

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

February 2009

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

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DIRECTORY

HONORABLE JANET T. NEFF
United States District Judge

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110 Michigan St., N.W.
Grand Rapids, MI 49503-2363
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United States District Court Clerk's Office
Tracey Cordes, Clerk
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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. 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 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. LCrR 47.2. They will be referred to a Magistrate in Grand Rapids, Michigan, 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. LCrR 12.4.

III. 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. LCrR 12.4.

IV. Orders

All proposed orders should be filed via ECF.

V. 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.

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 a signature and date.

VII. Final Pretrial Conference

A. Submissions

1. At least **three (3) business days** prior to the final pretrial conference, each party shall file:
 - a. Trial briefs (optional with defendant).
 - 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. Submit a proposed preliminary jury instruction defining the nature of the alleged offense and the elements of that offense.

B. Attendance

1. Counsel shall be present one-half hour prior to the final pretrial conference for an in-chambers conference.
2. The attendance of defendant at the final pretrial conference is required.

C. Matters to be Addressed

1. All pending motions shall be heard at the time of pretrial.
2. At the final pretrial conference the parties shall:
 - a. Advise the court of the status of any plea negotiations.
 - b. Review jury selection procedure.
 - c. Advise the court of the number of witnesses expected to be called and estimated length of trial.
 - d. Disclose the identity of all expert witnesses, and agree (if possible) upon the qualifications of expert witnesses.
 - e. Enter into stipulations of uncontested facts.
 - f. Discuss any legal issues, including motions in limine, or other evidentiary issues that may arise during the course of trial.
 - g. Agree upon 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.
 - h. Discuss jury instructions. This Court uses the Sixth Circuit's Criminal Pattern Jury Instructions (West Publishing).

This Court cannot allocate its resources efficiently if it must open court for a final pretrial conference. Therefore, **if court is opened for a final pretrial conference, even if a defendant pleads guilty at the time set for the final pretrial conference, the defendant will not receive**

the one-level reduction in offense level described in U.S.S.G. § 3E1.1(b). In cases where a hearing for a plea of guilty is desired, counsel shall contact Susan A. Smith, Case Manager, at (616) 732-2746.

VIII. 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 8:30 a.m. and recesses between 3:00 - 3:30 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. Preparation for Bench Trial

1. The parties in a bench trial shall file the following not later than **three (3) business days** after the conclusion of the trial:
 - a. 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 law clerk to whom the case is assigned.

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 of the charged offenses. 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 of the charged offenses will be included in the preliminary jury instructions.

- b. Joint proposed jury 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 Attorney Information tab. The 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 Smith at susan_smith@miwd.uscourts.gov.

F. 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 12 names for the jury panel, plus one or two names for alternates, and such persons will be seated in the order they are called. Alternates will sit in seats 7 and 14.
 - 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 piece 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.

2. 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

G. Exhibits

As a general rule, all evidentiary and demonstrative exhibits, must be shown to 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.

