

INFORMATION and GUIDELINES

for Civil Practice before

The Honorable Janet T. Neff
United States District Judge

United States District Court
for the Western District of Michigan

July 2008

Honorable Janet T. Neff
401 Ford Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503-2363

TABLE OF CONTENTS

Directory	2
I. Calendar	3
II. Alternative Dispute Resolution	3
III. Judges' Courtesy Copy Policy	3
IV. Motions	3
A. Dispositive	3
B. Non-Dispositive	5
V. Ex Parte Applications	6
VI. Orders	6
VII. Transcripts of Court Proceedings	6
VIII. Stipulations	6
IX. Final Pretrial Conference	7
A. Matters to be Addressed	7
B. Submissions	7
C. Preparation of Order	7
X. Trial	10
A. Courtroom Decorum	10
B. Daily Schedule and Time Frames	11
C. Recesses	11
D. Preparation for Bench Trial	11
E. Preparation for Jury Trial	11

F. Jury Selection	12
G. Witnesses	13
H. Exhibits	13
I. Deposition Designations and Motions in Limine	14
Attachment - Exhibit 1	15

DIRECTORY

HONORABLE JANET T. NEFF
United States District Judge

United States District Court
401 Ford Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503-2363
Telephone: (616) 456-6774
FAX: (616) 456-6947

Judicial Assistant - Chris Bockheim

Law Clerks - Kathleen Geiger
Rita Buitendorp

Case Manager - Susan A. Smith
Telephone: (616) 732-2746

Court Reporter - Kathy Anderson
Telephone: (616) 914-2384

United States District Court Clerk's Office
Ronald C. Weston, Sr., Clerk
399 Ford Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503-2363
Telephone: (616) 456-2381

Judge Neff's office is open Monday through Friday from 8:30 AM to 5:00 PM.

I. Calendar

The Case Manager is in charge of all calendar matters. If you need a scheduling change, you must first reach agreement with opposing counsel and then contact the Case Manager. In situations where an opposing attorney will not consent to the proposed change, the party requesting it should send a letter to the Case Manager, stating reasons for the change. It is incumbent upon the party requesting a change to notify the opposing party of the request and, if granted, the new date.

Do not contact the Judge or her law clerks to request a scheduling change.

II. Alternative Dispute Resolution

In the interest of conserving judicial resources, this Court will require the parties to participate in some form of Alternative Dispute Resolution. Voluntary Facilitative Mediation is encouraged, but the parties are free to consider other methods as permitted by W.D. Mich. LCivR 16.2. At a minimum, the Court will schedule a settlement conference before a magistrate judge prior to the final pretrial conference. The parties are under an ongoing obligation to engage in good faith settlement negotiations.

III. Judges' Courtesy Copy Policy

All attorneys must comply with Administrative Order No. 07-026, which requires attorneys to provide courtesy copies of all dispositive motion papers filed electronically.

IV. Motions

A. Dispositive

1. Pre-Motion Conference

- a. **A pre-motion conference with the Court is required before filing any dispositive motion**, except no pre-motion conference is required before filing a post-trial motion, a bankruptcy appeal, or a dispositive motion in a case referred to a magistrate judge.
- b. To arrange a pre-motion conference, the movant shall file a Pre-Motion Conference Request, not to exceed three (3) pages, with a brief description of the grounds for such motion. Each party served with a Pre-Motion Conference Request must file a Response to Pre-Motion Conference Request within seven (7) days; the response shall not exceed three (3) pages. Opposition to requests for a pre-motion conference will not be considered.

- c. At the pre-motion conference, the Court will determine a briefing schedule. In cases in which the party desires to file a dispositive motion before filing its answer, the party shall simultaneously move for an extension of its time to answer at the time a pre-motion conference is requested.
2. Statements of Material Facts on Motion for Summary Judgment
 - a. Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, there shall be annexed to the motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Each paragraph must be followed by citation to the evidence. Failure to submit such a statement may constitute grounds for denial of the motion.
 - b. There shall be annexed to the response to the motion for summary judgment a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried. Each paragraph must be followed by citation to the evidence.
 - c. Each numbered paragraph in the statement of material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.
3. Filing of Dispositive Motion Papers
 - a. **No motion papers shall be filed until the motion has been fully briefed.**
 - b. The movant must serve each party on the briefing schedule due date with a hard copy of the motion, all supporting papers, and a cover letter stating whom the movant represents and which documents are attached. A copy of the proof of service only shall be filed.
 - c. Opposing parties must serve the movant on the briefing schedule due date with two copies of their response papers (one copy is for inclusion in the later submission to Chambers pursuant to [Administrative Order 07-026](#)). A copy of the proof of service only shall be filed.
 - d. Any further motion papers shall be served in the above manner on the due date. A copy of the proof of service only shall be filed.

- e. **Each party is responsible for filing its motion papers via ECF on the day the motion is fully briefed, with the moving party first filing the motion. Once the moving party has filed the motion, response and reply documents may be electronically filed.** Pursuant to [Administrative Order 07-026](#), upon filing of the motion, the movant shall also provide Chambers with a full set of courtesy copies of the motion papers together with a cover letter specifying each document in the package.
4. Dispositive motions must adhere to W.D. Mich. LCivR 7.2. If dispositive motions are based on supporting documents such as depositions or answers to interrogatories, then only those excerpts that are relevant to the motion shall be filed.
5. Oral argument may be requested pursuant to W.D. Mich LCivR 7.2(d). The Court may schedule oral argument or may, in its discretion, dispose of the motion without argument at the end of the briefing schedule. To request oral argument on a motion, state “ORAL ARGUMENT REQUESTED” in the caption and the heading of the brief.
6. In cases where oral argument is heard and counsel wishes to digitize exhibits for projection on the large screen in the courtroom, projection of exhibits is accomplished using the evidence cart in the courtroom. Scheduling the use of the evidence cart can be accomplished by sending an e-mail to courttech@miwd.uscourts.gov or by calling (616) 456-2523. Information concerning the features of the evidence cart is available at the court's website: www.miwd.uscourts.gov (click on *Courtroom Technology* link). *Counsel is also advised to notify chambers – in advance of the motion hearing – of its intentions to use technology resources in the courtroom.*

B. Non-Dispositive

Non-dispositive motions shall be filed in accordance with W.D. Mich. LCivR 7.3. They will be referred to a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A). In accordance with 28 U.S.C. § 471 *et seq.*, it is the policy of this Court to prohibit the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion. *See* W.D. Mich. LCivR 7.1(d).

V. Ex Parte Applications

Ex parte applications are disfavored and should be avoided except in the most extreme circumstances. Where such cases arise, the party submitting the application must state in the application that opposing counsel has been contacted in an attempt to resolve the situation through normal motion practice and why such an option is unsatisfactory, or, why contacting the opposing party would be inappropriate under the circumstances. W.D. Mich. LCivR 7.1(d). Applications for temporary restraining orders must comply strictly with the specific requirements of Fed. R. Civ. P. 65.

VI. Orders

All proposed orders should be filed via ECF.

If the Court has instructed a prevailing party to submit an order, then the prevailing party must have the proposed order approved by opposing counsel before it is submitted to the Court for the Judge's signature. In the event of a disagreement as to the form of an order, the prevailing party may bring a motion to settle the order.

Whenever a motion to settle an order is made, costs and attorney's fees will be awarded against an attorney who unreasonably withholds consent as to form.

VII. Transcripts of Court Proceedings

If a transcript of a court proceeding is desired, Judge Neff's Court Reporter, Kathy Anderson, should be contacted directly, either by telephone (616) 914-2384 or by e-mail, kathy_anderson@miwd.uscourts.gov and a confirming letter sent.

VIII. Stipulations

All stipulations should be submitted by electronic filing for the judge's approval with a proposed order, or the stipulation itself can include the phrase "IT IS SO ORDERED" with a place for a signature and date.

IX. Final Pretrial Conference

A. Matters to be Addressed

1. Counsel shall be present one-half hour prior to the final pretrial conference for an in-chambers conference.
2. At the final pretrial conference, the parties and the Court will formulate a plan for trial, including facilitating the admission of evidence; consider the prospects of settlement; and consider such other matters as may aid in the trial or other disposition of the action, including
 - a. Jury Selection Procedure, and
 - b. Jury Instructions.
3. Unless excused upon a showing of good cause, the attorney who is to conduct the trial shall attend the pretrial conference and shall come with full authority to act in all respects, or shall be accompanied by a representative of the party with such authority.

B. Submissions

1. At least **five (5) business days** prior to the final pretrial conference, counsel shall file:
 - a. Trial briefs.
 - b. Proposed voir dire questions. The Court will conduct voir dire, taking into account questions proposed by the attorneys that have been submitted for review before the final pretrial conference. Attorneys may be permitted limited additional voir dire.

C. Preparation of Order

Unless directed otherwise by this Court, a proposed pretrial order, entitled “Final Pretrial Order,” shall be prepared jointly by counsel and filed **five (5) business days** prior to the final pretrial conference in the following form:

A final pretrial conference was held on the ____ day of _____. Appearing for the parties as counsel were:

(List the counsel who will attend the pretrial conference.)

1. Exhibits: The following exhibits will be offered by the plaintiff and the defendant:

(List jointly [JT EX __] all exhibits, including demonstrative evidence and summaries of other evidence. Exhibits expected to be used solely for impeachment purposes need not be identified until trial. The exhibits shall be identified on a form similar to Exhibit 1, attached to these Guidelines. The complete list of exhibits on a form similar to Exhibit 1 must be produced at the final pretrial conference. Failure to list an exhibit required to be listed by this order will result, except upon a showing of good cause, in a determination of non-admissibility at trial. Where the parties are unable to agree on the inclusion of an exhibit, plaintiff shall use numbers [1-99]; defendant shall use letters [A-Z]. Indicate with respect to each exhibit whether and for what reason its admissibility is objected to. Objections not contained in the Pretrial Order, other than objections under Evidence Rule 402 or 403, shall be deemed waived except for good cause shown. *See* Fed. R. Civ. P. 26(a)(3).)

2. Uncontroverted Facts: The parties have agreed that the following may be accepted as established facts:

(State in detail all uncontroverted facts.)

3. Controverted Facts and Unresolved Issues: The factual issues remaining to be determined and issues of law for the Court's determination are:

(Set out each issue that is genuinely controverted, including issues on the merits and other matters that should be drawn to the Court's attention.)

4. Witnesses:

- a. Non-expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

(List names, addresses, and telephone numbers of all non-experts who will testify. Indicate whether they are expected to testify in person, by deposition videotape, or by reading of their deposition transcript. Indicate all objections to the anticipated testimony of each non-expert witness. For each witness listed, indicate whether the witness **will be** called or merely **may be** called to testify.)

- b. Expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

(List names, addresses, and telephone numbers of all experts who will testify, providing a brief summary of their qualifications and a statement of the

scientific or medical field(s) in which they are offered as experts. Indicate whether they will testify in person, by deposition videotape, or by reading of their deposition transcript. Indicate all objections to the qualifications or anticipated testimony of each expert witness.)

- c. It is understood that, except upon a showing of good cause, no witness whose name and address does not appear in the lists required by subsections (a) and (b) will be permitted to testify for any purpose, except impeachment, if the opposing party objects. Any objection to the use of a deposition under Fed. R. Civ. P. 32(a) not reflected in the Pretrial Order shall be deemed waived, except for good cause shown.

5. Depositions and Other Discovery Documents:

All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the plaintiff and the defendant are:

(Designate portions of depositions by page and line number. Designate answers to interrogatories and requests for admissions by answer or request number. Designation need not be made of portions that may be used, if at all, as impeachment of an adverse party. Indicate any objections to proposed deposition testimony, answers to interrogatories, and admissions.)

- 6. Length of Trial: Counsel estimate the trial will last approximately _____ full days, allocated as follows: _____ days for plaintiff's case; _____ days for defendant's case; _____ days for other parties.

- 7. Form of Alternative Dispute Resolution: The form of Alternative Dispute Resolution selected was _____. The outcome was unsuccessful for the following reasons: _____.

- 8. Prospects of Settlement: The current status of settlement negotiations is:

(Indicate persons present during negotiations, progress toward settlement and issues that are obstacles to settlement.)

The proposed Final Pretrial Order shall be signed by all counsel, signifying their acceptance. Upon approval by the Court, with such additions, deletions, or modifications as are necessary, the Final Pretrial Order will be entered.

X. Trial

A. Courtroom Decorum

The purpose of this paragraph is to describe certain basic principles concerning courtroom behavior and decorum. The requirements stated in this rule are minimal, not all-inclusive, and are intended to emphasize and supplement, not supplant or limit, the ethical obligations of counsel under the Rules of Professional Conduct or the time honored customs of experienced trial counsel. These requirements apply to all counsel and all persons at counsel table.

1. This Court expects all attorneys and parties to act with courtesy and respect toward everyone in the courtroom. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses. Address all remarks to the Court, not to opposing counsel. Refer to all persons, including witnesses, other counsel and the parties, by their surnames and not by their first or given names.
2. Please be careful with the courtroom furniture. For example, do not put briefcases with metal feet on the tables.
3. Stand near the lectern while examining a witness and making statements to the jury, except that counsel may approach the clerk's desk or the witness for purposes of handling or tendering exhibits. The recording system picks up voices only when they are speaking into a microphone.
4. Offers of, or requests for, a stipulation should be made privately — not within the hearing of the jury.
5. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, and the like, as manifestations of approval or disapproval, during the testimony of witnesses or at any other time, are prohibited.
6. Cell phones or other electronic devices shall be in silent mode or turned off. The Court reserves the right to take appropriate action for violation of this policy.
7. Water is provided at counsel table and may be brought into the courtroom in appropriate containers. No other beverages are allowed.
8. Gum chewing and eating are prohibited in the courtroom.

B. Daily Schedule and Time Frames

Trial begins at 9:30 a.m. and recesses between 4:30 - 5:00 p.m. There will be a 20 minute break mid-morning and mid-afternoon and a 1½ hour lunch break. This schedule is subject to the other demands of the docket. Counsel must have enough witnesses to fill up the day.

C. Recesses

At each recess, outside the presence of the jury, counsel will be asked if there is anything that should be raised before the next session. Counsel may not be able to anticipate everything, but many matters should and will be taken up during the recesses.

D. Preparation for Bench Trial

1. The parties in a bench trial shall file the following not later than **three (3) business days** prior to the commencement of the trial:
 - a. A joint statement of the case and statement of the elements that must be proven by each party. If the parties are unable to agree on the language of a joint statement of the case, then separate, concise, non-argumentative statements shall be filed.
 - b. Proposed Findings of Fact and Conclusions of Law
2. The parties are required to submit a copy of the joint statement of the case and statement of the elements, and the proposed findings of fact and conclusions of law compatible with IBM computer/Corel WP 9.0 by e-mail to Judge Neff's Judicial Assistant, Chris Bockheim at chris_bockheim@miwd.uscourts.gov and Judge Neff's Case Manager, Susan A. Smith at susan_smith@miwd.uscourts.gov.

E. Preparation for Jury Trial

1. The parties shall jointly file the following not later than **three (3) business days** prior to the trial:
 - a. A joint statement of the case and statement of the elements that must be proven by each party. Unless the case is very complex, the summary should not exceed one paragraph. If the parties are unable to agree on the language of a joint statement of the case, then separate, concise, non-argumentative statements shall be filed. The purpose of the summary is to acquaint the jury

with the nature of the case and to provide a basis for certain voir dire questions. The statement(s) of the case will be read to the prospective jurors during jury selection. The elements that must be proven by each party will be included in the preliminary jury instructions.

- b. Joint proposed jury instructions. This Court uses Western District of Michigan's Standardized Jury Instructions for the preliminary and final instructions. A copy of these instructions is available on the Court's website (www.miwd.uscourts.gov).¹ The court generally uses O'Malley, Grenig & Lee's *Federal Jury Practice and Instructions* for those not covered in the standard set. Standard instructions may be submitted by number. Other non-standard instructions shall be submitted in full text, one per page, and include reference to the source of each requested instruction. Indicate objections, if any, to opposing counsel's proposed instructions, with a summary of the reasons for each objection.
 - c. Joint proposed jury verdict form(s).
2. The parties are required to submit a copy of the joint statement of the case and statement of the elements, joint proposed jury instructions, and joint proposed verdict form(s) compatible with IBM computer/Corel WP 9.0 by e-mail to Judge Neff's Judicial Assistant, Chris Bockheim at chris_bockheim@miwd.uscourts.gov and Judge Neff's Case Manager, Susan A. Smith at susan_smith@miwd.uscourts.gov.

F. Jury Selection

1. Counsel shall be present at 9:00 a.m. for an in-chambers conference on the day of jury selection.
2. The Court will seat a jury of 8 members, and all jurors shall participate in the verdict subject to Fed. R. Civ. P. 47(c) and 48.
3. A jury will generally be selected as follows:
 - a. The courtroom clerk will call 8 names for the jury panel, and such persons will be seated in the order they are called.

¹ The instructions are located within the Electronic Filing section. Both an E-Filing Login and a Password are necessary to access them. Once logged into the electronic filing section of the website, click Utilities, then select WDMI Attorney References, and then select Standard Civil Jury Instructions.

- b. The Court will conduct voir dire, taking into account questions proposed by the attorneys that have been submitted for review before the final pretrial conference. Attorneys may be permitted limited additional voir dire. The Court may sua sponte, in its discretion, excuse a juror for cause.
- c. Attorney challenges for cause will be heard at side bar. The Court will excuse any prospective juror for cause where appropriate, replace the excused juror, and the process will be repeated.
- d. When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges. *See* 28 U.S.C. §1870. Peremptory challenges will be exercised in writing away from the jury, and the Court will then excuse all peremptorily-challenged jurors.
 - (1) In the first round of challenges, plaintiff’s counsel will exercise its peremptory challenges first and defense counsel second.
 - (2) The challenged jurors will be replaced, and the process repeated in the same manner except defense counsel will exercise its peremptory challenges first during the second and all subsequent even-numbered rounds.
 - (3) The process repeats itself until there is a jury.
 - (4) In a case with multiple parties, the Court may allow additional peremptory challenges. *See* 28 U.S.C. §1870.

G. Witnesses

If a witness is not listed in the final pretrial order, then the Court will not allow either side to call the non-listed witness unless there is good cause shown. This, of course, does not apply to rebuttal witnesses. However, rebuttal experts must always be disclosed and listed in the final pretrial order.

H. Exhibits

If an exhibit has not been listed in the pretrial order, then it will not be admitted in the case-in-chief unless good cause is shown as to why it was not designated. All exhibits, charts, blow-ups, etc., must be shown to opposing counsel prior to the beginning of trial. Do not wait until the witness is on the stand to show these items to opposing counsel.

The exhibits shall be clearly identified. In cases where counsel wishes to publish the exhibits to the jury and the party intends to introduce more than 10 documents, counsel shall arrange to have

all exhibits digitized for projection on the large screen in the courtroom. Projection of exhibits is accomplished using the evidence cart in the courtroom. Scheduling the use of the evidence cart can be accomplished by sending an e-mail to courttech@miwd.uscourts.gov or by calling (616) 456-2523. Information concerning the features of the evidence cart is available at the court's website: www.miwd.uscourts.gov (click on *Courtroom Technology* link). *Counsel is also advised to notify chambers – in advance of trial – of its intentions to use technology resources in the courtroom.*

In addition, six notebooks with the exhibits shall be prepared before trial. The exhibits should be divided and tabbed with the exhibit numbers or letters. A list of the exhibits on a form similar to Exhibit 1 attached to these Guidelines should be located in the front of the notebooks. One set of notebooks is for the Court, one set for the Court's law clerk, one set is for the courtroom clerk, one set is for the use of the witnesses, and there should be a set of notebooks to be used by each party or counsel for the parties. When bringing a document to the attention of the Court and witnesses, counsel asking the questions should refer to the notebook volume and exhibit number.

Offer exhibits into evidence as soon as the foundation has been laid. Often, when counsel waits until the end of the examination or the case to make the offer, the witness has completely discussed the document during testimony and the document is not in evidence.

Offer exhibits that have identical foundation requirements in a group. It wastes time to lay a separate foundation on several identical kinds of documents, showing the witness one at a time. If they are all the same type of document, show the witness exhibits 1 through 10, ask the witness to identify the exhibits and lay a foundation (e.g., checking account statements of John Doe for the months January through June 2001). If the parties have stipulated to the admissibility of exhibits before trial, then those exhibits will be admitted as a group after opening statements and before the first witness is called. These stipulated exhibits can then be referenced without the necessity of establishing a foundation.

I. Deposition Designations and Motions in Limine

Deposition designations and motions in limine must be filed prior to the final pretrial conference. The Court will not entertain additional motions in limine or deposition designations unless good cause is shown.

