

Magistrate Judge Diane M. Welsh

Judge Welsh was born on April 19, 1954 in Philadelphia, Pennsylvania. She received a B.A. from LaSalle University in 1976 and a J.D. from Villanova University in 1979. She served as counsel to the Pennsylvania Senate Judiciary Committee for one year. From 1981 until 1984 she was a Deputy District Attorney in Bucks County, Pennsylvania. From 1984 until 1994 she was in private practice in Montgomery County, Pennsylvania. Judge Welsh was appointed as a Magistrate Judge of the United States District Court for the Eastern District of Pennsylvania on February 22, 1994.

PRELIMINARY GENERAL MATTERS

1. Correspondence With the Court

Judge Welsh permits correspondence from counsel, but usually only on matters such as scheduling, extensions of time, and uncontested matters between counsel. Otherwise, she prefers formal motions to be filed in accordance with Local Rule of Civil Procedure 20.

2. Communication With Law Clerks

Judge Welsh permits counsel to talk with her law clerks regarding administrative matters only. Lawyers should not solicit legal advice from law clerks.

3. Telephone Conferences

Judge Welsh generally prefers counsel to come to chambers for conferences. However, she does utilize telephone conferences for handling matters such as scheduling changes, extensions of time, and non-complex discovery disputes, particularly those arising during the course of a deposition.

4. Oral Arguments and Evidentiary Hearings

Judge Welsh does not set aside any special days or times for oral arguments or evidentiary hearings. These matters are scheduled by her law clerk or Courtroom Deputy who will attempt to accommodate the schedules of counsel.

5. Pro Hac Vice Admissions

Judge Welsh prefers that a written motion for *pro hac vice* admission be filed before the filing of any papers, or before the day the attorney first appears in court.

MAGISTRATE JUDGE DIANE M. WELSH

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences

Judge Welsh conducts scheduling conferences and final pretrial conferences in accordance with Federal Rule of Civil Procedure 16 and Local Rule of Civil Procedure 21. The scheduling conference is held promptly upon the case being referred to her and will result in the entry of a scheduling order. A sample of a typical scheduling order is attached. The final pretrial conference is generally held two to four days before trial.

Continuances and Extensions

1. General Policy

Judge Welsh will normally consult counsel before establishing a briefing scheduling, oral argument, evidentiary hearing, discovery deadline, or trial date and expects adherence to the dates that have been established.

2. Requests for Extensions and Continuances

Generally, Judge Welsh will approve an uncontested request for a continuance or extension and ordinarily a letter or phone conference will suffice stating the reasons for the request and the reasonable amount of additional time counsel believe is necessary.

When a request for a continuance or extension is contested, Judge Welsh prefers that it be made by formal motion.

General Motion Practice

1. Oral Argument on Motions

Judge Welsh rarely schedules oral argument on motions. Counsel should request oral argument at the time the motion or response is filed if they consider it necessary.

MAGISTRATE JUDGE DIANE M. WELSH

2. Reply and Surreply Briefs

Judge Welsh will generally grant permission to file reply and surreply briefs. Requests for time to do so may be made by letter or telephone.

3. Chamber Copies of Motion Papers

Judge Welsh appreciates a courtesy copy of all motion papers being sent to her chambers.

Discovery Matters

1. Length of Discovery Period and Extensions

Judge Welsh usually allows three to four months for the completion of discovery; however, she will consider the informed view of counsel as to the time required for discovery in a particular case. Joint requests for extensions of time will generally be granted. Judge Welsh will usually permit discovery after the deadline as long as it does not prejudice the opponent and will not delay the filing of dispositive motions or trial.

2. Discovery Conferences and Dispute Resolution

Judge Welsh requires that the parties seriously attempt to resolve a discovery dispute before filing a motion. The lack of an attached certification pursuant to Local Rule of Civil Procedure 24(f) may result in the motion being summarily dismissed. Judge Welsh encourages telephone conferences, in lieu of motion practice, to resolve routine discovery disputes. More complex discovery matters will require adherence to Local Rules of Civil Procedure 20 and 24 followed by a chambers conference.

3. Confidentiality Agreements

Counsel are certainly permitted to enter into confidentiality agreements when appropriate. Judge Welsh, however, will not ordinarily approve such an agreement as a stipulated order.

4. Expert Witness

Expert witnesses shall be disclosed as soon as they have been identified by counsel and by not later than the end of the discovery period. Expert reports are to be exchanged on or before the dates set in the Scheduling Order. If necessary, Judge Welsh will allow additional time for expert depositions.

MAGISTRATE JUDGE DIANE M. WELSH

Settlement

1. General Approach to Settlement

Judge Welsh conducts settlement conferences when the parties request one or upon referral from a District Court Judge. Lead trial counsel must attend the settlement conference with the parties and with the persons or persons having full authority to negotiate and to settle the case on any terms. If circumstances make personal appearance too burdensome or expensive, parties may be available by telephone. At least five court days before the conference, counsel must submit to Chambers a short and concise preconference memorandum (see attached form of Settlement Conference Summary). Counsel are expected to be prepared to discuss all legal and factual issues in the case and to put forth their best efforts to achieve a settlement on the day of the conference. This is not a perfunctory proceeding. Judge Welsh will generally allocate at least a half day, and often will allocate a full day for a settlement conference.

2. Referral of Settlement Negotiations to Another Magistrate Judge or District Judge

In non-jury cases where the parties have consented to trial before Judge Welsh, she will refer settlement negotiations to another Magistrate Judge.

Arbitration

1. General Approach to Arbitration Cases

Judge Welsh has no special practices or procedures for arbitration cases that differ from those used in cases certified as involving more than \$100,000.00 except that generally all discovery should be completed by the time of the arbitration hearing.

2. Scheduling of Trial De Novo From Arbitration

When a demand for trial *de novo* is filed after arbitration, Judge Welsh promptly schedules a status conference to explore the possibility of settlement and, if necessary, to schedule a trial date.

Proposed Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

Unless specifically provided for by separate order, Judge Welsh requires the use of the short form pretrial memorandum set forth in Local Rule of Civil Procedure 21(c).

MAGISTRATE JUDGE DIANE M. WELSH

Trial Procedure

1. *Scheduling of Cases*

When parties consent to have their cases tried before Judge Welsh, she and the parties decide upon a mutually convenient date certain for trial.

2. *Conflicts of Counsel*

Counsel generally do not have a conflict with the trial date since the date is set after consultation with all counsel; however, if an unexpected personal or professional conflict arises, counsel should first notify opposing counsel to determine if a request to reschedule will be opposed. Thereafter, counsel notify Judge Welsh of the conflict by conference call or letter specifying the nature of the conflict and whether or not a request to reschedule is contested.

3. *Cases Involving Out-of-Town Parties or Witnesses*

Counsel are expected to consult with all parties and witnesses before agreeing to fix the date for trial; therefore, problems with parties and witnesses generally do not arise.

4. *Notetaking by Jurors*

Judge Welsh generally does not permit notetaking by jurors, but will permit it in the appropriate case.

5. *Trial Briefs*

Judge Welsh encourages the submission of trial briefs.

6. *Voir Dire*

Judge Welsh requests that counsel submit proposed *voir dire* questions with the final pretrial memorandum. Judge Welsh conducts most of the *voir dire*, affording counsel the opportunity to conduct supplemental *voir dire* following Judge Welsh's questioning.

7. *Side Bars*

Judge Welsh prefers to avoid side-bar conferences and encourages counsel to raise issues before trial begins or during recesses so that lengthy arguments can be conducted when the jury is not present in the courtroom.

MAGISTRATE JUDGE DIANE M. WELSH

8. *In Limine Motions*

Motions *in limine* should be filed with the final pretrial memorandum and will usually be ruled upon at the final pretrial conference unless it is appropriate to defer a ruling until some time during the trial.

9. *Examination of Witnesses Out of Sequence*

Judge Welsh will generally permit counsel to call witnesses out of turn for the convenience of the witnesses, subject to objection by opposing counsel.

10. *Opening Statements and Summations*

Judge Welsh has no fixed rule on time limits for opening statements or summations.

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

Judge Welsh will permit more than one attorney to examine different witnesses or to argue different points before the Court.

12. *Examination of Witnesses Beyond Redirect and Recross*

Judge Welsh has no general policy regarding further examination of a witness beyond redirect and recross. Where appropriate she will permit it so long as it is not repetitive and not beyond the scope of the previous questioning by opposing counsel.

13. *Videotaped Testimony*

Judge Welsh requests that counsel examine all videotaped depositions in an effort to resolve objections and edit the videotape. Any objections which cannot be resolved by counsel should be raised in the final pretrial memorandum and will be ruled upon at the final pretrial conference.

14. *Reading of Material Into the Record*

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

MAGISTRATE JUDGE DIANE M. WELSH

15. Preparation of Exhibits

Judge Welsh requires all exhibits to be pre-marked and pre-exchanged. Counsel should provide the Court with one copy of each trial exhibit accompanied by an index.

16. Offering Exhibits Into Evidence

Judge Welsh prefers that counsel offer an exhibit into evidence either as the witness qualifies it, or at the close of testimony by the witness testifying about the exhibit, rather than at a later time.

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

Motions for judgment as a matter of law, or motions for judgment on partial findings in non-jury trials, may be submitted in writing or orally. Judge Welsh will ordinarily request oral argument regarding these motions.

18. Proposed Jury Instructions and Verdict Forms

Judge Welsh requires counsel to confer and attempt to agree upon jury instructions. The proposed jury instructions should relate to the elements of the parties' causes of action, any defenses thereto, and the question of damages. There should be no submissions regarding general points such as the meaning of preponderance of the evidence, credibility of witnesses, role of the jury, etc. Counsel should *jointly* submit proposed jury instructions, ordered in logical sequence, together with a table of contents. Any instruction on which counsel cannot agree shall be marked as "disputed," and shall be included within the jointly submitted instructions in the place the party proposing the instruction believes it should be given. Argument and authority for and against each disputed instruction shall be included as part of the joint submission, on separate sheets directly following the disputed instruction. Counsel are also required to *jointly* submit proposed jury interrogatories or a verdict sheet. Whenever possible, counsel should provide the Court with copies of the proposed jury instructions and jury interrogatories on either a 3.5" or 5.25" IBM compatible computer disc, in a format readable by WordPerfect 5.1. If possible, Judge Welsh will rule on any objections at the final pretrial conference. Prior to giving the jury charge, counsel will be provided with a copy of the final jury instructions and verdict sheet (or jury interrogatories) and will be given an opportunity to make corrections, suggest additions, or take exception.

MAGISTRATE JUDGE DIANE M. WELSH

19. Proposed Findings of Fact and Conclusions of Law

In non-jury cases, Judge Welsh requires submission of proposed findings of fact and conclusions of law with the filing of the final pretrial memorandum.

Jury Deliberations

1. Written Jury Instructions

Judge Welsh generally gives the jury a copy of the instructions in a complex case, but not in a routine case.

2. Exhibits in the Jury Room

Judge Welsh usually permits all exhibits admitted into evidence to be sent out with the jury unless there is an objection.

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

Judge Welsh will generally permit testimony to be read back and audiotapes or videotapes to be replayed; however, she will consult with counsel before making a decision.

4. Availability of Counsel During Jury Deliberations

Judge Welsh permits counsel to return to their offices provided they are able to return to the courtroom within 15 minutes.

5. Taking the Verdict and Special Interrogatories

Judge Welsh has no usual practice regarding special or general verdicts. She usually submits interrogatories to the jury.

6. Polling the Jury

Judge Welsh will grant a request to poll the jury.

7. Interviewing the Jury

After a verdict has been recorded and the jury has been discharged, Judge Welsh will permit counsel to interview the jurors. The jurors are told they are permitted to talk to counsel and others about the case but that they are not required to do so.

MAGISTRATE JUDGE DIANE M. WELSH

CRIMINAL CASES

1. Approach to Oral Argument and Motions

Judge Welsh encourages oral argument on motions in criminal cases.

2. Pretrial Conferences

Judge Welsh does not conduct pretrial conferences in criminal cases.

3. Voir Dire

Judge Welsh conducts all *voir dire* in criminal cases but encourages counsel to submit proposed *voir dire* questions.

4. Sentencing Memoranda

Judge Welsh permits both the Government and the defense to submit sentencing memoranda.

OTHER GENERAL MATTERS

Judge Welsh likes to receive copies of the appellate briefs when a decision by her is appealed.

Judge Welsh prefers to have copies of all written motions delivered to Chambers in advance of being presented in Court.

Counsel may contact her law clerk or courtroom deputy if they have any questions about her practices or procedures.