

The Honorable John R. Padova
United States District Judge
Room 17613, U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
215- 597-1178
Fax: 215-580-2272

Policies and Procedures

(Revised January, 2011)

Communications with Law Clerks..... 3

Electronic Filing..... 3

Telephone Conferences. 3

Correspondence with the Court. 3

Pro Hac Vice Admissions. 4

Cases on Appeal..... 4

Pretrial Conferences..... 4

Continuances and Extensions. 5

Motions Practice. 5

Discovery Matters. 7

Settlement. 7

Arbitration. 8

Injunctions. 8

Trial Procedures..... 8

Jury Deliberations. 11

Criminal Case Matters

Speedy Trial Act Continuances. 13

Sentencing Memoranda. 13

COMMUNICATIONS WITH LAW CLERKS

Judge Padova strongly discourages communication with his law clerks. All telephone inquiries should be directed to one of Judge Padova's Deputies.

ELECTRONIC FILING SYSTEM

Judge Padova requires that all documents be filed electronically through Electronic Case Filing (ECF). ECF provides greater efficiency and timeliness in the filing of pleadings, as well as electronic storage of documents for remote access by the Court, the bar and the litigants. Applications are available from the Office of the Clerk of the Court, 601 Market Street, Room 2609, Philadelphia, PA 19106-1797, by calling (215) 597-5711, or by accessing the Court's website at www.paed.uscourts.gov.

TELEPHONE CONFERENCES

Judge Padova sometimes uses telephone conferences for non-complex pretrial conferences, scheduling, discovery disputes, settlement conferences and other like matters. Telephone conferences should be arranged through the Deputy. Judge Padova expects counsel to bring matters to his attention only after they have been discussed with opposing counsel. All parties must be represented on any telephone conference with Judge Padova.

Counsel have the responsibility to initiate telephone conferences and to contact Judge Padova through his Deputy after all other parties are present on the call.

CORRESPONDENCE WITH THE COURT

Judge Padova permits correspondence under the following circumstances:

- (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 some information to the Court by letter;
- (3) When there is a request for a continuance of the Preliminary Pretrial Conference (see paragraph entitled "Continuances and Extensions");
- (4) When there is an uncontested request for a continuance of the Rule 16 Scheduling Order deadlines not affecting the trial date or pool placement (see paragraph entitled "Continuances and Extensions");

- (5) 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 medical problems, vacation plans, or other similarly personal problems or questions; or
- (6) To confirm or advise the Court that a case has been settled, dismissed, or otherwise finally disposed.

All other communications with the Court should be by the filing of pleadings, motions, applications, briefs or legal memoranda.

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 Padova requires a written motion for admission on or before the day of the first appearance of counsel seeking admission.

CASES ON APPEAL

Judge Padova generally expects to receive copies of appellate briefs when a decision rendered by him is appealed.

PRETRIAL CONFERENCES

Preliminary Pretrial Conference (Scheduling Conference)

Judge Padova regularly schedules an initial pre-trial conference within 35 days of the filing of answers or pre-answer motions by all defendants in cases assigned to the Standard Management Track. Such a conference is always scheduled within 30 to 60 days of the filing of the complaint in cases assigned to the Special Management Track.

At least three days prior to the pretrial conference, counsel must submit to chambers a completed Scheduling Information Report. Counsel must also timely submit the discovery plan adopted at the Rule 26(f) conference in accordance with the Federal Rules of Civil Procedure, but no later than three days prior to the scheduled pretrial conference. (It is not necessary to docket these submissions.) The Court's processes and procedures rely 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, in any event, at least fourteen days before the scheduling conference. Such compliance is of the highest degree mandatory. **Parties who do not comply will have no voice at the scheduling conference and may be subject to additional sanctions.**

Topics that are frequently addressed in an initial pre-trial conference include those listed in Local Rule 16.1(b), Federal Rule of Civil Procedure 16(b) and (c) and the progress of self-executing disclosure under Federal Rule of Civil Procedure 26(a). Judge Padova further requires that counsel taking part in all pre-trial conferences be prepared to speak on the subjects to be covered, including settlement, and have authority from their clients to do so. A Rule 16 scheduling order is issued at the conclusion of the conference. Judge Padova uses a standard form of scheduling order for standard track cases, a copy of which is posted on the Court's website under Judge Padova's Policies and Procedures.

Counsel must be prepared to present argument at the conference on any pending motions.

Final Pretrial Conference

Judge Padova typically holds a final pretrial conference sometime during the month before trial is scheduled. At that time, outstanding topics that were the subject of the initial pretrial conference are typically addressed, as well as settlement, resolution of motions in limine, and trial procedure.

CONTINUANCES AND EXTENSIONS

Judge Padova has a general policy of adhering to originally scheduled dates unless a compelling reason is presented that justifies a change. This policy applies to briefing schedules, oral argument, evidentiary hearings, discovery deadlines and trial dates.

Counsel should advise the Court immediately, and *before the date has run*, of any compelling reason justifying an extension or continuance of any originally scheduled date. Any request for an extension or continuance shall be made in writing by letter or formal motion for cause shown. If there is an agreement, a stipulation of counsel should be submitted; however, Court approval is required.

A letter request is acceptable when there is an uncontested request for a continuance of the Rule 16 Scheduling Order deadlines not affecting the trial date or pool placement; when the continuance of a preliminary pretrial conference is sought; or when there is an uncontested request for an extension of time to respond to a motion.

MOTION PRACTICE

Judge Padova requires that one courtesy copy of motion papers be sent to his chambers. Courtesy copies should be stapled or neatly bound, with dividers between the exhibits.

If Judge Padova determines that oral argument will aid in deciding the matter, he will order argument or grant a request by counsel to be heard. Requests should be made in writing at the time of filing a motion or reply as part of the moving papers.

Judge Padova does not set aside any certain days or times for oral argument on motions or evidentiary hearings.

Reply and Surreply Briefs

Except as provided for in the Federal and Local Rules pertaining to motions filed under Rule 56, Judge Padova considers motions “ripe” when a response has been filed. Reply and surreply briefs may only be filed with leave of the Court. Counsel should file a motion requesting leave to file additional briefing and attach the proposed reply as an exhibit.

Rule 56 Motions

Upon any motion for summary judgment pursuant to Fed. R.Civ.P. 56, there shall be filed with the motion a separate, short and concise statement of the material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue to be tried.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts, responding to the numbered paragraphs set forth in the statement required in the foregoing paragraph, as to which it is contended that there exists a genuine issue to be tried.

Statements of material facts in support of, or in opposition to, a motion shall include references to the parts of the record that support the statements.

All material facts set forth in the statement required to be served by the moving party may be taken by the Court as admitted unless controverted by the opposing party.

The pendency of a Rule 56 Motion does not stay the deadlines contained in the Court's Scheduling Order. Counsel must apply by letter or by motion if they wish an extension to the Scheduling Order deadlines.

Judge Padova requires that one courtesy copy of motion papers be sent to his chambers. Courtesy copies should be stapled or neatly bound, with dividers between the exhibits.

DISCOVERY MATTERS

Length of Discovery Period and Extensions

At the initial pretrial conference, Judge Padova will set a discovery period. Judge Padova usually allows 60 to 90 days to complete discovery from the date when all defendants have entered their appearance.

Discovery Conferences and Dispute Resolution

Judge Padova normally does not hold discovery conferences, but encourages the use of telephone conferences in lieu of motion practice to resolve discovery disputes. When a **discovery default** occurs, Judge Padova encourages counsel to file a motion to compel, which he will usually grant upon presentation pursuant to Local Civil Rule 26.1(g). When a **discovery dispute** occurs, and counsel have been unable to resolve it themselves or with Judge Padova's assistance by telephone, he requires a motion to compel. Judge Padova expects discovery to be voluntary and cooperative in accordance with the Federal Rules of Civil Procedure and the Plan.

Confidentiality Agreements

Parties may agree privately to keep documents and information confidential. The Court may enter an Order of Confidentiality 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).

Expert Witnesses

Counsel are required to identify expert witnesses and provide curriculum vitae and, as to all experts, voluntarily exchange the information referred to in Federal Rule of Civil Procedure 26(a)(2)(B) by expert report, deposition or answer to expert interrogatory in accordance with the dates outlined in the Court's scheduling orders. Except for good cause, expert testimony will be limited at trial to the information provided.

SETTLEMENT

At the earliest appropriate point, Judge Padova takes an active role in settlement discussions. This point is typically reached in the initial pretrial conference. Judge Padova may hold an early Resolution Hearing in court at which individual parties, or the principals of corporate parties, are present, and he often recommends settlement figures or alternative methods of dispute resolution. Judge Padova prefers not to participate in settlement negotiations in non-jury cases. He typically refers such cases to a Magistrate Judge for settlement.

Judge Padova will occasionally refer a case to another District Court Judge for settlement.

ARBITRATION

Scheduling of Trial De Novo From Arbitration

Once a trial *de novo* is demanded, Judge Padova issues a standard form scheduling order, a copy of which is on the Court's website under Judge Padova's Policies and Procedures. If counsel believe that a settlement conference would be helpful, Judge Padova is willing to meet with the parties upon their request. Ordinarily, Judge Padova does not allow additional discovery. Counsel can expect the case to be placed in the trial pool within thirty days.

INJUNCTIONS

Scheduling and Expedited Discovery

Judge Padova's usual practice is to hold a conference with counsel before scheduling hearings for temporary restraining orders and preliminary and permanent injunctions. Judge Padova usually handles requests for expedited discovery by telephone conference. When a complaint is accompanied by a Motion for a Temporary Restraining Order or Preliminary Injunction, Judge Padova will contact counsel and schedule a hearing.

Proposed Findings of Fact and Conclusions of Law

Parties shall submit proposed findings of fact and conclusions of law in accordance with the deadlines set forth in the Rule 16 scheduling Order. **One courtesy copy should be sent to Chambers. Judge Padova also requires that the parties submit a computer diskette in WordPerfect format.**

TRIAL PROCEDURES

Scheduling Cases

Cases may be placed in the trial pool or assigned a date certain for commencement of trial.

Cases Involving Out-of-Town Parties or Witnesses

Trial scheduling by Judge Padova does not change by the presence of out-of-town parties or witnesses. Judge Padova leaves the scheduling of witnesses to counsel.

Conflicts of Counsel

When counsel become aware of professional or personal conflicts that may effect the trial schedule, they should notify Judge Padova and opposing counsel immediately. Such notice may be given to Judge Padova's Deputy by telephone, but it must be confirmed in writing.

Final Pretrial Memoranda

The Rule 16 Scheduling Order will specify the items to be included in all pretrial memoranda and the filing dates. Judge Padova uses a standard form order, which can be found on the Court's website under Judge Padova's Policies and Procedures.

Notetaking by Jurors

Judge Padova permits jurors to take notes and will issue an instruction on juror notetaking similar to that found in *United States v. MacLean*, 578 F.2d 64 (3d Cir. 1978).

Voir Dire

Judge Padova ordinarily asks a standard set of voir dire questions. Parties should file proposed voir dire questions by the deadline set forth in the Rule 16 scheduling order for the submission of proposed jury instructions. **Judge Padova also requires that the parties submit voir dire questions on a computer diskette in WordPerfect format.**

Trial Briefs

Judge Padova requires the submission of one courtesy copy of trial briefs.

In Limine Motions

Judge Padova requires counsel to submit one courtesy copy of motions *in limine* in accordance with the deadlines set forth in the Rule 16 scheduling order.

Examination of Witnesses Out of Sequence

Judge Padova will permit counsel to take witnesses out of turn for the convenience of the witness, subject, of course, to objection by opposing counsel.

Opening Statements and Summations

Judge Padova normally attempts to obtain the agreement of counsel regarding time limits to be placed on opening statements and summations. However, Judge Padova believes that twenty to thirty minutes is usually adequate for an opening statement and thirty to forty-five minutes is usually adequate for a summation.

Examination of Witnesses or Argument by More Than One Attorney

Judge Padova will permit more than one attorney for a party to examine different witnesses or to argue different points before the Court, but he will not permit two attorneys for a party to examine the same witness or argue the same point.

Examination of Witnesses Beyond Redirect and Recross

Judge Padova does not have a general policy regarding further examination of a witness after redirect or recross have been completed. Where appropriate, he will allow it, but he will not permit any repetition or rehashing.

Videotaped Testimony

Videotaped testimony should begin with the witness being sworn. Objections should be given to the Court well in advance of the tapes being offered so that the tapes may be appropriately edited. Objections should be accompanied by a copy of the transcript in order for the Court to issue a ruling.

Reading of Material Into the Record

Judge Padova has no special practice or policy of reading into the record stipulations, pleadings, or discovery material. He will permit it when necessary.

Preparation of Exhibits

Judge Padova requires that exhibits be pre-marked and pre-exchanged. At the commencement of trial, the parties shall provide the Court with three copies of a schedule of exhibits that shall briefly describe each exhibit. **At the trial, the parties shall provide the Court with two copies of each exhibit at the time of its first use at trial.**

Offering Exhibits Into Evidence

Judge Padova prefers that counsel offer exhibits into evidence at the close of testimony by the first witness testifying about the exhibit unless the exhibit is objected to, in which event it should not be testified to unless it is received into evidence.

Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings

Judge Padova prefers that Rule 50 motions be in writing. Oral argument, if necessary, will be requested by the Court.

Proposed Jury Instructions and Verdict Forms

As set forth in his standard form of pretrial order, Judge Padova expects counsel to work together in submitting joint proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury. In addition, Judge Padova requires that counsel submit individual proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury on those issues that counsel cannot agree upon in their joint

submissions. In all cases, one copy of the joint and/or individual submissions should be submitted to the Court (Chambers) *no later than the date provided in the Rule 16 scheduling order*. Judge Padova also requires that the parties submit jury instructions and verdict forms on a computer diskette in WordPerfect format. Each proposed instruction should be double-spaced on a separate sheet of paper. Cited cases and pattern jury instructions should be accurately quoted and specific page references should be given. Jury instructions need only be submitted with respect to substantive issues in the case. Proposed instruction on procedural matters such as the burden of proof, unanimity, and credibility are not required. Judge Padova may accept supplemental jury instructions until the start of closing argument.

Proposed Findings of Fact and Conclusions of Law

Judge Padova requires that proposed findings of fact and conclusions of law in non-jury cases be submitted in accordance with the date set forth in the Rule 16 scheduling order. One courtesy should be sent to Chambers, along with a diskette with the document in WordPerfect format.

JURY DELIBERATIONS

Written Jury Instructions

Judge Padova generally does not give the jury written instructions, but may do so in complex cases.

Exhibits in the Jury Room

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

Handling of Jury Requests to Read Back Testimony or Replay Tapes

Judge Padova will advise the jury that testimony is usually not in transcript form to give them. However, if a transcript is available, he will consider reading appropriate portions requested by the jury. He will usually allow tapes and videotapes to be replayed.

Availability of Counsel During Jury Deliberations

Counsel must remain in the courthouse during jury deliberations.

Taking the Verdict and Special Verdicts

Whether Judge Padova takes a general or special verdict depends on the case. If useful, Judge Padova will submit interrogatories to the jury.

Polling the Jury

Judge Padova grants all requests to poll the jury.

CRIMINAL CASE MATTERS

Speedy Trial Act Continuances

Motions requesting a trial continuance should be accompanied by a proposed order in Speedy Trial Act language, containing findings of fact and conclusions that would justify a continuance under the Speedy Trial Act.

Sentencing Memoranda

Judge Padova encourages the submission of sentencing memoranda by both the Government and defendants, but notes that they must be within the framework provided by the Sentencing Guidelines in order to be useful.

SENTENCING MEMORANDA SHOULD BE SUBMITTED AT LEAST THREE DAYS BEFORE THE SCHEDULED SENTENCING DATE.