

OUTLINE OF PRETRIAL AND TRIAL PROCEDURES
BEFORE JUDGE EDUARDO C. ROBRENO

I. Preliminary General Matters

- A. Electronic Case Filing (ECF)
- B. Correspondence with the Court
- C. Communication with Law Clerks
- D. Telephone Conferences
- E. Oral Arguments and Evidentiary Hearings
- F. Pro Hac Vice Admissions

II. Civil Cases

A. Pretrial Procedure

- 1. Pretrial Conferences

B. Continuances and Extensions

- 1. General Policy
- 2. Continuances and Extensions

C. General Motion Practice

- 1. Oral Argument on Motions
- 2. Reply and Surreply Briefs

D. Discovery Matters

- 1. Length of Discovery Period and Extensions
- 2. Discovery Conferences and Dispute Resolution
- 3. Confidentiality Agreements
- 4. Expert Witnesses

E. Settlement

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

F. Arbitration

- 1. General Approach to Arbitration

2. Scheduling of Trial De Novo from Arbitration

G. Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

H. Injunctions

1. Scheduling and Expedited Discovery

2. Conference Held Prior to Hearing

3. Proposed Findings of Fact and Conclusions of Law

I. Trial Procedure

1. Scheduling Cases

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

3. Conflicts of Counsel

4. Notetaking by Jurors

5. Voir Dire

6. Trial Briefs

7. In Limine Motions

8. Examination of Witnesses Out of Sequence

9. Opening Statements and Summations

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

11. Examination of Witnesses Beyond Redirect and Recross

12. Videotaped Testimony

13. Reading of Material into the Record

14. Preparation of Exhibits

15. Offering Exhibits into Evidence

16. Directed Verdict Motions

17. Proposed Jury Instructions and Verdict Forms

18. Proposed Findings of Fact and Conclusions of Law

19. Offers of Proof
20. Unavailability of Witness
21. Lay Witness Opinion

J. Jury Deliberations

1. Written Jury Instructions
2. Exhibits in the Jury Room
3. Handling of Jury Requests to Read Back Testimony or
Replay Tapes
4. Availability of Counsel During Jury Deliberation
5. Taking the Verdict and Special Verdicts
6. Polling the Jury
7. Interviewing the Jury

III. Criminal Cases

1. Approach to Oral Argument and Motions
2. Pretrial Conferences
3. Voir Dire
4. Sentencing Memoranda

IV. Other Matters

1. Briefs of Cases on Appeal
2. Consultation with Opposing Counsel
3. Professionalism

JUDGE EDUARDO C. ROBRENO

Judge Robreno was born on July 28, 1945, in Havana, Cuba. He is a graduate of Massachusetts State College at Westfield (B.A. History, 1967), University of Massachusetts (M.S. Labor Relations, 1969), and Rutgers Law School (J.D., 1978). From 1978 to 1981, Judge Robreno served as a trial attorney in the Antitrust Division of the United States Department of Justice and as a Special Assistant United States Attorney. From 1981 to 1992, he was in private practice in Philadelphia, Pennsylvania. Judge Robreno was appointed to the United States District Court for the Eastern District of Pennsylvania on June 30, 1992.

I. PRELIMINARY GENERAL MATTERS

A. Electronic Case Filing (ECF)

Judge Robreno requires that all documents are 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 Robreno are required to register as Electronic Case Filing ("ECF") Filing Users at the Office of the Clerk of the Court or at this court's website at www.paed.uscourts.gov.

B. Correspondence with the Court

Judge Robreno permits correspondence with the Court concerning scheduling, other routine matters, and to advise the court that a case has been settled or dismissed. Any written communication requesting action by the Court should include at a minimum: a description of the situation requiring the Court's attention; the position of the opposing party (i.e., consent or opposition); and, the specific relief sought. Otherwise, all communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda. Counsel should not send Judge Robreno copies of letters sent to each other unless specifically invited to do so.

C. Communication with Law Clerks

Judge Robreno discourages communications with his law clerks. Counsel should not call upon law clerks for advice on substantive or procedural matters. Communications with the Court about scheduling matters should be directed to Judge Robreno's Courtroom Deputy.

D. Telephone Conferences

Judge Robreno may hold telephone conferences to resolve scheduling matters or 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 party to

initiate the telephone conference and to contact Judge Robreno through his secretary after all parties are present on the call.

E. Oral Arguments and Evidentiary Hearings

Judge Robreno does not set aside certain days or times for oral argument, motions or evidentiary hearings. Hearings and argument are scheduled when warranted.

F. Pro Hac Vice Admissions

Judge Robreno prefers that a written motion for admission be made by associate counsel of record. The admission of out-of-the-jurisdiction counsel pro hac vice does not relieve associate counsel of responsibility for the matter before the Court.

II. CIVIL CASES

A. Pretrial Procedure

1. Pretrial Conferences

Judge Robreno regularly schedules an in-person initial pretrial conference ("IPTC") soon after the answer is filed or the case is transferred to him. Prior to the IPTC, the parties should confer and prepare a joint report pursuant to Federal Rule of Civil Procedure 26(f). The joint report should be filed seventy-two (72) hours prior to the IPTC.

At the IPTC, counsel should be prepared to discuss those topics listed in Local Rule of Civil Procedure 16.1(b), and

Federal Rules of Civil Procedure 16(b) and (c). Counsel should also be prepared to discuss the progress of self-executing disclosure 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. As provided in section 8:01 and Chapter IX of the Plan, Judge Robreno requires that counsel taking part in the IPTC be prepared to speak knowledgeably on these subjects.

A Scheduling Order will be issued at the conclusion of the IPTC which will set forth deadlines for the completion of discovery, the filing of dispositive motions, the filing of pretrial submissions, and a date certain when the case will be placed in the trial pool. Where appropriate, a date for an interim status conference may be provided. In certain cases, particularly in Special Management Track cases, Judge Robreno 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 16.1.

Judge Robreno typically holds a final pretrial conference ("FPTC") within ten (10) days of the date the case will be placed in the trial pool. 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. At that time, outstanding topics that were the subject of the IPTC, and issues

concerning the trial are typically discussed, as well as possible settlement.

B. Continuances and Extensions

1. General Policy

Judge Robreno has a general policy of adhering to the dates contained in the scheduling order, unless good cause is shown that justifies a change.

2. Continuances and Extensions

Judge Robreno will grant a 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 based on 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. A request for an extension or continuance 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. An unopposed request may be made by letter to the Court.

C. General Motion Practice

1. Oral Argument on Motions

If Judge Robreno determines that oral argument will be helpful in deciding a matter, he 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.

2. Reply and Surreply Briefs

Reply and surreply briefs are discouraged unless necessary to rebut an issue or point of law not discussed in the initial briefs. They shall not be filed for motions of any nature without prior leave of the Court. Any motion for leave should be filed of record with a copy of the proposed brief attached as an exhibit to the motion.

D. Discovery Matters

1. Length of Discovery Period and Extensions

In Standard Track cases, Judge Robreno usually allows up to ninety days from the date of the IPTC to complete discovery. In Special Management cases, Judge Robreno will permit additional time depending upon the need to do so identified by the parties at the IPTC, and any subsequent status conferences. A case will ordinarily be listed for trial thirty (30) to sixty (60) days after the completion of discovery.

2. Discovery Conferences and Dispute Resolution

When a discovery default occurs, Judge Robreno will consider a motion to compel under Local Civil Rule 24(g)(1). When a discovery dispute occurs and the parties are unable to resolve the matter by themselves, after undertaking the

reasonable efforts required by Local Civil Rule 26(f), the party seeking relief must file a motion to compel.

Once a motion to compel is filed, Judge Robreno will schedule a telephone or in-person conference to resolve the dispute within ten (10) days. The non-moving party will be allowed nine (9) days to file a response. If the parties work out the dispute, the conference will be canceled. If the Court's intervention is required, the Court customarily imposes sanctions upon the non-prevailing party unless the position of the non-prevailing party is found to have been substantially justified. Judge Robreno permits telephone conferences to resolve discovery disputes during depositions in cases where the deposition would otherwise have to be adjourned.

3. Confidentiality Agreements

Judge Robreno will not approve confidentiality or sealing orders unless good cause is shown.

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

1. General Approach to Settlement and Non-Jury Cases

Settlement will be discussed at the IPTC, at subsequent status conferences, and at the FPTC. However, it is Judge

Robreno's view that settlement of a case is the responsibility of the parties and that, unless requested by all parties, he will not schedule settlement conferences. Judge Robreno will not 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.

F. Arbitration

1. General Approach to Arbitration

Judge Robreno 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.

2. Scheduling of Trial De Novo from Arbitration

Upon demand for trial de novo from an arbitration award, Judge Robreno will issue a Scheduling 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.

G. Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

Unless otherwise ordered by Judge Robreno, the pretrial memorandum should be prepared in accordance with the provisions

of Local Rule of Civil Procedure 16.1(c), 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 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.

H. Injunctions

1. Scheduling and Expedited Discovery

Judge Robreno will promptly list any request for a temporary restraining order ("TRO") or a preliminary injunction assigned to him.

2. Conference Held Prior to Hearing

Judge Robreno will hold a pre-hearing conference to discuss discovery issues, 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.

3. Proposed Findings of Fact and Conclusions of Law

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

I. Trial Procedure

1. Scheduling Cases

Judge Robreno's practice is to assign a date for placing the case in the trial pool 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. Ordinarily, a case will begin on or shortly after its trial pool date. Questions relating to scheduling matters should be directed to Judge Robreno's Courtroom Deputy.

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

Judge Robreno schedules the trial of cases involving out-of-town counsel, parties, or witnesses the same as all other cases. He leaves the scheduling of witnesses to counsel.

3. Conflicts of Counsel

Judge Robreno requires that counsel notify the

Court immediately upon hearing of any unavoidable and compelling professional or personal conflicts affecting the trial schedule.

4. Notetaking by Jurors

Judge Robreno generally permits jurors to take notes.

5. Voir Dire

Ordinarily, Judge Robreno conducts voir dire in all cases. The parties are afforded an opportunity to submit proposed voir dire questions. After the Court has concluded voir dire, counsel is afforded the opportunity to suggest follow-up questions.

6. Trial Briefs

Judge Robreno requires the submission of a trial brief no later than ten (10) days before the trial pool date.

7. In Limine Motions

Judge Robreno requires motions in limine to be submitted no later than ten (10) days before the trial pool date. The specific dates are set forth in the Scheduling Order.

8. Examination of Witnesses Out of Sequence

Judge Robreno generally will permit counsel to examine its 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 Robreno normally attempts to obtain the agreement of counsel regarding time limits on opening statements and summations. However, he believes that in most cases twenty (20)

to thirty (30) minutes is adequate for an opening statement and thirty (30) to forty-five (45) minutes is adequate for summation.

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

Judge Robreno will permit more than one attorney for a party to examine different witnesses or to argue different points of law before the Court. He will not permit more than one attorney to examine the same witness, or to address the jury during the opening statement, or summation.

11. Examination of Witnesses Beyond Redirect and Recross

Judge Robreno disfavors re-direct and re-cross unless it involves 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 should edit the tapes before offering the videotaped testimony at trial.

13. Reading of Material into the Record

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

14. Preparation of Exhibits

Judge Robreno requires that exhibits be pre-marked and pre-exchanged in accordance with the Final Pretrial Order. On the day trial is scheduled to commence, one copy of each exhibit and a copy of a schedule of exhibits should be provided to the Court.

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

Judge Robreno prefers that motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials be in writing. Oral argument on the motions is ordinarily permitted.

17. Proposed Jury Instructions and Verdict Forms

In his Scheduling Order, Judge Robreno provides that proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury be submitted no later than ten (10) days before the trial pool date. 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.

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

If a model jury instruction is submitted, for instance, from 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, the modification should be set forth in the following manner: additions should be underlined and deletions should be placed in brackets.

18. Proposed Findings of Fact and Conclusions of Law

In his Scheduling Order, Judge Robreno provides that proposed findings of fact and conclusions of law in non-jury cases be submitted at least ten (10) 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 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 from the Court 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 parties with the same information and/or documents required with respect to such expert witnesses.

J. Jury Deliberations

1. Written Jury Instructions

Judge Robreno generally provides the jury with a copy of the jury instructions.

2. Exhibits in the Jury Room

Unless cause is shown, Judge Robreno 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.

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

At the jury's request, if the transcript is available, Judge Robreno 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 Judge Robreno, counsel must remain in the courthouse during jury deliberations.

5. Taking the Verdict and Special Verdicts

Ordinarily, Judge Robreno will submit interrogatories to the jury.

6. Polling the Jury

Ordinarily, Judge Robreno will poll the jury.

7. Interviewing the Jury

Ordinarily, Judge Robreno will allow counsel to interview jurors but will set certain conditions for the interviews.

III. CRIMINAL CASES

1. Approach to Oral Argument and Motions

If requested, Judge Robreno will generally permit oral argument on a substantive motion in a criminal case.

2. Pretrial Conferences

Judge Robreno generally will hold a telephone scheduling conference with counsel in criminal cases shortly after arraignment. At the conclusion of the conference, Judge Robreno 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 Robreno, based, in part, on questions submitted by counsel. After the voir dire is concluded, the Judge will permit counsel to suggest follow-up questions. In his Scheduling Order, Judge Robreno provides for the submission of proposed voir dire questions by counsel in writing ten (10) days before the trial date.

4. Sentencing Memoranda

Judge Robreno 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 after the entry of a guilty plea or judgment (in the case of a conviction).

IV. OTHER MATTERS

1. Briefs of Cases on Appeal

Judge Robreno welcomes copies of appellate briefs when a decision rendered by him is appealed.

2. Consultation with Opposing Counsel

In general, Judge Robreno expects counsel to bring matters to his 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 my request to show photographs to the jury during opening statements, etc.

3. Professionalism

Judge Robreno will insist on 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 should be conducted from the lectern or from counsel's table. Counsel shall rise to address the Court and shall seek permission of the Court before approaching witnesses or the bench. 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. Side bar conferences are permitted when appropriate but are generally discouraged.