

BIOGRAPHY and COURT PRACTICE JUDGE DAVID STEWART CERCONE



Judge David Stewart Cercone was appointed Judge of the United States District Court for the Western District of Pennsylvania by President George W. Bush in 2002. Prior to his appointment, Judge Cercone had been a member of the Pennsylvania judiciary for twenty years.. He began his judicial career in 1982 after being elected district justice for the communities of Stowe and McKees Rocks, Pennsylvania. In 1985, at the age of thirty-two, Judge Cercone became the youngest person ever elected to the Allegheny County Court of Common Pleas. In both elections, Cercone was the nominee of both the Democratic and Republican Parties.

Before becoming a federal judge, Judge Cercone served in both the criminal and civil divisions of the Allegheny County Court of Common Pleas. In 1993, he was appointed administrative judge for the criminal division by the Supreme Court of Pennsylvania. In that capacity, Judge Cercone supervised fourteen judges and over two hundred court employees. During his tenure, Cercone implemented an accelerated plea docket to prevent jail overcrowding and to reduce case backlogs. He also established the first “drug court” in western Pennsylvania for the rehabilitation of drug offenders.

Judge Cercone received his Bachelors of Arts degree, magna cum laude, for Westminster College, New Wilmington, Pennsylvania, in 1974. He graduated from Duquesne University School of Law, Pittsburgh, Pennsylvania, in 1977. Following law school, Cercone clerked for Allegheny County Common Pleas Court Judge Paul R. Zavarella. In 1979, he was appointed an assistant district attorney for Allegheny County, and specialized in the prosecution of narcotics and violent crime cases.

In addition to his judicial career, Judge Cercone has been an active teacher. Since 1982, Cercone has been an adjunct faculty member at the University of Pittsburgh’s Graduate School of Public and International Affairs. He has also been a part-time faculty member at Robert Morris University. In 2001, he was selected by students at the University of Pittsburgh to be the recipient of the first Student’s Choice Award for outstanding instruction.

Judge Cercone currently serves on many committees of the Allegheny County Bar Association, and is a former member of the Pennsylvania Conference of State Trial Judges. He is also a member of the board of directors of the Boys and Girls Club of Western Pennsylvania. Since 1999, he has served on the board of visitors of the Graduate School of Public and International Affairs at the University of Pittsburgh.

Judge Cercone and his wife, Mary Ann, reside in Stowe Township, Pennsylvania, with their three children.

**PRACTICES AND PROCEDURES OF
JUDGE DAVID STEWART CERCONE**

I. GENERAL MATTERS

A. Communications with the Court

In an emergency situation, Judge Cercone will permit either correspondence or contact by telephone with his chambers. This includes such items as obtaining a one or two day extension of time to file a pleading when an unexpected event occurs which interferes with the attorney's ability to make a timely filing. He has a strong preference, however, that written communications with the court be in a form of a motion for docketing purposes.

B. Communications with Law Clerks

Judge Cercone permits communication with his law clerks concerning the status of matters.

C. Telephone Conferences

Judge Cercone will permit attorneys or parties to participate in conferences by telephone but only, for the most part, where out-of-town counsel are involved. If it is a pretrial settlement conference, he prefers counsel to be present.

D. Pro Hac Vice Admissions

Judge Cercone routinely grants pro hac vice admission.

E. Comment to the Media

No special policy is in effect and the Rules of Professional Conduct govern.

II. MOTIONS PRACTICE

A. Oral Argument

Oral argument is entertained only on selected, usually factually and legally complex matters, but not otherwise.

B. Briefs

Judge Cercone requires briefs to be filed in support of all substantive motions. If the motion is procedural, e.g., a request for an extension of time and the like, a brief is not required. Judge Cercone permits the filing of reply briefs; leave is not required to file such briefs. Judge Cercone would generally expect them to be filed within 11 days of the filing of the prior brief. His general page limitation on briefs is 25 pages.

- C. Chambers Copies of Motion Papers**
Judge Cercone does not require that a courtesy copy of motions and papers be sent to his chambers.
- D. Scheduling**
Responses to motions are governed by Judge Cercone's Case Management Order attached hereto. Judge Cercone appreciates scheduling pressures and will entertain requests for extensions.
- E. Magistrate Judge's Report and Recommendation**
When a Magistrate Judge makes a recommendation on a dispositive motion, it is Judge Cercone's practice to review the report and recommendation in de novo fashion.
- F. Evidentiary Hearings**
In both civil and criminal matters which require an evidentiary hearing on a pretrial motion, Judge Cercone schedules the hearing in advance of trial and as soon as possible after all motions and briefs have been filed.
- G. In Limine Motions**
Judge Cercone's practice with respect to the presentation of motions in limine in civil cases is set out in his Case Management Order and in his Pretrial Order attached hereto. Judge Cercone generally rules on such motions at the time of trial.

III. CIVIL CASES

- A. Pretrial Procedures**
 - 1. Local Rule 16.1**
Judge Cercone has a standard Case Management Order in both jury and non-jury matters; a copy of each follows this summary.
 - 2. Pretrial Conferences**
An initial case management conference is scheduled within 30 days of the filing of a responsive pleading. At the initial conference, the L.R. 16 order is issued after discussion with counsel as to the length of time necessary for discovery, handling of expert witnesses, and other matters. Additional case management conferences take place on request of counsel and in all cases prior to the trial date to discuss settlement and/or trial. Counsel are encouraged to request the assistance of the court on any matter.

3. Settlement

Judge Cercone requires that the parties have authority to settle a matter at a settlement conference. If a party is from out-of-town, Judge Cercone will permit the person with authority to participate by telephone. Judge Cercone will participate in the settlement of non-jury cases. If any party objects to his participation, he will refer the matter to another Judge or a Magistrate Judge. If Judge Cercone feels that discussing a specific amount of damages would prejudice his ability to remain neutral, he would refrain from participating in a damage discussion. However, Judge Cercone indicated it is very rare that he does not get involved with discussing both the liability and damage aspects of a non-jury case in the course of settlement. Although Judge Cercone does not routinely recommend any Alternative Dispute Resolution mechanisms, he encourages the parties to utilize the arbitration procedure which has been instituted in the Western District. Mini-trials may be conducted when the parties genuinely believe it will assist settlement.

4. Extensions and Continuances

Judge Cercone has no special rules regarding extensions and continuances. He prefers requests to be in the form of a motion. He will continue arguments, hearings and conferences if circumstances require.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Judge Cercone normally grants a 120 day deadline for discovery, unless counsel requests a longer period at the outset. He will grant extension of the discovery, especially if all parties agree and it is apparent the case will not be called for trial immediately.

2. Expert Witnesses

Judge Cercone has no specific policy with respect to discovery depositions of expert witnesses other than compliance with the Federal Rules of Civil Procedure

3. Deposition Disputes

Judge Cercone will entertain telephone calls from attorneys at a deposition to resolve a discovery dispute.

4. Stay of Discovery

Judge Cercone's general policy is not to grant requests for a stay of discovery during the pendency of a dispositive motion unless the grounds for the motion are "obvious." His preference is for the parties to get on with exploring the substance of a case. He will, however, entertain motions to stay.

5. Limitations on Discovery

Judge Cercone does not impose any restrictions on the number of interrogatories or depositions or the use of any other discovery procedure.

6. Rule 11 Motions - Rule 37 Sanctions

Judge Cercone generally defers ruling on Rule 11 and Rule 37 motions until the end of a case. Such motions must be briefed; if a party wants sanctions, the request must be supported with argument and law. Judge Cercone is reluctant to award attorneys' fees as sanctions.

C. Injunctions and TROs

Judge Cercone's general practice regarding TROs is that he requires opposing counsel to be contacted. If circumstances warrant, Judge Cercone will rule ex parte, however, this is an extremely rare occurrence. After ruling upon a TRO, he schedules a preliminary injunction hearing promptly. If injunctive relief is sought, unless preceded by a TRO, it will be given accelerated treatment only if the particular case appears to warrant it.

D. Trial Procedures

1. Scheduling of Cases

In criminal cases, Judge Cercone sets a specific date for trial. Generally, Judge Cercone is inclined to assign a specific "firm" date for the beginning of each trial. Depending on the Court's schedule, Judge Cercone may also give each case a "back-up" date, which is generally an earlier date. If he has to postpone a civil case because of a criminal trial, or for other reasons, he will put the civil case on a master list and try to reschedule it at the earliest possible date.

Judge Cercone generally will not consider other obligations of counsel and witnesses with respect to the "firm" date because it is scheduled so far in advance; he is, however, more flexible with respect to the "back-up" date. He will consider rescheduling to accommodate an expert witness if there is good cause for the request.

2. Trial Hours/Days

Judge Cercone generally conducts jury trials on Monday through Thursday from 9:30 a.m. to 4:30 p.m. with an hour lunch break and a 15 minute recess in the morning and afternoon. Bench trials are conducted from 9:30 a.m. to 4:30 p.m. He will run jury trials later if everyone is agreeable and if he thinks he can thereby speed up the trial. He will also use Fridays, if necessary, to move a case.

- 3. Trial Briefs**
Judge Cercone does not require trial briefs. If a trial brief is submitted, the page limitation should be accordance with the pretrial order of 25 pages absent leave of court.
- 4. Voir Dire**
In criminal cases, Judge Cercone conducts voir dire. In civil cases, Judge Cercone's deputy clerk conducts the voir dire. Counsel is permitted to supplement the court's standard voir dire questions by submitting proposed questions which will be ruled upon by Judge Cercone.
- 5. Note Taking by Jurors**
Judge Cercone generally does not permit note taking by jurors.
- 6. Side Bars**
Judge Cercone permits side bar conferences. He has no special rules for when a side bar conference is appropriate.
- 7. Examination of Witnesses Out of Sequence**
Judge Cercone allows for flexibility in the sequence of calling witnesses.
- 8. Opening Statements and Summations**
Judge Cercone does not limit the amount of time for opening statements. Although Judge Cercone does not limit the amount of time for summations, he may ask counsels' estimation of the length of summation and set a tentative limit if he believes that counsels' estimate is excessive.
- 9. Examination of Witnesses or Argument by More Than One Attorney**
Judge Cercone permits participation by more than one attorney in a trial. Under special circumstances, he would permit more than one attorney to question one witness if a compelling reason is presented.
- 10. Examination of Witnesses Beyond Direct and Cross**
Judge Cercone permits redirect and recross. Judge Cercone will permit examination beyond redirect and recross if it is truly necessary.
- 11. Videotaped Testimony**
Judge Cercone has no special procedures or requirements with respect to the use/admission of videotape testimony.
- 12. Reading of Material into the Record**
Judge Cercone requires that counsel read into the record such things as deposition testimony, stipulations, pleadings or discovery materials.

13. Exhibits

Judge Cercone's pretrial order addresses the marking and exchanging of exhibits prior to trial. Judge Cercone permits counsel to use visual aids during trial, including opening statements, if all counsel consent. If there is a question of admissibility of a chart, model or blow-up, Judge Cercone will not permit the use of the exhibit during opening statements. Judge Cercone requires that an exhibit be offered into evidence before any substantive testimony regarding the exhibit is developed.

14. Directed Verdict Motions

Judge Cercone has no standard requirement regarding directed verdict motions or motions to dismiss in a non-jury case.

15. Jury Instructions and Verdict Forms

Judge Cercone utilizes a compilation of standard jury instructions. He permits the submission of proposed jury instructions and verdict forms. He requires that proposed jury instructions be submitted prior to trial in conformance with his pretrial order. Judge Cercone rules upon all proposed jury instructions before closing arguments outside the presence of the jury.

16. Proposed Findings of Fact and Conclusions of Law

Judge Cercone requires the submission of proposed findings of fact and conclusions of law. Generally they are due after the transcript is available. Plaintiff's are due 30 days after filing of transcript and then defendant's 30 days thereafter.

17. Offers of Proof

Judge Cercone does not impose any restrictions upon requests for offers of proof during trial so long as the right is not abused.

18. General Courtroom Rules

Judge Cercone has no special courtroom rules regarding the conduct of counsel during trial.

E. Jury Deliberations

1. Written Jury Instructions

Except in complex cases, Judge Cercone ordinarily does not give the jury a copy of his instructions.

2. Exhibits in the Jury Room

As a general policy, Judge Cercone provides the jury with exhibits except if the exhibits involve contraband such as drugs or firearms.

3. Jury Request to Read Back Testimony or Replay Tapes During Deliberations

Judge Cercone will generally permit read-backs or replays after consultation with counsel.

4. Jury Questions

All questions from the jury must be in writing.

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom during jury deliberation. However, counsel must be available by telephone and must return to the courtroom within 15 minutes of the telephone call.

6. Interviewing the Jury

Judge Cercone has no special rules regarding interviewing jurors post-verdict. Judge Cercone tells jurors they have the freedom to speak or not to speak, but should not disclose individual ballots.

F. General

1. Special Types of Cases

Judge Cercone uses a standard social security case order. He requires the filing of a RICO statement in RICO cases after the initial status conference and motions to certify a class in class actions.

IV. CRIMINAL CASES

A. Motions

Judge Cercone considers request for extensions on a case-by-case basis. He does want language to the effect that the time is excluded for purposes of the Speedy Trial Act.

B. Pretrial Conferences

Judge Cercone does not generally conduct “formal” pretrial conferences in criminal cases, but will conduct one or more conferences prior to trial to deal with problems and schedules, discuss pending motions, and the like.

C. Guilty Pleas

Judge Cercone has no special rules regarding guilty pleas. He has no deadlines for accepting/rejecting plea bargains. Judge Cercone has a written format for the guilty plea colloquy.

D. Voir Dire

Judge Cercone conducts the voir dire in criminal cases. Counsel may supplement any standard voir dire with questions they propose. However, proposed voir dire questions are to be submitted to the court at least one week prior to trial.

E. Trial

In multi-defendant cases, Judge Cercone permits all counsel to examine each witness. However, Judge Cercone encourages that defense counsel not duplicate areas previously covered by other defense counsel.

If the parties request sequestration of witnesses, Judge Cercone grants the request.

Judge Cercone permits the government to use transcript for tape recorded conversations. However, Judge Cercone charges the jury that the evidence is the tape recorded conversations, not the transcript. Judge Cercone charges the jury if what they read on the transcript differs from what they hear on the tapes, the tape controls.

Defense counsel is permitted to determine when he or she makes their opening statement.

Judge Cercone does not permit the use of special interrogatories in a criminal case.

Judge Cercone has no set rule as to when and how he prefers any waiver of the defendant's rights be placed on the record.

F. Sentencing Memoranda

Judge Cercone permits the filing of a sentencing memorandum, but it is not required. He has no set time as to when the sentencing memorandum must be filed other than setting it with sufficient time so that the court may consider it at the time of sentencing.

G. Sentencing Conference

Judge Cercone does not hold a sentencing conference for cases under the Sentencing Guidelines prior to the actual imposition of sentence.

Judge Cercone files a tentative order ruling on the guideline computations in cases under the Sentencing Guidelines.

H. Other General Practices and Procedures

Judge Cercone will make recommendations to the Bureau of Prisons regarding the federal institution he deems appropriate in certain cases if there is good reason.

Judge Cercone's general policy is that Jencks material should be furnished by 10 a.m. of the Friday of the week preceding trial or the week in which the witness would be called to testify.

Judge Cercone requires the filing of a formal motion for leave to travel outside the Western District by a defendant, even where the Assistant U. S. Attorney and Probation Officer agree.

Judge Cercone approaches conflicts between defense counsel and the defendant on a case-by-case basis.

V. BANKRUPTCY CASES

N/A

VI. BANKRUPTCY APPEALS (TO THE DISTRICT COURT)

A. Filing and Scheduling

Briefing on the appeal will be in accordance with Bankruptcy Rule 8009 .

B. Oral Argument

Oral argument is not generally scheduled, but may be granted upon request.

C. Other General Practices/Procedures

Briefing schedules and other deadlines imposed by the Federal Rules of Bankruptcy Procedure will be modified where appropriate on the request of the party.

(JURY DEMAND)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	CA _-__
)	
ABC CORP.,)	
)	
Defendant.)	

CASE MANAGEMENT ORDER

AND NOW, this ____ day of _____, 2003,

IT IS ORDERED that this case be, and hereby is, placed under Local Rule 16.1 for all pretrial procedures and all provisions thereof will be strictly enforced;

IT IS FURTHER ORDERED that trial counsel shall appear for all scheduled conferences and proceedings before the court, including status, pretrial management and settlement conferences. Counsel shall confer with their clients prior to all scheduled conferences and shall obtain settlement authority to resolve the case or have their principals immediately available by telephone during the conference. Counsel are encouraged to appear with their principal(s) at all pretrial settlement conferences if practicable;

A. DISCOVERY AND PRETRIAL DEADLINES

IT IS FURTHER ORDERED that compliance with Local Rule 16.1 shall be completed as follows:

- 1) All fact and expert discovery shall be completed by _____. All written discovery shall be initiated in sufficient time to permit responses to be completed and depositions to be taken in compliance with all applicable deadlines.
- 2) Plaintiff's pretrial narrative statement shall be filed on or before _____, and comply with Local Rule 16.1.4A. (**Approximately 20 days after discovery closes**)

Counsel shall specify all material facts to be proved at trial and identify all exhibits to be used in the plaintiff's case-in-chief. Proof of facts not specified or exhibits not identified may be excluded at trial upon objection or by the court sua sponte.

- 3) Defendant's pretrial narrative statement shall be filed on or before _____ and comply with Local Rule 16.1.4B. **(Approximately 20 days after plaintiff's pretrial narrative statement is filed)**

Counsel shall specify all material facts to be proved at trial and identify all exhibits to be used in the defendant's case-in-chief. Proof of facts not specified or exhibits not identified may be excluded at trial upon objection or by the court sua sponte.
- 4) Counsel shall confer and complete the attached pretrial stipulation on or before _____. **(Approximately 10 days after defendant's pretrial narrative statement is filed)**
- 5) All dispositive motions shall be filed within thirty (30) days of the filing of the pretrial stipulation.

B. MOTION PRACTICE

IT IS FURTHER ORDERED that a brief shall be filed with all motions except motions for a continuance, an extension of time, to compel discovery or to present an uncontested matter to the court. A response and brief in support shall be filed within eleven (11) days of service of a motion - except for a dispositive motion, which shall be filed within thirty (30) days of service. A reply brief may be filed within five (5) days of service of the response. Briefs shall not exceed twenty-five (25) pages without leave of court.

The discovery deadline shall be extended only with leave of court. Any such motion shall state the reasons for the requested extension and enumerate with particularity all previous extensions of the deadline. The proposed order shall include the extension of all remaining pretrial deadlines under subsection A above.

Counsel shall confer in good faith and employ all reasonable means available to resolve any discovery or scheduling dispute. Discovery motions shall comply with Local Rules 16.1.2G and 7.1 and shall be presented and addressed by the parties as succinctly as the circumstances will permit.

Each dispositive motion, including motions for summary judgment, shall be accompanied by a concise statement of material facts in numerical form to which the movant asserts there is no material issue for trial. Each statement of fact shall be accompanied by clear and concise references to the parts of the record relied upon to support it. Any response in opposition to the motion shall be

accompanied by a counter statement of material facts corresponding to the numbered paragraphs of the movant's statement and identifying all facts to which the respondent contends are contested or otherwise remain in dispute. The counter statement likewise shall contain clear and concise references to the parts of the record relied upon to support the statements of fact therein. The documents, parts or portions of the record relied upon by each party to support their respective statement or counter statement shall be submitted to the court as an appendix to the motion or response. The failure to support any proposed statement may result in the rejection of the proposition advanced or the reading of the record as presented by the opposing party. In determining a dispositive motion, the court will assume that facts identified by the movant in its statement of material facts are admitted unless such facts specifically are controverted in the counter statement of material facts.

IT IS FURTHER ORDERED that the pendency of motions, such as motions to dismiss, summary judgment and so forth, will not stay any compliance requirement established by this pretrial order or this court's local rules, including the period of discovery set forth above.

IT IS FURTHER ORDERED that all pre-trial motions, including but not limited to motions in limine, must be filed within thirty (30) days following the final pretrial settlement conference unless the court orders otherwise at that conference.

The unexcused failure to file a motion or a response in a timely manner will result in appropriate sanctions, including the summary denial or granting of the motion. Either party's failure to comply with the requirements imposed by this case management order or to submit matters to the court in a timely manner will result in appropriate sanctions, including the dismissal of the action for failure to prosecute or the granting of judgment for the failure to defend in a timely manner.

C. PRE-TRIAL SETTLEMENT CONFERENCE

A pre-trial conference will be held after all dispositive motions have been resolved. Trial counsel shall be present and shall be prepared to discuss the potential for settlement of the case and all remaining material issues of fact or law. Counsel shall be prepared to comply with their obligations under Local Rule 16.1.4E at the conference. Counsel also shall be prepared to identify

and discuss any (1) contemplated pretrial motions that have not yet been filed, (2) disputes as to the admissibility of exhibits, (3) proposed special voir dire, and (4) need for or objection to an unusual procedure to be employed during trial.

D. MISCELLANEOUS

IT IS FURTHER ORDERED that any depositions or portions thereof to be read into evidence shall be identified and marked for the record. The proponent of such evidence shall file a memorandum with the court setting forth the grounds for the admissibility of such evidence at least five (5) business days prior to trial. Any objection to the admissibility of such evidence shall be filed within two (2) business days from the filing of the proponent's memorandum. The uncontested portions of the evidence shall be marked and contain appropriate page references.

IT IS FURTHER ORDERED that after the case has been set for trial the absence of a party's expert witness will not be recognized as a basis to continue trial. Video services are available through the local bar association.

David Stewart Cercone,
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,)	
Plaintiff,)	
v.)	CA _-__
ABC CORP.,)	
Defendant.)	

PRETRIAL STIPULATION

- I. Plaintiff(s) seeks the following forms of relief in this action:
- II. This Court has jurisdiction based upon the following facts:
- III. The parties stipulate that the following facts will require no proof at trial:
- IV. The following issues of fact remain in dispute:
- V. The following issues of law remain in dispute:
- VI. The following deposition testimony will be offered at trial:
- VII. The following individuals will be offered as experts at trial based upon the accompanying statement of qualifications for each individual:
- VIII. The parties estimate they will need the following number of six (6) hour days to try this action:

Plaintiff's case-in-chief: _____

Defendant's case-in-chief: _____

Third-Party Defendant's case-in-chief: _____

TOTAL TIME NEEDED: _____

(NON-JURY)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN DOE,)
)
 Plaintiff,)
)
 v.) CA _-__
)
 ABC CORP.,)
)
 Defendant.)

CASE MANAGEMENT ORDER

AND NOW, this ____ day of _____, 2003,

IT IS ORDERED that this case be, and hereby is, placed under Local Rule 16.1 for all pretrial procedures and all provisions thereof will be strictly enforced;

IT IS FURTHER ORDERED that trial counsel shall appear for all scheduled conferences and proceedings before the court, including status, pretrial management and settlement conferences. Counsel shall confer with their clients prior to all scheduled conferences and shall obtain settlement authority to resolve the case or have their principals immediately available by telephone during the conference. Counsel are encouraged to appear with their principal(s) at all pretrial settlement conferences if practicable;

A. DISCOVERY AND PRETRIAL DEADLINES

IT IS FURTHER ORDERED that compliance with Local Rule 16.1 shall be completed as follows:

- 1) All fact and expert discovery shall be completed by _____. All written discovery shall be initiated in sufficient time to permit responses to be completed and depositions to be taken in compliance with all applicable deadlines.

If the completion of expert reports and/or the depositions of experts cannot for good cause be completed by the close of discovery, then prior to the close of discovery counsel shall agree upon a date for the exchange and submission of

such reports and/or the taking of any necessary depositions.

- 2) Prior to _____, counsel shall confer and complete the attached pre-trial stipulation. The pre-trial stipulation shall be filed with the court on that date and shall contain all uncontested facts which can be considered by the court in rendering judgment. **(Approximately 10 days after discovery closes)**

Prior to completing the pre-trial stipulation counsel shall disclose and identify for the record all exhibits to be offered at trial.

- 3) Plaintiff's pretrial narrative statement shall be filed on or before _____ and comply with Local Rule 16.1.4A. **(Approximately 20 days after the pre-trial stipulation is filed)**

Counsel shall specify all material facts to be proved at trial and identify all exhibits to be used in the plaintiff's case-in-chief. Proof of facts not specified or exhibits not identified may be excluded at trial upon objection or by the court sua sponte.

On the same date plaintiff also shall file and serve (1) proposed findings of fact and conclusions of law and (2) a pre-trial brief in support of judgment. Plaintiff's proposed findings of fact and conclusions of law shall be consecutively numbered and shall address each contested issue of fact and/or law remaining for trial. Each proposed finding shall be supported by clear and specific references to the portions of the record relied upon to support it. Each proposed conclusion shall be supported by citation to appropriate authority. The proposed findings and conclusions shall be accompanied by a pre-trial brief in support of judgment integrating the proposed findings with the corresponding conclusions and demonstrating under the controlling authority why the relief requested is appropriate.

- 4) Defendant's pretrial narrative statement shall be filed on or before _____ and comply with Local Rule 16.1.4B. **(Approximately 20 days after plaintiff's pretrial narrative statement is filed)**

Counsel shall specify all material facts to be proved at trial and identify all exhibits to be used in the defendant's case-in-chief. Proof of facts not specified or exhibits not identified may be excluded at trial upon objection or by the court sua sponte.

On the same date defendants also shall file and serve (1) counter-proposed findings of fact and conclusions of law and (2) a pre-trial brief in support of judgment. Defendant's proposed counter findings and conclusions shall correspond to the same numbered findings and conclusions advanced by plaintiff before identifying any additional matters raised in defense. Each proposed counter finding shall be supported by clear and specific references to the portions of the record relied upon to support it. Each proposed counter conclusion shall be supported by citation to appropriate authority. The proposed counter findings and conclusions shall be accompanied by a brief in support of judgment integrating the proposed counter findings with the proposed counter-conclusions and demonstrating under the controlling authority why the relief requested is appropriate.

- 5) All dispositive motions shall be filed within thirty (30) days of the filing of defendant's pre-trial submissions.

B. MOTION PRACTICE

IT IS FURTHER ORDERED that a brief shall be filed with all motions except motions for a continuance, an extension of time, to compel discovery or to present an uncontested matter to the court. A response and brief in support shall be filed within eleven (11) days of service of a motion - except for a dispositive motion, which shall be filed within thirty (30) days of service. A reply brief may be filed within five (5) days of service of the response. Briefs shall not exceed twenty-five (25) pages without leave of court.

The discovery deadline shall be extended only with leave of court. Any such motion shall state the reasons for the requested extension and enumerate with particularity all previous extensions of the deadline. The proposed order shall include the extension of all remaining pretrial deadlines under subsection A above.

Counsel shall confer in good faith and employ all reasonable means available to resolve any discovery or scheduling dispute. Discovery motions shall comply with Local Rules 16.1.2G and 7.1 and shall be presented and addressed by the parties as succinctly as the circumstances will permit.

Each dispositive motion, including motions for summary judgment, shall be accompanied by a concise statement of material facts in numerical form to which the movant asserts there is no material issue for trial. Each statement of fact shall be accompanied by clear and concise references to the parts of the record relied upon to support it. Any response in opposition to the motion shall be accompanied by a counter statement of material facts corresponding to the numbered paragraphs of the movant's statement and identifying all facts to which the respondent contends are contested or otherwise remain in dispute. The counter statement likewise shall contain clear and concise references to the parts of the record relied upon to support the statements of fact therein. The documents, parts or portions of the record relied upon by each party to support their respective

statement or counter statement shall be submitted to the court as an appendix to the motion or response. The failure to support any proposed statement may result in the rejection of the proposition advanced or the reading of the record as presented by the opposing party. In determining a dispositive motion, the court will assume that facts identified by the movant in its statement of material facts are admitted unless such facts specifically are controverted in the counter statement of material facts.

IT IS FURTHER ORDERED that the pendency of motions, such as motions to dismiss, summary judgment and so forth, will not stay any compliance requirement established by this pretrial order or this court's local rules, including the period of discovery set forth above.

IT IS FURTHER ORDERED that all pre-trial motions, including but not limited to motions in limine, must be filed within thirty (30) days following the final pretrial settlement conference unless the court orders otherwise at that conference.

The unexcused failure to file a motion or a response in a timely manner will result in appropriate sanctions, including the summary denial or granting of the motion. Either party's failure to comply with the requirements imposed by this case management order or to submit matters to the court in a timely manner will result in appropriate sanctions, including the dismissal of the action for failure to prosecute or the granting of judgment for the failure to defend in a timely manner.

C. PRE-TRIAL SETTLEMENT CONFERENCE

A pre-trial conference will be held after all dispositive motions have been resolved. Trial counsel shall be present and shall be prepared to discuss the potential for settlement of the case and all remaining material issues of fact or law. Counsel shall be prepared to comply with their obligations under Local Rule 16.1.4E at the conference. Counsel also shall be prepared to identify and discuss any (1) contemplated pretrial motions that have not yet been filed, (2) disputes as to the admissibility of exhibits, (3) proposed special voir dire, and (4) need for or objection to an unusual procedure to be employed during trial.

D. MISCELLANEOUS

IT IS FURTHER ORDERED that any depositions or portions thereof to be read into evidence shall be identified and marked for the record. The proponent of such evidence shall file a memorandum with the court setting forth the grounds for the admissibility of such evidence at least five (5) business days prior to trial. Any objection to the admissibility of such evidence shall be filed within two (2) business days from the filing of the proponent's memorandum. The uncontested portions of the evidence shall be marked and contain appropriate page references.

IT IS FURTHER ORDERED that after the case has been set for trial the absence of a party's expert witness will not be recognized as a basis to continue trial. Video services are available through the local bar association.

David Stewart Cercone,
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,)	
)	
Plaintiff,)	
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v.)	CA _ - _
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ABC CORP.,)	
)	
Defendant.)	

PRETRIAL STIPULATION

- I. Plaintiff(s) seeks the following forms of relief in this action:
- II. This Court has jurisdiction based upon the following facts:
- III. The parties stipulate that the following facts will require no proof at trial:
- IV. The following issues of fact remain in dispute:
- V. The following issues of law remain in dispute:
- VI. The following deposition testimony will be offered at trial:
- VII. The following individuals will be offered as experts at trial based upon the accompanying statement of qualifications for each individual:
- VIII. The parties estimate they will need the following number of six (6) hour days to try this action:

Plaintiff's case-in-chief:	
Defendant's case-in-chief:	
Third-Party Defendant's case-in-chief:	
TOTAL TIME NEEDED:	

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	CA _-__
)	
ABC CORP.,)	
)	
Defendant.)	

PRETRIAL ORDER

AND NOW this ____ day of _____, 2003, it is hereby ordered as follows:

Final Pretrial Orders:

1. Jury selection and trial are hereby set for _____, 2003, at 9:30 a.m., Room 1036, Courtroom 12, Tenth Floor, United States Post Office and Courthouse, Seventh Avenue and Grant Street, Pittsburgh, PA 15219.

2. Exchange of Witness Lists and Exhibits.

(a) Plaintiffs shall serve and submit to the court their list of trial witnesses, listing separately those they will call and those they may call if needed (other than purely for impeachment), and copies of all proposed exhibits consecutively numbered, and a list of such exhibits, by **(approximately 3 weeks before trial)**.

(b) Defendants shall serve and submit to the court its list of trial witnesses, listing separately those they will call and those they may call if needed (other than purely for impeachment), and copies of all proposed exhibits consecutively lettered, and a list of such exhibits, by **(approximately 2 weeks before trial)**.

(c) Voluminous data should be presented by summary exhibits pursuant to FED. R. EVID. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

3. Designation of Discovery Excerpts to be Offered at Trial.

The parties shall submit designations of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) by **(approximately 3 weeks before trial)**.

4. **Motions.** The Parties shall file all motions in limine, including motions under FED. R. EVID. 104(a) [*Preliminary questions concerning the qualifications of a witness, existence of privilege, or admissibility of evidence.*] and motions to limit or sever issues, together with supporting briefs or memoranda of law, by **(approximately 3 weeks before trial)**. Responses shall be filed by **(1 week later)**. All briefs supporting or opposing are limited to fifteen (15) pages.

5. **Proposed Jury Instructions.** (a) The parties shall file substantive jury instructions (elements of plaintiff's cause of action and defendant's defenses), citing authority for each instruction, by **(approximately 3 weeks before trial)**. The court requests that if possible, the parties send a copy of the instructions to the undersigned on a 3 ½ inch diskette in WordPerfect format.

(b) A party must file any objections to the instructions proposed by the other party by **(1 week before trial)**. Any and all objections shall be in writing and shall set forth the proposed instruction in its entirety. The objection should then specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation to authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable the objecting party shall submit an alternative instruction covering the subject or principle of law.

(c) All instructions should be short, concise, understandable and **neutral** statements of law. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

6. **Proposed voir dire.** The parties shall file any propose voir dire questions, if different from those listed at Local Rule 47.1, by **(2 weeks before trial)**. Responses and/or

oppositions by any party to said voir dire questions shall be filed within seven (7) days thereafter.

7. **Proposed Verdict Forms.** The parties shall submit proposed verdict forms by **(1 week before trial)**.

8. **Joint Stipulations.** On or before **(approximately 2 weeks before trial)**, all parties are directed to submit stipulations as to the following items:

- (I) Curricula vitae of experts or expert witnesses. Copies of the curricula vitae shall be exchanged by the parties. Should there be no objection, the curricula vitae of the expert will be read into the record before the experts testimony commences:
- (ii) Facts;
- (iii) Admissibility and authenticity of exhibits;
- (iv) Medical records and/or reports;
- (v) Reports of experts;
- (vi) A brief statement of the claims and defenses to be read to the jury to introduce the trial.

9. The jury panel in this matter shall consist of _____ jurors.

10. A transcript of the pretrial hearing shall be filed at the joint cost of the parties.

9. **Final Pretrial Conference.** A final pretrial conference shall be held _____, at _____ p/m., Room 1016, Tenth Floor, United States Post Office and Courthouse, Seventh Avenue and Grant Street, Pittsburgh, PA 15219.

David Stewart Cercone
United States District Judge

cc: