

The Nuts and Bolts of Local Practice in the Eastern District of Michigan (Part 2)

A guide to practicing in the U.S. District Court for the Eastern District of Michigan, adapted from the Federal Bar Association's *Handbook on Local Practice in the Eastern District of Michigan*

By Matthew J. Lund and Joshua L. Zeman

As in the Michigan state court system, most of your time in a federal civil case will be spent on discovery, and most of your interaction with the court will be through motion practice. Different courts have different rules regarding discovery and motion practice. While understanding the substantive law of your case is certainly paramount, knowledge of local federal discovery procedure and motion practice is a close second.

The second piece of our three-part series highlighting the key practice and procedure points in handling a civil case in the United States District Court for the Eastern District of Michigan addresses discovery and motion practice. The information in this series is more fully set forth in the *Handbook on Local Practice in the Eastern District of Michigan* as maintained by the Eastern District of Michigan chapter of the Federal Bar Association.¹

Discovery in the Eastern District of Michigan

The discovery process in a federal civil case begins with the exchange of initial disclosures, in which each party identifies the witnesses and evidence they may rely on, the plaintiff provides a computation of its damages, and the defendant identifies any applicable insurance coverage.² While due within 14 days of the parties' discovery planning meeting, the deadline can be, and often is, expanded by agreement of the parties.³

With the recently effective amendments to the Michigan Court Rules, written discovery in the Eastern District is largely similar to state court. The Federal Rules of Civil Procedure limit each party to 25 interrogatories, including all discrete subparts.⁴ Thus,

if your first interrogatory contains a main question followed by subparts (a) through (e) eliciting additional and different information, you have propounded six interrogatories for purposes of the rule. This limitation—like a new limitation in the Michigan Court Rules⁵—may come as a rude awakening to some. Depending on the facts of your case, 25 interrogatories will seem constraining, so use them wisely and draft them with deliberation. Or make it a point to propose an enlargement in your joint discovery plan. Depositions are limited to 10 per side, with each extending no longer than one seven-hour day.⁶ Written discovery and the certificates of service related to it are not to be filed with the court.⁷

Like in state court, protective orders are often necessary, and they are often entered upon by agreement of the parties. Proposed stipulated orders—whether protective or otherwise—are not to be filed on the docket. Instead, you submit them for the judge's consideration using the "Utilities" function on the electronic case filing (ECF) system. This function delivers a Microsoft Word copy of the proposed order electronically to the judge's chambers only, thereby allowing the paper to be reviewed and modified as the judge deems appropriate. Since you are not filing the proposed order, the ECF system does not notify your adversary of its submission. It is good practice, therefore, to send opposing counsel a copy of what you submitted. If the order is acceptable to the court, the judge will sign and file it.

Motion practice in the Eastern District of Michigan

There are many differences between state and federal court procedure related to motion practice, beginning with the format of

the papers. Unlike in state court, motions in the Eastern District do not need to be—and, as a general matter, are not—presented in numbered paragraphs. It is appropriate for the motion to contain just a paragraph or two identifying its nature, the relief sought, the rule under which it is filed, your effort to obtain concurrence, and a reference to the supporting brief.⁸ There is neither a requirement nor a practical need to address substantive issues in your motion. All motions must be accompanied by a brief in support, which the court will rely on to understand your issues.

Briefs in the Eastern District must follow a specified format. Before getting to the substance of your argument—whether you are the movant or a responding party—you must include a concise statement of issues presented, followed on the next page by a list of the controlling or most appropriate authority for the relief sought.⁹ A table of contents and index of authorities are not required by the rules, but may be included.¹⁰ As in state court, it is common to include an introduction followed by separate sections setting forth the relevant facts and your legal argument.

Your brief, including footnotes and signatures, may not exceed 25 pages. Unlike in state court, reply briefs are expressly allowed under the local rules; they are limited to seven pages.¹¹ While the page limitations in the Eastern District appear more generous than the Michigan Court Rules, keep in mind that you must use 14-point font (proportional), and that the rule applies to footnotes as well as text.¹² While it may go without saying, 14-point font is large, so plan accordingly when outlining your brief. All citations should conform to the rules of the most current publication of *The Bluebook: A Uniform System of Citation*, which are

substantially different from the state court briefing format and citation rules of the *Michigan Appellate Opinion Manual*.

Briefing deadlines are determined by the nature of your motion. A standard briefing schedule—response briefs due within 14 days and reply briefs due seven days later—is applicable to all motions in a civil case except motions for injunctive relief, for judgment on the pleadings, for summary judgment, to certify or decertify a class, to dismiss under FR Civ P 12(b), and to involuntarily dismiss an action under FR Civ P 41(b).¹³ For those motions, an enlarged briefing schedule applies; response briefs are due within 21 days of service, and reply briefs are due 14 days later.¹⁴ You have until midnight on the due date to file your motion, response, or reply, which may be good or bad, depending on how you value your time away from the office.¹⁵

What you should expect in terms of oral argument also differs from the state court system. Unlike in state court, attorneys do not notice their motions for hearing. Rather, the judge will set the hearing date and time, and you will be notified by the court through a notice filed on the ECF system. If you have a scheduling conflict that you cannot resolve, call the judge's chambers and speak to the case manager about possible alternatives. Each judge is assigned a case manager to handle his or her docket. Case managers are experienced, accessible, and friendly. Their phone numbers are available under the judge's link on the court's website.

While state court motion hearings typically involve many cases, a motion call in the Eastern District usually involves only a few motions—and sometimes only one. As a result, your hearing will begin at the scheduled time, so do not be late. Allow for enough time to get through security, which on some days can be longer than normal because of large events like naturalization ceremonies. On the day of oral argument, attorneys are required to check in with the judge's case manager, either in chambers or in the courtroom. If the case manager is not in the courtroom, go to the chambers and ring the doorbell.

Upon conclusion of oral argument, the judge may rule on your motion or take it under advisement. The district's local rules contain both a consent procedure and seven-

day rule procedure similar to the Michigan Court Rules for entry of orders.¹⁶ However, unlike in state court, these rules are rarely used. In most circumstances, you can and should rely on the court to submit its own order resolving your motion.

The magistrate judge assigned to your case will often hear and resolve non-dispositive pretrial motions and may hear and recommend the determination of dispositive motions. If your motion is assigned to a magistrate judge, the rules allow a process for review by the district judge. If you believe that the magistrate judge erred, you may file objections within 14 days.¹⁷ You must specify the part of the order, proposed findings, or recommendation to which you object and the basis for the objection.¹⁸ In addition to filing, you must serve the magistrate judge with a copy of your objections.¹⁹ A response to objections is due within 14 days of service, and the objecting party's reply is due seven days later.²⁰ While you may object to a non-dispositive motion, the magistrate judge's ruling will remain in full force and effect unless and until it is stayed by the magistrate judge or district judge.²¹

Special motions

Summary judgment motions

Summary judgment—the federal equivalent of MCR 2.116(C)(10)—is governed by FR Civ P 56. Absent leave of court, you may only file one motion for summary judgment.²² Many judges in the Eastern District have unique procedural requirements relating to motions for summary judgment. For example, some require a statement of material facts to be filed in a separate document and exhibits and relevant cases to be submitted to chambers with relevant sections highlighted. Suffice it to say, summary judgment is a good time to visit your judge's link on the court's website.

Motions for injunctive relief

Motions for temporary restraining orders and preliminary injunctions also have particularized requirements. Both requests must be made by motion, and not by an order to show cause.²³ If granted, a temporary restraining order is only valid for 14 days, unless the court, for good cause, extends

it for an additional 14 days.²⁴ As a practical matter, if you wish to preserve the relief set forth in a temporary restraining order for any period longer than 28 days, you should seek a preliminary injunction.

Motions for protective orders

The local rules provide specific (and unique) requirements regarding motions for protective orders relating to information that is privileged or otherwise subject to protection. The requirements are set forth in ED Mich LR 26.4. Unlike other motions in the Eastern District, you must append a proposed order as an exhibit to your motion. The proposed order must set forth the privilege or other reason for protection and a description of the type of information to be protected.²⁵

Discovery motions

When discovery disputes arise, the federal rules require counsel to meet and confer before a motion to compel is filed, and require the movant to certify that the conference was either held or sought in good faith.²⁶ Before hearing on the motion, the parties must again confer in good faith in an attempt to narrow the issues in dispute.²⁷

Many judges in the Eastern District have their own specific requirements relating to discovery disputes. Some require that a party seek leave before filing any discovery motion. Others conduct a telephonic conference to discuss the issues before a motion may be filed. Still others refer all discovery disputes to the assigned magistrate judge as a matter of course. This is another time when it is prudent to access the judge's link on the court's website.

In state court, discovery disputes are often resolved a week after they are filed. Briefing and hearing on discovery disputes in federal court take much more time and can slow down progress in your case. For this reason (among others), it is wise to work hard at trying to resolve discovery disputes without motion practice.

Motions for reconsideration

Motions for reconsideration are one area where the local rules are very similar to Michigan's state court rules. A motion for

reconsideration must be filed within 14 days of entry of the order or judgment at issue, demonstrate that the order or judgment contains a palpable defect by which the court and parties have been misled, and show that correction of the defect would lead to a different result.²⁸ If you seek reconsideration, your motion should be narrowly tailored to identify the palpable defect and should not merely attempt to relitigate the issues already ruled on by the court. The court will issue its ruling based on your motion alone; no response brief is allowed, and there is no oral argument unless the court orders otherwise.²⁹

Next month, our final piece of this three-part series will address alternative dispute resolution and trial practice in the Eastern District of Michigan. ■



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ENDNOTES

- The handbook was authored by James D. VandeWyngearde (Adient PLC), Mary K. Deon (Shelton Deon Law Group, PLLC), Brett M. Gelbord (Pepper Hamilton LLP), and the authors of this article. It is available at <<https://fbamich.org/docsremarks>> [<https://perma.cc/X5TQ-P2BH>]. All websites cited in this article were accessed January 8, 2020.
- FR Civ P 26(a)(1).
- FR Civ P 26(a)(1)(C).

- FR Civ P 33(a)(1).
- Effective January 1, 2020, MCR 2.309(A)(2) limits a party to 20 interrogatories, including discrete subparts.
- FR Civ P 30(a)(2)(A)(i) and FR Civ P 30(d)(1).
- Under ED Mich LR 26.2, written discovery is only filed in conjunction with a motion, response, or reply; when it is introduced during a trial or hearing; on order of the court; or if it is needed for an appeal. This and other local court rules are available at *Local Rules*, Eastern Dist of Mich, US Dist Court <<https://www.mied.uscourts.gov/index.cfm?pagefunction=rulesPlansOrders>> [<https://perma.cc/57XZ-SKHR>].
- ED Mich LR 7.1(a).
- ED Mich LR 7.1(d)(2).
- Id.*
- ED Mich LR 7.1(d)(3).
- ED Mich LR 5.1(a)(3). Alternatively under this rule, the type size of all text and footnotes must be no smaller than 10.5 characters per inch (nonproportional).
- ED Mich LR 7.1(e).
- ED Mich LR 7.1(e)(2).
- ED Mich ECF R15(b). This and other ECF rules are available at <https://www.mied.uscourts.gov/PDFfiles/policies_procedures.pdf> [<https://perma.cc/FHH5-FFE7>].
- ED Mich LR 58.1(c).
- FR Civ P 72(a).
- ED Mich LR 72.1(d)(1).
- ED Mich LR 72.1(d)(2).
- ED Mich LR 72.1(d)(3)–(4).
- ED Mich LR 72.2.
- ED Mich LR 7.1(b)(2).
- ED Mich LR 65.1.
- FR Civ P 65.
- ED Mich LR 26.4.
- FR Civ P 37(a)(1).
- ED Mich LR 37.1.
- ED Mich 7.1(h)(3).
- Id.*

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