

PRETRIAL AND TRIAL PROCEDURES

Before Judge James McGirr Kelly

1. Counsel shall be familiar with the provisions of Federal Rule of Civil Procedure 16 and the Civil Justice Expense and Delay Reduction Plan of the United States Court for the Eastern District of Pennsylvania.

2. Discovery shall be conducted promptly and diligently. Deadlines will be enforced and neither unnecessary discovery nor obstructionism will be tolerated. Discovery enforcement or relief should be sought promptly by motion only. The Court will ignore correspondence from counsel that should properly be the subject of motion practice. Issues shall not be raised or answered by letter.

Discovery Deposition Guidelines

a. At the beginning of the deposition, deposing counsel shall instruct the witness to ask deposing counsel, rather than the witness's own counsel, for clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition. The witness shall abide by these instructions.

b. All objections, except those which would be waived if not made at the deposition under Federal Rule of Evidence 32(d)(3)(B), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the court, or to present a motion pursuant to Federal Rule of Evidence 30(d), shall be preserved. Therefore, those objections need not and shall not be made during the course of depositions.

c. Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.

d. Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct and verbally economical, stating the basis of the objection and nothing more.

e. Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness.

3. Counsel should avoid contacting chambers either by letter or telephone during pendency of litigation. Counsel should also avoid contacting the courtroom deputy except for scheduling matters. Most interim matters can and should be handled by motion practice. If it is necessary to contact chambers, counsel should inform opposing counsel **prior** to either writing or telephoning chambers as to the nature of the intended communication. If opposing counsel objects to the proposed communication, then counsel should file a motion. Merely sending opposing counsel a copy of a letter sent to chambers does not fulfill this directive.

Letters or written communication should be directed to the court and not to law clerks or to the deputy clerk. Telephone calls to law clerks are discouraged. Law clerks are not permitted to render advice to counsel and have no authority to grant continuances or to speak on behalf of the court. Counsel may contact Sharon Hall, Deputy Clerk, Telephone No. (267) 299-7569 regarding **scheduling matters only**.

4. Motion practice will be conducted in accordance with Local Rule of Civil Procedure 7.1. A reply memorandum addressing arguments first raised in the memorandum in opposition to the motion may be filed by the moving party within ten (10) calendar days after service of the memorandum in opposition to the motion. No further briefing by either party may be filed without express leave from the court. New motions should not be filed in response to existing motions, but should be filed separately. All dispositive motions must be filed not later than ten (10) days after the close of discovery. Exhibits (or appendices) shall consist of only those pages of documents (or depositions) referred to in the motion or memorandum and relevant to the issue; if Judge Kelly needs additional supporting material, his law clerk will request it. All motions in limine shall be filed at least ten (10) days before the final pretrial conference.

5. Pretrial Memoranda shall be filed with the Clerk of Court with a courtesy copy to chambers as per Court Order and shall include the following:

- a. A list of all witnesses to be presented with a brief statement of the nature of their testimony. Witnesses not listed may not be called in the party's case in chief.
- b. A list of all exhibits (pre-numbered and pre-exchanged among all counsel).
- c. Claimant's itemized statement of damages or other relief sought.

- d. A statement of any anticipated important legal issues on which the Court will be required to rule together with counsel's single best authority (case citation, Rule of Civil Procedure, Rule of Evidence, Statute, etc.).
- e. All stipulations of counsel.
- f. In all jury cases, proposed points for charge and in all non-jury cases, proposed findings of fact and conclusions of law. Counsel have the right to file supplemental points, findings and conclusions upon the close of testimony. Counsel should assume the Court's charge will include routine matters such as burden of proof, credibility of witnesses, etc. Therefore, counsel shall, except with leave of Court, limit proposed points for charge to 15 in number touching upon the unique or most important aspects of the case. Each point for charge should be referenced to the single best authority which supports the point.

6. Expert Reports

Unless otherwise ordered by the Court, the party with the burden of proof shall forward to the other party(s) an expert's report which discloses the expert testimony relating to the issue(s) at least ninety (90) days before the close of discovery. Any other party using an expert to rebut the received expert's report shall send to the other party(s) its expert report within thirty (30) days prior to the close of discovery.

Expert reports must contain the following information:

a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

The failure of a party to timely submit an expert report to the opposing side may result, inter alia, in the expert's testimony being excluded.

7. It is the Court's intention to avoid any side bar conferences and counsel are therefore instructed to anticipate

legal issues and objections and to raise them prior to commencement of trial, at a recess or after adjournment.

8. Court sessions will commence daily at 10:00 a.m. and continue until 12:30 p.m. with a short mid-morning break. Court will reconvene at 2:00 p.m. and continue until 4:30 p.m. with a short mid-afternoon break. Because of the jurors' transportation considerations, the daily adjournment time will be scrupulously observed and counsel must fill all witnesses into that time frame and not seek exceptions.

9. Counsel has the responsibility to have all witnesses available in Court as scheduled. Failure to do so may result in sanctions.

10. Except for good cause shown, counsel shall be limited in the examination of a witness to direct, cross, redirect and recross. Redirect and recross should be used sparingly.

11. Whenever a deposition or portion thereof is to be read into evidence, a written designation of the pages and lines shall be furnished to opposing counsel and to the Court at least 24 hours before commencement of trial. Opposing counsel shall submit any counter designations in a similar fashion within 24 hours.

12. All videotape recordings shall be conducted with an acute sensitivity that the video tape will be shown to a jury. Skillful organization of the testimony, elimination of unnecessary objections, and conservation of time are strongly urged.

13. Whenever a deposition or videotape is to be used, a transcript of the testimony shall be furnished to the Court in advance.

14. All exhibits, once identified, shall be placed and kept at all times on the exhibit table in sequential order arranged according to each party. Each exhibit should be offered into evidence as it becomes admissible. Normally it is the Court's policy to send all exhibits admitted into evidence out with the jury when they retire to deliberate. The only exceptions will be those exhibits which counsel for justifiable reason bring to the Court's attention as being prejudicial.

15. Counsel shall conduct examination of witnesses from counsel table or from the lectern.

16. When necessary to an intelligent understanding of the testimony, counsel may display briefly an exhibit specifically to the jury upon its admission by holding it directly in front of all jurors at once.

17. Opening statements shall be brief and outlines only (not argument) of the evidence counsel intends to present.

18. Summations shall not exceed thirty minutes except upon special exception allowed by the Court in a complex case. Rebuttal argument by plaintiff shall ordinarily not exceed five minutes and shall be confined strictly to a response to unanticipated argument by opposing counsel. Re-argument will not be permitted.

19. In all RICO cases the plaintiff shall file a RICO statement as outlined in the RICO Case Standing Order within twenty (20) days of the date of the Pretrial Scheduling Order.

20. Counsel are advised that current telephone and FAX number(s) and any changes thereto are to be submitted to the courtroom deputy clerk.

21. A courtesy copy of each pleading filed with the Clerk's Office (**even if the pleading is filed electronically**) should be sent to chambers, Room 4006, United States Courthouse, 601 Market Street, Philadelphia, PA 19106

JAMES MCGIRR KELLY, J.

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