HANDBOOK ON LOCAL PRACTICE IN THE EASTERN DISTRICT OF MICHIGAN

FEDERAL BAR ASSOCIATION
EASTERN DISTRICT OF MICHIGAN

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On behalf of the Federal Bar Association, welcome to the Eastern District of Michigan.

Like most courts, the Eastern District has its own rules and unique practices – practices that, in many important ways, differ from those used in the state court system. Our intent in putting this Handbook together is to equip those who are new to the District with a basic understanding of the local practice.

We hope it is a helpful aid in navigating your way through the common procedural issues you may confront in litigating a civil case in the Eastern District.

Matt Lund, Chair
Eastern District Handbook Committee

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I. ADMISSION TO THE EASTERN DISTRICT OF MICHIGAN

The Eastern District of Michigan does not provide for *pro hac vice* admission. Therefore every attorney wishing to practice in the District must:

- Complete the On-Line Application for Admission, which is available from the Court's website: www.mied.uscourts.gov.
- Provide an original Certificate of Good Standing issued within the last 30 days from a court of record identified in the application;
- A written statement of facts disclosing any previous disciplinary issues (if such issues exist, the applicant must also provide a signed Declaration of Sponsor Form)
- Submit a $300.00 application fee made payable to "Clerk, U.S. District Court"; and
- Bring or mail the above four items to the Clerk's Office.

Upon receipt of these materials, the application will be reviewed by the Clerk. If the application is granted, an email will be sent to you explaining the process to register for an electronic filing login and password.

Once admitted to the District, an attorney may perform all functions in a case (appear on pleadings, attend depositions, etc.). However, the attorney may not participate in Court proceedings (argue motions, appear at trial) until he or she has been sworn in. Before an attorney can appear in person before the Court, the attorney must take the Oath of Admission, which is administered either by a Judicial Officer or a Deputy Clerk. Sponsorship by an Eastern District attorney is no longer required, unless you seek to have the oath of admission performed remotely or you are disclosing disciplinary issues. If you wish to receive the Oath from a Judicial Officer, you are responsible for making those arrangements with chambers. *See* Local Rule 83.20. As a practical matter, it is not necessary to make a special trip to the Court for purposes of being sworn in. Judges often accommodate requests to administer the oath on the day the lawyer makes his or her first physical appearance for Court proceedings. To make such a request, call the judge's case manager in advance.

II. INITIATING THE LAWSUIT – LOCAL CONSIDERATIONS FOR PLAINTIFFS

A. ECF Filing

All papers filed in a civil lawsuit in the Eastern District of Michigan must be filed electronically, including the papers necessary to initiate the lawsuit. This requirement is subject to limited exceptions as set forth in the Court's local electronic case filing rule 7 (ECF R7). The local electronic case filing rules are appended to the Local Rules, and are available online at the Eastern District website (http://www.mied.uscourts.gov/PDFFIles/policies_procedures.pdf).

To file any papers electronically, a party must establish an account through the Court's ECF system at https://www.mied.uscourts.gov/AttorneyRegistration/ARprocess.cfm. The website offers helpful information regarding electronic filing, including the Electronic Case Filing User's Manual and filing fees.

B. Civil Case Cover Sheet

Parties are only required to file a Civil Case Cover Sheet if the Complaint is not filed electronically. When filing electronically, a party need only provide the information normally entered on the Civil Case Cover Sheet.. *See* Local Rule 3.1.

C. Summons

Unlike the Michigan state court system, where the plaintiff submits a summons to be issued by the court clerk, a summons in the Eastern District is automatically generated within 24 hours by the office of the court clerk upon request and appears on the electronic docket for the plaintiff to use for service of process.

D. Filing Fee

Upon filing of the papers initiating the lawsuit, the filing party will be charged a fee $400.00. If the lawsuit is filed electronically, the fee must be paid by credit card. Alternatively, a check or other method of payment for the filing fee may be remitted to the Court Clerk within 24 hours of the filing.

The filing fee is the only fee that must be remitted. No motion fees are required in the Eastern District of Michigan.

E. Corporate Disclosure Statement

All parties who are not individuals (i.e., corporate parties) must file a Statement of Disclosure of Corporate Affiliations and Financial Interest ("Corporate Disclosure Statement") with their initial pleadings. This allows the judge to determine whether he or she has any conflicts of interest in relation to the parties. The Corporate Disclosure Statement must identify whether (i) the corporate party is a subsidiary or affiliate of a publicly owned corporation (*i.e.*, if it controls, is controlled by, or is under common control with, a publicly owned corporation); and (ii) whether there is a publicly owned corporation or its affiliate, not a party to the case, that has a substantial financial interest in the outcome of the litigation. You may obtain a fillable PDF form at http://www.mied.uscourts.gov/forms. *See* Local Rule 83.4.

F. Contents to include on face of the Complaint

All Complaints presented for filing must include the following information, if applicable to your case:

1. a request for a jury demand;

2. a request for three judge court; and

3. a request for certification as a class action.

G. Practice Tip

When bringing a case in federal court, a good starting place is the Court's website -- www.mied.uscourts.gov. The website contains the forms that need to be filled out, the Federal Rules of Civil Procedure, the Court's Local Rules, the procedural requirements established by each individual judge, and much more helpful information about pursuing a case in federal court.

III. LOCAL CONSIDERATIONS FOR DEFENDANTS

A. Removal

Generally speaking, Defendants may remove an action from state court to federal court if (i) a federal question exists; or (ii) there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

1. **Federal Question**: A federal question exists when a claim or right arises under the Constitution, treaties or laws of the United States. A claim does present a federal question merely because the defendant may raise a defense arising under the Constitution, treaties or laws of the United States. Whenever a claim arising out of a federal question is joined with one or more otherwise non-removable claims, the entire case may be removed. The District Court may determine all issues raised, or, in its discretion, the Court may remand all matters in which state law predominates.

2. **Complete Diversity**: Complete diversity of citizenship exists when each plaintiff has a different citizenship than each defendant. However, a defendant may not remove an action based on diversity if it is a citizen of the forum state.

   The jurisdictional burden of proof in all removal actions lies on the party asserting jurisdiction. For specific requirements governing Removal, please see 28 U.S.C. § 1441.

3. **Timing**: A defendant wishing to remove a civil action to federal court must do so "within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading . . . or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. § 1446. This thirty day time period is jurisdictional and may not be extended.

4. **Necessary Information**: To remove a case to the Eastern District, the defendant(s) must file a notice of removal with the district court, and all defendants must either join in the removal petition or file written consent to removal. The removing party

should ensure that the notice of removal provides (i) all of the information needed to establish subject matter jurisdiction – e.g., the federal statute, constitutional provision, or treaty that is involved, (ii) facts establishing the timeliness of removal, (iii) a statement regarding the concurrence of all defendants who have been served, and (iv) a copy of the service of process, pleadings, and orders received by the defendant. The required contents of a removal petition based on diversity jurisdiction are set forth in Local Rule 81.1. In the case of removal on the basis of diversity, you must provide the required information concerning the citizenship of each party. You must also provide information establishing that the amount-in-controversy requirement has been met (in the event that this is not clear from the underlying Complaint), or state that the removing defendant has no such facts at this time. *See* Local Rule 81.1(b).

5. **Practice tip:** For purposes of determining diversity, individuals are deemed citizens of their place of domicile (actual residence plus intent to remain). Corporations are deemed to be citizens of BOTH their state of incorporation and principal place of business. Under current case law, a partnership or limited liability company is considered to have the citizenship of each of its constituent partners/members.

Like the initiation of the lawsuit, a defendant's removal papers must be filed through the Court's electronic case filing system. Promptly after filing Notice of Removal in District Court, the defendant must also file notice with the clerk in state court.

The fee for a removal petition is $400.00. The fee must be paid by credit card if the petition is electronically-filed. Alternatively, a check or other method of payment for the filing fee may be remitted to the Court Clerk within 24 hours of the filing of the removal papers.

A Civil Cover Sheet (*see* Section II.B., above) need only be filed if the petition is not filed electronically.

B. Remand

State courts do not adjudicate whether an action is properly removed. Once a defendant has filed a notice to remove a case, jurisdiction is transferred

automatically and immediately from the state court to the federal court. Any objection to removal must be presented to the federal court. (The state court has no jurisdiction to decide motions to remand).

The party challenging removal may file a Motion to Remand based on (i) a lack of subject matter jurisdiction, or (ii) procedural defects – e.g., failure to join all defendants, or improper timing. A Motion to Remand on any basis other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal. 28 U.S.C. §1447(c). In other words, procedural defects must be addressed by a Motion to Remand within 30 days after the filing of the removal notice. Otherwise, the right to challenge the removal is waived. However, a lack of subject matter jurisdiction may be challenged at any time before final judgment. The Court may also remand a case on its own initiative. If the Court finds that the notice of removal was defective or that the federal court does not have jurisdiction, the case will be remanded to the state court from which it was removed.

The removing party bears the burden of proof as to all elements relating to the propriety of the removal. The requisite "proof" is based on a preponderance of the evidence standard.

If the plaintiff moves to remand on the grounds that the amount in controversy does not exceed $75,000, exclusive of interest and costs, the plaintiff must include a signed statement of damages with its motion that itemizes "all damages by category and amount, or for those categories for which the plaintiff is unable to specify a precise amount, an estimate of the maximum amount and a detailed description of the factual basis for the estimate." *See* Local Rule 81.1(d).

The prevailing party on a motion to remand may be entitled to recover costs and any actual expenses, including attorneys' fees, incurred as a result of the removal. An award of such fees is within the district court's discretion.

C. Corporate Disclosure Statement

All corporate defendants must file a Corporate Disclosure Statement with their initial pleadings. *See* § I.E. above.

IV. FILING OF PAPERS

A. Form of Papers:

1. All papers presented for filing must include the following:

   a. the name of the court;

   b. the title and number of the case;

   c. the name and nature of the paper in sufficient detail for identification;

   d. the name of the district judge and magistrate judge to whom the case is assigned;

   e. the following contact information:

      i. For an attorney: Name, office address, e-mail address, telephone number, and state bar identification number;

      ii. For a party without counsel: Name, address, e-mail address, and telephone number.

   Contact information for the attorneys or parties (if not represented by counsel) is to be included in the signature block only and is not to be included on the cover page, as it is in the Michigan Court System.

2. All papers filed with the Court must be on 8½ x 11 size paper, with 14 point font, 1 inch margins and numbered consecutively. Footnotes should also be in 14 point font. *See* Local Rule 5.1(a).

B. Filing of Exhibits

1. Generally, all exhibits are filed electronically through .pdf images, as required by the local ECF Rules. If a party files more than one exhibit, it is required to include an Index of Exhibits.

2. Bulky exhibits can be filed with Clerk but must be securely bound or fastened and clearly marked with the case number and

the name of the judge to whom the case is assigned. *See* Local Rule 5.1(d).

C. Filing Under Seal

Filing papers under seal is only available in limited circumstances. (*See* Local Rule 5.3)

1. **Requirements for filing under seal**

   a. Except where authorized by statute or rule, you cannot file or tender to the Clerk an item proposed for sealing unless the Court enters an Order permitting the sealing.

   b. Where a statute or rule provides for filing under seal, such a filing may be made without a court order, as follows:

      i. A separate notice of filing under seal must be filed before filing an item under seal.

      ii. The notice must include:

         a) a citation to the statute or rule authorizing the seal;

         b) an identification and description of each item submitted under seal; and

         c) a statement establishing that the items are within the statute or rule authorizing the seal.

   c. An Order allowing documents to be filed under seal may be included in the terms of a proposed Stipulated Protective Order entered by the Court.

   d. Absent a stipulated order or statutory/rule-based authorization, a party must file a motion seeking an order to file a paper under seal. A motion to seal must include the following:

      i. An index of documents which are proposed for sealing and, as to each document, whether any other party objects;

ii. A description of any non-party or third-party privacy interests that may be affected if the documents or portions thereof to be sealed were publicly disclosed on the court record;

iii. Whether the proposed sealed material was designated as "confidential" under a protective order and by whom;

iv. For each proposed sealed exhibit or document, a detailed analysis, with supporting evidence and legal citations, demonstrating that the request to seal satisfies controlling legal authority;

v. A redacted version of the document(s) to be sealed, filed as an exhibit to the motion, unless the proponent of filing is seeking to file the entire document under seal, in which case a blank sheet shall be filed as an exhibit. The redacted version must be clearly marked by a cover sheet or other notation identifying the document as a "REDACTED VERSION OF DOCUMENT(S) TO BE SEALED";

vi. An unredacted version, filed as a sealed exhibit, of the document that is sought to be filed under seal. The unredacted version may be filed under seal for the limited purpose of resolving the motion to seal without a prior court order. Like with the redacted version of the documents, the redacted documents must be clearly marked by a cover sheet identifying the document as an "UNREDACTED VERSION of DOCUMENT(S) TO BE SEALED PURSUANT TO LR 5.3(b)(3)(B)(iii)." The unredacted version must clearly indicate which portions of the document are the subject of the motion; and

vii. A supporting brief.

e. When a motion to seal is filed, the movant must submit a proposed Order with the motion stating the reason the seal is required.

2. Only the germane portion of the filing should be sealed (*i.e.*, if the sealed item is an exhibit to a motion, only the exhibit is sealed, not the entire motion).

3. **Practice Tip:** Motions to seal have come under increased scrutiny in the Eastern District since the Sixth Circuit's ruling in *Shane Group, Inc., et al. v. Blue Cross Blue Shield of Michigan, et al.*, 825 F.3d 299 (6th Cir. 2016). *Shane Group* emphasized a trial court's obligation to keep its records open for public inspection.

D. Judge's Copies

1. Judge's copies of non-dispositive motions need only be provided if instructed by each judge. (The Court's website specifies the papers each judge requests be provided directly to the judge as a judge's copy). A "courtesy" or "chambers copy" of all dispositive motion papers must be submitted to the judge's chambers on paper. *See* ECF Rule 5.

2. Each judge's copy must have a Notice of Electronic Filing attached to the front. While a "Judge's Copy" stamp is not required by the rules, it is good practice to use one. In the rare circumstance where the actual filing has not been made electronically, that filing must be made with the clerk and must include an original and a copy of the document filed. That copy "should be clearly marked 'JUDGE'S COPY.'" *See* Local Rule 5.1(b)(2).

3. A judge's copy is submitted to the judge's chambers (not the clerk's office).

4. Under Rule 5 of the E-Filing Policies and Procedures for the Eastern District of Michigan: "[a]ny exhibits must be properly tabbed and all papers firmly bound, usually along the left margin ('book-style'). Good practice requires that in appropriate cases, relevant portions of lengthy documents be highlighted."

E. No Filing Fee for Motions

No motion fees are required in the Eastern District of Michigan.

F. Service of Papers on Opposing Party

Service is accomplished through the Court's electronic filing system. Papers need not be served by additional means.

G. Proposed Orders

Proposed orders are not filed in the same manner as other electronically filed papers, i.e. on the docket. Instead, you must use the "Utilities" function on the ECF system. Accordingly, if you wish to provide opposing counsel with a copy of the proposed order, you must send him or her a copy yourself because the system will not do it automatically. A copy of the receipt provided by the ECF Utilities function should accompany the copy of the proposed order you send out.

V. DISCOVERY

A. Rule 16 Scheduling Conference

1. The Rule 16 Scheduling Conference is convened by the Court. Some judges will waive the conference and set a schedule upon submission of a joint discovery plan. Others may hold them telephonically and others may hold them in chambers or open court. The Court's website posts any Standing Orders issued by each judge, many of which include specific guidelines relating to Rule 16 conferences.

   Note that some judges allow discovery prior to the Rule 26(f) conference. To determine if a particular judge allows discovery prior to a Rule 16 Conference, lawyers should consult the judge's Standing Orders, all of which are posted on the Eastern District website.

2. Be prepared to answer questions and to discuss the facts and law relevant to your case at the Rule 16 Conference.

3. Each party must be represented at the conference by at least one attorney who will participate actively in the trial, and who has information and authority adequate for effective participation for all purposes, including settlement.

B. Form of Discovery

1. Unless otherwise stipulated to or ordered by the Court, a party may serve on any other party no more than 25 interrogatories, including all discrete subparts.

2. The party serving discovery is required to provide a space after each interrogatory, request for production or request for admission, for the answer, response, or objection thereto.

3. The party answering, responding, or objecting to written interrogatories, requests for production, or requests for admission shall either set forth the answer, response, or objection in the space provided, or shall quote each such interrogatory or request in full immediately preceding the answer, response, or objection thereto.

4. Each party must also number its interrogatories, requests, answers, responses, or objections sequentially, regardless of the number of sets of interrogatories or requests. For example, if you propounded 12 interrogatories in your first set, your second set of interrogatories starts with number 13. In cases involving multiple parties, the sequential numbering required by this rule operates for each plaintiff and defendant.

5. A separate numerical sequence shall be maintained for each discovery device and for each party from whom discovery is sought. *See* Local Rule 26.1.

C. Filing of Discovery Material

1. As a general rule, discovery materials and related certificates of service are not to be filed with the Court.

2. Discovery material and certificates of service for such discovery material are only filed in the following circumstances:

   a. When it provides factual support for a motion, response or reply. (The party relying on the material must file only the germane portion of it as an exhibit or attachment to the motion, response, or reply);

   b. When it is read or otherwise used during a trial or other proceeding. (The party relying on the material must file it at the conclusion of the trial or other proceeding in which it was used or at a later time that the Court permits);

   c. On Order of the Court; or

   d. If discovery material not previously filed is needed for an appeal, the party or other person with custody of the discovery material must file it either by stipulation or Court Order. *See* Local Rule 26.2.

3. **Maintaining Discovery Materials**

   Each party that propounded discovery requests must maintain the discovery material for a period of six months following expiration of the last applicable appeal period.

D. Discovery Disputes

1. Discovery Motions

a. **"Meet and Confer" Obligations**:

i. Prior to filing a motion to compel discovery, the moving party must confer or attempt to confer with the opposing party regarding the issues in dispute. Failing consensual resolution, the movant must certify in its motion that such a conference was either held or sought in good faith. Fed. R. Civ. P. 37(a)(1).

ii. In advance of the hearing on a motion to compel discovery, the parties must confer in a good faith effort to narrow the areas of disagreement. The conference must be held a sufficient time in advance of the hearing so as to enable the parties to narrow the areas of disagreement to the greatest possible extent.

iii. It is the responsibility of the movant's counsel to arrange for these conferences.

b. Any discovery motion must include, in the motion itself or in an attached memorandum (1) a verbatim recitation of each interrogatory, request, answer, response, and (2) the objection that is the subject of the motion, or a copy of the actual discovery document which is the subject of the motion.

c. Many judges have specific requirements relating to discovery disputes. Some judges impose timing restrictions on when such motions can be filed, and some impose prerequisites to filing discovery motions. Prior to filing any discovery-related motion, you should review the practice guidelines of the judge to whom your case has been assigned. This can be found on the Court's website. (www.mied.uscourts.gov)

See Local Rules 37.1, 37.2.

2. **Motions for Protective Orders**

a. Local Rule 26.4 provides detailed information regarding requests for protective orders on grounds of privilege or other protection. The rule only applies to motions for protective orders "based on a claim that information is privileged or subject to protection." The motion must:

i. state the claim that information, otherwise discoverable, is either privileged or subject to protection, and

ii. without revealing privileged or protected information, describe the nature of the documents, communications, or things not produced or disclosed, to enable the Court to assess application of the privilege or protection.

b. Additionally, the rule provides that "[t]he movant must submit as an exhibit to the motion a proposed order that states that the information is either privileged or subject to protection and describes the type of information to be protected."

c. Failure to adhere to the above guidelines may result in a denial of your motion for a protective order.

VI. MOTIONS

A. General Motion Practice

1. **Seeking Concurrence:** A party must always seek opposing counsel's concurrence prior to filing any motion and state on the face of the motion whether or not such concurrence was obtained. If concurrence is not obtained, the motion or request must specifically state that there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion and its legal basis and requested, but did not obtain, concurrence in the relief sought; or, despite reasonable efforts specified in the motion or request, the movant was unable to conduct a conference. Attorneys should keep in mind that the Court may tax costs for unreasonable withholding of consent. *See* Local Rule 7.1.

2. **Format of the Motion:** Unlike state court actions, federal court motions need not be presented in numbered paragraphs. It is appropriate for the motion to be set forth in a paragraph or two that identifies its nature, the relief sought, and the rule under which it is filed, and refers the court to the supporting brief.

3. **Briefs in Support**

   a. All motions must be accompanied by a brief in support.

   b. The text of a brief in support of a motion or response, including footnotes and signatures, may not exceed 25 pages. *See* Section IV, above, for font and format requirements.

   c. The text of a reply brief, including footnotes and signatures, may not exceed 7 pages. (A person seeking to file a longer brief may apply *ex parte* in writing setting forth the reasons.)

d. Briefs supporting a motion and response briefs opposing a motion must contain a concise statement of issues presented, and, on the next page, the controlling or most appropriate authority for the relief sought. The brief may contain a table of contents, an index of authorities, and an index of exhibits to the brief. These pages may be numbered separately, and are not included against the 25-page text limit.

e. The citations in federal court briefs should conform to the *Blue Book* rules, and not to the unique citation format used in Michigan state courts.

f. Attorneys are not required to submit a proposed Order with a motion and brief. Typically, the Court issues its own Order.

g. **Timing for Motions, Responses, and Replies:**

i. **Briefing Schedule**: Unless otherwise ordered by the Court, responses to all motions, except those listed below, must be filed within 14 days after service of the motion. Any reply brief in support of the motion must be filed within 7 days after service of the response, but no later than 3 days before the motion hearing.

ii. **Enlarged Briefing Schedule**: In contrast to the general rule that a response must be filed within 14 days after service of the motion, responses to the following motions must be filed within 21 days following service of the motion: (i) for injunctive relief; (ii) for judgment on the pleadings; (iii) for summary judgment; (iv) to dismiss or quash an indictment or information made by a defendant; (v) to suppress evidence in a criminal case; (vi) to certify or decertify a class; (vii) to dismiss under Federal Rule of Civil Procedure 12(b); and (viii) to involuntarily dismiss an action under Federal Rule of Civil Procedure 41(b). Any reply supporting such a motion must be filed within 14 days after

service of the response, but not later than 3 days before the motion hearing..

4. **Oral Argument**

a. Attorneys should not notice their motions for a hearing date and time as is the practice in state court. Instead, the Court will set the hearing date and time, unless the Court determines that a hearing is not necessary.

b. Attorneys should check in with the Case Manager in the Judge's Chambers at the time of hearing.

c. **Practice tips**:

i. Unlike in state court, a motion call in federal court will typically involve only a few motions. The hearing will begin at the time scheduled by the case manager, so do not be late.

ii. The Eastern District of Michigan has courthouses in Ann Arbor, Bay City, Detroit, Flint and Port Huron. Prior to an oral argument before a District Court or Magistrate Judge, check to make sure which courthouse they are in. For example, the Magistrate Judge hearing a discovery motion may be in a different courthouse than the District Court Judge that has the case.

5. **Motions Pending Before Magistrate Judges**

a. The Magistrate Judge assigned to a case will often hear and determine non-dispositive pretrial motions and will hear and recommend the determination of dispositive motions. *See* Local Rule 72.1(a)(2)(C).

b. A party may file a written objection to a Magistrate Judge's Order or recommended disposition. The objection must be filed within 14 days after being served with the Order or recommendation and must specify the part of the Order, proposed findings, or recommendation to which the party objects and state the basis for the objection. A party may respond to objections within 14 days of service, and the objecting party may file a reply within 7 days of the response. *See* Local Rule 72.1(d).

c. When an objection is filed to a Magistrate Judge's ruling on a non-dispositive motion, the ruling remains in full force and effect unless and until it is stayed by the Magistrate Judge or District Judge. *See* Local Rule 72.2.

B. Special Motions

1. **Summary Judgment Motions**

a. Fed. R. Civ. P. 56 governs motions for summary judgment, which are a method of promptly disposing of actions in which there is no genuine issue of material fact. A fact is "material" if its resolution affects the outcome of the lawsuit. An issue is "genuine" if a reasonable jury could return a verdict for the non-moving party. The "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

b. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time until 30 days after the close of all discovery,

move for summary judgment. However, a different time may be set by court order.

c. The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. The party opposing the motion must then come forward with specific facts showing there is a genuine issue for trial. A party asserting that a fact cannot be disputed (or a party asserting that a fact is genuinely disputed) must support the assertion with a "pinpoint citation" that cites to "particular parts" of materials in the record, and shows that the materials cited do not establish the absence or presence of a genuine dispute.

d. Additionally, Fed. R. Civ. P. 56 gives the court options when a party fails to properly support or respond to a factual assertion; the court may: (1) provide an opportunity to rectify the deficiency, (2) consider the fact undisputed, (3) grant summary judgment, or (4) issue any other appropriate order.

e. If the moving party shows that there is no genuine dispute as to any material fact based upon the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, the court "shall" grant summary judgment.

f. Many judges in the Eastern District have specific requirements relating to summary judgment motions. Prior to filing a summary judgment motion, you should review the practice guidelines of the judge to whom your case has been assigned. This can be found at the Court's website. (www.mied.uscourts.gov)

g. A party must obtain leave of court to file more than one motion for summary judgment. *See* Local Rule 7.1(b)(2).

2. **Temporary Restraining Orders, Injunctions:** Requests for temporary restraining orders and for preliminary injunctions must be made by a separate motion and not by order to show cause. Motions for temporary restraining orders and preliminary

injunctions and responses must comply with the briefing requirements of Local Rule 7.1(b)-(d). However, a request for concurrence in the relief sought under Local Rule 7.1(a) is not necessary for a temporary restraining order if Fed. R. Civ. P. 65(b)(1) permits an *ex parte* Order. *See* Local Rule 65.1.

3. **Practice Tip:** An order granting a temporary restraining order is only valid for 14 days, unless the Court, for good cause, "extends it for a like period or the adverse party consents to a longer extension." If a party wishes to preserve the relief set forth in the TRO for longer than 14-28 days, it should file a motion for preliminary injunction.

4. **Motions for Reconsideration**:

   a. A motion for rehearing or reconsideration must be filed within 14 days after entry of the judgment or order.

   b. No response to the motion and no oral argument are permitted unless the Court orders otherwise.

   c. In making a motion for reconsideration, the movant must (i) demonstrate a palpable defect by which the Court and the parties have been misled, and (ii) show that correcting the defect will result in a different disposition of the case. As a general rule, the Court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the Court, either expressly or by reasonable implication.

5. **Motions to Alter or Amend Judgment:** No response to a motion to alter or amend a judgment and no oral argument are permitted unless the Court directs otherwise.

   See Local Rule 59.1.

6. **Motions to Consolidate:** A party seeking to consolidate cases under Fed. R. Civ. P. 42(a) must: (i) file a motion in the case with the earliest case number; and (ii) file a notice of the motion in each related case. The judge presiding in the earliest numbered case will decide the motion; however, the motion will not be granted unless the judges presiding in the related cases consent.

If granted, the consolidated cases will be reassigned to the judge presiding in the earliest numbered case. *See* Local Rule 42.1.

VII. ALTERNATIVE DISPUTE RESOLUTION

A. ADR Generally

1. The Eastern District of Michigan updated its Local Rules in 2015 to include more comprehensive ADR provisions. These rules can be found at Local Rules 16.3 through 16.7.

2. The rules explicitly provide that "[t]he judges of this district favor ADR methods in cases where the court determines, after consultation with the parties, that ADR may help resolve the case."

3. The different methods of ADR specifically addressed in the Local Rules are not the only ADR approaches allowed; individual judges may approve the use of other ADR processes in appropriate cases.

See Local Rule 16.7

4. **Practice Tips:**

   a. Communications in ADR proceedings are confidential and are not admissible.

   Local Rule 16.3(d).

   b. Electing to participate in an ADR proceeding does not automatically suspend any filing or discovery deadlines set by the Court via a Scheduling Order or other means. If you want to suspend or delay any deadlines, you must do so affirmatively by seeking an order providing for new deadlines.

   Local Rule 16.3(g).

   c. The attorney or law firm representing a party participating in ADR *is directly responsible for fees* payable to the court, mediators, or arbitrators. To the extent consistent with ethical rules, reimbursement may be sought from the client.

   Local Rule 16.3(h).

B. Facilitative Mediation

1. Facilitative Mediation (mediation) is a flexible, nonbinding dispute resolution process in which an impartial third party — the mediator — facilitates negotiations among the parties to help them reach settlement. Mediation seeks to expand traditional settlement discussions and broaden resolution options, often by going beyond the issues in controversy. The mediator, who may meet jointly and separately with the parties, serves as a facilitator only and does not decide issues or make findings of fact. Cases will be assigned to mediation if the district or magistrate judge, after consultation with counsel or the parties, is satisfied that the selection of mediation will assist in the resolution of the case.

Local Rule 16.4(a)(2).

2. The parties may select a mediator, but the court may disapprove of the mediator, or, where the parties cannot agree on a mediator, appoint a mediator.

3. The mediation process is determined by the rules of any given mediator, but generally involves the submission of memoranda a week prior to the scheduled mediation session, and the mediator will usually meet with the parties together and individually during the mediation session.

4. See Local Rule 16.4(e) for more specific information on the mediation process

C. Case Evaluation

1. Unlike in Michigan state court, not all civil cases are assigned to case evaluation. In the Eastern District, the court may refer a case to case evaluation under M.C.R. 2.403 with or without the parties' consent. However, the court may not enforce the sanctions provision of that rule unless the parties consent. *See* Local Rule 16.5.

2. Cases in which the United States is a party are not subject to case evaluation.

3. If you wish to request case evaluation, you should do so at the Rule 16 Scheduling Conference.

D. Settlement Conferences

Local Rule 16.6 allows the judge on a case "to order a settlement conference to be held before that judge, another district judge, or a magistrate judge." The parties themselves (or an appropriate corporate representative) may be ordered to appear at such a conference.

VIII. PRETRIAL

A. Pretrial Conferences

1. All pretrial conferences are set by the Court. However, counsel may petition the Court to hold a pretrial conference at a prior time.

2. Each party must be represented in the pretrial conference by at least one attorney who will participate actively in the trial, and who, in attending the conference, shall possess information and authority adequate for responsible and effective participation in it for all purposes, including settlement.

3. If a timely-filed dispositive motion remains pending on the seventh day before the date for submitting the final pretrial order, that date will be postponed and rescheduled to a date no earlier than 7 days after the date of the decision on the motion, unless the court orders otherwise.

See Local Rule 16.1.

B. Joint Final Pretrial Orders

1. A Joint Final Pretrial Order must be filed before the pretrial conference.

2. Counsel for plaintiff is required to convene a conference for all parties to confer, in person, and collaborate in formulating a concise joint final pretrial order.

3. At the conference, counsel should (i) attempt to reach stipulations on issues of law and fact, (ii) address non-stipulated issues, and (iii) exchange documents that will be offered at trial. Counsel for plaintiff is responsible for compiling the joint final pretrial order.

4. Counsel for all parties must approve and sign the order. Counsel for plaintiff must submit an original and one copy of the order to the assigned Judge for approval and adoption.

5. **Required Contents of Joint Final Pretrial Order**

Unless the trial judge has other specific requirements, Joint Final Pretrial Orders are required to contain the following information under numbered and captioned headings:

a. **Jurisdiction.** The parties shall state the basis for federal court jurisdiction and whether jurisdiction is contested by any party.

b. **Plaintiffs' Claims**. The statement of the claim or claims of plaintiffs shall include legal theories.

c. **Defendants' Claims**. The statement of the defenses or claims of defendants, or third parties, shall include legal theories.

d. **Stipulation of Facts**. The parties shall state, in separately numbered paragraphs, all uncontested facts.

e. **Issues of Fact to be Litigated.**

f. **Issues of Law to be Litigated.**

g. **Evidence Problems Likely to Arise at Trial.** Include objections to exhibits and to the use of deposition testimony, including the objections required under Fed. R. Civ. P. 26(a)(3)(B). The order shall list all motions *in limine* of which counsel should reasonably be aware.

h. **Witnesses.** Each party shall list all witnesses whom that party will call and all witnesses whom that party may call. A party may, without further notice, call a witness listed by another party as a "will call" witness. Except as permitted by the Court for good cause, a party may not list a witness unless the witness was included on a witness list submitted under a prior order or has been deposed. The list shall state whether the witness is an expert and whether testimony will be offered by deposition. Only listed witnesses will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be reasonably anticipated before trial, or except for good

cause shown. The provisions of Fed. R. Civ. P. 37(c)(1) shall apply to a failure to list a witness.

i. **Exhibits.** The parties must number and list, with appropriate identification, each exhibit, including summaries, as provided in Fed. R. Civ. P. 26(a)(3)(A)(iii). Objections to listed exhibits must be stated in the joint pretrial order. Only listed exhibits will be considered for admission at trial, except for rebuttal exhibits which could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed. R. Civ. P. 37(c)(1) will apply to a failure to list an exhibit.

j. **Damages.** The parties shall itemize all claimed damages and shall specify damages that can be calculated from objective data. The parties shall stipulate to those damages not in dispute.

k. **Trial.** The parties shall include whether it is a jury or non-jury trial and the estimated length of trial.

l. **Settlement.** Counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and state the current status of negotiations and any plans for further discussions. They may state that they wish the Court to schedule a settlement conference.

m. **Filing of Trial Briefs, Findings and Instructions.** The joint final pretrial order must further provide that trial briefs and requests for jury instructions must be filed on the first day of trial and proposed findings of fact and conclusions of law in nonjury cases must be filed before the last day of trial, unless the Court orders otherwise.

See Local Rule 16.2.

C. Pretrial Filings and Exchanges

1. **Trial briefs:** Parties must file and serve trial briefs on the first day of trial.

2. **Exhibits:** Parties must mark, number, and exchange all trial exhibits before trial. For good cause, the court may admit exhibits that are not marked, numbered, and exchanged before trial. During trial, each party must have its exhibits available as needed. After trial, each party must retain its exhibits.

3. **Jury Instructions**: Parties in jury trials must file and serve on opposing counsel requested instructions on the first day of trial. The jury instructions must include an instruction stating concisely the party's claim and theory of the issues. At any time before closing argument, a party may file and serve additional requested instructions that could not have reasonably been anticipated before trial. A party may file and serve with the requested instructions a legal memorandum in support thereof. Parties may file and serve legal memoranda opposing the requested instructions at any time before settlement of the instructions. Each requested instruction must start on a separate page, be consecutively numbered, bear the case number, identify the requesting party, and cite supporting authority.

IX. EXAMINATIONS OF WITNESSES AT TRIAL

Not more than one counsel on each shall be allowed to examine the same witness at trial unless leave of Court is obtained. Otherwise, tasks may be split among counsel (e.g., opening and closing). If you have questions about a judge's practice in this regard, you should review them at the Joint Final Pretrial Conference.

X. JUDGMENT

A. Procedure for Entry

While the following methods for entering a judgment are technically available by way of the Local Rules, in the overwhelming majority of matters, the Judges of the Eastern District of Michigan issue their own orders. That being said, the Court may enter a Judgment or Order by one of the following methods:

1. The Court may sign the judgment or order at or after the time it grants the relief in the judgment or order.

2. The Court will sign the judgment or order after the parties have approved its form.

3. The "Seven Day" Rule:

    a. Within seven days after granting the judgment or order, or later if the court allows, a person seeking entry of a judgment or order may serve a copy of the proposed judgment or order on the other parties and any other person entitled to be heard on entry of the judgment or order, with notice that it will be submitted to the court for signing if no written objections are filed within seven days after service of the notice. The person seeking entry of the judgment or order must file the original and proof of service with the court.

    b. If no written objections are filed within seven days, the court will then sign the judgment or order if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court will notify the parties to appear before the court on a specified date for settlement of the matter; or, in the court's discretion, the court may enter its own order consistent with the court's decision.

    c. A person filing the objections must serve them on all parties and other persons entitled to be heard on entry of the judgment or order.

d. If objections are filed, within seven days after receiving notice of the objections, the person who proposed the judgment or order must notice it for settlement before the court.

B. Default and Default Judgment

1. Entry by Clerk

a. **Requests for Default**:

Requests for a Clerk's Entry of Default must be accompanied by a supporting affidavit that contains (a) a statement identifying the specific defendant who is in default; (b) a statement attesting to the date the summons and complaint were served upon the defendant who is in default; and (c) a statement indicating the manner of service and the location where the defendant was served. *See* Appendix E for a sample form of Clerk's Entry of Default. *See* Local Rule 55.1. The forms may be obtained from the Eastern District website.

b. **Clerk's Entry of Judgment by Default**:

Requests for a Clerk's Entry of Judgment by Default must also be accompanied by an affidavit which sets forth:

i. The sum certain or the information necessary to allow the computation of a sum certain.

ii. The name of the defendant who is subject to default.

iii. A statement that the defendant is not an infant or an incompetent person, or in the military service.

iv. A statement that a default has been entered because the defendant failed to plead or otherwise defend in accordance with Fed. R. Civ. P. 55(a). *See* Local Rule 55.2.

See Appendix F for a sample Request for Clerk's Entry of Default Judgment. The forms may be obtained from the Eastern District website.

XI. TAXATION OF COSTS

A. Bill of Costs Handbook

A party seeking costs must file a Bill of Costs no later than 28 days after the entry of judgment. The Eastern District has published a Bill of Costs Handbook, which is available at the clerk's office and the court's web site at http://www.mied.uscourts.gov. The Handbook is a valuable resource and should be followed closely. The clerk will tax costs under Fed. R. Civ. P. 54(d)(1) as provided in the Handbook.

B. Motion for Attorneys' Fees and Non-Taxable Expenses

1. A motion for attorneys' fees and related non-taxable expenses pursuant to Fed. R. Civ. P. 54(d)(2) must be filed no later than 14 days after entry of judgment.

2. A motion for an award of attorneys' fees must be supported by a brief addressing the authority of the Court to make such an award, and why the movant should be considered the "prevailing party," if such is required for the award. The motion shall also be supported by an affidavit of counsel setting out in detail the number of hours spent on each aspect of the case, the rate customarily charged by counsel for such work, the prevailing rate charged in the community for similar services, and any other factors which the Court should consider in making the award.

3. Within 14 days after filing of the motion, the party or parties against whom the award is requested shall respond with any objections and an accompanying memorandum setting forth why the award is excessive, unwarranted, or unjust. *See* Local Rule 54.1.2.

XII. SUMMARY OF KEY PROCEDURAL DISTINCTIONS BETWEEN MICHIGAN STATE COURTS AND THE EASTERN DISTRICT OF MICHIGAN

In the Eastern District:

1. Subject to certain limited exceptions, all civil papers are to be electronically filed;

2. The Court Clerk will issue the summons;

3. There is no motion filing fee required;

4. Service is accomplished through the Court's ECF system and no additional means of service is necessary;

5. All pleadings and other filings should utilize 14 point font;

6. Prior to hearing discovery motions, counsel for the parties must meet and confer in a good faith effort to narrow the areas of disagreement;

7. Unless stipulated to or ordered by the Court, a party may serve only 25 interrogatories (including all discrete subparts) on any other party;

8. Motions need not be presented in numbered paragraphs; and

9. Parties should not file a Notice of Hearing relative to a motion.

XIII. GENERAL DOS AND DON'TS IN THE EASTERN DISTRICT OF MICHIGAN

A. Do

1. Do familiarize yourself with the Local Rules and the applicable judge's practice guidelines, found on the Court's website.

2. Do make sure that you and your staff are signed up and properly trained for electronic filing, and carefully review all materials prior to filing to ensure that they are mistake-free and submitted in the proper manner.

3. Do file an appearance on the docket. It is insufficient if someone else in your firm has already filed an appearance. Each attorney working on the case or appearing before the Court must file his or her own appearance.

4. Do seek concurrence before filing a motion.

5. Do make sure to adhere to type size requirements for text, including footnotes.

6. Do make sure that you have your clients (with full settlement authority) personally attend all settlement conferences and final pretrial conferences.

7. Do contact the judge's chambers immediately if you resolve the issues addressed in a pending motion or the lawsuit.

8. If you settle a case, do let the judge know as soon as possible.

9. Do carefully review and adhere to the Eastern District of Michigan's Civility Principles, Admin. Order No. 08-AO-009, and conduct yourself accordingly when dealing with the Court, all other counsel, parties and witnesses.

10. Do confer in advance of a hearing on a motion to compel discovery as required by Local Rule 37.1.

11. Do thoroughly familiarize yourself with Eastern District Local Rule 7.1.

12. Do bring your bar card with you to court if you'd like to have your cell phone inside the courthouse.

B. DON'T

1. Don't include a motion within a response brief. Separately file responses and cross-motions.

2. Don't submit a state-court style "notice of hearing" with your motion. The Court's case manager will set all hearings.

3. Don't put attorneys' names or "at a session" language on the cover pages of filings.

4. Don't call the judge's chambers asking for legal advice.

5. Don't use your cell phone in a judge's chambers or in the Courtroom.

6. Don't bring your cell phone into the Courthouse unless you are an attorney and have your bar card with you.

7. Don't e-file stipulated or proposed Orders. They should be submitted through "utilities."

This document is NOT to be considered legal advice, nor should it be cited as legal authority. This document may be used in conjunction with the federal rules and Local Rules of the Court.