GUIDELINES FOR TRIAL AND OTHER PROCEEDINGS IN THE COURTROOM
JUDGE GENE E.K. PRATTER

TRIAL COUNSEL: PLEASE READ CAREFULLY. SHARE THESE GUIDELINES WITH YOUR CLIENTS AND COLLEAGUES WHO WILL BE PARTICIPATING IN TRIAL.

Preface

Compliance with these Guidelines is expected. These Guidelines are not intended to be exhaustive; they may be curtailed or modified in some cases. Deviations, or requests for deviations, will be discussed at the pretrial conference(s).

Civility is the key to behavior in court – that includes everyone: the Judge, staff, lawyers, parties, witnesses and observers. If there are complaints about anyone's civility, please bring the matter to the immediate attention of the Court by asking for a conference in Chambers.

Promptness

1. The Judge makes every effort to commence proceedings at the time set. Promptness is expected from counsel and witnesses. Known scheduling issues, or requests for scheduling changes should be raised with the Court at the earliest possible time. Schedule changes will be announced as soon as they are known.

2. During jury deliberations, counsel must be present or available in the Courtroom on 15 minutes' notice to counsel's office. Otherwise, the right to be present may be waived, and counsel's absence may be taken as counsel's consent for proceedings to take place in the courtroom during counsel's absence.

Courtroom Decorum

______1. Keep the proceedings low-key and reasonably formal. It is not a circus, an audition or a stage for demonstrating dramatic ability; nor is it an oratorical contest. It should be a dignified proceeding at all times.

2. Rise when the jury or the Judge enter or leave the courtroom.

3. Address all remarks to the Judge, not to opposing counsel. Colloquy or argument between or among attorneys is prohibited.

4. Rise when addressing the Judge and when making objections. (This calls the Judge's attention to objecting counsel and makes it much easier for the court reporter to correctly note the

speaker.)

5. When offering a stipulation in a jury case, first confer with opposing counsel so that there are no misunderstandings.

6. Do not exhibit excessive familiarity with witnesses, jurors, or opposing counsel. For example, do not use first names for witnesses, parties or opposing counsel. During jury argument, do not address any juror individually or by name.

7. Do not bring food or beverages into the courtroom without the Court's express advance permission. (During lengthy proceedings the Court will allow counsel to keep unobtrusive mints and the like at counsel table.) Do not allow witnesses, co-counsel, legal assistants or visitors to chew gum, bring in packaged snacks, bottled water, "designer" coffees, etc. Water will be available on the witness stand and on counsel tables.

8. When court is in session, do not address the reporter, ESR operator or Courtroom Deputy. All requests made of court personnel should be addressed to the Court.

9. Stand a respectful distance from the jury at all times.

10. Address the Court as "Your Honor," not "Ma'am".

11. TURN OFF all cell phones, Blackberries, pagers, PDA's or similar devices. These devices must remain off and unused in the courtroom unless the Court gives express permission to the contrary. Do not operate Blackberries, text messaging devices or similar equipment to transmit at any time during any proceeding in the courtroom. Both the Court and the jury can see when counsel or litigants are doing so, and it is generally interpreted as being rude. It also causes counsel to miss important things happening in court.

Statement of the Case

Each party must submit a "statement of the case" for use by the Court at the beginning of voir dire to advise the jurors of the nature of the case and the issues to be decided by the jury. The statement should be brief (normally two or three paragraphs in length) and neutral in tone and content.

Opening Statements

Confine opening statements to what counsel expects the evidence to show. It is not proper to use the opening statement to argue the case, instruct as to the law, or explain the purpose of an opening statement. Presumably the Court has already done so. Unless the case is unusually complex, the average time for an opening statement should be less than 30 minutes.

Voir Dire

The Court will conduct voir dire of the jury. Counsel may be permitted to ask brief follow-up questions of the jurors. Counsel may suggest questions for the Court to pose to the whole panel. Do not attempt to question each juror or condition jurors unless the Court specifically authorizes such a procedure. Typically, individual follow-up voir dire at side bar with counsel and the specific juror will follow the general voir dire of the panel as a whole.

Witnesses

1. It is unnecessary to greet or introduce oneself to adverse witnesses. Commence cross-examination without preliminaries. The right to cross-examine is neither a right to examine crossly nor to ask the witness to pass on the credibility of another witness.

2. Examine witnesses while seated at counsel table, standing behind counsel table, or at the lectern, as directed by the Court. Generally, the Court expects counsel to use the lectern.

3. Do not approach a witness or the bench without leave of Court.

4. Do not hover over a witness, even when permission has been granted to approach the witness. Maintain a respectable distance from the witness.

5. If there is need to point to an exhibit or to use the easel when asking a question, return to counsel table or the lectern as soon as possible. Do not linger in the well of the court.

6. A whiteboard, white paper, chalk, pens, pointer, screen, TV and VCR are available. However, if counsel wants an x-ray viewing box, tape recorder, computer, power point or similar equipment, counsel must furnish it or make arrangements with the Courtroom Deputy in advance, preferably no later than the final pretrial conference.

7. Treat witnesses with fairness and consideration. Do not shout at, ridicule or otherwise abuse witnesses. Do not engage in argumentative "talking over" a witness who attempts to explain an answer. If appropriate, counsel should ask the Court to curtail the witness who is unresponsive.

8. Do not ever, by facial expression or other conduct, exhibit any opinion concerning any witness' testimony. Counsel are to admonish their clients and witnesses about this common occurrence.

9. Do not ask the stenographer/ESR operator to mark testimony. Address all requests for re-reading of questions and answers to the Judge.

10. If a witness is on the stand at a recess or adjournment, have the witness back on the

stand ready to proceed when the proceedings resume.

11. Do not delay proceedings by writing out witnesses' answers during questioning. Charts and diagrams, where possible, should be prepared in advance, but counsel may use the writing board for opening statements and closing arguments.

12. Where a party has more than one lawyer, only one lawyer may conduct the direct or cross-examination of a given witness.

Objections

1. When objecting, stand and state only that there is an objection and briefly specify the technical nature of the ground(s). Do not use objections to make a speech, recapitulate testimony, or to guide the witness.

2. Do not argue an objection until the Judge grants permission or requests argument.

3. Give the Judge advance notice if there is reason to anticipate that any question of law or evidence is difficult, unusual, obscure or will provoke an argument.

4. Sidebar or Chambers conferences during trial are not to be utilized for discussion of evidentiary issues that could be addressed during recesses. If the issue is important enough to justify interruption of the trial, the jury will be excused and the matter heard in open court.

Exhibits

1. Normally, all exhibits should be marked in advance.

2. If counsel desires to display exhibits to the jury, sufficient additional copies must be available to provide each juror with a copy. Alternatively, use enlarged photographic, projected copies or juror notebooks. When copies have been provided (as is expected), the law clerk or Courtroom Deputy will hand out copies to the jurors unless the Court expressly permits counsel to do so.

3. Each counsel is responsible for any exhibits secured from the Deputy. At each noon-time or end-of-the-day adjournment, return all admitted exhibits to the Deputy. It is strongly recommended that counsel work together to make sure at least one extra set of clean exhibits is available in the courtroom.

4. If at all possible, let the Deputy or the Court know in advance the exhibits your next witness will be using.

5. Do not approach the witness with an exhibit without permission from the Judge.

6. Show documents and other exhibits, where practical, to opposing counsel before their use in court.

7. In a rare case, when it is necessary to mark an exhibit in open court, ask that the reporter or Deputy mark it and briefly describe the nature of the exhibit.

8. Exhibits should be offered in evidence when they become admissible rather than as a group at the end of counsel's case.

9. When referring to an exhibit, mention the exhibit number so that the record will be clear.

10. Counsel must review and certify on the record that what goes to the jury is correct before closing arguments.

11. Ordinarily, exhibits will be returned to counsel at the end of trial.

Depositions

1. All depositions used at the trial must be in accordance with the Local Rules.

2. Portions of depositions used for impeachment may be read to the jury during cross-examination, with pages and lines indicated for the record before reading. The witness should be asked whether he or she was asked the question(s) and gave the answer(s) on the date of the deposition(s).

Closing Arguments

Counsel should never assert personal opinion of: 1) the credibility of a witness, 2) the culpability of a civil litigant, or 3) the guilt or innocence of an accused. Never assert personal knowledge of a fact in issue or a fact not in evidence; do not argue the "Golden Rule."

Jury Instructions

All requested instructions must be filed and served no later than the final pretrial conference or as otherwise ordered by the Court. Supplemental instructions must be filed and served as soon as the need for them becomes apparent. Attempt to agree on neutral instructions. Remember: less is better than more, and "advocacy" instructions will be rejected. Joint submissions of instructions may be required.

Professionalism

Remember – professionalism is paramount and helps everyone achieve a fair, expeditious

and economical trial.

GENERAL PRETRIAL AND TRIAL PROCEDURES

JUDGE GENE E.K. PRATTER

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Judge Gene E.K. Pratter was born in Chicago, Illinois. She grew up in Southern California, earned an A.B. from Stanford University and a J.D. from the University of Pennsylvania Law School. From 1975 to 2004, Judge Pratter was in private practice in Philadelphia, Pennsylvania engaging in general civil litigation with a concentration in professional liability matters. She served as general counsel to a multi-state 500-lawyer firm from 1999-2004. While in practice and now in public service, Judge Pratter has been active in a host of diverse community activities, charities and projects. She is an adjunct instructor of Trial Advocacy at the University of Pennsylvania Law School. Judge Pratter was inducted to the United States District Court for the Eastern District of Pennsylvania on June 18, 2004.

I. PRELIMINARY GENERAL MATTERS

A. Professionalism and Civility.

Counsel and their clients at all times should be polite, courteous and otherwise civil to one another, as well as to all parties, witnesses, and court personnel. Gratuitous hyperbole, deliberate or reckless misstatements, uncooperative attitudes, "Rambo" tactics, over-reaching in discovery demands, pointless insults, refusals to accommodate reasonable requests for scheduling adjustments and the like are deleterious to the efficient and fair conduct of litigation and detract from the effectiveness and reputation of those who engage in such conduct. Written material of similar ilk, when included in submissions to the Court, are rarely - - if ever - - relevant to the matter at issue, much less persuasive, and may be cause for the submission to be returned to counsel for appropriate editing and possible re-submission without the offending material.

Judge Pratter expects counsel to confer with and keep their respective clients up to date (1) with respect to substantive submissions to the Court, (2) in advance of court appearances and (3) as to material developments in the client's case.

In general, counsel should bring matters to the Judge's attention only after they have been

discussed with opposing counsel and a reasonable effort has been made to resolve a dispute and the positions of all interested counsel on the matter needing the Court's attention have been shared with all other counsel.

Counsel and their clients should be punctual for all conferences, hearings, oral arguments and trials.

B. Correspondence with the Court.

Correspondence may be directed to the Court concerning scheduling, or other very routine matters. Correspondence to advise the Court that a case has been settled or dismissed is also appropriate, as is correspondence specifically requested by the Court. Any written communication requesting action by the Court on subjects such as these should include at a minimum: (1) a very brief description of the situation requiring the Court's attention; (2) the position of the opposing party(ies) (i.e., consent or opposition); and (3) the specific relief sought. Otherwise, all communications with the Court should be made by the formal filing of pleadings, motions, applications, briefs or legal memoranda. All counsel should be sent a contemporaneous copy of all correspondence sent to the Court. Discovery or other disputes should be handled by formal motion, not by correspondence unless specifically invited by the Court. Counsel **should not** send Judge Pratter copies of letters sent to each other unless specifically invited by the Court to do so.

C. Communication with Law Clerks.

Judge Pratter permits communications by counsel with her law clerks on appropriate matters. However, unless directed otherwise by the Court, counsel should never contact law clerks for advice on substantive or procedural matters other than of a very rudimentary nature

(such as to confirm the Court's administrative policies and procedures or to alert the Court of some actual emergency that cannot be timely handled by conventional correspondence or formal filings). Communications with the Court about scheduling matters should be directed to Judge Pratter's Courtroom Deputy for criminal matters or to the Judicial Secretary/Deputy Clerk for civil matters. Communications to the Court's staff should always be addressed formally, that is, the addressee's name preceded by Ms., Mrs., or Mr.

Communications from counsel purporting to justify counsel's conduct because "Your Honor's law clerk [or Deputy] said..." are highly disfavored and are never appropriate as an explanation of counsel's strategic or tactical choices.

D. Telephone Conferences.

Telephone conferences with all counsel are used only sparingly but may be used at the Court's discretion to resolve scheduling matters, time extensions, or certain discovery disputes. Counsel will be notified of the date and time for the telephone conference. It will be the responsibility of counsel for the moving or initiating party to arrange the telephone conference and to contact Judge Pratter through her Judicial Secretary/Civil Deputy after all parties are present on the call. Counsel are reminded to be especially careful to avoid being discourteous during phone conferences by failing to listen to other speakers, failing to identify themselves prior to each statement, failing to speak loudly or slowly enough to be heard, and the like. Failure to follow appropriate phone etiquette will result in cessation of phone conferences as an option for the specific case.

E. Oral Arguments and Evidentiary Hearings.

Judge Pratter does not set aside specific days or times for oral argument, motions or

evidentiary hearings. Hearings and arguments are scheduled on an *ad hoc* basis as warranted. They typically are conducted in the courtroom.

F. Pro Hac Vice Admissions.

All motions for the pro hac vice admission of counsel must be made by an attorney who is (1) admitted to practice and in good standing before the District Court for the Eastern District of Pennsylvania and (2) whose appearance has been entered in the case in which the motion is made. Each such motion *must* be accompanied by the affidavit or similar declaration of each attorney being proposed for pro hac vice admission in which the affiant/declarant includes the following information and undertakings:

a. Year and jurisdiction of each bar admission;

b. Status of the attorney's admission(s), i.e., active or inactive, in good standing, etc.;

c. Whether the attorney has ever been suspended from the practice of law in any jurisdiction or received any public reprimand by the highest disciplinary authority of any bar in which the attorney has been a member;

d. That the affiant/declarant (i) has in fact read the most recent edition of the Pennsylvania Rules of Professional Conduct and the Local Rules of this Court and (ii) agrees to be bound by both sets of Rules for the duration of the case for which pro hac vice admission is sought; and

e. That, if granted pro hac vice status, the affiant/declarant will in good faith continue to advise counsel who has moved for the pro hac vice admission of the current status of the case for which pro hac vice status has been granted and of all material developments therein.

The admission of out-of-the-jurisdiction counsel pro hac vice does not relieve associate local counsel of responsibility for the matter before the Court.

G. Use of Electronic Court Filings ("ECF")

Counsel are also advised that the Court expects all counsel to be registered on the ECF system of this District Court. All official filings submitted to the Clerk of the Court must be filed directly by the filing attorney on to ECF. The Court's orders, opinions and other docketed materials will be filed on to ECF and notice thereof will be communicated to counsel either by ECF or ordinary first-class mail. Requests to be excused from ECF registration must be made in writing directly to Judge Pratter.

II. CIVIL CASES

A. Pretrial Procedure.

Judge Pratter regularly schedules an in-person initial pretrial conference ("IPTC") pursuant to Rule 16 soon after the answer or other response to the complaint is filed or soon after the case is transferred to her. Prior to the IPTC, counsel may be required to submit to Chambers an initial pretrial conference information or other status report. Generally, the conference will be held in Chambers. In very rare cases the conference may be by telephone. A written notice concerning the IPTC will be sent to counsel. Counsel should not wait to start discovery until after an IPTC has been held.

At the IPTC, counsel should be prepared to discuss those topics listed in Local Rule of Civil Procedure 16.1(a) and Federal Rule of Civil Procedure 16(b) and ©. Counsel should also be prepared to discuss the progress of self-executing disclosures pursuant to section 4:01 of the

Civil Justice Expense and Delay Reduction Plan (the "Plan"). In Special Management Track cases, the parties should provide the Court with a proposed case management plan pursuant to section 3:01 of the Plan three (3) days prior to the IPTC. Counsel taking part in the IPTC should be prepared to speak knowledgeably and with client authority on these subjects.

A Scheduling Order will be issued following the IPTC setting deadlines for the completion of discovery, the filing of dispositive motions, the filing of pretrial submissions, and a date when the case will be placed in the trial pool or specially listed for trial. Where appropriate, a date for another interim status conference(s) may be provided. In certain cases, particularly in Special Management Track cases, the Scheduling Order may provide a date by which the parties will be required to prepare and submit to the Court for approval a Final Pretrial Order pursuant to Local Civil Rule 21(d)(2).

Typically, Judge Pratter will hold a final pretrial conference ("FPTC") approximately ten (10) days prior to the date the case will be placed in the trial pool or is scheduled for trial. At the FPTC outstanding topics that were the subject of the IPTC and issues concerning the trial are typically discussed, as well as the subject of settlement possibilities. A Final Pretrial Order or a Final Scheduling Order in a Complex Case, as the case may be, will be issued at the conclusion of the FPTC.

Prior to attending any pretrial conference, counsel should confer with each other about the topics expected to be discussed at the conference, including a substantive discussion of potential settlement. Counsel are also expected to have discussed with their respective clients prior to the conference the issues to be addressed at any conference with the Court and to come to the conference with all necessary authority.

B. Continuances and Extensions.

1. General Policy.

Counsel should expect the Court to maintain the dates contained in the Scheduling Order, unless good cause is shown that justifies a change.

2. Requests for Extensions and Continuances.

Generally, Judge Pratter will grant a short (i.e., two weeks or less) continuance or extension that will not affect the discovery cutoff or trial date (i.e., the date that a brief is due, the date of an evidentiary hearing, or the date of an oral argument on a non-dispositive motion), if requested by way of a stipulation agreed upon by all parties. Any other request for a continuance or extension should set forth in detail the basis for the request and whether it is agreed to or opposed by the opposing party(ies). A request for an extension or continuance of longer than two (2) weeks or of the trial date, discovery cutoff date, or the deadline for filing dispositive motions must be made sufficiently prior to the due date to allow time for the Court to consider it and should set forth compelling reason(s) for the relief sought. An unopposed request may be made by letter to the Court and should include the reasons for the request.

C. General Motion Practice.

______Except as set forth here, motion practice will be conducted in accordance with Local Rule 7.1. The originals of all motions and briefs should be filed with the Clerk's Office. Two (2) courtesy copies should be supplied to Chambers by the filing counsel. See foregoing requirements concerning ECF filings.

Every factual assertion considered by the submitting party to be important to that party's position in a motion, opposing papers or brief must be supported by citation or other specific

reference to the record where that fact may be found. Legal and record citations shall be "pinpoint cites."

1. Oral Argument on Motions.

If the Court determines that oral argument will be helpful in deciding a matter, the Judge will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading. The Court is very likely to hear oral argument on dispositive motions.

2. Reply and Surreply Briefs**.**

Reply and surreply briefs are discouraged unless it is apparent on the face of the submission that such additional briefing is necessary to rebut an issue or point of law not discussed in the initial briefs. Reply and surreply briefs may be filed and served within seven (7) days of service of the brief to which the reply or surreply responds unless the Court sets a different schedule. Reply and surreply submissions should not contain a repeat recitation of the facts of the case and, without leave of Court for good cause shown, should not exceed 15 pages in toto. The Court will not necessarily delay its decision while awaiting a reply or surreply brief.

No other briefs may be filed without leave of Court for good cause shown.

3. Chambers Copies of Motions.

Notwithstanding compliance with the Court's procedure regarding use of ECF, counsel should send to Chambers two (2) courtesy copies of any motions (and related briefs) filed with the Clerk of Court.

D. Discovery Matters**.**

1. Length of Discovery Period and Extensions.

The length of time permitted for discovery depends upon the nature of the case. Generally, up to six (6) months from the date the complaint is responded to by answer or motion is permitted for discovery. Parties should not assume that the filing of a motion to dismiss will be sufficient reason to extend this six-month period, although the Court will entertain a reasonable request by any party for an order staying discovery during the pendency of a motion to dismiss the complaint. In Special Management cases, Judge Pratter will permit additional time for discovery depending upon the need to do so identified by the parties at the IPTC, and any subsequent status conferences. A case ordinarily will be scheduled to be listed for trial or included in the trial pool approximately sixty (60) days after the scheduled completion of all discovery.

2. Discovery Conferences and Dispute Resolution.

When a discovery dispute occurs, Judge Pratter will consider a motion to compel under Local Civil Rule 26.1(g). Prior to submission of any discovery dispute to the Court for resolution, counsel should consult Local Rule 26.1(f) which requires counsel to make reasonable efforts to resolve the discovery dispute before submitting it to the Court for resolution. The Rule requires that counsel who is submitting the dispute to the Court include a certification that a good faith resolution effort has been made by counsel involved in the dispute. Judge Pratter expects that such a certification will be substantive and meaningful. For example, it is *not* sufficient for the certification to simply recite that "reasonable efforts have been made but were unsuccessful", that "counsel have conferred in good faith", that "counsel repeatedly conferred with opposing counsel", or similar generalities. See, e.g., Naviant Marketing Solutions, Inc. v. Larry Tucker, Inc., 339 F.3d 180, 186 (3d Cir. 2003); Evans v. American Honda Motors Co., Inc., 2003 WL

22722417 at *1-2 (E.D. Pa. Nov. 26, 2003).

Accordingly, when counsel elect to submit a discovery dispute to Judge Pratter, the submission must include a Rule 26.1(f) certification that delineates with specificity the actual efforts made to resolve the discovery dispute amicably. Failure to include such a certification will subject the submission to summary denial without substantive consideration.

Once a motion to compel is filed, the Court likely will schedule a telephone or in-person conference to resolve the dispute to be held within ten (10) business days or less of the Court's receipt of the motion. The non-moving party will be allowed up to five (5) business days from the date of service of the motion to file a response, and if the non-moving party wishes the Court to consider the response in advance of ruling and/or a conference, such party should arrange to have the response delivered to Chambers within the five (5) day time frame. On occasion the Court may request the non-moving party to submit the response before the expiration of the five (5) business days. If the parties work out the dispute amicably, the conference will be canceled.

The motion and the response must each be accompanied by a form of order and a short brief not to exceed five (5) pages describing the disputed issue(s). Discovery motions and responses and the accompanying briefs should not recount the allegations of the complaint, the factual underpinnings of the defense or the history of the case except as absolutely necessary for an understanding and resolution of the specific discovery dispute at issue. In many instances, the Court expects to rule promptly on discovery motions and often decides such motions during the telephone conference if one is held. The Court may act on discovery motions prior to receipt of responsive briefs by initiating a telephone conference for that purpose. A reminder : All motions must contain the certification required under Local Civil Rule 26.1(f).

Judge Pratter permits telephone conferences to resolve discovery disputes during depositions in cases where the deposition would otherwise have to be adjourned. However, counsel should resort to such efforts only sparingly and certainly only after making all appropriate efforts to resolve the impasse amicably, professionally and realistically. Of course, counsel should not assume that efforts to reach the Court for such disputes will be successful.

3. Confidentiality Agreements**.**

Judge Pratter will consider entry of stipulated, narrowly fashioned confidentiality, protective or seal orders if the proposed order includes a detailed statement demonstrating that good cause exists for the order. See Pansy v. Borough of Stroudsberg, 23 F.3d 772, 786 (3rd Cir. 1994). 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."

4. Expert Witnesses.

The time for disclosure of the identity of experts, submission of curricula vitae and for discovery pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), will be set forth in the Scheduling Order issued at the conclusion of the IPTC.

E. Settlement**.**

Settlement will be discussed at the IPTC, at subsequent status conferences, and at the FPTC. However, settlement of a case is primarily the responsibility of the parties and, unless requested by all parties, Judge Pratter generally will not set required or mandatory settlement conferences. Judge Pratter will only very rarely participate in settlement negotiations in non-jury

cases. By agreement of the parties, a case in which settlement prospects are promising may be referred to a magistrate judge or to another District Court judge for a settlement conference. Judge Pratter welcomes all reasonable suggestions by counsel with respect to options for the pursuit of potential settlement at any time during the pendency of the case.

F. Arbitration.

Judge Pratter neither holds an IPTC nor issues a scheduling order in arbitration track cases, unless there is a de novo appeal from an arbitration award. The parties are expected to complete all discovery prior to the date of the arbitration hearing. Upon demand for trial de novo from an arbitration award, Judge Pratter will issue an order setting the date for trial at the earliest date available to the Court. Ordinarily, neither discovery nor dispositive motions will be allowed after the arbitration hearing is held except that the parties are free to mutually agree to additional discovery, provided that there is no impact upon the Court's scheduling of the case for trial.

G. Summary Judgment Motions.

All summary judgment motions and oppositions to such motions must contain a numbered paragraph-by-paragraph recitation of facts with specific citations to the record for the support of all of those facts. The Court will not consider any assertion of a fact that is not supported by a citation to the record. A party opposing summary judgment must state in similar paragraph form whether that party agrees or disagrees that the fact(s) as stated by the moving party are undisputed. If a party contends that a fact is in dispute, citation must be made to the record evidence that supports the party's view of that particular fact. Failure to address the moving party's factual contentions in this manner will lead to the Court's consideration of the moving party's factual assertion(s) as undisputed.

H. Final Pretrial Memoranda.

Unless otherwise ordered, each party shall prepare its own pretrial memoranda and should include the topics addressed in Local Rule of Civil Procedure 16.1©, and should also include the following items:

a. All stipulations of counsel;

b. Any objection to: (1) the admissibility of any exhibit based on authenticity; (2) the admissibility for any reason (except relevancy) of any evidence expected to be offered; (3) the adequacy of the qualifications of an expert witness expected to testify; and, (4) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701. Such objection shall describe with particularity the ground(s) and the authority for the objection;

c. Deposition testimony (including videotaped depositions) to be offered during a party's case-in-chief (with citations to the page and line number), including the opposing party's counter-designations.

The Scheduling Order, or such other order as may be entered, will set forth the due date for the final pretrial memoranda.

I. Injunctions.

Judge Pratter will list promptly any request for a temporary restraining order ("TRO") or a preliminary injunction assigned to her. She will hold a pre-hearing conference to discuss discovery issues to narrow the issues of contention and to allocate time for the hearing. Expedited discovery will be discussed and, when appropriate, ordered at the conclusion of the pre-hearing conference.

Submission of proposed findings of fact and conclusions of law for TRO and injunction hearings will be required. The time for submission of these items will be set at the pre-hearing conference.

J. Trial Procedure.

Counsel must read and review with clients and courtroom colleagues the Court's "Guidelines For Trial and Other Proceedings In the Courtroom". Those Guidelines will be applied by the Court, and counsel is expected to be familiar with the Guidelines.

1. Scheduling.

Judge Pratter's practice is to assign either a date for placing the case in the trial pool or a specific trial date at the time of the IPTC. Once a case is placed in the trial pool, counsel, parties, and witnesses should be ready to start trial upon 24 hours telephone notice, although all reasonable efforts will be made to provide at least 48 hours notice. Generally, notice will be considerably longer. The trial day typically will be from 9:30 a.m. until 4:30 p.m., so that the early morning and late afternoon periods can be used for addressing matters outside the presence of the jury. Questions relating to scheduling matters should be directed to Judge Pratter's Deputy Clerks (Civil or Criminal), as appropriate.

2. Cases Involving Out-Of-Town Parties or Witnesses.

Other than in rare and exceptional circumstances, Judge Pratter schedules the trial of cases involving out-of-town counsel, parties, or witnesses the same as all other cases, leaving the scheduling of witnesses to counsel.

3. Conflicts of Counsel.

Counsel should notify the Court and opposing counsel immediately upon hearing of any unavoidable and compelling professional or personal conflicts affecting the trial schedule.

4. Notetaking by Jurors.

Judge Pratter decides whether to permit jurors to take notes on an ad hoc basis. Generally it is permitted. Jurors are not permitted to pose questions to be asked of witnesses.

5. Voir Dire.

Ordinarily, Judge Pratter will conduct voir dire. The parties are afforded an opportunity to submit proposed voir dire questions. After the Court has concluded voir dire, in most cases, counsel may suggest or pose directly follow-up questions. If allowed, counsel typically should use generic questions of the entire panel unless at the Court's invitation limited follow-up questions of specific jurors is permitted. If allowed, counsel should typically use generic questions of the entire panel unless, at the Court's invitation, limited follow-up questions of specific jurors is permitted.

6. Trial Briefs.

Judge Pratter requires the submission of trial briefs no later than seven (7) calendar days before the trial pool date or the specified trial date.

7. In Limine Motions.

Except as may otherwise be ordered, Judge Pratter requires motions in limine to be submitted in writing no later than ten (10) business days before the trial pool date or specified trial date.

8. Examination of Witnesses Out of Sequence.

Counsel generally will be permitted to examine his/her own witnesses out of turn for the convenience of a witness unless it is objected to by the opposing party and prejudice would result.

9. Opening Statements and Summations.

Judge Pratter normally attempts to obtain the agreement of counsel regarding time limits on opening statements and closing arguments. However, in most cases, twenty (20) to thirty (30) minutes should be adequate for an opening statement, and thirty (30) to forty-five (45) minutes should be adequate for summation.

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

Judge Pratter will permit more than one attorney for a party to examine different witnesses or to argue different points of law before the Court, but only one attorney per party may examine the same witness, and only one attorney per party may address the jury during the opening statement or summation.

11. Examination of Witnesses Beyond Redirect and Recross.

Re-direct and re-cross will be strictly limited to matters not previously covered by direct or cross examinations or special circumstances. Where appropriate, a proffer may be requested before it is permitted.

12. Videotaped Testimony.

Videotaped testimony should begin with the witness being sworn. Objections should be brought to the Court's attention at the time of the FPTC. After the Court rules on any objections, (ordinarily at the FPTC), counsel must edit the tapes before offering the videotaped testimony at trial. All material objections should be resolved before offering the videotape as evidence.

13. Reading Material into the Record.

Judge Pratter has no special practice or policy regarding reading into the record stipulations, pleadings, or discovery material.

14. Preparation of Exhibits.

Exhibits should be pre-marked and pre-exchanged in accordance with the Final Pretrial Order. On the day trial is scheduled to commence, two (2) binders containing a copy of each exhibit and a copy of a schedule of exhibits should be provided to the Court by each party. Equipment and the smooth presentation of exhibits in video or other electronic form is the responsibility of counsel and should be attended to with care. Back-up plans in the event of equipment failure should be available.

15. Offering Exhibits into Evidence.

Generally, unless the parties have an agreement as to the admissibility of a proposed exhibit, a witness may not testify as to its content until it has been admitted into evidence.

16. Directed Verdict Motions.

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials should be in writing if at all possible. Oral argument on such motions is ordinarily permitted.

17. Proposed Jury Instructions and Verdict Forms.

Proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury should be submitted no later than seven (7) calendar days before the trial pool date. A courtesy copy of the proposed jury instructions (or findings of fact and conclusions of law) should be submitted to Chambers by electronic filing in a format discussed ahead of time with the Court's Chambers staff. Jury instructions need only be submitted with

respect to substantive issues in the case. Proposed instructions on procedural matters such as the burden of proof, unanimity and credibility are not necessary.

Each proposed instruction should be on a separate sheet of paper, double spaced and include citation to specific authority. Proposed instructions without citation to specific legal authority will not be considered. Cases and model jury instructions that are cited should be accurately quoted and a pinpoint page reference should be provided.

If a model jury instruction is submitted, for instance, from the Third Circuit Model Instructions, Devitt & Blackmar, Federal Jury Practice and Instructions or Sand, Modern Federal Jury Instructions, the submitting party shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction, additions should be underlined and deletions should be placed in brackets.

Counsel will have the opportunity to file supplemental points, or proposed findings of fact and conclusions of law, near the close of testimony.

18. Proposed Findings of Fact and Conclusions of Law.

Proposed findings of fact and conclusions of law in non-jury cases must be submitted at least seven (7) calendar days before the trial pool date. The parties may submit revised findings of fact and conclusions of law with specific reference to testimonial or documentary evidence which has been admitted at the close of testimony, unless otherwise provided for in the Final Pretrial Order.

19. Offers of Proof.

If any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of opposing counsel prior to the start of trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking

relief prior to trial.

20. Unavailability of Witness.

Because a witness may be unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects oral or videotaped depositions to be used at trial for any witness whose testimony the party believes essential to the presentation of that party's case, whether the witness is a party, a non-party, or an expert. The unavailability of such witness will not be a ground to delay the commencement or progress of trial.

21. Lay Witness Opinion.

Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 with respect to issues of liability or damages shall, at the time required for submission of expert reports, serve the opposing counsel with the same information and/or documents required with respect to such expert witnesses.

K. Jury Deliberations.

1. Written Jury Instructions.

In some cases Judge Pratter may provide the jury with a copy of the instructions.

2. Exhibits in the Jury Room.

Unless cause is shown, Judge Pratter will permit all exhibits containing substantive or real evidence to go out with the jury. Demonstrative exhibits ordinarily will not be permitted in the jury room. Counsel should confer with each other as to which exhibits should go into the jury room.

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

At the jury's request, if the transcript is available, Judge Pratter will consider allowing the reading of the appropriate portions back to the jury and the replaying of audio and video tapes.

4. Availability of Counsel During Jury Deliberation.

Unless excused by the Court, counsel should remain in the courthouse during jury deliberations, and no more than 15 minutes away..

5. Taking the Verdict and Special Verdicts.

Ordinarily, Judge Pratter will submit written interrogatories to the jury. The verdict form will be reviewed with counsel before it is provided to the jury.

6. Polling the Jury.

Judge Pratter will poll the jury upon request.

7. Interviewing the Jury.

Ordinarily, Judge Pratter will allow counsel to interview jurors following conclusion of the trial but will set certain conditions for the interviews. At a minimum, jurors will be told that they are under no obligation to talk with counsel.

III. CRIMINAL CASES

In general, policies and procedures for criminal cases are those set forth above for civil cases.

1. Oral Argument and Motions.

If requested, Judge Pratter generally will permit oral argument on a substantive motion in a criminal case. Evidentiary hearings typically will be set to take place very promptly following the due date of papers opposing the motion.

2. Pretrial Conferences.

Judge Pratter will hold a scheduling conference with counsel in criminal cases on an as-needed basis or if requested by counsel. At the conclusion of the conference, if trial seems likely, Judge Pratter will issue a Scheduling Order governing speedy trial issues, discovery, time

for filing motions, and the trial date.

3. Voir Dire.

In criminal cases, the voir dire is conducted by Judge Pratter, based, in part, on questions submitted by counsel. After the voir dire is concluded, the Judge will permit counsel to suggest follow-up questions. Counsel should plan for submission of proposed voir dire questions in writing seven (7) calendar days before the trial date.

4. Sentencing Memoranda.

Judge Pratter requires the submission of objections to the Presentence Investigation Report and the submission of sentencing memoranda in accordance with the notice of sentencing issued shortly in conjunction with the entry of a guilty plea or judgment. The Judge expects substantive Memoranda from both counsel for the Government and defense counsel.

5. Continuances.

Defense counsel will be expected to consult with counsel's client and set forth in papers submitted to the Court the client's position with respect to any request for a continuance. The defendant's written agreement with the request must be submitted to the Court at the time of the defense motion.

IV. OTHER GENERAL MATTERS

1. Briefs of Cases on Appeal.

Judge Pratter welcomes copies of appellate briefs concerning decisions rendered by her.

2. Consultation with Opposing Counsel.

In general, Judge Pratter expects counsel to bring matters to her attention only after they have been discussed with opposing counsel. When communicating with the Court, counsel shall

be prepared to state the position of opposing counsel, e.g., “opposing counsel does not oppose the continuance”, “opposing counsel opposes the request to show photographs to the jury during opening statements”, etc.

3. Professionalism In The Courtroom.

To repeat comments set forth above, Judge Pratter expects punctuality and courtesy from counsel to the Court and to each other, both in the presence of the Court and otherwise. The examination of witnesses during hearings or trials should be conducted from the lectern or from counsel's table. Counsel always should rise to address the Court unless specifically instructed otherwise. In addition, counsel will direct all comments to the Court or to the witness under examination and not to other counsel or to the jury. To the extent possible, the Court should be alerted to issues that will need to be ruled upon during the day at the start of the day's proceedings, or during recess out of the jury's presence.

4. Miscellaneous Courtroom Conduct Issues.

a. Counsel must turn off and not operate (surreptiously or otherwise) cell phones, electronic messaging devices (“Blackberries”), PDA’s, pagers and the like. All such equipment must remain off and unused for the duration of the proceeding. Counsel has the responsibility to advise their client(s), witnesses and colleagues of the Court’s requirement in this regard.

b. If counsel wishes to approach the witness, counsel should ask for permission to do so. If counsel needs to approach one witness many times, a single request for permission will suffice. When counsel approaches the witness, he or she should accomplish the reason for approaching and then return to the place from which he or she is questioning.

c. If counsel wishes to make an objection, counsel should stand and state the objection along with the technical basis for the objection in a word or phrase, like "hearsay," without making a speech. If counsel wishes to have a sidebar conference, the Court usually will grant the request if counsel does not abuse this option. Counsel is encouraged to bring any evidentiary questions to the attention of the Court outside the presence of the jury.

d. Counsel has the responsibility to advise witnesses that no witness may talk to the jury at any time during the pendency of the case. For example, if the witness has stepped down from the witness stand to testify from an exhibit, the witness should not have any private conversation whatsoever with any juror. The witness may, of course, direct his or her answers to the jury's direction, so long as the witness is still answering the lawyer's questions.

e. In opening or closing statements, no lawyer may call a witness or opposing counsel a "liar" or say that the witness "lied." Such conclusions are for the jury to make. Using such language, including use of the phrases, "I believe," or "I think," is not appropriate during opening or closing statements.

f. There often will be a clerk in the courtroom during a jury trial who will give the jurors any exhibits or other items that counsel requests be given to them. Counsel should not walk up to the jury and start handing the jurors things unless specifically permitted by the Court to do so. Likewise, counsel should not ask the jurors if they can see or hear something. If counsel is concerned, counsel should say something like: "Your Honor, would the Court ask if the jury can see or hear."

g. A jury trial is a formal affair and all counsel are to act accordingly. Coats,

coffee cups, crumpled papers, empty transit boxes, water bottles, candy wrappers and the like should not be left within sight of the jury.

h. Opposing counsel should not have extended conversations with each other in front of the jury without the Court's permission. The Court will allow counsel to have a private conversation if requested and if it will move things along. Lawyers should not argue with either opposing counsel or the Court.

i. It is counsel's obligation to make all necessary arrangements for securing a transcript of the proceedings.

5. If counsel has a specific question on a matter not addressed above, counsel is encouraged to contact the Court's Chambers staff.

5. **Addendum To Judge Gene E.K. Pratter Policies and Procedures**

Pro Hac Vice Applications

All motions for the pro hac vice admission of counsel shall be made by an attorney who is (1) admitted to practice before the District Court for the Eastern District of Pennsylvania and (2) whose appearance has been entered in the case in which the motion is made. Each such motion *must* be accompanied by the affidavit or similar declaration of each attorney being proposed for pro hac vice admission in which the affiant/declarant includes the following information and undertakings:

a. Year and jurisdiction of each bar admission;

b. Status of the attorney's admission(s), i.e., active or inactive, in good standing, etc.;

c. Whether the attorney has ever been suspended from the practice of law in any jurisdiction or received any public reprimand by the highest disciplinary authority of any bar in which the attorney has been a member;

d. That the affiant/declarant (i) has in fact read the most recent edition of the Pennsylvania Rules of Professional Conduct and the Local Rules of this Court and (ii) agrees to be bound by both sets of Rules for the duration of the case for which pro hac vice admission is sought; and

e. That, if granted pro hac vice status, the affiant/declarant will in good faith continue to advise counsel who has moved for the pro hac vice admission of the current status of the case for which pro hac vice status has been granted and of all material developments therein.

6. Discovery Disputes and Certifications Under Local Rule 26.1(f)

Prior to submission of any discovery dispute to the Court for resolution, counsel should consult Local Rule 26.1(f) which requires counsel for the disputing parties to make reasonable efforts to resolve the discovery dispute before submitting it to the Court for decision. The Rule requires that counsel who is submitting the dispute to the Court include a certification that a good faith resolution effort has been made by counsel involved in the dispute. Judge Pratter expects that such a certification will be substantive and meaningful. For example, it is *not* sufficient for the certification to simply recite that "reasonable efforts have been made but were unsuccessful", that "counsel have conferred in good faith", that "counsel repeatedly conferred with opposing counsel", or similar generalities. See, e.g., Naviant Marketing Solutions, Inc. v. Larry Tucker, Inc., 339 F.3d 180, 186 (3d Cir. 2003); Evans v. American Honda Motors Co., Inc., 2003 WL 22722417 at *1-2 (E.D. Pa. Nov. 26, 2003).

Accordingly, when counsel elect to submit a discovery dispute to Judge Pratter, the submission must include a Rule 26.1(f) certification that delineates with specificity the actual efforts made to resolve the discovery dispute amicably. Failure to include such a certification will subject the submission to summary denial of a discovery motion without substantive consideration.

7. **Criminal Continuance Form**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA Criminal No.

vs.

I, ___________________________ (Defendant), have consulted with my counsel concerning my right under the Speedy Trial Act and my right to a speedy trial under the Sixth Amendment to the U.S. Constitution. I do not oppose a continuance of my trial, now scheduled for **(date)**, and agree that the ends of justice served by a continuance outweigh the best interest of the public and myself in a speedy trial. I understand that the time between the filing of a Motion to Continue and the new trial date to be set by the Court will be excluded for purposes of computing the time within which my trial must commence under the Speedy Trial Act, and I also agree that this delay will not deprive me of my speedy trial rights under the Sixth Amendment. I understand that if I do not wish to sign this document, the Court will hold a hearing at which I will be present.

__________________________________ Witness signature

______________________________ Defendant

______________________________ Date