

**INTERIM PRACTICES AND PROCEDURES OF
JUDGE CHRISTY CRISWELL WIEGAND**
(Effective October 19, 2020)

I. GENERAL MATTERS

A. Local Rules of Court

The Court follows all Local Rules of Court in civil, criminal, bankruptcy, patent and admiralty cases, unless otherwise noted herein or ordered.

B. Communication with the Court

Except as set forth in Sections III.A.1. and III.B.2. below, relating to confidential position letters and discovery disputes, communication with the Court shall be in the form of a motion, 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. Otherwise, such requests are to be made by motion.

C. Communication with Law Clerks and Other Staff

Communication with the Court's Deputy Clerk and Paralegal concerning the administration, but not the merits of a case, are permissible. No substantive legal matter should be discussed. Unless directed to do so, counsel are not to contact Judge Wiegand's law clerks.

D. Telephonic and Video Conferences

Requests for counsel or parties to participate in conferences remotely will be considered on a case-by-case basis for good cause. Unless otherwise ordered, initial case management conferences, settlement conferences, and final pretrial conferences will not be conducted remotely.

E. Alternative Dispute Resolution (ADR)

The Court follows the ADR policies and procedures available on the Court's website (www.pawd.uscourts.gov).

F. Objections

If counsel has an objection to any procedure, ruling or other action of the Court, it is counsel's responsibility to make an immediate formal objection on the record. If no court reporter is present and counsel has an objection, or otherwise desires the proceeding to be on the record, it is counsel's responsibility to request a court reporter and thereafter place the objection or proceeding on the record.

G. Comments to the Media

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

H. Amendment of these Practices and Procedures

The Court's practices and procedures are available online and will be updated periodically. Attorneys are responsible for ascertaining and abiding by any such changes.

II. CIVIL MOTIONS PRACTICE

A. Routine Motions: Duty to Confer

For routine motions, including motions for extension of time, motions for continuance, or motions for leave to amend the pleadings, counsel for the moving party must confer with opposing counsel to obtain consent, and state in the motion whether consent was obtained.

B. Rule 12 Motions: Duty to Confer and Certify

If a party chooses to file a motion under Federal Rule of Civil Procedure 12(b), the parties must meet and confer before the filing of such a motion to determine whether any pleading defects are curable by amendment, thereby obviating part or all of the motion. The duty to meet and confer extends to parties appearing pro se. A motion to dismiss must be accompanied by a certificate stating that the moving party has made a good faith effort to confer with the nonmovant(s) to determine whether the identified pleading deficiencies may be cured by amendment.

Motions to dismiss that do not contain the required certification will be summarily denied. Furthermore, a non-moving party's non-compliance with this requirement, including failure to timely engage in the meet-and-confer process, may result in the assessment of monetary and/or nonmonetary sanctions. Those sanctions may include, but are not limited to, an assessment of attorneys' fees and costs associated with the filing of the motion to dismiss, and/or a denial of the non-movant's subsequent request for leave to amend.

C. Motions for Leave to Amend Pleadings

Parties must attach a copy of the draft amended pleading to any motion to amend and must show all proposed changes in "redline" or "track changes" format. The motion shall state the position of all other parties to the motion and shall set forth why amendment is supported by new law or newly discovered facts.

D. Briefs

No briefs should be filed for motions for extensions of time and motions for continuance. No briefs or motions are to be filed regarding discovery disputes unless directed by the Court after a telephonic status conference. *See* Section III.B.2. Otherwise, any motion seeking a substantive legal ruling, whether dispositive or non-dispositive, must be accompanied by a supporting brief, filed contemporaneously with the motion.

Briefs in support of and opposing dispositive motions are limited to twenty (20) pages, excluding exhibits and fact statements submitted in support of, or in

opposition to, summary judgment motions. Briefs in support of and opposing all other motions are limited to ten (10) pages.

Reply briefs are permitted without leave of court only for Rule 12(b), Rule 12(c), and Rule 56 motions, and are limited to five (5) pages. The parties must seek leave of court to file all other reply briefs and any surreply brief, and will be limited to five (5) pages if leave is granted.

E. Briefing Schedule

Parties have twenty-one (21) days from service to respond to a dispositive motion, such as a motion to dismiss or a motion for summary judgment, and seven (7) days to respond to a non-dispositive motion, unless otherwise ordered by the Court. Reply briefs to dispositive motions are due within seven (7) days of the date of service of the response to which they reply. No replies are permitted to non-dispositive motions except by leave of court. No surreplies for any motion are permitted without leave of court.

F. Proposed Orders

All motions must include a proposed order as an attachment. The proposed order must detail the specific relief sought, and not simply state that the motion “is granted.”

G. Response to Statement of Facts on Summary Judgment

When responding to a statement of facts pursuant to Rule 56, the responding party must include a reprint of each original fact statement, followed by the response, seriatim.

Except as otherwise provided herein, counsel must follow Local Rule 56 when filing and responding to summary judgment motions.

H. Oral Argument

Motions may be decided with or without oral argument as determined by the Court. Any party who believes that oral argument will materially assist the Court’s resolution of the motion may so advise the Court and request argument.

I. Chambers Copies

Counsel should not send courtesy copies to chambers of any document that is available on the CM/ECF system unless requested to do so.

J. Magistrate Judges’ Reports and Recommendations

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

the basis of the Report and Recommendation, the previously-filed briefs, and the record.

K. Evidentiary Hearings

Evidentiary hearings on pretrial matters, when deemed to be appropriate by the Court, generally will be scheduled in advance of trial. If counsel believes that an evidentiary hearing is appropriate, they should confer with opposing counsel and request a hearing by motion.

L. Motions in Limine/Daubert Motions

Deadlines for filing motions *in limine* and *Daubert* motions, with their respective supporting briefs and proposed orders, will be set in the post-discovery or pretrial scheduling orders. The Court will rule on these motions prior to trial, when feasible.

III. CIVIL PRETRIAL PROCEDURES

A. Pretrial Procedures

1. Confidential Position Letters

In all jury cases,¹ at least three (3) business days prior to any scheduled conference (initial case management conference, post-discovery status conference, settlement or pretrial conference) each party shall submit a confidential position letter of five (5) pages or less to Judge Wiegand's chambers.¹ To ensure candor, the position letters are not to be filed or shared with opposing counsel, but rather, are to be emailed to chambers at **wiegand_chambers@pawd.uscourts.gov**. All position letters will be kept confidential.

The position letter shall include:

- (a) A brief recitation of the most salient facts in the case;
- (b) A forthright discussion of your party's strengths and weaknesses, including your party's likelihood of prevailing on each claim or defense and a description of the issues remaining in dispute;
- (c) An estimate of the cost and time to be expended for trial;
- (d) The relief you are seeking; and
- (e) Your party's settlement posture, including present demands and offers and history of past settlement discussions, offers, and demands.

2. Initial Case Management Conference

An initial case management conference will ordinarily be held within thirty (30) days of the filing of answers by all defendants or disposition of a motion pursuant to Fed. R. Civ. P. 12. Lead trial counsel are required to participate in the conference.

¹ Position letters should not be submitted in non-jury cases before Judge Wiegand.

Prior to the conference, the parties must meet and confer and file their report pursuant to Fed. R. Civ. P. 26(f), the form of which is set forth in “Appendix LCvR 16.1A” to the Local Rules. The parties must also file a fully completed stipulation selecting ADR process prior to the conference. The Court will strike non-compliant ADR stipulations.

Counsel shall confer with their clients on all issues prior to the conference and be prepared to discuss the substance of the case. The Court will issue a case management order at or after the conference.

3. Post-Discovery Status Conferences

A post-discovery status conference will be held no more than thirty (30) days after the close of discovery in each case to discuss any expert witnesses, motions for summary judgment, potential trial dates, and settlement efforts. Lead trial counsel shall attend in person unless permission is otherwise granted in advance, and parties must attend in person or be available by telephone. If the Court orders a full settlement conference to take place as part of the post-discovery status conference, then the attendance requirements for settlement conferences will be in effect, per Section III.A.4. below.

Prior to the post-discovery status conference, the parties shall meet and confer regarding settlement of the case, whether either party intends to file a motion for summary judgment, and if a party intends to file a motion for summary judgment, on what claims.

Following discussion at the conference, if any party intends to file a motion for summary judgment, the Court will set such deadlines. If no motions for summary judgment will be filed, the Court will issue a pretrial order setting forth all pertinent deadlines.

If motions for summary judgment are filed, the Court will schedule a status conference after ruling on such motions to discuss settlement and pretrial matters, and the pretrial order will be issued following this status conference. Lead trial counsel shall attend in person unless permission is otherwise granted in advance, and parties must attend in person or be available by telephone. If the Court orders a full settlement conference to take place as part of this post-discovery status conference, then the attendance requirements for settlement conferences will be in effect, per Section III.A.4. below.

4. Settlement Conferences

If a matter is anticipated to proceed to a jury trial as opposed to a bench trial, the Court will entertain requests for settlement conferences, and/or may schedule such conferences in its discretion, including as part of post-

discovery status conferences and/or pretrial conferences.

Lead trial counsel and the appropriate client representative(s) with ultimate settlement authority shall attend all settlement conferences, in person. In cases where there is insurance coverage (or the possibility of insurance coverage, even if there is a coverage dispute or reservation of rights), an authorized representative shall attend the settlement conference, in person. Insurance carrier and client representatives in attendance must have ultimate settlement authority, and must not need to consult with other individuals, by telephone or otherwise, to obtain approval for any proposed settlement term or amount.

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. All participating trial counsel, the appropriate client representative(s) with ultimate settlement authority for each party, as well as any authorized insurance representative(s) with ultimate settlement authority, are required to attend in person.

B. Discovery Matters

1. Length of Discovery Period

Generally, 150 days is permitted for discovery unless the parties indicate that a different time frame is needed and the Court approves that time frame. Extensions of discovery may be permitted, but only for good cause shown, and if counsel has advanced the case during the initial period of discovery.

2. Discovery/Deposition Disputes

Counsel for the parties must confer on discovery disputes, prior to seeking the Court's intervention. If a discovery dispute cannot be resolved after the parties have conferred in good faith, the parties are to jointly contact chambers via telephone, or email the Court's deputy clerk Jounsun_Miller@pawd.uscourts.gov, with a copy to the Court's paralegal at Danielle_Crane@pawd.uscourts.gov, to schedule a telephonic status conference to discuss the dispute. No discovery motions are to be filed until after the conference except in cases of emergency as certified by counsel. Absent good cause shown, a failure to follow the above procedures shall result in a denial of any discovery motion, without prejudice.

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

3. Stay of Discovery

The filing of a motion to dismiss or other dispositive motion does not automatically stay discovery. A stay may be sought by motion, but will be

granted only if the right to relief under the dispositive motion is clear or some other compelling reason exists. In appropriate circumstances, discovery may be limited to those facts in support or opposition to the dispositive motion. Participation in an ADR process will not stay discovery.

C. Injunctions and TROs

Federal Rule of Civil Procedure 65 governs motions for temporary restraining orders and/or preliminary injunctions, and litigants should review that rule prior to the filing of any motion for injunctive relief. Any *ex parte* contact with the Court should be avoided. For temporary restraining orders without notice, the moving party must meet the requirements of Federal Rule of Civil Procedure 65(b). Consistent with Rule 65, the Court will not issue a temporary restraining order:

- (1) when the opposing party has been served;
- (2) when the motion provides no certification indicating that prompt service cannot be accomplished; or
- (3) when the motion is unaccompanied by an affidavit or verified complaint consistent with Rule 65(b)(1)(A).

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 to the affidavit(s). Any response to the motion for temporary restraining order or preliminary injunction should be accompanied by affidavit(s).

Following a review of the pleadings and affidavit(s), the Court will, in its discretion, determine whether or not to conduct a hearing, whether the injunction hearing should be consolidated with a trial on the merits, the scope of the testimony necessary to resolve the matter, and whether expedited discovery should be granted. Counsel filing a motion for temporary restraining order or preliminary injunction should immediately be prepared to proceed with argument, and testimony from supporting witnesses.

IV. CRIMINAL CASES

A. Motions for Extensions of Time: Duty to Confer

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 such delay from the operation of the Speedy Trial Act must be included in any proposed order on such a motion.

B. Motions for Pre-Plea Presentence Report

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

Defendant's counsel shall make every effort to ascertain the position of the government as well as the Probation/Pretrial Services Office before filing a motion to travel and include said positions in any motion.