



## GENERAL GUIDELINES

### PRELIMINARY GENERAL MATTERS

#### **1. Correspondence with the Court**

Judge Kauffman permits correspondence from counsel in the following circumstances only:

- (1) When letters of transmittal accompany documents required to be sent to or filed with the Court or in another official office in the Courthouse;
- (2) When counsel are specifically requested by the Court to communicate information to the Court by letter;
- (3) When the participation of counsel in the case is expected to be affected by a personal matter concerning counsel, a party, a witness, or counsel's immediate family, such as a medical problem, vacation plans, or other similarly personal problems or questions; or
- (4) To advise the Court that a case has been settled, dismissed, or otherwise finally resolved.

All other written communications with Judge Kauffman concerning any case assigned to his calendar should be by the filing of a pleading, motion, application, brief, legal memorandum, or other similar filing provided for under the Federal Rules of Civil or Criminal Procedure or the Local Rules of Civil or Criminal Procedure of the Eastern District of Pennsylvania.

#### **2. Communications with Law Clerks**

Judge Kauffman permits counsel to speak directly to his law clerks regarding scheduling and similar administrative matters, with the understanding that counsel must carefully observe ethical considerations and avoid discussion of the merits of a pending case.



### **3. Telephone Conferences**

On occasion, Judge Kauffman will utilize telephone conferences for non-complex pretrial conferences, scheduling, discovery disputes, settlement conferences and other similar matters. Counsel have the responsibility to initiate telephone conferences and to contact Judge Kauffman's Chambers only after *all* parties are present on the call.

### **4. Oral Arguments and Evidentiary Hearings**

Judge Kauffman does not set aside any certain days or times for oral argument on motions or evidentiary hearings, all of which will be scheduled on a case-by-case basis.

### **5. Pro Hac Vice Admissions**

Counsel not admitted to practice in the Eastern District of Pennsylvania must be sponsored for admission *pro hac vice* by a member of the bar of this Court. Judge Kauffman requires that a written motion and form of order be submitted no later than the first appearance of counsel seeking admission.

## **CIVIL CASES**

### **A. Pretrial Procedure**

#### **1. Pretrial Conferences**

On all new cases, Judge Kauffman will schedule an initial pretrial conference to be held within sixty (60) days of the filing of answers by all defendants.

Topics that will frequently be addressed at the initial conference include possible jurisdictional defects, time required to complete discovery, amendments to pleadings, dispositive motions, joinder of additional parties, the possibility of settlement, alternative dispute resolution, and the scheduling of trial. *See* Fed.R.Civ.P. 16(b)-(c). Judge Kauffman requires that counsel taking part



in all pretrial conferences be prepared to and have their client's authority to address these subjects.

At the conclusion of the pretrial conference or shortly thereafter, Judge Kauffman will issue a Rule 16 scheduling order.

Judge Kauffman will hold a final pretrial conference within two to three weeks of the date on which trial is scheduled. At the final pretrial conference, counsel present should have settlement authority, as well as authority to explore alternative dispute resolution mechanisms, such as arbitration or mediation.

## **B. Continuances and Extensions**

### **1. General Policy**

Judge Kauffman adheres to all originally scheduled dates unless a compelling reason is presented that justifies a continuance or extension. This policy applies to all briefing schedules, oral arguments, evidentiary hearings, discovery deadlines and trial dates.

### **2. Continuances and Extensions**

Counsel should advise the Court *before the date has run* of any compelling reason justifying an extension or continuance of any scheduled date. *See* Rule 6(b). Any request for an extension or continuance should be made by formal motion and set forth the good cause for granting the motion. Agreement should first be sought from opposing counsel. If there is an agreement regarding a continuance or extension, a stipulation of counsel should be attached to the motion as an exhibit. Regardless of any such stipulation, however, the Court's approval must be obtained for any continuance or extension.



## **C. General Motion Practice**

### **1. Oral Argument on Motions**

Judge Kauffman will order or grant counsel's request for oral argument in any case in which he believes oral argument will aid his decision. Any request for oral argument should be made in writing when the motion or reply is filed.

### **2. Reply and Surreply Briefs**

Judge Kauffman will accept reply briefs if promptly filed. Surreply briefs are not encouraged and should be filed only for compelling reason. Neither reply briefs nor surreply briefs should raise new issues.

### **3. Chambers Copies of Motion Papers**

Judge Kauffman requires that counsel deliver two copies of all motion papers directly to his chambers and, if possible, a 3.5" computer disk in WordPerfect (5.1 or higher) format.

## **D. Discovery Matters**

### **1. Length of Discovery Period and Extensions**

In non-complex cases or Standard Track cases, Judge Kauffman generally will permit four (4) months to complete discovery, measured from the date of service of the Complaint. If counsel have been diligent and genuinely require additional time, Judge Kauffman will generally grant additional time. In complex or Special Management cases, the discovery schedule will be fixed on a case-by-case basis. In arbitration cases, all discovery must be completed by the arbitration date.

### **2. Discovery Conferences and Dispute Resolution**

Judge Kauffman encourages the use of telephone conferences in lieu of motion practice to resolve discovery disputes. When a discovery *default* occurs, any motion to compel shall be filed in



accordance with Local Civil Rule 26.1(g). Judge Kauffman expects that counsel will make every effort to resolve discovery disputes *without* the Court's intervention.

### **3. Confidentiality Agreements**

Judge Kauffman will enter a Confidentiality Order only after making a specific finding of good cause based on a particularized showing that the parties' privacy interests outweigh the public's right to obtain information concerning judicial proceedings. *See Pansy v. Borough of East Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994).

### **4. Expert Witnesses**

Counsel are required to identify expert witnesses and provide *curriculum vitae*, and should voluntarily exchange all information referred to in Federal Rule 26(a)(2)(B) by expert report, deposition or answer to expert interrogatory. Judge Kauffman will generally set a deadline for filing expert reports at the initial pretrial conference. Expert testimony will be limited at trial to the information provided by the expert reports.

## **E. Settlement**

### **1. General Approach to Settlement**

Judge Kauffman believes that the Court's involvement in settlement conferences is generally helpful. In non-jury matters, where the parties request a judicial officer's involvement, Judge Kauffman may refer settlement negotiations to a Magistrate Judge. Judge Kauffman generally will not participate in settlement negotiations in non-jury cases unless the parties jointly agree that his participation will be of assistance.



## **F. Arbitration**

### **1. Scheduling of Trial De Novo from Arbitration**

If a trial *de novo* is demanded following an arbitration award, Judge Kauffman will issue a standard form scheduling order. Ordinarily, Judge Kauffman will not permit any additional post-arbitration discovery.

## **G. Final Pretrial Memoranda**

### **1. Required Form of Pretrial Memoranda**

Judge Kauffman will determine the appropriate form of pretrial memoranda at the initial pretrial conference.

## **H. Injunctions**

### **1. Scheduling and Expedited Discovery**

Judge Kauffman will schedule preliminary and permanent injunction hearings as soon as required. He urges the parties to agree upon their own expedited discovery plan, but will set a schedule if the parties cannot agree. When a temporary restraining order is sought, Judge Kauffman expects prompt service of the motion and complaint upon the opposing party and notice to opposing counsel unless, for good cause shown, such notice is impossible.

### **2. Proposed Findings of Fact and Conclusions of Law**

Judge Kauffman requires that counsel submit proposed findings of fact and conclusions of law at least three (3) days before a preliminary injunction hearing. Counsel are required to deliver two (2) copies to Judge Kauffman's Chambers and, if possible, a 3.5" computer disk in WordPerfect format.



## **I. Trial Procedure**

### **1. Scheduling Cases**

Cases scheduled for trial will either be placed in the trial pool or assigned a specific date. Counsel whose cases are in the trial pool must maintain contact with Judge Kauffman's clerk.

### **2. Conflicts of Counsel**

When counsel become aware of professional or personal conflicts that may affect the trial schedule, they should notify Judge Kauffman and opposing counsel immediately. Although initial notice of a conflict may be provided to Judge Kauffman's Chambers by telephone, all requests for the continuance of any scheduled date *must be in writing*.

### **3. Note taking by Jurors**

Judge Kauffman permits jurors to take notes and will issue an appropriate instruction on juror note taking.

### **4. Voir Dire**

In civil cases, *voir dire* ordinarily will be conducted by counsel with a member of Judge Kauffman's staff present.

### **5. Trial Briefs**

Judge Kauffman encourages the submission of trial briefs where counsel conclude that they will be of assistance to the Court. Counsel should provide two (2) copies of trial briefs to Judge Kauffman's Chambers and, if possible, a 3.5" disk in WordPerfect format.

### **6. Motions In Limine**

Judge Kauffman requires counsel to submit two copies of any motions *in limine* no later than with the filing of final pretrial memoranda.



## **7. Objections**

In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment unless the Court requests elaboration. In a jury trial, arguments on objections shall be made by counsel at the bench, outside of the hearing of the jury.

## **8. Side Bars**

Side-bar conferences should be rare and must be kept brief. If an issue of any length must be discussed, the jury will be excused.

## **9. Examination of Witnesses Out of Sequence**

Judge Kauffman will permit counsel to take a witness out of turn only if failure to do so would result in undue hardship to the witness, and subject to the objection of opposing counsel.

## **10. Opening Statements and Summations**

No time limits will be placed on opening statements or summations. Judge Kauffman believes, however, that twenty (20) to thirty (30) minutes is generally adequate for opening statements and that thirty (30) to forty-five (45) minutes is generally adequate for summations. During opening statements and summations counsel shall not express personal knowledge or opinion concerning any matter in issue.

## **11. Examination of Witnesses or Argument by More Than One Attorney**

Judge Kauffman will not permit more than one attorney for a party to examine the same witness or to argue the same point of law, but will permit another attorney for a party to examine a different witness or to argue a different point of law.

## **12. Examination of Witnesses Beyond Redirect and Recross**

Where appropriate, Judge Kauffman will permit the examination of a witness after redirect



or recross examination, but will not permit needless repetition.

### **13. Videotaped Testimony**

All videotape recordings should be conducted with an acute sensitivity that the video tape may be shown to a jury. Skillful organization of the testimony, elimination of unnecessary objections, and conservation of time are strongly urged. Videotaped testimony should begin with the witness being sworn. Whenever a deposition or videotape is to be used, a transcript of the testimony and all exhibits should be furnished to the Court in advance. Objections should be submitted to the Court well in advance of the tapes being offered so that the tapes may be appropriately edited.

### **14. Reading Material into the Record**

Judge Kauffman requires that whenever a deposition or portion thereof is to be read into evidence, a written designation of the pages and lines be furnished to opposing counsel and to the Court in duplicate at least forty-eight (48) hours before commencement of trial. Opposing counsel should submit any counter-designations in a similar fashion within twenty-four (24) hours. Use of a highlighter is suggested.

### **15. Preparation of Exhibits**

Judge Kauffman requires counsel to pre-mark and pre-exchange all exhibits. No later than two (2) days before trial is scheduled, counsel should deliver to Judge Kauffman's Chambers two indexed copies in three-ring binders. Each party should, by agreement, use a different color binder and a label giving the exhibit numbers and the identifying party should be placed on the spine of each binder. Individual binders should not exceed a width of two inches. Any paper or exhibit not previously marked for identification should be marked before it is tendered to a witness for examination, with copies handed to the Court and opposing counsel.



## **16. Offering Exhibits into Evidence**

Consistent with the Federal Rules of Evidence, counsel may choose when to offer their exhibits into evidence.

## **17. Rule 50 Motions**

Judge Kauffman prefers that motions for judgment as a matter of law in jury trials under Federal Rule 50(a) and motions for judgment under Rule 52(c) be submitted in writing and include a supporting brief. Judge Kauffman generally will hear oral argument on such motions.

## **18. Proposed Statement of the Case, Jury Instructions and Verdict Forms**

Judge Kauffman expects counsel to work together in an effort to submit a joint statement of the case for use in the preliminary jury instructions, final jury instructions, and verdict forms or special interrogatories to the jury. Two (2) copies should be submitted to Judge Kauffman's Chambers *no later than one week before the trial is scheduled to commence or placed in the trial pool*. A 3.5" disk in WordPerfect format would be appreciated.

The statement of the case for use in the preliminary jury instructions should succinctly summarize each party's position and should state the essential elements of claims and defenses that must be proven by each party.

Specific requests for jury instructions are not required with respect to undisputed familiar points of law. To the extent that there is agreement on such matters, the parties should simply list the subject desired to be covered in the charge (e.g., negligence, proximate cause, assumption of risk, burden of proof, credibility, etc.), unless specific phraseology is deemed important in the particular case. With respect to non-routine legal issues, requests for instructions should be accompanied by appropriate citations of legal authorities. If a model jury instruction is used (*e.g.* Devitt &



Blackmar), any modifications should be indicated by underlining and boldfacing additions and striking out deletions. *See* WordPerfect font menu. Unless Judge Kauffman orders otherwise, such requests shall be filed at least one week before the commencement of trial, but amendments or supplements may be submitted at the close of the evidence.

### **19. Proposed Findings of Fact and Conclusions of Law**

Judge Kauffman requires that proposed findings of fact and conclusions of law in non-jury cases be submitted at least three (3) days before trial is scheduled. Two (2) copies and, if possible, a 3.5" disk in WordPerfect format should be delivered to Judge Kauffman's Chambers.

### **20. Courtroom Decorum**

Judge Kauffman anticipates that counsel will conduct themselves professionally and in accordance with their role as Officers of the Court. Judge Kauffman emphasizes, however, that civility is as important as zealous advocacy and that counsel will be expected to: (1) stand when addressing or being addressed by the Court; (2) address all statements to the Court, not opposing counsel; (3) avoid disparaging personal remarks directed towards opposing counsel, litigants, or witnesses; (4) refer to all persons, including witnesses, other counsel, and litigants by their surnames; and (5) refrain from and direct their client to refrain from any gestures, expressions, comments, or the like, manifesting approval or disapproval during the testimony of any witness, or at any other time.

## **J. Jury Deliberations**

### **1. Written Jury Instructions**

Judge Kauffman will give the jury copies of his instructions.



## **2. Exhibits in the Jury Room**

Judge Kauffman generally permits all trial exhibits to go out with the jury unless a well-founded objection is asserted.

## **3. Handling of Jury Requests To Read Back Testimony or Reply Tapes**

If a juror requests, portions of the testimony will be played back on the Court's electronic court reporting equipment. Judge Kauffman will generally grant a juror's request to replay a videotape recording that has been admitted into evidence.

## **4. Juror Note-Taking**

Judge Kauffman will permit jurors to take notes.

## **5. Availability of Counsel During Jury Deliberations**

Counsel should be available on ten (10) minutes notice during jury deliberations.

## **6. Taking the Verdict and Special Verdicts**

Judge Kauffman will decide whether to take a general or special verdict on a case-by-case basis. If useful, Judge Kauffman will submit written interrogatories to the jury.

## **7. Polling the Jury**

Judge Kauffman will generally grant a request to poll the jury.

## **8. Interviewing the Jury**

After a verdict has been recorded and a jury discharged, Judge Kauffman generally will permit counsel to interview jurors. Jurors will be told that they are permitted to talk to counsel and others about their verdict, but are under no obligation to do so.



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## CRIMINAL CASES

### **1. Approach to Oral Argument and Motions**

Judge Kauffman will grant oral argument on a motion in a criminal case if he believes that it will assist in deciding the motion.

### **2. Pretrial Conferences**

Judge Kauffman generally will hold pretrial conferences in criminal cases. Topics that will be addressed at the pretrial conference include outstanding or potential motions and the prompt scheduling of trial.

### **3. Voir Dire**

In criminal cases, Judge Kauffman will conduct voir dire. Counsel should submit proposed *voir dire* questions at least three (3) days before the case is scheduled for trial.

### **4. Sentencing Memoranda**

Judge Kauffman expects sentencing memoranda, within the framework of the Sentencing Guidelines, to be submitted by both the Government and defendants. Sentencing memorandum and motions must be submitted at least one week before the date of the sentencing hearing.

## Other Matters

### **1. Briefs of Cases Appealed**

Judge Kauffman would appreciate receiving copies of appellate briefs when a decision that he rendered is appealed.



## **2. Consultation with Opposing Counsel**

Judge Kauffman expects counsel to bring matters to his attention only after resolution has been sought by discussion with opposing counsel. *All* parties *must* be represented on any telephone conference with Judge Kauffman.