

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

PRELIMINARY GENERAL MATTERS

1. Correspondence With the Court

Correspondence with the Court is disfavored, except to advise the Court of the status of something happening in the case, e.g., mediation. If a party desires Judge Conti to take some action, the party must file a motion. Judge Conti does not accept letter briefs.

2. Communications With Law Clerks

Parties may communicate with Judge Conti's law clerks about scheduling and other administrative matters. They are not to discuss any substantive legal matter with the law clerks.

3. Telephone Conferences

Although, generally, Judge Conti prefers that the lawyers in a matter attend all conferences with the Court, she will allow attendance by telephone if counsel submits a request and there is a good reason to do so. She will suggest conferences by telephone when they are likely to be brief and a lawyer is from out-of-town.

4. Oral Arguments and Evidentiary Hearings

Judge Conti schedules oral argument on most substantive motions, particularly motions to dismiss. She, however, generally does not schedule oral argument on motions summary judgment. If she can dispose of the motion on the record, she will do so.

5. Pro Hac Vice Admissions

Motions for a pro hac vice admission must be made in accordance with the local rules of the Western District.

CIVIL CASES
Pretrial Procedure

1. Pretrial Conferences

Judge Conti will hold at least four conferences prior to trial:

- A. An initial Rule 16 conference at which a schedule for all fact discovery will be set. The parties should also be prepared to discuss what issues they anticipate will arise in the case, as well as the prospects for settlement. This conference generally lasts 10 - 30 minutes.
- B. A conference at the close of all fact discovery. The purpose of this conference is to ascertain whether all fact discovery is completed. If fact discovery is not completed, the parties should file a request to extend the date for completion of fact discovery prior to the date of the scheduled conference. If fact discovery is completed, the Court will determine whether expert discovery will be required, and if it is, she will set dates for reports to be filed, expert discovery to be completed; objections to experts' testimony to be filed; and a presumptive date for a Daubert hearing. She will also determine if a summary judgment motion will be filed and if it will be, she will also set a briefing schedule, which will either run contemporaneously with expert discovery or, if expert discovery is required before the motion can be filed, after expert discovery is completed. If no summary judgment motion will be filed, Judge Conti will set a date for trial, as well as for the filing of various documents (pretrial statements, joint pretrial stipulation, motions *in limine*, proposed *voir dire*, jury instructions and verdict form) and a pretrial conference. Judge Conti will again broach the subject of settlement at this conference.
- C. A pretrial conference at which Judge Conti will review with the parties her proposed jury *voir dire* and preliminary charge. She will also rule on motions *in limine*, unless they are so voluminous that she feels a separate conference is necessary to address them. By the time of this conference, Judge Conti will have reviewed the parties' pretrial submissions and will address with them any issues that have arisen in her mind related to them. Again, Judge Conti will discuss settlement with the parties.
- D. A conference on the date of jury selection. At this conference, Judge Conti and the parties will finalize *voir dire* and resolve all disputes over the preliminary charge and exhibits. Settlement will not be discussed at this time as Judge Conti expects the parties to settle prior to the jury panel being brought in.

Judge Conti may hold other conferences if necessary.

2. Requests for Extensions and Continuances

Parties seeking an extension or continuance must file a written motion, stating why they could not meet the deadlines set by the Court and, in the case of extensions of discovery, what discovery remains to be taken and how long it will take. The proposed order accompanying such motions shall include the date certain, or a blank space for insertion of the date certain, on which the proposed new deadline falls. If more than one deadline is affected by the requested extension, the proposed order shall include all such affected dates.

Judge Conti may decide such motions without response because of the Court's inherent discretion over scheduling. Generally, she requires good cause to support a request for an extension of a deadline. She is more liberal in granting such motions early in a case and more stringent as the case advances and/or other extensions have been granted.

3. General Motion Practice

Judge Conti has set the following rules relating to motion practice before her:

- A. **Form of Motions.** A motion must consist of two documents, consisting of a motion stating the party's request and a separate brief containing the factual and legal grounds for the request. Evidentiary materials in support of or opposition to a motion should be tabbed and compiled in a separate document. If the evidentiary materials are voluminous, i.e., more than 25 pages, a courtesy copy of the materials appropriately marked and tabbed should be furnished to the judge's chambers. Only the evidentiary materials that are essential to deciding the motion should be submitted to the Court. A proposed order setting forth the specific relief requested must be attached to the motion.
- B. **Form of Responses.** The opposing party shall file a response to every motion. Unless otherwise directed, the response should be titled in the form of "A's Response to B's Motion [for/to] _____." A brief may be filed with the response as a separate document. A proposed order shall also be attached to the response.
- C. **Routine or Unopposed Motions.** If the nonmoving party does not oppose the motion, or the motion is of a type that normally does not implicate the substantial rights of the nonmoving party (e.g. motion to withdraw as counsel, motion to set a conference, many motions for extension of time), the nonmoving 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 nonmoving 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 consent to the motion.

D. Deadlines for Responses.

- a. Responses to motions relating to discovery shall be filed 14 days from the date of service of the motion. The court frequently resolves such motions by telephone conference, which the parties may request and which the court also may schedule before any response is required. If a telephone conference is scheduled, the nonmoving party is excused from filing a response, and will state its position during 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 21 days from the date of service of the motion.

E. 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.

F. 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, which must be a separate document. 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, which must be a separate document. 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, for each claim to be considered, set forth the elements of the claim and cite to current authority for the Court of Appeals for 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. Briefs in support of and opposing all other motions shall be limited to 15 pages.
 - e. 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 brief to be stricken from the record or the excess material to be treated as being outside the record without further notice to counsel.
 - f. 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.

4. Reply Briefs and Surreply Briefs

Except for summary judgment motions, the Court discourages reply briefs because usually repetitive and, therefore, wasteful. They may be filed only upon leave of Court. Reply briefs should state the novel matter contained in the opposition brief that merits a reply and not merely assert that opposing counsel has misstated the law.

If allowed, reply briefs are limited to 10 pages unless otherwise ordered by the Court.

Surreply briefs will be allowed only upon leave of Court, should state the novel issue and not reargue issues already addressed. A surreply brief is limited to 10 pages unless otherwise ordered by the Court.

5. Chambers' Copies of Motion Papers; Courtesy Copies

Except for voluminous materials, i.e., in excess of 25 pages, counsel should not submit courtesy copies unless requested by the Court. Voluminous materials should be appropriately marked and tabbed prior to submission to the Court.

Discovery Matters

1. Length of Discovery Period and Extensions

Unless counsel for the parties jointly agree that they require a longer period for discovery and have reasons supporting their request, Judge Conti is inclined to set a 90 to 120 day discovery period. If she allows a longer period, she will advise counsel that they must meet their deadlines, not expect an extension, and, therefore, should schedule depositions early in the period.

2. Discovery Conferences

Judge Conti expects the parties to be able to resolve discovery issues themselves. If they cannot, she will resolve discovery disputes that do not require her to review written discovery responses or to issue a written order over the telephone. Otherwise, the parties must file a written motion and appear before her in person.

If Judge Conti is available, she will accept telephone calls from counsel in a deposition in order to resolve a dispute.

3. Confidentiality Agreements

All confidentiality agreements must meet the requirements of the local rules. If such agreements meet these requirements and the parties agree on their contents, Judge Conti will sign them.

4. Expert Witnesses

Judge Conti generally schedules expert discovery and the date for a *Daubert* hearing, if necessary, after fact discovery. Although if the parties desire to take expert discovery earlier, she will allow it.

Settlement

1. General Approach

Judge Conti will discuss settlement in cases which will be tried to a jury. In nonjury matters, she will discuss settlement only if the matter is particularly complex and all parties consent to her participation. Otherwise, she will refer settlement discussions to a

a lawyer listed on the Western District's ADR panel, or the parties may select a private mediator. Judge Conti will not entertain settlement discussions if a dispositive motion is pending before the Court.

Proposed Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

Judge Conti follows Local Rule 16.1.C with regard to pretrial statements.

Injunctions

1. Scheduling and Expedited Discovery

Judge Conti will schedule an expedited hearing, when required, on requests for injunctive relief. She rarely issues temporary restraining orders without both parties present. If she is not available, motions for a temporary restraining order will be heard by the miscellaneous judge.

The Court will hear argument on requests for expedited discovery and will order it if warranted.

2. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law are required in any matter to be decided by the Court. If, however, emergency injunctive relief is sought, Judge Conti will rule from the bench, without proposed findings of fact and conclusions of law.

Trial Procedure

1. General Approach

Counsel should be on time for each court session. When the court recesses, attorneys and their support personnel must stay in place until the jury has left the courtroom.

2. Scheduling of Cases

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, sentencing 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.

3. Conflict of Counsel

Trial is to take precedence over other matters. Judge Conti expects counsel to file motions in other courtrooms to accommodate trial. With adequate advance notice, she will, if possible, schedule trial to take into account other scheduled trials and court proceedings as well as planned vacations.

4. Cases Involving Out-of-Town Parties or Witnesses

The Court will take into account out-of-town parties and witnesses in the scheduling of a trial. She will also allow such witnesses to testify remotely and out of turn.

5. Notetaking by Jurors

Jurors are permitted to take notes.

6. Trial Briefs

Trial briefs are generally not required as all issues are typically resolved prior to trial. Judge Conti will ask for trial briefs on matters prior to or during trial if she deems them necessary.

7. Voir Dire

Voir dire in civil cases is conducted by either Judge Conti's courtroom deputy or law clerk. Counsel may not address potential jurors. Judge Conti will resolve all challenges for cause and will conduct individual *voir dire* in her jury room when necessary. In civil cases the court reporter does not attend *voir dire*, but will be asked to record challenges for cause.

8. Objections; Side Bars

- A. When counsel makes objections, the objection must be stated. In the presence of the jury, counsel should not state the legal basis for the objection or make any further argument concerning the objection. Counsel 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, 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 no later than the date scheduled by the Court or, if not scheduled, at least one week in advance of trial with regard to evidentiary matters. Counsel will meet with the court at 4:30 p.m. each day to raise points of evidence or other issues that would otherwise necessitate a side bar. Failure to raise issues at the beginning or end of the trial day will generally result in a disposition of the in-court objection in the presence of the jury.

- C. There should be no requests for offers of proof during trial as the parties will have discussed the next day's witnesses with each other or at the 4:30 p.m. conference with the court.

9. In Limine Motions

Counsel are required to file motions *in limine* together with supporting briefs no later than the date scheduled by the Court or, if not scheduled, at least one week in advance of trial with regard to evidentiary matters.

10. Opening Statements and Summations

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.

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.

11. 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 back to back.

12. 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, provided that the other counsel's ability to view the witness and the jury is not obstructed.

- 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. Counsel may approach witnesses without leave of Court for purposes of identifying and interrogating concerning exhibits.
- G. Counsel should not face or otherwise appear to address himself or herself to jurors when questioning a witness.
- H. Counsel shall not approach the jury without leave of Court and should not lean or place papers on the jury box.

13. Examination of Witnesses Beyond Direct or Cross

The Court will allow re-direct and re-cross.

14. Videotaped Testimony

The Court requires all parties to retain a competent video operator for any video to be shown during trial.

15. Reading of Material Into the Record

Counsel can devise their own methodology for reading material into the record, providing opposing counsel agrees.

16. Preparation of Exhibits

- A. 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 lists. Two weeks prior to trial, each party shall supply the Court with a copy of all exhibits to be used at trial and must identify whether an exhibit's authenticity and admissibility have been agreed to by opposing counsel or are in dispute. The Court will resolve disputes prior to trial if possible. 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.
- B. In advance of each trial session, counsel for the party going forward at that session should show opposing counsel the exhibits he or she intends to introduce at the session.

- C. All exhibits already admitted into evidence that are not electronically stored 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 are not electronically stored and 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 that are not electronically stored and which have been admitted into evidence to the exhibit table.

17. Offering Exhibits Into Evidence

If the parties agree on the admission of an exhibit, the party offering it does not need to move its admission. If they do not agree, the party offering it must move to have it admitted if possible, at a pretrial conference or at side bar. The exhibit must be admitted before any questioning can proceed.

18. Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings.

The only requirements for such motions are set forth in the Federal Rules of Civil Procedure and in the Order on Motion Practice entered in the case.

19. Proposed Jury Instructions and Verdict Forms

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 their meeting, the parties shall file one document containing a 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.

20. Proposed Findings of Fact and Conclusions of Law

Judge Conti requires proposed findings of fact and conclusions of law in all bench trials.

21. Conference on Proposed Jury Instructions

Judge Conti holds her charge conference on a rolling basis, beginning with the pretrial conference and continuing in the conference she holds before the jury is selected and trial begins. She will accept, throughout the trial, supplemental jury instructions and objections to the extent the issues raised could not have been anticipated prior to trial. Judge Conti will make her final rulings before instructing the jury prior to closing arguments.

Jury Deliberations

1. Written Jury Instructions

Jurors are provided with a copy of both the preliminary charge and the final charge which they take with them to the jury room.

2. Exhibits in the Jury Room

Generally, the jury has with it all exhibits during its deliberations. If an exhibit is in electronic form, the parties should make available to the jury the hardware and software necessary to view the exhibit.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes

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.

4. Questions from Jury

All written questions submitted by the jury are supplied to counsel. Counsel and the Court meet in chambers to discuss and hopefully to agree on a reply. The response in written form will be sent to the jury or in certain circumstances the jury may be summoned to the courtroom and a verbal reply is given to them.

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom area, but must be available by telephone and able to return to the courtroom within about five minutes.

6. Taking the Verdict and Special Interrogatories

The bailiff will retrieve from the jury foreperson the verdict and/or responses to special interrogatories and give it to the Court. After the Court reviews it, the bailiff will read the verdict.

7. Polling the Jury

Judge Conti generally polls the jury.

8. Counsel Interviewing the Jury

Interviewing jurors post-verdict is discouraged. Judge Conti tells the jurors that it is up to them to decide if they will speak to counsel.

CRIMINAL CASES

1. Oral Argument and Motions

Motions must be in writing. Judge Conti will generally schedule oral argument.

2. Pretrial Conferences

Judge Conti conducts a pretrial conference in criminal cases. The parties are to submit proposed *voir dire* and jury instructions prior to the conference. Unlike in civil cases, the parties are not required to submit joint instructions. Judge Conti will have a draft of *voir dire* and her preliminary charge to the jury for distribution at the conference. She will hold a second conference one or two days prior to a criminal trial at which she will decide on final *voir dire* and her preliminary charge.

3. Voir Dire

Judge Conti will conduct *voir dire* on the record in criminal cases.

4. Conduct of Trial Differing From Civil to Criminal

Judge Conti conducts criminal trials similarly to civil trials. The parties, however, do not submit joint jury instructions and *voir dire* and do not exchange witness lists and exhibits until the first day of trial.

5. Sentencing Memoranda

Judge Conti requires the submission of sentencing memoranda in accordance with the local rules. Objections to the report of the pre-sentence investigation will be resolved at the sentencing. Judge Conti generally issues tentative findings with respect to applicable advisory guidelines range a day prior to the sentencing.