

PRACTICES AND PROCEDURES OF
JUDGE NORA BARRY FISCHER
EFFECTIVE FEBRUARY 5, 2013

I. **GENERAL MATTERS¹**

A. **Communications with the Court**

Communication with the Court shall be in the form of motions, accompanied by proposed orders specifying the relief requested. Counsel are not to send correspondence to Judge Fischer, except where she specifically requests or approves the same.

B. **Communications with the Court Room Deputy and Law Clerks**

Communications with the Court Room Deputy and law clerks concerning the administration, but not the merits of a case, are permissible. Such inquiries include those pertaining to the status of any pending matter.

C. **Filing and Service**

Counsel or any pro se party (not the Court) is responsible for filing of all pleadings, documents or any other material provided to the Court and/or the Office of the clerk, and service upon opposing counsel or pro se parties. The Court is not responsible for filing and/or service of the pleadings, documents or any other materials of the parties.

D. **Objections**

If counsel or any pro se party at any time has an objection to any procedure, ruling or other action of the Court, it is counsel's or the pro se party's responsibility to make an immediate formal objection on the record. If there is no court reporter present and counsel has an objection(s), it is counsel's responsibility to request a court reporter and thereafter place the objections(s) on the record.

E. **Telephone Conferences**

¹ **Application of Local Rules**

Unless otherwise noted, Judge Fischer follows all of the Local Rules of Court in civil, criminal, bankruptcy, patent and admiralty cases pending before this Court.

Requests for attorneys and parties to participate in conferences by telephone will be considered on a case by case basis. However, unless otherwise ordered by the Court, pretrial conferences, settlement conferences and the initial case management conference will not be conducted over the telephone. (For settlement conferences, both chief trial counsel with full authority and parties including their insurer or underwriter with full authority are expected to appear in person.) See Settlement Conferences, infra.

When a telephone conference is permitted, the Court's law clerk will initiate the conference. Counsel shall contact the law clerk beforehand to provide any necessary telephone number at which they are to be reached if said number is different from that reflected on the docket sheet.

F. Pro Hac Vice Admissions

Pro Hac Vice admissions should be done by written motion with payment of the appropriate filing fee. Said motion should include what Court(s) the requesting attorney is admitted to in good standing and a certification indicating he/she is a registered user of the Western District of Pennsylvania's Electronic Case Filing System.

G. Comments to the Media

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

H. Amendment of these Practices and Procedures

Court practices and procedures are available online and will be updated periodically. Counsel are responsible for ascertaining whether these practices and procedures have been amended.

I. Conduct of Attorneys

Counsel shall conform in general with the *Code of Trial and Pretrial Conduct*, published by the American College of Trial Lawyers (June, 2009). See also *Civil Discovery Standards*, published by the Section of Litigation, American Bar Association (2004). The Court also commends counsel to the *Code of Professional Conduct* published by the Academy of Trial Lawyers of Allegheny County. (See <http://www.atlac.org>).

II. MOTIONS PRACTICE

A. Oral Argument

The Court entertains oral argument only on selected factually and legally complex matters, but not otherwise. An Order will be issued should the Court deem oral argument necessary. At times, if argument is permitted, the Court will begin oral argument by advising the parties of her tentative ruling on the motions and briefs so that counsel can focus their legal arguments and/or highlight important facts of record. After oral argument, the Court may rule from the Bench on the record.

B. Briefs

Briefs in support of motions shall be filed simultaneously with all motions except discovery motions, motions for extensions of time and motions for continuance, for which no briefs are required. The briefs must contain all information relevant to disposition of the pending motion. Incorporating previously filed motions or briefs is prohibited. There is a brief page restriction of twenty (20) pages for all moving and responsive briefs filed with the Court. The parties must seek leave of Court to file reply and sur-reply briefs and will be limited to five (5) pages, if leave is granted. (See Exhibit "A" - Order on motions practice).

C. Chamber Copies of Motion Papers

Counsel should not send courtesy copies of any motion or brief that is available on the CM/ECF System. In the unusual event that a document is not so available, courtesy copies are appreciated. Counsel should also send a courtesy copy of any exhibits or appendices, in excess of twenty (20) pages in addition to filing said exhibits or appendices on the CM/ECF System.

D. Responses to Motions - Scheduling

Parties generally are given twenty-one (21) days to file a response to a dispositive motion and fourteen (14) days to respond to a non-dispositive motion, unless otherwise ordered by the Court.

E. Summary Judgment Motions

(i) Judge Fischer requires strict compliance with the provisions of LcvR 56. Every motion for summary judgment and supporting brief, if based on the affirmative proof of facts, shall be accompanied by a statement of material facts not in dispute. This statement shall contain numbered paragraphs setting forth all of the facts supporting the motion which are necessary for its resolution. Each factual assertion shall cite to evidentiary material

accompanying the motion. The accompanying evidentiary material shall be limited to the amount necessary to support the motion.

- (ii) Every party opposing a Motion for Summary Judgment shall file in addition to its brief in opposition, a response to the moving party's statement of material facts not in dispute. In paragraphs corresponding to the statement of material facts not in dispute, the opposing party shall state whether the facts listed are disputed. For any disputed fact, the opposing party shall cite to evidentiary material demonstrating the dispute and attach such evidentiary material to its response.
- (iii) Parties need not repeat the relevant facts in their briefs, but may do so for clarity.
- (iv) The argument portion of every brief in support of a motion for summary judgment shall cite to current authority from the Third Circuit, if available, that establishes the essential elements of each claim for which the moving party seeks summary judgment.
- (v) A party's failure to adhere to these requirements may result in the motion for summary judgment being decided against the party's position.

F. Deadlines for Motions for Summary Judgment

The Court will issue a motions order setting forth responses/reply deadlines.

G. Magistrate Judge's Report and Recommendation

Reports and recommendations to which objections have been filed will not be decided until a response is filed by the non-objecting party (or opposite party if both object). Briefs not in excess of ten (10) pages are encouraged. If no objections have been filed, a decision will be made solely on the basis of the report and recommendation and the previously filed briefs. Objections and appeals in regard to Magistrate Judge orders on discretionary issues pertaining to discovery disputes are discouraged.

H. Evidentiary Hearings

Hearings necessitated by pretrial motions (e.g., suppression of statements or evidence) will be held approximately one week prior to trial, unless otherwise ordered by the Court.

I. Motions in Limine

Deadlines for filing motions in limine, with their supporting briefs, will be set forth in the Court's final pretrial order. Unless there is a good reason not to do so, motions in limine will be ruled upon in advance of trial and usually at the pretrial conference.

J. Line Spacing, Font and Pagination

All motions and briefs must be double spaced and cannot use a font size smaller than twelve (12). Pagination is required for all motions and briefs.

K. Proposed Orders of Court

Each and every motion shall be accompanied by a proposed order of court. The order of court shall include language detailing the specific relief sought and not simply that the motion is granted.

L. Alterations to Motions Practice

The Court may alter any of these provisions, by order, or by notice of the Court staff at the Court's direction.

M. Motions for Reconsideration

Any Motions for reconsideration shall be filed within seven (7) days. Any responses to same shall be filed within seven (7) days thereafter.

N. Certificate of Conferral

The Court requires that **all** discovery motions and motions in limine must be accompanied by a certificate of conferral as set forth in Local Rules 16.1.C.4, 37.1 and 37.2. Counsel shall meet and confer in an effort to resolve their disputes prior to filing such motions. E-mail communications are not sufficient.

III. CIVIL CASES

A. Pretrial Procedures

1. Initial Case Management Conference

An initial case management conference is scheduled within thirty (30) days of the filing of a responsive pleading, if not sooner. Chief trial counsel are required to attend and shall obtain full settlement authority prior to the conference. All parties shall be available by telephone. In addition, any

underwriter or insurer representative shall be available by telephone.

At the initial case management conference, the L.R. 16 Order (Case Management Order) is issued, after discussion with lead trial counsel as to the length of time necessary for discovery, handling of expert witnesses and other matters. Settlement and ADR options also will be discussed, in depth. In addition, the Court will ask the parties to agree to submit the case to a form of ADR, including mediation, neutral evaluation or final and binding arbitration. Alternatively, the Court may ask the parties to consider trial before a United States Magistrate Judge. Accordingly, counsel shall speak with their clients about all of these issues prior to attending the conference and be prepared to respond, with authority.

Additional status conferences take place at the Court's discretion, on request of counsel and in all cases prior to the trial date to discuss the status of discovery, settlement and/or trial. Chief trial counsel are encouraged to request the assistance of the Court on any matter and conferences to handle routine problems that can be conducted by telephone on request. See Telephone Conferences, supra.

Generally, a trial date is not set at the initial case management conference. (See Exhibits "B", "C" and "D").

2. **Settlement Conferences**

The Court entertains settlement conferences on a regular basis during the pendency of any case. See Exhibit "E." At least three (3) working days prior to such conference, the parties shall submit brief letters to the Court detailing the relative strengths and weaknesses of their case, as well as settlement postures. Letters will not be filed nor shared with opposing counsel and will be retained as confidential. Accordingly, candor is expected.

Chief trial counsel, the client, and any insurer or underwriter with full settlement authority shall attend all settlement conferences, in person. In cases in which there is insurance coverage (or the possibility of insurance coverage), the representative(s) from the carrier(s) or other underwriter(s) shall attend and such representative(s) must have full settlement authority on behalf of the carrier(s) or risk pool to the full extent of the insurance policy(ies) or coverage.

Consistent with the initial case management conference procedure, at the settlement conference, counsel shall be prepared to discuss and agree to an

ADR option. (See Exhibits “E”, “F” and “G”.)

Finally, at all settlement conferences, chief trial counsel shall be prepared to discuss any outstanding dispositive motions, any unusual issues of fact or law, as well as counsel’s predictions for the amount of time necessary to try the case. It is suggested that counsel confer three (3) working days before the conference to discuss any claims to be reviewed at the settlement conference.

3. Position Letters

As noted, supra, at least three (3) business days prior to all conferences (case management, settlement or pretrial) counsel for every party shall submit a position letter to the Court. The position letter shall set forth the following: (a) a brief recitation of the facts; (b) a discussion of your case’s strengths and weaknesses; and (c) your client’s settlement posture. To ensure candor, as noted above, the position papers are not to be filed or shared with opposing counsel but rather are to be faxed directly to this Court’s Chambers, attention: John Galovich, Court Room Deputy Clerk at fax number (412) 208-7487. All position papers will be kept confidential.

4. Extensions and Continuances

The Court is not inclined to grant extensions for the filing of motions or briefs. Any request for an extension must take the form of a written motion (accompanied by a proposed order), and the motion must demonstrate good cause and include a statement regarding opposing counsel’s position on an extension.

Specific restrictions will be placed on further extensions when the case is not moving. To this end, the Court may make specific inquiry concerning the status of discovery.

Postponement of dates regarding appearances before the Court will be granted infrequently.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Generally, 150 days is permitted for discovery unless the parties indicate that a different time frame is needed and the Court approves that time frame. Extensions of time for discovery are permitted for cause shown, provided that the case has been advanced by counsel during the initial period of discovery.

As noted, the Court may inquire of the parties on this point.

2. **Expert Witnesses**

Discovery depositions of expert witnesses are nearly always permitted. Expert witness discovery is reciprocal.

3. **Deposition Disputes**

For discovery disputes that arise during a deposition, written motions are discouraged. The attorneys together may contact the Court to determine whether the Court wishes to resolve the matter at that time. If the Court makes the decision to handle such discovery dispute, the parties should coordinate a telephone conference with the Court through the Court's Deputy Clerk, Mr. Galovich, who can be reached at (412) 208-7480.

4. **Stay of Discovery**

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion, but will only be granted if the right to relief under the dispositive motion is clear or there is some other good reason. In some cases, discovery may be limited to those facts in support or opposition to the dispositive motion (e.g., a motion to dismiss on grounds of lack of in personam jurisdiction).

5. **Limitations on Discovery**

No standard form restrictions on the number of interrogatories or length of depositions are employed by this Court beyond those set forth in the Federal Rules of Civil Procedure and any pertinent Local Rules. However, the parties are expected to use their common sense and discretion in discovery matters, and the Court will entertain motions to limit discovery when the request(s) propounded is/are unreasonable. The Court recommends to counsel the Final Report on the Joint Project of the American College of Trial Lawyers' Task Force on Discovery (March 11, 2009).

Discovery requests must be served soon enough that responses are due within the discovery period.

6. **Rule 11 & Rule 37 Motions/Sanctions**

The Court expects counsel to avoid the necessity for the filing of Rule 11 and/or Rule 37 Motions through the exercise of good professional judgment,

common courtesy and civility. However, counsel fees and costs will be awarded in appropriate circumstances.

C. Injunctions and Temporary Restraining Orders

Ex parte contact with the Court should be avoided. Therefore, in an injunction and/or temporary restraining order situation, the moving party must establish that serious efforts were made to contact the opposing party or its counsel prior to seeking relief, supported by the Fed.R.Civ.P.65(b) affidavit regarding the same. Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order.

The moving papers in support of a motion for a temporary restraining order or preliminary injunction should include affidavits(s) in support of the motion with all relevant agreements attached to the affidavit(s). Any response to the motion for temporary restraining order or preliminary injunction must be accompanied by affidavit(s).

If necessary, the Court will establish a briefing schedule.

All requests for injunctions and temporary restraining orders are handled as expeditiously as possible and the Court will, in its discretion, and after review of the pleadings and affidavit(s), determine whether or not to conduct a hearing and, if so, the scope of any testimony and other evidence to be allowed.

D. Patent Cases

All patent cases before the Court shall follow the Western District of Pennsylvania's Local Rules of Practice for Patent Cases, which are available at <http://www.pawd.uscourts.gov> under the heading, "Reference Materials." See also, proposed Initial Patent Scheduling Order (Exhibit "H").

E. Trial Procedures and Matters Relating to the Jury

1. Scheduling of Cases

At the initial case management conference, a date for trial will not be set. Once set, counsel should note that there may be one or more trials set for the same date. Vacation schedules, family conflicts and personal conflicts are accommodated where possible, but counsel must notify the Court of any such conflict, in writing, as soon as possible.

2. Pretrial Conferences

Prior to the final pretrial conference, trial counsel will meet with one of this Court's clerks in preparation for the final pretrial conference. The Court will schedule the date and time, generally one week before the final pretrial conference.

At the final pretrial conference, stipulations, witness lists, exhibits, motions in limine, jury instructions, voir dire, verdict slips and any other pretrial matters will be discussed, in detail, and generally ruled upon. As such, counsel should be prepared to make all arguments thereon. In addition, given the nature and complexity of the case, the Court may conduct a separate exhibit hearing.

At the final pretrial conference, the Court will discuss with the parties the number of hours each party anticipates to present testimony and evidence at trial. After the conclusion of the final pretrial conference, the Court will hold a settlement conference if all parties' counsel and any insurer agree. All practices and procedures related to settlement conferences shall apply. (See section III.A.2, supra.)

3. **Trial Hours/Days**

Court is in trial session Monday through Thursday, 9:00 a.m. to 4:30 p.m. with breaks when appropriate unless the jury requests a different schedule. Fridays are generally reserved for pretrial and status conferences, sentences and evidentiary hearings. Counsel must be available at 8:30 a.m. (or earlier, if necessary to ensure that trial commences on time) and at the conclusion of the Court day to meet with the Court concerning scheduling, trial problems and to obtain advance rulings on evidentiary or other issues.

Counsel shall be on time for each Court session. Trial engagements must take precedence over any other business. If counsel has matters scheduled in other courtrooms, appropriate motions to accommodate these obligations must be promptly filed.

When the Court recesses or adjourns, the parties, their attorneys and their support staff, as well as any witnesses and observers shall stay in place until the jury has left the courtroom.

4. **Trial Briefs**

Trial briefs are optional, but very much appreciated. There are no filing date restrictions, but the briefs are much more useful and more likely to be given serious consideration if filed at least fourteen (14) days before trial. Trial

briefs should not exceed fifteen (15) pages.

In bench trials, counsel are required to submit proposed findings of fact and conclusions of law. (See “Proposed Findings of Fact and Conclusions of Law,” infra.)

5. **Voir Dire in Civil Cases**

The Judge’s deputy clerk generally conducts both general and individual voir dire in civil cases. The Judge may become involved, if the situation warrants.

Unless otherwise ordered by the pretrial order, counsel are permitted to supplement the standard questions. Counsel shall attempt to obtain consent of opposing counsel prior to submission of any such supplemental voir dire. Those supplemental voir dire questions to which counsel have agreed upon shall state “Consented To By Counsel.” Any supplemental voir dire is due at least seven (7) working days before the trial date. The Court will circulate by e-mail proposed voir dire in advance of the pretrial conference at which time the Court will entertain any objections or argument, and make rulings thereon.

6. **Note Taking by Jurors**

Jurors are permitted to take notes and are provided with notebook paper to do so.

7. **Side Bars and Objections**

The Court believes counsel should be considerate of the jurors’ time. Consequently, side bars are highly disfavored because they tend to waste the jury’s time and unduly extend the length of the trial. Counsel are expected to anticipate matters to be discussed outside of the jurors’ hearing and shall raise such matters either at the beginning or at the conclusion of each trial day. Counsel will meet with the Court each day at 8:30 a.m. (or earlier if necessary to ensure the trial commences on time) or at 4:30 p.m. to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise an issue at these times will generally result in a disposition of the in-Court objection(s) in the presence of the jury.

When counsel makes objections, the objection and the legal basis for the objection must be stated. In the presence of the jury, counsel should not make any further argument concerning the objection and should not argue the ruling of the Court on the objection. Again, any argument on objections

should be made at the 4:30 p.m. conference with the Court or at the following day's conference at 8:30 a.m. and not at side bar. There should be no need for offers of proof during trial as parties will have discussed the witness's proposed testimony and any evidence to be offered at the 4:30 p.m. or 8:30 a.m. conferences.

8. **Examination of Witnesses Out of Sequence**

Where appropriate, witnesses may be examined out of sequence upon request of a party. Witnesses may be examined in any order to which counsel agrees. For example, counsel could agree that expert witnesses for each side will testify back to back.

9. **Opening Statement and Closing Argument**

The Court does not put strict time limitations on opening statements and closing arguments. However, the Court suggests thirty (30) minutes is reasonable for an opening statement or closing argument, depending on the complexity of the case. At the Pretrial Conference, the Court will inquire about the length of time counsel anticipate for openings and closings. With advance notice to opposing counsel and to the Court, visual aids and exhibits may be used during opening statements.

10. **Time Limits for Examination of Witnesses**

At the pretrial conference, the Court may set limits for the examination of witnesses and admission of evidence during trial, after consultation with counsel. Such time limit includes each party's time spent on both direct and cross examinations. However, the time limit does not include the time permitted for opening statements and closing arguments. The Courtroom Deputy or the law clerk assigned to the case will keep track of each party's use of time during the trial.

11. **Examination of Witness or Arguments by More Than One Attorney**

Co-counsel are not permitted to split up the examination of a witness. Accordingly, the same attorney will also make all objections and speak for his or her client at all conferences with the Court during trial.

Counsel may approach witnesses without leave of Court for purposes of identifying and interrogation concerning exhibits.

12. **Examination of Witnesses Beyond Direct and Cross**

Re-direct and re-cross examination are not permitted without leave of Court.

13. **Videotaped Testimony**

The Court has no special procedures regarding videotaped deposition testimony except those set out in the Local Rules. The Court expects that counsel will have made appropriate technological arrangements coordinating with the Court's IT Department and this Court's Deputy, prior to trial. The Court will not adjourn to take videotaped testimony.

14. **Reading of Material into the Record**

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

15. **Exhibits**

All exhibits must be exchanged and marked in advance of trial, so as to not waste the jury's time. Plaintiffs shall use the letter "P" and numbers and defendants shall use the letter "D" and numbers. Duplicates should be omitted. Copies are to be provided for the Court on disk or in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least three (3) days in advance of trial, unless otherwise ordered by the Court. In addition, counsel shall be prepared to compile and agree to a disk and a single exhibit binder ("Joint Exhibit Binder"), containing all the joint exhibits that will be submitted to the jury, at the close of trial. Counsel may be required to submit twelve (12) copies of the Joint Exhibit Binder, eight (8) for the jury and four (4) for the Court, dependant on the nature of the case. These amounts will increase if more than 8 jurors will be seated for trial. In that event, the Deputy or law clerk assigned to the case will retain one of these as the official record of the Court.

Counsel are encouraged to use the Courtroom's technology.

Voluminous data shall be presented by summary exhibits pursuant to Federal Rule of Evidence 1006 and voluminous exhibits will be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel.) When copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

Counsel are not to take time during trial to exchange exhibits with each other, as this should have been accomplished in the pretrial proceedings. As noted,

with advance notice and approval of the Court, visual aids and exhibits may be used during opening statements. Exhibits need not be offered into evidence in numerical order.

All hard copy exhibits already admitted into evidence must remain on the table immediately in front of the Bench, at all times, except when being used as part of the examination of a witness. Such exhibits should not be taken to counsel table.

16. **Directed Verdict Motions**

Rule 50 and 52 Motions shall be submitted in writing and be accompanied by a brief.

17. **Closing Arguments and Final Instructions**

The Court will charge the jury prior to closing arguments. In closing argument, counsel may quote the charge verbatim on a particular subject. As noted, the Court suggests closing arguments should not exceed thirty (30) minutes, 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.

18. **Jury Instructions**

The parties shall meet in an attempt to agree on a joint set of proposed jury instructions. After said meeting, the parties shall file a unified (meaning one) combined set of proposed instructions, along with computer disk/CD containing the instructions in WordPerfect format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together. Instructions shall include supporting authority.

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

A charging conference will be held, at which time a ruling will be made on each point for charge. Counsel are required to state on the record any objections to the proposed charge at the charging conference and to supply

any alternate language, together with case authority. A copy of the Court's proposed charge will be then provided to counsel.

As noted, the jury will be provided with a copy of the jury instructions.

Lawyers must make any and all exceptions to the charge at its conclusion.

19. **Proposed Findings of Fact and Conclusions of Law (Non-jury trial only)**

Plaintiff shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered proposed findings of fact and 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 reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief shall not exceed ten (10) pages. Defendant should do likewise.

20. **Offers of Proof**

Generally, there should be no requests for offers of proof during trial as the parties will have discussed the next day's witnesses at the 4:30 p.m. conference with the Court or at the following day's conference at 8:30 a.m.

21. **General Courtroom Rules**

Counsel can conduct a trial in any manner they see fit, provided it is done with courtesy and civility and consistent with the Rules of Professional Conduct. However, counsel should not face or otherwise appear to address himself or herself to jurors when questioning a witness. Nor should counsel approach the jury without leave of Court. The Court commends counsel to read and adhere to Judge Bloch's Courtroom Decorum/Instructions for Trials (7/9/03, found on this Court's website, <http://www.pawd.uscourts.gov>).

F. **Jury Deliberations**

1. **Written Jury Instructions**

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

2. **Exhibits in the Jury Room**

Generally, the jury will be given all admitted exhibits for use in deliberations. Exceptions are made for dangerous items, such as firearms and drugs, as well as videotapes and/or recordings. As the jury room doesn't contain technology to review exhibits, counsel shall be prepared to supply hard copy exhibits, if needed.

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

Requests to read back testimony or replay tapes during deliberations generally will be denied. However, if the jury is able to point to a specific portion of testimony or videotape, a jury request to read back testimony or replay tapes may be permitted.

4. **Jury Questions**

Jurors must submit any questions in written form, dated, timed and signed by the foreperson. All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. In most cases, the jury will then be summoned to the courtroom where a verbal reply will be read. A written reply is also provided where appropriate.

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

Trial counsel need not remain in the courtroom area, but must be available by telephone so that they can promptly return to the courthouse upon being contacted by the Court. Contact information must be supplied to the courtroom deputy or law clerk assigned to the case.

6. **Interviewing the Jury**

Interviewing of jurors post-verdict is discouraged, but the jury is told that it is up to them to decide if they choose to be interviewed or not.

IV. **CRIMINAL CASES**

A. **Motions**

Motions for extension of time to file pretrial motions are generally granted, especially if there is a significant amount of discovery material, the case involved a wiretap or a

complex factual situation. Appropriate language excluding delays from the operation of the Speedy Trial Act should be included in the proposed order accompanying the motion.

B. Pretrial Conferences

A pretrial conference approximately one week before the start of trial is scheduled in each case.

A pretrial order (Exhibit "I") establishing the time of the pretrial conference, as well as time-lines for other aspects of the case, will be issued in all cases for which a trial is necessary.

C. Guilty Pleas

There are no special rules regarding guilty pleas and no deadlines for accepting or rejecting plea bargains. Counsel are encouraged to plea bargain as early as possible to avoid tying up trial time. The Court follows a written colloquy for entry of the plea.

D. Voir Dire

The Judge conducts the voir dire in criminal cases.

Unless otherwise scheduled in the pretrial order, proposed voir dire questions are to be submitted to the Court at least one (1) week prior to trial. Counsel may supplement any standard voir dire with questions they propose. If approved by the Court, the Court will also ask these questions.

For sensitive questions (e.g. questions regarding racial bias, one's criminal history or that of family members, or status of venire persons as victims of crime), the Court conducts individual voir dire outside the presence of other venire persons, in the jury room, with counsel and a court reporter present.

E. Trial

1. Any waivers of defendant's rights should be put on the record at the commencement of trial.
2. Counsel may decide when or if they will present on opening statement. Defense counsel may not open both before and after the prosecution.

3. In multi-defendant cases, the Court allows defendants' counsel to question the witnesses in any order upon which they unanimously agree. If counsel is unable to agree, they will question witnesses in the order in which defendants are listed in the indictment.
4. Sidebars are disfavored and will not be permitted. Instead, counsel should bring to the Court's attention any issue either before or after the jury trial day. The Court will entertain arguments both before or after the trial day.
5. Unless otherwise scheduled in the pretrial order, motions in limine are to be filed, together with any supporting brief, at least two (2) weeks in advance of trial.
6. Transcripts of tape recorded conversations are permissible.
7. The Government is encouraged to turn over Jencks Act material as early as possible, and generally no later than the date jury selection begins.
8. All Brady material within the possession or control of the Government or its agents should be disclosed well in advance of trial, and the Government is under a continuous obligation to disclose such material to the defense.
9. Special interrogatories to the jury will be submitted upon request of counsel in appropriate cases.
10. A copy of the jury instructions will be provided to the jury.
11. Unless otherwise ordered, counsel are required to submit proposed jury instructions, with supporting authority, at least two (2) weeks prior to trial, along with a computer disk/CD containing the instructions in WordPerfect format. Counsel are referred to the Third Circuit's Standard Criminal Jury Instructions. A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the Court's proposed charge will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply any alternate language, together with case authority. The Court will supply counsel with a copy of the charge.

F. Objections to Pre-Sentence Investigation Report

1. Following the acceptance of a change of plea or upon defendant's conviction, the Court will issue a Pre-Sentence Order outlining dates for the disclosure of

Tentative Pre-Sentence Report, submission of the Pre-Sentence Investigation Report, for the filing of Objections to/Agreements with the Pre-sentence Investigation Report, for the submission of responses thereto, for the submission of the Pre-Sentence Investigation Report with Addendum, for the filing of the Court's Tentative Findings and Rulings, for the Telephonic Sentencing Conference, for the filings of any supplemental memoranda and letters for the Court's consideration, for the filing of any responses thereto, for the parties to bring any changes to their positions to the Court's attention, and for the date of Sentencing. See Exhibit "J" attached hereto.

2. Objections to or agreements with the Pre-Sentence Investigation Report must be submitted by counsel by the date indicated in the above stated Pre-Sentence Order. Counsel should refer to the Local Rules of Criminal Procedure for guidance.
3. Tentative Findings and Conclusions Concerning Disputed Facts or Factors will be provided to counsel in advance of the sentencing hearing in written form entitled "Tentative Findings and Rulings."
4. The Court will hold a telephonic conference prior to sentencing with counsel and the probation officer.
5. The parties will be notified in advance and provided with reasons in cases when a downward or an upward departure is contemplated.
6. The parties will receive a motion/briefing schedule with the issuance of the Court's Pre-Sentence Order and/or Tentative Findings and Rulings.

G. Other General Practices and Procedures in Criminal Cases

1. The Court will, upon request, make appropriate recommendations to the Bureau of Prisons regarding the Federal institution for incarceration of a defendant.
2. The Court requires the filing of a formal motion for leave of a defendant to travel outside of Western Pennsylvania. Even when defense counsel, the prosecutor and the probation officer all agree that permission be granted, the Court will not necessarily grant such permission.
3. Any conflicts between defense counsel and his or her client(s) should be brought to the Court's attention on the record. If necessary, the Court will conduct a hearing on said matter.

V. **BANKRUPTCY APPEALS (TO THE DISTRICT COURT)**

A. **Filing and Scheduling**

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

B. **Oral Argument**

Oral argument is not generally scheduled, but may be granted upon request.

C. **Other General Practices/Procedures for Bankruptcy Cases**

Briefing schedules and other deadlines imposed by the Federal Rules of Bankruptcy Procedure will be modified where appropriate on the request of the party.

VI. **Special Types of Cases**

A. **Fee Awards**

In any case which may result in a fee award, the Court recommends to counsel the format outlined in the instructions setting forth how attorney time should be recorded and described as appears on this Court's website under Judge Bloch's Practices and Procedure.

B. **Class Certification/Social Security Actions**

The Court strictly enforces time limit requirements for class certifications and for Social Security actions.

C. **RICO Actions**

With respect to RICO actions, the Court requires that the plaintiff file a RICO Case Statement within fourteen (14) days of the filing of the Complaint in the form set forth at "Appendix LcvR 7.1.B" of the Local Rules.

EXHIBIT "A"

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

,)	
)	
Plaintiff(s),)	
)	
v.)	2:
)	
)	
Defendant(s).)	
)	

ORDER ON MOTIONS PRACTICE

The parties shall submit to the following rules in making and responding to motions on any case assigned to this member of the Court:

1. A motion shall state the factual and legal grounds for said motion, and shall be accompanied by a brief in support. A brief in support of a motion shall not exceed twenty (20) pages in length. No briefs are required for discovery motions, motions for extension of time and motions for continuance.

2. Responses to non-dispositive motions shall be filed within fourteen (14) days, not to exceed five (5) pages. No reply briefs to non-dispositive motions are permitted without leave of court. Responses to dispositive motions shall be filed within twenty-one (21) days. Responsive briefs are limited to twenty (20) pages in length. Reply briefs are permitted to dispositive motions, and must be submitted within fourteen (14) days of service of the response and are not to exceed ten

(10) pages. Sur reply briefs are not to be filed without leave of Court, and will be limited to five (5) pages, if leave is granted. **No briefing schedule will issue.**

3. Oral argument will not be scheduled unless the Court determines that it is necessary.

An order will be issued should the Court deem oral argument necessary.

4. Counsel should be familiar with this Court's Practices and Procedures (See Court Practices and Procedures at www.pawd.uscourts.gov, link "court practice".)

SO ORDERED this _____ day of , 20.

Nora Barry Fischer
United States District Judge

cc/ecf: counsel of record

EXHIBIT "B"

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

_____,)
)
) Plaintiff,)
)
 vs.) Civil Action No. _____
) Judge Nora Barry Fischer
)
 _____,)
)
) Defendant.)
)

CASE MANAGEMENT ORDER

AND NOW, this ____ day of _____, 20____, an initial case management conference having been held pursuant to Fed. R. Civ. P. 16 and Local Rule 16.1, it is hereby ORDERED that the parties adhere to the following case management order:

Discovery Schedule

1. All disclosures required by Rule 26(a) of the Federal Rules of Civil Procedure shall be made by _____.

2. Fact discovery shall be completed by _____. The discovery deadline shall be extended only by leave of court, and upon motion filed prior to the expiration of such deadline. The motion shall: (a) specify discovery which has been completed; (b) state reasons for the requested extension; (c) list any previous extensions of discovery; and (d) attach a proposed order which establishes specifically the extended pretrial schedule being requested. Any such motion shall contain a certificate of conferral as required by Local Rule 16.1.B.3. Upon the completion of fact

discovery, the Court shall conduct a Telephone Post Fact Discovery Status Conference. Said conference will occur on _____ at _____. The Court will initiate said conference call.

3. The deadlines for expert discovery, if any, including the filing of expert reports and the taking of expert depositions, shall be set at the Telephone Post Fact Discovery Status Conference. The expert discovery deadline shall be extended only by leave of court, and upon motion filed prior to the expiration of such deadline.

4. The total number of written interrogatories, requests for production, and requests for admission, including subparts, submitted by a party to another party shall not exceed 25.

5. Discovery materials shall not be filed with the Clerk consistent with Federal Rule 5(d) and Local Rule 5.4.A. However, if such material is necessary to the Court's review of any motion, relevant portions only shall be included with the motion or opposition, or filed separately as an appendix. Courtesy copies are to be delivered to the Court concurrent with their filing.

6. Pursuant to Local Rule LCvR 16.1(D), and to aid in the implementation of Fed. R. Evid. 502, the following is ordered in the event of an inadvertent disclosure of any privileged or trial preparation/attorney work product material:

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

b) Upon receiving notice of inadvertent production, any receiving party shall immediately retrieve all copies of the inadvertently disclosed material and sequester such

material pending a resolution of the producing party's claim either by the Court or by agreement of the parties.

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

7. Discovery motions shall comply with Local Rule 7 and all rules enumerated therein, together with a memorandum of law, and include a certification that counsel have met and conferred regarding the disputed issues. The responding party shall file its response within five (5) days of receipt of said motion, excluding weekends and holidays. All memoranda on discovery issues shall be limited to five (5) pages. No reply briefs are permitted. Argument over contested discovery motions will be scheduled as appropriate.

Motions to Amend or Add New Parties

8. Any motions to amend pleadings or to add new parties shall be filed no later than _____. The responding party shall file its response within five (5) days of receipt of said motion, excluding weekends and holidays. No reply briefs are permitted.

Non-Dispositive Motions

9. Miscellaneous motions shall be limited to five (5) pages. The response to any miscellaneous motion shall be filed within ten (10) days of receipt of said motion, excluding weekends and holidays, and be limited to five (5) pages. No reply or sur reply briefs are permitted without leave of Court. Argument shall be scheduled as deemed necessary.

Summary Judgment Motions

10. The Court will establish a schedule for the filing of summary judgment motions upon the completion of all discovery in this case. Motions for summary judgment shall be accompanied by a memorandum of law, not to exceed twenty (20) pages. The responding party shall file its responsive memorandum, not to exceed twenty (20) pages and any supporting evidentiary material within thirty (30) days. All argument in support of or opposition to a motion for summary judgment shall be set forth in the accompanying memorandum of law and shall not be included in the motion itself. Reply briefs are permitted, and must be submitted within ten (10) days of service of the response and are not to exceed ten (10) pages. No further submissions, such as a sur reply, will be permitted without leave of court and will be limited to five (5) pages, if leave is granted.

11. Any motion for summary judgment and opposition thereto shall conform to the requirements of Local Rule 56.

Pretrial Matters

12. If a motion for summary judgment is filed, pretrial narratives need not be filed until ordered by the court. In addition, no pretrial conference will be scheduled until the court has disposed of any motions for summary judgment.

13. If no motions for summary judgment are filed, the Court will establish dates for the filing of plaintiff's pretrial narrative and defendant's pretrial narrative at the Post Discovery Status Conference. The pretrial narratives shall conform to the requirements of Local Rule 16.1.C.

Trial Term

14. The date of trial in this matter depends on whether the parties file dispositive motions. Accordingly, at the appropriate time, and if necessary, the Court will set a trial date.

_____ at _____, (*1 week before trial*) in Courtroom 5B, 5th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania. A preliminary pretrial conference with the Court's law clerk shall be held on _____ at _____.

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

- a. Plaintiff shall file and serve its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Plaintiff shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due by _____. (*1 month before trial*)
- b. Defendant shall file and serve its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Defendant shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due by _____. (*3 weeks before trial*)
- c. All exhibits must be exchanged and marked in advance of trial. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least two (2) days in advance of trial, unless otherwise ordered by the Court. In addition, counsel shall be prepared to compile and agree to a

single exhibit binder (“Joint Exhibit Binder”) containing the most significant exhibits that will be submitted to the jury at the close of trial. Counsel shall plan to submit twelve (12) copies of the Joint Exhibit Binder (eight (8) for the jury and four (4) for the Court). Each Joint Exhibit Binder shall contain twenty (20) lined sheets of lined notebook paper provided for the jury to take notes. Additionally, a chart shall be provided to the Court, in hard copy and email form, identifying each exhibit by number and name, providing a brief description of the nature of the objection (if any), and a space for the Court’s ruling on the objection(s). Objections will be resolved at or before the pretrial conference.

- d. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

4. **Designation of Discovery Excerpts to be Offered at Trial.** The parties shall submit designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) by _____. (*2 weeks before trial*) Counter designations are due by _____. (*1 week before trial*)

5. **Motions.** The parties shall file all motions in limine, including motions under Fed.R.Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law, by _____. (*2 weeks before trial*) Responses shall be filed by _____. (*10 days before trial*) All briefs supporting or opposing such motions are

limited to 5 pages.

6. **Proposed Jury Instructions & Verdict Slips.** Counsel shall meet in an attempt to agree on a joint set of proposed substantive jury instructions regarding plaintiff(s)' claims and their elements, any defenses and their elements, and any evidentiary or other matters particular or unique to this case; the parties need not submit "boilerplate" or standard civil jury instructions. After said meeting, and on or before _____, counsel shall file a unified (meaning one) combined set of proposed instructions, along with computer disk/CD containing the instructions in WordPerfect format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together.

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

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

7. **Proposed Voir Dire.** Counsel are permitted to supplement the standard questions provided that the proposed supplemental voir dire questions are submitted to the Court in writing by _____ . *(10 days before trial)*

8. **Joint Stipulations.** The parties shall file joint stipulations by _____. *(10*

days before trial) All possible stipulations shall be made as to:

- a. Facts (both liability and damages);
- b. Issues to be decided;
- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports;
- e. Deposition testimony to be read into the record; and
- f. A brief statement of the claims and defenses to be read to the jury to introduce the trial.

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

9. Counsel must meet to discuss settlement by _____.

10. **Courtesy Copies.** Courtesy copies of all items required to be filed and served pursuant to this Order shall be delivered to chambers concurrently with filing.

B. Trial Procedure

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

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

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

to approach a witness.

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

5. **Side Bar Conferences.** The Court believes that counsel should be considerate of the jurors' time. Consequently, side bar conferences are highly disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 9:00 a.m. each day (or earlier if necessary to ensure that trial commences on time) each day to raise points of evidence or other issues that would otherwise necessitate a side bar conference. The Court will also be available at the end of the court day to resolve such matters. Failure to raise issues at that time will generally result in a disposition of the in-court objection in the presence of the jury. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch or for the day.

In addition, it is expected that counsel will anticipate evidentiary issues requiring lengthy argument and will take up such matters out of the presence of the jury. The Court will be available at **8:30 a.m.** each morning to address such issues. It is the responsibility of counsel to notify other counsel of the need for a conference at 8:30 a.m. and all other counsel will be expected to be there at the appointed time for argument. **THE COURT WILL NOT DELAY THE PROCEEDINGS TO RESPOND TO LAST MINUTE REQUESTS FOR CONFERENCES TO DISCUSS MATTERS WHICH, IN THE EXERCISE OF REASONABLE DILIGENCE, COULD HAVE**

3/23/10

BEEN HEARD AT THE MORNING CONFERENCE.

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

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

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

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

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

11. **Rule 50 Motions.** Any Rule 50 Motions shall be made in writing and shall be accompanied by a supporting Brief.

Nora Barry Fischer
United States District Judge

EXHIBIT "D"
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

v.

Civil Action No. _____
Electronically Filed

PRETRIAL ORDER (NON-JURY TRIAL)

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

A. Final Pretrial Orders:

1. **Trial.** Trial of the above captioned matter is set for _____ at _____, in Courtroom 5B, 5th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

2. **Pretrial Conference(s).** A final pretrial conference shall be held on _____ at _____, (*1 week before trial*) in Room 5260, 5th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania. A preliminary pretrial conference with the Court's law clerk shall be held on _____ in Room 5260, 5th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

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

- a. Plaintiff shall file and serve its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Plaintiff shall provide an offer of proof

explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due by _____. (*1 month before trial*)

b. Defendant shall file and serve its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Defendant shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due by _____. (*3 weeks before trial*)

c. All exhibits must be exchanged and marked in advance of trial. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least (2) days in advance of trial, unless otherwise ordered by the Court.

d. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

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

(2 weeks before trial) Any counter designations are due by _____. *(1 week before trial)*

5. **Motions.** The parties shall file all motions in limine, including motions under Fed.R.Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law, by _____. *(2 weeks before trial)* Responses to motions in limine shall be filed by _____. *(10 days before trial)* All briefs supporting or opposing such motions are limited to 5 pages.

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

a. On or before _____, Plaintiff shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered proposed findings of fact and 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 reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief shall not exceed _____ pages.

b. On or before _____, Defendant shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered counter-findings of fact and consecutively numbered counter-conclusions of law, corresponding to the same numbered findings of fact and conclusions of law proposed by Plaintiff. Each proposed counter finding shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each

proposed counter-conclusion shall be supported by citation to appropriate authority. With the proposed counter-findings and counter-conclusions Defendant also shall file and serve a brief in support of judgment integrating the counter-proposed findings of fact with the counter-proposed conclusions of law and demonstrating why the relief requested by defendant should be granted. The supporting brief shall not exceed _____ pages.

c. 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 upon objection or by the Court *sua sponte*.

7. **Joint Stipulations.** In addition to the above proposed findings of fact and conclusions of law, the parties shall file consecutively numbered joint stipulations by _____ . *(10 days before trial)* All possible stipulations shall be made as to:

- a. Facts;
- b. Issues to be decided;
- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports; and
- e. Deposition testimony to be read into the record.

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

B. Trial Procedure

1. **Hours.** Court is in trial session, unless otherwise ordered by the Court, Monday through Thursday, 9:00 a.m. to 5:00 p.m. with breaks where appropriate. **All counsel are expected to be in their seats and ready to commence at the appointed times.**

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

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

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

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

6. **Rule 52 Motions.** Any Rule 52 Motions shall be made in writing and shall be accompanied by a supporting Brief.

Nora Barry Fischer
United States District Judge

submit a proposed settlement agreement to the Court. The proposed agreement will not be filed nor shared with opposing counsel.

Counsel should be familiar with this Court's Practices and Procedures (See Court Practices and Procedures at www.pawd.uscourts.gov, link "court practice".)

SO ORDERED this __ day of _____, 20__.

Nora Barry Fischer
United States District Judge

cc: All counsel of record

3/23/10

EXHIBIT "F"

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

,)	
Plaintiff(s),)	
v.)	2:
)	
)	
,)	
Defendant(s).)	

ORDER REFERRING CASE TO ALTERNATIVE DISPUTE RESOLUTION

After due consideration of the issues and in consultation with the parties, the Court finds that this case is appropriate for referral to an alternative form of dispute resolution as provided by the local rules of this Court.

IT IS HEREBY ORDERED:

(a) Referral to ADR: This case is referred to: _____ program _____ .

Name of neutral is/are appointed to serve as the mediator/evaluator/arbitration panel. **(NOTE: If parties are proceeding with the court sponsored arbitration, delete the next three sentences on compensation.)** Compensation of the neutral will be as follows: _____% by Plaintiff and _____% by Defendant.* Compensation shall be paid directly to the neutral upon the conclusion of the ADR process. Failure to pay the neutral shall be brought to the attention of the Court.

(b) Conduct of ADR Conference(s): The ADR conference(s) shall be conducted in accordance with Local Rule 16.2 and the Court's ADR Policies and Procedures.

(c) Scheduling ADR Conference(s): The ADR conference(s) shall be concluded before date, unless extended by order of the Court. The ADR conferences may be conducted at any location agreed to by the parties, counsel, and the assigned neutral. **The report of the mediator shall be electronically filed with the court within seven (7) days of the date of the mediation.**

(d) Designation of Lead Counsel: _____ Is designated as lead counsel and shall be responsible for working with the parties and the neutral to coordinate an agreeable date, time and location for the initial ADR conference.

(e) Responsibilities of Lead Counsel: It is the responsibility of lead counsel to insure that notice of the date, time and location of the mediation has been electronically filed with the Court on or before _____. **THE COURT SHALL BE PROMPTLY NOTICED OF ANY RESCHEDULED DATE FOR THE SCHEDULED CONFERENCE.**

If the parties are utilizing a private process, the case is still governed by the Court's Local Rules and ADR Policies and Procedures. When private processes are used, it is the responsibility of counsel to ensure that all of the proper forms are timely submitted and filed, as required by Policies and Procedures.

The parties are hereby notified that any individual neutral (Court approved or private) is required to become a registered user of the Electronic Case Filing System (ECF) in the United States District Court for the Western District of Pennsylvania. Counsel shall so notify their agreed upon neutral and refer them to the Court's website at www.pawd.uscourts.gov for user registration forms. Counsel shall confirm to the Court that the selected neutral has completed the process.

Nothing in this order alters the Case Management Order previously entered in this case. All deadlines set forth in that Case Management Order remain in full force and effect.

SO ORDERED this _____ day of _____, 20____.

UNITED STATES DISTRICT JUDGE

*Alternate language for compensation section of ADR Orders

50/50:

Plaintiff shall pay one-half of the compensation and costs of the mediator and Defendant shall pay one-half of the compensation and costs of the mediator.

Defendant pays all:

Defendant shall pay the compensation and costs of the mediator.

Defendant pays all unless no settlement, then Plaintiff pays 1/4:

Defendant shall pay the compensation and costs of the mediator. If the case does not settle at mediation, Plaintiff will pay one-quarter of the compensation and costs of the mediator.

3/23/10

EXHIBIT "G"

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

)	
)	
Plaintiff(s))	
)	
v.)	Civil Action No.
)	
)	
Defendant(s))	

ORDER OF COURT APPOINTING ARBITRATOR

Pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, the parties hereby agree to final and binding arbitration of all claims set forth in the above-captioned matter (including the requested relief) before a single arbitrator selected by the counsel/parties. If the selected arbitrator cannot serve, the counsel/parties should agree on another arbitrator, and if they cannot agree on an arbitrator, the arbitrator will be appointed by Judge Fischer. The parties may engage in discovery, and any dispute relating to said discovery shall be resolved by the arbitrator. Parties reserve the right to file Motions(s) for Summary Judgment for determination by the arbitrator. Defendant will pay the compensation and costs of the arbitrator, and if defendant cannot agree on compensation and costs for the arbitrator, Judge Fischer will set reasonable compensation and costs. Counsel listed below represent that they have authority of their client to enter into the above agreement.

3/23/10

•

Selected arbitrator:

•

Arbitration shall take place before:

SO ORDERED this ___ day of _____, 200_.

Judge Nora Barry Fischer

AGREED TO:

Counsel for Plaintiff

Counsel for Defendant

Counsel for Plaintiff

Counsel for Defendant

cc: arbitrator

EXHIBIT "H"

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

Plaintiff(s),)
)
)
v.) Civil Action No. ____
)
)
)
Defendant(s).)

INITIAL PATENT SCHEDULING ORDER

AND NOW, this ____ day of _____, 200__, IT IS HEREBY ORDERED that this action is placed under the Local Patent Rules of this Court for pretrial proceedings and all provisions of these Rules will be strictly enforced.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to all scheduling, status, or pretrial conferences to obtain authority to participate in settlement negotiations which may be conducted or ordered by the Court.

IT IS FURTHER ORDERED that compliance with provisions of Local Rule 16 and the Local Patent Rules shall be completed as follows:

- (1) On or before _____, the parties shall confer regarding whether any

changes should be made to the protective order attached to the Local Patent Rules in Appendix A and, on or before _____, the parties shall file a joint report with the Court identifying the agreed upon changes thereto, together with a copy of the agreed upon protective order, or identifying the open issues and stating the parties' respective positions thereon;

(2) The parties shall move to amend the pleadings or add new parties by _____;

(3) On or before _____, the parties shall complete their individual disclosures, including compliance with LPR 3.1;

(4) The party claiming patent infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions by _____;

(5) The party claiming non-infringement and invalidity must serve on all parties a Disclosure of Non-Infringement and Invalidity Contentions by _____;

(6) Each party will simultaneously exchange Proposed Claim Terms and Phrases for Construction by _____;

(7) The parties shall meet and confer by _____ to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute and prepare and file a Joint Disputed Claim Terms Chart. Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each item of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart;

(8) On or before _____, the parties shall confer regarding whether they plan to present live testimony at the claim construction hearing and report accordingly to the Court when they file their Joint Disputed Claim Terms Chart.

(9) The parties will contact John Galovich by _____ concerning the need for expert disclosure and, to the extent required, a timetable for same will be established by the Court in

connection with claim construction;

(10) Plaintiff shall file and serve an Opening Claim Construction Brief and an identification of extrinsic evidence by _____;

(11) The Opposing Party shall file and serve a response to the Opening Claims Construction Brief, an identification of extrinsic evidence and any objections to extrinsic evidence by _____;

(12) The opening party may serve and file a Reply directly rebutting the opposing party's Response, and any objections to extrinsic evidence by _____;

(13) The Court will conduct a hearing on the issue of Claim Construction on _____ at _____ AM/PM;

(14) The parties shall complete fact discovery by _____, and all interrogatories, depositions, requests for admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of discovery. To the extent additional discovery is warranted by the Court's ruling on claim construction, the parties can seek leave of the Court for an additional discovery period of 30 days;

(15) A Post-Discovery Status Conference is scheduled for _____ at AM/PM. The parties shall be prepared to discuss settlement and the possibility of using a method of alternative dispute resolution. The parties are also advised that the court will schedule the following at this Conference: (1) dates by which expert disclosure and discovery should be completed; (2) dates by which dispositive motions should be filed and responded to; (3) dates by which the parties' pre-trial statements should be filed; (4) dates by which motions in limine should be filed and responded to; (5) dates for filing deposition designations and counter designations; (6) dates by which Daubert motions should be filed and responded to; (7) dates on which argument on Daubert motions and motions in limine shall be heard; (8) dates for the final pre-trial conference and preceding conference

with the assigned court clerk; and (9) the trial term date and probable date for trial.

BY THE COURT:

Nora Barry Fischer
United States District Judge

EXHIBIT "I"

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

UNITED STATES OF AMERICA)
)
 v.) **Criminal No.**
)
 DEFENDANT NAME,)
)
 Defendant.)

PRETRIAL ORDER IN CRIMINAL CASE

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

A. Final Pretrial Orders

1. **Jury Selection & Trial.** Jury selection and trial are set for _____, **20**__ at _____ **a.m./p.m.**, in Courtroom 5B, 5th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

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

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

a. The government shall file with the Court a list of trial witnesses, under seal, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment or rebuttal). For each witness listed the government shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Said witness list and offers

of proof need not be served on defendant, and shall be due by_____.

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

_____.

- c. All exhibits must be exchanged and marked in advance of trial. A Stipulated Exhibit Binder or disk is to be provided to the Court by the government no later than _____; stipulated exhibits that are not objected to shall be marked "S-1, S-2, S-3 etc.; the government's exhibits which are being objected to by the defense shall be marked numerically, i.e., G-1, G-2, G-3, etc.; the defendant's exhibits which are being objected to by the government shall be marked alphabetically, A, B, C, etc. Additionally, a chart shall be provided to the Court, in hard copy and email form, identifying each exhibit by number and name, providing a brief description of the nature of the objection (if any), and a space for the Court's ruling on the objection(s). Objections will be resolved at or before the pretrial conference.
- d. No later than the morning of trial, the government shall submit a disk and eighteen (18) copies of the Stipulated Exhibit Binder (fourteen(14) for the

jury, marked "Juror Exhibit Binder," and four (4) for the Court, marked "Stipulated Exhibit Binder"). Each Stipulated Exhibit Binder for jurors shall contain twenty (20) sheets of lined notebook paper for note taking.

- e. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

4. **Jencks Act - Impeachment Materials - Rule 404(b).** The government shall provide defense counsel with copies of any *Brady/Giglio* impeachment materials not previously disclosed, and any evidence of defendant's uncharged conduct which it intends to introduce at the trial pursuant to Federal Rule of Evidence 404(b), on or before _____. The government is encouraged to provide all Jencks Act materials prior to the pretrial conference, and no later than the Friday before trial.

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

6. **Proposed Jury Instructions & Verdict Slips.** Counsel shall meet in an attempt to agree on a joint set of proposed substantive jury instructions regarding the offenses charged and their elements, the theory of the defense, and any matters particular or unique to this case; the parties need not submit "boilerplate" or standard criminal jury instructions. After said meeting, and on or before _____, counsel file a unified (meaning one) combined set of proposed instructions, and shall e-mail a copy of the proposed instructions to the law clerk assigned to the case, or

alternatively, deliver a computer disk/CD to chambers containing the instructions in WordPerfect format. Counsel are referred to the Third Circuit Standard Criminal Jury Instructions. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Citations to authority shall also be provided. Proposed instructions by different parties shall be grouped together (i.e., instruction should be matched with counter instructions).

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

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

7. **Voir Dire.** Counsel are permitted to supplement the standard questions provided that the proposed supplemental voir dire questions are submitted to the Court in writing by _____ . Voir dire questions will be asked by the Court, with as many questions as possible asked of the panel en banc. Individual voir dire will be conducted outside the presence of the entire panel. The Court may limit individual voir dire.

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

8. **Joint Stipulations.** The parties shall file joint stipulations by _____ .

All possible stipulations shall be made as to:

- a. Facts;
- b. Issues to be decided;

- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports;
- e. Statement or deposition testimony, if any, to be read into the record; and
- f. A neutral summary of the indictment and a brief statement of the defense which will be read to the jury to introduce the trial and to be read to the venire before jury selection.

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

B. Trial Procedure

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

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

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

4. **Testifying Officers and Agents.** All testifying law enforcement officers and agents shall have any reports or declarations they have prepared or used to refresh their recollections with them on the witness stand. All witnesses who will testify about the content of documents will review those documents prior to taking the stand and be prepared to answer questions about document contents based on their prior reading.

5. **Opening and Closing Statements.** Up to thirty (30) minutes is permitted to each side for opening and closing statements, depending on the complexity of the case. Counsel may request additional time at the Pretrial Conference. Counsel may use exhibits or charts in opening

argument provided that the same have been provided to opposing counsel beforehand and either agreement was reached or the Court has ruled upon the matter.

6. **Side Bar Conferences.** The Court believes that counsel should be considerate of the jurors' time. Consequently, side bar conferences are highly disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 8:30 a.m. each day (or earlier if necessary to ensure that trial commences on time) each day to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-court objection in the presence of the jury. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch or for the day.

The Court will be available at **8:30 a.m.** each morning to address such evidentiary and other issues. It is the responsibility of counsel to notify other counsel of the need for a conference at 8:30 a.m. and all other counsel will be expected to be there at the appointed time for argument. The Court will also be available each afternoon, upon completion of trial proceeding for that day, at 4:30 p.m., to address any trial related matters. **THE COURT WILL NOT DELAY THE PROCEEDINGS TO RESPOND TO LAST MINUTE REQUESTS FOR CONFERENCES TO DISCUSS MATTERS WHICH, IN THE EXERCISE OF REASONABLE DILIGENCE, COULD HAVE BEEN HEARD AT THE MORNING CONFERENCE.**

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

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

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

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

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

Nora Barry Fischer
United States District Judge

cc/ecf: All counsel of record
Defendant c/o Defense counsel
Pretrial Services
U.S. Marshal

EXHIBIT "J"

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

UNITED STATES OF AMERICA)
)
 vs.) Criminal No.
)
)
)
 Defendant.)

ORDER

AND NOW, this day of, 20____, defendant _____
having entered a plea of guilty to/been found guilty of Count ____ of the Indictment/Information
filed at Criminal No. _____, and in accordance with the Sentencing Reform Act of 1984, 18 U.S.C.
§3551, et seq. (1987) and the Sentencing Guidelines of the United States Sentencing Commission
promulgated under that Act and the Sentencing Commission Act, 28 U.S.C. §991, et seq. (1987),

IT IS HEREBY ORDERED that:

1. Not later than _____ (**seven (7) weeks/**

Forty-nine (49) days)) prior to the date set for sentencing, the United States Probation Office shall
disclose the tentative Presentence Investigation Report to only the defendant, the defendant's attorney
and the attorney for the government. If a party disputes facts or factors material to sentencing
contained in the Presentence Report, or seeks the inclusion of additional facts for factors material to
sentencing, that party shall have the obligation to pursue the administrative resolution of that matter
through informal presentence conferences with opposing counsel and the United States Probation

Office. The party seeking administrative resolution of such facts and factors shall do so within two weeks (fourteen (14) days) after the initial disclosure of the tentative Presentence Report. No later than two weeks (fourteen (14) days) after the initial disclosure of the tentative Presentence Report, following any good faith efforts to resolve disputed, or include additional, material facts or factors described above, the United States Probation Office shall notify the attorneys for the government and the defendant of the matters that have, or have not, been administratively resolved. The Court expects counsel to fully comply with these procedures.

2. No later than _____ (**35 days before sentencing**), pursuant to Fed. R. Crim. P. 32(g), the United States Probation Office shall disclose the Presentence Report to this Court, to the defendant, and to counsel for the defendant and for the government.

3. No later than _____ (**28 days before sentencing**), the parties shall each file with the Court a pleading entitled "Position of [Defendant or Government as appropriate] With Respect to Sentencing Factors," pursuant to Fed. R. Crim. P. 32(g), §6A1.2(b) of the U.S.S.G., and LCrR 32(c)(4).

4. A party may file a response to the opposing party's Position With Respect to Sentencing Factors by no later than _____ (**21 days prior to sentencing**).

5. No later than _____ (**14 days prior to sentencing**), the United States Probation Office shall serve this Court and counsel for the defendant and for the government the Presentence Report, together with an addendum setting forth any unresolved objections of counsel to the Presentence Report, together with the Probation Officer's comments thereon. The United States Probation Office shall certify that the Presentence Report, together with any revision

thereof and any addendum thereto, have been disclosed to the defendant and to all counsel of record, and that the addendum fairly sets forth any remaining objections and responses.

6. This Court will issue to counsel for the defendant and for the government and to the Probation Office its tentative findings and rulings concerning disputed facts or factors on _____ **(7 days prior to sentencing)**.

7. This Court will strictly enforce Local Rule 32.1(c)(2) with respect to disclosure of any Presentence Report information.

8. No later than _____ **(seven (7) calendar days before sentencing)**, a party may file supplemental information or a memorandum with respect to sentencing of the defendant, and shall serve the same upon the United States Probation Office. If counsel for the defendant intends to submit letters to the Court for consideration at sentencing, said letters should be electronically filed by no later than _____ **(seven (7) calendar days before sentencing)**. Any letters which counsel deem as containing confidential material necessitating sealing by the Court require counsel to abide by Paragraph 8 of this Court's Electronic Case Filing Policies and Procedures ("Sealed Documents") as well as this Court's policy governing all sealed matters (Misc. No. 05-45 (See Exhibit B)). Opposing counsel may file a response to any supplemental information or memorandum no later than _____ **(three (3) days before sentencing)**.

9. In advance of Sentencing, the Court will initiate a Telephonic Sentencing Conference with counsel and the Probation Officer on _____, 20__ at _____ **a.m./p.m. (usually 4 days prior to sentencing)**. Counsel should be prepared to outline the parameters of the evidence, if any, to be presented as well as any legal arguments.

10. Any changes in the position of either the defendant or the government must be brought to the Court's attention by **12:00 p.m. on _____, 20__ (the day after the Telephonic Sentencing Conference).**

11. Sentencing of defendant _____ will take place on _____, **20__ at _____ a.m./p.m. (at least 98 days following plea/conviction)**

s/Nora Barry Fischer
United States District Judge

cc/ecf: , Asst. U.S. Atty.

 , AFPD/Esquire

 c/o , AFPD/Esquire

 Probation Office

 Pretrial Services

 U.S. Marshal