

PRACTICES AND PROCEDURES OF JUDGE GUSTAVE DIAMOND

I. GENERAL MATTERS

A. Communications with the Court

In an emergency situation, Judge Diamond will permit either correspondence or contact by telephone with his chambers. This includes such items as obtaining a one or two day extension of time to file a pleading when an unexpected event occurs which interferes with the attorney's ability to make a timely filing. He permits the filing of letter briefs in this regard.

B. Communications with Law Clerks

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

C. Telephone Conferences

Judge Diamond permits attorneys and parties to participate in conferences by telephone, especially on discovery matters such as objections during a deposition.

D. Pro Hac Vice Admissions

Judge Diamond routinely grants pro hac vice admission.

E. Comment to the Media

Judge Diamond has no particular policy regarding comment about a pending case by counsel to the media except that counsel should strictly follow the Rules of Professional Conduct. Judge Diamond indicated that if he felt an attorney was abusing the use of the media in a high profile case, he would issue an appropriate restriction.

II. MOTIONS PRACTICE

A. Oral Argument

In civil cases, generally Judge Diamond does not have oral argument unless he feels there is a backlog of civil motions that must be addressed. Judge Diamond will then schedule an oral argument. At oral argument, Judge Diamond informs the parties he has read their briefs and states what his tentative ruling is based on the briefs and his review of the law. Judge Diamond permits the party against whom his tentative ruling is made an opportunity to challenge his tentative ruling. If necessary, the other party will be given argument. After completion of argument, he will rule from the bench. Although there is no particular day of the week that he schedules argument, normally it occurs on Friday since this is a day he utilizes to handle miscellaneous matters.

B. Briefs

Judge Diamond requires that briefs be filed in accordance with his pretrial order. He has a pretrial order for both jury and non-jury matters, copies of which follow

this.summary. (Exhibit III.A.1.-1 and III.A.1.-2) He does not require reply briefs. Upon application, he will permit the filing of a reply brief. Judge Diamond's pretrial order states briefs shall not exceed twenty-five pages absent leave of court.

C. **Chambers Copies of Motion Papers**

Judge Diamond does not require that a courtesy copy of motions and papers be sent to his chambers.

D. **Scheduling**

Judge Diamond's pretrial order requires a respondent to file a response to a motion within 11 days after service of the motion upon the respondent.

E. **Magistrate Judge's Report and Recommendation**

When a Magistrate Judge makes a recommendation on a dispositive motion, it is Judge Diamond's practice to review the report and recommendation in de novo fashion

F. **Evidentiary Hearings**

In both civil and criminal matters which require an evidentiary hearing on a pretrial motion, Judge Diamond schedules the hearing in advance of trial and as soon as possible after all motions and briefs have been filed.

G. **In Limine Motions**

Judge Diamond's pretrial order requires that all motions in limine be filed within one month after the pretrial stipulation is due. Although Judge Diamond will permit the filing of a motion in limine outside of the time stated in his pretrial order, the attorney must have a legitimate basis for such a filing. If Judge Diamond perceives the attorney has withheld filing the motion in limine for strategic reasons, the motion will be denied. Although Judge Diamond normally rules on motions in limine prior to trial, there are instances where he will defer ruling in order to consider the context in which the evidence is being offered during the trial.

III. **CIVIL CASES**

A. **Pretrial Procedures**

1. **Local Rule 16.1**

Judge Diamond has a standard pretrial order in both jury and non-jury matters; a copy of each follows this summary. (Exhibit III.A.1.-1 and III.A.1.-2)

2. **Pretrial Conferences**

Judge Diamond does not routinely hold an initial Rule 16.1.c conference. His experience has indicated that this initial conference is not very productive in most cases.

3. **Settlement**

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

4. **Extensions and Continuances**

In requesting and granting extensions and continuances for various items, Judge Diamond requires the request be made in writing unless it is an emergency situation which prohibits counsel from complying with a deadline.

B. **Discovery Matters**

1. **Length of Discovery Period and Extensions**

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

2. **Expert Witnesses**

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

3. **Deposition Disputes**

Judge Diamond routinely entertains telephone calls from attorneys at a deposition to resolve a discovery dispute to eliminate needless motions and briefs.

4. **Stay of Discovery**

Judge Diamond's pretrial order specifically states that a motion to dismiss or other dispositive motion does not act as a stay of discovery. If a party files a motion to stay along with a dispositive motion, Judge Diamond will stay discovery if he feels there is a colorable claim that it will dispose of all matters.

5. **Limitations on Discovery**
Judge Diamond does not impose any restrictions on the number of interrogatories or depositions or the use of any other discovery procedure.

6. **Rule 11 Motions - Rule 37 Sanctions**

C. **Injunctions and TRO's**

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

D. **Trial Procedures**

1. **Scheduling of Cases**

In criminal cases, Judge Diamond sets a specific date for trial. Judge Diamond utilizes a trial list for his civil cases. The trial list is continuously ongoing. Judge Diamond's clerk will call counsel and notify them of the date for trial. He indicated he gives counsel as much notice as possible. If a case is on a trial list, and vacation is scheduled for an attorney with family or it is a prepaid vacation, Judge Diamond will accommodate the counsel, so long as the court is notified sufficiently in advance of the attorney's vacation. Aside from conflicts with vacation, if counsel has other conflicts and they are legitimate, Judge Diamond will move to the next case on the list.

2. **Trial Hours/Days**

Judge Diamond generally leaves Fridays open when he is in trial unless it is a short trial that can be completed by utilizing Friday. The hours during trial are as follows:

- (a) 9:30 a.m. to 12:30 p.m.
- (b) Fifteen minute break at 11:00 a.m.
- (c) Lunch from 12:30 p.m. to 1:30 p.m.
- (d) 1:30 p.m. to 3:00 p.m. with a fifteen minute break at 3:00 p.m.
- (e) At 4:30 p.m., the Court recesses. Judge Diamond will continue beyond 4:30 p.m. to accommodate a witness if it does not interfere with a juror's ability to secure a ride home.

3. **Trial Briefs**

Judge Diamond does not require trial briefs. If a trial brief is submitted, the page limitation should be in accordance with the pretrial order of twenty-five pages absent leave of court.

4. **Voir Dire**
In criminal cases, Judge Diamond conducts voir dire. In civil cases, Judge Diamond's deputy clerk conducts the voir dire. Counsel is permitted to supplement the court's standard voir dire questions by submitting proposed questions, which will be ruled upon by Judge Diamond.
5. **Notetaking by Jurors**
Judge Diamond does not permit notetaking by jurors because he feels it takes away from the juror's ability to assess the credibility of witnesses.
6. **Side Bars**
Judge Diamond permits side bar conferences. He has no special rules for when a side bar conference is appropriate.
7. **Examination of Witnesses Out of Sequence**
Judge Diamond permits the examination of witnesses out of sequence. Judge Diamond allows for flexibility in the sequence of calling witnesses.
8. **Opening Statements and Summations**
Judge Diamond does not limit the amount of time for opening statements. Although Judge Diamond does not limit the amount of time for summations, he may ask counsels' estimation on the length of summation and set a tentative limit if he believes that counsels' estimate is excessive.
9. **Examination of Witnesses or Argument by More Than One Attorney**
Judge Diamond permits participation by more than one attorney in a trial. Under special circumstances, he would permit more than one attorney to question one witness if a compelling reason is presented.
10. **Examination of Witnesses Beyond Direct and Cross**
Judge Diamond permits redirect and recross. Judge Diamond will permit examination beyond redirect and recross if it is truly necessary.
11. **Videotaped Testimony**
Judge Diamond has no special procedures or requirements with respect to the use/admission of videotape testimony.
12. **Reading of Material into the Record**
Judge Diamond requires that counsel read into the record such things as deposition testimony, stipulations, pleadings or discovery materials.
13. **Exhibits**
Judge Diamond's pretrial order addresses the marking and exchanging

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

14. **Directed Verdict Motions**

Judge Diamond has no standard requirement regarding directed verdict motions or motions to dismiss in a non-jury case. The motions need not be in writing.

15. **Jury Instructions and Verdict Forms**

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

Judge Diamond does not permit special interrogatories in a criminal case, except as may be required by Appendix. In civil cases, Judge Diamond prefers interrogatories except in a garden variety negligence case.

16. **Proposed Findings of Fact and Conclusions of Law**

Judge Diamond requires submissions of proposed Findings of Fact and Conclusions of Law in conformity with his pretrial order for non-jury cases.

17. **Offers of Proof**

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

18. **General Courtroom Rules**

Judge Diamond has no special courtroom rules regarding the conduct of counsel during trial. Judge Diamond requires that counsel request permission to approach a witness with a document or to ask a witness to step down from the witness stand for purposes of demonstration or other such purposes. If an attorney is purposely standing next to a witness to harass the witness, Judge Diamond will require counsel to step back or to be seated during examination.

E. **Jury Deliberations**

1. **Written Jury Instructions**

In complex criminal cases, Judge Diamond will provide the jury with a copy of his jury instructions.

2. **Exhibits in the Jury Room**

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

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

If the jury requests the reading of trial testimony or the replaying of videotape testimony, Judge Diamond will comply if it can be done without extended delay. Judge Diamond indicated he would not be averse to replaying a video

4. **Jury Questions**

All questions from the jury must be in writing.

5. **Availability of Counsel During Jury Deliberations**

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

6. **Interviewing the Jury**

After the verdict, Judge Diamond informs the jury that they are free to discuss their verdict with whomever they decide. Judge Diamond further informs them they are not obliged to talk with anyone. Judge Diamond informs the jury if they are contacted and the contacting party insists on discussing their verdict over the juror's objection, the juror should inform the Court.

F. **General**

Judge Diamond has a special pretrial order for both social security and RICO cases; a copy of each follows this summary. (Exhibits IV.F.1.-1 through F.1.-3) In social security cases, Judge Diamond's pretrial order requires that parties file cross motions for summary judgment.

IV **CRIMINAL CASES**

A. **Motions**

Judge Diamond indicated that in cases in which there is significant discovery material to be reviewed, he will generally grant a reasonable extension of time. If the Judge grants an extension, it is not necessary to file an order of court. Judge Diamond utilizes his own language in an order of court granting an extension to conform with the Speedy Trial Act.

B. **Pretrial Conferences**

Judge Diamond generally does not schedule a pretrial conference in criminal matters.

C. **Guilty Pleas.**

Judge Diamond does not have any deadline for accepting or rejecting a guilty plea. If the defendant pleads guilty on the date scheduled for trial, Judge Diamond does not require that the defendant plead to the entire indictment. Judge Diamond uses a standard guilty pleas colloquy; however, his colloquy is not written out in advance. Judge Diamond ensures that his colloquy complies with Rule 11 of the Federal Rules of Criminal Procedure.

D. Voir Dire

In criminal cases, Judge Diamond conducts all voir dire. Judge Diamond requires that any supplemental voir dire be submitted before trial pursuant to his order of court. If during the voir dire counsel deems it appropriate to supplement voir dire based on the answers of jurors, Judge Diamond will permit counsel to make suggestions for supplementing the voir dire at side bar.

E. Trial

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

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

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

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

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

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

F. Sentencing Memoranda

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

G. Sentencing Conference

Judge Diamond does not hold a sentencing conference for cases under the Sentencing Guidelines prior to the actual imposition of sentence. Judge Diamond files a tentative order ruling on the guideline computations in cases under the Sentencing Guidelines.

H. Other General Practices and Procedures

Ordinarily, Judge Diamond does not make a recommendation to the Bureau of Prisons regarding the federal institution where a defendant will be housed. If defense counsel can show a compelling reason, such as for convenience of the defendant's family, Judge Diamond would make such a recommendation.

Judge Diamond requests that the government provide the Jencks material as far in advance of trial as possible

If the original bond conditions permit the defendant to travel outside the Western District, Judge Diamond has no objection to this. If it is not stated in the original bond conditions, Judge Diamond requires a written motion and order be submitted to modify the travel conditions.

If there are any conflicts between defense counsel and the defendant, Judge Diamond insures that a thorough record is made.

V. BANKRUPTCY CASES

N/A

VI. BANKRUPTCY APPEALS (TO THE DISTRICT COURT)

In appeals from bankruptcy cases, Judge Diamond does not require oral argument. The only requirement set by the court is the requirement in the rules requiring that the party appealing perfect an appeal with a timely filing of a brief.

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

ORDER OF COURT

AND NOW, this _____ day of _____, IT IS ORDERED that the above case be, and the same hereby is, placed under Rule 16.1 for pretrial procedure and all provisions thereof will be strictly enforced; and,

IT IS FURTHER ORDERED that lead counsel for each party shall be present at all scheduled court proceedings, including case management, status and settlement conferences. Counsel shall confer with their clients prior to all conferences or court proceedings and shall obtain the authority to bind the represented party to a settlement agreement prior to all scheduled court conferences or shall have their principals available by telephone during the conference to facilitate the amicable resolution of all matters raised in the litigation.

IT IS FURTHER ORDERED that in all cases assigned to arbitration by the clerk of court pursuant to Local Rule 16.2.4(A), any party which does not consent to arbitration shall file a formal motion requesting the withdrawal of the case from arbitration within 10 days after all defendants have answered the complaint.

A case management conference will be scheduled in all cases which are not referred to arbitration. At the case management conference, counsel shall be prepared to identify and discuss all issues raised in the litigation and the need for any special pretrial procedures due to the complexity or procedural posture of the case. Counsel also shall be prepared to narrow the issues of fact and law and to engage in settlement discussions with opposing counsel and the court.

A. DISCOVERY AND PRETRIAL DEADLINES

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

- 1) All fact and expert discovery shall be completed on or before _____.

Prior to the close of discovery counsel shall stipulate to the date for the submission of expert reports and the dates for depositions of experts, if such report(s) or deposition(s) cannot for good cause be completed within the time limits set forth above. Any stipulation extending the time periods set forth in Fed.R.Civ.P. 33, 34 and 36 beyond the time limit on all discovery set forth above shall be submitted to the court for approval.

- 2) Prior to _____, counsel for all parties shall meet to:

(a) Complete the attached pretrial Stipulation form, which is to be filed with the court on or before _____. The completed Pretrial Stipulation shall set forth all uncontested facts which may be considered by the court in rendering judgment. Should the admissibility of any uncontested fact be challenged, the party objecting and the grounds for such objection shall be stated in writing;

(b) Formally identify and disclose to each other the exhibits to be offered into evidence at trial; and,

(c) Stipulate to the admissibility of each identified and disclosed exhibit. Counsel shall prepare a status report which shall be filed with the court at the time of trial specifically identifying each exhibit as to which there is a genuine dispute as to its admissibility and succinctly setting forth the reasons for the dispute. Counsel shall be prepared to discuss the dispute as to the admissibility of any exhibit with the court at the pre-trial settlement conference or the next scheduled conference or proceeding.

- 3) Plaintiff _____ shall file and serve on or before _____ consecutively numbered proposed findings of fact and consecutively numbered conclusions of law. Plaintiff's proposed findings of fact shall address each contested issue of fact remaining. Each proposed finding of fact shall be supported by clear and explicit references to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. Plaintiff _____ also shall file and serve with the proposed findings of fact and conclusions of law 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.
- 4) Defendant _____ shall file and serve on or before _____ consecutively numbered counter-findings of fact and consecutively numbered counter-conclusions of law, corresponding to the same numbered findings and conclusions proposed by plaintiff _____.

Each proposed counter-finding shall be supported by clear and explicit references to the parts of the record relied upon to support it. Each proposed counter-conclusion shall be supported by citation to appropriate authority. Defendant _____ also shall file and serve with the proposed counter-findings and counter-conclusions 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.

Counsel shall specify in the proposed findings or proposed counter-findings all facts to be proved at trial. Proof of facts not specified may be excluded at trial upon objection or by the court *sua sponte*.

[INCLUDE ONLY IF THIRD-PARTY COMPLAINT HAS BEEN FILED.]

- 5) Third-party plaintiff _____ shall file and serve on or before _____ consecutively numbered proposed findings of fact and consecutively numbered conclusions of law. Third-party plaintiff _____ proposed findings of fact shall address each contested issue of fact remaining in the third-party action. Each proposed finding of fact shall be supported by clear and explicit references to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. Third-party plaintiff _____ also shall file and serve with the proposed findings of fact and conclusions of law 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.
- 6) Third-party defendant _____ shall file and serve on or before _____ consecutively numbered counter-findings of fact and consecutively numbered counter-conclusions of law, corresponding to the same numbered findings and conclusions proposed by third-party plaintiff _____. Each proposed counter-finding shall be supported by clear and explicit references to the parts of the record relied upon to support it. Each proposed counter-conclusion shall be supported by citation to appropriate authority. Third-party defendant _____ also shall file and serve with the proposed counter-findings and counter-conclusions 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 third-party defendant _____ should be granted.

Counsel for the third parties shall specify in the proposed findings or proposed counter-findings all facts to be proved at trial. Proof of facts not specified may be excluded at trial upon objection or by the court *sua sponte*.

IT IS FURTHER ORDERED that all discovery shall be initiated in sufficient time so that responses thereto can be filed or depositions taken prior to the close of discovery. Discovery motions will not be considered by the court unless a certificate demonstrating full compliance with Local Rule 7.1(B) is attached to the motion. Where it is intended that discovery matters will be referenced at trial or a court proceeding, a copy of the discovery matter along with a memorandum explaining the reasons why it must be referenced shall be served and made available to the court at least five (5) business days prior to the time of trial or the proceeding. Any response shall be filed at least one (1) business day prior to the time of trial or the proceeding;

IT IS FURTHER ORDERED that after this case has been listed for trial, or placed on a trial list, the absence of a party's expert witness will not be an excuse to delay the trial. Video tape service is available through the Clerk of Court;

IT IS FURTHER ORDERED that depositions or portions thereof to be used as an exhibit or to be read into evidence shall be identified and marked for the record. A memorandum setting forth the grounds in support thereof shall be filed at least five (5) business days prior to the time of trial. Any objections to the admissibility of those depositions or portions thereof shall be filed at least one (1) business day prior to the time of trial. The agreed portions shall be marked and page references annexed.

B. MOTION PRACTICE

IT IS FURTHER ORDERED that all motions filed with the court shall be accompanied by a brief. The respondent shall file a response with an accompanying brief within eleven (11) days of service of the motion upon the respondent. The movant may submit a reply brief within five (5) days of service of the response upon the movant. **Briefs shall not exceed twenty-five pages absent leave of court.** Failure of a movant to comply with this order will result in appropriate sanctions, including the denial of the motion if warranted; failure of a respondent to comply with this order will result in appropriate sanctions, including granting the motion as presented if warranted;

IT IS FURTHER ORDERED that should any party file a motion prior to the issuance of this pretrial order, the time in which to file a response to the motion will be eleven (11) days from the date of this pretrial order;

IT IS FURTHER ORDERED that each dispositive motion, including motions for summary judgment, shall be accompanied by a concise statement of material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue. Each statement of uncontested fact shall be identified by clear and explicit references to the parts of the record relied upon to support it. Any response in opposition to the motion shall be accompanied by a separate concise statement of the material facts, corresponding to the numbered paragraphs in the movant's statement and specifically identifying all facts as to which the non-movant contends there exists a genuine issue which must be litigated. The non-movant's statement likewise shall include clear and explicit references to the parts of the record relied upon to support the contention that there are contested issues of material fact. All parties shall attach to their statements of material facts copies of the documents or portions of the record which support their statements of contested or uncontested material facts. The failure to support any proposed statement may result in the summary rejection of the proposition advanced or the court reading the record as presented by opposing counsel with regard to the proposition advanced. In determining any motion for summary judgment, the court will assume that facts identified by the movant in its statement of material facts are admitted, unless such facts are specifically controverted in the statement of material facts filed in opposition to the motion;

IT IS FURTHER ORDERED that the court **WILL NOT** entertain requests for rulings contained in informal letters. All such matters **MUST** be made the subject of a formal motion filed with the Clerk of Court;

IT IS FURTHER ORDERED that pendency of motions, such as motions for summary judgment or motions to dismiss, **WILL NOT** stay the discovery period or stay any other compliance requirements of this pretrial order; and

IT IS FURTHER ORDERED that *all* motions not otherwise addressed in this pretrial order, including but not limited to motions *in limine* and proposed *voir dire* questions in cases to be tried by a jury, must be filed within one (1) month after the pretrial settlement conference or as otherwise ordered by the court at the pretrial settlement conference.

The unexcused failure to file a motion or a response in a timely manner will result in appropriate sanctions, including the summary denial or granting of the motion. Where the untimely filing of a motion or a response results in the delay of trial, in addition to the other appropriate sanctions the court may require the offending party to bear the additional expenses and attorney's fees resulting from the delay. Either party's failure to comply with the requirements imposed by this case management order or to submit matters to the court in a timely manner will result in appropriate sanctions, including the dismissal of the action for failure to prosecute or the granting of judgment for failure to defend in a timely manner.

C. PRETRIAL SETTLEMENT CONFERENCE

A pretrial settlement conference will be held after all dispositive motions have been resolved. Lead counsel shall be present and shall be prepared to discuss and narrow all issues as to which a dispute of material fact or law remains. Counsel also shall be prepared to identify and discuss any contemplated motions *in limine*, disputes as to the admissibility of exhibits, and the need for or objection to any unusual procedure to be employed during trial.

Gustave Diamond
United States District Judge

cc: _____

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

ORDER OF COURT

AND NOW, this _____ day of _____, IT IS ORDERED that the above case be, and the same hereby is, placed under Rule 16.1 for pretrial procedure and all provisions thereof will be strictly enforced; and,

IT IS FURTHER ORDERED that lead counsel for each party shall be present at all scheduled court proceedings, including case management, status and settlement conferences. Counsel shall confer with their clients prior to all conferences or court proceedings and shall obtain the authority to bind the represented party to a settlement agreement prior to all scheduled court conferences or shall have their principals available by telephone during the conference to facilitate the amicable resolution of all matters raised in the litigation.

IT IS FURTHER ORDERED that in all cases assigned to arbitration by the clerk of court pursuant to Local Rule 16.2.4(A), any party which does not consent to arbitration shall file a formal motion requesting the withdrawal of the case from arbitration within 10 days after all defendants have answered the complaint.

A case management conference will be scheduled in all cases which are not referred to arbitration. At the case management conference, counsel shall be prepared to identify and discuss all issues raised in the litigation and the need for any special pretrial procedures due to the complexity or procedural posture of the case. Counsel also shall be prepared to narrow the issues of fact and law and to engage in settlement discussions with opposing counsel and the court.

A. DISCOVERY AND PRETRIAL DEADLINES

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

- 1) All fact and expert discovery shall be completed on or before _____.

Prior to the close of discovery counsel shall stipulate to the date for the submission of expert reports and the dates for depositions of experts, if such report(s) or deposition(s) cannot for good cause be completed within the time limits set forth above. Any stipulation extending the time periods set forth in Fed.R.Civ.P. 33, 34 and 36 beyond the time limit on all discovery set forth above shall be submitted to the court for approval.

- 2) Plaintiff _____ pretrial narrative statement shall fully comply with Local Rule 16.1.4A and shall be filed on or before _____.
- 3) Defendant _____ pretrial narrative statement shall fully comply with Local Rule 16.1.4B and shall be filed on or before _____.
- 4) Third-party defendant _____ pretrial trial narrative shall fully comply with Local Rule 16.1.4C and shall be filed on or before _____. [OPTIONAL - ONLY WHEN THIRD-PARTY COMPLAINT HAS BEEN FILED.]

[THE FOLLOWING PARAGRAPHS THROUGH (d) GO IN ALL CASES. WHEN 4) IS NOT APPLICABLE, THIS SECTION SHALL FOLLOW 3).

Counsel shall specify in the pretrial narrative the facts to be proved at trial. Proof of facts not specified may be excluded at trial upon objection or by the court *sua sponte*.

Prior to _____, counsel for all parties shall meet to:

- (a) Complete the attached Pretrial Stipulation form, which is to be filed with the court on or before _____. The completed Pretrial Stipulation shall set forth all uncontested facts which may be read to the jury. Should the admissibility of any uncontested fact be challenged, the party objecting and the grounds for such objection shall be stated in writing;
- (b) Formally identify and disclose to each other the exhibits to be offered into evidence at trial;
- (c) Stipulate to the admissibility of each identified and disclosed exhibit. Counsel shall prepare a status report

which shall be filed with the court at the time of trial specifically identifying each exhibit as to which there is a genuine dispute as to its admissibility and succinctly setting forth the reasons for the dispute. Counsel shall be prepared to discuss the dispute as to the admissibility of any exhibit with the court at the pre-trial settlement conference or the next scheduled conference or proceeding; and,

(d) Determine if the case shall proceed non-jury.

IT IS FURTHER ORDERED that all discovery shall be initiated in sufficient time so that responses thereto can be filed or depositions taken prior to the close of discovery. Discovery motions will not be considered by the court unless a certificate demonstrating full compliance with Local Rule 7.1(B) is attached to the motion. Where it is intended that discovery matters will be referenced at trial or a court proceeding, a copy of the discovery matter along with a memorandum explaining the reasons why it must be referenced shall be served and made available to the court at least five (5) business days prior to the time of trial or the proceeding. Any response shall be filed at least one (1) business day prior to the time of trial or the proceeding;

IT IS FURTHER ORDERED that after this case has been listed for trial, or placed on a trial list, the absence of a party's expert witness will not be an excuse to delay the trial. Video tape service is available through the Clerk of Court;

IT IS FURTHER ORDERED that depositions or portions thereof to be used as an exhibit or to be read into evidence shall be identified and marked for the record. A memorandum setting forth the grounds in support thereof shall be filed at least five (5) business days prior to the time of trial. Any objections to the admissibility of those depositions or portions thereof shall be filed at least one (1) business day prior to the time of trial. The agreed portions shall be marked and page references annexed.

B. MOTION PRACTICE

IT IS FURTHER ORDERED that all motions filed with the court shall be accompanied by a brief. The respondent shall file a response with an accompanying brief within eleven (11) days of service of the motion upon the respondent. The movant may submit a reply brief within five (5) days of service of the response upon the movant. *Briefs shall not exceed twenty-five pages absent leave of court.* Failure of a movant to comply with this order will result in appropriate sanctions, including the denial of the motion if warranted; failure of a respondent to comply with this order will result in appropriate sanctions, including granting the motion as presented if warranted;

IT IS FURTHER ORDERED that should any party file a motion prior to the issuance of this pretrial order, the time in which to file a response to the motion will be eleven (11) days from the date of this pretrial order;

IT IS FURTHER ORDERED that each dispositive motion, including motions for summary judgment, shall be accompanied by a concise statement of material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue. Each statement of uncontested fact shall be identified by clear and explicit references to the parts of the record relied upon to support it. Any response in opposition to the motion shall be accompanied by a separate concise statement of the material facts, corresponding to the numbered paragraphs in the movant's statement and specifically identifying all facts as to which the non-movant contends there exists a genuine issue which must be litigated. The non-movant's statement likewise shall include clear and explicit references to the parts of the record relied upon to support the contention that there are contested issues of material fact. All parties shall attach to their statements of material facts copies of the documents or portions of the record which support their statements of contested or uncontested material facts. The failure to support any proposed statement may result in the summary rejection of the proposition advanced or the court reading the record as presented by opposing counsel with regard to the proposition advanced. In determining any motion for summary judgment, the court will assume that facts identified by the movant in its statement of material facts are admitted, unless such facts are specifically controverted in the statement of material facts filed in opposition to the motion;

IT IS FURTHER ORDERED that the court **WILL NOT** entertain requests for rulings contained in informal letters. All such matters **MUST** be made the subject of a formal motion filed with the Clerk of Court;

IT IS FURTHER ORDERED that pendency of motions, such as motions for summary judgment or motions to dismiss, **WILL NOT** stay the discovery period or stay any other compliance requirements of this pretrial order; and

IT IS FURTHER ORDERED that all motions not otherwise addressed in this pretrial order, including but not limited to motions in limine and proposed voir dire questions in cases to be tried by a jury, must be filed within one (1) month after the pretrial settlement conference or as otherwise ordered by the court at the pretrial settlement conference.

The unexcused failure to file a motion or a response in a timely manner will result in appropriate sanctions, including the summary denial or granting of the motion. Where the untimely filing of a motion or a response results in the delay of trial, in addition to the other appropriate sanctions the court may require the offending party to bear the additional

expenses and attorney's fees resulting from the delay. Either party's failure to comply with the requirements imposed by this case management order or to submit matters to the court in a timely manner will result in appropriate sanctions, including the dismissal of the action for failure to prosecute or the granting of judgment for failure to defend in a timely manner.

C. PRETRIAL SETTLEMENT CONFERENCE

A pretrial settlement conference will be held after all dispositive motions have been resolved. Lead counsel shall be present and shall be prepared to discuss and narrow all issues as to which a dispute of material fact or law remains. Counsel also shall be prepared to identify and discuss any contemplated motions *in limine*, disputes as to the admissibility of exhibits, proposed special *voir dire*, and the need for or objection to any unusual procedure to be employed during trial.

Gustave Diamond
United States District Judge

cc: _____

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

PRETRIAL STIPULATION

- I. [Set forth the relief sought. If additional space is needed to set forth the information called for in any section of this form, supplemental pages may be attached.]

This is an action for:

- II. [Set forth a concise statement of the facts relied on to confer federal jurisdiction. State which facts are agreed to and which facts are disputed by the parties.]

This Court has jurisdiction because:

- III. [Set forth a comprehensive statement of all uncontested facts. The facts should be stated in logical order of proof without regard to objections of relevancy or materiality, although such objections to specific facts should be noted. It is expected that all facts subject to ready verification by the parties will be stipulated, i.e., geographic locations and directions, measurements, dimensions, distances, duration of hospital confinement, periods of absence from work, and the amounts of medical bills and actual wage loss to date.]

The following facts are stipulated by the parties and require no proof:

- IV. [Set forth a concise statement of each issue of fact which is to be litigated at trial. For example, where negligence or contributory negligence is in issue, each claimed act or omission relied upon to establish negligence shall be specified.]

The following issues of fact remain to be litigated at the trial:

- V. [Set forth a concise statement of each contested issue of law. Each party shall either (1) include herein citations to the principal authority relied on for its position as to each contested issue, or (2) submit to the Court with this stipulation a separate brief fully setting forth the authority relied on for its position as to each contested issue of law.]

The following issues of law remain to be litigated at the trial:

- VI. [Identify any depositions or portions thereof which will be read into evidence as testimony at trial. Objections to the admissibility of any portion of such testimony shall be set forth below with specificity.]

The following deposition testimony will be offered at the trial:

- VII. [Set forth or attach a statement of the qualifications of any witness who will testify as an expert at the trial. The statement should be in a form that can be read to the jury. Objections to the reading of any such qualifications shall be set forth specifically below.]

- VIII. Set forth the estimated time needed to try the action assuming six hours of court time per day:

Plaintiff's case-in-chief: _____

Defendant's case-in-chief: _____

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

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

TOTAL TIME NEEDED: _____

IX. STIPULATION

The foregoing admissions of fact having been made, and the parties having specified the issues of fact and law remaining to be litigated, this stipulation shall supplement the pleadings and govern the course of the trial unless modified to prevent manifest injustice.

STIPULATED AND AGREED TO BY:

Counsel for Plaintiff

Counsel for Defendant

Counsel for Defendant

Counsel for Third-Party Defendant

APPROVED this _____ day

of _____, 19 ____

United States District Judge

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

^C)	
	Plaintiff,)	
)	
vs.)	Civil Action No. ^C
)	
	Secretary of Health and)	
	Human Services,)	
	Defendant.)	

ORDER OF COURT

The above action seeks review of a decision by the Secretary of Health and Human Services denying plaintiff social security disability benefits. The court's jurisdiction is limited to reviewing the administrative record to determine whether the decision is supported by substantial evidence in the record. Notwithstanding any other rule governing the procedure in civil cases, IT IS ORDERED that:

- 1) Defendant shall file a certified copy of the supplemental transcript of the administrative record, within thirty (30) days of the date of this order.
- 2) Plaintiff shall serve and file a motion for summary judgment and brief supporting plaintiff's petition for review within fifteen (15) days of the date of the filing of the supplemental transcript.
- 3) Defendant shall serve and file a cross-motion for summary judgment and brief within thirty (30) days of service of plaintiff's brief.
- 4) Plaintiff may serve and file a reply within fifteen (15) days after service of defendant's brief.
- 5) The matter shall be deemed submitted, without hearing, fifteen (15) days after the filing of defendant's opposition, unless otherwise ordered by court.
- 6) No extensions of time will be permitted without order of the court.

DATED: _____

United States District Judge

cc: ^C
United States Attorney

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

^C)	
Plaintiff,)	
)	
vs.)	Civil Action No. ^C
)	
Secretary of Health and)	
Human Services,)	
Defendant.)	

ORDER OF COURT

The above action seeks review of a decision by the Secretary of Health and Human Services denying plaintiff social security disability benefits. The court's jurisdiction is limited to reviewing the administrative record to determine whether the decision is supported by substantial evidence in the record. Notwithstanding any other rule governing the procedure in civil cases, IT IS ORDERED that:

- 1) The plaintiff shall cause the summons and complaint to be served upon the defendant in the manner specified by Rules 4(d) (4) and 4(d) (5), Fed.R.Civ.P.
- 2) Defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record, within sixty (60) days of service of the complaint.
- 3) Plaintiff shall serve and file a motion for summary judgment and brief supporting plaintiff's petition for review within forty-five (45) days of service of defendant's answer.
- 4) Defendant shall serve and file a cross-motion for summary judgment and brief within thirty (30) days of service of plaintiff's brief.
- 5) Plaintiff may serve and file a reply within fifteen (15) days after service of defendant's brief.
- 6) The matter shall be deemed submitted, without hearing, fifteen (15) days after the filing of defendant's opposition, unless otherwise ordered by the court.
- 7) No extensions of time will be permitted without order of the court.

DATED: _____

United States District Judge

cc: ^C
United States Attorney

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

^C)	
	Plaintiff,)	
)	
	vs.)	Civil Action No. ^C
)	
^C)	
	Defendant.)	

ORDER OF COURT

In this action, claims having been asserted by the plaintiff under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, within twenty (20) days hereof plaintiff shall file a RICO case statement in the form following:

This statement shall include the facts the plaintiff is relying upon to initiate this RICO complaint as a result of the "reasonable inquiry" required by Fed.R.Civ.P. 11. In particular, this statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§1962(a), (b), (c) and/or (d).
2. List each defendant and state the alleged misconduct and basis of liability of each defendant.
3. List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
4. List the alleged victims and state how each victim was allegedly injured.
5. Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:
 - a. List the alleged predicate acts and the specific statutes which were allegedly violated;
 - b. Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;
 - c. If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." Fed.R.Civ.P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;
 - d. State whether there has been a criminal conviction for violation of the predicate acts;
 - e. State whether civil litigation has resulted in a judgment in regard to the predicate acts;
 - f. Describe how the predicate acts form a "pattern of racketeering activity"; and
 - g. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.
6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:
 - a. State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;
 - b. Describe the structure, purpose, function and course of conduct of the enterprise;
 - c. State whether any defendants are employees, officers or directors of the alleged enterprise;
 - d. State whether any defendants are associated with the alleged enterprise;
 - e. State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and,
 - f. If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

7. State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.
8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.
9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.
10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.
11. If the complaint alleges a violation of 18 U.S.C. §1962(a), provide the following information:
 - a. State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and
 - b. Describe the use or investment of such income.
12. If the complaint alleges a violation of 18 U.S.C. §1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.
13. If the complaint alleges a violation of 18 U.S.C. §1962, provide the following information:
 - a. State who is employed by or associated with the enterprise; and
 - b. State whether the same entity is both the liable "person" and the "enterprise" under §1962(c).
14. If the complaint alleges a violation of 18 U.S.C. §1962(d), describe in detail the alleged conspiracy.
15. Describe the alleged injury to business or property.
16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.
17. List the damages sustained for which each defendant is allegedly liable.
18. List all other federal causes of action, if any, and provide the relevant statute numbers.
19. List all pendent state claims, if any.
20. Provide any additional information that you feel would be helpful to the court in processing your RICO claim.

AND NOW, this ____ day of ^C, IT IS SO ORDERED.

United States District Judge

cc: ^C
^C