

JUDGE ANITA B. BRODY

Judge Brody received her A.B. from Wellesley College and her J.D. from Columbia Law School. She served as a Deputy Assistant Attorney General in New York, then took time out to raise her children. She was in private practice, and was a Lecturer in Law at the University of Pennsylvania Law School. Judge Brody served as a judge on the Court of Common Pleas, Montgomery County. On October 20, 1992 she was appointed to the United States District Court for the Eastern District of Pennsylvania by President George H.W. Bush.

Disclaimer: This document is not intended to be read as a statute but rather as a compilation of best intentions.

PRELIMINARY GENERAL MATTERS

1. Correspondence with the Court

Judge Brody permits correspondence by email, letter and fax from counsel concerning urgent administrative matters such as scheduling hearings and conferences, or their continuances. All other matters should be addressed by motion, including: requests for extensions of time to file; requests to file reply and surreply briefs in non-dispositive motions; and all discovery controversies. If counsel improperly submits a letter to the court, to which opposing counsel would like to respond, opposing counsel is not to respond via letter, but rather should file the letter on CM/ECF with a response.

2. Communications with Law Clerks

Judge Brody permits counsel to email and speak with her law clerks about administrative or scheduling matters.

3. Telephone Conferences

Judge Brody will often arrange for a telephone conference to deal with less complex matters, including discovery disputes involving no more than three attorneys and less complex issues.

4. Chambers Copies of Submissions

Judge Brody expects counsel to send two courtesy hard copies of all submissions (including copies of the complaint and answer) to her chambers. Chambers copies should include the ECF docket entry number on the first page. Double-sided copies to save paper are encouraged. Points for charge should also be emailed to the law clerk.

5. Filings with the Clerk of Court

Judge Brody insists that all attorneys appearing before her register on ECF and submit official filings with the court directly through ECF. All orders, opinions and other docket entries generated from chambers will likewise be filed directly on ECF. Notice of the entry will be communicated to counsel by ECF .

6. Naming of Responses and Replies to Motions

Particularly in complex cases with multiple parties and dispositive motions, Judge Brody encourages parties to title motions and responses in a logical and helpful manner by

including both descriptive titles and docket entry numbers. For example: “Opposition to Plaintiff’s Motion # 35 (Res Judicata) and Motion # 42 (Statute of Limitations)” and “Reply in Support of Plaintiff’s Motion # 35 (Res Judicata) and Motion # 42 (Statute of Limitations).”

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences

Judge Brody notices an initial pretrial scheduling conference as soon as counsel for all parties have entered appearances. A copy of the standard notice is attached. The notice establishes certain guidelines that Judge Brody will follow throughout the litigation and outlines the matters that will be considered at the scheduling conference. The Judge expects trial counsel to attend the conference in person. As stated in the Notice, counsel must submit a joint proposed discovery plan via ECF to the court no later than 3 days prior to the conference. After the scheduling conference, Judge Brody issues a scheduling order. (A copy of the standard scheduling order is also attached.) Judge Brody will arrange for additional pretrial conferences if necessary, and conducts a final pretrial conference close to the date for trial.

2. Scheduling Policy

Judge Brody tries to accommodate reasonable requests from counsel regarding scheduling. If counsel agree on a scheduling issue, a letter requesting Judge Brody's approval is often sufficient. If time does not permit a letter, an attorney may fax the request to the law clerk.

3. Continuances and Extensions

Judge Brody is generally accommodating with respect to initial requests for extensions; she is less accommodating with respect to subsequent requests. Although Judge Brody adheres to the general policy that no associate should be forced to "pull an all-nighter" to comply with a scheduling deadline, once the dates are established, reasonable compliance is expected. It is unlikely that Judge Brody will grant a continuance once a case has been called for trial.

General Motion Practices

1. Chambers Copies of Motion Papers

As stated previously with respect to all submissions, counsel should send two courtesy hard copies of motion papers to her chambers.

2. Reply and Surreply Briefs

With respect to dispositive motions, Judge Brody encourages submission of a reply brief. Parties need not move for permission to file a reply. For non-dispositive motions, parties must file a motion for leave to file a reply. If the moving party has filed a Rule 56 motion in accordance with Judge Brody’s “preferred procedure,” then a reply and surreply brief are required. Otherwise, surreply briefs are discouraged and will be accepted only if the Judge grants a motion for a surreply. When no order or applicable rule

imposes a deadline for filing a reply brief, replies are due ten days after the related response is filed.

3. Motions for Summary Judgment

Both the brief accompanying a motion for summary judgment and the responding brief must identify the material facts which are not in dispute, preferably in outline form including specific citations to the underlying record. In addition to the standard summary judgment procedure under Federal Rule of Civil Procedure 56, instructions on Judge Brody's "preferred procedure" on summary judgment are appended to the attached scheduling order.

4. Motions for Pro Hac Vice Admission

Motions for admission pro hac vice should be filed with the court.

5. Oral Arguments and Evidentiary Hearings

Judge Brody will hold oral argument if she believes it will assist her in deciding the motion. Judge Brody will also consider requests from counsel to hold oral argument on a particular motion. The law clerk assigned to the case, in conjunction with the Judge's secretary/civil deputy, handles scheduling for oral arguments and evidentiary hearings. Unless arrangements for more time are made in advance through the law clerk, counsel should assume a 20 minute limit.

Discovery Matters

1. Length of Discovery Period

Except in complex cases, Judge Brody will allow 90 to 120 days for discovery. She will grant additional time upon request if necessary.

2. Discovery Conferences and Dispute Resolution

Judge Brody expects the parties to resolve discovery disputes on their own. If they cannot, she will hold a telephone conference or in-chambers conference, depending on the number of counsel and issues. Judge Brody requires that all discovery disputes be addressed by motion.

3. Confidentiality Agreements

Parties are free to reach a confidentiality agreement among themselves. If the parties request that the court enter the agreement as an order it must include a proviso clearly indicating that Judge Brody is not bound by the terms of the agreement and may alter them sua sponte.

4. Expert Witnesses

Counsel should arrange for the exchange of written expert reports without the assistance of the court. Judge Brody will permit counsel to depose experts when appropriate. Furthermore, Judge Brody expects that counsel will identify expert witnesses well in advance of trial, and that the parties will videotape the deposition of any expert who will be unavailable at trial.

5. Settlement

Whether requested to or not, Judge Brody will inquire as to settlement at every opportunity. Unless the parties opt for a particular method of ADR, Judge Brody will refer the case to the magistrate judge for a formal settlement conference immediately upon the close of discovery and before the pretrial submissions are due. If counsel would like to attend a settlement conference earlier, they can request at the pretrial conference that such a provision be included in the scheduling order.

6. Arbitration

Judge Brody does not hold pretrial scheduling conferences in arbitration cases. She expects that discovery will be completed before the arbitration date. If a trial de novo is demanded, Judge Brody will hold a pretrial conference to explore settlement and will schedule the trial as soon as possible.

7. Pretrial Requirements

In an order setting the date for trial, Judge Brody will require that parties submit short final pretrial memoranda pursuant to Local Rule 16.1. The parties should submit with their memorandum: voir dire questions; proposed jury instructions; proposed verdict sheets; and motions in limine. In nonjury cases and criminal cases in which a suppression hearing will be held, she also requires submission of proposed findings of fact and conclusions of law. Additionally, in preparation for a final pretrial conference, Judge Brody expects counsel to communicate with each other on a number of matters, including objections to exhibits, expert depositions, and stipulations of fact.

Injunctions

1. Scheduling and Expedited Discovery

When a temporary restraining order is requested, Judge Brody will immediately schedule a conference to decide the TRO. Unless the urgency of the circumstances precludes notice to opposing counsel, Judge Brody requires that all counsel to be present. Judge Brody rarely grants ex parte temporary restraining orders. Judge Brody schedules preliminary and permanent injunction hearings as soon as possible and combines the two hearings if feasible. Usually, she permits expedited discovery for injunctive matters.

2. Proposed Findings of Fact and Conclusions of Law

As in all non-jury trials, Judge Brody requires the submission of tentative findings of fact and conclusions of law, in accordance with Fed R. Civ. P. 52(a).

Scheduling of Trials

1. Scheduling Conflicts

Judge Brody prefers that counsel notify her by letter concerning professional and personal scheduling conflicts affecting the trial schedule. If absolutely necessary, counsel may contact Judge Brody's secretary/civil deputy by telephone and then confirm the request in writing.

2. Cases Involving Out-of-Town Parties or Witnesses

Judge Brody does not generally change her trial schedule for the convenience of out-of-town parties or witnesses; however, she will consider special requests if brought to her attention before the case enters the trial pool.

Trial Procedure

1. Pretrial Briefs

Judge Brody prefers that parties submit pretrial briefs.

2. Voir Dire

Judge Brody requires the submission of proposed voir dire questions prior to trial. Proposed voir dire should not exceed 15 questions. In civil cases, Judge Brody permits counsel to conduct the voir dire. Initial questioning, however, is limited to the questions that are submitted.

3. Side Bars

Judge Brody permits side bar conferences during trial to address matters that were unanticipated prior to trial. To the extent possible, counsel are directed to raise potential issues prior to trial to ensure that side bars are kept to a minimum.

4. Motions In Limine

Judge Brody expects all issues that can be anticipated prior to trial to be raised in motions in limine. Motions in limine should be accompanied by a memorandum and will usually be addressed at the final pretrial conference. Judge Brody may, however, defer ruling on motions in limine until trial.

5. Examination of Witnesses Out of Sequence

Judge Brody makes every effort to accommodate counsel regarding the scheduling of witnesses. Depending upon the circumstances, Judge Brody may permit counsel to take the testimony of a witness out of turn.

6. Note-taking by Jurors

Judge Brody decides whether note-taking will be permitted on a case by case basis and accepts requests from counsel or from the jurors themselves.

7. Opening Statements and Summations

Generally, Judge Brody will not impose time limits on opening statements or summations and does not require use of the lectern. Judge Brody expects counsel to refrain from objecting during closing argument if the objection can wait until counsel has finished. If an objection is necessary, it should be stated softly and will usually be ruled upon at the conclusion of the summation. Judge Brody may, if requested, cure the objectionable statement in her charge.

8. Offers of Proof

All offers of proof as to the testimony of witnesses or the admissibility of documents must be raised and addressed at the final pretrial conference. If other

evidentiary issues arise and an offer of proof is necessary, counsel will usually be called to side bar.

9. Use of Multiple Attorneys During Trial

The parties may utilize several different attorneys during the trial to examine witnesses and argue legal points. The parties may not, however, use more than one attorney to examine a particular witness or argue a specific legal point.

10. Examination of Witnesses Beyond Redirect and Recross

Upon request, Judge Brody may permit further examination of a witness after redirect or recross has been completed.

11. Disputes over Videotaped Testimony

Objections to videotaped testimony should be submitted before the final pretrial conference. A transcript of the testimony should also be provided.

12. Exhibits

Judge Brody requires that exhibits be marked and exchanged prior to trial. Judge Brody encourages the use of computerized and other electronic devices to present evidence. Two courtesy copies of all trial exhibits should be submitted to the Judge at the pretrial conference. If the exhibits are voluminous or difficult to reproduce, counsel should bring this to the court's attention before trial. Counsel must also provide the court with three copies of an exhibit list.

13. Reading of Material into the Record

Judge Brody has no overall practice or policy on reading stipulations, pleadings, or discovery materials into the record.

14. Offering Exhibits into Evidence

Judge Brody has no overall policy regarding the offering of exhibits into evidence. Unless otherwise necessary, counsel may wait until the close of his or her case to move for the admission of exhibits.

15. Directed Verdict Motions

Counsel may move for a directed verdict either orally or in writing. Judge Brody usually conducts oral argument on such a motion.

16. Jury Instructions and Verdict Sheets

As stated in the section concerning final pretrial conferences, counsel are required to submit proposed jury instructions (one point per page) and a proposed verdict sheet in advance of trial. These must also be submitted via email attachment to the law clerk assigned to the case (WordPerfect format is preferred but Microsoft Word is acceptable). Normally, Judge Brody will distribute a copy of her proposed charge early in the trial, and then conduct a conference to review the revised proposed charge, including any critiques from counsel on substantive issues. If a new issue arises, Judge Brody will

permit submission of supplemental jury instructions up until the close of evidence. It is Judge Brody's usual practice to distribute to all counsel a written copy of the final version of the charge before closing arguments.

17. Proposed Findings of Fact and Conclusions of Law

In non-jury cases, Judge Brody requires submission of tentative proposed findings of fact and conclusions of law in advance of trial. After trial, counsel must amend and this must include citations to the notes of testimony.

Jury Deliberations

1. Written Jury Instructions

Judge Brody does not routinely give the jury a copy of her instructions; however, if requested by counsel or the jury, she will consider doing so.

2. Exhibits in the Jury Room

Counsel are instructed to confer as to which exhibits should go out with the jury. Judge Brody will rule upon disputed exhibits.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes

Judge Brody will evaluate jury requests to play back portions of recorded or videotaped testimony on a case by case basis.

4. Availability of Counsel During Jury Deliberations

Judge Brody permits counsel to leave the courthouse during deliberations but expects them to be available by telephone and within close distance to the courthouse.

5. Taking the Verdict and Special Interrogatories

The courtroom deputy usually takes the verdict. In most cases, Judge Brody will submit special interrogatories to the jury.

6. Polling the Jury

Judge Brody will poll the jury upon request.

7. Interviewing the Jurors

After the verdict has been recorded and the jury discharged, Judge Brody permits counsel to speak with the jurors. Judge Brody advises the jurors that they are permitted to speak with counsel, but instructs them that it is their personal choice and that they are not required to do so. She expects all counsel to respect each juror's choice in this regard.

CRIMINAL CASES

(to the extent different from the procedures in civil cases)

1. Voir Dire

Judge Brody conducts the entire voir dire but receives proposed questions. After voir dire, where necessary, jurors will be called to side bar to respond to any unanswered questions or for further questioning by the judge or counsel.

2. Other Practices and Procedures

Judge Brody issues the attached standard pretrial order.

3. Sentencing Memoranda

Judge Brody expects the submission of sentencing memoranda by both the government and the defendant well in advance of the sentencing.

OTHER GENERAL MATTERS

Appellate Briefs

Judge Brody appreciates receiving copies of the appellate brief when a decision she renders is appealed.

(revised 8/17/2011)