

HONORABLE HENRY S. PERKIN
United States Magistrate Judge
Suite 4401
Edward N. Cahn U.S. Courthouse and Federal Building
504 Hamilton Street
Allentown, Pennsylvania 18101
Telephone No. 610-434-3823
Courtroom Deputy Clerk: Carlene Kohut

Magistrate Judge Perkin a graduate of Duquesne University (1969) and the Duquesne University School of Law (1972) where he served as the Comment Editor of the Duquesne Law Review. Upon graduation from Law School he served a clerkship with the Honorable Alfred T. Williams, Jr., President Judge of the Court of Common Pleas of Northampton County. He worked as an Assistant Public Defender (1975-1977) and Assistant District Attorney (1977-1987) in Lehigh County. He served as the Lehigh County Solicitor from 1995 through 2006. From 2006 to March 1, 2007 he served as the Solicitor for the City of Allentown. During his years as an attorney, Judge Perkin maintained a private practice in which he handled a variety of commercial litigation. He was sworn in as a United States Magistrate Judge on March 2, 2007.

PRELIMINARY GENERAL MATTERS

1. *Correspondence with the Court*

Judge Perkin permits correspondence from counsel on any matters as long as all other counsel in the matter are sent copies of such correspondence. Judge Perkin sometimes permits letter motions in lieu of formal motions.

2. *Communication with Law Clerks*

Judge Perkin permits counsel to communicate with his law clerks on scheduling and administrative matters, but never on the merits of a case.

3. *Telephone Conferences*

Judge Perkin prefers that counsel come to chambers for all conferences. Telephone conferences may be utilized, however, for dealing with matters such as scheduling changes and routine discovery disputes. It will be the responsibility of counsel requesting a conference to contact the Judge's deputy clerk, Carlene Kohut.

4. *Oral Arguments and Evidentiary Hearings*

To the extent deemed necessary by Judge Perkin, oral arguments and evidentiary

hearings will be scheduled through his deputy clerk. All reasonable efforts will be made to accommodate the schedules of counsel.

5. *Pro Hac Vice Admissions*

Judge Perkin will permit oral motions for *pro hac vice* admissions on the day that the attorney to be admitted first appears. On or before the date of the non-admitted attorney's first appearance, counsel must prepare an appropriate Order to memorialize the *pro hac vice* admission.

CIVIL CASES - IN GENERAL

Pretrial Procedure

Judge Perkin regularly conducts pretrial/status and settlement conferences in cases pending before him. Pretrial/status conferences, where appropriate, are scheduled promptly upon referral of the case to Judge Perkin. *At pretrial conferences, attorneys from both sides should be prepared to discuss settlement possibilities.*

General Motions Practice

1. *Oral Argument on Motions*

Judge Perkin will schedule oral argument on motions only if it appears likely to be helpful to the Court's resolution of the matter.

2. *Reply and Supplemental Briefs*

Judge Perkin will not normally permit reply or supplemental briefs. Counsel desiring to file a such a brief must first seek permission of the Court before such a brief will be accepted.

3. *Chambers Copy of Motions Papers*

Judge Perkin encourages a courtesy copy of all motion papers to be sent directly to chambers.

Discovery Matters

1. *Discovery Disputes*

A. General Discovery Matters

Judge Perkin expects counsel to attempt to resolve disputes prior to bringing them to his attention, pursuant to Rule 26.1(f) of the Local Rules of Civil Procedure for the Eastern District of Pennsylvania. Should counsel be unable, in good faith, to resolve their dispute, Judge Perkin permits contact with the Court through his deputy clerk to set up telephone or chambers conferences to resolve outstanding issues. Generally, Judge Perkin prefers letter memoranda outlining the discovery dispute. Such memoranda should include the steps taken to resolve the dispute as well as the relief requested. Except for subpoenas issued to non-parties, the use of motion practice in discovery matters is discouraged.

B. Enforcement of Subpoenas to Non-Parties

Matters involving the enforcement of subpoenas issued to non-parties shall be handled through motion practice.

2. Confidentiality Agreements

Judge Perkin will permit confidentiality agreements subject to the requirements of *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994).

Settlement

1. When Jurisdiction Remains with the District Court

A. Preliminary Telephone Conference

When a matter is referred to Judge Perkin for purposes of settlement he will generally hold a chambers conference with the parties. In certain cases, he may choose to hold a preliminary telephone conference with counsel. At the time of the telephone conference, counsel will be expected to discuss the status of settlement discussions (if any) and timing of the actual chambers conference. It is Judge Perkin's practice to hold settlement conferences as early as practicable and to stage discovery in order to facilitate settlement and control costs without contradiction to the referring judge's Rule 16 Scheduling Order. Counsel should read and be familiar with Judge Perkin's *Settlement Procedures* which are posted on the Court's web site at www.paed.uscourts.gov.

B. Settlement Conference Memoranda

Judge Perkin will normally require counsel to submit a brief written conference summary one week before the scheduled conference including an offer/demand settlement proposal. This summary should not exceed two (2) pages. Judge Perkin requires that counsel exchange their summaries, but counsel is not required to communicate their settlement proposals in the exchanged summaries. This information may be provided by a separate document to the court. The summaries are not to be filed with the Clerk's office.

C. *Parties' Attendance and Participation*

Judge Perkin will require that a party or party's representative with knowledge of the case and *full and binding* settlement authority attend the chambers conference *in person*. **At the settlement conference, trial counsel shall appear and bring with them all persons whose consent may be necessary to settle the case. "[A]ll persons" shall mean insurance adjustors with full and unlimited authority to settle the case, as well as clients. Persons present must have full and unlimited settlement authority and may not confer by telephone with anyone to seek additional authority. Defendant's settlement authority must be consistent with and not less than the Plaintiff's last demand.** *Only* in exceptional circumstances, Judge Perkin will permit that person to participate in the conference by telephone. This shall be the exception rather than the rule. Counsel seeking this relief must contact chambers as soon as they are aware of a problem with attendance. A copy of Judge Perkin's Settlement Conference Scheduling Order is attached for reference. Counsel and the parties must strictly adhere to this procedure.

At the conference, the judge will expect counsel to:

- Be prepared to discuss the weaknesses, as well as, the strengths of their case.
 - Prepare their client. Judge Perkin will speak to them directly.
 - Be patient. Settlement is a process. It takes time.
 - Be flexible. Avoid bottom lines or top numbers.
 - Realistically evaluate the case.
 - Manage your client's expectations.
 - Manage your own expectations.

D. *Follow-up Contact*

Judge Perkin will, if appropriate, continue to work with counsel after the settlement conference if the matter is not resolved at the conference.

E. *Continuances*

Settlement conferences are scheduled by order of the court and are not discretionary. Counsel and participants should use all efforts to be available for this conference. Due to the large number of cases scheduled for settlement conferences, any need to reschedule the conference could cause a delay of that conference for several weeks. For this reason, any continuance requests should be made within fourteen (14) days of receipt of the notice scheduling the conference. Continuance requests will only be granted for the most compelling reasons.

2. *When Jurisdiction for All Purposes Has Been Referred to Judge Perkin*

A. *Jury Matters*

Judge Perkin may, after discussion with counsel, conduct his own settlement conferences utilizing the above-outlined procedures. If not appropriate, but a conference is deemed worthwhile, Judge Perkin may obtain the assistance of another magistrate judge to preside over settlement discussions.

B. *Non-Jury Matters*

Judge Perkin will not take part in settlement discussions in a non-jury matter. A settlement conference may, however, be arranged with another magistrate judge.

CIVIL CASES - REFERRED TO JUDGE PERKIN FOR ALL PURPOSES

Arbitration

1. *General Approach to Arbitration Cases*

Judge Perkin has no special practices or procedures for arbitration cases.

2. *Scheduling Trial De Novo from Arbitration*

Judge Perkin will schedule trial promptly when a demand for trial *de novo* is filed following arbitration.

Pretrial Procedure

1. *Length of Discovery Period*

Judge Perkin normally permits ninety(90) to one hundred and twenty (120) days for the completion of discovery. Additional time will be allowed in complex cases or upon a specific showing of need. *Judge Perkin will encourage that the most essential discovery be undertaken early in the case so as to foster early settlement and minimize the costs of litigation.*

2. *Continuances and Extensions*

In that counsel will have substantial input in the setting of dates in the Rule 16 Order, Judge Perkin expects counsel to comply with the dates set out in that Order. Extensions will be entertained upon a showing that circumstances beyond the reasonable expectation of counsel have hampered the progress of the case. Judge Perkin will not require a formal motion seeking an extension and will consider requests for extensions brought to the attention of his deputy clerk who will set up either a telephone or chambers conference. In most cases, extensions will only be considered after a conference with the Judge.

3. *Expert Witnesses*

The parties will identify expert witnesses and provide expert reports pursuant to the Rule 16 Scheduling Order entered in the particular case. A failure to do so will normally bar the use of the expert's testimony at trial.

Pretrial Memoranda

Unless specifically provided for by separate Order, Judge Perkin will require the use of the short form pretrial memorandum described in Rule 16.1© of the Local Rules of civil Procedure for the Eastern District of Pennsylvania. In certain cases, Judge Perkin may require counsel to stipulate to uncontested facts as generally set out in Local Rule 16.1(d)(2)(b)(2)(A-E).

Trial Procedure

1. *Scheduling of Cases*

Judge Perkin's cases will especially listed for trial based upon the Court's calendar and the availability of counsel, the parties, experts and critical witnesses.

2. *Conflicts of Counsel*

Given the manner of scheduling, conflicts will normally not occur. Should counsel, however, have a professional or personal conflict which may affect the trial schedule, notice should be provided immediately to opposing counsel and the Court.

3. *Parties or Witnesses*

Judge Perkin will make all reasonable attempts to accommodate the schedules and availability of parties, experts and critical witnesses.

4. *Note taking by Jurors*

Judge Perkin will consider note taking by jurors on a case-by-case basis.

5. *Trial Briefs*

Judge Perkin encourages the submission of trial briefs when they are necessary or likely to be helpful to the Court.

6. *Voir Dire*

Judge Perkin usually permits counsel to conduct all *voir dire*.

7. *Sidebar*

Judge Perkin discourages the use of sidebar conferences. Counsel are encouraged to raise particular evidentiary issues before trial or during recesses or adjournments.

8. *In Limine Motions*

Judge Perkin will accept *in limine* motions in advance of the final pretrial conference and in accordance with the scheduling order so as to give him an adequate opportunity to consider the merits of each motion.

9. *Examination of Witnesses Out of Sequence*

Judge Perkin will permit witnesses to be taken out of turn in appropriate circumstances.

10. *Opening Statements and Submission*

Judge Perkin will discuss with counsel the length of time necessary and appropriate for opening and closing statements, but will give counsel reasonable latitude.

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

Judge Perkin will not normally permit more than one attorney for the party to examine the same witness or more than one attorney to present argument on behalf of the party on the same issue.

12. *Examination of Witnesses Beyond Re-Direct or Re-Cross*

Judge Perkin will generally restrict counsel from examining witnesses beyond re-direct and re-cross.

13. *Videotaped Testimony*

Judge Perkin requires counsel to review all videotaped depositions and have them edited, after consultation with each other, such as to fairly present only the essential evidence of the witness involved. Counsel are expected to resolve all matters pertaining to objections before offering the videotape into evidence.

14. *Reading of Material into the Record*

Judge Perkin has no special practice with regard to reading stipulations, pleadings or discovery materials into the record.

15. *Preparation of Exhibits*

Prior to commencement of trial, exhibits are to be pre-marked and exchanged by counsel. Counsel should provide Judge Perkin with two (2) copies of each exhibit, together with a schedule of exhibits that briefly describes each exhibit. Counsel is encouraged, however, to provide the Court with only the essential and relevant portions of bulky exhibits, together with sufficient material to provide context for the relevant portion of the exhibits.

16. *Offering Exhibits into Evidence*

Judge Perkin expects counsel to reach agreement in advance as to the admission of exhibits. Judge Perkin has no particular procedure as to when an exhibit may be formally offered into evidence.

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

Motions for Judgment as a Matter of Law or Motions for Judgment on Partial Findings in non-jury trials may be submitted in writing or orally. Judge Perkin will ordinarily request oral argument on these motions.

18. *Proposed Jury Instructions and Verdict Forms*

Judge Perkin requires counsel to submit joint proposed jury instructions, noting areas of agreement as well as objections. The points for charge should be submitted with appropriate citations of legal authority and shall be provided to the Court in accordance with the deadline set forth in the scheduling order. Counsel will submit a jointly prepared verdict form or proposed special interrogatories in accordance with the deadline set forth in the scheduling order. If counsel are unable to agree, they may submit separate proposed forms of interrogatories. Judge Perkin will encourage counsel to agree upon a less than unanimous verdict.

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

Judge Perkin requires counsel to submit proposed findings of fact and conclusions of law in non-jury cases at the final pretrial conference or at such other date as set forth in the scheduling order. A supplementation will be permitted at the close of trial or, in an appropriate case, after trial.

Jury Deliberations

1. *Written Jury Instructions*

Judge Perkin has no particular practice or policy on submitting a copy of

instructions to the jury.

2. *Exhibits in the Jury Room*

Judge Perkin will consider what exhibits should be sent out to the jury during their deliberations on a case-by-case basis.

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

Judge Perkin will seek the input of counsel and will then make a determination on a case-by-case basis when requests are made to read back testimony or replay tapes.

4. *Availability of Counsel During Jury Deliberations*

Judge Perkin will not require counsel to remain in the courthouse during deliberations but will require counsel to be available on short telephone notice. Counsel must provide the deputy clerk with their phone number.

5. *Taking the Verdict and Special Interrogatories*

Judge Perkin has no usual practice with respect to taking a verdict. Judge Perkin will submit written interrogatories to the jury in the appropriate case. A copy of the interrogatories shall be given to the jury during their deliberations.

6. *Polling the Jury*

Judge Perkin will, if requested, permit the jury to be polled.

7. *Interviewing the Jury*

Judge Perkin will permit counsel to interview jurors, but only after the verdict has been recorded, the jury has been discharged *and* they have been told in clear terms that they have no obligation to speak with counsel.

CRIMINAL CASES

1. *Sentencing Memoranda*

When a pretrial sentencing report is utilized, Judge Perkin permits the submission of sentencing memoranda by both counsel.

2. *Additional Matters*

At all “criminal duty week” proceedings, counsel, once appointed or retained, must be present to permit the proceeding to go forward. Once the Court has ordered that a defendant be detained or has set conditions of release, any proposed changes thereto must be submitted to the Court by written motion. Judge Perkin does not favor the dual representation of defendants by a single attorney at any criminal proceeding, apart, perhaps, from the initial appearance. Judge Perkin requires that all relevant documents be delivered to chambers in advance of court. Counsel may contact the court’s deputy clerk, Carlene Kohut, if there are questions regarding the matters before the Court.

GENERAL MATTERS

When a decision rendered by this Court is appealed, Judge Perkin prefers to receive copies of appellate briefs. Judge Perkin expects counsel to be prompt in all appearances, to be professional and courteous to each other, both in the presence of the Court and otherwise, and to have discussions with each other about any matter in dispute before it is brought to the attention of the Court. Counsel should feel free to contact Judge Perkin’s deputy clerk or law clerks if they have any questions about his courtroom practices or procedures.