

**General Practice and Procedures**  
**United States Magistrate Judge Richard A. Lanzillo**  
**United States District Court for the Western District of Pennsylvania**  
**Erie Division**

I. General Matters

- A. Duties of United States Magistrate Judges in this District are governed by Local Rule 72.
- B. Communication with the Court. Magistrate Judge Lanzillo generally does not accept letters or faxes from litigants unless he specifically requests or approves the same. All communication should be made by way of motion, unless otherwise ordered by the Court. Requests for the re-scheduling of conferences may be made by telephone to the Court's Deputy Clerk but only if counsel for all parties are on the line or have expressly authorized counsel for a particular party to convey the request.
- C. Telephone Conferences. Magistrate Judge Lanzillo will, on occasion, handle some matters by telephone conference for the convenience of counsel and/or litigants. Such conferences may include participants in person and others on the telephone, depending on the situation. Magistrate Judge Lanzillo routinely handles motions for injunctive relief filed by prisoners by telephone hearing.
- D. Comment to the Media. Commentary to the media and postings to social media outlets such as Twitter and Instagram on pending cases are disfavored, but Magistrate Judge Lanzillo places no specific restrictions on counsel unless such commentary becomes disruptive to the proceedings. Attorneys are expected to adhere to the Rules of Professional Conduct in all dealings, including those with the media.

II. Motions Practice

- A. Oral argument. Magistrate Judge Lanzillo typically does not conduct oral argument on pretrial motions. Argument, if requested, may be held if deemed useful to the Court, particularly on dispositive motions in complex cases. If oral argument on a motion is appropriate, the Court will enter an order indicating such. No specific days or times are set aside for argument.
- B. Briefs. Magistrate Judge Lanzillo generally requires legal briefs in support of motions to be contemporaneously filed with those motions. Briefs in support of motions relating to discovery matters are not required but are generally permitted to be filed ten days after the Response deadline. Reply briefs are generally permitted **but shall not exceed five (5) pages without leave of court. If a reply brief raises arguments beyond the scope of the moving party's original motion, the Court may strike offending portions of the brief or, on motion of the non-**

moving party, permit the filing of a surreply. Surreply briefs are discouraged and may only be filed with leave of court. Surreply briefs shall not exceed five (5) pages.

- C. Motions on Discovery Matters. Magistrate Judge Lanzillo expects parties and their counsel to engage in good faith efforts to resolve discovery disputes prior to seeking the intervention of the Court. Where such efforts fail, a discovery motion should relate a concise summary of the issue, and any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall include a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion in accordance with LCvR 37.2. A discovery motion should be accompanied by a telephone call to Magistrate Lanzillo's chambers, during which a conference to resolve the dispute will be scheduled in order to avoid undue delay in the progress of the litigation. Counsel for the moving party must notify opposing counsel before contacting chambers to schedule a discovery dispute conference and make a good faith effort to include opposing counsel in the telephone call scheduling the conference.

- D. Motions to Dismiss – Certificates of Conferral

Given that motions filed pursuant to Federal Rule of Civil Procedure 12(b) are discouraged if the defective pleading is curable by amendment, the Court requires that the parties confer prior to the filing of such a motion to determine whether it can be avoided. The duty to meet and/or confer extends to parties appearing pro se but does not apply to incarcerated pro se litigants. Consistent with this rule, the party moving for dismissal must attach a certificate to their motion stating that they have made good faith efforts to confer with the non-moving party in order to determine whether the identified pleading deficiencies may be cured by amendment. Motions to Dismiss that do not contain the required certificate will be summarily denied.

Additionally, the parties shall endeavor not to oppose motions to amend 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.

- E. Chambers Copies of Motion Papers. In light of the establishment of CM-ECF, no paper courtesy copies should be sent to chambers.
- F. Scheduling. The case management order will typically set a schedule for dispositive motions and briefing. Magistrate Judge Lanzillo's typical practice is to require responsive briefs to be filed within 10-20 days of the day a motion is filed. If a motion is not covered by the case management order, the Magistrate

Judge will issue a separate scheduling order. Extensions of time to respond will be granted as necessary.

- G. Evidentiary Hearings. When requested by a District Judge, Magistrate Judge Lanzillo will hold evidentiary hearings on pretrial motions on a date separate from, and prior to trial. Magistrate Judge Lanzillo may additionally hold evidentiary hearings on habeas corpus petitions when appropriate.
- H. Motions in Limine. If requested by a District Judge, motions in limine will be entertained prior to trial.
- I. Proposed Orders. In accordance with the Local Rules, every motion shall be accompanied by a proposed order. This order must include language detailing the specific relief sought, and not simply that the motion “is granted.”

### III. Matters Relating to Civil Cases

#### A. Pretrial Procedures.

- 1. Local Rule 16.1. Magistrate Judge Lanzillo’s pretrial statement requirements are found in the standard case management order. Such requirements are indicated in the form provided for in the Local Rules.

After the filing of an answer by defendants (or after the denial of a timely 12(b) motion), Magistrate Judge Lanzillo will conduct 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).

Magistrate Judge Lanzillo will entertain motions by out-of-town counsel to participate in the first case management conference by telephone. Attendance by telephone is permitted only with the prior express permission of the Court. Personal appearance of lead counsel for all parties is encouraged.

- 2. Pretrial Conferences. The District Judge assigned to the case typically conducts the final pretrial conference, except in cases where the parties have consented to the jurisdiction of the Magistrate Judge. In consent cases, an order will be issued to the parties indicating requirements of the pretrial conference.
- 3. Settlement. Magistrate Judge Lanzillo encourages settlement of disputes where possible and is willing to participate in settlement conferences when requested by the parties. All settlement conferences will be held in Erie, Pennsylvania, and all parties and counsel must be attendance. Persons with authority to settle must attend the settlement conference with the

attorneys. In limited circumstances, Magistrate Judge Lanzillo will allow a party to be available by telephone but only with the express prior permission of the Court and the opposing parties. Written summaries are not required in preparation for settlement unless specifically ordered by Magistrate Judge Lanzillo.

4. Extensions and Continuances. Motions for extensions of time and for a continuance will be determined on an individual, case specific basis. Such requests are usually granted so long as they are reasonable in length, not frivolous, and not repetitive. Magistrate Judge Lanzillo is reluctant, however, to reschedule these matters without good cause.

B. Matters Relating to Discovery.

1. Length of Discovery Period and Extensions. Magistrate Judge Lanzillo typically permits 120-150 days for the completion of discovery—unless it is a simple case needing less time. Reasonable requests for extensions of time will be granted.
2. Expert Witnesses. Magistrate Judge Lanzillo adheres to Fed. R. Civ. P. 26(b)(4) as to depositions of expert witnesses.
3. Discovery/Deposition Disputes. Magistrate Judge Lanzillo will entertain telephone calls from counsel during a deposition to resolve a discovery dispute as available. The parties are encouraged to attempt to resolve discovery disputes without court involvement or intervention. Magistrate Judge Lanzillo will entertain telephone conferences to resolve minor discovery disputes provided counsel for the party seeking relief provides reasonable advance notice to counsel for all parties of the request for the Court's involvement.
4. Stays of Discovery. Magistrate Judge Lanzillo's usual practice is not to stay discovery during the pendency of a dispositive motion. 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. Absent a motion to stay, the parties should assume that discovery is appropriate.
5. Limitations on Discovery. As a general matter, Magistrate Judge Lanzillo does not impose any limitations on the use of particular discovery procedures outside of the Federal Rules of Civil Procedure or the Local Rules of this Court.
6. Rule 11 Motions – Rule 37 Sanctions. Magistrate Judge Lanzillo's practice is to rule as soon as possible on motions made pursuant to Rule 11 or Rule 37 motions. In lieu of a supporting brief, counsel should telephone

chambers to note the filing of a Rule 11 or Rule 37 motion, so that an argument can be scheduled.

C. Injunctions and TROs

1. Argument is typically held on all motions for preliminary injunction and temporary restraining order, including prisoner motions. They are typically held telephonically in prisoner cases, and in the courtroom in non-prisoner matters. Magistrate Judge Lanzillo issues a Report and Recommendation on these motions.

D. Trial Procedures.

*N.B. The following practices are not exhaustive. Recognizing that each trial is unique, certain practices and procedures may be added or amended depending on the needs of the particular litigation.*

1. Scheduling. All trials scheduled before Magistrate Judge Lanzillo are assigned a date certain for trial. In setting the trial date he will consider other obligations of counsel and of the parties and witnesses so long as he is promptly notified of any obligations.
2. Trial Hours/Days. Generally, cases will be tried Monday through Friday, between 9:30 a.m. to 4:30 p.m., with breaks when appropriate. Magistrate Judge Lanzillo will meet with counsel before these appointed times to discuss trial/evidentiary issues.
3. Trial Briefs. Trial briefs or memoranda may be filed, but are not required, unless ordered.
4. Voir Dire. Magistrate Judge Lanzillo will conduct the preliminary voir dire of potential jurors. Counsel may submit proposed voir dire questions for the Court's consideration one week prior to the start of trial.
5. Note Taking by Jurors. Allowing jurors to take notes will be determined on a case-by-case basis.
6. Side Bars. Side bar conferences during trial are permitted when necessary.
7. Examination of Witnesses Out of Sequence. The examination of a witness out of sequence—either within the party's own case or within an opposing party's case—will be permitted if a scheduling conflict exists.

8. Opening Statement and Summations. In general, counsel are not limited in the amount of time taken for opening statements and summations but the Court instructs that concise statements are more effective.
9. Examination of Witnesses or Argument by More Than One Attorney. One attorney from each party may conduct an examination of any witness and they may argue any motion or point.
10. Examination of Witness Beyond Direct and Cross. Counsel is permitted to re-direct and re-cross examine a witness as necessary, but are not usually permitted any further examination.
11. Videotaped Testimony. Magistrate Judge Lanzillo does not have any special procedures or requirements with respect to the use or admission of videotaped testimony other than informing the Court prior to trial of the intention to use such evidence.
12. Reading of Material into Record. Magistrate Judge Lanzillo has no policy or rules on this issue, it will be considered on a case-by-case basis.
13. Exhibits. Magistrate Judge Lanzillo has no special rules regarding the marking, exchange, or submission of exhibits or demonstrative evidence. He has no special rules regarding use of visual aids during trial or opening statements. Exhibits are required to be marked, and must be offered into evidence before testimony is given.
14. Directed Verdict Motions. Magistrate Judge Lanzillo does not have any special requirements beyond those set forth in the Federal Rules of Civil Procedure.
15. Jury Instructions and Verdict Forms. Generally, Magistrate Judge Lanzillo utilizes standard jury instructions from Federal Jury Practice. He will permit the submission of proposed jury instructions and proposed verdict forms. If proposed jury instructions are to be submitted, the Court will establish an appropriate deadline for submission.
16. Proposed Findings of Fact and Conclusions of Law. In non-jury trials, Magistrate Judge Lanzillo permits, and at times will order, the submission of proposed findings of fact and conclusions of law.
17. Offers of Proof. There are no restrictions on offers of proof at trial.
18. General Courtroom Rules. Counsel shall conduct themselves with courtesy and civility at all times.

E. Jury Deliberations

1. Written Jury Instructions. During trial, or in the case of a short trial at the pretrial conference, Magistrate Judge Lanzillo requests proposed jury instructions from all parties. A jury instruction conference discussing the proposals is held during the trial with all parties. Standardized jury instructions regarding general issues and procedures are used as well.
2. Exhibits in the Jury Room. Magistrate Judge Lanzillo allows exhibits to be provided to the jury during their deliberations.
3. Jury Requests to Read Back Testimony or Replay Tapes During Deliberations. Magistrate Judge Lanzillo has no general practice regarding the request for reading of trial testimony or replaying videotaped testimony.
4. Jury Questions. If a question is submitted to the Court, Magistrate Judge Lanzillo will discuss the question with counsel and obtain agreement on an appropriate answer to be given to the jury.
5. Availability of Counsel During Jury Deliberations. Counsel must be available by telephone while the jury is deliberating.
6. Interviewing the Jury. Magistrate Judge Lanzillo will advise jurors that they do not have to respond to inquiries from counsel. However, he will instruct jurors that responses may be helpful to counsel. Although the Judge does not discourage counsel from interviewing jurors post-verdict, attorneys should advise the Court of their intention to interview a juror prior to doing so.

F. General Concerns

1. Special Types of Cases. Magistrate Judge Lanzillo does not have any special practices or procedures as to particular types of cases.
2. Other Individual Practices/Procedures. There are currently no other individual practices Magistrate Judge Lanzillo would like attorneys practicing before him to be aware of. Counsel will be notified via this posting as to any new rules or procedures the Judge elects to adopt.

IV. Criminal Cases

- A. The only criminal matters other than preliminary hearings Magistrate Judge Lanzillo presides over are misdemeanors and petty offenses. In those cases, where there is a guilty plea, Magistrate Judge Lanzillo follows a written format which is

available for counsel's review. Decisions on pretrial detention hearings are made within one day of the hearing.