

**PRACTICES AND PROCEDURES OF
DISTRICT JUDGE SUSAN PARADISE BAXTER
EFFECTIVE DECEMBER 1, 2018**

I. GENERAL MATTERS

A. Application of Local Rules:

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

B. 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.

C. Communications with the Court:

Counsel are not to send correspondence to Judge Baxter, 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.

D. Communications with Law Clerks:

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

E. Use of Hyperlinking:

The use of hyperlinks to other documents previously filed within the CM/ECF in the Western District of Pennsylvania or any other federal court, and to exhibits cited to within the document is **strongly encouraged** (except for pro se parties).

The use of hyperlinks to Westlaw for cited legal authority is **strongly encouraged** (except for pro se parties), but hyperlinks may not replace standard citation format.

The use of hyperlinks to sealed or restricted documents, any websites other than Westlaw or Lexis/Nexis, or to audio or video files is **prohibited**. If citing to a website, the website must be converted to a .pdf file that clearly shows the date the website was accessed and attached as an exhibit.

Hyperlinking must comply with the hyperlinking protocol in the Court's Electronic Case Filing Policies and Procedures. Non-confirming documents may be ordered stricken by the Court.

F. Telephone Conferences:

Requests for counsel of parties to participate by phone will be considered on a case by case basis for good cause. Any such request must be made by motion filed more than two (2) business days prior to the scheduled conference.

G. Pro Hac Vice Admissions:

Judge Baxter routinely grants motions for pro hac vice admissions that comply with all applicable rules, including this Court's Local Rules.

H. Comments to the Media:

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

II. MOTIONS PRACTICE

A. Generally:

1. Proposed Orders:

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

2. Briefs:

Briefs in support of a motion shall be filed contemporaneously with all motions except discovery motions (see Section D.2.), motions for extension of time, and motions for continuance, for which no briefs are required.

3. Scheduling Deadlines for Responses to Non-dispositive Motions:

Unless otherwise ordered, responses to all non-dispositive motions shall be filed within ten (10) calendar days of service. Because, generally, a separate briefing

order will not be issued, the contention that a party failed to respond because a party was awaiting a briefing order will not pass muster.

4. 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.

5. Chambers Copies of Motion Papers:

In light of the establishment of CM/ECF, no paper courtesy copies should be delivered to Chambers.

6. Oral Argument:

Oral argument is only granted on selected, factually or legally complex matters. If the Court deems oral argument to be appropriate, an order will issue. Judge Baxter does not set aside a specific day or time for argument of motions.

7. Evidentiary Hearings:

Evidentiary hearings on pretrial matters, when deemed to be appropriate by the Court, generally are scheduled in advance of trial. When counsel concludes that an evidentiary hearing is appropriate, they should confer with opposing counsel and request a hearing by motion.

B. Motions to Dismiss:

1. Certificate of Conferral:

Given that motions pursuant to Federal Rule of Civil Procedure 12(b) are discouraged if the pleading defect is curable by amendment, the Court requires that parties meet and confer prior to the filing of such a motion to determine whether it can be avoided. The duty to meet and confer extends to parties appearing pro se, but does not apply to incarcerated pro se litigants. Consistent with this rule, motions to dismiss must be accompanied by a certificate of the movant, stating that the moving party has made good faith efforts to confer with the nonmovant/s to determine whether the identified pleading deficiencies properly may be cured by amendment. Motions to dismiss that do not contain the required certification will be summarily denied.

In addition, the parties shall endeavor not to oppose motions to amend the pleadings that are filed prior to the Initial Case Management Conference, or within the time set forth in the parties' Rule 26(f) Report and/or the Court's Rule 16 Case Management Order.

2. Partial motions to dismiss:

Partial motions to dismiss are acceptable but they **do not** excuse defendants from the obligation to file an answer.

3. Briefs:

A brief in support of a motion to dismiss shall be filed contemporaneously with the motion. Motions to dismiss filed without a supporting brief will be summarily dismissed.

The brief must contain all information relevant to disposition of the pending motion. Incorporating previously filed motions or briefs is prohibited.

Supporting and responsive briefs are limited to twenty-five (25) pages in length. Reply briefs on Rule 12(b) and Rule 12(c) are permitted without leave of Court. Such reply briefs are limited to five (5) pages in length and should be narrowly tailored to address only those matters newly raised in the response brief. Surreply briefs are strongly discouraged and may only be filed with leave of Court.

4. Scheduling Deadlines for Responses to Motions to Dismiss:

Responses to Rule 12 motions shall be filed within **twenty (20) calendar days** and Reply briefs shall be due within **five (5) calendar days**. **Because, generally, a separate briefing order will not be issued, the contention that a party failed to respond because a party was awaiting a briefing order will not pass muster.**

C. Motions for Summary Judgment:

1. Briefs and other supporting filings:

A brief in support of a motion for summary judgment shall be filed contemporaneously with the motion. Motions for summary judgment filed without a supporting brief will be summarily dismissed.

The brief must contain all information relevant to disposition of the pending motion. Incorporating previously filed motions or briefs is prohibited.

Supporting and responsive briefs are limited to twenty-five (25) pages in length, excluding exhibits and Concise Statements submitted in support of, or in opposition to, summary judgment motions. Reply briefs on Rule 56 motions are permitted without leave of Court. Such reply briefs are limited to five (5) pages in length and should be narrowly tailored to address only those matters newly raised in the response brief. Surreply briefs are strongly discouraged and may only be filed with leave of Court.

The argument portion of every brief in support of a motion for summary judgment shall cite to current authority from the Supreme Court and the Third Circuit, if

available, that establishes the essential elements of each claim for which the moving party seeks summary judgment.

Strict compliance with the provisions of Local Rule 56 is required. Every motion for summary judgment and supporting brief, if based on the affirmative proof of facts, **shall be accompanied by a Concise 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 materials accompanying the motion. There is no page limitation for Concise Statements.

Documents referenced in the Concise Statement shall be included in an Appendix. The evidentiary materials included in the Appendix shall be limited to the amount necessary to support the motion.

2. Opposition filings:

Each party opposing a motion for summary judgment shall file in addition to its brief in opposition, **a response to the moving party's Concise Statement of Material Facts.** See Local Rule 56. In paragraphs corresponding to the Concise Statement, 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 in an appendix. **When responding to the Concise Statement of Material Facts, the responding party must include a reprint of each original fact statement, followed by the response, seriatim.** There is no page limitation for Responses to Concise Statements.

The Responsive Concise Statement may also contain any other material facts, set forth in separately numbered paragraphs with appropriate citation to the evidentiary material contained in the Appendix, that are necessary for the Court to determine the motion for summary judgment.

As per Local Rule 56, opposition filings to motions for summary judgment shall be filed within **thirty (30) calendar days** of service. **Because, generally, a separate briefing order will not be issued, the contention that a party failed to respond because a party was awaiting a briefing order will not pass muster.**

3. Reply filings:

Local Rules provide for Reply brief without leave of Court to be filed within **fourteen (14) calendar days** of service. **Because, generally, a separate briefing order will not be issued, the contention that a party failed to respond because a party was awaiting a briefing order will not pass muster.**

Any new material fact raised in the Responsive Concise Statement must be addressed by the opposing party in the same manner as the Responsive Concise Statement addressed the material facts raised in the Concise Statement and must be filed within **fourteen (14) calendar days** of service. **No separate briefing order will issue. Failure to respond will not be excused because a party was awaiting a briefing order will not pass muster.**

Surreply briefs are strongly discouraged and may only be filed with leave of Court.

4. Admission of Material Facts:

As provided by Local Rule 56, alleged material facts set forth in the moving party's Concise Statement of Material Facts or in the opposing party's Responsive Concise Statement, which are claimed to be undisputed, will for the purpose of deciding the motion for summary judgment be deemed admitted unless specifically denied or otherwise controverted by a separate responsive concise statement of the opposing party.

D. Other Motions:

1. Discovery Motions:

Discovery motions should be extremely brief and must be accompanied by a telephone call to Chambers where a conference to resolve the motion will be scheduled by the Courtroom Deputy so that the case does not become stalled. The discovery at issue should be attached to the motion. No brief in support shall be filed.

2. Motions for Reconsideration:

Any motions for reconsideration shall be filed within **ten (10) calendar days**. Any responses to same shall be filed within **ten (10) calendar days** thereafter.

3. 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 forth in the Final Pretrial Order. Generally, the Court will rule on these motions prior to trial.

4. 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 16-16C.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.

E. Objections to 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). Objection 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's orders on discretionary issues pertaining to discovery disputes are discouraged. If new legal authority or evidence is presented in Objections or Responses thereto not previously presented to the Magistrate Judge, a reason for that failure must be given or the new offering will not be considered.

III. ADDITIONAL PROCEDURES IN CIVIL CASES

A. Pretrial Procedures:

1. Initial Scheduling Order:

The Court uses an Initial Scheduling Order based on Local Rule 16.1.B.

2. Initial Case Management Conference (ICMC):

Pursuant to Local Rule 16.1, after the filing of an Answer by the defendant, Judge Baxter 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 LCvR 16.1.A" to the Local Rules.

3. Settlement Authority and ADR:

In jury cases, Judge Baxter **requires** counsel and their clients, or other persons with ultimate settlement authority if the client does not have ultimate settlement authority (including insurance company representatives with knowledge of the matter), to be present at settlement conferences, including the Final Pretrial Conferences. A person with ultimate settlement authority is not someone who is required to consult with other individuals, by telephone or otherwise, to obtain approval for any proposed settlement term or amount. **Should the Court determine that the client/representative present does not have ultimate settlement authority, sanctions may be imposed.** Although highly discouraged, with prior leave of Court and only for good cause shown, persons with ultimate settlement authority may be permitted to participate by telephone on rare occasions. Otherwise, telephone participation in a settlement conference **is not permitted.**

The Local Rules require that all non-prisoner cases participate in the Court's ADR program pursuant to Local Rule 16.2. Prior to the Initial Case Management

Conference, counsel **must** submit a Stipulation to an ADR process consistent with Local Rule 16.2.D. Stipulation forms are available on the Court's website and **must** specify a proposed neutral. If the parties cannot agree on an ADR process and/or a proposed neutral, the Court will make the ultimate selection.

4. 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 for good cause shown. Requests for extensions of time should include suggested alternative dates on which all parties are available. All such requests should be filed more than two (2) business days prior to the deadline to which the motion refers. In the unusual event that parties must seek an extension or a continuance by phone rather than by motion, all parties shall be on the line and must have their calendars in front of them.

5. Post-Discovery Status Conferences:

Following the end of fact discovery, Judge Baxter will conduct a status conference in which the parties will discuss any expert witnesses, motions for summary judgment, potential trial dates, and interest in settlement discussions.

After the Court has ruled on all dispositive motions, a final status conference will be held to discuss settlement and pretrial matters. Prior to that conference, the parties shall meet and confer regarding settlement of the case. A Pretrial Order will issue.

6. The Final Pretrial Conference:

The Final Pretrial Conference shall take place immediately prior to the beginning of trial.

B. Discovery Matters:

1. Length of Discovery Period:

Counsel must comply with the provisions of Fed.R.Civ.P. 26 and must file the written report required by Rule 26(f) prior to the Initial Case Management Conference. For cases that are subject to the Court's 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.

2. Expert Witnesses:

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

3. Discovery/Deposition Disputes:

Counsel for the parties must confer on discovery disputes, prior to seeking the Court's intervention. If counsel for the parties cannot resolve the dispute, Judge Baxter requires that the parties file an extremely brief motion which must be accompanied by a telephone call to Chambers where a conference to resolve the motion will be scheduled by the Courtroom Deputy. The discovery at issue should be attached to the motion. No brief in support shall be filed. Absent good cause shown, a failure to follow the above procedures shall result in a denial of any discovery motion, without prejudice.

For discovery disputes that arise during a deposition, the attorneys together may contact the Court via telephone to resolve the matter.

4. Stay of Discovery:

The filing of a motion to dismiss or other dispositive motion will not stay discovery. Participation in an ADR process will not stay discovery.

5. Limitations or Expansions on Discovery:

The Court follows the Federal Rules of Civil Procedure on this matter and does not impose additional restrictions or limitations. To the extent that the parties seek to expand the limits set forth in the Federal Rules of Civil Procedure, this should be addressed in the parties' Rule 26(f) report. See "Appendix LCvR 16.1A" to the Local Rules.

6. 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. Preliminary Injunctions and Temporary Restraining Orders:

Federal Rule of Civil Procedure 65 governs motions for preliminary injunction and/or temporary restraining order and litigants are encouraged to review that Rule prior to the filing of any motion for injunctive relief. Any ex parte contact with the Court should be avoided. For a temporary restraining order without notice, the moving party must meet the requirements of Federal Rule of Civil Procedure 65(b). Consistent with Rule 65, no temporary restraining order will issue (1) when the opposing party has been served; (2) when the motion provides no certification indicating that prompt service cannot be accomplished; or (3) when the motion is unaccompanied by an affidavit or verified complaint consistent with Rule 65(b)(1)(A).

The moving papers in support of a temporary restraining order or preliminary injunction should include affidavit/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.

All requests for preliminary injunction or temporary restraining order will be handled as expeditiously as possible. Following a review of the pleadings, the Court will determine whether to conduct a hearing, whether the injunction hearing should be consolidated with a trial on the merits, the scope of the necessary testimony and evidence to be presented and whether expedited discovery should be granted.

D. Trial Procedures:

1. Scheduling of Cases:

A date certain will be given for trial following the resolution of Rule 56 motions or, if none is filed, in the Final Pretrial Order. Vacation schedules, personal/professional obligations, and religious holidays that conflict with the trial date will be accommodated when possible. The Court must be notified of any potential conflict as soon as possible.

2. Division Jury Terms:

The jury terms for the Erie Division are set by Order of the Chief Judge of the Western District of Pennsylvania in August of the preceding year and are available on the Court's website.

3. Trial Hours/Days:

Generally, cases will be tried Monday through Friday from 9:30 a.m. to 4:30 p.m., with breaks as appropriate. Judge Baxter will meet with counsel before and after these appointed times to discuss trial/evidentiary issues. These times are subject to special consideration which will be given to jurors traveling from a great distance.

4. *Voir dire*:

In civil cases, Judge Baxter 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. Note-taking by Jurors:

Judge Baxter allows jurors to take notes, unless a valid objection is voiced.

6. Side Bars:

Reasonable side bar conferences will be permitted when necessary.

7. Examination of Witnesses Out of Sequence:

Judge Baxter will permit the examination of a witness out of sequence, either within the party's own case or within an opposing party's case, on a showing of good cause or by consent of all parties. In the event that a witness will be unavailable for trial, the

witness's testimony may be presented by video deposition or deposition testimony may be read into the record.

8. Opening and Closing Statements:

There may be time limits placed on opening and closing arguments. The Court will determine those limits at the Final Pretrial Conference.

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

Only one attorney for each party may conduct an examination of any witness.

10. Examination of Witnesses Beyond Direct and Cross:

Judge Baxter will permit redirect and recross of a witness as necessary.

11. Videotaped Testimony:

Judge Baxter does not have any special procedures or requirements with respect to the use or admission of videotaped testimony but requires the parties to comply with the Local Rules governing video depositions, except that the recording is not to be filed with the Clerk. Counsel should inform the Court in advance of trial of the intention to use video testimony, so that the Judge and parties may discuss the procedures to be utilized. Additionally, at least week prior to trial, counsel should make every effort to test the video/audio quality of such testimony utilizing the Court's technology.

12. Reading of Material into the Record:

Judge Baxter has no policy or rules on this issue. Any request in this regard will be considered on a case-by-case basis.

13. Glossary:

Where necessary, counsel shall confer and prepare a joint glossary of any unusual or technical terms. The glossary shall be submitted to Chambers no later than three (3) business days in advance of the start of trial. Counsel shall provide copies of the glossary to the courtroom deputy and the court reporter on the first day of trial.

14. Exhibits:

All exhibits must be listed in the Pretrial Narrative Statements. Generally, plaintiff/s shall use a "P" followed by an exhibit number and defendant/s shall use a "D" followed by an exhibit number. The parties are expected to comply with Local Rule 16.1.C.5.a 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. As many exhibits as are able to be offered into evidence without objection should be offered prior to testimony.

Counsel shall obtain the Court's approval in advance for use of any demonstrative aid/s during opening statements. Demonstrative aids are permitted during trial absent a sustained objection.

15. 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. The Court requires the use of the Model Jury Instruction for the Third Circuit, where applicable. To the extent that the parties cannot agree on a particular instruction or form, counsel for each party shall submit his/her version of the particular instruction and/or form, along with supporting authority for that instruction or form. If the party believes that a particular instruction should not be included at all, that party shall submit supporting authority for that position. The date for filing proposed jury instructions and verdict forms will be set in the Final Pretrial Order. Toward the close of trial, 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.

16. Proposed Findings of Fact and Conclusions of Law:

In non-jury trials, Judge Baxter requires the submission of proposed findings of fact and conclusions of law. The parties shall file consecutively numbered proposed findings of fact and conclusions of law. The proposed findings of fact shall address each contested issue of fact and cite support by clear and explicit reference to the record evidence relied upon. Each proposed conclusion of law shall be supported by citation to the appropriate authority. With the proposed findings of fact and conclusions of law, the parties also shall file and serve a brief in support of judgment that integrated the proposed findings of fact with the proposed conclusions of law to demonstrate why the relief requested should be granted. The supporting brief shall not exceed twenty (20) pages. The proposed findings of fact and conclusions of law, along with the supporting brief, shall be filed within twenty (20) days of the final day of trial. The Court also requires that the parties separately submit to the Court their respective proposed findings and conclusions in an editable word processing format.

17. Offers of Proof:

There are no restrictions on offers of proof at trial.

18. General Courtroom Decorum:

Counsel shall conduct themselves with respect, courtesy, and civility at all times. The Court will not tolerate demonstrations of hostility or of discrimination or bias of any kind. Such unprofessional displays may result in the imposition of sanctions.

E. Jury Deliberations:

1. Written Jury Instructions:

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

2. Exhibits in Jury Room:

Judge Baxter permits exhibits to be provided to the jury for their deliberations, so long as counsel agree upon the exhibits that are to be provided and the exhibits are not contraband.

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

Where appropriate, Judge Baxter 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:

All counsel must be available in person or by telephone during jury deliberations.

6. Interviewing the Jury:

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

Although Judge Baxter does not discourage counsel from interviewing jurors post-verdict, attorneys should advise the Court of their intention to interview a juror prior to doing so. Should a juror inform counsel that they do not wish to be interviewed, counsel shall refrain from further interaction with that juror.

IV. CRIMINAL CASES

V. PATENT CASES

VI. BANKRUPTCY APPEALS TO THE DISTRICT COURT