

**PRACTICES AND PROCEDURES OF
CHIEF MAGISTRATE JUDGE
SUSAN PARADISE BAXTER**

I. GENERAL MATTERS¹

A. Communications with the Court

Magistrate Judge Baxter generally does not accept letters or faxes. All communications should be made by way of motion, unless otherwise specifically requested by the Court.

B. Communications with Chambers

Counsel may inquire as to the status of pending motions or the judge's docket through her courtroom deputy or her law clerks.

C. Telephone Conferences

Magistrate Judge Baxter will handle some matters by telephone, depending on the circumstances, in an attempt to serve the convenience of counsel and keep the case moving. It is acceptable to her if one person is present by telephone and another in person, if a reasonable objection to this division is made however, she will have all counsel participate via telephone.

Magistrate Judge Baxter routinely handles motions for injunctive relief in prisoner cases by a telephonic hearing.

D. Pro Hac Admissions

Magistrate Judge Baxter follows the Local Rule on admissions pro hac vice. Generally, the district judge handles such admissions.

E. Comment to the Media

Magistrate Judge Baxter does not approve of counsel's commenting to the media in pending cases, but she will not place any restrictions on counsel unless such comments become disruptive to the proceedings.

II. MOTIONS PRACTICE

A. Oral Argument

Magistrate Judge Baxter typically does not conduct oral argument on pretrial motions because she does not find it useful. She will hold argument, if requested, if she believes it will be helpful to the court, i.e., on some dispositive motions or

¹ Magistrate Judges' duties in the Western District are governed by Local Rule 72.1.

in complex cases. If she deems oral argument to be appropriate, an order will issue. She has no specific days or times set aside for argument.

B. Briefs

Magistrate Judge Baxter requires legal briefs in support of all motions except for discovery motions. The supporting brief must be filed contemporaneously with the motion. Reply briefs are generally permitted.

Discovery motions should be brief and must be accompanied by a telephone call to chambers where a conference to resolve the motion will be scheduled by the courtroom deputy so that the case does not become stalled. The motion should detail the discovery dispute and need not cite case law.

C. Chambers Copies of Motion Papers

In light of the establishment of CM-ECF, no paper courtesy copies should be sent to chambers.

D. Scheduling

Magistrate Judge Baxter's general practice is to require responsive briefs to be filed within 10-14 days of the day a motion is filed and served. Her standard case management order sets out her standard schedule. If a motion is not covered by the case management order, the judge will issue a separate scheduling order. She will grant extensions of time to respond when necessary.

E. Evidentiary Hearings

At the request of the trial judge, Magistrate Judge Baxter holds evidentiary hearings on pretrial motions on a date separate from, and prior to trial.

Magistrate Judge Baxter will hold evidentiary hearings on habeas corpus petitions when she deems it necessary.

F. In Limine Motions

If requested by the trial judge, in limine motions will be entertained prior to trial. Magistrate Judge Baxter will also rule on such motions at that time.

G. Proposed Orders

In accordance with the Local Rules, each and every motion shall be accompanied by a proposed order of court. The order of court must include language detailing the specific relief sought, and not simply that the motion "is granted."

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

Magistrate Judge Baxter's pretrial statement requirements are set out in her standard case management order. She requires the items set out in the Local Rules form.

After the filing of an answer by defendants (or after the resolution of a timely 12(b) motion), Magistrate Judge Baxter will conduct the initial scheduling conference. Prior to the conference, the parties shall meet and confer and file a report pursuant to Fed.R.Civ.P. 26(f).

Magistrate Judge Baxter will permit out of town counsel to participate in the first case management conference by telephone with the prior express permission of the Court.

2. Pretrial Conferences

The trial judge assigned to the case usually conducts the final pretrial conference, except in cases where the parties have consented to the jurisdiction of the Magistrate Judge. In consent cases, an order will be issued to the parties for the requirements of the pretrial conference.

3. Settlement

Magistrate Judge Baxter is willing to participate in settlement conferences at the request of the parties. Magistrate Judge Baxter requires that settlement conferences be held in Erie and parties and attorneys must be present at the conference. Persons with authority to settle must attend the settlement conference with the attorneys. In limited circumstances, Magistrate Judge Baxter will allow a party to be available by phone but only with the express permission of the Court and the opposing party. Magistrate Judge Baxter does not require written summaries in preparation for a settlement conference.

4. Extensions and Continuances

Magistrate Judge Baxter considers motions for extensions of time and continuances on a case-by-case circumstance-specific basis. Such requests are usually granted so long as they are reasonable in length, not frivolous, and not repetitive. With regard to scheduled conferences or hearings, Magistrate Judge Baxter is reluctant to reschedule these matters without good cause.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Magistrate Judge Baxter generally allows 120 days for the completion of discovery – unless it is a simple case needing less time. She will grant requests for extensions if they are reasonable.

2. Expert Witnesses

Magistrate Judge Baxter follows Fed. R. Civ. P. 26(b)(4) as to depositions of expert witnesses.

3. Discovery/Deposition Disputes

Magistrate Judge Baxter will entertain telephone calls from attorneys at a deposition to resolve a discovery dispute. She will take or return calls as she is available.

4. Stay of Discovery

Magistrate Judge Baxter's general practice is not to stay discovery during the pendency of a dispositive motion. A stay may be sought by motion but will be granted only if the right to relief is clear or some other compelling reason exists. Absent a motion to stay, the parties should assume that discovery is appropriate.

5. Limitations on Discovery

As a general matter, Magistrate Judge Baxter does not impose any limitations on the use of particular discovery procedures outside of the Federal Rules of Civil Procedure or the Local Rules of this Court.

6. Rule 11 Motions – Rule 37 Sanctions

Magistrate Judge Baxter's practice is to rule as soon as possible on Rule 11 or Rule 37 motions. In lieu of a supporting brief, she would prefer to receive a telephone call to chambers noting the filing of a Rule 11 or Rule 37 motion, so that an argument can be scheduled on the motion quickly.

C. Injunctions and TROs

Magistrate Judge Baxter generally holds argument on all motions for preliminary injunction and temporary restraining order, including prisoner motions. They are typically held telephonically in prisoner cases, and in the courtroom in non-prisoner matters. Magistrate Judge Baxter issues a Report and Recommendation on all such motions.

D. Trial Procedures

1. Scheduling of Cases

All trials that are scheduled before Magistrate Judge Baxter are assigned a date certain for trial. In setting the trial date she will consider other obligations of counsel and of the parties and witnesses so long as she is promptly notified of any obligations.

2. Trial Hours/Days

Generally, cases will be tried Monday through Friday, 9:30 a.m. to 4:30 p.m., with breaks when appropriate. Magistrate Judge Baxter will meet with counsel before these appointed times to discuss trial/evidentiary issues.

3. Trial Briefs

Magistrate Judge Baxter permits, but does not require, the filing of trial briefs.

4. Voir Dire

Magistrate Judge Baxter will conduct the preliminary voir dire of potential jurors. Counsel may submit proposed voir dire for the Court's consideration one week prior to the start of trial.

5. Note Taking by Jurors

The Court will consider allowing jurors to take notes on a case-by-case basis.

6. Side Bars

Magistrate Judge Baxter permits side bar conferences when necessary.

7. Examination of Witnesses Out of Sequence

Magistrate Judge Baxter will allow the examination of a witness out of sequence – either within the party's own case or within an opposing party's case – if a scheduling conflict exists.

8. Opening Statement and Summations

Magistrate Judge Baxter generally does not limit the amount of time taken by counsel for opening statements and summations but believes that concise statements are more effective.

9. Examination of Witnesses or Argument by More Than One Attorney

One attorney from each party may conduct an examination of any witness and they may argue any motion or point.

10. Examination of Witness Beyond Direct and Cross

Magistrate Judge Baxter will permit redirect and recross of a witness as necessary, but does not usually permit any further examination.

- 11. Videotaped Testimony**

Magistrate Judge Baxter does not have any special procedures or requirements with respect to the use or admission of videotaped testimony other than informing the Court prior to trial of the intention to use such evidence.
- 12. Reading of Material into Record**

Magistrate Judge Baxter has no policy or rules on this issue, it will be considered on a case-by-case basis.
- 13. Exhibits**

Magistrate Judge Baxter has no special rules regarding the marking, exchange, or submission of exhibits or demonstrative evidence. She has no special rules regarding use of visual aids during trial or opening statements. She does require that exhibits be marked, and that they be offered into evidence before testimony is given.
- 14. Directed Verdict Motions**

Magistrate Judge Baxter does not have any special requirements beyond those set forth in the Federal Rules of Civil Procedure.
- 15. Jury Instructions and Verdict Forms**

Generally, Magistrate Judge Baxter utilizes standard jury instructions from Federal Jury Practice. She will permit the submission of proposed jury instructions and proposed verdict forms. If proposed jury instructions are to be submitted, the court will establish an appropriate deadline for submission.
- 16. Proposed Findings of Fact and Conclusions of Law**

In non-jury trials, Magistrate Judge Baxter permits, and at times requests, the submission of proposed findings of fact and conclusions of law.
- 17. Offers of Proof**

There are no restrictions on offers of proof at trial.
- 18. General Courtroom Rules**

Counsel shall conduct themselves with courtesy and civility at all times.

E. Jury Deliberations

- 1. Written Jury Instructions**

During trial, or in the case of a short trial at the pretrial conference, Judge

Baxter requests proposed jury instructions from all parties. A jury instruction conference discussing the proposals is held during the trial with all parties. Standardized jury instructions regarding general issues and procedures are used as well.

2. Exhibits in the Jury Room

Magistrate Judge Baxter allows exhibits to be provided to the jury for their deliberations.

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

Magistrate Judge Baxter has no general practice regarding the request for reading of trial testimony or replaying videotaped testimony.

4. Jury Questions

If a question is submitted to the Court, Magistrate Judge Baxter will discuss the question with counsel and obtain agreement on an appropriate answer to be given to the jury.

5. Availability of Counsel During Jury Deliberations

Counsel must be available by telephone during jury deliberations.

6. Interviewing the Jury

Magistrate Judge Baxter advises jurors that they do not have to respond to inquiries from counsel. However, she instructs the jurors that responses may be helpful to counsel.

Although the Judge does not discourage counsel from interviewing jurors post verdict, attorneys should advise the Court of their intention to interview a juror prior to doing so.

F. General

1. Special Types of Cases

Magistrate Judge Baxter does not have any special practices or procedures as to particular types of cases.

2. Other Individual Practices/Procedures

There are currently no other individual practices Magistrate Judge Baxter would like attorneys practicing before her to know about.

IV. CRIMINAL CASES

The only criminal matters other than preliminary hearings Magistrate Judge Baxter

handles are misdemeanors and petty offenses.

In such cases, where there is a guilty plea, Magistrate Judge Baxter follows a written format which is available for counsel's review.

Decisions on pretrial detention hearings are made within one day of the hearing.