

**PRACTICES AND PROCEDURES OF
JUDGE ROBERT J. COLVILLE**

I. GENERAL MATTERS

A. Communications with the Court

Communication with the Court shall be in the form of motions (rather than letters to Chambers), accompanied by a proposed order specifying the relief requested. In an emergency situation, counsel should telephone Chambers. The Court should not be copied on correspondence between counsel.

B. Communications with Law Clerks and Other Staff

Communications with law clerks, the Judicial Assistant, and the Courtroom Deputy Clerk concerning the administration, not the merits, of a case, or to request a status conference, are permissible. Such inquiries include those pertaining to the status of any pending matter. Counsel must affirmatively confirm that any communication is with the knowledge and concurrence of all parties.

C. Filing and Service on CM/ECF

Counsel (not the Court) is responsible for the filing of all pleadings, documents, or any other material provided to the Court and/or the Clerk, and for service upon opposing counsel or pro se parties. The Court is not responsible for filing and/or service of pleadings, documents or any other material of the parties. All filings must be made on the District's CM/ECF electronic filing system, unless otherwise permitted or directed by the Local Rules of Court. For guidelines and information on CM/ECF, and how to become a registered user of the system, please refer to <https://www.pawd.uscourts.gov> and click on the CM/ECF Electronic Filing tab. The Court may require any pro se litigant to become a registered CM/ECF user.

D. ADR

The Court follows the ADR Policies and Procedures available on the Court's website (<https://www.pawd.uscourts.gov>). For cause shown, specific to a given case, the Court may adjust the ADR timeline and procedures.

E. Telephone Conferences

Requests for attorneys and parties to participate in conferences by telephone will be considered on a case-by-case basis. Unless otherwise ordered by the Court, however, settlement conferences, final pretrial conferences, and oral arguments will not ordinarily be conducted by telephone. Lead trial counsel, parties, and any authorized insurance representatives are expected to appear in person for noticed settlement conferences.

When warranted, the court will provide a conference call-in number to the parties prior to the conference.

F. Pro Hac Vice Admissions

Pro hac vice motions should be filed of record and are routinely granted if all of the requirements of Local Rule 83.2.B are met.

G. Comments to the Media

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

H. Amendment of Practices and Procedures

The Court's Practices and Procedures are available online and will be updated periodically. Counsel are responsible for keeping informed of any such changes.

I. Consultation by Counsel/Attendance of Necessary Counsel

All counsel are expected to confer with one another prior to any conference with the Court to review any issue which may be raised by counsel at such conference and to provide to one another their respective positions on all such matters. All parties (other than those proceeding pro se) shall be represented at any conference by counsel who is a member of the Bar of this Court (or who has been or will be admitted specially), has entered an appearance, and is sufficiently familiar with all legal and factual matters involved in the action. At any conference, counsel shall be prepared to discuss in detail and argue any pending motions, and to discuss settlement.

J. Pronouns and Titles

Should any participant wish to be addressed by a particular pronoun or title, responsible counsel (or any unrepresented party) may contact the Court via email to tyler_klein@pawd.uscourts.gov, indicating the specified participant's pronoun and/or title preferences (i.e., he, she, they etc., and/or Mr., Ms., Mrs., Mx., etc.).

II. MOTION PRACTICE

A. Oral Argument

Motions may be decided with or without oral argument as determined by the Court. Any party believing that oral argument will materially advance the decisional process may so advise the Court and request argument.

B. 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."

C. Briefs, Responses and Replies, and Page Limits

See Judge Colville's Standing Order and Procedures on Civil Motion Practice (available online at <https://www.pawd.uscourts.gov>).

D. Chambers Copies of Motion Papers

See Judge Colville's Standing Order and Procedures on Civil Motion Practice (available online at <https://www.pawd.uscourts.gov>).

E. Magistrate Judges' Reports and Recommendations

Reports and Recommendations to which objections have been filed will usually not be decided until a response is filed by the non-objecting party (or opposite party if both object), unless no objections are filed in a timely manner, or the Court concludes that the objections are without merit. Briefs in support of or in response to Objections are permitted. Such briefs shall not exceed fifteen (15) pages. If no Objections have been timely filed, a decision will be made solely on the basis of the Report and Recommendation, the previously filed briefs, and the record.

F. Evidentiary Hearings

Hearings necessitated by pretrial or other motions will be held as ordered by the Court. Any party whose motion relies in any part on a contested factual issue should request a hearing on the matter, and be prepared to offer evidence at any hearing on the motion if scheduled.

G. Motions in Limine/ *Daubert* Motions

Deadlines for filing motions in limine and *Daubert* motions, with their respective supporting briefs and proposed orders of court, will be set forth in the pretrial or post-discovery scheduling orders. Motions in limine will be ruled upon in advance of trial, when possible.

H. Motions for Leave to Amend Pleadings

Parties should comply with Third Circuit precedent and attach a copy of the draft amended pleading to any motion to amend. The motion shall state the position of all other parties to the motion. The motion shall set forth why such amendment is supported by new law or newly discovered facts.

I. Motions to Seal

All motions to seal any document or proceeding must set forth the specific factual and legal basis and necessity for sealing under prevailing law. Any Order sealing any matter is subject to being vacated upon the motions of any party, any interested person, or by the Court on its own motion. Absent exceptional circumstances, any proposed Order must include this language: "This Order may be vacated and sealing lifted for cause shown upon the motion of any party or other person with a recognized interest, or after due notice by the Court upon the Court's own motion." The parties are reminded that all proceedings in federal court are presumptively open to the public, including those in which "sealed" material may be discussed.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court uses a standard case management order form based upon Local Rule 16.1. Pretrial Statements must comply with Local Rule 16.1.C.

2. Joint Pre-Conference Statement

At least five (5) business days prior to a **scheduled initial case management conference** and/or **post-discovery status conference**, the parties shall file on the docket a joint pre-conference statement. The pre-conference statement shall not exceed three (3) pages, and shall include the following:

- a. A brief statement of the facts of the case;
- b. A brief statement of the claims and defenses;
- c. A brief statement respecting the status of the exchange of pertinent documentation and/or discovery;
- d. An estimate of the cost and time to be expended for trial; and
- e. The relief sought.

3. Voluntary Position Statement

Any party may supplement the joint pre-conference statement with an individually filed voluntary position statement (not to exceed 8 pages), which may include greater detail respecting the claims and defenses, a forthright evaluation of the filing party's likelihood of prevailing on the claims and defenses, a description of the major issues in dispute, any anticipated motions, and, when possible, any non-confidential information respecting the filing party's position on settlement, including the filing party's present demand or offer and history of the filing party's past settlement positions. The filing of a voluntary position statement is optional, and is by no means required.

4. Initial Case Management Conference

An initial case management conference is ordinarily scheduled within thirty (30) days of the filing of answers by all defendants, if not sooner. Lead trial counsel are required to participate in the conference. The Court shall presumptively schedule said conferences by telephone unless counsel request, and the Court agrees, that an in-person conference is warranted.

The following matters are generally discussed at the initial case management conference: (1) length of time needed for discovery; (2) handling of expert witnesses; (3) ADR/settlement elections; (4) the Court's standing Order on Motions Practice; and (5) dates that will control pretrial

scheduling. After the initial case management conference, a Case Management Order is issued.

5. Settlement Conferences

Where the matter is anticipated to proceed to a jury trial, the Court entertains requests for settlement conferences, and/or schedules them at its own discretion. Unless otherwise ordered, at least five (5) business days prior to the conference, the parties shall file an updated joint pre-conference statement, and any party may individually file a voluntary position statement, as described above. The Court rarely conducts such conferences in **non-jury cases**, even with the consent of all parties.

Lead trial counsel and the appropriate client representative(s) with full settlement authority shall attend all settlement conferences, in person. In cases where there is insurance coverage (or the possibility of insurance coverage (even if there is a coverage dispute or reservation of rights), an authorized representative(s) from the insurance carrier(s) shall attend the settlement conference in person or be immediately available by telephone. Carrier and client representative(s) must have full and unilateral settlement authority on behalf of the carrier(s) to the full extent of the insurance policy(ies). “Full settlement authority” means that all persons necessary to make any settlement proposal or decision, or to accept or reject any settlement offer or demand, are in attendance. The Court routinely requires the exchange of updated/current settlement demands/offers immediately prior to the settlement conference.

Consistent with the initial case management conference procedure, *see* Section 4 above, at any settlement conference counsel shall be prepared to discuss and agree to ADR options, including follow-up ADR proceedings.

At all settlement conferences, trial counsel shall be prepared to discuss any anticipated dispositive motions as well as counsels’ assessment of the amount of time necessary to try the case. No participant may leave the conference unless and until excused by the Court.

6. Extensions and Continuances

Requests for extensions of time and continuances for the filing of motions and briefs shall be presented by a short written motion containing supporting facts and indicating the position of opposing counsel. Any such motion shall include a proposed scheduling order adjusting any dates affected by an extension or continuance. Reasonable extensions generally will be granted. All such requests should be made at least five (5) business days in advance of the existing deadline. Parties opposing short extensions

must be prepared to articulate the actual prejudice which would occur if the extension were granted.

Counsel shall expect that reasonable but specific restrictions may be placed on further extensions when the case is not appropriately progressing.

Extensions for dates regarding appearances before the Court, conferences, or oral arguments will be granted when the Court is given sufficient notice so as to not complicate the Court's calendar or prejudice other parties.

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 appropriate and the Court approves that time frame. Extensions of time for discovery are permitted for good cause shown, provided that the case has been advanced by counsel during the initial period of discovery. The Court will, upon the request of the parties or its own motion, consider phased discovery in appropriate cases.

2. Expert Witnesses

Discovery depositions and depositions for use at trial of expert witnesses are nearly always permitted. Expert witness discovery is reciprocal, and the Court encourages the use of video deposition testimony.

3. Deposition/Discovery Disputes

The Court will not take phone calls from the parties for disputes arising during a deposition. The parties shall place the objection on the record and proceed with the deposition.

For all other discovery disputes, prior to filing any discovery motions, the parties shall first meet and confer in an attempt to resolve the dispute as required by Federal Rule of Civil Procedure 37(a)(1). If the matter is still unresolved after meeting and conferring, then the parties shall contact the Court to schedule a telephone discovery conference prior to filing any discovery motion.

4. Stay of Discovery

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion but will ordinarily be granted only for good cause shown. In some cases, discovery may be limited to those facts in support of or opposition to the dispositive motion (e.g., a motion to dismiss for lack of personal jurisdiction).

5. Limitations on Discovery

No standard restrictions on the number of interrogatories or length of depositions are employed beyond those set forth in the Federal Rules of Civil Procedure.

6. Rule 11 Motions - Rule 37 Sanctions

Counsel are expected to comply with the federal and local rules. The Court will issue a briefing order on any sanctions motion.

7. Post-Discovery Conferences

A post-discovery conference will be scheduled within thirty (30) days of the completion of discovery. The Court shall presumptively schedule said conferences by telephone unless counsel request, and the Court agrees, that an in-person conference is warranted.

C. Injunctions and Temporary Restraining Orders

Where a party seeks an injunction and/or a temporary restraining order, the moving party must establish and demonstrate that substantial and meaningful efforts were made to contact the opposing party or its counsel prior to seeking relief, which must be supported by filing a Federal Rule of Civil Procedure 65 affidavit regarding the same. Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order. In circumstances where a bond or deposit of security may be required if relief is granted, the moving party is expected to have arranged for the same at the time the motion is filed.

The papers in support of a motion for a temporary restraining order or preliminary injunction should include affidavit(s) in support of the motion with all relevant documents attached to the affidavit(s). Any response to the motion for temporary restraining order or preliminary injunction should be accompanied by affidavits(s). Counsel may attach proposed findings of fact and conclusions of law, if appropriate.

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 to conduct a hearing and, if so, determine the scope of the testimony necessary to resolve the matter. Counsel filing any such motion should be immediately prepared to proceed with argument, and testimony from supporting witnesses.

D. Patent Cases

All patent cases will follow the Western District of Pennsylvania's Local Rules of Practice for Patent Cases.

E. Trial/Hearing Courtroom Procedures

1. Scheduling of Cases

Vacation schedules, family schedule conflicts, and personal and professional schedule conflicts of trial counsel are ordinarily accommodated when counsel has notified the Court of any such conflict as soon as the conflict becomes known.

2. Final Pretrial Conference

At the final pretrial conference, 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 at the conference. As such, counsel should be prepared to make all related arguments in a succinct manner at that time. The Court will usually permit/direct the deposition of necessary experts or unavailable witnesses for use at trial.

In cases where it is appropriate, the Court may inform the parties at the pretrial conference of the amount of time each party will be allotted to present testimony and evidence at trial.

Unless excused by the Court, all participating trial counsel, the principal client representative/client in civil matters, and the authorized insurance representative (all with full settlement authority) must attend the final pretrial conference in person.

3. Trial Hours/Days

Except as is otherwise necessary to accommodate jurors, the Court generally conducts trial Monday through Thursday, 9:00 a.m. to 4:30 p.m. with breaks when appropriate, unless the jury requires a different schedule. On trial days, counsel must be available at 8:30 a.m. (or earlier, if necessary, to ensure that trial commences on time) and after the jury has been dismissed to meet with the Court concerning scheduling, anticipated trial issues, and to obtain advance rulings on evidentiary or other issues.

4. Trial Briefs

While not required, trial briefs are appreciated where counsel deems the filing of the same appropriate. Trial briefs, ideally, should not exceed fifteen (15) pages.

5. Voir Dire

The filing date for proposed voir dire questions will be set forth in the pretrial order. The Court conducts voir dire in civil and criminal cases.

Unless otherwise ordered by pretrial order, counsel are permitted to supplement the standard voir dire 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 be so identified. The Court may allow counsel to ask follow-up questions during individual voir dire questioning.

6. Note Taking by Jurors

Jurors are permitted to take notes and are provided with juror notebooks to do so. The notes will be retained by the Courtroom Deputy Clerk during trial and deliberations, and will be destroyed once a verdict has been rendered.

7. Side Bars

Side bars shall be permitted when warranted, upon the direction of the Court. However, counsel should be considerate of jurors' time. Counsel should anticipate matters to be discussed outside of the jurors' presence and raise them either at the beginning or end of each trial day.

8. Opening and Closing Statements

The Court may impose time limits on opening statements and closing arguments. The Court will determine those limits at the final pretrial conference.

9. 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 agree. For example, counsel could agree that expert witnesses for each side will testify in succession. The Court prefers that all testimony from a witness be drawn out in one sitting, as opposed to a witness being recalled.

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

Except in unusual circumstances with advance leave of Court, co-counsel are not permitted to split the examination of a witness.

11. Examination of Witness Beyond Direct and Cross

Re-direct (and often re-cross) examination is usually permitted, though not favored; further examination is not permitted without leave of Court.

12. Videotaped Testimony

The Court has no special procedures regarding videotaped testimony except those set forth in the Local Rules.

13. Reading of Material into the Record

The Court has no special practice with regard to reading stipulations and the like into the record. It will be considered on a case-by-case basis.

14. Exhibits

By a date set forth in the Pretrial Order, counsel shall file on CM/ECF a Joint Exhibit List Chart (with columns) setting forth all government/plaintiff and defendant trial exhibits, by exhibit number/letter, date, author, type of document, objection as to authenticity (if any) with response, and objection as to admissibility with response. In addition, counsel shall provide two (2) tabbed exhibit binders (standard black presentation, 3-ring binders not larger than three (3) inches) to the Court. The actual copy of the exhibits should not be filed on CM/ECF, only the Joint Exhibit List Chart shall be filed on CM/ECF. The hand-delivered Joint Exhibit List Chart and exhibit binders shall be delivered to Chambers by the date set forth in the Pretrial Order.

One paper copy of each exhibit displayed during trial is to be provided to the Courtroom Deputy Clerk on the same day of its display. In order for the Jurors' Exhibit Binders to be complete when deliberations begin, counsel must ensure that a copy of each exhibit displayed and admitted has been provided to Court by the last day of trial. Counsel must provide the Courtroom Deputy Clerk with a binder(s) that will hold the paper copies of the exhibits to be submitted to the jury at the close of trial, and this will constitute the original record for purposes of appeal, if any.

Voluminous data must 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. All exhibits will be presented using the Court's electronic presentation system. All trial counsel must know how to use it.

Counsel are not to take time during trial to exchange exhibits with each other as this will have been accomplished pretrial. With advance notice to all parties and approval of the Court, visual aids and exhibits may be used during opening statements. Exhibits need not be offered into evidence in numeric/alphabetical order. Plaintiffs use numbers, defendants use letters.

15. Federal Rule of Civil Procedure 50 Motions

Any Rule 50 Motions shall be made in writing and shall be accompanied by a supporting brief.

16. Jury Instructions

The parties shall meet to agree on joint proposed jury instructions. After meeting, the parties together shall file one combined set of proposed instructions, and shall email a copy of the proposed instructions in Microsoft Word format to Judge Colville's law clerks. 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 of each instruction: "This proposed instruction is agreed upon by the parties." Each disputed instruction shall state which party is advancing it, along with the legal authority relied on by each party in support of and in opposition to each such instruction. Proposed instructions as to a given issue by different parties shall be grouped together.

Generally, a charging conference will be held at which time a ruling will be made on each point for charge. Counsel are required to state objections to the proposed charge at the charging conference and to supply any proposed alternate language, together with case authority.

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

The Court generally tries to rule on jury instructions at or prior to the final pretrial conference.

17. Proposed Findings of Fact and Conclusions of Law in Bench Proceedings

Except where a shorter period is set by the Court (e.g., TRO and preliminary injunction matters), within fourteen (14) days of the conclusion of a hearing or bench trial (unless otherwise ordered), Plaintiff shall file (and email a courtesy copy in Microsoft Word format to Judge Colville's law clerks) consecutively numbered proposed findings of fact and conclusions of law. Plaintiff's proposed findings of fact shall address each contested issue of fact remaining and shall also include any facts stipulated to by the parties. Each proposed finding of fact shall be supported by clear and explicit reference to the record. 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 should not exceed twenty (20) pages.

Except where a shorter period is otherwise set by the Court (e.g., TRO and preliminary injunction matters), within fourteen (14) days after service of Plaintiff's proposed findings of fact and conclusions of law (unless ordered otherwise), Defendant shall file (and email a courtesy copy in Microsoft Word format to Judge Colville's law clerks) 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 record. 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 twenty (20) pages.

18. 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.

19. General Courtroom Rules

Counsel shall conduct themselves with courtesy and civility at all times. The Court will not tolerate demonstrations of hostility, discrimination, or bias of any kind. All parties and party representatives are also expected to conduct themselves in a similarly appropriate manner.

20. Use of Courtroom Technology

The parties are invited to use trial presentation technology, courtroom technology, and trial exhibit summaries (pursuant to Rule 1006 of the Federal Rules of Evidence), to the fullest extent possible in all cases. Should the parties require training or other information on use of the courtroom technology, the parties may contact Sean Fox, of the Information Technology Department, at (412) 208-7468. Unsecured, wireless internet access is available in the Courtroom. Counsel are expected to make arrangements to share major AV devices (projectors, jumbo screens, etc.).

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

At the close of trial, the Court will determine what, if any, evidence will be provided to the jury for use in deliberations.

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

Requests to read back testimony or replay tapes during deliberations will be considered on a case-by-case basis, but will ordinarily be denied.

4. Jury Questions

Jury questions must be in writing. The Court will confer with counsel and arrive at a satisfactory instruction/response.

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom area but must be immediately available by telephone so that they can promptly return to the Courthouse upon being contacted by the Court.

6. Interviewing the Jury

The Court will inform the jurors that they may speak to counsel but are not required to do so. Counsel shall not approach any juror until the Court has met with and dismissed the members of the jury.

IV. 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 scheduled upon request.

C. Other General Practices/Procedures

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

V. CRIMINAL CASES

A. Motions for Extensions

The Court considers requests for extensions (including to file pretrial motions) on a case-by-case basis. All such motions should be filed at least two (2) days before

the expiration of any pending motions schedule. The Court requires language in any proposed order that effectively excludes extended time for purposes of the Speedy Trial Act. Should a criminal defendant request numerous continuances, the Court may schedule a conference to assess the status of the case.

B. Pretrial Conferences

The Court will conduct one or more conferences with counsel prior to trial to deal with schedules, coordination with essential witnesses, and the like.

C. Guilty Pleas

The Court has no special rules regarding guilty pleas, or deadlines for accepting/rejecting plea agreements.

D. Voir Dire

The Court conducts voir dire in criminal cases with the assistance of his law clerks and Deputy Clerk. General questions will be asked of the venire panel as a whole; specific individual inquiry with prospective jurors will then be undertaken as warranted. Counsel are permitted to augment the standard voir dire questions set forth in the Local Rules by submitting proposed questions which will be ruled upon or otherwise considered in formulating the general questions to be asked of the panel. The due date for proposed voir dire questions is set by the Trial Scheduling Order. Counsel may be permitted to ask follow-up questions during individual examination of jurors during voir dire.

E. Trial

In multi-defendant cases, all counsel may examine each witness. However, counsel should not duplicate areas previously covered by other counsel.

If the parties request sequestration of witnesses, the Court routinely grants the request.

The Court usually permits the use of transcripts of tape-recorded conversations. The jury will be instructed that the evidence is audio evidence from the tape-recorded conversations, not the transcript, and that if what the jury reads on the transcript differs from what they heard on the recording, the recording controls.

Defense counsel is permitted to determine when to make an opening statement.

The Court permits the use of special interrogatories in a criminal case if appropriate.

F. Sentencing Memoranda

The Court expects the filing of a sentencing memorandum per its standard presentence order. All motions or other matters regarding calculations of the

Advisory Sentencing Guidelines, Departures or the calculation of Criminal History matters must be raised in the “Position with Respect to Sentencing Factors.”

G. Sentencing Conference

The Court does not usually hold a sentencing conference regarding issues under the Sentencing Guidelines prior to the actual imposition of sentence, but may hold one if requested. The Court usually issues an order setting forth tentative findings and rulings on sentencing matters several days before sentencing.

H. Other Practices and Procedures

1. The Court will include recommendations to the Bureau of Prisons in the judgment order if appropriate.
2. The Court requires the filing of a motion for leave to travel outside the Western District by a defendant, and each such motion should state the position of the Assistant U. S. Attorney and the Probation Officer.
3. Counsel for the United States is responsible for obtaining any writs necessary for the appearance of persons in custody at any change of plea, sentencing proceeding, or other proceeding. Further, if the United States will move for bond revocation at any proceeding, the Assistant U.S. Attorney must so advise the Court and the defense counsel at least twenty-four (24) hours before the proceeding.
4. Any counsel desiring to have an “in-custody” Defendant appear at any proceeding in civilian attire must make arrangements in advance with the Marshal’s Office.
5. Defense counsel shall advise the Court’s Deputy Clerk in plenty of time if they want an “in-custody” Defendant to attend any proceeding in person (other than trial or sentencing, or other proceeding as required by Fed. R. Crim. P. 43(a) or a probation/supervised release revocation hearing, for which proceedings the Court will notify the Marshal’s Office).