

JUDGE ROBERT F. KELLY

Judge Robert F. Kelly was born on June 17, 1935 in Rosemont, Pennsylvania. He received a B.S. in Economics from Villanova University in 1957 and LL.B. from Temple University in 1960. Judge Kelly was in private practice in Media and Chester, Pennsylvania from 1961 to 1976. In 1976, he was elected to serve as a Judge of the Court of Common Pleas, Thirty-Second Judicial District. Judge Kelly was appointed to the United States District Court for the Eastern District of Pennsylvania in 1987.

PRELIMINARY GENERAL MATTERS

1. Electronic Case Filing

Judge Kelly requires that all documents be filed electronically by the attorney by using the Electronic Case Filing (ECF) system. ECF provides greater efficiency and timeliness in the filing of pleadings, automatic e-mail notice of case activity, as well as electronic storage of documents for remote access by the Court, the bar and the litigants. Attorneys appearing before Judge Kelly are required to register as Electronic Case Filing (“ECF”) Users at the Office of the Clerk of the Court or at this court’s website at www.paed.uscourts.gov.

A copy of the “Pretrial and Trial Procedure” for Judge Robert F. Kelly is available on this court’s website at www.paed.uscourts.gov under the heading “Documents” and the subheading “Judges’ Procedures”.

2. Correspondence With the Court

Judge Kelly permits correspondence under the circumstances set forth in his standard Notice to counsel, which his Courtroom Deputy routinely sends to counsel after a case is assigned. A copy of the Notice is attached. Otherwise, all other communications with the Court should be by the filing of pleadings, motions, applications, briefs, or legal memoranda.

3. Communications With Law Clerks

Judge Kelly permits communications with his law clerks concerning the administrative aspects of cases, but not on the merits of a case.

4. Telephone Conferences

Judge Kelly encourages the use of telephone conferences for matters such as pretrial conferences, scheduling, and minor discovery disputes. He prefers that such matters be managed by his Courtroom Deputy or the law clerk if the Courtroom Deputy is not available.

5. Oral Arguments and Evidentiary Hearings

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

6. Pro Hac Vice Admissions

Judge Kelly prefers a written motion for admission to be made on the day of the appearance of out-of-town counsel.

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences

When all defendants have entered appearances in the case Judge Kelly's Courtroom Deputy will arrange a conference call with counsel. The purpose of this is to give the court information from which it can prepare a scheduling order. The matters discussed will be, time needed to complete fact and expert discovery, likelihood of dispositive motions and a specific trial date. At that time the Judge also advises counsel that he is willing to hold a settlement conference at any time providing all counsel feel it might be fruitful.

Continuances and Extensions

1. General Policy

Judge Kelly 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 arguments, evidentiary hearings, discovery deadlines and trial dates.

2. Requests for Extensions and Continuances

Counsel should advise the court immediately of any compelling reason justifying an extension or a continuance of any originally scheduled date. Any request for an extension or a continuance should be made by a formal motion.

General Motion Practice

1. Oral Argument on Motions

Judge Kelly hears oral argument on motions only when he requests it.

2. Reply and Surreply Briefs

Reply and surreply briefs should be filed only if absolutely necessary.

3. Chambers Copies of Motion Papers

Judge Kelly prefers to receive courtesy copies of motion papers in chambers, and he encourages this practice.

Discovery Matters

1. Length of Discovery Period and Extensions

Judge Kelly's general policy is to allow four months to complete discovery.

2. Discovery Conferences and Dispute Resolution

Judge Kelly normally does not hold discovery conferences other than the usual Rule 16 conferences. He encourages the use of telephone conferences to resolve disputes arising during depositions. At times, he will initiate discovery conferences if he observes that counsel are having continuing difficulty getting through the procedure.

3. Confidentiality Agreements

Judge Kelly has no standard practice or policy concerning confidentiality orders. Counsel may submit stipulated confidentiality orders for consideration.

4. Expert Witnesses

Judge Kelly does not generally require written expert reports or expert depositions. He usually leaves these matters for agreement by counsel. It is the Judge's policy to have experts identified 60 to 90 days after the filing of a complaint.

Settlement

1. General Approach to Settlement and Non-Jury Cases

Judge Kelly believes the court's involvement in settlement conferences is generally helpful, and he will become involved in settlement conferences in jury cases at the request of both counsel when they feel there is a possibility of a settlement. Judge Kelly participates in settlement negotiations in non-jury cases, and he will only do so if counsel for both parties consent. Otherwise, in non-jury cases, he refers settlement negotiations to a Magistrate Judge.

2. Referral of Settlement Negotiations to Another District Court Judge

Judge Kelly has never referred settlement negotiations to another District Court Judge.

Arbitration

1. General Approach to Arbitration Cases

Judge Kelly has no standard procedures or practices for arbitration cases that differ from cases certified as involving more than \$100,000. He handles motions and conferences the same as in other cases.

2. Scheduling of Trial De Novo from Arbitration

Upon demand for trial *de novo* from an arbitration award, Judge Kelly places the matter in his trial pool immediately. Judge Kelly has no special practices or procedures concerning motions, pretrial memoranda, exhibits, or additional time for discovery for *de novo* arbitration cases.

Proposed Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

In jury cases, unless specifically provided for by separate order in a particular case, Judge Kelly has no requirements for pretrial memoranda other than those set forth in Rule 16. Any other requirements are set forth in Paragraph 4 of his standard Notice to Counsel, a copy of which is attached.

2. Common Deficiencies in Pretrial Memoranda

The most common deficiencies in pretrial memoranda noted by Judge Kelly are incomplete lists of proposed witnesses and inaccurate estimates of the number of days for trial. Incomplete witness lists frequently cause disputes at the time of trial.

Injunctions

1. Scheduling and Expedited Discovery

Judge Kelly's usual practice is to give priority and expedited treatment to the scheduling of preliminary and permanent injunction hearings. Judge Kelly has no standard policy for handling expedited discovery in injunction matters.

2. Proposed Findings of Fact and Conclusions of Law

Judge Kelly prefers to have proposed findings of fact and conclusions of law submitted prior to trial if possible. He accepts them after the testimony, but does not wish to wait for the transcript to be prepared.

Trial Procedure

1. Scheduling of Cases

Judge Kelly's practice is to give a specific trial date at the time of the scheduling conference.

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

Judge Kelly will usually accommodate out-of-town parties or witnesses.

3. Notetaking by Jurors

Judge Kelly permits notetaking by jurors in most cases.

4. Trial Briefs

Judge Kelly encourages the submission of trial briefs.

5. Voir Dire

Judge Kelly allows counsel to conduct voir dire in civil cases. Judge Kelly's Courtroom Deputy is present during voir dire. Judge Kelly will intervene if he notices that counsel will not be able to handle the voir dire themselves in an orderly fashion. Counsel may come to chambers if a dispute arises during voir dire. At a later time, the problem, and Judge Kelly's decision, will be put on the record. There is no time limit on the conduct of voir dire, although it is Judge Kelly's experience that the entire process takes one hour or less.

6. Side Bars

Judge Kelly allows side-bar conferences when absolutely necessary.

7. *In Limine* Motions

Judge Kelly views motions *in limine* as a great help in making him aware of evidentiary problems that will arise during trial. He prefers they be served in advance of trial in order to be properly studied. He will, however, accept them at any time.

8. Examination of Witnesses Out of Sequence

Judge Kelly usually grants requests by counsel to take the testimony of a witness out of turn for the convenience of the witnesses.

9. Opening Statements and Summations

Judge Kelly places time limits of one-half hour on both opening statements and summations by counsel.

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

Judge Kelly permits more than one attorney for a party to examine different witnesses or argue different points before the court.

11. Examination of Witnesses Beyond Redirect or Recross

Judge Kelly does not generally allow further examination of a witness after redirect or recross are completed.

12. Videotaped Testimony

Videotaped testimony should start with the witness being sworn. Objections should be given to the court well in advance of the tapes being offered, and they should be accompanied by a copy of the transcript for the court which is tabbed to indicate the exact location of the various objections.

13. Reading of Material into the Record

Judge Kelly has no special practice or policy for reading stipulations, pleadings, or discovery material into the record. Counsel may do it at any point.

14. Preparation of Exhibits

Judge Kelly requires that exhibits be pre-marked and pre-exchanged. Two copies of trial exhibits should be provided to the court in cases involving large numbers of documents and in non-jury cases.

15. Offering Exhibits into Evidence

Judge Kelly has no preference concerning when an exhibit is offered into evidence.

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

Judge Kelly prefers that motions for judgment as a matter of law (or motions for judgment on partial findings) be in writing. Judge Kelly normally hears oral argument on motions for judgment as a matter of law and motions for judgment on partial findings.

17. Proposed Jury Instructions and Verdict Forms

Judge Kelly normally requests that jury instructions for all points covered in the case be

submitted prior to the start of trial. He will allow counsel to submit supplemental jury instructions up to the time of closing arguments. At the end of his charge to the jury, counsel will be given the opportunity, at side bar, to take exception, make corrections or suggest additions. Judge Kelly usually conducts a conference on proposed jury instructions.

18. Proposed Findings of Fact and Conclusions of Law

Judge Kelly prefers that proposed findings of fact and conclusions of law in non-jury cases be submitted before trial, if possible. If so submitted, he will give counsel, upon request, an opportunity to submit additional proposed findings at the close of the testimony.

Jury Deliberations

1. Written Jury Instructions

Judge Kelly does not give a written copy of his instruction to the jury.

2. Exhibits in the Jury Room

Judge Kelly generally permits all exhibits received in evidence to go out to the jury unless they contain matters that would be confusing or prejudicial.

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

Judge Kelly's courtroom is equipped with an electronic court reporting system. Upon request by the jury, he will have the electronic court reporter locate that portion of the tape requested by the jury and simply play it back for them. He allows tapes and videotapes to be replayed if necessary.

4. Availability of Counsel During Jury Deliberations

Judge Kelly requires counsel to remain in the courthouse during deliberations. If counsel can assure him that they can get to the courtroom within five minutes, Judge Kelly will allow them to return to their offices.

5. Taking the Verdict and Special Interrogatories

Judge Kelly generally takes a special verdict. On simple, uncomplicated cases he allows a general verdict. He usually submits interrogatories to the jury.

6. Polling the Jury

Judge Kelly will, upon request, allow the jury to be polled.

7. Interviewing the Jury

After a case is concluded, Judge Kelly usually advises the jury that they are free to talk to anyone about the case, including counsel for the parties. He also tells the jury that they are not obligated to do so.

CRIMINAL CASES

1. Approach to Oral Argument and Motions

Judge Kelly will normally allow oral arguments on motions in criminal cases prior to selection of the jury on the first day of trial.

2. Pretrial Conferences

Judge Kelly rarely holds pretrial conferences in criminal cases.

3. Voir Dire

Judge Kelly conducts voir dire in criminal cases. He requests that counsel submit suggested questions to him two or three days prior to the start of trial. When finished with his questions, Judge Kelly will allow counsel an opportunity to submit follow-up questions to him to be given to the jury as a whole. When follow-up questions are to be asked of individual jurors, he normally brings the juror to side bar to allow the questioning of the juror on the record, but out of the hearing of the remainder of the panel.

Judge Kelly instructs the jury panel that if any of their answers would be embarrassing to them that they may come to side bar and respond to questions on the record at side bar in the presence of counsel.

4. Sentencing Memoranda

Judge Kelly permits and encourages the submission of sentencing memoranda by both the Government and the defense.

OTHER GENERAL MATTERS

If a decision rendered by Judge Kelly is appealed, he does not care to receive copies of appellate briefs.

Counsel should not hesitate to contact Judge Kelly's Courtroom Deputy or law clerks if they have a question about his courtroom practices or procedures.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CHAMBERS OF : 11613 U.S. COURTHOUSE
JUDGE ROBERT F. KELLY : PHILADELPHIA, PA 19106
: 215-597-0736
:
: CIVIL ACTION
:
: NO.

PRETRIAL ORDER

AND NOW, this day of , 2005, it is **ORDERED**:

1. All discovery in this case is to be completed by _____.
2. This case will be tried on _____.
3. Final Joint Pretrial Order pursuant to Fed. R. Civ. P. 16 and Local Rule of Civil Procedure 21 due: _____.
4. Changes in the foregoing schedule may be obtained only by written application to the Court, for cause shown.

Mark Rafferty
Acting Deputy Clerk to
Judge Robert F. Kelly

HONORABLE ROBERT F. KELLY
Senior United States District Judge

U.S. Courthouse
601 Market Street, Room 11613
Philadelphia, Pennsylvania 19106-1765
215-597-0736
Secretary: Maureen Mattern
Acting Courtroom Deputy Clerk: Mark Rafferty
267-299-7319

MAGISTRATE JUDGE ASSIGNMENT:

Magistrate Judge David R. Strawbridge

STANDING ORDERS:

None

COMMUNICATIONS WITH LAW CLERK:

Judge Kelly permits counsel to communicate with his law clerks on administrative matters.

PROBATION REPORT:

Judge Kelly does not permit the defendant or counsel to review the Probation Department's written recommendations as to sentence.

PRETRIAL AND TRIAL PROCEDURE
Before Judge Robert F. Kelly

1. Counsel shall be familiar with the provisions of F.R.C.P. 16.
2. Discovery shall be conducted promptly and diligently. Deadlines will be enforced and neither unnecessary discovery nor obstructionism will be tolerated. Discovery enforcement or relief should be sought promptly by motion only. Telephone inquiries relating to scheduling should be directed to the court deputy clerk.
3. A specific trial date will be established at the scheduling conference. The court will make every effort to commence trial as scheduled.
4. Pretrial memoranda required to be delivered to the court as per court order shall include the following:
 - a. All things as required in the Final Joint Pretrial Order pursuant to Fed. R. Civ. P. 16 and Local Rule of Civil Procedure 21, if applicable.
 - b. A list of all exhibits pre-numbered and pre-exchanged among all counsel. If exhibits are numerous, they should be suitably tabbed to facilitate ease and speed in locating an exhibit.
 - c. In all jury cases, proposed points for charge and in all non-jury cases, proposed findings of fact and conclusions of law. Counsel have the right to file supplemental points, findings and conclusions upon the close of testimony (counsel is reminded that the originals of these documents should be filed in the Clerk's Office, Rm. 2609, and that the court should be provided a copy).
 - d. A statement of any anticipated legal issues on which the court will be required to rule together with counsel's single best authority (case citation, Rule of Civil Procedure, Rule of Evidence, Statute, etc.).
 - e. All stipulations of counsel and an itemized list of any admissions to be read into evidence.
5. Court sessions will commence daily at 9:30 a.m. and continue until 12:30 p.m. with a short mid-morning break. Court will reconvene at 1:30 p.m. and continue until 4:30 p.m. (unless a juror from one of the outlying counties has a transportation schedule to meet) with a short mid-afternoon break. The court will adhere to this schedule and counsel must fit *all* witnesses into that time frame and not seek exceptions.
6. Counsel has the responsibility to have all witnesses available in court as scheduled. Failure to do so may result in sanctions.

7. All videotape recordings shall be conducted with an acute sensitivity that the videotape will be shown to a jury. Skillful organization of the testimony, elimination of unnecessary objections and conservation of time are strongly urged.

8. Counsel may conduct examination of witnesses from counsel table or from the lectern. Counsel is reminded that the courtroom is equipped with an electronic sound recording system. Therefore, counsel should always be near a microphone when speaking.

9. Opening statements shall be *brief* and *outlines only (not argument)* of the evidence counsel intends to present.

10. Summations shall *not* exceed thirty minutes except upon special exception allowed by the court in a complex case. Rebuttal argument by plaintiff shall ordinarily not exceed five minutes and shall be confined strictly to a response to *unanticipated* argument by opposing counsel. Re-argument will not be permitted.

11. Except for letters of transmittal that accompany documents that are required to be sent or filed at the Courthouse, counsel should not include the court as an addressee or as a party designated to receive copies of letters among and between counsel, except in the following instances:

- a. Where the court specifically invites counsel to advise the court of some matter by letter; or
- b. When the cause of counsel's participation 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 a medical problem, vacation plans, or other similarly personal problems or questions; or
- c. To confirm or advise the court that a case has been settled, dismissed or otherwise finally disposed of.

All other communications with the court concerning cases before the court should be by the filing of pleadings, motions, applications, briefs, legal memoranda, or other similar filings provided for in the Federal Rules of Civil or Criminal Procedure or our Local Rules of Civil or Criminal Procedure.