

UNITED STATES DISTRICT COURT
Eastern District of Pennsylvania

**JUDGE SLOMSKY'S SCHEDULING
AND MOTION POLICIES AND PROCEDURES**

Updated December 2009

I. Communications with Chambers

A. Correspondence

Written communications with the Court concerning any case assigned to Judge Slomsky's calendar should be by the filing of a pleading, motion, application or other similar filing provided for in the Federal Rules of Civil Procedure, or Local Rules of Civil Procedure.

Correspondence regarding the following is permitted, provided the letter states that counsel agrees or disagrees with the request:

- (1) When counsel are specifically requested by the Court to communicate some information to the Court by letter;
- (2) When there is an uncontested request for a continuance of the Rule 16 Scheduling Order deadlines not affecting the dates for filing a summary judgment motion and trial;
- (3) When the participation of counsel in the case is expected to be affected by an unanticipated personal matter concerning counsel, a party, a witness or counsel's immediate family, such as medical problems, vacation plans or other personal problems; or,
- (4) To confirm or advise the Court that a case has been settled, dismissed or otherwise finally disposed.

Counsel should not send copies of correspondence among and between counsel to the Court.

B. Telephone Calls

Law clerks may not render advice to counsel and have no authority to grant continuances or to give advice on substantive or procedural matters. Therefore, unless counsel is contacted by a law clerk, counsel should not ordinarily communicate with the law clerks.

When a written communication concerning a case cannot timely address a problem,

counsel may initiate necessary telephone communications with chambers. Issues appropriately addressed by telephone contact include: scheduling of conferences or proceedings, including pretrial and trial conferences; attendance of witnesses; exhibit handling or arrangements for video replay; and, arrangements for telephone conferences regarding discovery disputes.

Telephone inquiries should be directed as appropriate to either one of the following:

Judicial Secretary: Chris Murphy Casper - 267-299-7341
Contact for matters relating to civil scheduling, case management and general procedures.

Courtroom Deputy: Margaret Gallagher - 267-299-7349
Contact for matters regarding all criminal matters, courtroom procedures, trial setup, and transcripts.

Counsel are advised to submit current telephone and fax numbers to the Clerk's Office, the Courtroom Deputy and the Judicial Secretary.

C. Faxes

Facsimile transmittal of pleadings, motions, other filings or correspondence to chambers is not permitted.

D. Electronic Case Filing ("ECF") and Courtesy Copies

Counsel shall file all pleadings electronically through ECF. Notwithstanding compliance with this procedure regarding use of ECF, counsel shall send to Chambers two (2) courtesy copies of any motions (and related briefs) filed with the Clerk of the Court. In addition, in the unusual case where counsel does not file using ECF or counsel is requested to do so, two (2) courtesy copies of all pleadings and motion papers shall be delivered to Chambers, Room 5614, United States Courthouse, 601 Market Street, Philadelphia, PA 19106.

II. Pretrial Procedure

A. Rule 16 Conference and Rule 26(f) Meeting

A preliminary pretrial conference as described in Fed. R. Civ. P. 16(b) and (c) will be scheduled shortly after a defendant has filed an appearance or pleading. At least **three business days** prior to the pretrial conference, counsel must file with the Clerk a joint report of the Rule 26(f) meeting with a provisional discovery plan adopted at the conference in the form of the attached sample.

The Court relies on counsel's good faith compliance in all respects with Rule 26(f). The Rule 26(f) meeting shall take place as soon as possible and, in any event, no later than fourteen (14) days after the date of the Order scheduling the Rule 16 conference. The meeting should not be viewed as perfunctory but rather as a meaningful and substantive discussion among professionals to formulate the proposed discovery plan required by the Rule.

Outstanding motions will **not** excuse the requirements of holding the meeting and submitting the plan. Compliance is mandatory. **Parties who do not comply will have no voice at the scheduling conference and may be subject to additional sanctions.**

Topics addressed at the initial pretrial conference are those listed in Local Rule of Civil Procedure 16.1(b), Federal Rule of Civil Procedure 16(b) and (c), the progress of self-executing disclosure under Federal Rule of Civil Procedure 26(a), discovery, the preservation and production of electronically stored information, settlement and mediation proposals. A Rule 16 Scheduling Order is issued at the conclusion of the conference.

Lead trial counsel, not an associate, must attend the Rule 16 conference. Counsel shall have a thorough comprehension of the facts and shall be prepared to discuss all claims and defenses in detail, including settlement, and have authority from their clients to do so.

B. Threshold Motions

Motions to dismiss, amend, transfer, add parties and other threshold motions should be filed before the Rule 16 conference. Counsel shall be prepared to discuss the merits of any outstanding motions at the conference.

C. Settlement Conferences

Counsel are required to attend a settlement conference with Magistrate Judge Carol Sandra Moore Wells as set forth in the Scheduling Order. Counsel must adhere to Magistrate Judge Wells's requirements regarding the conduct of the conference. The parties and/or persons with full authority to settle must accompany counsel to the mediation before Judge Wells unless excused in advance by Judge Wells.

D. Mediation

In addressing settlement or early disposition of the case, counsel are reminded that participation in an early alternative dispute resolution effort is strongly encouraged. Counsel should be familiar with the Court's mediation program and Local Rule 53.2.1. Counsel are required to explore the feasibility of ADR, including court-annexed mediation, not only between themselves but with their clients as well. The specific reason for any decision not to participate in a form of early ADR shall be delineated in the Rule 26(f) report.

E. *Pro Hac Vice* Motions

Counsel moving for the *pro hac vice* admission of an attorney must file a motion setting forth in detail the attorney's admissions, the reason why the party desires the attorney to participate and why the attorney is especially qualified to do so. The form application provided by the Clerk is inadequate.

F. Confidentiality Agreements

Judge Slomsky will consider entry of stipulated confidentiality or sealing orders if the proposed order includes a detailed statement demonstrating that good cause exists for the order. See Pansy v. Borough of Stroudsburg, 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."

III. Discovery

The Federal Rules of Civil Procedure call for voluntary, cooperative discovery in a **timely** manner. The information required to be disclosed pursuant to Fed. R. Civ. P. 26(a) is required to be exchanged no later than fourteen (14) days after the date of the Order scheduling the Rule 16 conference. Compliance with the Rules is **mandatory**. Counsel are expected to act in accordance with both the **letter** and the **spirit** of the Rules.

The parties are required to commence discovery **immediately** upon receipt of notice of the Rule 16 conference. Pending motions do not excuse counsel from proceeding with discovery. Counsel will be required to report on the progress of discovery at the Rule 16 conference.

When timely discovery is not forthcoming after a reasonable attempt has been made to obtain it, the immediate assistance of the court should be sought after compliance with Local Rule 26.1(f). The certification must state **in detail** what efforts were made to resolve the dispute.

The court encourages the submission of discovery disputes by telephone conference. If a discovery motion is filed, it may be acted upon before a response is filed either with or without a telephone conference.

Electronic Discovery

It is expected that the parties will reach an agreement on how to conduct electronic discovery. In the event the parties cannot reach such an agreement before the Rule 16 scheduling conference, the court will enter an order incorporating default standards. The default order can be viewed at www.paed.uscourts.gov.

The parties shall discuss the parameters of their anticipated e-discovery at the Rule 26(f) conference and shall be prepared to address e-discovery at the Rule 16 scheduling conference with the court.

IV. Motions Practice

A. Oral Argument

Oral argument is not routinely scheduled. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading.

B. Reply Briefs

Reply briefs, addressing only issues raised in the brief in opposition and not repeating arguments in the initial brief, may be filed within seven days of service of the opponent's brief in opposition and shall be limited to ten pages. No further briefs may be filed.

V. Rule 56 Motions

Any motion for summary judgment filed pursuant to Fed. R.Civ.P. 56 shall include a separate Statement of Undisputed Facts which sets forth, in numbered paragraphs, the material facts that the moving party contends are undisputed and entitle the movant to judgment as a matter of law. Only those facts which bear on dispositive material issues shall be included in the Statement of Undisputed Facts.

The papers opposing a motion for summary judgment shall include a separate statement of material facts, responding to the numbered paragraphs set forth in the Statement of Undisputed Facts, which the respondent contends present genuine issues to be tried. The responding party also shall set forth, in separate numbered paragraphs, any additional facts which the respondent contends preclude summary judgment. All material facts set forth in the statement required to be served by the moving party shall be admitted unless controverted by the opposing party.

Statements of material facts in support of or in opposition to a motion for summary

judgment shall include specific and not general references to the parts of the record that support each of the statements. Each stated fact shall cite the source relied upon, including the page and line of any document or deposition to which reference is made.

VI. Final Pretrial Conference

The filing of a Pretrial Memorandum as described in Local Rule 16(1)(c) will be required. In the pretrial memoranda, counsel must detail the substance of the testimony of each witness. Identifying a witness as giving testimony on liability and/or damages is insufficient.

The parties shall provide the Court with one copy of each exhibit and three copies of a schedule of exhibits which shall briefly describe each exhibit. At the trial, the parties shall provide the Court with two copies of each exhibit. Exhibits shall be arranged and tabbed in a single three ring binder containing all exhibits numbered consecutively.

Sidebar conferences and objections to evidence which should have been anticipated are discouraged and are to be avoided at trial. Consequently, one of the goals of the final pretrial conference, which counsel can expect to last two to four hours, is to resolve all evidentiary issues to avoid delay at trial and to provide counsel with advance notice of evidentiary requirements. Therefore, rulings on all outstanding motions and objections to witnesses and exhibits will be made at the final pretrial conference.

Counsel shall be prepared to state their objections to witnesses and exhibits, and to respond to opposing counsel's objections. It is expected that counsel have discussed and have attempted to resolve all objections to exhibits and testimony prior to the final pretrial conference, leaving for the Court only those objections the parties could not resolve.

Any party intending to use depositions, written or video, at trial must notify all other parties in the pretrial memorandum. Objections to deposition testimony shall be made prior to the pretrial conference in writing, setting forth the page and line numbers of the challenged testimony and a clear statement for the basis of the objection. The objecting party must provide the Court with a copy of the deposition transcript with the challenged testimony highlighted.