

# **The Honorable Anita B. Brody**

United States District Court for Eastern District of Pennsylvania  
James A. Byrne United States Courthouse  
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## **POLICIES AND PROCEDURES\***

### **GENERAL MATTERS**

#### **1. Correspondence with the Court**

Judge Brody permits correspondence by email and fax from counsel concerning urgent administrative matters. Counsel must address all other matters by motion. If Counsel wishes to address any other matter by letter, that is fine, but the letter must be designated as a motion on ECF. This will trigger the need for a response from opposing counsel and signify to the court that action is required.

#### **2. Communications with Law Clerks**

Judge Brody permits counsel to email and speak with her law clerks about urgent administrative or scheduling matters. Communication is also permissible when designated by Judge Brody.

#### **3. Scheduling Policy**

Judge Brody tries to accommodate reasonable requests from counsel regarding scheduling. If counsel agree on a scheduling issue, a letter docketed on ECF requesting Judge Brody's approval is often sufficient. If time does not permit a letter, an attorney may fax the request to chambers.

#### **4. Continuances and Extensions**

Judge Brody is generally accommodating with respect to initial requests for extensions; she is less accommodating with respect to subsequent requests. Although Judge Brody adheres to the general policy that no associate should be forced to "pull an all-nighter" to comply with a scheduling deadline, once the dates are established, reasonable compliance is expected. It is unlikely that Judge Brody will grant a continuance once a case has been set for trial. A party seeking an extension should provide a date certain for the requested revised deadline.

#### **5. Telephone Conferences**

Judge Brody will often arrange for a telephone conference to deal with less complex matters, including discovery disputes.

#### **6. Filings with the Clerk of Court**

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\* *Disclaimer: This document is not intended to be read as a statute but rather as a compilation of best intentions.*

Judge Brody insists that all attorneys appearing before her register on ECF and submit official filings with the court directly through ECF.

## **CIVIL CASES**

### **Initial Pretrial Conference**

#### **1. Initial Pretrial Conference Notice**

Judge Brody will timely notice an initial pretrial scheduling conference (Rule 16). The notice establishes certain guidelines that Judge Brody will follow throughout the litigation and outlines the matters that will be considered at the scheduling conference. As stated in the Notice, counsel must submit a joint proposed discovery plan via ECF to the court no later than 3 days prior to the conference.

#### **2. Requirements for Participation in the Conference**

The Judge expects trial counsel to attend the conference in person. All counsel wishing to participate in the conference must enter an appearance on ECF prior to the conference. Additionally, all counsel wishing to participate and seeking to be admitted pro hac vice must file a pro hac vice motion and pay the associated fee prior to the conference. Counsel must arrive at the conference with settlement authority and arrange for the client to be available by telephone for the duration of the conference.

#### **3. Scheduling Order**

After the scheduling conference, Judge Brody issues a scheduling order establishing discovery and dispositive motions deadlines. After all dispositive motions have been decided or the deadline for dispositive motions has passed, Judge Brody will enter a trial scheduling order establishing deadlines for pretrial filings and setting dates for a pretrial conference/settlement conference and trial.

### **Settlement and Arbitration**

#### **1. Settlement**

Judge Brody will inquire as to settlement at every opportunity. Unless the parties opt for a particular method of ADR, Judge Brody will refer the case to a magistrate judge for a formal settlement conference. If counsel would prefer to attend an early settlement conference, they can request at the pretrial conference that such a provision be included in the scheduling order.

#### **2. Arbitration**

Judge Brody does not hold pretrial scheduling conferences in arbitration cases. If a trial de novo is demanded, Judge Brody will hold a pretrial conference to explore settlement and will schedule the trial as soon as possible.

### **Discovery Matters**

#### **1. Length of Discovery Period**

Except in complex cases, Judge Brody will allow 90 to 120 days for discovery. She will grant additional time if necessary upon request.

## **2. Discovery Conferences and Dispute Resolution**

Judge Brody expects the parties to resolve discovery disputes on their own. If they cannot, she will hold a telephone conference or an in-chambers conference, depending on the number of counsel and issues. Judge Brody requires that all discovery disputes be addressed by motion. At the discretion of counsel, however, a letter designated as a motion may be appropriate.

## **3. Confidentiality Agreements**

The parties may enter into private confidentiality agreements. However, Judge Brody will not approve and/or adopt the parties' confidentiality agreement as an Order of the Court.

## **4. Expert Witnesses**

Counsel should arrange for the exchange of written expert reports without the assistance of the court. Judge Brody will permit counsel to depose experts when appropriate. Furthermore, Judge Brody expects that counsel will identify expert witnesses well in advance of trial, and that the parties will videotape the deposition of any expert who will be unavailable at trial.

## **General Motions Practice**

### **1. Filing of Motions**

As explained earlier, all requests, except those that are urgent, must be filed as motions. Formal motion formatting is not always necessary; a letter filed as a motion and a letter filed as a response may be appropriate.

### **2. Length of Briefs and Memoranda**

Briefs or memoranda of law filed with the court must not exceed 35 pages unless otherwise authorized by the court. Shorter briefs and memoranda are recommended.

### **3. Naming of Responses and Replies to Motions**

Particularly in complex cases with multiple parties and dispositive motions, Judge Brody encourages parties to title motions and responses in a logical and helpful manner by including both descriptive titles and docket entry numbers. For example: "Response to Plaintiff's Motion # 35 (Res Judicata) and Motion # 42 (Statute of Limitations)" and "Reply in Support of Plaintiff's Motion # 35 (Res Judicata) and Motion # 42 (Statute of Limitations)."

### **4. Reply and Surreply Briefs**

Although sometimes unnecessary, replies are automatically allowed for all motions, and a party need not seek leave to file a reply. For a Rule 56 motion, a surreply is automatically allowed. For all other motions, surreply briefs are discouraged and a party must move for leave to file a surreply.

When no order or applicable rule imposes a deadline for filing a reply or surreply brief, the deadline for filing a reply or surreply is 10 days after the filing of an opposing party's brief.

## **6. Motions for Summary Judgment**

All summary judgment motions and responses must contain a statement of undisputed and disputed facts with citations to the record, including to the specific exhibit, page, and line number.

In all cases, a party is granted 21 days to file a response in opposition to a motion for summary judgment and 10 days to file a reply or surreply.

## **7. Oral Arguments and Evidentiary Hearings**

Judge Brody will hold oral argument if she believes it will assist her in deciding the motion. Judge Brody will also consider requests from counsel to hold oral argument on a particular motion. The law clerk assigned to the case, in conjunction with the Judge's secretary/civil deputy, handles scheduling for oral arguments and evidentiary hearings. Unless the parties arrange for more time in advance, counsel should assume a 20 minute limit.

## **Injunctions**

### **1. Scheduling and Expedited Discovery**

When a temporary restraining order is requested, Judge Brody will schedule a conference to decide the TRO as soon as possible. Unless the urgency of the circumstances precludes notice to opposing counsel, Judge Brody requires all counsel to be present. Judge Brody schedules preliminary and permanent injunction hearings as soon as possible and combines the two hearings if feasible. Usually, she permits expedited discovery for injunctive matters.

### **2. Proposed Findings of Fact and Conclusions of Law**

Judge Brody may require submission of proposed findings of fact and conclusions of law.

## **Scheduling of Trial**

### **1. Scheduling Conflicts**

Judge Brody prefers counsel to notify her by letter concerning professional and personal scheduling conflicts affecting the trial schedule. If absolutely necessary, counsel may contact Judge Brody's secretary/civil deputy by telephone and then confirm the request in writing.

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

Judge Brody rarely changes her trial schedule for the convenience of out-of-town parties or witnesses; however, she will consider special requests that are brought to her attention before the case is set for trial.

## **Trial Procedure**

### **1. Trial Scheduling Order**

In an order setting the date for trial, Judge Brody will also schedule a final pretrial conference and settlement conference. In all cases, the parties must submit pretrial memoranda in accordance with Local Rule 16.1. In jury cases, the parties must also submit voir dire questions, proposed jury instructions, proposed verdict sheets, and motions in limine. In non-jury cases, the

parties must also submit separate trial memoranda and motions in limine. In preparation for a final pretrial conference, Judge Brody expects counsel to communicate with each other on a number of matters, including objections to exhibits, expert depositions, and stipulations. The parties must submit prior to the final pretrial conference any exhibits that are in dispute.

## **2. Pretrial Memoranda**

Judge Brody requires that parties submit pretrial memoranda. The trial scheduling order provides instructions on the information the parties must include in their memoranda.

## **3. Trial Memoranda**

In non-jury cases, Judge Brody requires that parties submit separate trial memoranda that address important legal issues and include citation to legal authority.

## **4. Motions In Limine**

Judge Brody expects all issues that can be anticipated prior to trial to be raised in motions in limine. Motions in limine should be accompanied by memoranda and will usually be addressed at the final pretrial conference. Judge Brody may, however, defer ruling on motions in limine until trial.

## **5. Voir Dire**

In civil cases, Judge Brody permits counsel to conduct the voir dire in her presence; however, proposed voir dire should not exceed 15 questions. Initial questioning is limited to the questions that are submitted.

## **6. Jury Instructions**

The parties must file their proposed jury instructions on ECF and email a copy of them as an attachment in Microsoft Word format to the law clerk assigned to the case. Normally, Judge Brody will distribute a copy of her proposed charge early in the trial, and then conduct a conference to review the proposed charge, including any critiques from counsel on substantive issues. If a new issue arises, Judge Brody will permit submission of supplemental jury instructions up until the close of evidence. It is Judge Brody's usual practice to distribute to all counsel a written copy of the final version of the charge before closing arguments.

## **7. Verdict Sheets**

Counsel are required to submit proposed verdict sheets and any special interrogatories.

## **8. Exhibits**

Judge Brody requires that exhibits be marked and exchanged prior to trial. Judge Brody encourages the use of computerized and other electronic devices to present evidence.

## **9. Disputes over Videotaped Testimony**

Objections to videotaped testimony should be submitted before the final pretrial conference. A transcript of the testimony should also be provided.

## **10. Offers of Proof**

All offers of proof as to the testimony of witnesses or the admissibility of documents must be raised and addressed at the final pretrial conference if possible. If other evidentiary issues arise and an offer of proof is necessary, counsel will usually be called to side bar.

#### **11. Use of Multiple Attorneys During Trial**

During the trial, each party may have different attorneys examine witnesses and argue legal points. Each party may not, however, use more than one attorney to examine a particular witness or argue a specific legal point.

#### **12. Note-Taking by Jurors**

Judge Brody decides whether note-taking will be permitted on a case by case basis, taking into consideration requests from counsel or from the jurors.

#### **13. Opening Statements and Summations**

Generally, Judge Brody will not impose time limits on opening statements or summations and does not require use of the lectern. Judge Brody expects counsel to refrain from objecting during closing argument if the objection can wait until counsel has finished. If an objection is necessary, it should be stated softly and will usually be ruled upon at the conclusion of the summation. Judge Brody may, if requested, cure the objectionable statement in her charge.

#### **14. Side Bars**

Judge Brody permits side bar conferences during trial to address matters that were unanticipated prior to trial. To the extent possible, counsel are directed to raise potential issues prior to trial to ensure that side bars are kept to a minimum.

#### **15. Examination of Witnesses Out of Sequence**

Judge Brody makes every effort to accommodate counsel regarding the scheduling of witnesses. Depending upon the circumstances, Judge Brody may permit counsel to take the testimony of a witness out of turn.

#### **16. Examination of Witnesses Beyond Redirect and Recross**

Upon request, Judge Brody may permit further examination of a witness after redirect or recross has been completed.

#### **17. Reading of Material into the Record**

Judge Brody has no overall practice or policy on reading stipulations, pleadings, or discovery materials into the record and will consider the preference of counsel.

#### **18. Offering Exhibits into Evidence**

Unless otherwise necessary, counsel may wait until the close of his or her case to move for the admission of exhibits.

#### **19. Directed Verdict Motions**

Counsel may move for a directed verdict either orally or in writing. Judge Brody usually conducts oral argument on such a motion.

## **20. Proposed Findings of Fact and Conclusions of Law**

In non-jury cases, after trial, Judge Brody requires submission of proposed findings of fact and conclusions of law that include citations to the notes of testimony.

## **Jury Deliberations**

### **1. Written Jury Instructions**

Judge Brody does not routinely give the jury a copy of her instructions; however, if requested by counsel or the jury, she will consider doing so.

### **2. Exhibits in the Jury Room**

Counsel are instructed to confer as to which exhibits should go out with the jury. Judge Brody will rule upon disputed exhibits.

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

Judge Brody will evaluate jury requests to play back portions of recorded or videotaped testimony on a case by case basis.

### **4. Availability of Counsel During Jury Deliberations**

Judge Brody permits counsel to leave the courthouse during deliberations but expects them to be available by telephone and remain close to the courthouse.

### **5. Taking the Verdict and Special Interrogatories**

The courtroom deputy usually takes the verdict.

### **6. Polling the Jury**

Judge Brody will ask the courtroom deputy to poll the jury upon request.

### **7. Interviewing the Jurors**

After the verdict has been recorded and the jury discharged, Judge Brody permits counsel to speak with the jurors. Judge Brody advises the jurors that they are permitted to speak with counsel, but instructs them that it is their personal choice and that they are not required to do so. All counsel are expected to respect each juror's choice in this regard.

## **CRIMINAL CASES**

### **1. Generally**

The above procedures set forth for civil cases apply, unless special procedures are set forth below.

### **2. Voir Dire**

Judge Brody conducts the entire voir dire but receives proposed questions. After voir dire, individual jurors will be called to side bar to respond to any unanswered questions or for further questioning by Judge Brody or counsel. Counsel are advised to listen carefully to Judge Brody's instructions at the final pretrial conference on how voir dire will be conducted.

### **3. Suppression Motions**

When a suppression motion is filed, Judge Brody requires that parties submit tentative proposed findings of fact and conclusions of law in advance of the suppression hearing. After the hearing, Judge Brody may also require the parties to submit amended proposed findings of fact and conclusions of law with citation to the notes of testimony if feasible.

#### **4. Sentencing Memoranda**

Judge Brody expects the submission of sentencing memoranda by both the government and the defendant well in advance of the sentencing.