

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of  
JONATHAN BOND, a minor,  
Plaintiff(s),

CIVIL ACTION: 05-74253  
HONORABLE GERALD E. ROSEN

v.

CITY OF DETROIT, ET AL,  
Defendant(s).

**NOTICE TO COUNSEL (CIVIL)**

Enclosed you will find the Court's Scheduling Order and requirements for the Final Joint Pretrial Order.

**THIS IS NOT A FORM ORDER. COUNSEL ARE URGED TO READ ALL PROVISIONS THOROUGHLY AS THEY WILL BE HELD TO KNOW THE RULES AND REQUIREMENTS INCLUDED THEREIN, COUNSEL ARE FURTHER URGED TO CONDUCT ALL PHASES OF THIS LITIGATION WITH CIVILITY, COURTESY AND PROFESSIONALISM.**

The Court stand ready and willing to make itself available, upon request of counsel, to facilitate and expedite discovery and settlement. Ex parte contact of any type with the Court or its law clerks, other than as provided for the Federal Rules of Civil Procedure or in the Local Rules for the Eastern District of Michigan, is strictly prohibited. *All questions for the Court should be directed to the Case Manager, LaShawn R. Saulsberry.*

David J. Weaver, Clerk of Court

Dated: January 4, 2008

BY: s/LaShawn R. Saulsberry  
Case Manager (313) 234-5137

cc: NORMAN A. YATOOMA  
JOHN SCHAPKA

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**SCHEDULING ORDER**

**SPECIAL NOTICE TO COUNSEL:**

*Pursuant to Rule 16(f)* of the Federal Rules of Civil Procedure, it is the policy of the Court to enforce the deadlines and cut-off dates set forth in this Scheduling Order. Failure to comply with any of the requirements of this Scheduling Order may result in dismissal of the case and/or sanctions.

*Pursuant to Rule 16(b)* of the Federal Rules of Civil Procedure, requests for modifications of dates set by this Scheduling Order should be submitted by written motion to the Court at least 21 days prior to the date for which modification is sought.

Pursuant to Local Rules of the United States District Court for the Eastern District of Michigan, the Court enters the following Scheduling Order controlling the progress of the above captioned matter:

**IT IS HEREBY ORDERED THAT:**

1. The Discovery Cut-off date is: **JULY 31, 2008.**

ALL DISCOVERY SHOULD BE INITIATED IN ADVANCE OF THE DISCOVERY CUT-OFF DATE.

2. DISCOVERY PROBLEMS AND MOTIONS RELATED THERETO.

A. All motions to compel disputed discovery or for protective orders, including deposition objections, must be filed within 14 days of receipt or notice of such disputed discovery. This includes discovery not received on the date it is due. The Court will not entertain such motions beyond this time absent some extraordinary showing of good cause.

B. With respect to all disputed discovery, including but not limited to, deposition testimony, counsel are hereby put on notice that frivolous discovery and objections will be sanctioned. Counsel are specifically directed to read with care: Rules 11, 26, 30 and 37 of the Federal Rules of Civil Procedure. Counsel are further put on notice that, pursuant to Rules 30(c) and 37(b), and subject to any order of the Court pursuant to Rule 30(d), **ALL** deposition testimony shall: (1) be taken in good faith; and (2) be given over all objections other than privilege. Failure to abide by this Rule will result in sanctions upon either parties or counsel or both, whichever the Court deems appropriate.

C. PARTIES are placed on notice that the court complies strictly with FRCP 5(d) and Local Rule 26.2, which prohibit the filing of certain discovery materials. **DO NOT FILE DISCOVERY MATERIALS UNLESS OTHERWISE ORDERED BY THE COURT.**

3. Parties are **ORDERED** to exchange Preliminary Trial Witness Lists on or before: **JULY 17, 2008**.and file a proof of service. With respect to expert witnesses, this list will be final. With respect to Non-Expert Witnesses will be due on or before: **AUGUST 14, 2008**. **NO WITNESS, EXPERT OR NON-EXPERT, MAY BE CALLED FOR TRIAL UNLESS THAT WITNESS'S NAME IS LISTED BY THE RESPECTIVE DATES SET FORTH HEREIN WITHOUT ORDER OF THE COURT UPON SHOWING THAT THE WITNESS SOUGHT COULD NOT BE REASONABLY HAVE BEEN LISTED AS OF THIS DATE.**

4. Dispositive Motions (motions to dismiss, or for summary judgment, etc.), if any, should be filed by: **AUGUST 29, 2008**

See Comment below (paragraph \_\_\_\_ ) on motion practice and deadlines.

5. Motions in limine must be filed with the Court before the final pretrial/conference date. Generally, the Court will rule on questions of the admissibility of evidence and objections before trial starts.

6. The Proposed Joint Final Pretrial Order shall be submitted to the Judge's Chambers by: **JANUARY 2, 1009.**

The requirements for the Joint Final Pretrial Statement to be filed at the final pretrial conference are attached. NOTE that counsel for plaintiff is responsible for convening a conference to collaborate in the formulation of the Joint Final Pretrial Order. FAILURE TO SUBMIT A TIMELY PRETRIAL ORDER WILL RESULT IN THE ISSUANCE OF SANCTIONS.

7. FINAL PRETRIAL SETTLEMENT CONFERENCE IS SCHEDULED FOR: **JANUARY 8, 2009 AT 10:00 A.M..** TRIAL COUNSEL MUST BE PRESENT. CLIENTS, OR THOSE WITH AUTHORITY TO ENGAGE IN SETTLEMENT NEGOTIATIONS, SHALL ALSO BE PRESENT. THERE WILL BE **NO EXCEPTIONS** TO THIS REQUIREMENT OTHER THAN IN THE MOST DIRE AND EXTREME OF EMERGENCIES. ABSENT WRITTEN ORDER OF THE COURT, FAILURE OF CLIENTS, OR THOSE WITH AUTHORITY TO APPEAR AT THE FINAL PRETRIAL SETTLEMENT CONFERENCE WILL RESULT IN ENTRY OF JUDGMENT.

8. OTHER **ANSWER DUE: JANUARY 14, 2008**

9. JOINT JURY INSTRUCTIONS/PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. JOINT JURY INSTRUCTIONS. The parties are hereby Ordered to meet and confer prior to trial to discuss jury instructions. No later than the last business day prior to trial, the parties are to file with the Court a **single set of proposed, stipulated jury instructions.** All such instructions are to be typewritten and double-spaced, and shall contain any titles (e.g., "Duty to Deliberate") and notations or reference to authority (e.g., "Devitt and Blackmar,§; "U.S.A. v. \_\_\_\_\_, \_\_\_\_\_ U.S. \_\_\_\_\_(1985)"). Each party shall also file any additional proposed instructions to which any other party objects, and indicate both the basis supporting the instruction and the basis for the opposing party's objection(s). The parties are to

make a good faith effort to narrow the areas of dispute and to discuss each instruction with a view toward reaching agreement as to an acceptable form.

B. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In bench trials, Proposed Findings of Fact and Conclusions of Law **must** be submitted no later than the last business day prior to trial, unless otherwise ordered by the Court.

10. VOIR DIRE: It will be the Court's practice to conduct voir dire. Counsel are instructed to submit all requested voir dire to the Court on the last business day prior to trial with questions listed in numbered form. The Court will entertain requests for follow-up and additional voir dire on a limited basis, and **may** permit such voir dire to be conducted by counsel. In such instances, counsel are admonished to confine themselves to true voir dire and not engage in posturing, argument or speech-making.

11. COUNSEL ARE **ORDERED** TO MEET PRIOR TO TRIAL TO IDENTIFY ALL EXHIBITS TO WHICH THERE ARE NO OBJECTIONS AND ALL THOSE TO WHICH THERE ARE OBJECTIONS. EXHIBITS AGREED UPON ARE TO BE PRE-MARKED AND LISTED ON A SHEET OF PAPER. EXHIBITS NOT AGREED UPON ARE TO BE PRE-MARKED AND LISTED SEPARATELY. EXCEPT IN UNUSUAL CASES COPIES OF ALL EXHIBITS SHALL BE PROVIDED TO THE COURT PRIOR TO TRIAL.

12. The case is assigned for trial on the Court's trailing docket for: **JANUARY 13, 2009**.

The Court will advise you specifically at a later date as to additional trial schedule information. However, the above-stated trailing docket date will not be changed.

NOTE: NO DE BENE ESSE DEPOSITION(S) WILL BE PERMITTED TO BE TAKEN DURING TRIAL WITHOUT PERMISSION OF THE COURT, UPON MOTION SHOWING THAT SUCH DEPOSITION(S) COULD NOT REASONABLY HAVE BEEN TAKEN IN ADVANCE OF TRIAL. VIDEOTAPE DEPOSITIONS WILL NOT BE ALLOWED TO BE SHOWN AT TRIAL WITHOUT PRIOR APPROVAL OF THE COURT.

13. Where **EACH** attorney for **EACH** party in a suit desires an early trial date this Court will attempt to provide the earliest open date for trial. Please notify the Court of this desire by calling the Court's Courtroom Deputy Clerk, LaShawn R. Saulsberry at 313/234-5137.

14. MOTION PRACTICE - Counsel are expected to comply with all Local Rules, including specifically Rule 7.1 which requires filing of responses and briefs within twenty-one (21) days after service of motion, unless otherwise ordered by the Court upon motion. Failure to adhere to such deadlines may result in sanctions being imposed, including the striking of late briefs and responses.

Pursuant to Rule 7.1, the Court may order that motions in this case be submitted and determined on the briefs without oral hearing.

15. REFERRAL TO MAGISTRATE JUDGE: Unless otherwise ordered, all non-dispositive discovery motions are referred to the Magistrate Judge to whom this case is assigned. Other pre-trial matters may also be referred to the Magistrate Judge as determined on a case-by-case basis, and counsel will be advised.

16. SEALED MATERIALS: This court complies strictly with the provisions of Local Rule 5.3 regarding sealed materials.

DATED: January 4, 2008

s/Gerald E. Rosen  
UNITED STATES DISTRICT JUDGE