

The Honorable Joseph F. Leeson, Jr.
United States District Judge

United States District Court
Eastern District of Pennsylvania

Edward N. Cahn U.S. Courthouse and Federal Building
504 West Hamilton Street, Suite 3401
Allentown, Pennsylvania 18101
Telephone: 610-391-7020
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Chambers_of_Judge_Joseph_F_Leeson_Jr@paed.uscourts.gov

POLICIES AND PROCEDURES

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POLICIES AND PROCEDURES

(General Matters, Civil Cases, and Criminal Cases)

I. GENERAL INFORMATION

A. Communication with Chambers

1. Communications Policy - General Communication with chambers is permitted by e-mail, telephone, letter, or facsimile regarding scheduling and non-substantive matters only, with the exception of the procedures for raising discovery disputes with the Court.¹ Any attachments to e-mail communications are to be submitted in Microsoft Word format or pdf format, unless otherwise specified. All other issues must be addressed by motion or other filing. Under no circumstances may any party or counsel communicate *ex parte* with any chambers personnel concerning substantive matters. Telephone inquiries are to be directed to the civil or criminal deputy, as appropriate, at the telephone numbers listed below. If the appropriate deputy is unavailable, attorneys may speak to the law clerks regarding scheduling matters; however, law clerks may not render advice.

2. Contact for Matters Relating to Civil Case Management and Requesting Telephone Conferences

Civil Deputy Clerk: Diane J. Abeles
Telephone: 610-391-7020
Fax: 610-821-1481
E-mail: Diane_J_Abeles@paed.uscourts.gov (An e-mail does not constitute a filing.)

¹ See infra Section II(B)(3).

3. Contact for Matters Relating to Criminal Case Management and Courtroom Procedures

Criminal/Courtroom Deputy Clerk: Justin F. Wood

Telephone: 610-776-6118

Fax: 610-434-3461

E-mail: Justin_F_Wood@paed.uscourts.gov (An e-mail does not constitute a filing.)

B. Stipulations and Consent Decrees

Stipulations, consent decrees, or other documents requiring Court approval or signature may be in a form using electronic signature. For stipulations concerning extensions of time, the parties are to refer to Rule 6(b) of the Federal Rules of Civil Procedure requiring Court approval. Stipulations are not effective until approved by the Court. Stipulations should be sent by e-mail or facsimile to chambers with a proposed form of order for Court approval. Stipulations should not be sent to the Clerk of Court. If approved, Judge Leeson forwards the Stipulation and Order to the Clerk for filing and dissemination to the parties.

C. Telephone Conferences

Telephone conferences are scheduled at the Court's discretion and may be held to resolve scheduling matters or discovery disputes. The Court will notify counsel of the date and time for the telephone conference. In a civil case, counsel for the moving party will be responsible for initiating the telephone conference and contacting the Judge through the Judge's Civil Deputy Clerk after all parties are present on the call. In a criminal case, the United States Attorney's Office will be responsible for initiating the call and contacting the Judge through the Judge's Criminal Deputy Clerk after all parties are present on the call.

D. Courtesy Copies

Courtesy copies should not be provided to chambers unless specifically required by the Court.

E. Courtroom Location and Courtroom Technology

1. Allentown All trials and other proceedings will be held at the Edward N. Cahn U.S. Courthouse and Federal Building, Courtroom C, Third Floor, 504 West Hamilton Street, Allentown, Pennsylvania 18101.²

2. Courtroom Technology The Judge's courtroom is not an electronic courtroom. Requests for Court approval for the parties to provide and pay for (at the parties' expense) courtroom technology should be directed to the Criminal/Courtroom Deputy Clerk, Justin F. Wood. Counsel shall arrange to have all approved electronic equipment in the courtroom and

² See infra Section IV(A)(1).

fully functioning prior to the start of trial. Each party shall be solely responsible for operating its own electronic equipment.

3. Courtroom Internet Access Counsel and the parties will not have internet access (wireless or ethernet) in the courtroom. If counsel require internet access, counsel may request permission to obtain and make arrangements (at the expense of counsel) for an internet provider. The Court requires advance notice to arrange for building access, if necessary.

F. Transcripts

To request a transcript, please contact the Court's Transcription Coordinator (267-299-7041). To order a transcript, you will need the caption of the case or docket number, the exact date(s) of the proceeding, the name of the presiding judge, and the courtroom location.

G. Requirements of Paper Filings

Papers or other documents filed in this Court, except original or true copies of exhibits, shall be on paper eight and one-half (8½) inches by eleven (11) inches in size. Any paper or other document filed shall be sufficient as to format and other physical characteristics if it substantially complies with the following requirements:

- (1) Prepared on white paper (except for covers, dividers, and similar sheets) of good quality.
- (2) The lettering shall be clearly legible and shall not be smaller than 12 point word processing font, using Times New Roman typeface. The text must be double spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. The font type and size used in footnotes shall be the same as that used in the body of the document. Margins must be at least one inch on all four sides. All pages should be numbered.
- (3) Printed material shall appear on only one (1) side of each page.
- (4) Exceptions to the provisions of this rule may be made only upon motion and for good cause, or in the case of papers filed by a pro se litigant.

II. CIVIL PRETRIAL MATTERS

A. Initial Pretrial Conference (Fed. R. Civ. P. 16)

1. Scheduling and Required Attendance The initial pretrial conference pursuant to Rule 16 is an important step in the management of a case and will be scheduled once an answer is filed or, in some instances, while a motion to dismiss is pending. Unless a substitution is approved by the Court in advance, lead trial counsel must attend the initial pretrial conference and must enter an appearance prior to the conference. If lead trial counsel is appearing *pro hac vice*, local counsel must also attend the initial pretrial conference. All applications to appear *pro hac vice* must be approved prior to the conference. All pretrial conferences will be held in person in Judge Leeson's courtroom. Requests to continue an initial pretrial conference or to conduct such conferences telephonically are discouraged.

2. All Counsel Required to Hold Fed. R. Civ. P. 26(f) Meeting The Court relies on counsel's good faith compliance in all respects with Rule 26(f). The Rule 26(f) meeting shall take place as soon as possible, and should be viewed not as perfunctory but rather as a meaningful and substantive discussion among professionals to formulate the discovery plan required by the Rule. Outstanding motions will not excuse counsel from timely holding a meeting. Prior to the initial pretrial conference, counsel are to discuss the nature and basis of the parties' claims and defenses, the possibility of a prompt settlement, and a discovery plan pursuant to Rule 26(f).

3. All Counsel Required to File Joint Status Report under Fed. R. Civ. P. 26(f) The parties must complete the "Joint Report By Counsel to the Court of Rule 26(f) Meeting" in the form found on the Court's website under the link for "Judges' Info" – District Court Judges – Joseph F. Leeson, Jr. and must e-mail the completed report to chambers no later than three (3) days before the initial pretrial conference.

4. Required Initial Disclosures under Fed. R. Civ. P. 26(a)(1) At the initial pretrial conference, counsel are to disclose the status of compliance by the parties with the initial discovery disclosures required by Fed. R. Civ. P. 26(a)(1).

5. Other Matters that Will be Discussed at the Conference At the initial pretrial conference, counsel must be prepared to discuss the strengths and weaknesses of the case and must be conversant with the essential facts and issues involved. Motions to dismiss, transfer venue, and other threshold motions are to be filed before the initial pretrial conference. Counsel are to be prepared to discuss any pending motions at the conference and, if requested by the Court, to present legal argument on pending motions. A scheduling order will be issued after the conference to govern further proceedings in the case.

B. Discovery

1. Discovery Management Parties are to manage discovery pursuant to Federal Rule of Civil Procedure 26 without involving the Court.

2. Length of Discovery Period and Extensions Counsel are to commence discovery in advance of the date of the initial pretrial conference. In standard track cases, the Court may allow up to 90 days from the date of the initial pretrial conference to complete discovery. In special management cases, the Court may permit additional time to conduct discovery if, in the judgment of the Court, the parties identify a justifiable need to do so at the initial pretrial conference or any subsequent status conference.

3. Discovery Disputes – Telephone Conferences Counsel must exhaustively address all discovery disputes among themselves before requesting the Court’s intervention. If the parties are unable to resolve a discovery dispute on their own, counsel are to initially send correspondence to the Court briefly describing the dispute and the parties’ respective positions and must certify that all counsel have already made a good faith effort to resolve the issue themselves as required by Local Rule of Civil Procedure 26.1, which must describe in detail the efforts the parties made to resolve the dispute on their own. The Court may thereafter schedule a telephone conference with counsel to address the dispute or direct the parties to file motions and briefs. If the parties are directed by the Court to file a motion, counsel must certify as part of the motion that all counsel have already made a good faith effort to resolve the issue themselves as required by Local Rule of Civil Procedure 26.1.

4. Depositions Depositions are governed by Federal Rule of Civil Procedure 30, and all parties are expected to be familiar with the Rule and the accompanying notes. The parties are also encouraged to consult the opinion of *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993), and the commentary concerning the case that has followed. The parties should observe the court’s cautionary advice set forth in *Hall*:

Counsel should never forget that even though the deposition may be taking place far from a real courtroom, with no black-robed overseer peering down upon them, as long as the deposition is conducted under the caption of this court and proceeding under the authority of the rules of this court, counsel are operating as officers of this court. They should comport themselves accordingly

Id. at 531.

5. Expert Reports All expert reports, curricula vitae, and supporting documentation/information are to be exchanged in advance of trial pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure. The time for exchanging expert reports will ordinarily be set forth in the Scheduling Order. A violation of the disclosure requirements of the Rule or Scheduling Order may result in the barring of expert testimony at trial. Any deposition of an expert under Rule 26(b)(4)(A) must be conducted before the deadline for submission of dispositive motions.

6. Appointment of a Discovery Master The Court may approve the appointment of a discovery master in accordance with Rule 53 of the Federal Rules of Civil Procedure.

C. Requests for Extension of Time

Where compelling circumstances so require, counsel may request an extension of a filing or other deadline. Deadlines for filing dispositive motions will be extended only in very limited circumstances and only where absolutely necessary. Counsel must confer with all opposing counsel prior to requesting an extension. If a request for an extension is unopposed, counsel must so state and may submit the request through joint stipulation. Opposed requests must so state and be filed as a motion. Requests for extensions of discovery deadlines are strongly discouraged and rarely granted.

D. Confidentiality Agreements

The Judge will consider entry of an order approving stipulated confidentiality agreements or protective orders only if the proposed order explains, in detail, why disclosure would cause a “clearly defined and serious injury” and defines the categories of information subject to protection with specificity. See *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995) (cautioning that “[b]road allegations of harm, unsubstantiated by specific examples, . . . will not suffice”); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994); *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1122 & n.17 (3d Cir. 1986). All such orders must contain the following language (or language substantially similar):

“The Court retains the right to allow disclosure of any subject covered by this stipulation or to modify this stipulation at any time in the interest of justice.”

E. Settlement Conferences

The possibility of settlement will be addressed at all stages of the proceedings. Pursuant to Local Rule of Civil Procedure 53.3, the parties are to consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. The parties are encouraged to request early referral to a magistrate judge for settlement discussions if they believe it will be productive. Judge Leeson is also receptive to requests to hold a settlement conference at any step of the proceedings. Counsel are advised to review Judge Leeson’s “Settlement Conference Policies and Procedures,” which are available on the Court’s website.

F. Motions Practice and Briefs – Required Content

1. Electronic Case Filing Counsel are to use electronic case filing and comply with the Court’s Electronic Case Filing (“ECF”) Procedures pursuant to Local Rule of Civil Procedure 5.1.2, unless excused from ECF registration. *Pro se* litigants are not required to file electronically.

2. Briefs – Required Content All briefs shall consist of the following matters, separately and distinctly titled and in the following order:

- (a) Statement of Facts

- (b) Statement of the Questions Involved
- (c) Summary of Argument
- (d) Argument
- (e) Short conclusion stating the precise relief sought
- (f) Proposed Order that would grant the precise relief sought

When referring to the record, all briefs must specify the relevant exhibit, page, and line numbers.

3. Reply Briefs Parties may submit reply briefs without leave of Court in support of any motion. A reply brief is not to exceed ten (10) pages and is to address only issues raised in opposition to the motion, without repeating arguments included in the initial brief. Parties shall file a reply brief no later than seven (7) days after the opposition is served. A party may file a sur-reply brief only with permission of the Court upon good cause shown. The sur-reply brief may not exceed five (5) pages.

4. Proposed Order and Certificate of Concurrence or Non-Concurrence A proposed order shall accompany each motion or other request for relief. The order shall be formatted for the Judge's signature (for example, do not include the word "proposed" in the text of the order). All motions shall be accompanied by a Certificate of Concurrence or Non-Concurrence.

5. Oral Argument If the Court determines that oral argument will be helpful in deciding a matter, the Judge will schedule it. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading. Counsel are encouraged to bring their clients to oral argument on dispositive motions.

6. Injunctions and Restraining Orders Any request for a temporary restraining order ("TRO") or preliminary injunction will be promptly listed for hearing, if the Court determines that testimony is required. A pre-hearing conference may, in the Court's discretion, be held with counsel to discuss any discovery issues and any options available for resolving the request for a TRO or preliminary injunction. If appropriate, expedited discovery will be ordered. The following are to be exchanged by counsel, and filed with the Court in advance of any hearing on a preliminary or permanent injunction:

- (a) No later than four (4) business days before the hearing, the moving party shall furnish to all opposing parties the names, addresses, and employers of all witnesses, a summary of testimony to be presented by each witness, any affidavits to be filed in connection with the hearing, and copies of all exhibits to be submitted at the hearing.
- (b) No later than two (2) business days before the hearing, the non-moving party shall furnish to the moving party the names, addresses, and employers of all witnesses, a summary of testimony to be presented by each witness, any affidavits to be filed in connection with the hearing, and copies of all exhibits to be submitted at the hearing.

The Court may modify or expedite these requirements when circumstances dictate.

7. Submittal of Proposed Findings of Fact and Conclusions of Law. The parties are required to submit proposed findings of fact and conclusions of law for TRO and injunction hearings. The Court will set the time for these submissions at a pre-hearing conference or by order.

8. Motions for Summary Judgment - Required Statement of Undisputed Material Facts Any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure must be accompanied by a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. The moving party shall include only those facts that are material to the issues in dispute in the enumerated statement of facts. The moving party shall accompany each factual assertion with a citation to the specific portion(s) of the record that support the assertion, including the exhibit, page, and line numbers. When a factual assertion cites to a deposition transcript, counsel shall attach a copy of the entire transcript containing the cited testimony to the motion. The Court will not consider a factual assertion that is not supported by a citation to the record.

9. Responses to Motions for Summary Judgment - Required Answer to Moving Party's Statement of Undisputed Facts A party opposing a motion for summary judgment shall file a separate, short, and concise statement responding to the numbered paragraphs set forth in the moving party's statement of undisputed facts and shall either concede the facts as undisputed or state that a genuine dispute exists. If the opposing party asserts a genuine dispute exists as to any fact, the party shall cite to the specific portion(s) of the record that create the dispute, including the exhibit, page, and line number. The opposing party shall also set forth in enumerated paragraphs any additional material facts that the party contends preclude summary judgment. When a factual assertion cites to a deposition transcript, counsel shall attach a copy of the entire transcript containing the cited text. All facts set forth in the moving party's statement of undisputed facts shall be deemed admitted unless controverted.

10. Requests to File Documents under Seal

a. Motion for Permission to File Under Seal A party who seeks to file a document (or portions thereof) under seal must file a motion for permission to file the document under seal. The motion must contain the following items, all of which shall be filed publicly on ECF, with the exception of an unredacted copy of the document, which shall be filed in paper copy with the Clerk of Court (see subsection (v) below).

(i) Brief Supporting the Motion

(1) The brief must explain why there is good cause for the document (or portions thereof) to be sealed. The public has "a pervasive common law right 'to inspect and copy . . . judicial records and documents,'" so the moving party

“‘bears the burden of showing that the material is the kind of information that courts will protect’ and that ‘disclosure will work a clearly defined and serious injury to the party seeking closure.’” *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001). Mere reference to a stipulation or protective order that allowed a party to designate certain documents as confidential during discovery is not sufficient because a request to seal a document that will be filed with the Court is subject to a higher standard than a request to protect material exchanged during pretrial discovery. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984).

(2) If the reason the document is sought to be sealed is because an opposing party or a non-party designated the document as confidential pursuant to a protective order, then the brief may simply identify the party who designated the document as confidential. The Court will then direct that party to file a brief explaining why the document (or portions thereof) should be sealed.

(ii) Certificate of Concurrence or Non-Concurrence

A certificate of concurrence or non-concurrence must be attached.

(iii) Proposed Order

The proposed order must be narrowly tailored to seal only the sealable material and must clearly identify, in table format, each document (or portion thereof) that is sought to be sealed.

(iv) Redacted Version of the Document

A redacted version of the document must be included with the motion and filed publicly on ECF. A redacted version is not necessary if the party is seeking to file the entire document under seal.

(v) Unredacted Version of the Document

The unredacted version of the document should be filed under seal, which—unlike the rest of the motion—must be filed in paper copy with the Clerk of Court, with instructions to the Clerk to file the document as a sealed exhibit to the motion. *See* E.D. Pa. Local R. Civ. P. 5.1.2(7) (“Documents ordered to be placed under seal must be filed in paper copy filed in the traditional manner and not electronically.”).

b. Court to Grant or Deny Motion The procedure following issuance of the Court's ruling on motion:

(i) Motion is Granted:

The document filed under seal will remain under seal and the public will have access only to the redacted version, if any, that accompanied the motion.

(ii) Motion is Denied (in part or in whole):

(1) *If the motion to seal was filed by the party who produced the document:*

The document sought to be sealed will remain under seal, but it will not be considered by the Court unless the moving party opts to file an unredacted version of the document publicly on the docket (or, if the motion was denied in part, unless the moving party opts to file a revised redacted version of the document that comports with the Court's order) within seven (7) days after the motion is denied.

(2) *If the motion to seal was filed by a party who received the document from another party who designated the document as confidential pursuant to a protective order:*

The document will be unsealed and filed publicly on the docket.

11. Other Motions For all other motions, counsel are expected to follow the requirements of Local Rule of Civil Procedure 7.1.

G. Arbitration

In cases placed on the Arbitration Case Management Track, the Court will issue a scheduling order setting a deadline for dispositive motions and a trial de novo date in the event one is demanded. Arbitrations will be held at the Edward N. Cahn U.S. Courthouse and Federal Building, Third Floor, 504 West Hamilton Street, Allentown, Pennsylvania.

H. Final Pretrial Conference

The final pretrial conference will be used to resolve any outstanding motions and discuss *voir dire*, proposed jury instructions, objections raised in pretrial memoranda, and other trial procedures. The final pretrial conference date will routinely be set forth in the scheduling order.

I. Continuances

1. Applications for Continuances Counsel must immediately notify the Court upon learning of any unavoidable and compelling professional or personal conflicts affecting the trial schedule. Requests for continuances are strongly discouraged and rarely granted. Counsel must present good cause for the request. A continuance must be sought as soon as possible. Requests for continuances must be in writing and should be e-mailed to chambers with a copy to opposing counsel. If the scheduling conflict pertains to another court matter, counsel is required to identify the other court, the caption of the other case, the presiding judge in the other case, and the docket number of the other case. A formal motion is not required.

2. Position of Opposing Counsel Must be Ascertained Before Applying for a Continuance The party requesting a continuance must present the position of opposing counsel.

J. Proposed Voir Dire Questions, Joint Summaries of the Case, Jury Instructions, and Verdict Forms (or Special Interrogatories)

If a jury trial is scheduled, the parties will be directed to file with the Clerk of Court and submit to Chambers electronically in Microsoft Word format all of the following:³

(1) Each Party's Proposed Voir Dire Questions

- a. *Conduct of Voir Dire* The Court will conduct the preliminary phase of voir dire, after which counsel may be permitted to ask a brief set of supplemental questions.
- b. *American Bar Association Formal Opinion 466: "Lawyer Reviewing Juror's Internet Presence"* Counsel are permitted to use social media during jury selection in accordance with American Bar Association (ABA) Formal Opinion 466, "Lawyer Reviewing Juror's Internet Presence." Specifically, counsel may passively review a juror's public presence on the Internet but may not communicate with a juror (or potential juror).

(2) Joint Brief Summary of Case to be Read by the Court to the Jury Pool prior to Voir Dire One (1) copy of a joint summary of the case for the Court to read at the beginning of voir dire to advise the venire of the nature of the case and the issues to be tried. This summary should be very brief (not to exceed a few sentences) and neutral in tone and content.

(3) Joint Summary of Case to be Read by the Court to the Seated Jury before Opening Statements One (1) copy of a joint summary of the case and of applicable law for the Court to read to the jury panel at the beginning of trial to describe the claims, any counterclaims or defenses, and the elements of each

³ These same requirements will be set forth in the scheduling order governing the case. The material in italics provides additional commentary about these requirements.

cause of action. This brief summary should be consistent with Third Circuit Model Civil Jury Instruction 1.2.

- (4) Joint Jury Instructions and Verdict Forms (or Special Interrogatories) One (1) copy of joint proposed jury instructions on substantive issues, which shall accurately quote or cite, as applicable, model jury instructions or case citations from which the instructions were derived, and proposed verdict forms (or special interrogatories). The proposed instructions shall conform to the Third Circuit's Model Jury Instructions, if applicable, unless there is a compelling argument for deviation.

a. *Supplemental Points for Charge Counsel will have the opportunity to file supplemental points for charge during trial as necessary.*

- (5) Non-agreed-upon Jury Instructions and Verdict Forms (or Special Interrogatories) Each party shall submit one (1) copy of proposed jury instructions and verdict forms (or special interrogatories) on those issues not agreed upon by the parties in their joint submission, all of which shall be marked to show the specific words on which the parties do not agree.

a. *Oral Argument on non-agreed-upon Materials Argument on disputed points for charge, jury interrogatories, and the verdict slip will be heard at the final pretrial conference or, in the Court's discretion, at the close of testimony and before closing arguments.*

For any civil litigation issues not addressed above, please consult the Local Rules of Civil Procedure for the Eastern District of Pennsylvania, available at <http://www.paed.uscourts.gov>

III. CRIMINAL PRETRIAL MATTERS⁴

A. Motions Practice

1. Pretrial Motions Upon the filing of any pretrial motion, the parties shall advise the Court whether they believe an evidentiary hearing is necessary, and the expected duration of any testimony, so that the Court can schedule a hearing, if necessary.

2. Briefs – Required Content All briefs shall consist of the following matters, separately and distinctly titled and in the following order:

- (a) Statement of Facts
- (b) Statement of the Questions Involved
- (c) Summary of Argument
- (d) Argument
- (e) Short conclusion stating the precise relief sought
- (f) Proposed Order that would grant the precise relief sought

When referring to the record, all briefs must specify the relevant exhibit, page, and line numbers.

3. Reply Briefs Parties may submit reply briefs without leave of Court in support of any motion. A reply brief is not to exceed ten (10) pages and is to address only issues raised in opposition to the motion, without repeating arguments included in the initial brief. Parties shall file a reply brief no later than seven (7) days after the opposition is served. A party may file a sur-reply brief only with permission of the Court upon good cause shown. The sur-reply brief may not exceed five (5) pages.

4. Proposed Order and Certificate of Concurrence or Non-Concurrence A proposed order shall accompany each motion or other request for relief. The order shall be formatted for the Judge’s signature (for example, do not include the word “proposed” in the text of the order). All motions shall be accompanied by a Certificate of Concurrence or Non-Concurrence.

5. Pretrial Hearings Suppression and *Daubert*⁵ hearings are typically held at least two weeks prior to trial. The Court may require the parties to file proposed findings of fact and conclusions of law after the hearing.

B. Trial Continuances

1. Requirements Counsel must immediately notify the Court upon learning of any unavoidable and compelling professional or personal conflicts affecting the trial schedule, or of any need for additional time to effectively prepare for trial. Any request for a continuance must be filed no later than fourteen (14) calendar days in advance of the scheduled trial date, and must state the amount of time being requested for the continuance. Requests for a continuance must be

⁴ References to “counsel” herein include defendants acting pro se.

⁵ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

filed with the Clerk as a motion, stating the specific reasons for the request. If the scheduling conflict pertains to another court matter, counsel is required to identify the other court, the presiding judge in the other case, and the docket number of the other case. The motion must state whether the continuance is opposed or unopposed. Any such motion must be accompanied by a proposed order. The proposed order must be consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161(h)(7), and must include a proposed finding that explains in reasonable detail why the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial.

2. Written Consent Form If the defendant requests the continuance, the motion should indicate that the defendant agrees the time is excludable from the speedy trial clock, and attached to the motion must be a completed “Consent to Continuance of Criminal Trial” form signed by the defendant. The form can be found on the Court’s website under the link for “Judges’ Info” – District Court Judges – Joseph F. Leeson, Jr. (www.paed.uscourts.gov/judges-info/district-court-judges/joseph-f-leeson-jr).

3. Scheduling The Criminal Deputy Clerk handles all scheduling of criminal matters.

C. Guilty Pleas

1. Documents to be Submitted to the Court At least seven (7) calendar days prior to the plea hearing, the Government must file a guilty plea memorandum. A copy of the acknowledgment of rights and guilty plea agreement, if any, must also be submitted to the court at least seven (7) calendar days prior to the plea hearing, and may be emailed to the Criminal Deputy Clerk. These documents will be filed with the Clerk after the plea hearing.

2. Requirements of Guilty Plea Agreement The guilty plea agreement must state whether the plea is a general plea of guilty, a conditional plea, or a plea of *nolo contendere*. The guilty plea agreement also must disclose to the defendant and the Court whether the plea is entered pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (B) or (C). The guilty plea agreement should advise the defendant of the maximum punishments, of any mandatory minimum punishments, and of his appellate rights.

3. Government to Submit Guilty Plea Memorandum The Government’s guilty plea 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 and any mandatory minimum punishments for each offense, the terms of any plea agreement, and the factual basis for the plea.

D. Pretrial Conferences

If it appears that the case will proceed to trial, the Court will hold a pretrial conference approximately one week prior to the trial date. The pretrial conference will be used to resolve any outstanding motions and to discuss *voir dire*, proposed jury instructions, anticipated legal issues raised in the pretrial memorandum, and other trial procedures.

E. Pretrial Memorandum

At least seven (7) calendar days prior to the trial date, the Government must file a pretrial memorandum setting forth the essential elements of the offense(s) and any anticipated legal issues. The defendant is not required to file a pretrial memorandum but may do so.

F. Voir dire

1. Voir dire Questions The Court conducts *voir dire*. Proposed *voir dire* questions must be submitted in advance of trial, but counsel may submit additional questions, if necessary, during the *voir dire* proceedings.

2. American Bar Association Formal Opinion 466: “Lawyer Reviewing Juror’s Internet Presence” Counsel are permitted to use social media during jury selection in accordance with American Bar Association (ABA) Formal Opinion 466, “Lawyer Reviewing Juror’s Internet Presence.” Specifically, counsel may passively review a juror’s public presence on the Internet but may not communicate with a juror (or potential juror).⁶

G. Jury Instructions and Points for Charge

1. Conformity Proposed jury instructions shall conform to the Third Circuit Pattern Jury Instructions unless there is a compelling argument for deviation.

2. Supplemental Points for Charge Counsel will have the opportunity to file supplemental points for charge during trial, as necessary.

H. Exhibits

1. Binders Counsel for the Government and for the defendant shall pre-mark all trial exhibits. At the time of trial, counsel shall provide a copy of all exhibits to opposing counsel, if not previously provided. Counsel shall also provide the Court with three (3) copies of an exhibit binder including all exhibits (one binder for the Judge, one for the Judge’s law clerk, and one for the witness). In the event there is a tangible exhibit, such as a firearm or controlled substance, counsel shall include a place holder in the binder identifying the exhibit. Each binder shall include a table of contents listing all exhibits.

2. Custody In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be maintained for safekeeping by law enforcement during all times when court is not in session, and at the conclusion of the case.

⁶ Although a pro se defendant is not technically bound by the Rules of Professional Conduct, all pro se defendants are also prohibited from communicating, directly or indirectly, with any juror or potential juror without the prior permission of the court. See *Prude v. Pollard*, No. 13-cv-512, 2014 U.S. Dist. LEXIS 89991, at *29 (W.D. Wis. July 2, 2014) (discussing Local Rule 47.2 regarding juror contact).

3. Conclusion of Trial Unless there is an objection from opposing counsel placed on the record, upon approval of the Court, exhibits may be released at the close of trial to the custody of the party who offered them. Counsel for any party that offered into evidence tangible property, enlargements, or other large or bulky items shall take immediate possession. Counsel shall maintain custody of all released exhibits in its possession until the final disposition of all appeals and retrials, if any. Any exhibits that are not picked up by counsel or the parties will remain in the court's possession until the final disposition of all appeals and retrials, if any, or the appeal period expires. Any exhibits that are not picked up within seventy-two (72) hours thereafter will be destroyed.

For any criminal litigation issues not addressed above, please consult the Local Rules of Criminal Procedure for the Eastern District of Pennsylvania, available at <http://www.paed.uscourts.gov>

IV. TRIALS

A. General Procedures

1. Trial Location Jury selection for jury trials shall occur at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 on the first day of trial. The second and all subsequent trial days shall be held at the Edward N. Cahn U.S. Courthouse and Federal Building, Courtroom C, Third Floor, 504 West Hamilton Street, Allentown, Pennsylvania 18101.

2. Scheduling of Trial Date The scheduling order will assign a trial date. A final pretrial conference will typically be scheduled for the week preceding the trial date. Jury selection will ordinarily occur the Monday after the pretrial conference, with the trial starting immediately thereafter. All parties, witnesses, and counsel can expect their cases to be tried on the specified trial date and should arrange their schedules accordingly. If the trial does not commence on that date, the case will be placed in the trial pool and all attorneys and parties shall be on-call and ready to proceed on 24 hours' notice from the Court. In appropriate cases, time limits may be imposed on the parties' trial presentations. *See Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604, 609-10 (3d Cir. 1995).

3. Witness Scheduling Trial of cases involving out-of-town counsel, parties, or witnesses is generally scheduled in the same manner as all other cases. Counsel are responsible for the scheduling of witnesses. Do not run out of witnesses during a trial day, or the Court may determine that the party has rested its case. Requests for early adjournment of a trial day will not ordinarily be granted.

4. Court Start and End Times Court normally begins at 9:00 a.m. The Court will make every effort to commence proceedings on time. Counsel, parties, and witnesses shall be on time. Court normally adjourns at 5:00 p.m.

5. Civility Civility is the foundation of all courtroom procedures and will be expected at all times. Counsel and the parties shall rise when the Judge and the jury enter and leave the courtroom.

6. Proper Attire Counsel should instruct witnesses and parties to wear proper attire to court. Shorts, tank tops, etc. are not permitted attire. Witnesses or parties not properly attired may be excluded from the courtroom. In criminal cases, defense counsel must make arrangements to secure civilian clothes for the defendant so that the defendant does not appear in prison clothes in front of the jury.

7. Cell Phones and Electronic Devices to be Turned Off Cell phones and other electronic devices must be turned off (not on silent or vibrate mode) before entering the courtroom. Recording or taking photographs in the courtroom is strictly prohibited. A violation of these rules may result in confiscation of the cell phone or device and prosecution. Attorneys are responsible for their own electronic devices and those of their witnesses and clients.

8. Food, Drink, and Chewing Gum Prohibited in Courtroom Food, drink, and chewing gum are prohibited in the courtroom and witnesses are to be so instructed by counsel.

B. Decorum of Counsel

1. Proper Attire and Professional Conduct Counsel shall dress in an appropriate professional manner. The parties shall conduct the trial in a dignified and formal manner. Counsel shall not raise their voices any louder than is necessary to be clearly heard by the Court, witnesses, and the jury. All remarks are to be addressed to the Court and not opposing counsel. Counsel should never act or speak disrespectfully to the Court or opposing counsel.

2. Courtesy Counsel's demeanor should be one of courtesy and professionalism. Counsel shall not exhibit familiarity with the parties, jurors, or opposing counsel and are to avoid using first names. During opening statements and closing arguments, no juror is to be addressed individually or by name. Neither counsel nor the parties by body language or facial expression shall convey their reaction to the testimony of a witness.

3. Counsel Addressing the Court Counsel must rise to address the Court.

C. Notetaking by Jurors

Although notetaking is generally not permitted, in appropriate cases, notetaking by jurors may be permitted by the Court.

D. Court Seating

1. Party with Burden of Proof Seated Closest to Jury Box Under local practice, the party with the burden of proof (generally the plaintiff in civil cases, the government in criminal cases) is seated at the table closest to the jury box.

2. Special Requests for Seating Arrangements Any requests concerning seating (e.g., requests for more than one counsel table or special requests for seating, visual aids, etc.) are to be submitted to the Criminal/Courtroom Deputy Clerk, Justin F. Wood, at least one week before trial.

3. Seating Arrangements for Counsel, Parties, and Witnesses Only counsel and parties, if desired, may sit at counsel table. Witnesses shall sit in the spectator section only, unless otherwise authorized by the Court. If any party desires sequestration, the party shall move for sequestration at the outset of the trial. If the Court orders sequestration, all witnesses for all parties shall be sequestered. Counsel are responsible for informing their non-party witnesses that they should remain outside the courtroom until called, and that they should not discuss their testimony with other witnesses until the trial is concluded.

E. Opening Statements and Closing Arguments

In most cases, the Court permits up to 30 minutes for an opening statement and up to 45 minutes for a closing argument. Plaintiff's counsel must reserve time from his or her closing to use for rebuttal. The failure to reserve time for rebuttal will constitute a waiver of rebuttal. In civil cases, the Court generally follows Local Rule of Civil Procedure 39.1. In criminal cases, the Court follows Rule 29.1 of the Federal Rules of Criminal Procedure.

F. Witnesses

1. Courtesy to be Shown at All Times to All Witnesses The rule of civility is absolute in addressing witnesses, whether on direct or cross examination. Witnesses are to be treated with fairness and consideration; they are not to be shouted at, ridiculed, or abused in any manner. Counsel may not approach a witness without leave of court. Counsel shall be responsible for making arrangements to have their witness present in the courtroom when the witness is called to testify.

2. Witness to Speak into Microphone Counsel must ensure that a witness is speaking into the microphone for ease of recording and hearing. Court proceedings are electronically recorded; therefore it is important that all witnesses speak into the microphone.

3. Witnesses to be Ready; Discussions by Counsel with Witnesses During Witness Breaks If a witness was on the stand at a recess or adjournment, the witness should be on the witness stand ready to proceed when court resumes. Counsel are reminded that they may not discuss a witness's testimony with him or her once that witness has begun testifying until the witness is excused.

4. Witness Scheduling If there will be a problem with the scheduling of any witness, counsel should inform the Court at the pretrial conference or at the beginning of that day's proceedings. The Court may permit counsel to examine his/her own witnesses out of turn for the convenience of a witness.

G. Examination of Witnesses

1. Witness to State and Spell Name After the witness is sworn, if counsel has not already done so, the Court will ask the witness to state and spell his or her name for the benefit of the ESR operator. The Court will then allow counsel to proceed with questioning the witness.

2. Counsel Should Stand to Examine Witnesses and Speak into Microphone Counsel should stand to examine witnesses unless counsel has obtained the Court's permission to proceed otherwise. Since all court proceedings are electronically recorded, it is important for counsel to speak into one of the courtroom microphones. Counsel may request permission to use a lectern from which to examine witnesses.

3. Restrictions on Multiple Attorneys for One Party 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 opening statements or closing arguments.

4. Direct, Cross, and Re-Direct Examination The Court permits direct, cross, and re-direct examination of a witness. Re-cross examination is permitted only “[w]here new evidence is opened up on re-direct examination.” See *United States v. Riggi*, 951 F.2d 1368, 1375 (3d Cir. 1991) (explaining that “the privilege of recross-examination as to matters not covered on redirect examination lies within the trial court’s discretion” (citation omitted)).

5. Prior Written Statements of Witness If counsel wishes to examine a witness on the basis of a prior written statement made by the witness, the witness shall first be shown the statement and asked whether he or she acknowledges having made it.

6. Deposition of Witness If counsel wishes to cross-examine a witness on the basis of a deposition, counsel must give a copy of the deposition to the witness, who will be permitted to read the deposition and to adopt or deny the testimony before counsel may proceed with cross-examination.

H. Videotaped Testimony

Videotaped testimony is to begin with the witness being sworn. Counsel are to bring objections to the Court’s attention at the time of the final pretrial conference. After the Court rules on any objections, counsel is required to edit the video recording before offering the videotaped testimony at trial.

I. Reading of Material into the Record

The Court has no special practice or policy regarding reading stipulations, pleadings, or discovery material into the record at trial. Admissions, pleadings, requests for admissions, admissions of parties contained in depositions, and answers to interrogatories are not part of the evidence at trial unless counsel moves for their admission and the Court admits them.

J. Stipulations

Counsel are strongly encouraged to stipulate to as many matters as possible before trial, including undisputed facts, exhibits, jury instructions, and special interrogatories, if any.

K. Proposed Findings of Fact and Conclusions of Law – May Be Required in Non-Jury Cases

If the parties are directed to file proposed findings of fact and conclusions of law, all proposed findings of fact shall cite to specific pages and lines of the transcript where the proposed findings of fact appear.

L. Objections

1. Manner of Stating Objection When objecting, counsel should only state “objection” and cite to the evidentiary rule or principle upon which the objection is based in a word or two. Counsel are not to offer argument or explanation in front of the jury unless requested to do so by the Court. The Court will not permit counsel to state additional reasons for an objection after the Court has ruled.

2. Sidebar Conferences If necessary, particularly in instances where the Court requires argument or explanation about a particular objection, the Court may ask the parties to approach for a sidebar conference. In civil cases, sidebar conferences are discouraged and are rarely authorized. In criminal cases, however, counsel is directed to request a sidebar conference whenever necessary to avoid mentioning potentially prejudicial matters in front of the jury. The Court will not permit counsel to argue objections in the hearing of the jury or witnesses. Sensitive or highly controverted matters involving evidentiary objections should be brought to the attention of the Court before the commencement of trial, or on the morning of trial, before the jury enters the courtroom.

M. Jury Deliberations

1. Trial Exhibits Exhibits do not ordinarily go out with the jury during deliberations; however, upon request the Court may hear argument on whether particular exhibits should go out with the jury. Jury requests to examine any exhibit will be addressed as they arise.

2. Location of Counsel and Clients During jury deliberations, counsel and the parties may not leave the courthouse without seeking advance permission from the Court. Counsel are required to provide their cell phone numbers to the Courtroom Deputy Clerk. If the Court grants permission for counsel and the parties to leave the courthouse, they must be able to return to the courthouse within five (5) to ten (10) minutes.

3. Polling the Jury If requested by counsel, the Court will poll the jury.

4. Interviewing of Jurors after Verdict Counsel are permitted to interview jurors after the verdict, but the Court will instruct the jury that they are not required to talk to the attorneys.

V. CRIMINAL CASES- SENTENCING

A. Scheduling

Sentencing will be scheduled on the day the Court accepts a defendant's guilty plea or after a defendant is convicted at trial. Sentencing will generally take place one hundred ten (110) days after a guilty plea or trial.

B. Continuances

If, after receiving a first continuance, counsel for both the Government and defense believe that good cause exists for an additional continuance, counsel may jointly submit a request for an additional continuance. No motion is necessary, and the request may be emailed in lieu of a motion. All continuance requests should be directed to the Criminal/Courtroom Deputy Clerk, Justin F. Wood at Justin_F_Wood@paed.uscourts.gov.

C. Sentencing Motions

All counsel must file any sentencing motions and supporting memoranda at least fourteen (14) calendar days prior to the scheduled sentencing date, and any response thereto must be filed at least seven (7) calendar days prior to the scheduled sentencing date. The memorandum must set forth any legal authority relied upon by the party. Counsel shall serve a copy on the United States Probation Office.

D. Sentencing Memoranda (Exclusive of Motions)

Sentencing memoranda (exclusive of motions) must be filed no later than seven (7) calendar days before the scheduled sentencing date. All letters and exhibits must be included. Any responses thereto must be filed at least three (3) calendar days prior to the scheduled sentencing date. Counsel shall serve a copy on the United States Probation Office.

For any criminal litigation issues not addressed above, please consult the Local Rules of Criminal Procedure for the Eastern District of Pennsylvania, available at <http://www.paed.uscourts.gov>

VI. MISCELLANEOUS INFORMATION

A. Attorney Admissions in Philadelphia and Allentown

1. Attorney Admissions Application. The Attorney Admissions Application is available on the Court's website (www.paed.uscourts.gov/documents2/forms/forms-miscellaneous). Applicants are to bring the completed form on the scheduled attorney admission ceremony date. The form is also available in the Clerk's Office.

2. Attorney Admissions in Philadelphia. Attorney admission ceremonies in Philadelphia will occur on the date and time indicated on the Court's website (www.paed.uscourts.gov/services/attorney-info). The applicant and sponsor should report to the Clerk's Office, Room 2609 (second floor), thirty (30) minutes prior to the scheduled admission time.

3. Attorney Admissions in Allentown. Attorney admission ceremonies in Allentown will occur by appointment only. Arrangements should be made with Judge Leeson's Civil Deputy Clerk, Diane J. Abeles (610-391-7020) to schedule a date and time for the ceremony. The applicant and sponsor should report to the Clerk's Office, Room 1601 (first floor), thirty (30) minutes prior to the scheduled admission time, pay the admission fee, and bring a receipt for payment to the admissions ceremony.

4. Attorney Admissions Information. For additional information concerning attorney admissions, please see the FAQs on the Court's website (www.paed.uscourts.gov).