

The Nuts and Bolts of Local Practice in the Eastern District of Michigan (Part 1)

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

"Are we really going to make a federal case out of it?"

While this question is often raised facetiously outside of the law, it is something many Michigan lawyers will consider at some point in their practice. For those who practice principally in the state courts, the prospect of bringing or defending an action in federal court can seem foreign. The law is the law, but the procedural rules and local customs and practices in federal court differ in many ways from Michigan's state court system.

To help practitioners navigate the local rules and customs, the Eastern District of Michigan chapter of the Federal Bar Association created the *Handbook on Local Practice in the Eastern District of Michigan*. The handbook was drafted by a committee of practitioners who regularly appear in the district¹ and offers a user-friendly resource to introduce state court practitioners to federal court in the Eastern District. The handbook is available for free at <https://fbamich.org/docsremarks>.

Drawn from the handbook, this article is the first in a three-part series that will highlight the key practice points in handling a civil case in the Eastern District of Michigan. Together, the articles will cover the procedural life of a civil case from start to finish—from your admission to the court and initiation of the suit through the taxation costs at the conclusion of the matter.

Getting admitted

To practice in the Eastern District, a lawyer must first become admitted to the Eastern District of Michigan Bar. Unlike in state court, admission is not made pro hac vice on a case-by-case basis. Membership involves only the submission of a certificate

of good standing and a completed application available on the court's website.² The cost is currently \$300. Once you are a member, you may appear in all current and future cases.

If you have an office in the district, you must appear in person to take the oath of office before a judicial officer.³ It is not necessary, however, to make a special trip to the court to be sworn in. Judges generally accommodate requests to administer the oath on the day you make your first physical appearance for court proceedings. To make such a request, contact your judge's chambers and ask his or her case manager in advance.

If you do not have an office in the district, you may arrange to take the oath by telephone. To do that, you will need a member of the Eastern District Bar to sponsor your admission, which involves completing a form that is available at the court's website with the admission materials.⁴

Initiating a case: Local considerations for plaintiffs and defendants

Filing a complaint requires paying a filing fee (currently \$400); this is the only fee that is required during the pendency of the suit.⁵ If your client is a corporate entity,

you must also file a Statement of Disclosure of Corporate Affiliations.⁶ Available on the court's website, this form allows the judge to determine whether he or she has any conflicts of interest that may require recusal.

Unlike in Michigan courts, 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.⁷

At the time of filing, your case is assigned to both a district judge and a magistrate judge. District judges are appointed by the president of the United States for a life term under Article III of the U.S. Constitution. They handle all manner of federal cases filed in the district, whether civil or criminal. There are currently 15 active district judges and seven senior district judges in the Eastern District.⁸ Many, if not most, of the judges on senior status carry a full caseload. Magistrate judges are appointed by the district judges to assist them in carrying out their duties. There are currently seven magistrate judges in the Eastern District.⁹ You will know which judges are assigned to your case via the initials that appear in the case caption: the district judge's initials appear first, followed by the magistrate judge's. The judges'

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names are also listed on the docket sheet located on the Public Access to Court Electronic Records (PACER) system. Depending on the district judge, the magistrate judge's role may be discrete or it may be large. In fact, if the district judge and all parties consent, the magistrate may conduct all proceedings in a civil case through the entry of judgment.¹⁰

While the main courthouse is in Detroit, the Eastern District has divisional courthouses in Ann Arbor, Bay City, Detroit, Flint, and Port Huron. Proceedings in the Northern Division of the district are handled at the Bay City courthouse by the district judge and magistrate judge assigned to that division.¹¹ Cases in the Southern Division may be assigned to judges in any of the other courthouses, regardless of where in the division the claim arose. For example, if your claim arose in Flint, it could randomly be assigned to a judge in Detroit and vice versa.

Many civil actions are brought to the Eastern District by a defendant that removes the case from state court to federal court. As a refresher in federal civil procedure, a defendant may remove an action from state to federal court if a federal question exists, i.e., the claim or right arises under the Constitution, treaties, or laws of the United States, or if the amount in controversy exceeds \$75,000 and there is complete diversity of citizenship—meaning that each plaintiff has a different citizenship from each defendant.¹² For purposes of determining citizenship, corporations are considered citizens of both their state of incorporation and principal place of business, while partnerships or limited liability companies are considered to have the citizenship of each of their partners or members.¹³ Under the “forum defendant rule,” a defendant may not remove an action based on diversity if the defendant is a citizen of the forum state.¹⁴ Thus, if your client is a Michigan company sued by an out-of-state plaintiff, you may not remove the case even though the parties are completely diverse.

A defendant that wishes to remove a case to federal court must do so within 30 days of receiving the initial pleading or summons.¹⁵ The notice of removal must include the basis for subject matter jurisdiction, facts establishing the removal as timely, a statement of

the concurrence of all co-defendants who have been served, a copy of the service of process, and all pleadings and orders from the state court.¹⁶ Like the initiation of the lawsuit by a plaintiff, a defendant's removal papers must be filed through the court's electronic case filing (ECF) system. The fee for a removal petition is \$400 (payable by credit card). Promptly after filing the notice of removal, you must also file notice with the clerk in state court.¹⁷

The docket in your case (and all others in the Eastern District) is fully accessible through PACER, the ECF system's counterpart. You can access PACER through the court's website.

You're here: Now what?

Once you are in court in the Eastern District, a good starting place is the court's website, <https://www.mied.uscourts.gov/index.cfm>. The website contains the required forms and links to the Federal Rules of Civil Procedure and the court's local rules. It also has links for each district judge and magistrate judge through which you can access their individual practice guidelines. These guidelines are important, as different judges employ different procedural practices. Some require submitting motion papers or proposed protective orders in a unique format. Others require a phone conference with the court before filing discovery motions. Knowing your assigned judge's requirements is key to ensuring proper practice.

The papers that you file in the Eastern District look different than they would in state court. For starters, the font is larger. Papers are to be presented in 14-point font (proportional) rather than the 12-point font used in state court.¹⁸ Your contact information is only required in your signature block.¹⁹ As a result, the title page of your filings does not, as it would in a state court case, include contact information for all attorneys who have appeared in the case.

With limited exception, everything in the Eastern District is filed electronically, including the papers necessary to initiate the lawsuit. As a lawyer handling a case in the district, you must register an account with the court's ECF system as part of the admission process.²⁰ The court maintains a separate

set of ECF rules as an appendix following its local rules for civil practice.²¹ An index of exhibits is also required if your filing has more than one exhibit.²²

The court's electronic filing system automatically serves papers on opposing parties, provided the opposing party has appeared and registered an ECF account. Your certificate of service need only state that you electronically filed with the court; that notice will be sent by the court's electronic filing system to all participants with an ECF account. Unlike state court, a party's consent to electronic service is not required.²³

While all filings are to be made electronically, a courtesy or “chambers” copy must be submitted to the judge's chambers for all dispositive motions, as well as for nondispositive motions if called for by your assigned judge's practice guidelines.²⁴ While a “judge's copy” stamp is not required, it is good practice to use one. Exhibits must be tabbed and firmly bound, and relevant portions of lengthy documents should be highlighted.²⁵ A printed copy of the notice of electronic filing—a confirmatory form you will receive when your paper is e-filed—must be attached to the front of the paper. Sending the papers to chambers via first-class mail on the day they are filed is appropriate; you do not need to hand deliver your filing unless the hearing is to occur within the next five days.²⁶

When your filing includes information you believe to be confidential, you should consult the district's local rules, which outline particular requirements for filing papers under seal.²⁷ Before filing a motion to seal, closely consider the merits of your argument for confidentiality, as motions to seal have come under increased scrutiny following a decision by the U.S. Court of Appeals for the Sixth Circuit that emphasized a trial court's obligation to keep its records open for public inspection.²⁸

The scheduling conference

After the defendant has answered the complaint, the court will convene a scheduling conference.²⁹ Because the conference is governed by Rule 16 of the Federal Rules of Civil Procedure, judges and federal practitioners often refer to the initial scheduling

conference as the “Rule 16 conference.” Procedurally, this conference takes place after the parties submit a joint discovery plan;³⁰ however, the order convening the conference is typically the trigger for the parties to prepare their plan. Some judges may waive the Rule 16 conference if the parties have jointly submitted an agreeable schedule and have no disputed procedural matters to address. Others may give parties the option of a telephonic conference. For planning purposes, however, you should expect to be called on to appear in person for this conference, and you should be prepared. Judges will expect you to knowledgeably discuss the facts and law of your case.

Next month, we will address discovery and motion practice in the Eastern District of Michigan. ■



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ENDNOTES

1. 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.
2. *Admission to the Eastern District of Michigan Bar*, Eastern District of Michigan, US District Court <<https://www.mied.uscourts.gov/index.cfm?pagefunction=attyAdmissionProcedure>> and ED Mich LR 83.20(d)(1)–(2). This rule and other local court rules are currently available at *Local Rules*, Eastern District of Michigan, US District Court <<https://www.mied.uscourts.gov/index.cfm?pagefunction=rulesPlansOrders>>. All websites cited in this article were accessed November 27, 2019.
3. ED Mich LR 83.20(d)(4).
4. ED Mich LR 83.20(d)(3) and *Admission to the Eastern District of Michigan Bar*.
5. *Filing Fees*, Eastern District of Michigan, US District Court <<https://www.mied.uscourts.gov/index.cfm?pagefunction=coFeeSchedule>>.
6. ED Mich LR 83.4(b)(1).
7. ED Mich ECF R6(a). A copy of the Court's ECF rules is available at <https://www.mied.uscourts.gov/PDFfiles/policies_procedures.pdf>.
8. *Judges*, Eastern District of Michigan, US District Court <<https://www.mied.uscourts.gov/index.cfm>>.
9. *Id.*
10. ED Mich LR 73.1(a).
11. *Eastern District of Michigan Court Locations and Hours*, Eastern District of Michigan, US District Court <<https://www.mied.uscourts.gov/index.cfm?pagefunction=courtLocations&locationID=>>>.
12. 28 USC 1331, 28 USC 1332, and 28 USC 1441(a).
13. 28 USC 1332(c)(1) and *Delay v Rosenthal Collins Group, LLC*, 585 F3d 1003, 1005 (CA 6, 2009).
14. 28 USC 1441(b)(2).
15. 28 USC 1446(b)(1).
16. *Id.*
17. *Id.*
18. Alternatively, the type size may be no smaller than 10.5 characters per inch (nonproportional), ED Mich LR 5.1(a)(3).
19. ED Mich LR 5.1(a)(1)(E).
20. ED Mich ECF R3.
21. The ECF rules are current as of April 1, 2019, and only available in PDF format as of this writing. See the “Printable (PDF) version” link at *Local Rules*, Eastern District of Michigan, US District Court.
22. ED Mich ECF R18(b).
23. ED Mich ECF R8.
24. ED Mich ECF R5(b).
25. *Id.*
26. *Id.*
27. ED Mich LR 5.3(b)(1), (3).
28. *Shane Group, Inc v Blue Cross Blue Shield of Michigan*, 825 F3d 299 (CA 6, 2016).
29. FR Civ P 16.
30. FR Civ P 26(f).