

PRACTICES AND PROCEDURES FOR

CHIEF UNITED STATES

MAGISTRATE JUDGE

CYNTHIA REED EDDY

**CHAMBERS PRACTICES AND PROCEDURES OF
CHIEF MAGISTRATE JUDGE CYNTHIA REED EDDY**

I. GENERAL MATTERS

A. Communications with the Court

Unless otherwise specified in these practices and procedures, communication with the Court should be in the form of motions (rather than letters to Chambers), accompanied by a proposed order specifying the relief requested. 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. The parties should be prepared to set forth alternative conference dates on which all counsel agree. Otherwise, such requests are to be made by motion stating whether all counsel consent to rescheduling and setting forth alternative conference dates on which all counsel agree.

B. Telephone Conferences

Requests for counsel or parties to participate by phone will be considered on a case by case basis, although such requests are generally disfavored. Unless otherwise ordered, initial case management conferences and settlement conferences will not be conducted over the telephone.

When a telephone conference by all counsel is permitted, the court will provide a conference call-in number to the parties prior to the conference.

C. Pro Hac Vice Admissions

Pro hac vice motions are routinely granted, as long as all of the requirements of Local Rule 83.2.B. are met.

D. Comments to the Media

Attorneys are expected to adhere to Local Rules 83.1, 83.3, and the Rules of Professional Conduct in all dealings, including those with the media.

II. MOTIONS PRACTICE

A. Oral Argument

Oral argument is reserved for factually or legally complex matters. The parties may file a motion requesting oral argument although such motions are generally disfavored. If the Court deems oral argument to be appropriate, an Order will issue. Chief Magistrate Judge Eddy does not set aside a specific day or time for argument of motions.

B. Briefs

With the exception of motions for enlargement of time and for a continuance, all motions must be accompanied by a brief. The supporting brief must be filed contemporaneously with the motion.

1. Page Limitations

Chief Magistrate Judge Eddy imposes a page limitation of twenty (20) pages for all dispositive and responsive briefs. The page limitation for non-dispositive moving and responsive briefs is five (5) pages.

2. Citation to Unpublished Opinions

When citing to unpublished opinions, counsel are to use the Westlaw citation rather than the LEXIS citation.

3. Reply Briefs

If the court requires that a party submit a reply brief, the court will so state in the briefing order entered on the dispositive motion. Reply briefs shall not exceed five (5) pages. No sur-reply to a dispositive motion shall be filed without leave of court.

4. Font

All motions and briefs shall use a font not smaller than 12, double-spaced with one-inch page margins. Footnotes shall use a font not smaller than 12 and may be single spaced.

C. Chamber Copies of Motion Papers

Because all motions and briefs filed with the Court are available on CM/ECF, courtesy copies should not be forwarded to the Court unless requested by the Court.

D. Scheduling

Responses to non-dispositive motions shall be filed within fourteen (14) days of service, and responses to dispositive motions shall be filed within thirty (30) days of service, unless a separate briefing Order has been issued.

Summary judgment motions are generally scheduled to be filed within thirty (30) days of the close of discovery. Counsel must follow Local Rule 56.1.

E. Evidentiary Hearings

The scheduling of evidentiary hearings is determined on a case by case basis.

F. Motions *In Limine*

Motions *in limine* and supporting briefs are expected prior to trial and a date for filing same will be set at the final pretrial conference. 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.” For example, a proposed order that would dismiss some but not all of multiple defendants or claims from the case shall specify the defendants or claims to which it applies.

The Court may sua sponte strike any motion for failure to attach a proposed order of court.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court uses a standard case management order form based on Local Rule 16.1. Pretrial statements must comply with Local Rule 16.1.C. Please see Case Management Order, Appendix.

2. Conferences

a. Initial Case Management Conferences

The Court will issue a scheduling order within approximately two weeks of the filing of the answer(s). Lead trial counsel shall attend the initial case management conference, but the parties need not attend unless otherwise ordered.

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

b. Mid-Discovery Conferences

A mid-discovery telephone conference will be scheduled to take place within two weeks of the completion of ADR. The court will provide a conference call-in number to the parties prior to the conference.

The following matters are usually discussed at the mid-discovery telephone conference: (1) outcome of ADR; (2) progression of discovery; and (3) need for expert discovery, if not discussed at the initial case management conference.

The parties need not submit an updated confidential position statement prior to a mid-discovery telephone conference.

c. Post-Discovery Conferences

A post-discovery conference will be scheduled within two weeks of the close of discovery. Lead trial counsel must attend, and the court will inform counsel if attendance by the parties is necessary

d. Other Conferences

Additional case management conferences may take place at the request of counsel or at the Court's discretion.

3. Settlement

At every conference, at each stage of the litigation, the Court will explore the possibility of resolving the case short of continued litigation and may suggest arbitration, early neutral evaluation, mediation, or other forms of ADR.

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.

4. Confidential Position Statements

At least three days prior to a scheduled initial case management conference or post-discovery status conference, the parties shall submit to Magistrate Judge Eddy's chambers a confidential position statement. The statements may be faxed to Sarah Sewall, the Deputy Clerk, at (412) 208-7583, or emailed to Sarah.Sewall@pawd.uscourts.gov. To ensure candor, the position statements are not to be filed with the Clerk of Courts, nor served upon the other party, and the Court will not disclose the content of any statement to opposing counsel. The confidential position 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, including a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses, and a description of the major issues in dispute;
- c.** An estimate of the cost and time to be expended for trial;
- d.** The relief sought; and
- e.** The party's position on settlement, including present demands and offers and history of past settlement discussions, offers, and demands.

The parties shall not attach exhibits to the confidential position letter.

If the matter involves a non-jury trial, the parties **shall not** submit confidential position letters.

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. Any such motion shall include a proposed scheduling order adjusting any dates affected by an extension or continuance. Reasonable extensions generally will be granted.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Magistrate Judge Eddy solicits input from counsel on the anticipated length of discovery required. In this regard, counsel must comply with Local Rule 26, the provisions of Fed. R. Civ. P. 26 generally, and must file the written report required by Fed. R. Civ. P. 26(f) proposed discovery plan prior to the initial case management 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

The Court has no specific practice with regard to expert discovery, but generally disfavors expert discovery taking place after the close of fact discovery. The parties shall definitely state their position on using experts at the Mid-Discovery Telephone Conference.

3. Discovery/Deposition Disputes

It is Chambers practice not to take phone calls from the parties for disputes arising during a deposition. The parties shall place the objection on the record and continue 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)(a). If the matter is still unresolved after meeting and conferring, then the parties shall jointly email Sarah Sewall, Deputy Clerk, at Sarah.Sewall@pawd.uscourts.gov with the nature of the dispute and

copying all counsel on the email and the court will schedule a telephone conference to discuss the dispute.

4. Stay of Discovery

For cases participating in the ADR program, it is the policy of the Court not to stay discovery pending the ADR process. The Court will discuss requests for limited discovery deemed necessary to conduct a meaningful ADR session at the initial case management conference. 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.

5. Limitations on Discovery

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

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.

C. Preliminary Injunctions

Either upon consent of the parties or referral by a District Court Judge to Chief Magistrate Judge Eddy, a briefing schedule will be issued and a hearing date will be scheduled. Requests for and the use of expedited discovery are considered on a case by case basis.

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

After a party files a motion for preliminary injunction, the Court will enter a more comprehensive scheduling order.

The brief(s) in support of a motion for 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 preliminary injunction must be accompanied by affidavits(s).

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

D. Trial Procedures

1. Scheduling of Cases

A date certain will be given for trial at the post-discovery status conference and the Court will enter a more comprehensive pre-trial order at that time. Vacation schedules and personal/professional obligation conflicts of the attorneys, parties and witnesses will be accommodated where possible. Should a conflict arise, counsel must notify the Court within one week of the Court issuing the pre-trial order.

2. Pretrial Conferences

The Court's law clerk will conduct a preliminary pretrial conference. The following matters are generally discussed at the preliminary pretrial conference: (1) compliance with the pretrial order; (2) exhibit charts; (3) courtroom technology; and (4) counsel's questions regarding trial procedure.

The Judge will conduct a final pretrial conference approximately one week before the commencement of trial. At the final pretrial conference, the Court will rule on witness lists, exhibits, motions *in limine*, jury instructions (to the extent feasible), voir dire, verdict slips and any other pretrial matters will be discussed, in detail, and generally ruled upon.

2. Trial Hours/Days

Generally, cases will be tried Monday through Friday, 9:00 a.m. to 5:00 p.m., with breaks when appropriate. Chief Magistrate Judge Eddy will meet with counsel before and after these appointed times to discuss trial/evidentiary issues, and before the afternoon session.

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 at the end of the trial day to meet with the Court concerning scheduling, trial problems, and to obtain advance rulings on evidentiary or other issues.

3. Motions *In Limine*

The filing date for motions *in limine* will be set forth in the pretrial order.

4. Voir dire

The filing date for proposed voir dire questions will be set forth in the pre-trial order. 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 shall state ("Consented To By Counsel"). Chief Magistrate Judge Eddy or her Courtroom Deputy will conduct the voir dire. Counsel are not permitted to conduct voir dire.

- 5. Notetaking by Jurors**
The Court usually allows jurors to take notes unless counsel articulates a valid objection prior to the commencement of trial.
- 6. Side Bars**
Side bars will be permitted when necessary, by permission of the Court. However, counsel should be mindful of the negative impression side bars create on the jurors. 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.
- 7. Examination of Witnesses Out of Sequence**
Examination of a witness out of sequence is permitted, either within the party's own case or within an opposing party's case and on a showing of good cause or consent of all parties
- 8. Opening Statements and Summations**
The Court may impose time limits on opening statements and closing arguments. The Court will determine those limits at the final pre-trial conference. 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**
Redirect and recross of a witness will be permitted but may not exceed the scope of the immediately preceding line of questions.
- 11. Videotaped Testimony and Reading Deposition Testimony**
The use of videotaped testimony and reading deposition testimony into the record in lieu of live testimony are generally disfavored. If a party intends to use videotaped testimony and/or read deposition testimony into the record, the party must file a motion in accordance with Federal Rule of Civil Procedure 32 prior to the initial pre-trial conference and show good cause as to why live testimony is not feasible.
- 12. 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.

13. Exhibits

All exhibits must be listed in the Pretrial 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, unless otherwise ordered by the Court, 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 give notice to opposing counsel and obtain the Court's approval in advance for use of any visual aid(s) or demonstrative exhibits during opening statements. Otherwise, visual aids are permitted during trial and should be marked and offered into evidence as with any other exhibit.

Counsel for each party will be expected to provide three (3) tabbed exhibit binders to the Court and one (1) binder to counsel for each opposing party in advance of trial.

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

14. Federal Rule of Civil Procedure 50 Motions

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

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, and to submit to chambers an electronic copy of said jury instructions in Microsoft Word. To the extent that the parties cannot agree on a particular instruction or form, the various versions proposed by the parties and/or any objections shall be included where appropriate in the document, placing competing versions of a given instruction one after the other, and objections to a given instruction immediately following the contested instruction.

The date for filing same will be set in the 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.

16. Proposed Findings of Fact and Conclusions of Law

In any non-jury trial, the parties will be required to submit proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of testimony/final argument. The Court also requires that the parties separately submit to the Court their respective proposed findings and conclusions in Microsoft Word.

17. 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.

18. General Courtroom Rules

Counsel shall conduct themselves with courtesy and civility at all times. Chief Magistrate Judge Eddy 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.

E. Jury Deliberations

1. Written Jury Instructions

The jury will be given a written copy of the jury instructions.

2. Exhibits in the Jury Room

All admitted exhibits will be given to the jury for use in deliberations, except those that could prove to be dangerous.

3. Use of Courtroom Technology

The parties are required to use trial presentation technology and 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.

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

Generally the Court is not inclined to grant these requests. In the event of such a request, the Court will confer with counsel and arrive at a satisfactory instruction.

5. Jury Questions

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

6. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom during deliberations but must be available by telephone and able to return to the courthouse within a reasonably short period of time.

7. Interviewing the Jury

Chief Magistrate Judge Eddy 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.

F. General

1. Cases Referred to Magistrate Judge for Mediation and Settlement

Chief Magistrate Judge Eddy requires that trial counsel and a representative of each party with full settlement authority, including a representative of any insurance company, attend all mediations and settlement conferences in person. It is counsel's responsibility to ensure that the attending representative has full settlement authority.

The Court will enter a more comprehensive scheduling order for those cases referred to Magistrate Judge Eddy for mediation and settlement.

2. Special Types of Cases

Magistrate Judge Eddy has no special practice or procedure with respect to any particular type of case.

3. Other Individual Practices and Procedures

The attorneys, parties and witnesses must be civil and courteous to one another at all times.

IV. CRIMINAL CASES

Criminal cases before Chief Magistrate Judge Eddy 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.