

December, 2016

**PRACTICES AND PROCEDURES OF
JUDGE MARK R. HORNAK**

I. GENERAL MATTERS

A. Communications with the Court

Communication with the Court should be in the form of motions (rather than letters to Chambers), accompanied by a proposed order specifying the relief requested. In an emergency situation, or in situations involving agreed-upon requests for a short extension of a filing deadline, counsel should telephone Chambers. The Court should not be copied on correspondence between counsel. It is the Court's practice to post on the ECF docket any case-related correspondence that it receives.

B. Communications with Law Clerks and Other Staff

Communications with law clerks and the Courtroom Deputy Clerk concerning the administration, not the merits, of a case, or to request a status conference, are permissible and encouraged. Such inquiries include those pertaining to the status of any pending matter. Counsel must state that any communication is with the knowledge and concurrence of all parties.

C. Filing and Service on CM/ECF

Counsel (not the Court) is responsible for the filing of all pleadings, documents or any other material provided to the Court and/or the Clerk and for service upon opposing counsel or pro se parties. The Court is not responsible for filing and/or service of pleadings, documents or any other material of the parties. All filings must be made on the District's CM/ECF electronic filing system, unless otherwise permitted or directed by the Local Rules of Court. For guidelines and information on CM/ECF, and how to become a registered user of the system, please refer to www.pawd.uscourts.gov and click on the CM/ECF Electronic Filing tab (on bottom left side of webpage). The Court may require any pro se litigant to become a registered CM/ECF user.

D. ADR

The Court follows the ADR Policies and Procedures available on the Court's website (www.pawd.uscourts.gov). For cause shown specific to a given case, the Court will adjust the ADR timeline [and procedures](#) to "fit" the specific case.

E. Objections/Placing Proceedings on the Record

If counsel at any time has an objection to any procedure, ruling or other action of the Court, counsel should make an immediate objection by written motion or otherwise on the record at the earliest practicable time. If no court reporter is present and counsel has an objection(s), or otherwise desires the proceeding be on the record for any reason, counsel has the right to and should request a court reporter to be present and thereafter place the objection(s) or proceedings on the

record. Counsel may request at any time that any proceeding or matter be placed on the record. ECF filings and [Court](#) proceedings will not be “sealed” except by Order of the Court for good cause shown in conformity with applicable law. [See Section II\(I\), below.](#)

F. Telephone Conferences

Requests for attorneys and parties to participate in conferences by telephone (including to resolve case management problems) will be permitted, and are usually the norm. However, unless otherwise ordered by the Court, settlement conferences, final pretrial conferences and oral arguments will not ordinarily be conducted by telephone. For specifically noticed settlement conferences, both lead trial counsel and parties are expected to appear in person, along with any insurance representative. This Court will schedule and conduct a status conference (telephonic or in person) at anytime if requested by counsel for the parties. Counsel should confer on their agenda, and contact the Court to set it up.

When a telephone conference is requested, counsel shall provide the Court with direct contact phone numbers by 4:00 p.m. the day before the conference, and coordinate arrangements in consultation with Chambers. If no contact is made, the Court will use the number listed on the docket. Counsel must make sure that their contact information is kept current on the docket. The Court may direct the use of its AT&T conference number.

G. Pro Hac Vice Admissions

Motions for pro hac vice admissions should be done by filing a ~~brief~~-written motion consistent with the Local Rules. ~~The motion should include what court(s) the requesting attorney is admitted to, that they are in good standing in all courts, and a certification indicating they are a registered user of the Western District CM/ECF System.~~

H. Comments to the Media

Counsel are expected to adhere to the Rules of Professional Conduct in all dealings, including their dealings with the media as they relate to [any a pending](#) matter.

I. Amendment of these Practices and Procedures

The Court’s Practices and Procedures are available online and will be updated periodically. Counsel is responsible for keeping aware of any such changes.

J. Consultation by Counsel/Attendance of Necessary Counsel

All counsel are expected to confer with one another, in person or by telephone (not email), prior to any conference with the Court to review any issue which may be raised by counsel at such conference and to provide to one another their respective positions (and factual/legal authority) on all such matters. No counsel should be surprised at any conference by the position taken by any opposing party or the legal or factual basis for that position. All parties (other than those proceeding pro se) shall be represented at any conference by counsel who is a

member of the Bar of this Court (or who has been or will be admitted specially), has entered an appearance, and is sufficiently familiar with all legal and factual matters involved in the action (and has reviewed them with their client) so as to allow counsel to enter into appropriate stipulations and to meaningfully and fully participate in the proceedings. Ordinarily, this means lead trial counsel. At any conference, counsel shall be prepared to discuss in detail [and argue](#) any pending motions, [and to discuss settlement](#).

II. MOTIONS PRACTICE

A. Oral Argument

The Court will often schedule oral argument for any pending motion which, if granted, would dispose of a claim or defense in whole or in part, any motion for sanctions, any motion for disqualification of counsel, and any successive motion for modification of the pretrial schedule. Requests by any party for oral argument of any matter will be considered on a case-by-case basis. The Court often rules on the record at the conclusion of oral arguments.

B. Briefs

See attached Order on Motions Practice.

C. Chamber Copies of Motion Papers

See attached Order [and Procedures](#) on Motions Practice.

D. Responses to Motions – Scheduling

See attached Order [and Procedures](#) on Motions Practice.

E. Magistrate Judges’ Reports and Recommendations

Reports and Recommendations to which objections have been filed will usually not be decided until a response is filed by the non-objecting party (or opposite party if both object), unless no objections are filed in a timely manner, or the Court concludes that the objections are without merit. Briefs in support of or in response to Objections not in excess of fifteen (15) pages are permitted. If no Objections have been timely filed, a decision will be made solely on the basis of the Report and Recommendation and the previously filed briefs.

F. Evidentiary Hearings

Hearings necessitated by pretrial or other motions will be held as ordered by the Court. Any party whose motion relies in any part on a contested factual issue should be prepared to offer evidence at any hearing or argument on the motion.

G. Motions In Limine/Motions

Deadlines for filing motions in limine and Daubert motions, with their respective supporting briefs and proposed orders of court, will be set forth in the pretrial or post-discovery scheduling orders. Unless there is a good reason not to do so, motions in limine will be ruled upon in advance of trial and usually at the pretrial conference.

H. Motions For Leave to Amended Pleadings

Parties should comply with Third Circuit precedent and attach a copy of the draft amended pleading to any motion to amend (showing proposed changes in “redline” format), and the motions should state the position of all other parties to the motion. Counsel shall also set forth why such amendment is supported by new law or newly discovered facts.

I. Motions to Seal

All motions to seal any document or proceeding must set forth the specific factual and legal basis and necessity for sealing under prevailing law. Any Order sealing any matter is subject to being vacated upon the motions of any party, any interested person, or by the Court on its own motion. Absent exceptional circumstances, any proposed Order must include this language: “This Order may be vacated and sealing lifted for cause shown upon the motion of any party or other person with a recognized interest, or after due notice by the Court upon the Court’s own motion.” The parties are reminded that all proceedings in federal court are presumptively open to the public, including those in which “sealed” material may be discussed.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court utilizes a standard form case management order based on L.R. 16.1. Other than the requirements of L.R. 16.1, no additional items are included in the order. The standard form Case Management Order is attached.

2. Initial Case Management Conference

An initial case management conference is ordinarily scheduled within thirty (30) days of the filing of a responsive pleading or motion under Fed.R.Civ.P. 12, if not sooner. Lead trial counsel are required to participate in the conference and shall obtain full settlement authority prior to the conference. Party and insurance claims representatives shall be available by telephone for the duration of the conference. The Court will ordinarily conduct this conference by telephone if requested by any counsel (or on its own directive), especially where doing so saves time and money.

After the initial case management conference, the Case Management Order is issued after discussion with lead trial counsel at the initial conference as to the length of time necessary for discovery, handling of expert witnesses and other matters. Settlement and ADR options also will be discussed. Ordinarily, fact discovery will extend for 150 days, absent unusual circumstances.

Additional conferences may take place on request of counsel or at the direction of the Court and in all cases prior to the trial date to discuss pretrial matters, settlement and/or trial. Trial counsel are encouraged to request the assistance of the Court on any matter. Conferences to handle routine matters are most often conducted by telephone.

3. Settlement Conferences

The Court entertains requests for settlement conferences, and/or sets them at its own discretion. Unless otherwise ordered, at least five (5) working days prior to the conference, the parties should submit brief letters to the Court detailing the relative strengths and weaknesses of their case, as well as settlement positions. The letters will not be filed nor disclosed to opposing counsel. The Court rarely holds such conferences in non-jury [cases](#)~~trials~~, even with the consent of all parties.

Lead trial counsel and the client representative(s) with full settlement authority shall attend all settlement conferences, in person. In cases where there is insurance coverage (or the possibility of insurance coverage (even if there is a coverage dispute or reservation of rights), a representative(s) from the insurance carrier(s) shall attend the settlement conference. Carrier and client representative(s) must have full and unilateral settlement authority on behalf of the carrier(s) to the full extent of the insurance policy(ies). "Full settlement authority" means that all persons necessary to make any settlement proposal or decision, or to accept or reject any settlement offer or demand, are in actual, physical attendance. The Court routinely requires the exchange of updated/current settlement demands/offers immediately prior to the settlement conference.

Consistent with the initial status conference procedure, at any settlement conference counsel shall be prepared to discuss and agree to ADR options, including follow-up ADR proceedings.

At all settlement conferences, trial counsel shall be prepared to discuss any anticipated dispositive motions as well as counsels' assessment of the amount of time necessary to try the case. No participant may leave the conference unless and until excused by the Court.

4. Extensions and Continuances

The Court will grant extensions for the filing of motions or briefs where good cause is shown for doing so. Requests for extensions of the discovery period will routinely be granted (at least as to the first such request) so long as the motion sets forth the specific discovery conducted to date and the specific discovery which will be conducted during the extension. Requests for extensions should be made by a short written motion (accompanied by a proposed order), and the motion must include a statement regarding all opposing counsel's position on an extension and a list of any prior requests for extensions. All such requests should be made at least five (5) business

days in advance of the existing deadline. Parties opposing short extensions must be prepared to articulate the actual prejudice which would occur if the extension were granted.

Specific restrictions may be placed on further extensions when the case is not moving.

Extension for dates regarding appearances before the Court, conferences, or oral arguments will be granted when the Court is given sufficient notice so as to not complicate the Court's calendar or prejudice other parties.

The Court will do just about anything *reasonable* to accommodate trial counsel's family vacation/special event needs, *if* given *plenty* of advance notice.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Generally 150 days is permitted for discovery, unless the parties indicate that a different time frame is appropriate and the Court approves that time frame. Extensions of time for discovery are permitted for good cause shown, provided that the case has been advanced by counsel during the initial period of discovery. The Court will, upon the request of the parties or its own motion, consider phased discovery in appropriate cases.

2. Expert Witnesses

Discovery depositions and depositions for use at trial of expert witnesses are nearly always permitted. Expert witness discovery is reciprocal, and the Court encourages the use of video deposition testimony.

3. Deposition/Discovery Disputes

For discovery disputes that arise during a deposition, the attorneys together may contact the Court by telephone to determine whether the Court wishes to resolve the matter at that time. Counsel must contact the Court to set a discovery conference before filing any motion to compel or for sanctions, or for a non-consensual protective order. Failure to do so may result in the deferral of a ruling, or denial of such motion.

4. Stay of Discovery

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion but will ordinarily be granted only for good cause shown. In some cases, discovery may be limited to those facts in support of or opposition to the dispositive motion (e.g., a motion to dismiss for lack of personal jurisdiction).

5. Limitations on Discovery

No standard restrictions on the number of interrogatories or length of depositions are employed beyond those set forth in the Federal Rules of

Civil Procedure. However, the parties are expected to use their common sense and discretion in discovery matters, and the Court will entertain motions when the request propounded or response is unreasonable.

6. Rule 11 & Rule 37 Motions/Sanctions

The Court expects counsel to avoid the necessity of filing Rule 11 and/or Rule 37 motions through the exercise of good professional judgment, common courtesy and civility. However, counsel fees and costs may be awarded in appropriate circumstances. Oral argument is ordinarily scheduled as to all [sanctions](#) motions.

C. Injunctions and Temporary Restraining Orders

Where a party seeks an injunction and/or a temporary restraining order situation, the moving party must establish and demonstrate that serious efforts were made to contact the opposing party or its counsel prior to seeking relief, which must be supported by filing an F. R. Civ. P. 65 affidavit regarding the same. Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order. In circumstances where a bond or deposit of security may be required if relief is granted, the moving party is expected to have that arranged at the time the motion is filed.

The papers in support of a motion for a temporary restraining order or preliminary injunction should include affidavit(s) in support of the motion with all relevant documents attached to the affidavit(s). Any response to the motion for temporary restraining order or preliminary injunction should be accompanied by affidavit(s). [Both motions and responses must attach proposed findings of fact and conclusions of law.](#)

All requests for injunctions and temporary restraining orders are handled as expeditiously as possible and the Court will, in its discretion and after review of the pleadings and affidavit(s), determine whether or not to conduct a hearing and, if so, the scope of the testimony necessary to resolve the matter. Counsel filing any such motion should be immediately prepared to proceed with argument, and testimony from supporting witnesses.

D. Patent Cases

All patent cases will follow the Western District of Pennsylvania's Local Rules of Practice for Patent Cases.

E. [Trial/Hearing Courtroom Procedures](#) [\(all cases\)](#)

1. Scheduling of Cases

At the initial case management conference, a presumptive date for trial generally will be discussed. Vacation schedules, family [schedule](#) conflicts, and personal [and professional schedule](#) conflicts of trial counsel

are ordinarily accommodated when counsel has notified the Court of any such conflict as soon as the conflict becomes known.

2. **Final Pretrial Conference**

At the final pretrial conference, witness lists, exhibits, motions in limine, jury instructions, voir dire, verdict slips, and any other pretrial matters will be discussed in detail, and generally ruled upon at the conference. As such, counsel should be prepared to make all related arguments at that time. The Court will usually permit/direct the deposition of necessary experts or unavailable witnesses for use at trial.

In addition, at the pretrial conference in cases where it is appropriate, the Court may inform the parties of the amount of time each party will be allotted to present testimony and evidence at trial.

Unless excused by the Court, all participating trial counsel, the principal client representative/client in civil matters, and the responsible insurance representative (all with full settlement authority) must attend the final pretrial conference in person.

3. **Trial Hours/Days**

Except as is otherwise necessary to accommodate jurors, the Court is in trial Monday through Friday, 9:00 a.m. to 4:30 p.m. with breaks when appropriate, unless the jury requests a different schedule. On trial days, counsel must be available at 8:30 a.m. (or earlier if necessary to ensure that trial commences on time) to meet with the Court concerning scheduling, anticipated trial issues, and to obtain advance rulings on evidentiary or other issues. The Court usually takes 15 minute breaks in both the morning and afternoon, and a 75 minute lunch break.

4. **Trial Briefs**

Trial briefs are appreciated. There are no filing date restrictions, but the briefs are more useful and more likely to be given serious consideration if filed at least seven (7) days before trial. Trial briefs should not exceed fifteen (15) pages.

In bench trials, counsel will be required to submit proposed findings of fact and conclusions of law.

5. **Voir Dire**

The Court conducts voir dire in civil and criminal cases, and may permit a short introductory statement by counsel for each party to the venire panel. The Court often selects the jury on the Wednesday of the week prior to trial.

Unless otherwise ordered by pretrial order, counsel are permitted to supplement the standard voir dire questions. Counsel shall attempt to obtain consent of opposing counsel prior to submission of any such

supplemental voir dire. Those supplemental voir dire questions to which counsel have agreed upon shall so state. If counsel behaves, the Court will usually allow counsel to ask follow-up questions during individual voir dire questioning.

6. Note Taking and Questions by Jurors

Jurors are permitted to take notes and are provided with notebook paper to do so. The Court is open to requests from counsel to allow jurors to be permitted to submit questions in writing to the Court, which will be reviewed by the Court and counsel before being propounded to the witness.

7. Side Bars

Counsel should be considerate of the use of jurors' time. Consequently, except where essential to avoid prejudice to the trial process, side bars are generally disfavored because they disrupt the presentation of evidence, can waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court each day at 8:30 a.m. (or earlier if necessary to ensure that trial commences on time) to raise points of evidence or other issues that would otherwise necessitate a side bar conference.

8. Examination of Witnesses Out of Sequence

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 in succession. The Court prefers that all testimony from a witness be drawn out in one sitting, as opposed to a witness being recalled.

9. Opening and Closing Statements

Ordinarily, up to thirty (30) minutes is allotted to each side for opening and for closing statements, depending on the complexity of the case. It is the Court's belief that shorter is most often better. Counsel may use exhibits or demonstratives if agreed to by all parties, or authorized by the Court, in advance.

10. Time Limits for Examination of Witnesses

Ordinarily, the Court will not set fixed time limits for the examination of witnesses or presentation of a party's case. However, where appropriate, the Court may set time limits for the examination of witnesses and admission of evidence during trial. Such time limits include each party's time spent on both direct and cross examinations. However, any time limit imposed does not include opening statements or closing arguments. In such situations, the Court will keep track of each party's use of time during the trial.

- 11. Examination of Witnesses or Argument by More Than One Attorney**
Except in unusual circumstances with advance leave of Court, co-counsel are not permitted to split the examination of a witness. However, the Court will consider relaxing this rule if dual examinations/argument will facilitate a newer lawyer actively participating in trial, is not prejudicial to the opposing party, will not unduly prolong the proceedings, and does not result in intentional “double dipping.”
- 12. Examination of Witnesses Beyond Direct and Cross**
Re-direct (and often re-cross) examination is usually ~~ordinarily~~ permitted; further examination is not permitted without leave of Court.
- 13. Videotaped Testimony**
The Court has no special procedures regarding videotaped testimony except those set out in the Local Rules.
- 14. Reading of Material into the Record**
Counsel can devise their own methodology for reading material (including stipulations) into the record, provided opposing counsel agrees.
- 15. Exhibits**
By a date set forth in the Pretrial Order, counsel shall file on CM/ECF a Joint Exhibit List Chart (with columns) setting forth all government/plaintiff and defendant trial exhibits, by exhibit number/letter, date, author, type of document, objection as to authenticity (if any) with response, and objection as to admissibility with response. In addition, a copy of each exhibit shall be delivered to Chambers in a binder. The actual copy of the exhibits should not be filed on CM/ECF, only the Joint Exhibit List Chart shall be filed on CM/ECF. The hand-delivered Joint Exhibit List Chart with a copy of the exhibits in a standard black presentation, 3-ring binder(s) (not larger than three (3) inches) shall be delivered to Chambers by the date set forth in the Pretrial Order.

One paper copy of each exhibit displayed during trial is to be provided to the Courtroom Deputy Clerk on the same day of its display. In order for the Jurors’ Exhibit Binders to be complete when deliberations begin, counsel must insure that a copy of each exhibit displayed and admitted has been provided to Court by the last day of trial. Counsel must provide the Courtroom Deputy Clerk with a binder(s) that will hold the paper copies of the exhibits to be submitted to the jury at the close of trial, and this will constitute the original record for purposes of appeal, if any.

Voluminous data must 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. All

exhibits will be presented using the Court's electronic presentation system. All trial counsel must know how to use it.

Counsel are not to take time during trial to exchange exhibits with each other as this will have been accomplished pretrial. With advance notice to all parties and approval of the Court, visual aids and exhibits may be used during opening statements. Exhibits need not be offered into evidence in numeric/alphabetical order. Plaintiffs use numbers, defendants use letters.

16. Juror Notebooks

The Court will provide juror notebooks. The notes will be retained by the Courtroom Deputy Clerk during trial and deliberations and will be destroyed once a verdict has been rendered.

17. Motions for Judgment As a Matter of Law

The Court's only requirements for such motions are set forth in the [applicable](#) Federal Rules of ~~Civil~~ Procedure.

18. Jury Instructions

The parties shall meet to agree on joint proposed jury instructions. After meeting, the parties together shall file one combined set of proposed instructions, along with a CD/flash drive containing the instructions in Word format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom of each instruction: "This proposed instruction is agreed upon by the parties." Each disputed instruction shall state which party is advancing it, along with the legal authority relied on by each party in support of and in opposition to each such instruction. Proposed instructions as to a given issue by different parties shall be grouped together.

Generally, a charging conference will be held at which time a ruling will be made on each point for charge. Counsel are required to state objections to the proposed charge at the charging conference and to supply any proposed alternate language, together with case authority.

The Court will not accept separate proposed jury instructions from the parties.

The Court generally tries to rule on jury instructions at or prior to the final pretrial conference.

19. Proposed Findings of Fact and Conclusions of Law in Bench Proceedings

Except where a shorter period is set by the Court (e.g., TRO and preliminary injunction matters), within fourteen (14) days of the conclusion of a hearing or bench trial (unless otherwise ordered), Plaintiff

shall file (and serve a courtesy copy on a CD/flash drive formatted in Word format) consecutively numbered proposed findings of fact and conclusions of law. Plaintiff's proposed findings of fact shall address each contested issue of fact remaining and shall also include any facts stipulated to by the parties. Each proposed finding of fact shall be supported by clear and explicit reference to the record. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment, integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief should not exceed twenty (20) pages.

Except where a shorter period is otherwise set by the Court (e.g., TRO and preliminary injunction matters), within fourteen (14) days after service of Plaintiff's proposed findings of fact and conclusions of law (unless ordered otherwise), Defendant shall file (and serve a courtesy copy on CD/flash drive formatted in Word format) consecutively numbered counter findings of fact and consecutively numbered counter conclusions of law, corresponding to the same numbered findings of fact and conclusions of law proposed by Plaintiff. Each proposed counter finding shall be supported by clear and explicit reference to the record. Each proposed counter conclusion shall be supported by citation to appropriate authority. With the proposed counter findings and counter conclusions, Defendant also shall file and serve a brief in support of judgment integrating the counter proposed findings of fact with the counter proposed conclusions of law and demonstrating why the relief requested by defendant should be granted. The supporting brief shall not exceed twenty (20) pages.

20. Offers of Proof

There should be no requests for offers of proof during trial as the parties will have discussed the witnesses at the 8:30 a.m. conference with the Court.

21. General Courtroom Rules

Counsel can conduct the trial in any manner they see fit, provided it is done with courtesy and civility, and complies with the applicable Rules of Procedure and Evidence. Counsel may move around the Courtroom, so long as they do not invade any person's personal space or block the view of any trial participant. Counsel abusing this prerogative are subject to being "grounded" by the Court.

Those at counsel/support tables may have soft drinks in closed containers with a mechanically-closing lid only (no flimsy "take out" lids). Those requiring the use of laptops, computer systems, iPads, etc. for trial presentation must make advance arrangements via the Courtroom Deputy Clerk.

22. Use of Courtroom Technology

The parties are required to use trial presentation technology, courtroom technology, and trial exhibit summaries (pursuant to Rule 1006 of the Federal Rules of Evidence), to the fullest extent possible in all cases. Should the parties require training or other information on use of the courtroom technology, the parties may contact Sean Fox, of the Information Technology Department, at (412) 208-7468. Unsecured, wireless internet access is available in the Courtroom. [Counsel are expected to make arrangements to share major AV devices \(projectors, jumbo screens, etc.\).](#)

23. Sample Documents

The Court's website page contains samples of its various forms of jury instructions and *voir dire*.

F. Jury Deliberations [\(all cases\)](#)

1. Written Jury Instructions

The jury will be provided with a copy of the jury instructions.

2. Exhibits in the Jury Room

Generally, the jury will be given all admitted exhibits for use in deliberations.

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

Requests to read back testimony or replay tapes during deliberations will ordinarily be denied.

4. Jury Questions During Deliberations/[Polling](#)

All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. In most cases, the jury will then be summoned to the courtroom, where an oral reply will be read. A written reply is also provided when appropriate. [The Court will poll the jury as a matter of course, and will give counsel the opportunity to review the verdict form prior to discharging the jury.](#)

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom area but must be [immediately](#) available by telephone so that they can promptly return to the courthouse upon being contacted by the Court.

6. Interviewing the Jury

The jury will be told that it is up to them to decide if they choose to be interviewed. Any such interview must be conducted with courtesy and respect for the service of jurors.

IV. BANKRUPTCY APPEALS (TO THE DISTRICT COURT)

A. Filing and Scheduling

The brief for the appellant shall be served and filed within 14 days after entry of the appeal on the docket pursuant to Bankruptcy Rule 8007; the brief for appellee shall be served and filed within fourteen (14) days after service of appellant's brief. Reply briefs may be filed according to the schedule set forth in Bankruptcy Rule 8009(a)(3), upon notification to the Court that such reply brief shall be filed.

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.

V. CRIMINAL CASES

A. Motions for Extensions

The Court considers requests for extensions [\(including to file pretrial motions\)](#) on a case-by-case basis. All such motions should be filed at least two (2) days before the expiration of any pending motions schedule. The Court requires language in any proposed order that effectively excludes extended time for purposes of the Speedy Trial Act.

B. Pretrial Conferences

The Court will conduct one or more conferences with counsel prior to trial to deal with schedules, coordination with essential witnesses, and the like.

C. Guilty Pleas

The Court has no special rules regarding guilty pleas, or deadlines for accepting/rejecting plea agreements. The Court has a format which is generally followed for the guilty plea colloquy, a copy of which is posted on-line for counsel's review.

D. Voir Dire

The Court conducts voir dire in criminal cases with the assistance of his law clerks and deputy clerk. General questions will be asked of the venire panel as a whole; specific individual inquiry with prospective jurors will then be undertaken as warranted. Counsel are permitted to augment the standard voir dire questions set forth in the Local Rules by submitting proposed questions which will be ruled upon or otherwise considered in formulating the general questions to be asked of the panel. The due date for proposed voir dire questions is set by the Trial Scheduling Order. [So long as counsel is behaving, they will be permitted to ask follow up questions during individual examination of jurors during voir dire.](#)

E. Trial

In multi-defendant cases, all counsel may examine each witness. However, defense counsel should not duplicate areas previously covered by other defense counsel.

If the parties request sequestration of witnesses, the Court grants the request.

The Court usually permits the ~~government to use~~ of transcripts of tape recorded conversations. The jury will be instructed that the evidence is the tape recorded conversations, not the transcript, and that if what the jury reads on the transcript differs from what they heard on the recording, the recording controls.

Defense counsel is permitted to determine when to make an opening statement.

The Court permits the use of special interrogatories in a criminal case if appropriate

F. Sentencing Memoranda

The Court expects the filing of a sentencing memorandum per its standard presentence order. That standard order is posted on the Court's Website, and is deemed incorporated into these Practices and Procedures. All motions or other matters regarding calculations of the Advisory Sentencing Guidelines, Departures or the calculation of Criminal History matters must be raised in the "Position with Respect to Sentencing Factors." Those raised for the first time in the Sentencing Memorandum may be denied as untimely.

G. Sentencing Conference

The Court does not usually hold a sentencing conference regarding issues under the Sentencing Guidelines prior to the actual imposition of sentence, but will hold one if requested. The Court usually issues an order setting forth tentative findings and rulings on sentencing matters several days ~~about one (1) week~~ before sentencing.

H. Other General Practices and Procedures

1. The Court will include recommendations to the Bureau of Prisons in the judgment order if appropriate.

2. The Court requires the filing of a motion for leave to travel outside the Western District by a defendant, and each such motion should state the position of the Assistant U. S. Attorney and the Probation Officer.

3. Counsel for the United States is responsible for obtaining any writs necessary for the appearance of persons in custody at any change of plea, ~~or~~ sentencing proceeding or other proceeding. Further, if the United States will move for bond revocation at any proceeding, the Assistant U.S. Attorney must so advise the Court and the defense counsel at least twenty-four (24) hours before the proceeding.

4. Any counsel desiring to have an “in-custody” Defendant appear at any proceeding in civilian attire must make arrangements in advance with the Marshal’s Office.
5. Defense counsel shall advise the Court’s Deputy Clerk in plenty of time if they want an “in-custody” Defendant to attend any proceeding in person (other than trial or sentencing, or other proceeding as required by Fed. R. Crim. P. 43(a) or a probation/supervised release revocation hearing, for which proceedings the Court will notify the Marshal’s Office).

December, 2016

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

CIVIL PRETRIAL ORDER

AND NOW, this ____ day of _____, 20____, the Court **HEREBY ORDERS** as follows:

A. Final Pretrial Orders:

1. **Jury Selection & Trial.** Jury selection and trial are set for _____, 20____ at 9:00 AM, in Courtroom 6A, 6th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

2. **Pretrial Conference(s).** A final pretrial conference shall be held on _____, 20____ at 2:30 PM, in Courtroom 6A, 6th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania. All parties, party representatives and involved insurance representatives (each with full settlement authority), along with all lawyers who will participate in the trial, must be present in person.

3. **Exchange of Witness Lists and Exhibits.**

a. Plaintiff shall file a pretrial statement on or before _____, 20____. Plaintiff shall also file a final list of trial witnesses, listing separately (i) the witnesses it will call and (ii) the witnesses it may call if needed (other than purely for impeachment). For each witness listed, Plaintiff shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due by _____, 20____.

- b. Defendant shall file a pretrial statement on or before _____, 20__.
- Defendant shall also file a final list of trial witnesses, listing separately (i) the witnesses it will call and (ii) the witnesses it may call if needed (other than purely for impeachment). For each witness listed, Defendant shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due by _____, 20__.
- c. On or before _____, 20__, counsel shall file on CM/ECF a Joint Exhibit List Chart (with columns) setting forth all trial exhibits, by exhibit number, date, author, type of document, objection as to authenticity (if any) with response, and objection as to admissibility with response. At the same time, a copy of each exhibit in a binder or notebook, shall be delivered to Chambers. (The actual copy of the exhibits should not be filed on CM/ECF, only the Joint Exhibit List Chart shall be filed on CM/ECF). The Joint Exhibit List Chart, with a copy of the exhibits in a binder, shall be hand-delivered to Chambers by _____, 20__.
- d. All exhibits must be exchanged and marked in advance of trial. One paper copy of each exhibit displayed during trial is to be provided to the Courtroom Deputy Clerk following its display. In order for the Jurors' Exhibit Binder to be complete when deliberation begins, counsel must have provided one paper copy of each admitted exhibit by the last day of trial. Counsel must provide the Court with binder(s) that will hold the paper copies of the exhibits to be submitted to the jury at the close of trial.
- e. Voluminous data must 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.

4. **Designation of Discovery Excerpts to be Offered at Trial.** The parties shall submit a designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) by _____, 20__.

5. **Motions.** The parties shall file all motions in limine, including motions and proposed orders of court under Fed. R. Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law, by _____, 20__. Responses shall be filed by _____, 20__. All briefs supporting or opposing such motions are limited to 10 pages. All Daubert motions must be filed by _____, 20__, with responses filed no later than _____, 20__.

6. **Proposed Jury Instructions & Verdict Slips.** Counsel shall meet to agree on a joint verdict slip and a joint set of proposed substantive jury instructions regarding Plaintiff(s)' claims and their elements, any defenses and their elements, and any evidentiary or other matters particular or unique to this case; the parties need not submit "boilerplate" or standard civil jury instructions. After said meeting, and on or before _____, 20__, counsel shall file one combined set of proposed instructions, along with CD/flash drive containing the instructions in Word format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom of each instruction: "This proposed instruction is agreed upon by the parties." Non-agreed upon instructions shall state which party is advancing it, along with the legal authority relied upon by each party in support of and in opposition to each such instruction. Each instruction to which the parties have not agreed shall indicate at the bottom of the instruction the name of the party proffering the instruction. 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.

A charging conference will be held, at which time a ruling will be made on each point for charge, and a copy of the Court's proposed charge will be supplied to counsel. Counsel are required to

state objections to the proposed charge at the charging conference and to supply the alternate language, together with case authority. The Court will not accept separate proposed jury instructions from the parties. The Court generally rules on party-proposed jury instructions at the Final Pretrial Conference.

A joint proposed verdict slip shall be filed by _____, 20____. If parties, after meeting in an attempt to agree on a joint verdict slip are unable to agree, the parties shall submit their respective proposed verdict slips by _____, 20____.

7. **Proposed Voir Dire.** Counsel are permitted to supplement the standard questions, provided that the proposed supplemental voir dire questions are submitted to the Court in writing by _____, 20____.

8. **Joint Stipulations.** The parties shall file joint stipulations by _____, 20____. All possible stipulations shall be made as to:

- a. Facts;
- b. Issues to be decided;
- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports;
- e. Deposition testimony to be read into the record;
- f. A brief statement of the claims and defenses to be read to the jury during voir dire and to introduce the trial; and
- g. Exhibits or other presentation aids to be used in operating statements.

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

B. Trial Procedure

1. **Hours.** Court is ordinarily in trial session, unless otherwise ordered by the Court, Monday through Friday, 9:00 a.m. to 4:30 p.m. with breaks where appropriate. All counsel are expected to be in their seats, and witnesses available, and ready to commence at the appointed times.

2. **Exhibits.** Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel prior to using them.

3. **Approaching the Witness.** It will not be necessary for counsel to request permission to approach a witness.

4. **Opening and Closing Statements.** Up to thirty (30) minutes is ordinarily permitted to each side for opening and for closing statements, depending on the complexity of the case. Counsel may use exhibits or charts in opening argument, provided that the same have been provided to opposing counsel beforehand and either agreement was reached or the Court has ruled upon the matter.

5. **Side Bar Conferences.** The Court believes that counsel should be considerate of the jurors' time. Consequently, side bar conferences are disfavored [unless necessary to avoid prejudice](#). Such conferences tend to disrupt the presentation of evidence, can waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 8:30 a.m. each day (or earlier if necessary to ensure that trial commences on time) 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 open court. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch, or for the day.

In addition, it is expected that counsel will anticipate evidentiary issues requiring lengthy argument and will take up such matters out of the presence of the jury. The Court will be available at 8:30 a.m. each morning to address such issues. It is the responsibility of counsel to notify other counsel of the need for such a conference at 8:30 a.m. and all other counsel will be expected to be present at the appointed time for argument. The Court will not delay the proceedings to respond to last minute requests for conferences to discuss matters that, in the exercise of reasonable diligence, could have been heard at the morning conference.

6. **Witness List.** Prior to the commencement of the trial, counsel shall provide opposing counsel with a complete witness list, and shall provide opposing counsel throughout the trial with the actual list of the next day's witnesses by 5:00 p.m. in the order they are expected to be called. The same procedure will be employed by both sides at the end of each trial day. Counsel should be sure that they have adequate witnesses to fill the time allotted each day.

7. **Note Taking.** The jury shall be permitted to take notes.

8. **Jury Questions/Jury Deliberations.** All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. The jury is then summoned to the Courtroom in most cases and the oral reply is given to them. A written reply is provided where appropriate.

9. **Jury Instructions.** A copy of the jury instructions shall be provided to the jury for use during its deliberations.

10. **Jury Access to Exhibits.** Unless otherwise advised by counsel, it will be assumed that all admitted exhibits will be sent out with the jury.

11. **Use of Technology.** The parties are required to use trial presentation technology, courtroom technology, and trial exhibit summaries pursuant to Rule 1006 of the Federal Rules of Evidence, to the fullest extent possible.

12. **Other Procedures.** The parties are directed to the Court's Chambers Rules and Procedures, available on the Court's website for additional pretrial and trial procedures.

SO ORDERED this __ day of _____, 20__.

Mark R. Hornak
United States District Judge

cc: All counsel of record

December, 2016

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

ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE

The above case has been assigned to United States District Judge Mark R. Hornak for all further proceedings. Pursuant to Local Rule 16.1, an initial case management conference will be conducted to discuss narrowing of the issues, the extent of pretrial preparation, discovery procedures, the early disposition of controlling questions of law, the probable extent of provable damages, the possibility of settlement, alternative dispute resolution options, and any other matters that will contribute to prompt and fair disposition of the case; and establish a date for the pretrial conference and a date for the commencement of the trial. Lead trial counsel shall participate in the conference. Lead trial counsel shall obtain full settlement authority prior to the conference and must be prepared to discuss settlement of the case and alternative dispute resolution options in detail. [All pending motions are subject to argument and disposition at the conference.](#) Clients and insurance carrier representatives must be available by telephone. The Conference will be held on _____, 20__ at _____ M, in Room 6170, 6th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania. Any counsel may participate by telephone upon request made at least forty-eight (48) hours in advance.

As required by Rule 26(f) of the Federal Rules of Civil Procedure the parties must, as soon as practicable, “confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan[.]” See Fed.R.Civ.P. 26(f). The “confer” meeting must occur in person or by telephone (not via e-mail exchanges), and all trial counsel shall personally participate.

On or before _____, 20__, and pursuant to Rule 26(f), and as required by Local Rule 16.1.1, the attorneys of record and all unrepresented parties that have appeared in this case are jointly responsible for submitting to the Court the following ~~two (2)~~ documents:

- (a) **A written report required by Fed.R.Civ.P. 26(f), in the format set forth in Appendix LCvR 16.1 A (current form) to the Local Rule 16.1.1B**
- (b) **A stipulation selecting an ADR process (pursuant to Local Rule 16.2) (current form). If counsel believes that ADR should occur at a time other than within sixty (60) days of the Initial Case Management Conference, they are welcome to state that in the Rule 26(f) Report, setting out their reasons, and proposed timing for the ADR session.**
- (c) **The Court will ordinarily include the following language in its Initial Case Management Order (or in the alternative, enter an Order in the form set forth at Appendix LCvR 16.1.D of the Local Rules) unless a party objects: “Pursuant to Fed. R. Evid. 502(d), no ~~inadvertent~~ disclosure connected to this litigation shall act as a waiver in any proceeding of any otherwise applicable privilege or protection unless so ordered by this Court.”**

Documents (a) & (b) may be downloaded from the Court's website at www.pawd.uscourts.gov, “forms.”

SO ORDERED this __ day of _____, 20__.

Mark R. Hornak
United States District Judge

cc: All counsel of record

December, 2016

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

INITIAL CASE MANAGEMENT ORDER

AND NOW, this ____ day of _____, 20__, an initial case management conference having been held pursuant to Federal Rule of Civil Procedure 16 on _____, 20__, it is hereby ORDERED that the parties comply with the following:

1. **Local Rule 16.1:** This civil action is governed by Local Rule of Civil Procedure 16.1 – Pretrial Procedures.

2. **Settlement Negotiations:** Counsel for the parties shall confer with their clients and any involved insurance carriers before all case management, status or pretrial conferences to obtain authority to participate in settlement negotiations conducted by the Court. A client’s representative/insurance carrier representative shall be available by phone for any such conference. If a party anticipates potentially relying upon an insurance carrier to satisfy all or part of any settlement or award, a representative of the insurance carrier(s) who possesses full, unilateral settlement authority shall be available to participate in all case management conferences, status conferences, and settlement negotiations, including ADR sessions, either in-person or via telephone.

3. **Initial Scheduling:** The parties shall comply with the following deadlines:

a) Disclosures pursuant to Fed. R. Civ. P. 26(a) shall be made on or before _____, 20__.

b) Additional parties shall be joined on or before _____, 20__.

c) Pleadings shall be amended by _____, 20__.

d) Fact discovery shall be completed on or before _____, 20__. The

Court may extend the discovery deadline upon a showing of good cause and upon motion filed prior to the expiration of such deadline. The motion shall: (i) specifically state all discovery

completed to date and to be conducted if the extension is granted; (ii) contain a showing of good cause for the requested extension; (iii) list any previous extensions of discovery; and (iv) attach a proposed order which establishes specifically the extended closure date being requested and setting forth the discovery to be conducted.

e) Plaintiff's expert report(s) shall be produced on or before _____, 20__.
Defendant's expert report(s) shall be produced on or before _____, 20__.

f) Defendant shall depose Plaintiff's expert on or before _____, 20__.
Plaintiff shall depose Defendant's expert on or before _____, 20__.

g) Third party expert report(s) shall be produced on or before _____, 20__. Third party expert deposition(s) shall be completed on or before _____, 20__.

h) Pretrial motions relating to discovery or this Order shall be filed on or before the last day of the applicable discovery deadline. This deadline does not apply to motions to extend discovery, motions to compel discovery, motions *in limine*, motions for summary judgment, or other pretrial motions.

Responses to motions relating to discovery or this Order shall be filed within seven (7) days from the date of service of the motion. The Court frequently resolves such motions by telephone conference, which the parties may also request. The Court may also schedule a telephone conference before the time runs for any response. In such a case, the non-moving party is excused from filing a response; instead, said party should be prepared to state its position at the telephone conference.

Replies to such responses shall be filed seven (7) days from the date of service of the response. Replies may be filed without the leave of the Court. Surreplies shall not be filed without leave of the Court obtained in advance. For further information regarding general motions practice, please see the "Chambers' Rules" website available from the United States District Court for the Western District of Pennsylvania's homepage.

4. **Alternative Dispute Resolution (ADR):** The parties are advised to comply with all ADR requirements pursuant to Local Rule of Civil Procedure 16.2. The parties are directed to promptly schedule and file the notice of the ADR proceeding. A representative of any insurance carrier which may be responsible, in whole or in part, for any portion of the claims alleged and who has full, unilateral settlement authority must attend any ADR proceeding in person if insurance proceeds could cover any portion of a settlement or verdict.

5. **Procedures Following Inadvertent or Other Disclosure (“Clawback”):** Pursuant to Local Rule LCvR 16.1(D), and to aid in the implementation of Fed. R. Evid. 502, the following is ordered in the event of ~~an inadvertent~~ a disclosure of any privileged or trial preparation/attorney work product material:

a) The producing party shall promptly notify all receiving parties of the inadvertent production of any privileged or trial preparation material. Any receiving party who has reasonable cause to believe that it has received privileged or trial preparation material shall promptly notify the producing party.

b) Upon receiving notice of ~~inadvertent~~ such production, any receiving party shall immediately retrieve all copies of the ~~inadvertently~~ disclosed material and sequester such material pending a resolution of the producing party’s claim either by the Court or by agreement of the parties.

c) If the parties cannot agree as to the claim of privilege or protected status, the producing party shall move the Court for a resolution within 30 days of the notice set forth in subparagraph (a). Nothing herein shall be construed to prevent a receiving party from moving the court for a resolution, but such motion must be made within the 30-day period.

d) Pursuant to Fed. R. Evid. 502(d), no ~~inadvertent~~ disclosure connected to this litigation shall act as a waiver in any proceeding of any otherwise applicable privilege or protection unless so ordered by this Court.

6. **Discovery and Other Case Management Disputes:** In the Court's experience, many discovery and case management disputes can be promptly resolved in a conference with the Court and counsel. Therefore, in the event of such a dispute, lead counsel shall confer in person or by telephone, agree on the scope and nature of the dispute, and then contact the involved law clerk or the Courtroom Deputy to request a telephone status conference. The Court will usually either conduct the conference immediately, or set such a conference to occur within 24 hours, and more often than not, the dispute will be resolved at that time. The Court may, in situations involving more substantive matters, direct counsel to file the appropriate motion for relief. The Court will conduct a status conference at any time at the request of the parties.

7. **Other Deadlines/Post-Discovery Status Conference:** A Post-Discovery Status Conference is set for _____, 20__, at __:__ .m., at which time deadlines for dispositive motions, and a presumptive trial date, will be set. In the event a telephone status conference is scheduled, all participating counsel shall contact Chambers at 412-208-7433 at least 48 hours before the conference with their preferred contact number. The Court will initiate the call.

Mark R. Hornak
United States District Judge

cc: All counsel of record

December, 2016

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

PRETRIAL ORDER IN CRIMINAL CASE

AND NOW, this ____ day of _____, 20____, the Court **HEREBY ORDERS** as follows:

A. Final Pretrial Orders

1. **Jury Selection & Trial.** Jury selection and trial are set for _____, _____, 20____
at **9:30 a.m.**, in Courtroom 6A, 6th Floor, United States Courthouse, 700 Grant Street, Pittsburgh,
Pennsylvania.

2. The Court shall conduct a pretrial conference in this case on _____, _____, 20__ at
_____. ~~A preliminary pretrial conference with the Court's law clerk shall be held on~~
~~_____, 20__ at _____.~~

3. Exchange of Witness Lists and Exhibits.

- a. The government shall file with the Court a list of trial witnesses, under seal, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment or rebuttal). For each witness listed the government shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Said witness list and offers of proof need not be served on defendant, and shall be due by _____, 20__.
- b. Defendant shall file with the Court, under seal, his or her list of trial witnesses, excluding defendant, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment or rebuttal). For each witness listed Defendant shall provide an offer of proof

explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Said witness list and offers of proof need not be served on the government, and shall be due by _____, **20**.

- c. All exhibits must be exchanged and marked in advance of trial. A Joint Exhibit Binder is to be provided to the Court by the government no later than _____, **20**; exhibits that are not objected to shall be marked "J-1, J-2, J-3 etc."; the government's exhibits which are being objected to by the defense shall be marked numerically, i.e., G-1, G-2, G-3, etc.; the defendant's exhibits which are being objected to by the government shall be marked alphabetically, A, B, C, etc. Similarly, a binder of disputed exhibits shall be provided to the Court by each party on _____, **20**. Additionally, a chart shall be provided to the Court, in hard copy and email form, identifying each exhibit by number and name, providing a brief description of the nature of the objection (if any), and a space for the Court's ruling on the objection(s). Objections will be resolved at or before the pretrial conference. The Court expects that all exhibits will be presented using the Court's electronic presentation system. All trial counsel are expected to know how to use it.
- d. No later than the morning of trial, the government shall submit three (3) copies of the Joint Exhibit Binder, marked "Joint Exhibit Binder".
- e. Voluminous data shall 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.

4. **Jencks Act - Impeachment Materials - Rule 404(b).** The government shall provide defense counsel with copies of any *Brady/Giglio* impeachment materials not previously disclosed, and any additional evidence of defendant's uncharged conduct which it intends to introduce at the trial pursuant to Federal Rule of Evidence 404(b) which was not previously disclosed (see Docket No. [40]), on or before _____, **20** . The government is encouraged to provide all Jencks Act materials prior to the pretrial conference. [Notwithstanding this provision, all *Brady/Giglio* material must be disclosed in accord with prevailing law in a timely manner \(which may be at a time earlier than in an Order\), irrespective of the timeline in this Order.](#)

5. **Motions.** The parties shall file all remaining motions and motions in limine, including motions under Fed.R.Evid. 104(a), and motions to limit or sever issues, together with supporting briefs or memoranda of law, by _____, **20** . Responses shall be filed by _____, **20** . All briefs supporting or opposing such motions are limited to 5 pages.

6. **Proposed Jury Instructions & Verdict Slips.** Counsel shall meet to agree on a joint set of proposed jury instructions regarding the offenses charged and their elements, the theory of the defense, and any matters particular or unique to this case, including limiting instructions as to the phrase “among others” in the Indictment; the parties may also submit “boilerplate” or standard criminal jury instructions. After said meeting, and on or before _____, **20** , counsel file a unified (meaning one) combined set of proposed instructions, and shall e-mail a copy of the proposed instructions to the law clerk assigned to the case, or alternatively, deliver a computer disk/CD to chambers containing the instructions in Word format. The filed set of instructions shall include both the agreed upon instructions and the 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 (i.e., instruction should be matched with counter instructions).

A charging conference will be held, at which time a ruling will be made on each disputed point for charge and a copy of the Court's proposed charge will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply the alternate language, together with case authority.

The Court will not accept separate proposed jury instructions from the parties.

7. **Voir Dire.** Counsel are permitted to supplement the standard questions provided that the proposed supplemental voir dire questions are submitted to the Court in writing by _____, 20____. Voir dire questions will be asked by the Court, with as many questions as possible asked of the panel en banc. Individual voir dire will be focused, in the interest of conserving time.

The government shall have six (6) peremptory challenges and the defense shall have ten (10) peremptory challenges collectively. Each side shall have one challenge for each two (2) alternate jurors.

8. **Joint Stipulations.** The parties shall file joint stipulations by _____, 20____. All possible stipulations shall be made as to:

- a. Facts;
- b. Issues to be decided;
- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports;
- e. Deposition testimony to be read into the record; and
- f. A neutral summary of the indictment and a brief statement of the defense ([if requested by the Defendant](#)) which will be read to the jury to introduce the trial and to be read to the venire before jury selection.

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

B. Trial Procedure

1. **Hours.** Court is in trial session, unless otherwise ordered by the Court, Monday through Friday, 9:30 a.m. to 4:30 p.m. with breaks where appropriate. All counsel are expected to be in their seats and ready to commence at the appointed times.

2. **Exhibits.** Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel prior to using them. All counsel are expected to fully utilize the Courtroom Presentation Technology.

3. **Approaching the Witness.** It is not necessary for counsel to request permission to approach a witness.

4. **Testifying Officers and Agents and Other Witnesses.** All testifying law enforcement officers and agents shall have any reports or declarations they have prepared or used to refresh their recollections with them on the witness stand. All witnesses who will testify about the content of documents will review those documents prior to taking the stand and be prepared to answer questions about document contents based on their prior reading. Counsel are responsible for obtaining any necessary writs for the appearance of any person in custody.

5. **Opening and Closing Statements.** Unless ordered otherwise, up to thirty (30) minutes is permitted to each side for opening and closing statements, depending on the complexity of the case. Counsel may use exhibits or charts in opening argument provided that the same have been provided to opposing counsel beforehand and either agreement was reached or the Court has ruled upon the matter.

6. **Side Bar Conferences.** The Court believes that counsel should be considerate of the jurors' time. Consequently, except where necessary to prevent legal prejudice to the parties or the trial process, side bar conferences are disfavored because they can waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 8:30 a.m. each day (or earlier if necessary to ensure that trial commences on time) each day to raise points of evidence or other issues that would

otherwise necessitate a side bar conference. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch or for the day.

The Court will be available at **8:3045 a.m.** each morning to address such evidentiary and other issues. It is the responsibility of counsel to notify other counsel of the need for a conference at **8:3045 a.m.** and all other counsel will be expected to be there at the appointed time for argument. The Court will not delay the proceedings to respond to last minute requests for conferences to discuss matters which, in the exercise of reasonable diligence, could have been heard at the morning conference.

7. **Witness List.** Counsel shall provide opposing counsel throughout the trial with a list of the next day's witnesses in the order they are expected to be called. The same procedure will be employed by both sides at the end of each trial day. Counsel should be sure that they have adequate witnesses to fill the time allotted each day.

8. **Note Taking.** The jury shall be permitted to take notes, and will be given detailed cautionary instruction as to their appropriate use.

9. **Jury Questions.** All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. The jury is then summoned to the Courtroom in most cases and an oral ~~the verbal~~ reply is given to them. A written reply is provided where appropriate.

10. **Jury Instructions.** A copy of the jury instructions shall be provided to the jury for use during its deliberations.

11. **Jury Access to Exhibits.** Unless otherwise advised by counsel, it will be assumed that all admitted exhibits will be sent out with the jury.

SO ORDERED this ___ day of _____, 20__.

Mark R. Hornak
United States District Judge

cc: All counsel of record