

**PRACTICES AND PROCEDURES OF
MAGISTRATE JUDGE LISA PUPO LENIHAN**

I. GENERAL MATTERS

A. Communications with the Court

Counsel are not to send correspondence to Magistrate Judge Lenihan unless she specifically requests or approves the same. Requests for the rescheduling of conferences may be made by telephone to the Court's Deputy Clerk but only if counsel for all parties are on the line. Otherwise, such requests are to be made by motion.

B. Communications with Law Clerks

Counsel are not to contact Magistrate Judge Lenihan's law clerks. If they wish to consult on the status of a matter or an appropriate procedure, counsel are to call her Deputy Clerk.

C. Telephone Conferences

Requests for counsel or parties to participate by phone will be considered on a case by case basis.

When a telephone conference by all counsel is permitted, counsel must initiate the call and contact the Court once all parties are on line.

Magistrate Judge Lenihan prefers that discovery disputes be handled in the first instance by having the parties discuss a resolution among themselves and, if this does not prove possible, then telephone chambers to resolve the matter, rather than filing a formal discovery motion. Please see Order on Motions Practice, *infra*.

D. Pro Hac Vice Admissions

Pro hac vice motions may be ruled upon by the magistrate judge assigned to the case.

E. Comments to the Media

Attorneys are expected to adhere to the Rules of Professional Conduct in all dealings, including those with the media.

II. MOTIONS PRACTICE

A. Oral Argument

Oral argument is entertained on selected, factually or legally complex matters. If the Court deems oral argument to be appropriate, an order will issue. The parties may also file a motion requesting oral argument. Magistrate Judge Lenihan does not set aside a specific day or time for argument of motions.

B. Briefs

Motions seeking substantive legal ruling(s), whether dispositive or non-dispositive, should be accompanied by a supporting brief. The supporting brief must be filed contemporaneously with the motion. A brief may be omitted only if: (i) the motion is non-dispositive, and (ii) the motion itself contains sufficient arguments and legal citation to permit meaningful judicial review.

Supporting and Responsive briefs are limited to 25 pages in length. Reply briefs should not be submitted in connection with non-dispositive motions, absent leave of court. Reply briefs may be submitted in connection with dispositive motions but are limited to five (5) pages. Any reply brief submitted should be narrowly tailored to address only those matters newly raised in the response brief.

Sur-reply briefs are strongly disfavored, and they may be submitted only with leave of court.

C. Chamber Copies of Motion Papers

Generally, courtesy copies of all motions and briefs should not be forwarded to chambers, including exhibits and attachments, as they are available to the Court through ECF. However, where the exhibits are in excess of 300 pages, Magistrate Judge Lenihan prefers that counsel deliver to chambers a hard copy of the appendix/exhibits.

D. Scheduling

Responses to non-dispositive motions shall be filed within fourteen (14) days of service. Responses to motions to dismiss shall be filed within twenty one (21) days of service, and motions for summary judgment shall be filed within thirty (30) days of service. A separate briefing order will not be issued. Please see Order on Motions Practice, *infra*. Where a brief is required, it must be filed simultaneously with the motion.

At the close of discovery, or shortly thereafter, the Court will issue an order setting forth *inter alia* the deadline for filing dispositive motions, including summary judgment motions. Counsel must follow Local Rule 56.1 in filing and responding to summary judgment motions.

E. Evidentiary Hearings

Evidentiary hearings on pretrial matters generally are scheduled in advance of trial. When counsel conclude that an evidentiary hearing is appropriate, they should confer with opposing counsel and request a hearing by motion or through a conference call with the court.

F. Motions *In Limine*

Counsel shall comply in all respects with Local Rule 16.1.C.4 with regard to motions

in limine. To the extent counsel deems it necessary to file such motions, the date for filing the motion and supporting brief will be set in the Final Pretrial Order. Generally, the Court will rule on these motions prior to trial.

G. Proposed Orders

In accordance with local rules, 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.”

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court uses an Initial Scheduling Order based on Local Rule 16.1. Pretrial statements must comply with Local Rule 16.1.C. Please see Initial Scheduling Order, *infra*.

2. Scheduling Conferences

Pursuant to Local Rule 16.1, after the filing of an answer by the defendant (or after resolution of a timely filed Rule 12(b) motion), Magistrate Judge Lenihan will issue an order setting the date of the initial scheduling conference. Prior to the conference, the parties shall meet and confer and file a report pursuant to Fed. R. Civ. P. 26(f), the form of which is set forth in Appendix B to the Local Rules, as well as a joint proposed initial scheduling order, in compliance with the practices and procedures of the undersigned, Initial Scheduling Order, *infra*.

3. Pretrial/Settlement Conferences

After the court has ruled on all dispositive motions, a final conference will be held to discuss settlement and any pretrial matters that do not require the decision of the district court judge who will be trying the case. On consent cases, the final pretrial conference shall be conducted in accordance with Local Rule 16.1.D.

4. Settlement

Magistrate Judge Lenihan requires counsel and their clients, or persons with authority, to be present at settlement discussions. Presuming counsel has full authority to negotiate the settlement, and for good cause shown, the client may be permitted to participate by telephone on an as-needed basis.

With the exception of social security appeals, petitions for habeas corpus and prisoner civil rights cases, all cases filed after January 1, 2008 are required to participate in the Court’s ADR program pursuant to Local Rule 16.2.

5. Extensions and Continuances

Requests for extensions of time and continuances shall be presented by written motion, contain supporting facts and indicate the position of opposing counsel. Reasonable extensions will generally be granted.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Counsel must comply with the provisions of Fed.R.Civ.P. 26 generally, and must file the written report required by Rule 26(f) prior to the initial scheduling conference. For cases participating in the ADR program, the length of discovery shall be 150 days if the parties choose mediation or early neutral evaluation as their ADR process. If the parties choose arbitration the length of discovery shall be 120 days. Please see Initial Scheduling Order, *infra*.

2. Expert Witnesses

Expert depositions may be deferred until after dispositive motions upon agreement of the parties and the Court.

3. Discovery/Deposition Disputes

For discovery disputes that arise during a deposition, the attorneys together may contact the Court to resolve the matter at that time. Written motions are discouraged. Upon receipt of a written discovery motion, the Court will conduct a telephone conference with all attorneys as necessary. The non-moving parties may file a response if desired.

4. Requests for Extensions of Discovery

All requests for extensions of discovery must comply with the Court's standing order concerning extensions of discovery, *infra*. For cases participating in the ADR program, it is the policy of the entire court not to grant extensions without exceptional circumstances.

5. Stay of Discovery

The filing of a motion to dismiss or other dispositive motion generally will not stay discovery. A stay may be sought by motion but will be granted only if the right to relief is clear or some other compelling reason exists. Participation in an ADR process will not stay discovery.

6. Limitations on Discovery

The Court follows the Federal Rules of Civil Procedure on this matter and does not impose additional restrictions or limitations.

7. Rule 11 Motions - Rule 37 Sanctions

Counsel are expected to comply with the federal and local rules. The Court has no additional requirements and will rule promptly.

C. Injunctions

Either upon consent of the parties or on referral by a District Court Judge for Report and Recommendation, a briefing schedule will be issued and a hearing date will be scheduled if necessary.

D. Trial Procedures

1. Scheduling of Cases

For cases in which the parties have consented to jurisdiction before this Magistrate Judge, a date certain will be given for trial following the resolution of Rule 56 motions or, if none are filed, at the status conference following the close of discovery. Vacation schedules and personal/professional obligation conflicts of the attorneys, parties and witnesses will be accommodated where possible and the Court must be notified of any conflict as soon as possible.

2. Trial Hours/Days

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

3. Trial Briefs

Trial briefs are not required but are encouraged and should not exceed fifteen (15) pages.

4. Voir Dire

The Magistrate Judge's Deputy Clerk will conduct the preliminary voir dire of potential jurors. Counsel may submit proposed voir dire for the Court's consideration at the time established in the Final Pretrial Order.

5. Notetaking by Jurors

The Court usually allows jurors to take notes unless counsel voice a valid objection.

6. Side Bars

Side bars will be permitted when necessary.

7. Examination of Witnesses Out of Sequence

Magistrate Judge Lenihan will permit the examination of a witness out of sequence, either within the party's own case or within an opposing party's case, if a scheduling conflict exists. In the event that a witness will be unavailable for trial, the witness' testimony may be presented by deposition.

8. Opening Statements and Summations

There are no court imposed time limits on opening statements and closing arguments. Defense counsel may defer opening statements.

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

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

10. Examination of Witnesses Beyond Direct and Cross

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

11. Videotaped Testimony

Magistrate Judge Lenihan does not have any special procedures or requirements with respect to the use or admission of videotaped testimony. Counsel should, however, inform the court in advance of trial of the intention to use such evidence, so that the Judge and parties may discuss the procedures to be utilized.

12. Reading of Material into the Record

Magistrate Judge Lenihan has no policy or rules on this point and it will be considered on a case by case basis.

13. Exhibits

All exhibits must be listed in the Pretrial Narrative Statements. Plaintiff(s) shall use numbers; defendant(s) shall use letters. The parties are expected to comply with Local Rule 16.1.C.5 by exchanging exhibits prior to the final pretrial conference and should be prepared to indicate a position at the final pretrial conference with regard to the authenticity and admissibility of the opponent's exhibits. All exhibits shall be marked before trial. Exhibits may be introduced out of sequence.

Counsel shall obtain the Court's approval in advance for use of any visual aid(s) during opening statement. Otherwise, visual aids are permitted during trial and should be marked and offered into evidence as with any other exhibit.

14. Jury Instructions and Verdict Forms

The Court requires counsel to confer and submit a single set of agreed upon jury instructions and a proposed verdict form. To the extent that the parties cannot agree on a particular instruction or form, each party may submit one for the Court's approval. The date for filing same will be set in the Final Pretrial Order. The Court will hold a charging conference at which time counsel will receive the final charge and verdict form to be given to the jury.

15. Proposed Findings of Fact and Conclusions of Law

In non-jury trials, Magistrate Judge Lenihan permits, and at times requests, the submission of proposed findings of fact and conclusions of law.

16. Offers of Proof

Offers of proof should not be required since the Court sets aside time before and after a trial day to discuss trial/evidentiary matters with counsel. Should the need arise during trial, however, the Court does not impose any restrictions.

17. General Courtroom Rules

Counsel shall conduct themselves with courtesy and civility at all times. The Court will not tolerate discrimination or bias of any kind.

E. Jury Deliberations

1. Written Jury Instructions

Magistrate Judge Lenihan gives the jury a written copy of her jury instructions.

2. Exhibits in the Jury Room

Magistrate Judge Lenihan permits exhibits to be provided to the jury for their deliberations, so long as counsel agrees upon the exhibits that are provided.

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

Where appropriate, Magistrate Judge Lenihan will permit the reading back of testimony to the jury.

4. Jury Questions

If a question is submitted to the Court, the Judge will discuss the question with counsel prior to giving an answer to the jury.

5. Availability of Counsel During Jury Deliberations

Counsel must be available by telephone during jury deliberations.

6. Interviewing the Jury

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

IV. CRIMINAL CASES

Criminal cases before Magistrate Judge Lenihan are limited to petty offenses, misdemeanor charges and preliminary criminal proceedings (e.g., arraignment, detention hearings, etc.). Counsel must be well prepared and have conferred with their client prior to the scheduled criminal proceeding. Counsel shall conduct themselves with courtesy and civility.

ORDER SETTING INITIAL SCHEDULING CONFERENCE

The above-captioned case has been assigned to this Court for pretrial proceedings. Pursuant to Local Rule 16.1 and Rules 16 and 26 of the Federal Rules of Civil Procedure, an initial scheduling conference will be conducted in this case to discuss narrowing of the issues, the extent of pretrial preparation, discovery procedures, the early disposition of controlling questions of law, the probable extent of provable damages, the possibility of settlement, the possibility of the parties consenting to jurisdiction of the Magistrate Judge or requesting a District Judge be assigned to this case and any other matter that will contribute to the prompt disposition of the case.

As required by Rule 26(f) of the Federal Rules of Civil Procedure, the parties must, as soon as practicable and in any event at least ten (10) days before the date set for the initial scheduling conference, "confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to prepare and file a report pursuant to Fed. R. Civ. P. 26(f), the form of which is set forth in Appendix B to the Local Rules. The parties must also file a joint proposed initial scheduling order, in compliance with the practices and procedures of the undersigned, as well as a Stipulation Selecting ADR Process, which is attached to this order as Exhibit A.

The parties are hereby notified that any identified neutral (court approved or private) is required to become a registered user of the electronic case filing system 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 at the initial case management conference that the selected neutral has completed this process.

Therefore,

IT IS ORDERED this ___ day of _____, 200_, that the initial scheduling conference will be held on _____, in Courtroom 7B, U.S. Post Office and Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania. Trial counsel shall attend.

IT IS FURTHER ORDERED that the parties file a Rule 26(f) Report no later than two days before the scheduled conference.

IT IS FURTHER ORDERED that the parties file the Stipulation Selecting ADR Process no later than two days before the scheduled conference.

IT IS FURTHER ORDERED that each party complete and file the form indicating whether they wish consent to jurisdiction of the Magistrate Judge or have a District Judge assigned to the case no later than two days before the conference.

By the Court:

Lisa Pupo Lenihan
United States Magistrate Judge

cc: All counsel of record

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

) _____, Civil Action No. _____ Plaintiff,)) _____, Civil Action No. _____ Magistrate Judge Lisa Pupo Lenihan
v.)	
) _____ , Defendant.)	
))	
))	
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))	
))	
))	

STIPULATION SELECTING ADR PROCESS

Counsel report that they have met and conferred regarding Alternative Dispute Resolution (ADR) and have reached the following stipulation pursuant to L.R. 16.2 and the Court’s ADR Policies and Procedures.

Select one of the following.

Court Processes :

- _____ Mediation
- _____ Early Neutral Evaluation (ENE)
- _____ Arbitration

Private Process*:

_____ Private ADR (please identify process and provider) _____

***If you are utilizing a private process, be advised that the case is still governed by the Court’s ADR Policies and Procedures. It is the responsibility of counsel to ensure that all of the proper forms are timely submitted and filed, as required by Polices and Procedures.**

The parties have agreed to share the ADR costs as follows:

- _____ % by Plaintiff
- _____ % by Defendant

If a dispute arises as to compensation and costs for the mediator/neutral evaluator/private arbitrator, the Court will set reasonable compensation and costs.

The parties hereby designate by agreement the following individual(s) from the Court’s list of **available** Neutrals to serve as a Neutral in the above-styled action:

Name of Neutral: _____
Address of Neutral: _____
Telephone & FAX Numbers: _____
Email address of Neutral: _____

If Arbitration was the selected process, the parties may designate two (2) additional Neutrals per Section 5.3(A) of the Court's ADR Policies and Procedures:

Name of Neutral: _____
Address of Neutral: _____
Telephone & FAX Numbers: _____
Email address of Neutral: _____

Name of Neutral: _____
Address of Neutral: _____
Telephone & FAX Numbers: _____
Email address of Neutral: _____

We, the undersigned parties to this action, declare that this stipulation is both consensual and mutual.

Dated: _____
Attorney for Plaintiff

Dated: _____
Attorney for Defendant

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. All motions and briefs shall use a font size not smaller than 12.
2. A motion shall state the factual and legal grounds for said motion, and shall be accompanied by a proposed Order and a brief in support, except that briefs are not required for motions for extensions of time and motions for continuance. A brief in support of a motion shall not exceed twenty-five (25) pages in length. Motions for summary judgment shall comply with Local Civil Rule 56.
3. Responses to non-dispositive motions shall be filed within fourteen (14) days of service. Responses to motions to dismiss shall be filed within twenty-one (21) days of service, and responses to motions for summary judgment shall be filed within thirty (30) days of service. Responses to all other dispositive motions shall be filed within fourteen (14) days of service unless otherwise ordered. A separate briefing Order will not be issued. Responsive briefs are limited to twenty-five (25) pages in length.
4. Reply briefs for dispositive motions may be filed without leave of Court, but are limited to five (5) pages and shall be filed within ten (10) days of service of the response brief.
5. Sur-reply briefs may be submitted only with leave of court and if permitted, are limited to five (5) pages.
6. Oral argument will generally be reserved for only the most factually and legally complex matters. An order will issue should the Court deem oral argument necessary.
7. Generally, courtesy copies of all motions and briefs should not be forwarded to chambers, including exhibits and attachments, as they are available to the Court from ECF. However, where the exhibits are in excess of 100 pages, the Court prefers that counsel deliver to chambers a paper copy of the appendix/exhibits.

The following additional rules pertain specifically to discovery motions practice:

Counsel shall confer to resolve any discovery dispute **without** judicial intervention. Where the matter is resolved and requires modification of the Initial Scheduling Order, the parties shall file a joint motion and proposed Order requesting amendment. If discovery issues remain unresolved, counsel shall contact the Court to arrange for a telephone conference **before** proceeding to formal motions practice. Any dispute not resolved during the telephone conference shall be presented by motion, with a proposed order, in accordance with Local Rules 7.C. & D., Fed. R. Civ. P. 37(a)(1), and this Order on Motions Practice. All memoranda on discovery issues shall be limited to five (5) pages.

SO ORDERED this **5th day of October, 2015**.

BY THE COURT:

s/Lisa Pupo Lenihan
LISA PUPO LENIHAN
United States Magistrate Judge

STANDING ORDER CONCERNING EXTENSION OF DISCOVERY

In order to promote the prompt disposition of cases for the benefit of the litigants, IT IS
HEREBY ORDERED as follows:

1. All requests for extension of discovery must adequately explain the reasons why discovery was not completed during the original discovery period agreed to by counsel at the outset of the case.
2. All requests for extension of discovery must set forth the revised discovery plan, explaining in detail precisely what discovery will take place within the extended discovery period and when it will occur.
3. To promote uniformity in the handling of requests for extension of discovery or other modifications to the original case management order, all such motions shall be in the form attached to this order.
4. Counsel are forewarned that motions for extension of discovery and/or modification of the case management order will not be granted in the absence of extraordinary circumstances adequately articulated in the motion.
5. Counsel's preoccupation with other cases is not an extraordinary circumstance which would justify the granting of a motion for an extension.

SO ORDERED this 8th day of July, 2004 .

By the Court:

_____/s/
Lisa Pupo Lenihan
United States Magistrate Judge

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

_____,)
)
Plaintiff(s),)
)
vs.) Civil Action No. _____
)
)
_____,)
)
Defendant(s).)

**MOTION FOR EXTENSION OF DISCOVERY DEADLINES
AND/OR MODIFICATION OF SCHEDULING ORDERS**

1. This is the _____ (first or second) request for an extension of discovery deadlines and/or a modification of the Initial/Final Scheduling Order.
2. (A) copy(ies) of the Court’s Initial/Final Scheduling Order and any subsequent Orders is (are) attached.
3. [If applicable] The following ADR process took place on _____:
4. During the original discovery period, the following have taken place:
 - a. The following depositions were taken on the dates set forth below:
 - i. By Plaintiff:
 - ii. By Defendant:
 - b. Motions to produce documents were served on the dates set forth below:
 - i. By Plaintiff:
 - b. By Defendant:
 - c. Interrogatories were served on the dates set forth below:
 - i. By Plaintiff:
 - ii. By Defendant:

5. (Plaintiff) (Defendant) (Plaintiff and Defendant jointly) seek an extension of discovery deadlines or a modification of the Initial/Final Scheduling Order for the reasons set forth below:

6. If this motion is filed by only one of the parties:

- a. The movant has met and discussed this request with opposing counsel;
- b. Opposing counsel does (does not) consent to the extension or modification.

7. The specific request for extension and/or modification is set forth below:

8. The proposed amended case management order is attached.

9. If the motion is granted, the movant will complete the following discovery within the extended discovery period:

- a. Depositions of the following parties on the following dates;
- b. First (second or subsequent) set of interrogatories;
- c. First (second or subsequent) request to produce documents;
- d. Other specific discovery objectives to be completed.

10. Movant understands that absent some extraordinary, unavoidable and unforeseeable circumstances (which do not include moving counsel's preoccupation with other cases), no further extensions for discovery will be granted and the case will proceed to disposition.

Respectfully submitted,

Counsel for Plaintiff/Defendant

FINAL PRETRIAL ORDER

AND NOW, this ____ day of _____, 200_, the Court hereby orders as follows:

1. Jury selection is scheduled for _____ **at 9:30 AM**, in Courtroom 7B, U.S. Post Office & Courthouse, Seventh Avenue & Grant Street, Pittsburgh, Pennsylvania. The trial shall begin _____, **at 9:30 AM**, in the same Courtroom.
2. Plaintiffs shall file a Pretrial Statement no later than _____.
3. Defendants shall file a Pretrial Statement no later than _____.
4. 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. deposition testimony to be read into the record;
 - 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.
5. The parties shall file proposed joint jury instructions, citing authority for each instruction, by _____. The parties are to contact the court to obtain instructions to email the joint proposed instructions to the court as well as filing same. If there are proposed jury instructions on which the parties do not agree, these may be filed separately at the same time.
6. The parties shall file any motions in limine by _____. Responses shall be filed by _____. All briefs supporting or opposing such motions are limited

to 15 pages.

7. The parties shall file any proposed voir dire questions, if different from those listed in the Local Rules, by _____.
8. A final pretrial conference shall be held _____, at _____ AM/ PM, Courtroom 7B, before the undersigned.

Lisa Pupo Lenihan
United States Magistrate Judge

cc: Counsel of Record