

**JUDGE THOMAS N. O'NEILL, JR.**

4007 James A. Byrne United States Courthouse  
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Chambers\_of\_Judge\_Thomas\_O'Neill@paed.uscourts.gov

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**POLICIES AND PROCEDURES**

**PRELIMINARY GENERAL MATTERS**

1. **Correspondence with the Court.**

Judge O'Neill permits correspondence for scheduling and extensions of time, but ordinarily not in lieu of discovery motions. All correspondence directed to the Court should include the Action Number of the case and a copy of such correspondence should be served upon opposing counsel.

2. **Communications with Law Clerks.**

Judge O'Neill permits counsel to speak with his law clerks with respect to ministerial matters such as scheduling. They are not, however, permitted to give legal advice or to explain the reasons for the Court's rulings.

3. **Telephone Conferences.**

When appropriate, Judge O'Neill will entertain telephone conferences for matters such as pretrial conferences, scheduling changes and extensions of time. Judge O'Neill expects counsel to bring matters to his attention only after they have been discussed with opposing counsel.

Counsel have the responsibility to initiate telephone conferences and to contact Judge O'Neill through his deputy once all other parties are present on the call.

Ordinarily, the first conference in a case should take place in chambers.

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

Judge O'Neill does not set aside certain days or times for oral arguments or evidentiary hearings.

5. Pro Hac Vice Admissions.

Judge O'Neill has no preference as to how counsel present requests for pro hac vice admissions.

6. Requests For Default and Default Judgment.

Judge O'Neill requires that all requests for default and default judgment be served upon the parties that are in default.

7. Motions To Dismiss Pro Se Complaints.

If a pro se plaintiff does not respond to a motion to dismiss within the response time prescribed by Local Rule 20(c), Judge O'Neill will enter an Order granting plaintiff an additional thirty days within which to respond. Should plaintiff not respond to the motion within the additional time, Judge O'Neill will dismiss the action without prejudice.

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences.

Judge O'Neill normally conducts an initial pretrial conference shortly after a defendant has filed an appearance or pleading.

At least three business days before the Rule 16 conference, counsel shall provide the Court with a joint report of the Rule 26(f) meeting and a proposed discovery plan. The Rule 26(f) meeting shall take place as soon as possible and, in any event, at least fourteen days before the scheduling conference.

Judge O'Neill does not follow a standard agenda for pretrial conferences. Topics addressed at the initial pretrial conference may include those listed in Local Rule 16.1(b) and Federal Rule of Civil Procedure 16(b) and (c), such as the progress of self-executing disclosure under Rule 26(a), discovery and a plan for preservation of electronically stored information. Counsel shall be prepared to discuss these topics, all claims and defenses, any pending motions and the possibility of settlement, with authority from their clients to do so.

The Court will issue a Rule 16 Scheduling Order following the initial pretrial conference. A copy of the standard form of Order normally issued by Judge O'Neill following the Rule 16 conference is attached.

Judge O'Neill will conduct status conferences and final pretrial conferences as needed or as requested in a particular case. He will not hold a settlement conference until after the parties have engaged in extensive negotiations and prefers to schedule a settlement conference only if all counsel agree that a conference may be helpful.

### Continuances and Extensions

When possible, Judge O'Neill tries to accommodate counsel with regard to the scheduling of briefing, oral arguments, evidentiary hearings, discovery deadlines, trial dates, and requests for continuances or extensions.

If counsel have agreed to a continuance or an extension, (other than that of a trial date) they should submit a stipulation of counsel for Court approval with a letter that states that all parties agree to the extension, the reasons for the extension and the reasonable amount of additional time to which counsel have agreed. Approval of such an agreement usually follows, but is not automatic.

Judge O'Neill does not have any particular requirement as to how far in advance of a due date counsel should submit a request for an extension of time. However, a request for extension of a trial date that is submitted on the eve of trial usually is not favorably considered.

### General Motion Practice

#### 1. Oral Argument on Motions.

Judge O'Neill will grant oral argument on a motion only if he believes it will assist him in deciding the motion.

#### 2. Reply and Surreply Briefs.

Judge O'Neill has no formal policy on reply or surreply briefs. Such briefs should be concise, and counsel should evaluate carefully whether a reply or surreply brief is necessary. Decision of the motion will not be delayed for the receipt of such briefs.

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

Judge O'Neill prefers that courtesy copies of motion papers be sent to his chambers. Paper courtesy copies shall be stapled or neatly bound **with tabbed dividers between exhibits**.

### Discovery Matters

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

Except in complex cases, Judge O'Neill sets relatively short discovery deadlines – usually 60 or 90 days after the initial pretrial conference. He then extends the discovery deadline in individual cases if it becomes necessary.

Judge O'Neill permits counsel to engage in discovery past the deadline if the additional discovery does not delay the trial.

2. Discovery Conferences and Dispute Resolution.

Parties are reminded that discovery must be proportional to the needs of the case.

Judge O'Neill expects parties to resolve most discovery disputes without coming to him. When requested, and only after the parties have made a reasonable effort at resolution without Court intervention, routine discovery disputes may be addressed through the scheduling of a telephone conference in lieu of motion practice. If counsel are unable to resolve a discovery dispute themselves or with Judge O'Neill's assistance by telephone, then a motion to compel should be filed. If a discovery motion is filed, Judge O'Neill expects the parties to brief the relevance of the information sought and the validity of the asserted objection.

Judge O'Neill will permit telephone conferences to resolve disputes that arise during a deposition, but if too many disputes arise during a particular deposition or case, he will stop accepting the telephone calls.

3. Confidentiality Agreements.

Requested confidentiality agreements should be submitted to Judge O'Neill and will be reviewed pursuant to the Leucadia and Pansy cases, 998 F.2d 157 and 23 F.3d 772.

4. Expert Witnesses.

Because counsel normally exchange expert reports, Judge O'Neill usually does not have to direct them to do so. If necessary, he will. Judge O'Neill will permit expert depositions where appropriate. Judge O'Neill expects that counsel will identify expert witnesses sufficiently in advance of trial to permit adequate preparation by all parties. Judge O'Neill will not continue trial because of the unavailability of an expert. He expects that the deposition of an expert who will be unavailable at trial will be videotaped.

Settlement

1. General Approach to Settlement and Non-Jury Cases.

Judge O'Neill favors judicial involvement in settlement negotiations, but he expects counsel to conduct in-depth negotiations before coming to him. Judge O'Neill refers settlement negotiations to a magistrate judge if the parties request it.

2. Referral of Settlement Negotiations to Another District Court Judge.

In non-jury cases, Judge O'Neill normally will refer settlement negotiations to another district court judge or to his magistrate judge. On rare occasions, he will participate in settlement negotiations in a non-jury case if the parties agree. In such instances, Judge O'Neill's involvement normally is limited to cases where only questions of law and no factual disputes are involved. When Judge O'Neill refers a case to another judge, he asks counsel to agree on the identity of the judge to conduct the negotiations.

## Arbitration

Judge O'Neill will evaluate, as necessary, counsel's Arbitration Certification in non-arbitration track matters and, as appropriate, will designate a case for arbitration pursuant to Local Rule 53.2.

Judge O'Neill does not use any special practices or procedures for arbitration cases that differ from cases certified as involving more than \$150,000, except that he does not conduct an initial pretrial conference in arbitration cases.

If a trial de novo is demanded, Judge O'Neill issues a standard form scheduling order. Additional discovery and motion practice is not ordinarily permitted. Counsel are advised to inform the Court if a settlement conference would be helpful.

## Proposed Final Pretrial Memoranda

Unless Judge O'Neill specifies otherwise, he requires the parties to submit only short form pretrial memoranda. Judge O'Neill requires long form memoranda only in those few cases in which they are genuinely necessary.

## Temporary Restraining Orders and Injunctions

### 1. Ex Parte Temporary Restraining Orders.

Judge O'Neill is strongly disinclined to grant ex parte temporary restraining orders.

### 2. Scheduling and Expedited Discovery.

Judge O'Neill schedules preliminary and permanent injunction hearings quickly, and he attempts to combine the two hearings where possible. He permits expedited discovery on injunctive matters.

### 3. Proposed Findings of Fact and Conclusions of Law.

Judge O'Neill may not require proposed findings of fact and conclusions of law if the parties waive Rule 52(a) of the Federal Rules of Civil Procedure.

## Trial Procedure

### 1. Scheduling of Cases.

Once discovery has been completed, Judge O'Neill will send notices to counsel listing the case for trial.

2. Conflicts of Counsel.

Judge O'Neill prefers that counsel immediately notify him by letter about professional and personal conflicts affecting the trial schedule.

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

When possible, Judge O'Neill tries to schedule cases involving out-of-town parties or witnesses for a date certain and to give substantial advance notice of the trial date.

4. Notetaking by Jurors.

Judge O'Neill permits jurors to take notes.

5. Trial Briefs.

Judge O'Neill encourages counsel to submit trial briefs.

6. Voir Dire.

Judge O'Neill permits counsel to conduct all voir dire in civil cases with the deputy clerk present and Judge O'Neill not present. If there is a dispute, counsel go to Judge O'Neill's chambers.

He does not generally place a time limit on voir dire, but he prefers that counsel not spend more than one hour on voir dire.

7. Side Bars.

Judge O'Neill permits side-bar conferences.

8. In Limine Motions.

A deadline for in limine motions will be established in advance of trial.

9. Examination of Witnesses Out of Sequence.

Judge O'Neill will permit counsel to take witnesses out of turn for the convenience of the witnesses or for other good reason.

10. Opening Statements and Summations.

Counsel are to make their opening statements and summations at the lectern using a microphone. Judge O'Neill encourages brevity in opening statements, and he will cut off counsel if he or she goes on too long. For summations, he also encourages brevity. He usually will discuss with counsel the time they need and try to get agreement on the length of time for

summations.

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

Judge O'Neill will permit more than one attorney to try the case on behalf of a party however, only one attorney for a party may examine a particular witness. More than one attorney for a party may argue different points in a motion before Judge O'Neill.

12. Examination of Witnesses Beyond Redirect and Recross.

Judge O'Neill does not have any general policy on further examination of witnesses after redirect and recross have been completed.

13. Video Testimony.

Ruling on disputes or objections to video testimony should be sought in advance of trial through submission to Judge O'Neill of a written transcript of the relevant testimony. Counsel should edit video testimony to conform with any order of the Court in advance of trial.

14. Reading of Material into the Record.

Judge O'Neill does not have any special practice or policy on reading stipulations, pleading, or discovery materials into the record. He encourages counsel to stipulate to as many facts as possible.

15. Preparation of Exhibits.

Judge O'Neill requires that exhibits be pre-marked and pre-exchanged. Counsel should provide **two** copies of the marked exhibits to him, except for exhibits which are voluminous or difficult to reproduce.

16. Offering Exhibits into Evidence.

Judge O'Neill does not have a general policy regarding the offering of exhibits into evidence.

17. Directed Verdict Motions.

Judge O'Neill usually conducts a short oral argument on directed verdict motions and Rule 41(b) motions to dismiss non-jury trials. He has no preference as to whether such motions are written or oral.

18. Proposed Jury Instruction and Verdict Forms.

Counsel should submit comprehensive proposed jury instructions in advance of trial as provided in the form order attached hereto. Counsel need not, however, submit charges on

standard matters unless specifically directed to do so. Each proposed instruction should be on a separate page and double spaced. Cases and pattern jury instructions that are cited should be quoted accurately and without change and specific page references should be given.

In addition to filing copies of proposed jury instructions via ECF, counsel should email a courtesy copy of their proposed instructions in Microsoft Word format to:  
Chambers\_of\_Judge\_Thomas\_O'Neill@paed.uscourts.gov

Judge O'Neill conducts a conference on proposed jury instructions and will accept supplemental proposed jury instructions until the case goes to the jury.

19. Proposed Findings of Fact and Conclusions of Law.

Judge O'Neill usually requires proposed findings of fact and conclusions of law in a non-jury case and prefers citations to the evidence to be included. He may not require proposed findings of fact and conclusions of law if the parties waive Rule 52(a) of the Federal Rules of Civil Procedure.

Jury Deliberations

1. Written Jury Instructions.

Judge O'Neill ordinarily gives the jury a copy of the charge.

2. Exhibits in the Jury Room.

All exhibits (except for weapons, drugs and the like) usually go out with the jury unless counsel agree otherwise.

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

If the requested portion of testimony, tape recording, or videotape is available, Judge O'Neill will have it read or played back.

4. Availability of Counsel During Jury Deliberations.

Counsel may return to their offices during jury deliberations if their offices are within easy reach of the courthouse.

5. Taking the Verdict and Special Interrogatories.

Depending on the nature of the case, Judge O'Neill will take a special or general verdict. He frequently submits interrogatories to the jury in civil cases.

6. Polling the Jury.

Judge O'Neill will permit polling of the jury. If counsel request polling of the jury, each juror may refer to the verdict sheet.

7. Interviewing the Jury.

Judge O'Neill will permit the jury to be interviewed only after their service in the courthouse has been completed. He instructs the jurors that they are not required to speak to counsel.

OTHER GENERAL MATTERS

1. Appellate Briefs.

Judge O'Neill usually does not want to receive copies of the appellate briefs if a decision he renders is appealed.

2. Courtroom Decorum.

Judge O'Neill expects counsel to be on time and to be courteous to each other.

3. Stipulations.

Stipulations should be sent to Judge O'Neill's chambers for review and not to the Clerk of Court. If approved, Judge O'Neill forwards the stipulation to the Clerk for filing, and the Clerk sends copies to counsel.

4. Consultation with Opposing Counsel.

In general, Judge O'Neill expects counsel to bring matters to his attention only after they have been discussed with opposing counsel.

**NOTICE SCHEDULING AN INITIAL PRETRIAL CONFERENCE**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**NOTICE**

A pretrial conference will be held on \_\_\_\_\_ at \_\_\_\_\_ A.M. in Chambers, Room 4007.

It is the obligation of counsel for plaintiff to serve a copy of this notice upon counsel for all defendants and upon counsel for any other parties joined prior to the date of the conference, as soon as the identity of such counsel is learned.

(DATE)

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Deborah Owens,  
Deputy Clerk to Judge O'Neill

cc:

## STANDARD ORDER ISSUED AFTER PRETRIAL CONFERENCE

### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

#### ORDER

AND NOW, this , it is hereby ORDERED:

1. Additional parties, if any, must be joined within the time specified in Local Rule 14.1. All discovery, and any other activity within the provisions of Rule 16(b)(1) - (3), is to be completed by .

2(a). The party filing a dispositive motion shall include, preferably as a separate document, or, if short, within the memorandum of law, a “statement of undisputed facts”, which sets forth, in numbered paragraphs, all material facts that the moving party contends are undisputed, with record references.

(b). The responding party shall include, preferably as a separate document, or, within the memorandum of law, a “statement of disputed or undisputed facts” responding to the numbered paragraphs set forth in the moving party’s statement, either admitting that the paragraph is not disputed, or if it is disputed, setting forth those facts contended to be in dispute, with record reference to where the party’s contention is supported in the papers filed with the Court on the dispositive motion.

(c). The responding party may also set forth, in additional numbered paragraphs, any additional material facts which the responding party contends preclude the granting of the dispositive motion, with record references.

(d). A reply brief may be filed within seven days following receipt of the responding party’s papers, and shall be limited to fifteen pages, and limited to refuting arguments in the responsive brief. The moving party may respond, following the numbered paragraphs, to the responding party’s statement concerning factual issues. Surreply briefs are not accepted without leave of the Court.

(e). Statements of material facts in support or in opposition to a dispositive motion shall include specific and not general references to the parts of the record that support each of the statements, such as the title or numbered reference to a document, or the name of a deponent and the page(s) of the deponent’s deposition, or the identity of an affidavit or declaration and the specific paragraph relied upon.

(f). Exhibits should be listed in an index and should be tabbed.

(g). The parties may stipulate to a briefing schedule.

3. Counsel for plaintiff(s) will file a final pretrial memorandum, points for charge, any notices pursuant to Fed. R. Evid. 902(11) and (12) and any dispositive motion(s) by . Counsel for defendant(s) will file a final pretrial memorandum, points for charge and any dispositive motion(s) by .

The defendant(s) points must designate those plaintiff points not objected to.

4. Absent extraordinary circumstances, in its case in chief a party will not be permitted to offer a witness or exhibit not listed in its final pretrial memorandum.

5. Counsel will mark and exchange all exhibits in advance of trial.

6. The testimony of expert witnesses should be videotaped. A trial date will not be continued because of the unavailability of an expert witness.

7. In a jury case, if requested by counsel, the Court or Magistrate Judge Carol Sandra Moore Wells will hold a settlement conference. In non-jury cases, counsel should notify the Court whether a settlement conference before another District Judge or Magistrate Judge Wells is desired.

8. This case will be listed for trial on .

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THOMAS N. O'NEILL, JR., J.