

PRACTICES AND PROCEDURES OF JUDGE HARDY

(Effective January 1, 2026; Supersedes All Prior Versions)

I. General Matters

A. Local Rules of Court

These Practices and Procedures shall be followed in addition to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Court's Local Rules.

B. Communications with the Court

Except for discovery disputes (see Section II.B(2)), communications with the Court shall be in the form of motions which shall be accompanied by a proposed order specifying the relief requested, as well as a certification of conferral as addressed further herein. Correspondence should not be sent to the Court by email, letter, etc., unless specifically requested.

C. Communications with Law Clerks and Other Staff

Communications with Chambers Staff concerning the administration of a case are permissible, including inquiries pertaining to the status of any pending matter. No substantive legal matters should be discussed with the law clerks.

D. Filing and Service on CM/ECF

Counsel (and 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 expressly permitted or directed to do otherwise by the Court's Local Rules or Order of Court.

E. Telephonic and Video Conferences

The Court may permit counsel or parties to participate in conferences remotely via telephonic or video conferencing on a case-by-case basis by specific request. In most instances, it is the Court's preference for in-person proceedings and remote proceedings are the exception to this general rule. Unless specifically permitted or otherwise ordered, settlement conferences, pretrial conferences, and oral arguments will be conducted in person. Initial Case Management Conferences (ICMC's) and routine status conferences in civil matters are typically handled via telephone.

Telephonic conferences will be facilitated through a Court-provided conference line, which will be supplied via ECF docket entry. If a proceeding is to be conducted via video conference, Chambers will supply log-in information to counsel and unrepresented parties in advance of such proceeding.

In addition to Court-scheduled conferences, this Court will also schedule and conduct a status conference (telephonic or in person) upon request by counsel for the parties. Counsel should confer on their agenda before contacting the Chambers to schedule the conference.

F. Alternative Dispute Resolution (ADR)

The Court follows the ADR Policies and Procedures available on the Court's website (www.pawd.uscourts.gov). ADR timelines and procedures may be adjusted for good cause on a case-by-case basis upon leave of Court.

G. Objections/Placing Proceedings on the Record

If counsel at any time has an objection to any procedure, ruling or other action of the Court, counsel should make an immediate objection by written motion or otherwise on the record at the earliest practicable time. If no court reporter is present and counsel has an objection(s), or otherwise desires the proceeding be on the record for any reason, counsel has the right to and should request a court reporter to be present and thereafter place the objection(s) or proceedings on the record. Counsel may request at any time that any proceeding or matter be placed on the record. ECF filings and Court proceedings will not be "sealed" except by Order of the Court for good cause shown in conformity with applicable law, rules, and orders of court.

H. Consultation by Counsel/Attendance of Necessary Counsel

All parties (other than individuals 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 (and has reviewed them with their client) so as to allow counsel to enter into appropriate stipulations and to meaningfully and fully participate in the proceedings. Ordinarily, this means lead trial counsel. At any conference, counsel shall be prepared to discuss in detail and argue any pending motions, and to discuss settlement.

All counsel are expected to confer with one another, in person or by telephone (not merely by email), 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 (and factual/legal authority) on all such matters in controversy. This in-person or telephonic requirement does not preclude the exchange of written positions (via correspondence, email, etc.), but such written expressions of position, standing alone, is not sufficient to satisfy the obligation to confer. No counsel should be surprised at any conference by the position taken by any opposing party or the legal or factual basis for that position.

I. Amendment of these Practices and Procedures

The Court's Practices and Procedures are available online and will be updated periodically without express notice in individual cases. Counsel are responsible for keeping aware of any such changes.

II. Civil Matters

A. Pretrial Procedures

(1) Initial Case Management Conference (ICMC)

The Court will generally issue an order setting the date of the ICMC within thirty (30) days after the filing of an answer. Depending on the circumstances, the Court may also schedule an ICMC while a Rule 12 motion is pending. The Court will ordinarily conduct this conference by telephone unless the parties request otherwise. Prior to the ICMC, the parties are expected to meet and confer and file their report pursuant to Fed.R.Civ.P. 26(f). The parties must also file a fully completed Stipulation Selecting ADR Process prior to the conference. In the stipulation, the parties must identify the type of ADR selected, the neutral, the confirmed date of the ADR session, (to occur within 60 days of Initial Case Management Conference), and the names of all people attending (including a corporate or insurance representative with settlement authority, if applicable). The Court needs this information before the initial case management conference in order to set an appropriate schedule. Incomplete Rule 26(f) reports and ADR Stipulations may be stricken with direction to refile in full compliance with the Local Rules and these Practices and Procedures. The Court will issue a Case Management Order at or after the conference.

(2) Additional Status and Settlement Conferences

Additional conferences may take place at the direction of the Court upon request of counsel or its own initiative.

(3) Extensions and Continuances

The Court will grant extensions for the filing of motions or briefs where good cause is shown for doing so. Requests for reasonable extensions of the discovery period will be granted routinely (at least as to the first such request) so long as the motion sets forth the specific discovery conducted to date and the specific discovery which will be conducted during the proposed extended period with a tentative schedule for doing so. Requests for extensions should be made by a short, written motion, and the movant must include all opposing counsel's positions on an extension (and if opposing it, indicate whether the opposing party intends to file an opposition) and a list of any prior requests for extensions. The motion must be accompanied by a proposed order and a *separately attached* Certificate of Conferral. Also, such motions must be entitled (with matching docket text) using the following convention: "[First] Moton for [Un/Contested] Extension of Discovery" or "[First] Motion to Modify Case Management Order" as the case may be.

All such motions should be made at least five (5) business days in advance of the existing deadline when practicable. Parties opposing short extensions must be prepared to articulate the actual prejudice which would occur if the extension were granted.

Parties should not presume that an unopposed or joint request for an extension will be granted, particularly if the motion is filed long after the parties reasonably should have realized more time would be needed or if there is little or no indicia that the parties exercised diligence in completing scheduled tasks within previously established deadlines. Moreover, parties may not simply ignore court ordered deadlines by agreement or understanding (*e.g.*, informally agree to take certain depositions "out of time") without first seeking modifications to established court orders for doing so.

Regardless, specific restrictions may be placed on further extensions, or such requests may be denied.

Motions to reschedule appearances before the Court, conferences, or oral arguments will be granted only upon good cause when the Court is given sufficient notice, and when rescheduling will not disrupt the Court's calendar, or prejudice other parties. The Court will reasonably accommodate trial counsel's family vacation/special event needs if given ample advance notice.

(4) Post-Fact Discovery Status Conferences

Unless otherwise ordered, the Court will schedule a Post-Fact Discovery Status Conference generally no more than thirty (30) days after the close of discovery at which the parties will discuss expert discovery (if applicable), motions for summary judgment, potential trial dates, and settlement efforts. Chambers staff may email counsel/parties in advance of the status conference, who are expected to respond thereto in a timely manner as directed. Such email will solicit information to be supplied jointly to Chambers on such matters as:

- (i) Who will be participating in the conference?
- (ii) Will fact discovery be completed by the established deadline?
- (iii) Will the parties be engaging in expert discovery? If so, propose deadlines for expert discovery for the Court's consideration.
- (iv) Are the parties interested in returning to your Early ADR Neutral for another session?
- (v) Are the parties requesting a summary judgment schedule at this time? If so, propose deadlines for the Court's consideration.
- (vi) Are there any other issues that the parties would like to discuss with the Court at the Conference? If so, jointly supply an agenda of such items.

Absent leave of Court, motions for summary judgment shall not be filed until after this conference and then only in accordance with the Court's scheduling order.

The Court will schedule a status conference after ruling on all dispositive motions, if necessary, to discuss settlement and pretrial matters. The Court will issue a Pretrial Order following the conference setting forth all pertinent deadlines.

(5) Final Pretrial Conference

The Court will schedule a Final Pretrial Conference to address witness lists, exhibits, motions *in limine*, jury instructions, voir dire, verdict slips, and any other pretrial matters.

(6) Confidential Position Papers

For jury matters, the Court may, upon request, require the submission of a confidential position letter in advance of the Initial Case Management Conference, Post-Fact Discovery Status Conference, Pre-Trial Conference, settlement conference, or other status conference. Such position letters should include, when applicable: (i) a brief recitation of the most salient facts; (ii) a discussion of your party's strengths and weaknesses; (iii) your party's settlement posture; and (iv)

any other matters requested by the Court. To ensure candor, these position letters are not to be filed or shared with opposing counsel, but rather, emailed to chambers in accordance with instructions to be provided. All position letters will be kept confidential.

(7) Judicial Settlement Conferences

In the event Judge Hardy conducts a formal settlement conference for your case, you will be directed to complete several tasks prior to the settlement conference itself. These directives will be outlined in a Judicial Settlement Conference Order which typically includes the following requirements:

- (i) Pre-Settlement Conference Exchange of Written Demand and Offer.
- (ii) Joint Proposed Settlement Agreement (indicating areas of disagreement) and Joint Statement Identifying Key Areas of Disagreement
- (iii) Confidential Ex Parte Position Letters.

(8) Good Faith Conferrals; Certificates of Conferral

Any time that counsel/unrepresented parties are expected to meet and confer, whether pursuant to a statute, a federal or local rule, these Practices and Procedures, or a Court order, the parties must do so in good faith before such matters become subject to a motion or other dispute absent leave of court to forgo such conferral.

A good faith conferral must address the substantive merits of the dispute, as well as whether any such anticipated motion will be consented to or opposed and if opposed, whether such opposing party or parties desire to file a written opposition with the Court. The Court's conferral requirements are not satisfied by merely exchanging correspondence or emails without also having a verbal discussion (whether by phone, videoconference, or in person), nor by sending an email or leaving a voicemail on the evening before or day such motion is being filed.

All motions must be accompanied by a "Certificate of Conferral" in a separately attached exhibit providing specific details of the parties' efforts to resolve the dispute informally. Failure to comply with this requirement may result in such motion being stricken or summarily denied and sanctions may also be imposed. *See also* Section II.C(1).

B. Discovery Matters

(1) Length of Discovery Period and Extensions

Ordinarily, one hundred fifty (150) days is permitted for discovery unless the parties indicate that a different time frame is appropriate, and the Court approves of that time frame. Any such proposed variance must be addressed in the parties' Rule 26(f) Report and raised at the ICMC. Extensions of time for discovery are permitted for good cause shown, provided that the case has been diligently advanced by counsel during the initial period of discovery. The Court will consider phased discovery in appropriate cases.

(2) Discovery Disputes

Parties (through counsel or personally if *pro se*) must confer in good faith to resolve or narrow any discovery-related dispute in accordance with applicable procedural rules, Court orders, and these Practices and Procedures. If a discovery dispute cannot be resolved after conferring in good faith, the parties must confer on an agenda for a telephonic status conference that succinctly and fairly identifies the disputed issues and then jointly contact Chambers via telephone or email for instructions on submitting their proposed agenda and to schedule an informal telephone conference with Judge Hardy. Such request and jointly proposed agenda shall be directed to Courtroom Deputy Clerk Kallie Sheets at 412-208-7570 or Kallie_sheets@pawd.uscourts.gov. No discovery motions shall be filed unless and until after Judge Hardy conducts the informal conference and grants leave to file such motion. Premature motions that lack a "Certificate of Conferral" or are otherwise filed without first obtaining leave to do so by Judge Hardy may be stricken or denied summarily without prejudice.

For discovery disputes that arise during a deposition, the attorneys, together, may contact the Court by telephone to determine whether the Court is available and wishes to resolve the matter at that time.

If a discovery motion is filed (after obtaining permission from Judge Hardy), any response in opposition thereto must be filed within 5 days (unless Judge Hardy orders a different deadline). Reply briefs typically are not permitted. The Court endeavors to rule on discovery motions as expeditiously as possible, often within seven days after briefing is complete.

(3) 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 appropriate circumstances, discovery may be limited to those facts in support of or opposition to the dispositive motion such as a motion to dismiss for lack of personal jurisdiction.

C. Motions, Briefs, and other Written Submissions; Certificates of Conferral

- (1) Motions should provide a short and plain statement expressing the specific relief sought and the factual and legal grounds for such relief. All motions must be accompanied by a separately attached “Certificate of Conferral” in accordance with these Practices and Procedures, stating that the movant has conferred on the matter with all other parties, and expressly indicate whether the opposing party (or parties) consent or oppose the motion and whether such party (or parties) intends to file a response. A proposed order setting forth the specific relief requested shall also be filed as a separate attachment to the motion in accordance with the Court’s CM/ECF Policies & Procedures. General orders (*e.g.*, “the motion is granted”) are not acceptable. Failure to conform to these requirements may result in the motion being stricken or summarily denied. *See also* Section II.A(8).
- (2) Briefs need not be filed for discovery motions or motions seeking extension of time or continuance. Briefs supporting or opposing dispositive motions and briefs supporting or opposing class certification are required but shall not exceed twenty-five (25) pages without leave of Court. Briefs supporting or opposing all other motions shall not exceed ten (10) pages without leave of Court. Reply briefs relating to dispositive motions and class certification shall not exceed fifteen (15) pages and reply briefs pertaining to all other motions shall not exceed five (5) pages. Any written submissions not otherwise addressed herein shall not exceed five (5) pages without leave of Court. Failure to observe such page limitations may result in filings being stricken.
- (3) Motions may be decided with or without oral argument as determined by the Court. Any party believing that oral argument will materially assist the Court’s decisional process should so advise the Court and request argument with a brief explanation of the basis for such request.

D. Briefing Schedules

Unless an Order of Court or applicable Court Rules provide otherwise:

- (1) Responses to motions to dismiss and motions to compel arbitration shall be filed within twenty-one (21) days from the date of service of the motion.
- (2) Responses to motions for summary judgment and responses to motions for class certification shall be filed within thirty (30) days from the date of service of the motion.
- (3) Responses to motions relating to discovery and case management (*e.g.*, motions to modify briefing schedules, motions to extend discovery, motions to reschedule a status conference, etc.) shall be filed within five (5) days from the date of service of the motion.
- (4) For all other types of motions not expressly addressed herein, responses shall be filed within seven (7) days from the date of service of the motion.
- (5) Reply Briefs. A reply brief is defined as the second brief advocating a party's position on the same motion filed after the non-moving party's response. Reply briefs may be filed, without leave of court, seven (7) days from the date of service of the response to which they reply, except in motions for summary judgment and class certification matters, reply briefs may be filed within 14 days.
- (6) Sur-reply briefs, or other briefs, are disfavored and may be filed only with leave of court.
- (7) Motions for reconsideration must be filed within seven (7) days of the Order at issue.
- (8) If the moving party believes that there is urgency to the grant or denial of a motion requiring expedited consideration due to the particular facts or circumstances of the matter, movant should so state in the motion and advise Chambers and counsel for all other parties of same by telephone. Upon such request, the Court may consider modifying the response time.

- (9) Parties seeking an extension of time to respond beyond the timeframes stated herein shall confer with opposing counsel/unrepresented parties and file a motion requesting such adjustment. The Court's conferral and certification requirements shall apply. While stipulations are encouraged, they are not a substitute for the Court's approval of adjustments to its Orders and published procedures.
- (10) The Court may alter any of these provisions by Order or by notice from Chambers Staff at the Court's direction in the interests of justice.

E. Chamber Copies of Motions and Briefs

Counsel should not send courtesy copies of any motion or brief that is available on the CM/ECF System unless requested to do so.

F. Injunctions and Temporary Restraining Orders

Federal Rule of Civil Procedure 65 governs motions for preliminary injunctions and temporary restraining orders. A party seeking an injunction or temporary restraining order must demonstrate having made serious efforts to contact the opposing party or its counsel prior to seeking relief, along with reasons why notice should not be required, which must be supported by affidavit in accordance with Fed.R.Civ.P. 65(b). 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 that arranged at the time the motion is filed.

The papers in support of a motion for temporary restraining order or preliminary injunction should include affidavit(s) in support of the motion with all relevant documents attached thereto. Any response to the motion for temporary restraining order or preliminary injunction should be accompanied by affidavit(s). Both motions and responses must be supplemented by proposed findings of fact and conclusions of law subject to a scheduling order issued by the Court.

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, the scope of the testimony necessary to resolve the matter. Counsel filing any such motion should be prepared to proceed immediately with argument and testimony from supporting witnesses. Counsel should also be prepared to select a neutral and participate in an ADR process on an expedited basis before the scheduling of a preliminary injunction hearing.

G. Stipulated Protective Orders and Filings Under Seal

- (1) All proposed stipulated protective orders shall include the following provision:

“Pursuant to this Order, whenever a party intends to file Confidential Material or other such material with the Court that the party desires to be filed under seal, or reasonably believes another party desires it be filed under seal, such party shall first file a motion for leave to file such materials under seal after conferring with all other parties as to their consent or opposition and certify that the conferral occurred and state whether each party consents or opposes the motion.”

- (2) In accordance with Local Rule 5.2(H) and prevailing law, a party wishing to file any document or portion thereof under seal must obtain prior leave of Court for each document (or portion thereof) that is requested to be filed under seal. Whenever a party intends to file with the Court exhibits, transcript excerpts, affidavits, declarations, or related motions or briefing that include and/or quote from such materials containing information that the party desires be filed under seal or reasonably believes another party desires be filed under seal, such party shall file a motion for leave to file such materials under seal provisionally. The party filing such provisional motion shall first confer with all other parties as to their consent or opposition, and the motion shall certify that the conferral occurred and state whether each party consents to or opposes the motion or specified portions thereof. Upon cause shown by any party (including the party filing the provisional motion) who opposes the sealing of specified material contemplated by the provisional motion, the Court will establish deadlines for the party or parties desiring to keep such provisionally sealed materials sealed to file supplemental briefing that sets forth the specific factual and legal basis and necessity for sealing, with particularity as to each item to be sealed, in accordance with prevailing law. Any party or other person with a recognized interest may file a response thereto. No replies shall be filed absent leave of Court.

- (3) Any provisional motion to seal shall also be accompanied by a proposed order that includes the following: “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.” If a party or other person with a recognized interest wishes to file

such a motion to unseal, that party must first confer with the parties as to whether specified materials should be unsealed or remain sealed and such motion shall certify that the conferral occurred and state whether each party consents to or opposes the motion or specified portions thereof. Thereafter, and in accordance with deadlines established by further order of Court, any party who opposes such motion to unseal those materials must set forth the specific factual and legal basis and necessity for sealing, with particularity as to each item to remain sealed, in accordance with prevailing law, and any party or other person with a recognized interest may file an opposition thereto.

- (4) A party advocating for materials to be filed or maintained under seal must set forth the specific factual and legal basis and necessity for doing so, with particularity as to each item that is desired to be sealed, in accordance with prevailing law. *See In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662 (3d Cir. 2019).
- (5) The parties are reminded that all proceedings in federal court are presumptively open to the public, including those in which “sealed” material may be presented or otherwise discussed.
- (6) Parties need not seek leave of Court to redact personal identifiers as required by Local Rule 5.2.

III. Criminal Matters

A. Motions for Extensions of Time

The Court considers requests for extensions on a case-by-case basis. Prior to requesting an extension of time to file pretrial motions, counsel for the moving party must confer with opposing counsel to obtain consent, and state in the motion whether consent was obtained. Appropriate language excluding delay for purposes of the Speedy Trial Act must be included in the proposed order accompanying the motion.

B. Motions for Pre-Plea Presentence Report

The Court will not grant a motion for a pre-plea presentence report unless the defendant has consented to the submittal and disclosure of such report, consistent with Federal Rule of Criminal Procedure 32(e)(1). The 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. Motions to Travel

The Court requires the filing of a motion for leave to travel outside the Western District of Pennsylvania by a defendant. Such motion should specify the position of the Government and the Probation/Pretrial Services Officer.

D. Status/Pretrial Conferences

Status conferences will be scheduled as necessary or upon the request of counsel. Additionally, following the Court's ruling on pretrial motions, the Court will conduct a status conference at which defense counsel should be prepared to advise the Court of the defendant's intention to proceed to trial or plead guilty. A pretrial conference will be conducted in advance of trial.

E. Guilty Pleas

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

F. Trial

The Court will issue a pre-trial order, which sets forth pre-trial deadlines and outlines trial procedures.

G. Sentencing

The Court will issue a presentence order, which outlines deadlines for the filing of each party's Position With Respect to Sentencing Factors, issuance of the Court's Tentative Findings and Rulings, and the filing of each party's Sentencing Memorandum, as well as any other supplemental information for consideration at sentencing.

The Court does not usually hold a sentencing conference prior to the sentencing hearing but may hold one if requested by counsel.

H. Other Criminal Practices and Procedures

The Court will include recommendations to the Bureau of Prisons in the judgment order if appropriate.

/s/ *W. Scott Hardy*
W. Scott Hardy
United States District Judge