

**PRACTICES AND PROCEDURES OF
JUDGE CATHY BISSOON**

I. GENERAL MATTERS

A. Communications with the Court:

Counsel are not to send correspondence to Judge Bissoon, 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:

Unless specifically directed to do so, counsel are not to contact Judge Bissoon'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 are discouraged, but will be considered on a case by case basis for good cause.

D. Pro Hac Vice Admissions:

Judge Bissoon routinely grants motion for pro hac vice admissions that comply with all applicable rules, including this Court's local rules. Counsel are encouraged to review all local rules to ensure compliance.

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. Motions to Dismiss:

Given that motions pursuant to Federal Rule of Civil Procedure 12(b) are discouraged if the pleading defect is curable by amendment, the parties must 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. Consistent with the foregoing, 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. Furthermore, a non-moving party's non-compliance with this Order, including a failure to timely engage in the meet-and-confer process, may result in the assessment of monetary and/or nonmonetary sanctions. Those sanctions may include, but are not limited to, an assessment of attorneys' fees and costs associated with the filing of the motion to dismiss; and/or a denial of the non-movant's subsequent request for leave to amend.

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.

B. 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 Bissoon does not set aside a specific day or time for argument of motions.

C. Briefs:

Any motion 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/or legal citation to permit meaningful judicial review.

Supporting and responsive briefs are limited to twenty-five (25) pages in length, excluding exhibits and fact statements submitted in support of, or in opposition to, summary judgment motions. **Only** reply briefs on Rule 12(b), Rule 12(c) and Rule 56 motions are permitted without leave of Court. Such replies shall be no more than five (5) pages in length and should be narrowly tailored to address only those matters newly raised in the response brief. Requests for surreply briefs are strongly discouraged.

Except as otherwise provided herein, counsel must follow Local Rule 56 when filing and responding to summary judgment motions.

D. Response to Statement of Facts on Summary Judgment:

When responding to a Statement of Facts pursuant to Rule 56, the responding party must include a reprint of each original fact statement, followed by the response, seriatim.

E. Courtesy Copies:

Unless otherwise directed by order, or upon request of chambers, courtesy copies should not be delivered to the Court.

F. Scheduling:

Unless otherwise ordered, responses to all non-dispositive motions shall be filed within eleven (11) **calendar** days of service. Responses to Rule 12 motions shall be filed within twenty (20) **calendar** days, and responses to Rule 56 motions shall be filed within thirty (30) days of service. Reply briefs on Rule 12(b), Rule 12(c) and Rule 56 motions shall be due within five (5) **business** days of service of a response. **Because, generally, a separate briefing order will not be issued, the contention that a party failed to respond because that party was awaiting a briefing order will not pass muster.** Where a brief is required, it must be filed simultaneously with the motion.

Following a Post-Discovery Status/Settlement Conference, the Court will issue an order setting forth, *inter alia*, the deadline for filing summary judgment motions.

G. 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.

H. 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.

I. 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. 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 Scheduling Conference:

Pursuant to Local Rule 16.1, after the filing of an Answer by the defendant, Judge Bissoon 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 16.1A” to the Local Rules. Additionally, in **jury** cases, at least three (3) business days prior to the Initial Rule 16 Scheduling Conference, counsel for every party shall submit a position letter to this Court.¹ The position letter shall set forth the following: (a) A brief recitation of the facts; (b) A discussion of your party’s strengths and weaknesses; and (c) Your party’s settlement posture. To ensure candor, the position letters are not to be filed nor shared with opposing counsel, but rather, **emailed** to: bissoon_external@pawd.uscourts.gov. All position letters will be kept **confidential**.

¹ Position papers should not be submitted in non-jury cases before Judge Bissoon.

3. Post-Discovery Status/Settlement Conference:

A Post-Discovery Status Conference will be held no more than 30 days after the close of discovery in each case. In **jury** cases, the Post Discovery Status Conference also will serve as a Settlement Conference. Prior to that conference, the parties shall meet and confer regarding settlement of the case and, in **jury** cases, at least three (3) business days prior to the Post-Discovery Status Conference, counsel for every party shall submit a position letter to this Court.² The position letter shall set forth the following: (a) A brief recitation of the facts; (b) A discussion of your party's strengths and weaknesses; and (c) Your party's settlement posture. To ensure candor, the position letters are **not** to be filed nor shared with opposing counsel, but rather, **emailed** to:

bissoon_external@pawd.uscourts.gov. All position letters will be kept **confidential**.

4. Final Pretrial/Settlement Conference:

After the court has ruled on all dispositive motions, a final conference will be held to discuss settlement and any pretrial matters. The final pretrial conference shall be conducted in accordance with Local Rule 16.1.C. and these Practices and Procedures. Prior to that conference, the parties shall meet and confer regarding settlement of the case and, in **jury** cases, at least three (3) business days prior to the Final Pretrial Conference, counsel for every party shall submit a position letter to this Court.³ The position letter shall set forth the following: (a) A brief recitation of the facts; (b) A discussion of your party's strengths and weaknesses; and (c) Your party's settlement posture. To ensure candor, the position letters are

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5. Settlement Authority and ADR:

In jury cases, Judge Bissoon **requires** counsel and their clients, or other persons with ultimate settlement authority if the client does not have ultimate settlement authority (including insurance companies), to be present at settlement conferences, including Post-Discovery and 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 leave of Court and for good cause shown, persons with ultimate settlement authority may be permitted to participate by telephone. Otherwise, telephone participation in a settlement conference **is not permitted**.

Cases filed after January 1, 2008, are required to 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.

6. 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.

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 scheduling conference. Generally, for cases filed after January 1, 2008 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:

Expert depositions that are not relevant to Rule 56 motions will be deferred until after a ruling on such motions.

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 Bissoon **requires** that the parties contact the Court to set up a conference in an effort to resolve the matter, rather than file a formal discovery motion. 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 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.

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. Injunctions and TROs:

Federal Rule of Civil Procedure 65 governs motions for preliminary injunctions and/or temporary restraining orders 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 temporary restraining orders 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).

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 are filed, in the Final Pretrial Order. Vacation schedules and personal/professional obligations that conflict with the trial date will be accommodated where possible. The Court must be notified of any conflict as soon as possible.

2. Trial Hours/Days:

Generally, cases will be tried Monday through Thursday from 9:00 a.m. to 4:30 p.m., with breaks as appropriate. Absent extraordinary circumstances, testimony will not be heard on Fridays, although closings, jury charges and jury deliberations may take place on Fridays. Judge Bissoon 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 when counsel believe that such briefs would assist the Court. Such briefs should not exceed fifteen (15) pages and should be filed at least one (1) week prior to trial.

4. *Voir dire:*

In civil cases, Judge Bissoon's Deputy Clerk or Law Clerk may conduct the preliminary *voir dire* of potential jurors consistent with the Local Rules. 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 Bissoon allows jurors to take notes, unless a valid objection is voiced.

6. **Side Bars:**

Reasonable side bars will be permitted when necessary.

7. **Examination of Witnesses Out of Sequence:**

Judge Bissoon 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 statements. The Court will determine those limits at the Final Pretrial Conference. Defense counsel may defer opening statements.

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

Only one attorney for each party may conduct an examination of any witness, argue any motion or point, or give the opening or closing statements. Any rebuttal may be done by another attorney.

10. Examination of Witnesses Beyond Direct and Cross:

Judge Bissoon will permit redirect and recross of a witness as necessary, but does not typically permit any further examination.

11. Videotaped Testimony:

Judge Bissoon 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, 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 Bissoon 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. 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. While exhibits may be introduced out of sequence, this is not preferred. Should there be multiple

plaintiffs or multiple defendants, the “P” or “D” designation should be followed by the party’s surname initial or the first letter of the company’s name.

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.

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. The Court requires the use of the Model Jury Instructions 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 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, Judge Bissoon 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 conclusion of law, the parties also shall file and serve a brief in support of judgment that integrates 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.

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 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 sanctions.

E. Jury Deliberations:

1. Written Jury Instructions:

Judge Bissoon gives the jury a written copy of her final jury instructions.

2. Exhibits in the Jury Room:

Judge Bissoon 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 Bissoon will permit the reading back of testimony or recorded evidence 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 in person or by telephone during jury deliberations.

6. Interviewing the Jury:

Judge Bissoon advises jurors that they do not have to respond to inquiries from counsel. Should a juror inform counsel that they do not wish to be interviewed or debriefed, counsel shall refrain from further interaction with that juror.

IV. CRIMINAL CASES

A. Motions for Extensions of Time:

Reasonable requests for extensions of time to file pretrial motions will be granted for good cause and, in particular, in cases with a significant amount of discovery or in cases involving a wiretap or complex factual scenario. Appropriate language excluding such delay from the operation of the Speedy Trial Act must be included in any proposed order on such a motion. Should a criminal defendant request more than five extensions, Judge Bissoon likely will require a conference to assess the status of the case.

B. Motions for Pre-Plea Presentence Report:

Judge Bissoon will not grant a motion for a pre-plea presentence report unless a criminal defendant has consented to the submittal and disclosure of such report, consistent with Federal Rule of Criminal Procedure 32(e)(1). Defendant's written consent/waiver shall be deemed acceptable to the Court if it is in the following form:

DEFENDANT'S CONSENT TO SUBMITTAL AND DISCLOSURE OF A
LIMITED PRESENTENCE INVESTIGATION REPORT AND WAIVER OF
FEDERAL RULE OF CRIMINAL PROCEDURE 32(e)(1)

I, [NAME OF CRIMINAL DEFENDANT], after having been fully advised of my rights pursuant to Federal Rule of Criminal Procedure 32(e)(1), the text of which is set forth below, consent to the submittal and disclosure of a limited presentence investigation report by the United States Probation Office. This report shall be for the limited purpose of obtaining a criminal history calculation as it applies to career offender status and its impact on my criminal history score and offense level. I consent to the review of my presentence investigation report by a judge at any time, including the time prior to entry of a plea of guilty or nolo contendere. I further acknowledge the report will be made available for review to the parties in this case, including the prosecution.

Federal Rule of Criminal Procedure 32(e)(1) provides that: "[u]nless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty."

I have read, or had read to me, the foregoing consent and waiver and fully understand it.

[SIGNATURE OF CRIMINAL DEFENDANT]

C. Status/Pretrial Conferences:

Status conferences will be scheduled as necessary or upon the request of counsel. An initial status conference also will be held in accordance with our Court's Local Rules. Additionally, following the Court's ruling on pretrial motions, the Court will conduct a status conference at which counsel for Defendant/Defendants must advise the Court of their client's/clients' intention to elect a jury or non-jury trial or to plead guilty. A pretrial conference will be conducted in advance of trial.

D. Pretrial Procedures:

1. Brady Material:

Brady material should be exchanged as soon as practicable and well in advance of trial.

2. Jencks Act:

The government is encouraged to provide Jencks Act material as soon as practicable, but no later than the date on which jury selection begins.

3. 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. Transcripts of tape recorded conversations:

Transcripts of tape recorded conversations generally will be permitted, although the jury will be instructed that the transcripts are not evidence, but rather, the recordings themselves are evidence.

5. Special Interrogatories:

Special interrogatories to the jury will be permitted in appropriate cases, or if required for sentencing.

E. Trial:

With the exception of *voir dire*, exhibits and scheduling, Judge Bissoon's criminal trial policies and procedures are the same as her civil trial policies and procedures.

1. Scheduling:

Criminal cases take priority on Judge Bissoon's docket because of the Speedy Trial Act. Following the Court's ruling on pretrial motions, the Court will immediately conduct a status conference at which counsel for Defendant/Defendants must advise the Court of their client's/clients' intention to elect a jury or non-jury trial or to plead guilty. The Court will proceed immediately to schedule a trial or plea hearing on a date certain as soon as reasonably practicable.

2. Voir dire:

Judge Bissoon, with the assistance of her Deputy Clerk or Law Clerk, will conduct *voir dire* of potential jurors in all criminal cases. Counsel may submit proposed *voir dire* for the Court's consideration at the time established in the Final Pretrial Order.

3. Exhibits:

Generally, the government shall use a "G" designation followed by an exhibit number and Defendant(s) shall use a "D" followed by an exhibit number.

F. Guilty Pleas:

Counsel are encouraged to engage in plea bargain negotiations as early as possible to avoid disrupting the Court's trial schedule. If a plea agreement is reached, counsel for the government must promptly provide a copy of the agreement to the Court so that a hearing may be scheduled. Counsel for the government and the defendant will be called upon to summarize the plea agreement on the record, under seal, at the hearing.

If a plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), generally, the Court will defer a decision on the plea agreement until after a presentence report has been filed and the parties have had an opportunity to challenge the facts and guideline calculations recommended by the Probation Office. The Court will advise the parties of the Court's decision to accept or reject the plea agreement within three days of the date of sentencing.

G. Sentencing:

Counsel are encouraged to file with the Court legal memoranda in aid of sentencing, but are not required to do so. If such memoranda are to be submitted, they must be filed no later than seven (7) calendar days before sentencing. The submission of supplemental information regarding sentencing is governed by Local Criminal Rule 32.C.8, and such information likewise must be filed by no later than seven (7) calendar days before sentencing. Counsel must notify the Court at least two (2) weeks prior to sentencing as to whether extensive testimony will be presented at the sentencing hearing.

H. Motions to Travel:

Defendant's counsel shall make every effort to ascertain the position of the Government as well as the Probation/Pretrial Services Office before filing a motion to travel, and include said positions in any motion.

V. PATENT CASES

Patent cases will be governed by the Court's Local Patent Rules. Judge Bissoon is a designated patent judge of the Court's Patent Pilot Program.

VI. BANKRUPTCY APPEALS TO THE DISTRICT COURT

Appellant's Brief is due 30 days after the filing of a notice of appeal. Otherwise, briefing will be governed by Federal Bankruptcy Rule 8018.

VII. ERIE CASES

Judge Bissoon is on the "wheel" to preside over civil, non-prisoner cases in the Erie Division. With respect to these cases, counsel should follow all Practices and Procedures outlined above, except that all Rule 16 Case Management Conferences shall take place telephonically, unless counsel for a party is local to the Pittsburgh courthouse, in which case that counsel should be prepared to attend the Rule 16 Case Management Conference in person. Absent an indication to the contrary, or a specific and unanimous request by counsel, all other conferences and trial, will take place in Erie.