General Matters: Discovery

A. MEET & CONFER REQUIREMENT

The Federal Rules of Civil Procedure are designed to place discovery in the hands of counsel. As a result, the Court expects the parties and counsel to conduct discovery cooperatively and fairly. The Court also believes there should be few discovery disputes requiring its intervention, and attorneys are expected to undertake good-faith efforts to resolve discovery matters among themselves without unduly taxing Court resources. The Court further encourages counsel to attempt to resolve all discovery matters before a motion is filed. *See* E.D. Mich. L.R. 7.1.

This meet-and-confer requirement is not satisfied by an email exchange or message left unanswered, or by mere compliance with L.R. 7.1, which requires the moving party to seek concurrence in a motion. Rather, the Court requires **actual voice contact with opposing counsel**. When a conference has not been conducted, the moving party is to submit a written statement to the Court outlining all steps taken to participate in a conference with the opposing party. Any motion that fails to meet these requirements **will be struck** from the record. Further, any party refusing to appear for the conference or confer as the Court directs may be subject to costs and/or sanctions.

Similarly, if a motion addresses discovery issues and a hearing is scheduled, counsel for each of the parties or a party without counsel shall also meet and confer in accordance with E.D. Mich. L.R. 37.1. The parties are therefore directed to meet and confer **face-to-face or video conference** if feasible, before the hearing.

B. INFORMAL DISCOVERY CONFERENCE

When the district judge has expressly referred all discovery disputes to the magistrate judge, the Court is available to conduct an informal discovery conference to resolve pressing discovery disputes if all relevant parties agree that a discovery conference could be helpful.

To request an informal discovery conference, the movant must email the Court at efile_ivy@mied.uscourts.gov within seven days seeking an informal discovery conference with the Court via Zoom. The email must include the following:

i. Three separate proposed dates and times mutually agreed upon by the parties for the conference;
ii. The date(s) of the parties' meet-and-confer effort(s);
iii. The discovery cut-off date;
iv. A joint neutral statement of each issue in dispute and the specific relief requested; and
v. A summary of each party's position on the dispute(s). Each party's description should be no more than three sentences per dispute and may include citations to pertinent authority.

The movant must copy opposing counsel on the email.

After its review of the email request, the Court will schedule the discovery conference, if appropriate, or advise the parties to proceed by motion under Local Rule 37.2.

Tentative rulings may be issued as appropriate and could be issued prior to or during the discovery conference.

C. DISCOVERY MOTION HEARING

In a particular case, when there are multiple discovery disputes or when many motions are filed, the Court may set the matter for a general discovery conference or direct the parties to conduct a Rule

26(f) conference.

If the discovery matter is scheduled for a hearing, counsel **must** conduct a new meet-and-confer conference and file notice of any resolved issues no later than 5 business days prior to the date of hearing.

D. RESPONDING TO DISCOVERY REQUESTS

In responding to discovery requests, **form or boilerplate objections shall not be used** and, if used, may subject the party and/or its counsel to sanctions. Objections must be specific and state an adequate individualized basis. *See Wesley Corp. v. Zoom T.V. Products, LLC*, No. 17-10021, 2018 WL 372700, at *4 (E.D. Mich. Jan. 11, 2018) (Cleland, J.); *Siser N. Am., Inc. v. Herika G. Inc.*, 325 F.R.D. 200, 209-10 (E.D. Mich. 2018) ("Boilerplate objections are legally meaningless and amount to a waiver of an objection."); *accord Strategic Mktg. & Rsch. Team, Inc. v. Auto Data Sols., Inc.*, No. 2:15-CV-12695, 2017 WL 1196361, at *2 (E.D. Mich. Mar. 31, 2017) ("Boilerplate or generalized objections are tantamount to no objection at all and will not be considered by the Court.").

Finally, a party objecting to a request for production of documents as unduly burdensome must submit affidavits or other evidence to support its objections. *In re Heparin Prods. Liab. Litig.*, 273 F.R.D. 399, 410-11 (N.D. Ohio 2011); *Sallah v. Worldwide Clearing, LLC*, 855 F. Supp. 2d 1364, 1376 (S.D. Fla. 2012); *Convertino v. U.S. Dep't of Justice*, 565 F. Supp. 2d 10, 14 (D.D.C. 2008).

General Matters: Conferences

I. Scheduling/Status

When a case has been referred for all pretrial proceedings or for all discovery, the Court may hold a status, scheduling, or discovery conference as needed. If all parties agree that an informal conference would be productive, counsel may request such a conference by emailing the Court at efile_ivy@mied.uscourts.gov. This conference will require the personal appearances of all counsel of record.

In a particular case, where discovery disputes appear to multiply needlessly or where many motions are filed, the Court may set the matter for a general discovery conference or direct the parties to conduct a Rule 26(f) conference prior to meeting with the magistrate judge.

II. Settlement Conferences

The Court views facilitation as a valuable part of the litigation process and encourages counsel to consider voluntary settlement conferences when appropriate. The Court is willing to serve as a facilitator upon the parties' request and/or order of reference. Settlement conferences are generally conducted in person, and set to begin at 10:00 a.m. The parties should be prepared to devote the entire day to the conference.

1. REQUIRED PARTICIPANTS

   Each party, together with its lead trial counsel or counsel of record who have primary responsibility for discovery, must attend the conference unless expressly excused by the Court. If there are other parties that are necessary to settle the case, counsel must arrange for their attendance. Due to the confidential nature of the Settlement Conference, individuals other than those listed herein as a required participant will not be allowed to participate or receive communications or information related to this mediation.

   Individuals with full settlement authority shall be personally present at settlement conferences. For plaintiff(s), "full settlement authority" means the authority to dismiss the complaint with prejudice in exchange for a settlement. For defendant(s), "full settlement authority" is defined as the full relief requested in the lawsuit and/or the relief requested by the last settlement demand. A party will not be permitted to have only counsel attend the settlement conference without the Court's prior approval. If approval is granted, the excused individual must be available by telephone or video conference, without delay, throughout the settlement conference.

   An insured party need not attend unless the settlement decision will be made in part by the insured. When the settlement decision will be made in whole or part by an insurer, the insurer must send a representative in person with full and complete authority to make settlement decisions. A corporate party must send an authorized representative with full and complete authority to make settlement decisions and to bind the company. A governmental entity must send an authorized representative with full and complete authority to make settlement decisions and to bind the governmental entity, understanding that some settlement decisions may be subject to further approval by an elected municipal board. The Court encourages and invites lienholders whose rights could affect the likelihood of resolving the matter to attend the conference and/or be reachable by telephone.

   Settlements of litigation involving governmental bodies frequently must be formally approved

by elected officials such as a county board or city council, or by senior members of a governmental agency. The requirement that negotiators have full settlement authority is slightly modified in a case involving a government agency, in that government negotiators must come to a settlement conference with authority to affirmatively recommend that final decision-makers adopt a settlement agreed to at a settlement conference and must go on the record in court saying so.

A party appearing at the conference without full settlement authority will be in violation of this directive. If a party appears at the conference with authority to settle for only less than full settlement authority, the conference will be rescheduled. Failure to produce the appropriate person(s) at the conference may result in an award of costs and attorney fees incurred by the other parties in connection with the conference and/or sanctions against the noncomplying party and/or counsel.

2. PROCEDURES PRIOR TO THE CONFERENCE

The parties shall adhere to the procedures below:

At least fourteen days prior to the settlement conference, counsel for the parties shall meet and confer in a good faith attempt to settle the case or to narrow the areas of disagreement. They shall exchange good-faith and realistic offers to settle and shall explain to each other why their demand or offer is reasonable. If a demand or offer is rejected, the attorney who rejects shall explain to opposing counsel the reasons for the rejection. Following this meeting, if the parties agree the settlement conference will be an exercise in futility, the parties are directed to email the Court at efile_ivy@mied.uscourts.gov seeking an informal conference.

Five days before the settlement conference, the parties shall submit confidential, *ex-parte* settlement statements directly to the Magistrate Judge's chambers. The statement must be delivered by email to chambers (efile_ivy@mied.uscourts.gov). DO NOT FILE THESE STATEMENTS WITH THE COURT. The statements will not become part of the case record, and parties are directed to be candid in their statements. **The statements shall be limited to ten pages (double-spaced; 14-point font) and shall include the following:**

1. A brief description of the background and nature of the case;
2. The party's perceived strengths;
3. The party's perceived weaknesses;
4. A statement identifying each cause of action at issue, and the remedies available under each of those causes of action;
5. A summary of all settlement discussions that have taken place to date, including the **specific amount** of any offers/counter-offers that have been made; and
6. The **specific amount** of the party's opening offer or demand **to be shared with the opposing party to initiate settlement negotiations**. Note that because opening offers and demands are used to initiate settlement negotiations, they are not treated as confidential.

While the settlement statement may summarize the facts, claims and defenses, it is not a summary judgment motion, and counsel should be mindful that the Magistrate Judge facilitating settlement is not trying the case or deciding dispositive motions at this point.

3. PROCEDURES DURING THE CONFERENCE

One attorney for each party should be prepared to give a short summary of their case at the

beginning of the settlement conference. The summary should identify the remaining issues in the case and the evidence that supports the party's position on those issues.

At the settlement conference, the parties and their attorneys are expected to conduct themselves in a business-like manner and to negotiate in good faith. Posturing and other theatrics are counter-productive and prohibited.

Parties are encouraged to be frank and open in their discussions. As a result, statements made by any party during the Settlement Conference are not to be used in discovery or for any other purpose, will not be admissible at trial or other proceedings, and may not be disclosed to anyone other than the participants without an order of the court. E.D. Mich. LR 16.3(d); Fed. R. Evid. 408(a). Any documents submitted for the Settlement Conference will be maintained in Chambers and will be destroyed after the Conference.

In the event of a virtual settlement conference, all participants confirm that they will be in a private location and will disclose if anyone outside of the mediation process enters their private location. No participants shall record any part of the mediation session by any electronic means.

The Court sends a Notice with detailed information related to attendance and other matters. Scheduling and all other contact about settlement conferences is handled by Sara Krause, Case Manager (sara_krause@mied.uscourts.gov).

General Matters: Civility Requirements

All attorneys and all *pro se* litigants shall acquaint themselves, and conduct themselves in accordance, with both the letter and the spirit of the Civility Principles promulgated by this Court, and consistent with Fed. R. Civ. P. 1, "to secure the just, speedy, and inexpensive determination of every action."

General Matters: Social Security

Social security cases generally seek a judicial review of the administrative agency's final decision denying benefits. Oral arguments are generally not held.

The Court expects that a proof of service will be filed within 14 days after service of the complaint on the defendant, the local U.S. Attorney's Office and the Attorney General of the United States in Washington D.C. If service of the complaint is not shown on the docket, the Court will issue an order directing plaintiff to show cause why a proof of service has not been filed.

After the filing of the government's answer, along with the transcript of the agency hearing, the Court will schedule dates for filing cross motions for summary judgment. The dates are designed to provide sufficient time for counsel to file the motion. Requests for adjournments must show good cause in order to be considered. The matter is ready for decision as of the date the motions are due or filed, whichever comes first.

General Matters: Pro Se Prisoner

These matters are decided without oral argument. Notices, Orders, and Reports & Recommendations are served by U.S. mail on parties who are not represented by counsel or are not e-filers. The Court does not have funds to appoint counsel but will consider appointment of pro bono counsel in appropriate cases.

Pro Se litigants are expected to adhere to the Federal Rules of Civil Procedure. The Court does not give legal advice to either side and expects that pleadings will be in appropriate form. Letters to the Court are not pleadings and may be returned to the sender, if deemed inappropriate. A standing order for the conduct of prisoner civil rights cases will be mailed to the parties when a case is referred for all pretrial proceedings.

General Matters: Pro Se Habeas Cases

These matters are decided without oral argument. Notices, Orders, and Reports & Recommendations are served by U.S. mail on parties who are not represented by counsel or are not e-filers. The Court may consider appointing counsel under the Criminal Justice Act in appropriate cases. *Pro se* litigants are expected to adhere to the Federal Rules of Civil Procedure. The Court does not give legal advice to either side and expects that pleadings will be in appropriate form. Letters to the Court are not pleadings and may be returned to the sender, if deemed inappropriate.

General Matters: Amended Pleadings

Motions to amend pleadings must comply with E.D. Mich. L.R. 15.1. Specifically, the moving party is required to reproduce the *entire proposed amended pleading* and may not incorporate any prior pleading by reference.

The moving party must file the entire proposed amended pleading as an attachment to any motion under Fed. R. Civ. P. 15. The attachment must, in some way, identify the revisions to the pleading. For example, proposed changes can be highlighted, underlined, or filed in a tracked-changes format.

General Matters: Trials

1. **Types of Trials**

   The Court handles civil trials, jury or non-jury, with the consent of the parties and an order of reference from the district judge. See, 28 U.S.C. § 636(c). These matters will be set for a date certain. Appeals are to the Sixth Circuit Court of Appeals.

   The Court handles misdemeanor trials, pleas, and sentencing with the consent of the parties and an order of reference from the District Judge. See Fed. R. Crim. P. 58. Appeals are to the district judge.

2. **Jury Selection**

   The Court often selects juries in cases where the trial may be held before another judge. Counsel and the parties must consent in writing. A form will be provided to counsel, and any party not represented by counsel, in advance of the jury selection.

   Counsel will exchange *voir dire* questions in advance. The Court will meet briefly with trial counsel, typically in chambers, several days prior to jury selection to answer any questions and resolve any disputes as to the potential *voir dire* questions. No additional peremptory challenges are granted unless requested in advance by motion.

   In civil cases, the strike method is used. Under this method, the number of individuals who will be the jury (e.g., 6) plus the total number of peremptory challenges (e.g., 3 + 3) are seated. *Voir dire* is conducted on this group and when the group has been passed for cause, peremptory challenges are exercised at the bench without additional questioning.

   In criminal cases, 12 persons plus alternates are seated in the jury box. Challenges are made separately as to the jury and the alternate jurors in conformance with Fed. R. Crim. P. 24. However, counsel may agree to exercise challenges on the group as a whole instead.

   In both civil and criminal cases, the Court will ask the preliminary questions regarding background information, scheduling issues and will then conduct *voir dire*. Counsel may be asked to approach the bench at the conclusion of the Court's *voir dire* to suggest follow-up questions.

3. **Trial Exhibits**

   Each party shall provide the Court with a tabbed binder containing courtesy copies of its exhibits.

Civil Cases: A. Authority

Pursuant to 28 U.S.C. § 636(b)(l)(A) and (B), and an order of reference from the district judge, motions will be decided either by Report & Recommendation or Order. Dispositive motions may be referred by the district judge for Opinion and Order upon the consent of the parties, see 28 U.S.C. § 636(c).

Civil Cases: B. Scheduling

Except in *pro se* cases and *pro se* prisoner cases, oral argument is generally heard on dispositive motions that are referred for Reports and Recommendations and non-dispositive motions that are referred for hearing and determination.

In instances where the Court has issued a briefing schedule on a motion, that schedule applies. In all other instances, the parties should follow Local Civil Rule 7.1(e).

Except when requested by the Court (e.g., confirming an adjournment or withdrawal of a motion), letters are not to be sent to the Court. Letters directed to the Court, even if copied to the opposing counsel, may be deemed improper communications and may be returned to the sender.

In general, out of town counsel may not appear by telephone. In the event of inclement weather or other circumstances, counsel should immediately contact the Court.

Civil Cases: C. Briefing

The Court adheres to L.R. 5.1 regarding format and form and L.R. 7.1, with respect to motion practice. Deviations from the length or timing of briefs under these Local Rules must be by leave of the Court. Failure to file timely briefs may result in those briefs being stricken.

Civil Cases: D. Courtesy Copies

Courtesy copies are no longer required to be sent to chambers unless expressly requested by the Court.

Civil Cases: E. Orders

While the Court will generally issue its own orders, counsel may bring an appropriate proposed order granting or denying the motion to the hearing. Proposed orders should not be e-filed. If a motion is resolved prior to the hearing or decision, the parties shall submit a stipulation and proposed order through the "Utilities" menu on CM/ECF or e-file a notice withdrawing the motion.