CASE MANAGEMENT PROTOCOL
OAKLAND COUNTY CIRCUIT COURT
BUSINESS COURT CASES

1) Governance

a. As provided in the Notice and Order to Appear, the Business Court Case Management Protocol shall be adopted as a Court Order by the Court for the governance of all cases assigned to the business court docket unless specific objections are filed by either party prior to the early scheduling conference (i.e., Case Management Conference).

b. The Case Management Protocol shall be discussed by the parties and the Court at the initial Case Management Conference. If objections have been raised, the objecting party must show good cause as to why a particular case should be exempted, in whole or in part, from the Case Management Protocol or why the Case Management Protocol should be modified in relation to that particular case. Any deviation from the Case Management Protocol shall be specifically described by the objecting party and alternative procedures suggested.

c. The Case Management Protocol, including any alternative procedures acceptable to both the parties and the Court, shall be incorporated into the Scheduling Order.

2) Standing Protocols

a. Electronic Service. All counsel of record agree to accept service of all filings and other communication via email at the address identified by the State Bar of Michigan or a single email address as otherwise directed. Service is accomplished upon transmission absent knowledge by the sender that the email was not received (*e.g.*, it is returned as undeliverable). Delivery of materials by the Court's e-filing system also constitutes service effective as of the time stamp on the document.

b. Case Management Conference. Pursuant to MCR 2.401(B)(1), the Court may direct that an early scheduling conference be held. In Oakland County, the Court will conduct an early scheduling conference, known in Business Court as the Case Management Conference, at the onset of the case. Lead trial counsel shall attend and be prepared to discuss the case.

Prior to the conference, all counsel are expected to confer regarding the following matters (as outlined in 2(b)(i)-(xviii) of the Protocol). Plaintiff's counsel shall then file a Joint Case Management Plan, identifying areas of agreement and disagreement

(and as to such matters outlined below, briefly setting forth the parties' positions), at least one week prior to the scheduled conference.

During the conference, the Court should consider any matters that will facilitate the fair and expeditious disposition of the action. To assist the Court, the parties shall address:

i. whether jurisdiction and venue are proper or whether the case is frivolous;
ii. whether to refer the case to an alternative dispute resolution procedure under MCR 2.410;
    1. The timing of early ADR processes and the selection of a mutually acceptable neutral.
        a. The parties shall have discussed a mutually-acceptable neutral prior to the conference.
iii. the complexity of a particular case and dates when future actions should begin or be completed in the case;
iv. disclosure, discovery, preservation, and claims of privilege of ESI;
    1. Whether an ESI Conference will be necessary; if so, the ESI discovery plan shall be filed 14 days following the conference
v. the simplification of the issues;
vi. the amount of time necessary for discovery, staging of discovery, and any modification to the extent of discovery;
    1. The parties shall attempt in good faith to agree on a proposed discovery plan. The parties shall then incorporate their proposed discovery plan into the Joint Case Management Plan for the Court's review.
vii. the necessity or desirability of amendments to the pleadings;
viii. the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;
ix. the timing of disclosures under MCR 2.302(A);
x. the limitation of the number of expert witnesses, whether to have a separate discovery period for experts, whether to require preparation and disclosure of testifying expert reports, and whether to specify expert disclosure deadlines;
xi. the consolidation of actions for trial, the separation of issues, and the order of trial when some issues are to be tried by a jury and some by the court;
xii. the possibility of settlement;
xiii. whether mediation, case evaluation, or some other form of alternative dispute resolution would be appropriate for the case, and what mechanisms are available to provide such services;
xiv. the identity of the witnesses to testify at trial;
xv. the estimated length of trial;
xvi. whether all claims arising out of the transaction or occurrence that is the subject matter of the action have been joined as required by MCR

2.203(A); and xvii. other matters that may aid in the disposition of the action such as:

1. Requested relief, including a good faith estimate of the amount of damages, sought in the Complaint and any Counterclaim.
2. Need for a protective order and consent to the Court's Model Protective Order (https://www.oakgov.com/courts/businesscourt/Documents/ mod-bc-pro_ord.pdf).

The parties will be expected to discuss the adoption of the Case Management Protocol, subject to any objections and/or mutually agreeable alternative procedures, as a Court Order.

The parties and the Court will discuss the need and timing for any additional conferences.

c. Scheduling Order. At the Case Management Conference, the Court shall establish times for events and adopt other provisions deemed appropriate, including:
   i. What, if any, changes should be made in the timing, form, or requirement for disclosures under MCR 2.302(A);
   ii. What, if any, changes should be made to the limitations on discovery imposed under the court rules and whether other presumptive limitations should be established;
   iii. The completion of discovery; iv. The exchange of witness lists; and
   v. The scheduling of a pretrial conference, a settlement conference, or trial.

   The Scheduling Order may also include provisions concerning initial disclosures, discovery of ESI, any agreements the parties reach for asserting claims of privilege or for protection as trial-preparation material after production, preserving discoverable information, and the form in which ESI shall be produced. MCR 2.401(B)(2).

d. Standard Discovery Protocols

   NOTICE: A party may seek discovery only after the party serves its initial disclosures under MCR 2.302(A). See MCR 2.301(A)(1).

   NOTICE: Discovery shall be proportional to the complexity of the case and the amount of damages sought. See MCR 2.302(B)(1). The Court may control the scope, order, and amount of discovery consistent with the court rules. MCR 2.301(C).

   NOTICE: The parties shall preserve all documents, including all electronically stored information relevant or potentially relevant to the case. Any logistical, cost or other issues presented by this requirement shall be addressed at the Case Management Conference.

   i. The following provisions are suggested to the parties as a starting point in order to streamline discovery, reduce costs, and engage in meaningful ADR processes as

early in the litigation as practicable. The parties may agree to additional or different protocols as long as otherwise permitted by the Michigan Court Rules or upon Court Order. The Court will consider principles of proportionality with regard to all discovery disputes.

ii. *Initial Disclosures*.

(1) *Time for Initial Disclosures. MCR 2.302(A)(5).*
Unless a stipulation or order sets a different time, the following deadlines apply:
(a) A party that files a complaint, counterclaim, cross-claim, or third-party complaint must serve its initial disclosures within 14 days after any opposing party files an answer to that pleading.
(b) A party answering a complaint, counterclaim, cross-claim, or third-party complaint must serve its initial disclosures within the later of 14 days after the opposing party's disclosures are due or 28 days after the party files its answer.
(c) A party serving disclosures need only serve parties that have appeared. The party must serve later-appearing parties within 14 days of the appearance.

(2) *In General. MCR 2.302(A)(1).*
Except as exempted by the court rules, stipulation, or court order, a party must, without awaiting a discovery request, provide to the other parties:
(a) The factual basis of the party's claims and defenses;
(b) The legal theories on which the party's claims and defenses are based, including, if necessary for a reasonable understanding of the claim or defense, citations to relevant legal authorities;
(c) The name and, if known, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
(d) A copy - or a description by category and location - of all documents, ESI, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
(e) A description by category and location of all documents, ESI, and tangible things that are not in the disclosing party's possession, custody, or control that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment. The description must include the name and, if known, the address and telephone number of the person who has possession, custody, or control of the material;
(f) A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as

under MCR 2.310 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

(g) A copy (or an opportunity to inspect a copy) of pertinent portions of any insurance, indemnity, or suretyship agreement under which another person may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment including self-insured retention and limitations on coverage, indemnity, or reimbursement for amounts available to satisfy a judgment; and

(h) The anticipated subject areas of expert testimony.

(3) *Form.* Initial disclosures must be in writing, signed, and served, and a proof of service must be promptly filed.

(4) *Basis for Initial Disclosure; Unacceptable Excuses*. A party must serve initial disclosures based on the information then reasonably available to the party. A party is not excused from making disclosures because the party has not fully investigated the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(5) *Supplementing Initial Disclosures.* A party must supplement or correct an initial disclosure or response as ordered by the Court or in a timely manner if the party learns that the disclosure is materially incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties. Failure to supplement disclosures or responses could lead to sanctions under MCR 2.313(B)(2)(b).

(6) *Changes to Procedure.* A court order or a written and filed stipulation of the parties may change the initial disclosure requirements as long as the change is not inconsistent with a court order. MCR 2.302(F).

iii. *Written Discovery.*

1. *Scope*. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable. MCR 2.302(B)(1).

2. Each separately represented party may serve no more than **twenty** interrogatories upon each party. A discrete subpart of an interrogatory counts as a separate interrogatory. MCR 2.309(A)(2).

A court order or a written and filed stipulation of the parties may change the limits on interrogatories as long as the change is not inconsistent with a court order. MCR 2.302(F).

3. For any type of written discovery under 2.310 or 2.312, the parties are encouraged to agree upon any limitation on written discovery, including the timing and sequencing of written discovery that will best serve the speedy, just and efficient resolution of the matter.

4. Objections shall be clear and concise. Boilerplate or "general" objections are discouraged. Responses with objections shall clearly indicate the scope of the withholding of any information or document on the basis of an asserted objection.

5. Documents identified consistent with MCR 2.309(E) shall be identified by bates number or otherwise such that it is clear which produced documents correspond to each interrogatory.

6. Any document withheld on the basis of a claimed privilege, and generated before the initiation of litigation, shall be logged to allow the opposing party and the Court to assess the prima facie assertion of privilege. The log shall be produced at the same time as the document production. The document production shall be made at the same time as the written responses. The log shall (1) state the document number (e.g. Bates number) of the document, (2) describe the nature and general subject matter of the document not produced,(3) state the date and type of document (e.g., e-mail, notes, memo, etc.), (4) state the name(s) of the author/sender, recipient, and any third parties recipients copied, or, if known, who later received copies; and (5) state the privilege(s) asserted as to the withheld document. A log for post-litigation communications may be agreed to by the parties or requested by motion.

7. When filing a motion pursuant to MCR 2.309(C) or 2.310(C)(3), a party must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

8. The Court will entertain motions to expand or increase discovery upon good cause shown, either initially in the case or later in the discovery process once a defined need is established.

9. Unless otherwise ordered, a date for completion of discovery means the serving party shall initiate the discovery by a time that provides for a response or appearance, per the court rules, before the completion date. MCR 2.301(B)(4).

   That is, discovery must be served sufficiently in advance of the discovery cutoff date so as to allow the opposing party sufficient time to respond prior to the discovery cutoff. As a practical matter, a party shall initiate written discovery at least 28 days before the deadline for the completion of discovery.

10. Discovery motions may be brought after the date for completion of discovery as may be reasonable under the circumstances or by leave of the Court.

11. The parties may stipulate or the Court may order the mediation of discovery disputes. MCR 2.411(H). The Court may specify that discovery disputes must first be submitted to the mediator before being filed as a motion unless there is a need for expediency. MCR 2.411(H)(3).

iv. *Depositions.*

1. A deposition may not exceed **one day of seven hours**. MCR 2.306(A)(3).

2. Subject to MCR 2.306(A)(3), the parties are encouraged to agree upon a limitation on the number and length of any depositions, including the timing, location and sequencing of those depositions that will best serve the speedy, just and efficient resolution of the matter.

3. Presumptively, depositions of Plaintiff's representatives shall take place in Oakland County at Plaintiff's counsel's office or other local location designated by Plaintiff's counsel, and Defendant's depositions shall take place in the location of the deponent's customary place of work (whether in or out of state) at Defendant's counsel's office or other local location designated by Defendant's counsel.

4. Inordinate breaks during depositions, gamesmanship, objections violative of MCR 2.306(C)(4) or uncivil behavior are inappropriate and will be subject to the imposition of sanctions by the Court.

5. Notice of a deposition must be served on a party's corporate representative at least 14 days prior to the scheduled deposition. No later than 10 days after being served with the notice, the noticed entity may serve objections or file a motion for protective order, upon which the party seeking discovery may either proceed on topics as to which there was no objection or motion, or move to enforce the notice. MCR 2.306(B)(3).

v. *Electronic Discovery; ESI (Electronically Stored Information).*

1. *Form.* ESI means electronically stored information, regardless of format, system, or properties.

2. A party has the same obligation to preserve ESI as it does for all other types of information. MCR 2.302(B)(5). Failure to preserve ESI in the anticipation or conduct of litigation could lead to sanctions under MCR 2.313(D) upon a finding of prejudice to another party from the loss of information or upon a finding that the party acted with the intent to deprive another party of the information's use in litigation.

3. A party need not provide discovery of ESI from sources that the party identifies as not reasonably accessible because of undue burden or cost. MCR 2.302(B)(6).

4. *ESI Conference*. Where a case is reasonably likely to include the discovery of ESI, parties may agree to an ESI Conference, the judge may order the parties to hold an ESI Conference, or a party may file a motion requesting an ESI Conference, at which time certain matters shall be discussed. MCR 2.401(J)(1) sets forth the matters to be considered during the ESI Conference. Within 14 days of the ESI Conference, the parties shall file with the Court an ESI discovery plan and a statement concerning any issues upon which the parties cannot agree. MCR 2.401(J)(2). The Court may enter an order governing the discovery of ESI pursuant to the parties' ESI discovery plan, upon motion of a party, by stipulation o the parties, or on its own. MCR 2401(J)(4).

5. In cases involving complex issues of ESI, the Court may appoint an expert under MRE 706. By stipulation of the parties, the Court may also designate the expert as a discovery mediator of ESI issues. MCR 2.411(H)(4).

6. Parties should be prepared to discuss e-discovery protocols and related issues in an educated manner at the Case Management Status Conference. Parties are free to agree to additional protocols governing e-discovery (*e.g.,* the Model Order utilized by the U.S. District Court, E.D. Mich). (https://www.mied.uscourts.gov/pdffiles/ParkerEsiOrderChecklist.pdf).

   Presumptively, all documents produced electronically shall be produced in native format and with the load files preserving all metadata.

Failure to comply with the Business Court Case Management Protocol may subject the parties to sanctions.