



BIOGRAPHY and COURT PRACTICE

JOY FLOWERS CONTI

The Honorable JOY FLOWERS CONTI was born in Kane, Pennsylvania on December 7, 1948. She graduated from Duquesne University in 1970 with a Bachelor of Arts, and was awarded a J.D. degree *summa cum laude* from Duquesne University School of Law in 1973. She was Editor-In-Chief of the *Duquesne Law Reveiw*.

After graduation from law school, she served as a law clerk to Pennsylvania Supreme Court Justice Louis L. Mandrino (deceased). In 1974, she was the first woman lawyer to be hired by Kirkpatrick, Lockhart, Johnson & Hutchinson, now known as Kirkpatrick & Lockhart, LLP. In 1976 she accepted a position as a member of the faculty of Duquesne University School of Law. She became a tenured professor of law at Duquesne University School of Law and taught courses in civil procedure, corporations, corporate finance, corporate reorganizations and bankruptcy. In 1982, she returned to private practice with Kirkpatrick & Lockhart, and became a partner in 1983. In 1996, she joined Buchanan Ingersoll Professional Corporation as a shareholder. She concentrated her practice on bankruptcy, creditors' and debtors' rights, healthcare, general corporate and nonprofit corporation law. She has authored and lectured on bankruptcy and corporate law.

She is a member of the Allegheny County Bar Association, the Pennsylvania Bar Association, the American Bar Association, the Women's Bar Association of Western Pennsylvania, the Federal Bar

Association and the American Inns of Court – University of Pittsburgh Chapter. She is a former president of the Allegheny County Bar Association and former chair of the Allegheny County Bar Association's Young Lawyers' Section. She also served as secretary and a trustee of the Allegheny County Bar Foundation. She was a Governor-at-Large of the Pennsylvania Bar Association and was the chair of the Pennsylvania Bar Association's Corporation, Banking and Business Law Section. She served in the House of Delegates of the American Bar Association, and she is currently serving in the Pennsylvania Bar Association's House of Delegates. She was a co-chair of the Pennsylvania Bar Association's Task Force on Legal Services for the Poor, Part II. She was listed in *The Best Lawyers in America* while in practice and is listed in *Who's Who in America* and *Who's Who in American Law*.

She is a member of the American Law Institute and the American Judicature Society. She is a fellow of the American College of Bankruptcy, the American Bar Foundation, the Pennsylvania Bar Foundation and the Allegheny County Bar Foundation. She was president of the Historical Society of the United States Court of Appeals for the Third Circuit. She has also served on numerous non-profit boards throughout her career.

In 2002, she received the Outstanding Leadership Award in Support of Legal Services given by Pennsylvania Legal Services. In 1995, she was the second recipient of the Pennsylvania Bar Association's Anne X. Alpern Award, which annually recognizes one outstanding woman lawyer or judge. Also in 1995, she received the Vectors/Pittsburgh Award for Woman of the Year in Law and Government. In 1993, she received the YWCA Greater Pittsburgh Tribute to Women Award for Professionals and the Allegheny County Bar Association's Pro Bono Award. In 1981, she was

recognized as one of the 10 Outstanding Young Women in America and as the Outstanding Young Woman in Pennsylvania.

She is married to Anthony T. Conti and they have three children.

THE HONORABLE JOY FLOWERS CONTI
U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
RULES FOR PRETRIAL AND TRIAL MATTERS

I. MOTION PRACTICE

The parties shall follow the rules set forth below in making or responding to motions in any case assigned to me.

1. **Form of Motions.** A motion may consist of one document, stating the factual and legal grounds for the motion, or two documents, consisting of a motion that states the party's request, and a brief in support that contains the factual and legal grounds for the request. Evidentiary materials in support of or opposition to a motion should be tabbed and may be attached to the motion or brief, or compiled in a separate document. Counsel are directed to furnish only the evidentiary materials that are essential to deciding the motion. A proposed order setting forth the specific relief requested shall be attached to the motion.

2. **Form of Responses.** The opposing party shall file with the clerk a response to every motion. Unless otherwise directed, the response should be titled in the form of "A's Response in Opposition to B's Motion [for/to] ____." A brief may be filed with the response. A proposed order shall be attached to the response.

3. Routine or Unopposed Motions. If the non-moving party does not oppose the motion, or the motion is of a type that normally does not implicate the substantial rights of the non-moving party (e.g., motion to withdraw as counsel, motion to set a conference, many motions for extension of time), the non-moving party shall so state in its response. The court may decide motions that do not implicate the substantial rights of the opposing party without a response, which relieves the non-moving party of the duty to respond. Absent such action by the court, however, it is essential that a response be filed for all motions. Letters do not constitute responses on the record. Failure to respond may be deemed as conceding the grounds for the motion.

4. Deadlines for Responses.

- a. Responses to motions relating to discovery shall be filed 10 days from the date of service of the motion. The court frequently resolves such motions by telephone conference, which the parties may request. The court also may schedule a telephone conference before the time runs for any response. In such case, the non-moving party is excused from filing a response, and should state its position at the telephone conference.
- b. Responses to motions in limine shall be filed 7 days from the date of service of the motion.
- c. Responses to motions for summary judgment shall be filed 30 days

from the date of service of the motion.

d. Responses to all other motions shall be filed 20 days from the date of service of the motion.

5. **Reply Briefs.** A reply brief is defined as the second brief advocating a party's position on the same motion filed after the non-moving party's response. Reply briefs may be filed only after obtaining leave from the court sought by motion. Counsel should be aware that the court discourages reply briefs as usually repetitive and therefore wasteful. Reply briefs therefore should promptly state the novel matter contained in the opposition brief that merits a reply, and not merely assert that opposing counsel has misstated the law.
6. **Oral Argument.** Motions may be decided with oral argument as scheduled by the court.
7. **Extensions.** Motions to extend deadlines should be made as any other motion, but are more likely to be decided without response because of the court's inherent discretion over this subject. Every proposed order accompanying a motion to extend deadlines shall include the date certain, or a blank space for insertion of the date certain, on which the proposed new deadline falls. On a motion that affects more than one deadline, such as an extension of discovery that affects all deadlines in the case management order, the proposed order shall restate all of the deadlines affected. The last document in the file which deals with a particular deadline thus should always

identify the calendar date for that deadline.

8. Joint Motions. Joint or uncontested motions on matters that do not implicate the substantial rights of the parties are encouraged and will be promptly decided. A joint or uncontested motion shall so state in its title. Joint motions in cases with more than two parties that have the consent of fewer than all the parties shall so state on the first page. Counsel's representation that a motion is joint or consented to is sufficient.

9. Page Limits.

- a. Briefs in support of and opposing discovery motions shall be limited to 10 pages.
- b. Briefs in support of and opposing motions in limine shall be limited to 5 pages.
- c. Briefs in support of and opposing summary judgment motions shall be limited to 20 pages, excluding tables.

(i) Every motion for summary judgment and supporting brief, if based on the affirmative proof of facts, shall be accompanied by a statement of material facts not in dispute. This statement shall contain numbered paragraphs setting forth all the facts supporting the motion which are necessary for its resolution. Each factual assertion shall cite to evidentiary material accompanying the motion. The accompanying evidentiary material shall be limited to the amount necessary to support the motion.

(ii) Every party opposing a motion for summary judgment shall file, in addition to its brief in opposition, a response to the moving party's

statement of material facts not in dispute. In paragraphs corresponding to the statement of material facts not in dispute, the opposing party shall state whether the facts listed are disputed. For any disputed fact, the opposing party shall cite to evidentiary material demonstrating the dispute, and attach such evidentiary material to its response.

(iii) Parties need not repeat the relevant facts in their briefs, but may do so for clarity.

(iv) The argument portion of every brief in support of a motion for summary judgment shall cite to current authority, from the Third Circuit, if available, that establishes the essential elements of each claim for which the moving party seeks summary judgment.

(v) A party's failure to adhere to these requirements may result in the motion for summary judgment being decided against that party's position.

d. Reply briefs, if allowed, shall be limited to 10 pages.

e. Briefs in support of and opposing all other motions shall be limited to 15 pages.

f. All text and footnotes in briefs shall be in 12 point fonts, with one inch margins. Text must be double-spaced; footnotes may be single-spaced. Evasion of these standards or page limits will cause the excess material to be treated as being outside the record without further notice to counsel.

- g. Counsel and the parties should be aware of the court's experience that shorter briefs are almost always more persuasive because they get to the point faster. They also contain less extraneous material that dilutes the parties' main arguments, and frequently interferes with prompt resolution.
- 10. **Courtesy Copies.** Counsel should not submit courtesy copies unless requested by the court.
- 11. **Deadlines in Rules.** This order does not affect response deadlines set by any federal rule of procedure or computation of time under Federal Rule of Civil Procedure 6.
- 12. **Discretion to Amend.** The court may alter any of these provisions by order, or by notice from court staff at the court's direction.

II. TRIAL PROCEDURES AND MATTERS RELATING TO THE JURY

The following instructions regarding trial procedures and matters relating to the jury shall be complied with by the parties and their counsel:

- 1. **Trial Days/Hours; Recess/Adjournment**
 - a. Court is normally in session Monday through Thursday, 9:30 a.m. to 4:30 p.m. with breaks at approximately 11:00 a.m. and 3:00 p.m.

Fridays, unless otherwise ordered by the court, are reserved for pretrial and status conferences, sentences and evidentiary hearings. Counsel must be available at 9:00 a.m. and 4:30 p.m. on days the court is in session to meet with the court concerning scheduling, trial problems, and to obtain advance rulings on evidentiary or other issues.

- b.** Counsel should be on time for each court session. Trial engagements take precedence over any other business. If counsel has matters scheduled in other courtrooms, appropriate motions to accommodate those obligations must be promptly filed.
- c.** When the court recesses or adjourns, attorneys and their support people, as well as witnesses, shall stay in place until the jury has left the courtroom.

2. Juror Notetaking

Jurors are permitted to take notes.

3. Opening Statements

In the counsel's opening statement to the jury, which shall not exceed one hour for each side unless prior leave of court is obtained, counsel should not argue the case or discuss law. Co-counsel are not permitted to split up the opening statement. Counsel should confine himself or herself to a concise

summary of the important facts which counsel intends to prove. Counsel should not describe in detail what particular witnesses will say. With advance notice and approval of the court, visual aids and exhibits may be used during opening statements.

4. Examination of Witnesses

a. Counsel should not greet or introduce himself or herself to witnesses.

Examination should be commenced without preliminaries.

b. Witnesses should not be addressed on a first name basis. Witnesses should be referred to by Mr. or Ms. Professional witnesses should be referred to by their appropriate title, i.e., doctor, professor, etc.

c. Counsel should not pace about the courtroom when questioning witnesses. This conduct distracts the jury and wastes time. Counsel may take any position in which they are comfortable, sitting or standing, when questioning witnesses.

d. Each witness may be examined and cross-examined by only one attorney representing each party. That attorney will also make all objections and speak for his or her client at all side bar conferences.

e. The court limits examination of each witness to direct examination, cross-examination, redirect examination, and recross-examination.

That means that each party may question a witness only twice.

- f. Where appropriate, witnesses may be examined out of sequence upon request of a party. Witnesses may be examined in any order to which counsel agrees. For example, counsel could agree that expert witnesses for each side will testify back to back.
- g. Counsel may approach witnesses without leave of court for purposes of identifying and interrogation concerning exhibits.
- h. Counsel should not face or otherwise appear to address himself or herself to jurors when questioning a witness.
- i. Counsel shall not approach the jury without leave of court.
- j. There should be no requests for offers of proof during trial as the parties will have discussed the next day's witnesses at the 4:30 p.m. conference with the court or at the following day's conference at 9:00 a.m.

5. Exhibits

- a. Court time may not be used for marking exhibits.
- b. In advance of each trial session, counsel for the party going forward at that session should show opposing counsel the exhibits he intends to introduce at the session.
- c. All exhibits already admitted into evidence must remain on the table immediately in front of the bench at all times, except when being used as

part of the examination of a witness. Do not take exhibits to counsel table.

- d. If counsel intends to question a witness about any document or exhibit, all such documents or exhibits that will be used during the examination of that witness should be placed at the witness stand prior to the commencement of direct examination or cross-examination.
- e. At the conclusion of direct or cross-examination of a witness, counsel should return all exhibits which have been admitted into evidence to the exhibit table.

6. Video and Reading Material into the Record

- a. The court requires all parties to retain a professional video operator and equipment for any video to be shown during trial.
- b. Counsel can devise their own methodology for reading material into the record, provided opposing counsel agrees.

7. Objections and Side Bar Conferences

- a. When counsel makes objections, the objection and the legal basis for the objection must be stated. In the presence of the jury, counsel should not make any further argument concerning the objection and should not argue with the ruling of the court on the objection. Arguments with respect to objections will generally be heard at the 4:30 p.m. conference

with the court, at the following day's conference at 9:00 a.m. or at side bar.

- b.** Side bars are highly disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel are required to file motions in limine together with supporting briefs at least one week in advance of trial with regard to evidentiary matter. Counsel will meet with the court at 9:00 a.m. (or earlier if necessary) and 4:30 p.m., each day to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in court objection in the presence of the jury.

8. Motions for Judgment as a Matter of Law

The only requirements for motions for judgment as a matter of law are in the Federal Rules of Civil Procedure and the Order on Motion Practice entered in this case.

9. Closing Argument

The court will charge the jury prior to closing arguments. In a counsel's final, closing argument, counsel may quote the charge verbatim on a particular subject. Closing argument for each side shall not exceed one hour unless prior leave of court is obtained. Co-counsel are not permitted to split up closing arguments. After the closing arguments, the court will instruct the jury

about the process of jury deliberations.

10. Jury Deliberations

- a.** The jury will be provided with a copy of the jury instructions.
- b.** Generally, the jury has with it all exhibits during its deliberation.
- c.** Jury requests to read back testimony or replay tapes during deliberations are permitted when the jury is able to point to a specific portion of the testimony or videotape.

- d.** All written questions submitted by the jury are supplied to counsel.

Counsel and the court meet in chambers to discuss and hopefully agree on a reply. The jury is then summoned to the courtroom in most cases and the verbal reply is given to them. The written reply is also provided where appropriate.

- e.** Trial counsel need not remain in the courtroom area, but must be available by telephone.

11. Interviewing the Jurors

Interviewing of jurors post-verdict is discouraged, but the jurors are told that it is up to them to decide if they choose to be interviewed.

III. JOINT JURY INSTRUCTIONS

1. The parties shall file a joint set of proposed jury instructions pursuant to the following procedure:

The parties shall meet in an attempt to agree on a joint set of proposed jury instructions. After said meeting, the parties shall file a unified (meaning one) combined set of proposed instructions which includes both agreed upon instructions and proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together. The court will not accept separate proposed jury instructions from the parties.

2. Counsel shall mark and exchange all exhibits prior to trial. Plaintiffs shall use numbers and Defendants shall use letters. The parties shall compare exhibits and eliminate duplicates. If more than one party wants to offer the same exhibit it shall be marked with a number and listed as a joint exhibit on the parties exhibit list. On the first day of trial, each party shall supply the Court with a copy of all exhibits to be used at trial. The parties shall supply

the courtroom deputy/law clerk with a second set of exhibits to be used as part of the official records of the Court.