

**PRACTICES AND PROCEDURES OF
MAGISTRATE JUDGE LISA PUPO LENIHAN**

I. GENERAL MATTERS

A. Communications with the Court

Counsel are not to send correspondence to Magistrate Judge Lenihan unless she specifically requests or approves the same. Requests for the rescheduling of conferences must be made by motion.

B. Communications with Law Clerks

Counsel are not to contact Magistrate Judge Lenihan's law clerks. If they wish to consult on the status of a matter or an appropriate procedure, counsel are to call her Courtroom Deputy.

C. Telephone Conferences

Requests for counsel or parties to participate in any conference by phone will be considered on a case by case basis. Prior to making such a request, it is preferred that other counsel be consulted for opposition.

When a telephone conference by all counsel is permitted, the Court will enter an order with call in information.

Magistrate Judge Lenihan requires that discovery disputes be handled by having the parties discuss a resolution among themselves and, if this does not prove possible, then telephone chambers to resolve the matter, rather than filing a formal discovery motion. Please see Order on Motions Practice, *infra*.

D. Pronoun Usage

The parties and counsel are encouraged to advise the Court of their pronouns and honorifics (such as Ms., Mx., or Mr.). People appearing before this Court may provide their pronouns and honorifics in writing or orally when appearing for conferences, hearings or trials. Attorneys may identify their pronouns and honorifics in their signature lines when submitting documents for filing. Parties and counsel are instructed to address each other in all written documents and court proceedings by those previously identified pronouns and honorifics.

E. Pro Hac Vice Admissions

Pro hac vice motions may be ruled upon by the magistrate judge assigned to the case.

F. Comments to the Media

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

II. MOTIONS PRACTICE

A. Oral Argument

Oral argument may be scheduled on selected, factually or legally complex matters. If the Court deems oral argument to be appropriate, an order will issue. The parties may also file a motion requesting oral argument. Magistrate Judge Lenihan does not set aside a specific day or time for argument of motions. The parties are further referred to the Statement of the Court Regarding Courtroom Opportunities for Newer Lawyers below.

B. Briefs

Motions seeking substantive legal ruling(s), whether dispositive or non-dispositive, should be accompanied by a supporting brief. The supporting brief must be filed contemporaneously with the motion. A brief may be omitted only if: (i) the motion is non-dispositive, and (ii) the motion itself contains sufficient arguments and legal citation to permit meaningful judicial review.

Supporting and Responsive briefs are limited to 25 pages in length. Reply briefs should not be submitted in connection with non-dispositive motions, absent leave of court. Reply briefs may be submitted in connection with dispositive motions but are limited to five (5) pages. Any reply brief submitted should be narrowly tailored to address only those matters newly raised in the response brief.

Sur-reply briefs are strongly disfavored, and they may be submitted only with leave of court.

C. Chamber Copies of Motion Papers

Generally, courtesy copies of all motions and briefs should not be forwarded to chambers, including exhibits and attachments, as they are available to the Court through ECF. However, where the exhibits are in excess of 150 pages, Magistrate Judge Lenihan prefers that counsel deliver to chambers a hard copy of the appendix/exhibits.

D. Scheduling

Responses to non-dispositive motions shall be filed within fourteen (14) days of service. Responses to motions to dismiss shall be filed within twenty-one (21) days of service, and motions for summary judgment shall be filed within thirty (30) days of service. A separate briefing order will not be issued. Please see Order on Motions Practice, *infra*. Where a brief is required, it must be filed simultaneously with the motion.

At the close of discovery, or shortly thereafter, the Court will issue an order setting forth *inter alia* the deadline for filing dispositive motions, including summary judgment motions. Counsel must follow Local Rule 56.1 in filing and responding to summary judgment motions.

E. Evidentiary Hearings

Evidentiary hearings on pretrial matters generally are scheduled in advance of trial. When counsel conclude that an evidentiary hearing is appropriate, they should confer with opposing counsel and request a hearing by motion or through a conference call with the court.

F. Motions In Limine

Counsel shall comply in all respects with Local Rule 16.1.C.4 with regard to motions

in limine. To the extent counsel deems it necessary to file such motions, the date for filing the motion and supporting brief will be set in the Final Pretrial Order. 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.”

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court uses an Initial Scheduling Order based on Local Rule 16.1. Pretrial statements must comply with Local Rule 16.1.C.

2. Scheduling Conferences

Pursuant to Local Rule 16.1, after the filing of an answer by the defendant (or after resolution of a timely filed Rule 12(b) motion), Magistrate Judge Lenihan will issue an order setting the date of the initial scheduling conference. Prior to the conference, the parties shall meet and confer and file a report pursuant to Fed. R. Civ. P. 26(f), the form of which is set forth in an Appendix to the Local Rules.

3. Pretrial/Settlement Conferences

After the court has ruled on all dispositive motions, a final conference will be held to discuss settlement and any pretrial matters that do not require the decision of the district court judge who will be trying the case. On consent cases, the final pretrial conference shall be conducted in accordance with Local Rule 16.1.C.

4. Settlement/ADR

Magistrate Judge Lenihan requires counsel and their clients, or persons with authority, to be present at settlement discussions. Presuming counsel has full authority to negotiate the settlement, and for good cause shown, the client may be permitted to participate by telephone on an as-needed basis.

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. The Court prefers that the ADR process occur within 60 days of the Initial Scheduling Conference; however, if the parties have a good faith belief that additional time is required, the Court will entertain a motion or request to extend the deadline. If the

parties choose arbitration, that will generally be scheduled 90 days after the initial case management conference, with 60 days of discovery to follow if the arbitration is non binding.

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. Reasonable extensions will generally be granted.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Counsel must comply with the provisions of Fed.R.Civ.P. 26 generally and must file the written report required by Rule 26(f) prior to the initial scheduling conference. Generally, the Court allows 150 total days for discovery.

2. Expert Witnesses

Expert depositions may be deferred until after dispositive motions upon agreement of the parties and the Court.

3. Discovery/Deposition Disputes

For discovery disputes that arise during a deposition, the attorneys together may contact the Court to resolve the matter at that time. Written motions are discouraged. As stated above, the Court prefers a telephone conference prior to the filing of a discovery motion. If a written discovery motion is filed, the Court will conduct a telephone conference with all attorneys as necessary. The non-moving parties may file a response if desired.

4. Requests for Extensions of Discovery

All requests for extensions of discovery must comply with the Court's standing order concerning extensions of discovery, *infra*. The parties are encouraged to abide by discovery deadlines and only request extensions if absolutely necessary.

5. Stay of Discovery

The filing of a motion to dismiss or other dispositive motion generally will not stay discovery. A stay may be sought by motion but will be granted only if the right to relief is clear or some other compelling reason exists. Participation in an ADR process will not stay discovery.

6. Limitations on Discovery

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

7. Rule 11 Motions - Rule 37 Sanctions

Counsel are expected to comply with the federal and local rules. The Court has no additional requirements and will rule promptly.

C. Injunctions

Either upon consent of the parties or on referral by a District Court Judge for Report and Recommendation, a briefing schedule will be issued, and a hearing date will be scheduled if necessary.

D. Trial Procedures

1. Scheduling of Cases

For cases in which the parties have consented to jurisdiction before this Magistrate Judge, a date certain will be given for trial following the resolution of Rule 56 motions or, if none are filed, at the status conference following the close of discovery. Vacation schedules and personal/professional obligation conflicts of the attorneys, parties and witnesses will be accommodated where possible and the Court must be notified of any conflict as soon as possible.

2. Trial Hours/Days

Generally, cases will be tried Monday through Friday, 9:30 a.m. to 4:30 p.m., with breaks when appropriate. Magistrate Judge Lenihan will meet with counsel before and after these appointed times to discuss trial/evidentiary issues.

3. Trial Briefs

Trial briefs are not required but are encouraged and should not exceed fifteen (15) pages.

4. Voir Dire

The Court will conduct the preliminary voir dire of potential jurors. Counsel may submit proposed voir dire for the Court's consideration at the time established in the Final Pretrial Order.

5. Notetaking by Jurors

The Court allows jurors to take notes unless counsel voice a valid objection.

6. The Court encourages the parties to consider permitting jurors to ask questions during the trial, previously screened by the Court and counsel.

7. Side Bars

Side bars will be permitted when necessary.

8. Examination of Witnesses Out of Sequence

Magistrate Judge Lenihan will permit the examination of a witness out of sequence, either within the party's own case or within an opposing party's case, if a scheduling conflict exists. If a witness will be unavailable for trial, the witness' testimony may be presented by deposition.

9. Opening Statements and Summations

There are no court imposed time limits on opening statements and closing arguments; however, the Court encourages parties to limit openings and closings to 30 minutes unless the case is particularly complex. Defense counsel may defer opening statements. The parties are given a choice as to sequence of closing argument. Plaintiff may close first and retain a short time for rebuttal or close last. If the parties are not in agreement as to this the Court will defer to Plaintiff.

10. 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.

11. Examination of Witnesses Beyond Direct and Cross

Magistrate Judge Lenihan will permit redirect and recross of a witness as necessary but does not usually permit any further examination.

12. Videotaped Testimony

Magistrate Judge Lenihan does not have any special procedures or requirements with respect to the use or admission of videotaped testimony. Counsel should, however, inform the court in advance of trial of the intention to use such evidence, so that the Judge and parties may discuss the procedures to be utilized.

13. Reading of Material into the Record

Magistrate Judge Lenihan has no policy or rules on this point and it will be considered on a case by case basis.

14. Exhibits

All exhibits must be listed in the Pretrial Narrative 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 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 obtain the Court's approval in advance for use of any visual aid(s) during opening statement. Otherwise, visual aids are permitted during trial and should be marked and offered into evidence as with any other exhibit.

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. To the extent that the parties cannot agree on a particular instruction or form, each party may submit one for the Court's approval. The date for filing same will be set in the Final Pretrial Order. The Court will hold a charging conference at which time counsel will receive the final charge and verdict form to be given to the jury.

16. Proposed Findings of Fact and Conclusions of Law

In non-jury trials, Magistrate Judge Lenihan permits, and at times requests, the submission of proposed findings of fact and conclusions of law.

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. The Court will not tolerate discrimination or bias of any kind.

E. Jury Deliberations

1. Written Jury Instructions

Magistrate Judge Lenihan gives the jury a written copy of her jury instructions.

2. Exhibits in the Jury Room

Magistrate Judge Lenihan permits exhibits to be provided to the jury for their deliberations, so long as counsel agrees upon the exhibits that are provided.

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

Where appropriate, Magistrate Judge Lenihan will permit the reading back of testimony to the jury.

4. Jury Questions

If a question is submitted to the Court, the Judge will discuss the question with counsel prior to giving an answer to the jury.

5. Availability of Counsel During Jury Deliberations

Counsel must be available by telephone during jury deliberations.

6. Interviewing the Jury

Magistrate Judge Lenihan advises jurors that they do not have to respond to inquiries from counsel. However, she instructs the jurors that responses may be

helpful to counsel.

IV. CRIMINAL CASES

Criminal cases before Magistrate Judge Lenihan 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.

Rev. 4/19

ORDER ON MOTIONS PRACTICE

The parties shall submit to the following rules in making and responding to motions on any case assigned to this member of the Court:

1. All motions and briefs shall use a font size not smaller than 12.
2. A motion shall state the factual and legal grounds for said motion, and shall be accompanied by a proposed Order and a brief in support, except that briefs are not required for motions for extensions of time and motions for continuance. A brief in support of a motion shall not exceed twenty-five (25) pages in length. Motions for summary judgment shall comply with Local Rule 56.1.
3. Responses to non-dispositive motions shall be filed within fourteen (14) days of service. Responses to motions to dismiss shall be filed within twenty-one (21) days of service, and responses to motions for summary judgment shall be filed within thirty (30) days of service. A separate briefing Order will not be issued. Responsive briefs are limited to twenty-five (25) pages in length.
4. Reply briefs for dispositive motions may be filed without leave of Court, but are limited to five (5) pages and shall be filed within fifteen (15) days of service of the response brief.
5. Sur-reply briefs may be submitted only with leave of court and if permitted, are limited to five (5) pages.
6. Oral argument will generally be scheduled for only the most factually and legally complex matters. An order will issue should the Court deem oral argument necessary. If counsel would like to present oral argument on a matter, they should file a motion. (Counsel are referred to the Statement Regarding Courtroom Opportunities For Newer Lawyers below.)
7. Generally, courtesy copies of all motions and briefs should not be forwarded to chambers, including exhibits and attachments, as they are available to the Court from ECF. However, where the exhibits are in excess of 150 pages, the Court prefers that counsel deliver to chambers a hard copy of the appendix/exhibits.

The following additional rules pertain specifically to discovery motions practice:

Counsel shall confer to resolve any discovery dispute **without** judicial intervention. Where the matter is resolved and requires modification of the Initial Scheduling Order, the parties shall file a joint motion and proposed Order requesting amendment. If discovery issues remain unresolved, counsel shall contact the Court to arrange for a telephone conference **before** proceeding to formal motions practice. Any dispute not resolved during the telephone conference shall be presented by motion, with a proposed

**STATEMENT REGARDING COURTROOM OPPORTUNITIES
FOR NEWER LAWYERS**

LISA PUPO LENIHAN, UNITED STATES MAGISTRATE JUDGE

Courtroom opportunities for relatively new attorneys, particularly those who practice at larger firms or in more complex areas of the law, have declined precipitously in recent years.

I encourage the active participation of such attorneys in all court proceedings. Based on my experience, these newer lawyers are more than up to the task, and they can effectively handle not only relatively routine matters (such as discovery motions), but also, where appropriate, more complex matters (such as motions for summary judgment or the examination of witnesses at trial).

In an effort to increase advocacy opportunities for newer lawyers, with notice in advance, the Court will consider relaxing the usual requirement that only a single lawyer may present an argument, and will allow a more experienced lawyer to "back up" a newer lawyer in the examination of witnesses so long as doing so will not unduly prolong the proceeding, not prejudice the opposing party, and not result in undue "double dipping". Such new lawyers who actively participate in evidentiary hearings, including examining a witness at trial, should be accompanied and supervised by a more experienced attorney.

Of course, even relatively inexperienced attorneys will be held to the same professional standards with regard to any matter as to which experience is largely irrelevant. In particular, all attorneys appearing in court are expected to be appropriately prepared, regardless of experience. For example, any attorney who is arguing a motion for summary judgment is expected to be thoroughly familiar with the factual record and the applicable law.

Further, all attorneys appearing in court should have a degree of authority commensurate with the proceeding that they are assigned to handle. For example, an attorney appearing at a scheduling conference ordinarily must have the full authority to propose and agree to a discovery or trial schedule and any other matters reasonably likely to arise at the conference, to address and argue any then-pending motion, and to discuss the status of any settlement discussions.

Dated: April 2019

STANDING ORDER CONCERNING EXTENSION OF DISCOVERY

In order to promote the prompt disposition of cases for the benefit of the litigants, IT IS

HEREBY ORDERED as follows:

1. All requests for extension of discovery must adequately explain the reasons why discovery was not completed during the original discovery period agreed to by counsel at the outset of the case.
2. All requests for extension of discovery must set forth the revised discovery plan, explaining in detail precisely what discovery will take place within the extended discovery period and when it will occur.
3. To promote uniformity in the handling of requests for extension of discovery or other modifications to the original case management order, all such motions shall be in the form attached to this order.
4. Counsel are forewarned that motions for extension of discovery and/or modification of the case management order will not be granted in the absence of extraordinary circumstances adequately articulated in the motion.
5. Counsel's preoccupation with other cases is not an extraordinary circumstance which would justify the granting of a motion for an extension.

SO ORDERED this 11th day of April, 2019 .

By the Court:

_____/s/
Lisa Pupo Lenihan
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____,)
)
Plaintiff(s),)
)
vs.) Civil Action No. _____
)
)
_____,)
)
Defendant(s).)

**MOTION FOR EXTENSION OF DISCOVERY DEADLINES
AND/OR MODIFICATION OF SCHEDULING ORDERS**

1. This is the _____ (first or second) request for an extension of discovery deadlines and/or a modification of the Initial/Final Scheduling Order.
2. (A) copy(ies) of the Court’s Initial/Final Scheduling Order and any subsequent Orders is (are) attached.
3. [If applicable] The following ADR process took place on _____:
4. During the original discovery period, the following have taken place:
 - a. The following depositions were taken on the dates set forth below:
 - i. By Plaintiff:
 - ii. By Defendant:
 - b. Motions to produce documents were served on the dates set forth below:
 - i. By Plaintiff:
 - b. By Defendant:
 - c. Interrogatories were served on the dates set forth below:
 - i. By Plaintiff:
 - ii. By Defendant:

5. (Plaintiff) (Defendant) (Plaintiff and Defendant jointly) seek an extension of discovery deadlines or a modification of the Initial/Final Scheduling Order for the reasons set forth below:

6. If this motion is filed by only one of the parties:

- a. The movant has met and discussed this request with opposing counsel;
- b. Opposing counsel does (does not) consent to the extension or modification.

7. The specific request for extension and/or modification is set forth below:

8. The proposed amended case management order is attached.

9. If the motion is granted, the movant will complete the following discovery within the extended discovery period:

- a. Depositions of the following parties on the following dates;
- b. First (second or subsequent) set of interrogatories;
- c. First (second or subsequent) request to produce documents;
- d. Other specific discovery objectives to be completed.

10. Movant understands that absent some extraordinary, unavoidable and unforeseeable circumstances (which do not include moving counsel's preoccupation with other cases), no further extensions for discovery will be granted and the case will proceed to disposition.

Respectfully submitted,

Counsel for Plaintiff/Defendant