

**PRACTICES AND PROCEDURES OF
MAGISTRATE JUDGE MAUREEN P. KELLY**

I. GENERAL MATTERS

A. Communications with the Court

Counsel are not to send letter motions/briefs to Magistrate Judge Kelly unless she specifically requests or approves this practice. 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.

B. Communications with Chambers

Counsel may contact Magistrate Judge Kelly's staff to discuss administrative matters and to inquire as to the status of pending motions.

C. Telephone Conferences

Requests for counsel or parties to participate by phone will be considered on a case by case basis. 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, counsel must initiate the call and contact the Court once all parties are on line.

D. 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.

E. 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 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. Magistrate Judge Kelly 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. The brief may be omitted if the motion contains sufficient argument and legal citations to permit meaningful judicial review.

1. Page Limitations

Magistrate Judge Kelly imposes a page limitation of twenty-five (25) pages for all dispositive and responsive briefs. The page limitations for non-dispositive moving and responsive briefs is five (5) pages.

2. Citation to Unpublished Opinions

When citing to unpublished opinions, counsel is to use the Westlaw citation rather than the LEXIS cite.

3. Reply Briefs

Reply briefs of no more than five (5) pages may be filed within fourteen (14) days of service of a response to a dispositive motion. 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.

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 the filing and any exhibits exceed twenty-five (25) pages.

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.”

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, *infra*.

2. Conferences

a. Initial Case Management Conferences

Magistrate Judge Kelly schedules an initial case management conference within approximately two weeks of the filing of the answer(s) by defendant(s). If a motion to dismiss is filed in lieu of an answer, the Court will schedule an initial case management conference within approximately two weeks of the order disposing of the motion. Trial counsel shall attend the initial case management conference.

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. Post-Discovery Conferences

A post-discovery conference will be scheduled within two weeks of the close of discovery. Trial counsel must attend.

c. Settlement Conferences

Magistrate Judge Kelly requires that trial counsel and a representative of each party with settlement authority, including insurance companies, attend all settlement conferences.

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.

At least three days prior to a scheduled settlement conference, the parties shall fax to Magistrate Judge Kelly's chambers at (412) 208-7457 a confidential settlement conference statement. To ensure candor, the position statements are not to be filed with the Clerk of Courts, nor served upon the other party. The confidential settlement conference statement 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;
- e. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers, and demands; and
- f. Any other evidence, including depositions or trial exhibits, that counsel believes would be useful to Magistrate Judge Kelly in analyzing the case.

4. 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 generally will be granted.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Magistrate Judge Kelly solicits input from counsel on the anticipated length of discovery required. In this regard, counsel must comply with the provisions of Fed. R. Civ. P. 26 generally, and must file the written report required by Rule 26(f) proposed discovery plan prior to the initial case management conference. Please see Order Setting Initial Case Management Conference, *infra*.

2. Expert Witnesses

The Court has no specific practice with regard to discovery depositions of expert witnesses. Expert depositions may be taken after the close of factual discovery.

3. Discovery/Deposition Disputes

For discovery disputes that arise during a deposition, all of the attorneys may jointly call the Court to resolve the matter at that time. All other discovery disputes shall be presented in a written motion accompanied by a certification as required by Federal Rule of Civil Procedure 37(a)(1).

4. Stay of Discovery

The filing of a motion to dismiss or other dispositive motion generally will not stay discovery. For cases participating in the ADR program, it is the policy of the Court generally not to 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.

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 has no additional requirements and will rule promptly.

C. Injunctions and TROs

Either upon consent of the parties or referral by a District Court Judge to Magistrate Judge Kelly, 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.

D. Trial Procedures

1. Scheduling of Cases

A date certain will be given for trial following the final pretrial conference. 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, 9:00 a.m. to 4:00 p.m., with breaks when appropriate. Magistrate Judge Kelly 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. The filing date for the briefs will be set at the final pretrial conference.
- 4. Motions *In Limine***
Motions *in limine* must be filed at least seven (7) days prior to the commencement of trial absent good cause shown.
- 5. Voir Dire**
The filing date for proposed voir dire questions will be set at the final pretrial conference. Magistrate Judge Kelly's Courtroom Deputy will conduct the voir dire. Supplemental questions will be permitted as required.
- 6. Notetaking by Jurors**
The Court usually allows jurors to take notes unless counsel articulates a valid objection prior to the commencement of trial.
- 7. Side Bars**
Side bars will be permitted when necessary. 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.
- 8. Examination of Witnesses Out of Sequence**
Examination of a witness out of sequence is permitted.
- 9. Opening Statements and Summations**
There are no court imposed time limits on opening statements and closing arguments. Defense counsel may defer opening statements.
- 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**
Redirect and recross of a witness will be permitted but may not exceed the scope of the immediately preceding line of questions. The Court does not permit any further examination.
- 12. Videotaped Testimony**
Magistrate Judge Kelly has no special procedures or requirements with respect to the use or admission of videotaped testimony. Counsel, however, should

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

The Court has no special practice with regard to reading deposition testimony, stipulations and the like into the record. 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, 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 obtain the Court's approval in advance for use of any visual aid(s) 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 two (2) tabbed exhibit binders to the Court and one (1) binder to counsel for each opposing party in advance of trial.

15. Directed Verdict Motions

Magistrate Judge Kelly does not have any special requirements beyond that set forth in the Federal Rules of Civil Procedure.

16. 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, the various versions proposed by the parties and/or any objections shall be included where appropriate in the document. 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.

17. 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.

18. 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.

19. General Courtroom Rules

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

4. Jury Questions

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

5. Availability of Counsel During Jury Deliberations

Trial counsel may 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.

6. Interviewing the Jury

Magistrate Judge Kelly 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 them.

F. General

1. Special Types of Cases

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

2. 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 Magistrate Judge Kelly 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.