Court requires the submission of a sentencing memorandum from both parties, with the Government's memo being due one week before Defendant's memo. The sentencing memorandum must address any remaining objections to the Presentence Investigation Report.

Civil Cases: Case Management and Scheduling Orders

Immediately after a case is assigned, the Court will issue its *Civil Case Practice Guidelines* that explains many of the requirements that must be followed in all civil cases pending before Judge DeClercq.

After an Answer is filed, the Court routinely issues a *Notice Directing Parties to Appear for Scheduling Conference and Establishing Discovery Plan Deadline (Phase I)*. If there is more than one named Defendant, the Court typically holds the scheduling conference after all Defendants have filed Answers, unless doing so would cause significant delay. In addition, if a Defendant has filed a motion to dismiss but others have answered, the Court will still hold a scheduling conference.

Civil Cases: Discovery

Although Federal Rule of Civil Procedure 26(d) prohibits beginning Court-sanctioned discovery before the initial attorney conference, the Court encourages early discovery by agreement. The Court typically allows parties to decide how long they want to complete discovery, but the established cutoff date will be strictly enforced. Extensions of discovery dates are rarely given and only for good cause shown. Accordingly, the Court will not accept stipulations to extend the discovery period; the parties must ask for a status conference and explain the need for any extension.

The Court generally handles discovery disputes itself. Therefore, before filing any discovery motion, the parties must comply with the Court's discovery dispute protocol, which consists of three (3) steps:

1. The parties must meet and confer in an effort to resolve their differences without Court intervention. An email exchange will not suffice. Failure of a party to make itself available for this conference may result in sanctions.
2. If these good faith efforts are unsuccessful, the parties must submit a joint letter[1] via email to the Court's case manager regarding any discovery disputes the parties are unable to resolve. The letter generally should be no longer than five (5) pages and must identify the dispute, provide the most important relevant authority, and describe the parties' efforts to resolve the dispute to date.
3. The Court will then schedule a conference with the parties (always held in person) to resolve the dispute.

[1] If the dispute is solely failure to respond, a letter by the moving party will suffice.

Civil Cases: ADR

The Court typically refers parties for ADR at the end of fact discovery, before the date for dispositive motions is established. If the case does not settle at that time, the Court will confer with counsel and issue dates for dispositive motions through trial. The parties are free to engage in other ADR at any time and are encouraged to contact the Court for assistance to that end.

Civil Cases: Motion Practice

Before filing a motion, the movant must seek concurrence under E.D. Mich. Local Rule 7.1(a), engaging in a good faith effort to *meet or to have a real-time conversation* (via in-person, video conference, or telephone) with opposing counsel to attempt to obtain their agreement with the relief sought.

Motions will be decided on the briefs unless the Court determines that oral argument would be necessary or helpful. If needed, the Court's case manager will send out a notice of the hearing date.

No summary judgment motions may be filed before the end of discovery unless the Court grants leave to do so.

Civil Cases: Pretrial

In addition to the provisions of E.D. Mich. Local Rule 16.2, the Court sets forth its other requirements for the proposed Joint Pretrial Order in its *Civil Case Practice Guidelines*. The proposed Joint Pretrial Order is due before the Final Pretrial Hearing. The Final Pretrial Hearing is typically held 1–2 weeks before the first day of trial.

Civil Cases: Jury Instructions

The parties must meet and confer to discuss jury instructions in advance of the Final Pretrial Hearing. The parties must jointly email the Court's case manager one set of Stipulated Proposed Jury Instructions. At the same time, for any disputed instruction, the parties must separately submit a set of Proposed Alternative Jury Instructions with objections and commentary, also in Microsoft Word.

Each jury instruction must be on a separate page and cite the specific legal authority that supports it, unless one does not exist. Each set of jury instructions must contain a Table of Contents. The Court has its own standard introductory and concluding instructions, and therefore counsel is directed to concentrate on the jury instructions related to their respective claims and defenses.

Civil Cases: Exhibits

The parties must submit an Exhibit List to the Court in advance of the Final Pretrial Hearing. To that end, the parties must meet and confer to discuss the admissibility of each intended physical exhibit. Once a party has inspected an exhibit that the opposing party is introducing as evidence, the exhibit's evidentiary foundation will be presumptively established unless an objection is filed contesting the exhibit's foundation. *Objections to exhibits must be brought to the Final Pretrial Hearing.*

All exhibits must be marked and will be received before trial—unless objected to, as explained previously. They will be considered during trial when proper. The parties may not use the same identifiers for any of their exhibits; each party must use a different consecutive numbering system (i.e., numbers used by one party must not be used by any other party). The preferred method is the traditional "Plaintiff's Exhibit 1" (yellow) and "Defendant's Exhibit A" (blue) stickers, but any clearly marked method is acceptable.

During trial, counsel must track all admitted exhibits. In a jury trial, admitted exhibits should be ready to be given to the jury foreperson before closing instructions so jury deliberations are not delayed.

The parties are encouraged 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, the party must prepare exhibit books for the Court and each juror. Whether or not exhibits are presented electronically, two copies of an exhibit book should be prepared for the Court and one must be made available to any witness who is to be questioned about an exhibit.

Civil Cases: Trials

The Court sets a firm trial date in consultation with counsel following the close of discovery and the conclusion of the parties' ADR efforts. The first day of trial will usually commence at 9:00 a.m. ET. All other trial days will typically take place from 8:30 a.m. to 4:00 p.m. ET, with a lunch break.

Civil Cases: Jury Selection

The Court will conduct the initial *voir dire*, but counsel will be permitted to question prospective jurors for a limited time.

Alternatively, the parties may choose to have the assigned magistrate judge select the jury. If the parties want the assigned magistrate judge to select the jury, then all the parties must sign a Consent Form and submit it to the district judge's chambers for approval and referral at least one week before the Final Pretrial Conference. A sample Consent Form can be found here.

Civil Cases: Jury Deliberation

The Court typically will impanel eight jurors and allow all to deliberate. Unless stipulated by the parties, it is assumed that civil jury verdicts will be unanimous. Jurors typically will be allowed to take notes during trial, but they will receive limiting instructions with respect to their permissible consideration of those notes.

Civil Cases: Bench Trials

Parties should submit their respective Proposed Findings of Fact and Conclusions of Law 30 days after either the conclusion of trial or the filing of the certified transcript if ordered.