

INFORMATION and GUIDELINES

for Criminal Practice before

The Honorable Janet T. Neff
United States District Judge

United States District Court for the
Western District of Michigan

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

Revised: January 2023

TABLE OF CONTENTS

Directory	2
I. Calendar	2
II. Motions	2
A. Dispositive	2
B. Non-Dispositive	2
III. Ex Parte Applications	3
IV. Orders	3
V. Transcripts of Court Proceedings	3
VI. Stipulations	3
VII. Guilty Plea	3
VIII. Motions for Departure or Variance/Sentencing Memoranda	3
IX. Final Pretrial Conference	4
A. Submissions	4
B. Attendance	5
C. Motions	5
D. Matters to be Addressed	5
X. Trial	6
A. Courtroom Decorum	6
B. Daily Schedule and Time Frames	7
C. Recesses	7
D. Submissions for Jury Trial	7
E. Jury Selection	8

F. Exhibits	9
Attachment 1 - Exhibit List	11
Attachment 2 - Standard Voir Dire Questions	12

DIRECTORY

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United States District Judge

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I. Calendar

If you need a scheduling change, you must first reach agreement with opposing counsel and, if applicable, the probation officer and/or interpreter, before contacting Chambers. In situations where an opposing attorney will not consent to the proposed change, the party requesting it should submit a CM/ECF filing, stating reasons for the change.

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

II. Motions

A. Dispositive

Dispositive motions shall be filed and heard in accordance with W.D. Mich. LCrR 47.1. 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. This Court will hear oral argument on dispositive motions where requested, and where it appears that argument will be helpful. To request oral argument on a motion, state “ORAL ARGUMENT REQUESTED” in the caption and the heading of the brief.

In cases where counsel wishes to project evidence on the monitors in the courtroom, projection of exhibits is accomplished by using the electronic evidence presentation equipment in the courtroom. The evidence presentation allows for the projection of evidence on various monitors located at the bench, the witness stand, the lectern, the jury box, and the counsel tables. This technology eliminates the cumbersome process of handling paper evidence and its use is strongly encouraged. Counsel planning to use the equipment are required to contact the Court’s IT department well in advance of their court proceeding to inquire about equipment, training and practice sessions. Practice sessions and testing of the equipment must occur prior to the day of a scheduled court appearance. You may contact the Court’s IT department by sending an e-mail to courttech@miwd.uscourts.gov or by calling (616) 456-2523. Information concerning the features of the system are available at the court's website: www.miwd.uscourts.gov (click on *Judges’ Info/Judge Janet T. Neff/Courtroom Technology* tab). *Counsel is also required to notify Chambers – in advance of the hearing – of their intentions to use technology resources in the courtroom and coordinate the date and time of any practice sessions with Chambers.*

B. Non-Dispositive

Non-dispositive motions shall be filed in accordance with W.D. Mich. LCrR 47.2. They will usually 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 non-dispositive 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. LCrR 12.4.

III. Ex Parte Applications

Ex parte applications are disfavored and should be avoided except in the most extreme circumstances. Where such rare 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. LCrR 12.4.

IV. Orders

All proposed orders should be filed by means of the Court's CM/ECF system. Unopposed motions should include a proposed order.

V. Transcripts of Court Proceedings

If a transcript of a court proceeding is desired, contact the Court Reporter directly by e-mail.

VI. 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 the judge's signature and date.

VII. Guilty Plea

If the defendant anticipates entering a guilty plea, the plea should be scheduled before the duty magistrate judge at least one week prior to the date of the final pretrial conference. If the signed plea agreement has been filed, but the defendant has not entered a guilty plea at least five (5) days before the final pretrial conference, counsel remains obligated to timely file the final pretrial conference documents.

VIII. Motions for Departure or Variance/Sentencing Memoranda

Not less than fourteen (14) days before the date set for sentencing, any party seeking an upward or downward departure under the Sentencing Guidelines or a variance based on the application of the factors set forth in 18 U.S.C. § 3553(a), or both, must electronically file and serve a separate and clearly captioned motion seeking such relief. All sentencing memoranda, including memoranda in support of a motion for departure or variance, shall be electronically filed by the same date. **Counsel is strongly encouraged to electronically file a sentencing memorandum**

in all cases. Not less than seven (7) days before the date set for sentencing, any party may file a response to any previously filed motion or sentencing memoranda. Counsel must submit such motions and memoranda by the CM/ECF system and may move for leave to restrict access to the court, the probation office, attorneys of record for the government and for the relevant defendant, if sensitive or confidential information is contained therein. *Pro se* parties must file and serve such documents in paper, with proof of service on the opposing party. See [Administrative Order No. 22-RL-079](#) and [LCr 32.2](#). Any correspondence received by Chambers from defendant or from others with regard to defendant's character, will not be made a part of the record, nor be considered at the time of sentencing unless submitted on behalf of defendant by a CM/ECF filing and attached to counsel's sentencing memorandum. See [Administrative Order No. 07-031](#).

IX. Final Pretrial Conference

A. Submissions

1. At least **five (5) days** prior to the final pretrial conference, each party shall file:
 - a. Trial briefs (optional with defendant).
 - b. A joint statement of the case and statement of the elements of the charged offenses. Unless the case is very complex, the joint statement of the case 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, nonargumentative statements shall be filed. The purpose of the joint statement of the case is to summarize the nature of the case. [In a jury trial, the statement(s) of the case will be read to the prospective jurors during jury selection. The elements of the charged offenses will be included in the preliminary jury instructions.]
 - c. Proposed voir dire questions in jury trials. 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. Counsel is advised to review the standard voir dire questions posed by the Court as stated in Attachment 2. Counsel should submit only voir dire questions not included in this Court's standard voir dire questions. Attorneys may be permitted limited additional voir dire.

2. At least **five (5) days** prior to the final pretrial conference the parties are required to submit a copy of the joint statement of the case, statement of the elements of the charged offenses, and proposed voir dire questions in jury trials in an editable word processing format by e-mail to Judge Neff's Paralegal, Karen Lindstrom at karen_lindstrom@miwd.uscourts.gov.

B. Attendance

1. The attendance of defendant at the final pretrial conference is required.

C. Motions

1. Unless otherwise ordered by the Court, all pending motions shall be heard at the time of the final pretrial. Counsel shall refer to the criminal case management order deadline for all Motions in Limine.

D. Matters to be Addressed at the Final Pretrial Conference:

1. Status of any plea negotiations.
2. Jury selection procedure.
3. Number of witnesses expected to be called and estimated length of trial.
4. Identity of all expert witnesses, and agreement (if possible) upon the qualifications of expert witnesses.
5. Stipulations of uncontested facts.
6. Any evidentiary or other legal issues expected to arise at trial.
7. Admissibility of exhibits (if possible). The parties shall number and label their exhibits for identification prior to the final pretrial conference. Any party intending to introduce into evidence summaries pursuant to FED. R. EVID. 1006 must make available at or before the final pretrial conference copies of all such summaries and duplicates of the supporting documents summarized.
8. Jury instructions. This Court uses the Sixth Circuit's Criminal Pattern Jury Instructions (West Publishing).

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 paragraph 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 to refrain from making gestures, facial expressions, audible comments, and the like, as manifestations of approval or disapproval, during the testimony of witnesses or at any other time.
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. Remove hats when in the courtroom.

B. Daily Schedule and Time Frames

Trial begins at 8:30 a.m. and recesses generally between 3:30 - 4:00 p.m. There will be a break mid-morning and early afternoon and a 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. Submissions for Jury Trial

1. The parties shall jointly file by means of the Court's CM/ECF system, and submit in an editable word processing format by e-mail to Judge Neff's Paralegal, Karen Lindstrom at karen_lindstrom@miwd.uscourts.gov the following not later than **five (5) days** prior to the trial:

a. Joint proposed jury instructions. The parties shall electronically file **one joint** set of instructions. This Court uses the Sixth Circuit's Criminal Pattern Jury Instructions (West Publishing). A copy of these instructions is available on the Court's website (www.miwd.uscourts.gov) under the For Attorneys/Criminal Case Information tab.

- (1) Pattern instructions with no changes may be submitted by number, using the numbering system of the pattern instructions.
- (2) Each remaining instruction shall be submitted in full text, one instruction per page, in the order in which you propose they be given to the jury.
- (3) For pattern instructions with blanks or language in brackets, fill in the blanks and modify or delete the language, as applicable.
- (4) If you would like to change language on a pattern instruction, or submit additional instructions, you must indicate the source of the additional language or instruction.
- (5) Indicate objections, if any, to opposing counsel's proposed instructions, with a summary of the reasons and legal authority for each objection. Place each objection at the bottom of the specific instruction page. The parties must make every reasonable effort to agree on the substantive instructions stating the elements of the crime.

- b. Joint proposed jury verdict form(s).
2. Counsel are also required to submit exhibit lists and witness lists in an editable word processing format by e-mail to Judge Neff's Paralegal, Karen Lindstrom at karen_lindstrom@miwd.uscourts.gov.

E. Jury Selection

1. Counsel shall be present for an in-chambers conference one-half hour prior to the start of jury selection.
2. A jury will generally be selected as follows:
 - a. The courtroom clerk will call 14 people (by number) for the jury panel, and such persons will be seated in the order they are called.
 - 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. Counsel will be given a sheet of paper with the appropriate number of challenges identified.
 - (1) In the first round of challenges, the government will write its peremptory challenges and give the paper to defense counsel who will then write defendant's peremptory challenges. After defense counsel writes defendant's peremptory challenges, the paper is returned to the Court. The Court will then excuse the challenged jurors.
 - (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) No backstrikes are permitted.

- (5) In a case with multiple defendants, the Court may allow additional peremptory challenges. *See* 28 U.S.C. §1870.
3. Alternate juror seats are designated before jury selection for purposes of exercising peremptory challenges, but the jurors will not be informed of the designation until just prior to deliberation. FED R. CRIM. P. 24

F. Exhibits

1. **Five 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 Attachment 1 attached to these Guidelines should be located in the front of the notebooks. Two sets of notebooks shall be distributed to the Court, one set shall be distributed to the jurors/witnesses, and there should be a set of notebooks to be used by each party or counsel for the parties. Counsel is responsible for ensuring the accuracy of the notebook ultimately provided to the jurors at the conclusion of trial. 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.
2. The exhibits shall be clearly identified. In cases where counsel wishes to project evidence on the monitors in the courtroom, projection of exhibits is accomplished by using the electronic evidence presentation equipment in the courtroom. The evidence presentation allows for the projection of evidence on various monitors located at the bench, the witness stand, the lectern, the jury box, and the counsel tables. This technology eliminates the cumbersome process of handling paper evidence. Counsel planning to use the equipment are required to contact the Court's IT department well in advance of their court proceeding to inquire about the equipment, training and practice sessions. Practice sessions and testing of the equipment must occur prior to the day of a scheduled court appearance. You may contact the Court's IT department by sending an e-mail to courttech@miwd.uscourts.gov or by calling (616) 456-2523. Information concerning the features of the system are available at the court's website: www.miwd.uscourts.gov (click on *Judges' Info/Judge Janet T. Neff/Courtroom Technology* tab). *Counsel is also required to notify Chambers – in advance of the hearing – of their intentions to use technology resources in the courtroom and coordinate the date and time of any practice sessions with Chambers.*
3. As a general rule, all evidentiary and demonstrative exhibits 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.
4. Offer joint exhibits into evidence on the first day of trial for admittance. 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.

5. 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.

ATTACHMENT 2 - STANDARD VOIR DIRE QUESTIONS

1. Do you have any health, hearing, vision or other special disability or problem that would make serving as a member of this jury difficult or impossible?
2. This trial is expected to take ___ days. Does that prospect present a scheduling problem for anyone?
3. Have you heard or read anything about this case?
4. Is there anything about the charge itself that would make it difficult for you to be fair and impartial?
5. Do you know any of the attorneys or witnesses?
6. Will your relationship with anyone named preclude your participation on this jury?
7. Have you ever had a dispute with the federal government?
8. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury in either federal or state court?
9. Have you ever been involved, in any court, in a criminal matter that concerned yourself, any member of your family, or a close friend either as a defendant, a witness, or a victim?
10. Do you have any training or employment in the legal field?
11. Have any of you ever watched the television show “CSI,” or similar fictional law enforcement dramas, where crimes are solved using advanced forensic techniques such as DNA typing, blood-spatter analysis, voice-exemplar comparisons, etc? If so, do you think that these techniques are routinely used in most investigations? Do you necessarily expect to see such evidence in this case?
12. Because this is a criminal case, each defendant is presumed innocent. Do you understand and accept this basic principle of American law? Can you abide by this rule?
13. In a criminal case such as this, the jury decides whether the government has proven its case against each defendant. Is there anyone who, for religious, moral, ethical or other reasons, believes he or she could not perform this duty?
14. If selected as a juror, will you be able to render a verdict after all the evidence and testimony are before you, the lawyers have made their arguments and I have instructed you on the law?

Do any of you believe you would hesitate to return a verdict, either for the government or for the defense? That is, would you be able to decide?

15. In a criminal trial, the prosecution presents witnesses and evidence first, then defendant can present witnesses and evidence, if the defense chooses to do so. Can you avoid making up your mind until you have heard all of the evidence?
16. If you are selected to serve on the jury you will hear witness testimony and determine the credibility or believability of the witnesses. Elaborate. Does anyone believe they cannot do this?
17. At the end of the trial, you will be given instructions on the law that applies to this case. Will you abide by the law and apply the law to the facts of this case? If any of my instructions are in conflict with your own beliefs or if you personally disagree with my instructions, will you set aside your own beliefs and agree to abide by the instructions as given?
18. If selected as a juror will you be able to render a verdict solely on the evidence you see and hear in the courtroom during trial and the legal instructions I give you, and do you believe you can be fair and impartial in rendering a verdict free of bias or prejudice against the government or the defendant?
19. Does any other matter occur to you as a reason why you could not sit as a fair and impartial juror?
20. Please keep in mind that defendant has no obligation to prove anything; he/she has no duty to call witnesses or produce evidence or do anything at all. Do you understand and accept?
21. If drug case, does anyone have any experience (self, family, friend) relating to the use or possession of illegal drugs or narcotics?