

POLICIES AND PROCEDURES

Judge John M. Gallagher

United States District Court for the Eastern District of Pennsylvania

Edward N. Cahn Courthouse & Federal Bldg.

504 W. Hamilton Street, Suite 4701

Allentown, Pennsylvania 18101

Phone: 610-434-3457

Fax: 610-434-3459

Chambers_of_Judge_John_Gallagher@paed.uscourts.gov

Magistrate Judge Assignment: Magistrate Judge Timothy R. Rice

GUIDELINES INDEX

I. GENERAL MATTERS	1
A. General Matters	1
1. Correspondence with the Court.....	1
2. Communication with Law Clerks and Deputy Clerks.....	1
3. Telephone Conferences	2
4. E-Filing Guidelines	2
5. Sealed and redacted documents.....	3
6. <i>Pro hac vice</i> motions.....	3
II. CIVIL CASES.....	4
A. Pretrial Procedures.....	4
1. Rule 16 Conferences	4
2. Final Pretrial Conference	5
3. Continuances and Extensions.....	5
4. Stipulations and proposed Orders	6
B. Motion Practice	6
1. Oral Arguments on Motions.....	6
2. Formatting requirements	6
3. Replies and sur-replies	7
4. Page limits and content of briefs or legal memoranda	7
5. Dispositive motions.....	7
6. Courtesy copies	9
7. Reconsideration.....	10
C. Discovery Matters	10
1. Length of Discovery Period and Extensions	10

2.	Discovery Conferences and Dispute Resolution.....	10
3.	Privilege logs.....	11
D.	Settlement.....	12
E.	Protective Orders and Confidentiality Agreements.....	12
F.	Final Pretrial Memoranda.....	12
G.	Arbitration	13

III. COURTROOM AND TRIAL PROCEDURES..... 14

A.	Scheduling Cases.....	14
B.	Motions <i>In Limine</i>	14
C.	Courtroom Technology	14
D.	Jury Selection in Civil Cases.....	14
E.	Note Taking By Jurors.....	15
F.	Trial Briefs.....	15
G.	Examination of Witnesses Out of Sequence.....	15
H.	Opening Statements and Summations	15
I.	Examination of Witnesses or Argument by More than One Attorney	15
J.	Examination of Witnesses on Redirect and Recross	15
K.	Videotaped Testimony.....	16
L.	Reading of Material into the Record	16
M.	Preparation of Exhibits	16
N.	Offering Exhibits into Evidence.....	16
O.	Directed Verdict Motions.....	16
P.	Proposed Jury Instructions and Verdict Forms.....	17
Q.	Proposed Findings of Fact and Conclusions of Law	17
R.	Unavailability of Witness.....	17

S.	Objections.....	18
T.	Lay Witness Opinion.....	18
U.	Jury Deliberations.....	18
1.	Written Jury Instructions.....	18
2.	Exhibits in the Jury Room.....	18
3.	Handling of Jury Requests to Read Back Testimony or Replay Tapes.....	18
4.	Availability of Counsel During Jury Deliberation	18
5.	Taking the Verdict and Special Verdicts.....	19
6.	Polling the Jury	19
7.	Interviewing the Jury.....	19
V.	Offers of Proof.....	19
W.	Development of Young Attorneys.....	19
IV.	CRIMINAL CASES	20
A.	Oral Argument and Motions.....	20
B.	Pre-Trial Conferences.....	20
C.	Pre-Trial Hearings	20
D.	<i>Voir Dire</i>	20
E.	Trial Memoranda.....	20
F.	Proposed Jury Instructions and Verdict Forms.....	21
G.	Guilty Plea Memoranda.....	21
H.	Sentencing	21

I. GENERAL MATTERS

A. General Matters

1. Correspondence with the Court

Counsel or *pro se* parties may correspond with the Court concerning scheduling, routine matters or to advise the Court that a case has been settled or dismissed. Counsel should direct communications concerning administrative or procedural matters to the Deputy Clerks or Chambers. Any written communication requesting action by the Court should include a description of the situation requiring the Court's attention, the position of the opposing party and the specific relief sought. Otherwise, all communications with the Court should be made by the filing of a pleading, motion, application, brief or legal memorandum. Letters may be submitted to the Court via email, but such communications should be limited to routine matters for which no opposition is anticipated or required. Responsive letters should **only** be submitted at the Court's request. Counsel should not send the judge copies of letters sent to each other unless specifically requested to do so.

2. Communication with Law Clerks and Deputy Clerks

Law clerks may not render advice to counsel and have no authority to grant continuances or to give advice on substantive or procedural matters. Therefore, unless directly contacted by a law clerk, or instructed by the Court to do so, counsel should not communicate with the law clerks.

Counsel may contact chambers by telephone when a written communication is insufficient to timely address an issue. The Court also permits counsel to telephone chambers to schedule conferences or proceedings, including pretrial or discovery-related conferences, or to arrange for the attendance of witnesses, exhibit handling or video replay.

Telephone inquiries should be directed as appropriate to one of the following:

Civil Deputy Clerk: Brian R. Dixon – 610-776-6121

Criminal/Courtroom Deputy Clerk: Christine C. Stein – 610-391-7012

Counsel should submit current telephone numbers, fax numbers, e-mail addresses and any changes to the Clerk's Office and Judge Gallagher's Deputy Clerks.

3. Telephone Conferences

Judge Gallagher may hold telephone conferences to resolve scheduling matters or discovery disputes. The Court will notify counsel of the date and time for the telephone conference. Counsel for the moving party will be responsible for initiating the telephone conference and contacting Judge Gallagher through his Deputy Clerk after all parties are present on the call.

4. E-Filing Guidelines

a. Judge Gallagher requires all attorneys use Electronic Case Filing (ECF). Attorneys appearing before Judge Gallagher are required to register as ECF Filing Users in accordance with Rule 5.1.2 of the Local Rules of Civil Procedure, referencing the Procedural Order on Electronic Case Filing. *Pro se* parties are not required to use ECF.

b. When submitting exhibits via ECF, Parties should submit each exhibit as a separate document on the CM/ECF system, rather than as a single file. If the Court receives a filing with a single document marked "Exhibits," it will strike the filing. In addition, when parties submit exhibits via ECF, they must give each document a name identifying the document. Thus, it is not sufficient to label a file "Exhibit A." Instead, the name should be "Exhibit A: Contract," "Exhibit B: Declaration of John Smith," or some other reference to permit the Court to identify what the exhibit is without having to open the file.

c. Deposition testimony and other transcripts shall be submitted to the Court as full-sized pages, not manuscripts. In addition, parties submitting deposition transcripts should provide only a cover page identifying the witness and relevant pages from the transcripts. Parties should not submit the entire transcript unless the entire transcript is relevant to the issue before the Court. The Court will request the entire transcript if it deems it necessary.

d. Parties should not submit to the Court unpublished decisions that are available on Westlaw or Lexis.

5. Sealed and redacted documents

Except in emergency situations, no documents may be filed under seal without first obtaining leave. All motions for leave to seal documents should be filed of record with a courtesy copy of all documents that the party proposes to file under seal. In recognition of the common law right of public access, the Court will generally require the parties to file redacted versions of any sealed documents on the public record, unless the redactions would be so extensive as to render the document unreadable.

6. *Pro hac vice* motions

To be admitted *pro hac vice*, associate counsel of record should submit a written motion for admission. The admission of out-of-the-jurisdiction counsel *pro hac vice* does not relieve associate counsel of responsibility for the matter before the Court. The Court will deny *pro hac vice* motions for which no fee has been submitted and recorded on the docket.

II. CIVIL CASES

A. Pretrial Procedures

1. Rule 16 Conferences

The Court will schedule a preliminary pre-trial conference pursuant to Fed. R. Civ. P. 16 once each defendant has appeared in the case. **Lead trial counsel must attend the Rule 16 Conference.** Counsel taking part in any pre-trial conference must be prepared to speak on every subject, including settlement and have authority from their clients to do so. Counsel should be prepared to discuss all claims and defenses in detail and shall have a thorough understanding of the facts.

At least seven (7) calendar days prior to the pretrial conferences, counsel must submit to chambers the joint status report pursuant to Fed. R. Civ. P. 26(f). The parties must use the Court's sample Rule 26(f) form that will be attached to the order scheduling the Rule 16 conferences. This form is also available on Judge Gallagher's page on the Court's website.

The Court relies on counsels' good faith compliance with Rule 26(f) in all respects. The Rule 26(f) meeting should take place as early in the case as possible. Pending motions do not stay the parties' obligations to meet and confer pursuant to Fed. R. Civ. P. 26(f) or to attend a conference pursuant to Fed. R. Civ. P. 16. The meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule. The parties should begin discovery as soon as permitted under the applicable rules without waiting for the Rule 16 conference and regardless of whether a motion is pending. If a party wishes to stay discovery during the pendency of a motion, it should present its request in person at the Rule 16 conference. However, **the Court will grant a stay of discovery only in extraordinary circumstances.**

At the initial pretrial conference, the parties should be prepared to address all topics listed in the Local Rule of Civil Procedure 16.1(b) and Federal Rule of Civil Procedure 16(b) and (c), the progress of self-executing disclosure under Federal Rule of Civil Procedure 26(a) and any settlement or mediation proposals. The Court will issue a Rule 16 Scheduling Order following the conference.

Lead counsel shall participate in the Rule 26 conference, attend the Rule 16 conference, and be deemed lead counsel for all future proceedings. A designation of “lead counsel” will mean that counsel will attend all court proceedings and will deliver an opening statement and closing argument at trial, absent a written request from the client to have someone else perform those tasks.

2. Final Pretrial Conference

There will be a final Pretrial Conference within ten (10) days of the trial date. Counsel shall comply with Local Rule 16.1 regarding the submission of a pretrial memorandum. Unless otherwise specified in a scheduling order, these memoranda shall be filed, with a courtesy copy to chambers, no later than ten (10) days prior to the Pretrial Conference.

During this conference, the Court will address factual and legal issues, the admissibility of exhibits, scheduling issues and settlement. At the conclusion of the conference, the Court will issue a Final Pretrial Order or a Final Scheduling Order in a Complex Case.

3. Continuances and Extensions

Unless there is good cause to justify a change, the parties are expected to adhere to the dates contained in the scheduling order. The Court will grant a continuance or extension based on a stipulation of all parties if the continuance or extension does not affect the date dispositive motions are due. If a continuance or extension will affect the deadline for filing dispositive motions or the trial date, counsel should make a written request which sets forth the basis for the

continuance or extension and indicates whether the other party or parties agree to or oppose the request. A request for an extension or continuance of the trial date or the deadline for filing dispositive motions must be made sufficiently prior to the due date to allow time for the Court to consider it. These requests should be made by motion, although an unopposed request may be made by letter to the Court.

4. Stipulations and proposed Orders

Contrary to Local Civil Rule 5.1.2(10), all stipulations and proposed orders must be emailed to Chambers rather than sent to the Clerk of Court.

B. Motion Practice

1. Oral Arguments on Motions

If the judge believes oral argument will be helpful in deciding a matter, he will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading.

2. Formatting requirements

Except as set forth herein, motion practice will be conducted in accordance with Local Civil Rule 7.1.

All written submissions to the Court must be prepared in 12-point, Times New Roman font, with at least one-inch margins. All footnotes shall appear in 12-point font as well. Motion papers and memoranda of law must be double-spaced. Any briefs longer than ten (10) pages must include a table of contents. Counsel are encouraged to post searchable versions of their briefs to the CM/ECF system.

The parties shall not include substantive arguments in footnotes.

In all written submissions to the Court, citations to documents on the docket, e.g., “Amended Complaint,” should identify those documents by ECF number.

3. Replies and sur-replies

Replies and sur-replies are **not permitted** unless leave to file them is granted upon motion of a party. Such briefs must be concise and address only new issues raised by opposing counsel. The Court discourages any replies or sur-replies that repeat or rehash previous arguments.

Any replies or sur-replies must be filed as soon as practicable, but in any event, no later than seven (7) days after the previous filing.

4. Page limits and content of briefs or legal memoranda

All grounds for relief should be set forth in a single, comprehensive motion. A motion to dismiss, for example, should not be divided into separate motions for each count but rather should include all bases for relief. Opening briefs filed in support of and in opposition to a motion should be limited to twenty (20) pages. This includes the table of contents and any attachments or addenda. If a party requires more than twenty (20) pages to explain its position to the Court, a motion to exceed the page limit should be filed, setting forth good cause for granting an exception to this rule. Replies and sur-replies, where granted, must be limited to ten (10) and seven (7) pages, respectively.

5. Dispositive motions

Before filing a motion pursuant to Fed. R. Civ. P. 12(b)(6), counsel shall first contact opposing counsel to discuss the substance of the contemplated motion and to provide an opportunity to cure any alleged pleading deficiencies. This conference shall take place at least seven (7) days prior to the filing of the motion. If the parties are unable to reach a resolution that eliminates the need for a 12(b)(6) motion, counsel for the moving party shall include, along with

the 12(b)(6) motion, a certification that the parties met and conferred regarding the alleged pleading deficiencies. These efforts must include substantive verbal communications, whether by phone or in person. Exchanges of letters or e-mails are not sufficient. It is not sufficient to report that opposing counsel was not available or that the parties made “reasonable efforts.” The Court will deny a 12(b)(6) motion that does not meet these requirements.

All parties SHALL comply with the following protocol as to Summary Judgment pleadings pursuant to Fed. R. Civ. P. 56:

1. The movant shall file, in support of the motion for summary judgment, a Statement of Undisputed Facts which set forth, in numbered paragraphs, all material facts which the movant contends are undisputed.
2. The respondent shall file, in opposition to the motion for summary judgment, a separate Statement of Disputed Facts, responding to the numbered paragraphs set forth in the movant’s Statement of Undisputed Facts, which the respondent contends present a genuine issue to be tried. The respondent shall also set forth, in separate paragraphs, any additional facts which the respondent contends preclude summary judgment.
3. All material facts set forth in the Statement of Undisputed Facts required to be served by the movant shall be admitted unless specifically controverted by the opposing party.
4. Statements of material facts in support of or in opposition to a motion for summary judgment shall include specific and not general

references to the parts of the record which support each of the statements. Each stated fact and each statement that a material fact is disputed shall cite to the source relied upon, including the title, page and line of the document supporting the statement.

5. If a party's motion for summary judgment, or an opposition thereto, is based in whole or in part on an argument that expert testimony is not admissible, the party must raise such argument in a contemporaneous *Daubert* motion.
6. For purposes of summary judgment, counsel shall submit a joint appendix, including any and all exhibits that may be referenced in their respective motions, no later than the date the initial motion for summary judgment is docketed. All pages/exhibits of said appendix shall be "bates stamped" and referenced in the motions consistent with the bates number assigned each page. Judge Gallagher will not consider any document/exhibit not included in said appendix.

Failure of the movant to follow this procedure in all respects will result in the denial of the motion. Respondent's failure to comply with this procedure in all respects will result in the Court's considering the motion as uncontested.

6. Courtesy copies

Counsel should send one (1) courtesy copy of a motion, brief or memorandum to chambers at the time of filing. For any filings made under seal, the filing party shall provide two (2) courtesy copies to Chambers the same day as the filing. For any motions with more than five (5) exhibits or more than fifty (50) pages of exhibits, the parties shall provide the Court with a courtesy copy

of the exhibits within three (3) days of filing. Courtesy copies should be submitted in hard copy, either spiral-bound or in three-ring binders.

7. Reconsideration

Reconsideration motions should only be filed sparingly. Parties shall not respond to a motion for reconsideration absent a Court Order. Any motion for reconsideration of a discovery order must itself comply with the page limits in Section II.C.1., below.

C. Discovery Matters

1. Length of Discovery Period and Extensions

The parties are required to commence discovery immediately upon receipt of notice of the Rule 16 conference. Pending motions will not excuse counsel from proceeding with discovery. Counsel will be required to report on the progress of discovery at the Rule 16 conference.

In standard track cases, the Court usually allows up to ninety (90) days from the date of the Rule 16 conference to complete discovery. In special management cases, the Court will permit additional time to conduct discovery if the parties identify a need to do so at the Rule 16 conference or any subsequent status conferences. A case will ordinarily be listed for trial sixty (60) to ninety (90) days after the completion of discovery.

2. Discovery Conferences and Dispute Resolution

The Court urges the parties to settle discovery disputes among themselves. If Court assistance is required, Judge Gallagher prefers that simple disputes be addressed by telephone conferences. Counsel should provide the Court with a brief letter explaining the discovery dispute and requesting a conference. Such letters should be filed on ECF. For complex disputes, if the parties remain unable to resolve the dispute after the reasonable efforts required by Local Civil Rule 26.1(f), the Court will consider a motion to compel under Local Civil Rule 26.1(b). Counsel

for the aggrieved party shall file with the Court a motion in conformity with Local Civil Rule 26.1(b). **The motion shall not exceed five (5) pages and shall not contain exhibits and shall not include a brief or memorandum of law.**

Once a motion to compel is filed, the Court will schedule a telephone or in-person conference with counsel as soon as possible to resolve the dispute. The responding party may file a response within five (5) days. The response should also be limited to five (5) pages and shall not include exhibits or a brief or memorandum of law. If the parties resolve the dispute, the conference will be cancelled. Judge Gallagher permits telephone conferences to resolve disputes during depositions in cases where the deposition would otherwise have to be adjourned. Counsel should not walk out of a deposition before making an effort to contact the Court and obtain guidance.

In filing a discovery motion, the certificate of counsel must provide **specific** details of the parties' efforts to resolve the dispute informally. These efforts must include verbal communications, whether by phone or in person. Exchanges of letters or e-mails are not sufficient. It is not sufficient to report that opposing counsel was not available or that the parties made "reasonable efforts." The Court will deny a discovery motion that does not meet these requirements. All motions must contain the certification required under Local Civil Rule 26.1(f).

3. Privilege logs

Parties preparing privilege logs must provide information sufficient for the opposing party to determine the basis for the assertion of privilege. For claims of privilege covering multiple e-mails, the party asserting privilege must describe the specific e-mails that are being withheld, as opposed only to the e-mail at the top of the e-mail string, and the basis for withholding each e-mail. Where several e-mails are exchanged between individuals, and the same privilege claim

applies to all of those e-mails, the party asserting privilege may describe the e-mails collectively, rather than one-by-one.

D. Settlement

Settlement will be discussed at the initial Rule 16 status conference and at any subsequent conference. The Court will not participate in settlement negotiations in non-jury cases. A case may be referred to a Magistrate Judge for a settlement conference.

E. Protective Orders and Confidentiality Agreements

Any request for a protective order or approval of a confidentiality agreement must be made by motion. The Court will not accept stipulated proposed orders in lieu of a motion. All such motions must satisfy the requirements of *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, No. 18-2259, --- F.3d ----, 2019 WL 2119630, *4 (3d Cir. May 15, 2019) and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994). If so referred to a Magistrate Judge, the parties shall update Judge Gallagher on the status of settlement discussions no later than thirty (30) days before the close of discovery.

F. Final Pretrial Memoranda

Unless otherwise ordered by the Court, the pretrial memorandum should be prepared in accordance with the provisions of Local Rule of Civil Procedure 16.1(c) and should also include the following items:

1. All stipulations of counsel.
2. A statement of objection to: (1) the admissibility of any exhibit based on authenticity; (2) the admissibility of any evidence expected to be offered for any reason (except relevancy); (3) the adequacy of the qualifications of an expert witness expected to testify; and (4) the admissibility of any opinion

testimony from lay witnesses pursuant to Federal Rule of Evidence 701. Such objection shall describe with particularity the ground and the authority for the objection.

3. Deposition testimony (including videotaped deposition testimony) that the party intends to offer during its case-in-chief. The statement should include citations to the page and line number and the opposing party's counter-designations.
4. A statement of any anticipated important legal issues on which the Court will be required to rule, together with counsel's single best authority on each such issue.

G. Arbitration

Judge Gallagher will not hold a Rule 16 conference or issue a Scheduling Order in arbitration track cases, unless there is a *de novo* appeal from an arbitration award hearing. However, the Court requires the parties to submit a joint status report each month, to report on the status of the case, including but not limited to the date schedules for the arbitration, and when the arbitration has been concluded.

The parties are expected to complete all discovery prior to the date of the arbitration hearing. Upon demand for trial *de novo* from an arbitration award, the Court will issue a Scheduling Order setting the date for trial at the earliest date available to the Court. Ordinarily, neither discovery nor dispositive motions will be allowed after the arbitration hearing is held.

III. COURTROOM AND TRIAL PROCEDURES

A. Scheduling Cases

A date for trial will be determined at the initial Rule 16 conference. Once a case is listed for trial, counsel, parties and witnesses should be ready to start trial on the date noted. Questions relating to scheduling matters should be directed to Judge Gallagher's Deputy Clerk.

B. Motions *In Limine*

The time for filing motions *in limine* will be determined at the Rule 16 conference and will be confirmed in the Scheduling Order. Absent leave of court, a party shall not file more than five (5) motions *in limine*.

C. Courtroom Technology

The Court holds proceedings in Courtroom 4-B, which is generally equipped for electronic presentation of evidence. Parties expecting to employ courtroom technology are encouraged to contact the Courtroom Deputy in advance of trial to conduct a preliminary run in order to minimize disruptions during the trial itself.

D. Jury Selection in Civil Cases

Counsel must discuss *voir dire* questions and resolve any differences at least one (1) day prior to jury selection. If counsel cannot agree, they must advise the deputy clerk that the Court must rule upon the disputed issues. The attorneys will be permitted to conduct *voir dire*. The Plaintiff will begin and be given no more than 35 minutes to *voir dire* the panel. The Defense will follow and will be given no more than 35 minutes to *voir dire* the panel.

Strikes for cause and hardship will be considered by the Court. Peremptory challenges will then be exercised by alternate strikes, plaintiff first, until each side has stricken three potential jurors or opts not to use any or all of their strikes.

Judge Gallagher will typically seat eight (8) jurors in a civil case.

E. Note Taking By Jurors

Judge Gallagher permits jurors to take notes.

F. Trial Briefs

Parties should submit a trial brief only if a new or unique point of law is involved.

G. Examination of Witnesses Out of Sequence

The Court will permit counsel to examine his/her own witnesses out of turn for the convenience of a witness.

H. Opening Statements and Summations

Judge Gallagher does not ordinarily put time limits on opening statements or closing arguments. However, depending upon the issues in the case and the length of trial, time limits may be imposed. Rebuttal must not be a rehashing of closing argument. Judge Gallagher will charge the jury prior to counsels' closing arguments.

I. Examination of Witnesses or Argument by More than One Attorney

More than one attorney for a party may examine different witnesses or argue different points of law before the Court. Only one attorney for each side may examine the same witness or address the jury during the opening statement or summation.

J. Examination of Witnesses on Redirect and Re-cross

The Court will permit limited re-cross examination on matters not previously covered by cross examination or in special circumstances.

K. Videotaped Testimony

Videotaped testimony should begin with the witness being sworn. Counsel should bring objections to the Court's attention at the time of the final pretrial conference. After the Court rules on any objections, counsel should edit the tapes before offering the videotaped testimony at trial.

L. Reading of Material into the Record

Judge Gallagher has no special practice or policy regarding reading stipulations, pleadings or discovery material into the record at trial.

M. Preparation of Exhibits

In civil cases, the parties will prepare one joint exhibit book with all exhibits that counsel may use at trial. Exhibits should be tabbed in a three-ring binder containing all exhibits and numbered consecutively. Exhibits should be exchanged in accordance with the Final Pretrial Order. At the final pretrial conference, the parties shall provide the Court with one copy of each exhibit and two copies of a schedule of exhibits which shall briefly describe each exhibit. At the trial, the parties should provide two copies of the joint exhibit book to the Court.

N. Offering Exhibits into Evidence

Unless the parties have an agreement as to the admissibility of a proposed exhibit, a witness may not testify as to its content until it has been admitted into evidence.

O. Directed Verdict Motions

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials must be in writing. Oral argument on the motions is ordinarily permitted.

P. Proposed Jury Instructions and Verdict Forms

Counsel must meet and discuss proposed jury instructions for the purpose of submitting agreed-upon jury instructions and verdict forms. Judge Gallagher's scheduling order will note the date on which the parties shall file with the Clerk of Court **joint** proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury. Each party shall also file proposed jury instructions, verdict forms or special interrogatories on those issues not agreed upon by the parties in their joint submission.

In submitting proposed points for charge, the parties are directed to the Model Civil Jury Instructions which are available online at <http://www.ca3.uscourts.gov/model-jury-instructions>.

Where applicable, the Court will use the Model Civil Jury Instructions to instruct the jury. In submitting points for charge based on the Model Jury Instructions, the parties need only refer to the Model Instruction by number and do not need to submit the text of the Instruction.

Jury instructions shall be submitted on a separate sheet of paper, double spaced, with accurate quotes from and citations to cases and pattern jury instructions where appropriate.

Q. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law in non-jury cases should be submitted at least seven (7) days **before** the trial or trial pool date. The parties may submit revised or supplemental findings of fact and conclusions of law with specific reference to trial evidence at the conclusion of the case. A schedule for the submission of revised findings/conclusions will be discussed at the conclusion of trial.

R. Unavailability of Witness

If a witness is unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects an oral or videotaped deposition to be used at trial for that witness,

whether the witness is a party, a non-party or an expert. The unavailability of such witness **will not be a ground to delay** the commencement or progress of trial.

S. Objections

Judge Gallagher does not permit speaking objections. Objections should be made by reciting the appropriate rule number or a one-word basis.

T. Lay Witness Opinion

Any party expecting to offer lay opinion testimony pursuant to Federal Rule of Evidence 701 regarding issues of liability or damages shall provide opposing parties with information or documents supporting the testimony at the time required for submission of expert reports.

U. Jury Deliberations

1. Written Jury Instructions

The Court will give the jury a copy of the written jury instructions.

2. Exhibits in the Jury Room

After the jury has been instructed and taken to the jury room to begin deliberations, the Court and counsel will discuss which exhibits should go out with the jury for their consideration during deliberations.

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

At the jury's request, the Court may permit the Deputy Clerk to read portions of the testimony back to the jury or to replay the audio or video-taped testimony.

4. Availability of Counsel During Jury Deliberation

Unless excused by the Court, counsel must remain in the courthouse during jury deliberations.

5. Taking the Verdict and Special Verdicts

Ordinarily, the Court will submit interrogatories to the jury. The Courtroom Deputy will take the verdict in the presence of the Court, counsel and the parties.

6. Polling the Jury

If requested by counsel, the Court will poll the jury.

7. Interviewing the Jury

Judge Gallagher will allow counsel to interview jurors but will instruct the jury that they are not required to talk to the attorneys.

V. Offers of Proof

Counsel must confer privately to resolve any unanticipated evidentiary issues that may arise during trial. Only if they are unable to reach agreement should counsel bring the matter to the deputy clerk's attention at the beginning of the day or during an appropriate break when the jury is not present.

W. Development of Young Attorneys

The Court encourages trial counsel to assign court presentations to less-experienced attorneys, particularly where the less-experienced attorney is more familiar with the matter at hand. If necessary, the Court will permit two lawyers to make an argument in order to ensure that a more experienced counsel has an opportunity to buttress a younger lawyer's presentation. The Court will draw no inference from a party's decision to have a younger lawyer make a particular presentation, including as to whether the client deems the issue "important."

IV. CRIMINAL CASES

A. Oral Argument and Motions

The Court will generally permit oral argument on a substantive motion in a criminal case upon request.

B. Pre-Trial Conferences

Judge Gallagher will generally hold a telephone scheduling conference with counsel in criminal cases shortly after arraignment. At the conclusion of the Conference, the Court will issue a Scheduling Order governing speedy trial issues, discovery, time for filing motions and the trial date.

C. Pre-Trial Hearings

The Court typically holds suppression, *Starks*, and *Daubert* hearings at least fourteen (14) days prior to trial. Following a hearing on a motion to suppress, the Court might request the submission of post-hearing briefs or proposed findings of fact and conclusions of law. The Court will establish a schedule of these submissions after the suppression hearing.

D. *Voir Dire*

In criminal cases, Judge Gallagher will conduct *voir dire*, based in part, on questions submitted by counsel. After *voir dire* is concluded, the Court will permit counsel to suggest follow-up questions. Counsel should submit proposed *voir dire* questions in writing seven (7) days before the trial date.

E. Trial Memoranda

At least seven (7) days prior to the trial date, the Government must file a pre-trial memorandum setting forth the essential elements of the offense(s), the facts that it intends to present, the identity of each witness it intends to call, a statement of the substance of each witness's

testimony, and any legal issues. The defendant is not required to file a pre-trial memorandum but may do so on the same schedule as the Government.

F. Proposed Jury Instructions and Verdict Forms

The Court will generally require the parties to submit a joint proposed set of jury instructions. The Court's pretrial order will detail how the parties should present contested jury instructions. Each point for charge and proposed jury interrogatory shall be numbered and on a separate sheet of paper. Each proposed instruction must be submitted with corresponding legal authority. If a model jury instruction is used, then the party submitting it shall state whether the proposed instruction is unchanged or modified. If a party modifies a model instruction, then additions and deletions must be noted.

G. Guilty Plea Memoranda

The Government must submit a guilty plea memorandum at least seven (7) days prior to the change of plea hearing. The memorandum shall include the elements of each offense to which the defendant is pleading guilty and legal citations for the elements, the maximum statutory penalties for each offense, the terms of any plea agreement, and the factual basis for the plea.

H. Sentencing

Judge Gallagher requires the parties to submit objections to the Pre-Sentence Investigation Report and sentencing memoranda in accordance with the Notice of Sentencing, which will be issued shortly after the entry of a guilty plea. Sentencing memorandums shall be submitted at least seven (7) days prior to the sentencing hearing.