

**Honorable Marilyn Heffley
United States Magistrate Judge
United States Courthouse
601 Market Street, Room 3040 Philadelphia, Pennsylvania 19106
(267)299-7420
Fax: (267) 299-5053
Courtroom Deputy Clerk: Sharon A. Hall-Moore**

Judge Marilyn Heffley, originally from Harrisburg, Pennsylvania, graduated *summa cum laude* from the University of Pittsburgh where she was honored as a Marshall Scholar and University of Pittsburgh Chancellor's Scholar. Judge Heffley received her J.D. from Temple University Beasley School of Law in 1984.

The majority of Judge Heffley's legal career was spent at Reed Smith LLP (September 1985 to October 2005 and May 2011 to April 2014) as a litigator representing both plaintiffs and defendants in a wide range of civil litigation, including commercial, consumer lending, financial services, insurance, labor and employment, environmental, oil and gas, product liability and toxic tort matters. From November 2005 to May 2011, Judge Heffley served as Sunoco, Inc.'s Assistant General Counsel and Head of Litigation. At Sunoco, she founded the Litigation Group within the company's legal department and managed its nationwide portfolio of litigation and records management program. Judge Heffley was sworn in as a United States Magistrate Judge on April 21, 2014.

MAGISTRATE JUDGE ASSIGNMENT:

Magistrate Judge Heffley is currently assigned to Judges Smith, Kearney, and Marston.

STANDING ORDERS:

See settlement conference order below.

JUDGE HEFFLEY'S GENERAL POLICIES AND PROCEDURES

- 1. Professionalism.** Judge Heffley expects counsel and the parties to conduct themselves in a civil, polite, and professional manner at all times. All proceedings will begin at the scheduled time and punctuality is expected.
- 2. Correspondence with the Court.** Judge Heffley permits correspondence from counsel on all matters. When appropriate, Judge Heffley may permit letter motions in lieu of formal motions. When letters are submitted in lieu of motions, they must also be filed on the Court's docket.
- 3. Communications with Law Clerks.** Judge Heffley permits counsel to speak with her law clerks regarding procedural matters, but never on the merits of the case.

Last updated on December 1, 2020

4. Telephone Conferences. Judge Heffley prefers that counsel come to chambers for all conferences. Telephone conferences may be used, however, for dealing with matters such as scheduling changes, extensions of time, and routine discovery disputes. Counsel seeking any such relief is responsible for initiating the conference by contacting Judge Heffley's courtroom deputy.

5. Oral Arguments and Evidentiary Hearings. Oral arguments and evidentiary hearings may be scheduled through Judge Heffley's courtroom deputy. All reasonable efforts will be made to accommodate the schedules of counsel.

6. Pro Hac Vice Admissions. Judge Heffley will permit oral motions for pro hac vice admissions on the day that the attorney to be admitted first appears. On or before the date of the non-admitted attorney's first appearance, counsel must prepare an appropriate order to memorialize the pro hac vice admission.

CIVIL CASES

Pretrial Procedure

Pretrial Status Conference. Judge Heffley will schedule status conferences, settlement conferences, and final pretrial conferences as required by the circumstance of each particular case. Judge Heffley will schedule either telephone conferences or conferences in chambers to resolve any issues that may arise as the case progresses. Judge Heffley does expect, however, that counsel will make good faith efforts to resolve any disputed matter before seeking the involvement of the Court. Counsel are expected to be mindful of the mandate of Fed. R. Civ. P. 1 that the procedural rules shall "be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding."

Continuances and Extensions

General Policy. Judge Heffley expects counsel to comply with the requirements set out in the Court's initial Rule 16 order. A scheduling order will be issued after a conference is convened with the parties. The Court expects that counsel will provide all information necessary to set realistic and firm deadlines. Counsel will be encouraged to consider settlement during all phases of the litigation and, alternatively, to consider discovery staging agreements that permit productive settlement discussions before the parties are required to bear the extensive costs of protracted discovery. Requests for extensions are strongly discouraged and will only be entertained upon a showing that circumstances beyond the reasonable expectation of counsel have hampered the progress of the case. Judge Heffley will permit a letter motion in lieu of a formal motion seeking an extension, and will also consider requests for extensions brought to the attention of her courtroom deputy, who will schedule either a telephone or chambers conference.

General Motions Practice

1. **Oral Argument on Motions.** Judge Heffley will schedule oral argument on motions if it appears likely to be helpful to the Court's resolution of the matter. Counsel may request oral argument if considered appropriate.

2. **Reply and Surreply Briefs.** Judge Heffley will permit reply briefs. Judge Heffley will not normally permit surreply briefs, and counsel who wish to file a surreply must first seek permission of the Court before such a brief will be accepted.

3. **Chambers Copy of Motions Papers.** Judge Heffley expects a courtesy copy of all motion papers to be sent directly to chambers. Judge Heffley expects that these papers will be submitted by hand delivery or overnight courier.

Discovery Matters

1. **Length of Discovery Period and Extensions.** Judge Heffley normally permits from 90 to 120 days for the completion of discovery; however, she will consider the informed view of counsel as to the time that will be required for discovery in a particular case. Additional time will be allowed in complex cases or upon a specific showing of need. Judge Heffley will also consider staged discovery. She will encourage that the most essential discovery be undertaken early in the case so that it will foster early settlement opportunities and minimize the costs of litigation.

2. **Discovery Conferences and Dispute Resolution.** Discovery should be conducted in a voluntary, candid, cooperative, and timely manner. Judge Heffley expects the parties to resolve discovery disputes without Court intervention. Should counsel be unable, in good faith, to resolve their dispute, Judge Heffley permits contact with the Court through her courtroom deputy to set up telephone or chambers conferences to resolve outstanding issues. Generally, Judge Heffley prefers letter memoranda outlining the discovery dispute. When such letter memoranda are submitted, they must also be filed on the Court's docket. Such memoranda should include the steps taken to resolve the dispute as well as the relief requested. **Except for subpoenas issued to non-parties, the use of motion practice in discovery matters is discouraged.**

3. **Confidentiality Agreements.** Judge Heffley will permit confidentiality agreements subject to the requirements of *Pansy v. Borough of Stroudsburg*, 23 F. 3d 772, 786 (3d Cir. 1994).

4. **Expert Witnesses.** The parties will identify expert witnesses and provide expert reports pursuant to the Rule 16 scheduling order entered in the particular case. A failure to do so may bar the use of the expert's testimony at trial.

Settlement

1. When Jurisdiction Remains with the District Court.

a. Settlement Conference Memoranda. Judge Heffley will normally require counsel to submit a confidential settlement conference summary and case synopsis one week before the actual conference. The case synopsis should not exceed five (5) pages. These summaries shall be submitted to the Court only, and should not be filed with the Clerk's Office or shared with other parties. Judge Heffley expects that these submissions will include a candid discussion of the submitting party's strengths and weaknesses in the case as well as an offer/demand settlement proposal. Settlement conference summaries and case synopsis may be e-mailed to Chambers_Heffley@paed.uscourts.gov.

b. Demands and Offers. Judge Heffley requires plaintiff (and defendant to any affirmative claim) to set out a written good faith demand prior to the conference. The defendant (or the other responding party) is required to respond to that demand in writing. The demand and response should be provided to the Court as part of each counsel's settlement conference submission.

c. Parties' Attendance and Participation. Judge Heffley will require that each party or a representative of each party with knowledge of the case and settlement authority attend the conference in person. In very exceptional circumstances, with advance approval, Judge Heffley will permit that person to participate in the conference by telephone.

d. Follow-up Contact. Judge Heffley will, if appropriate, continue to work with counsel after the settlement conference if the matter is not resolved at the conference.

2. When Jurisdiction for All Purposes Has Been Referred to Judge Heffley.

a. Jury Matters. Judge Heffley may, after discussion with counsel, conduct her own settlement conferences using the procedures referred to above. If that is not appropriate, and if a conference is deemed worthwhile, Judge Heffley will seek the assistance of another magistrate judge to assist with settlement discussions.

b. Nonjury Matters. Judge Heffley will not take part in settlement discussions in a nonjury matter. A settlement conference may, however, be arranged with another magistrate judge.

Arbitration

1. General Approach to Arbitration Cases. Judge Heffley has no special practices or procedures for arbitration cases.

2. Scheduling Trial De Novo from Arbitration. Judge Heffley will schedule trial promptly when a demand for trial de novo is filed following arbitration.

Proposed Pretrial Memoranda

1. Required Form of Pretrial Memoranda. Unless specifically provided for by separate order, Judge Heffley will require the use of the short form pretrial memorandum described in Rule 16.1(c) of the Local Rules of Civil Procedure for the Eastern District of Pennsylvania. In certain cases, Judge Heffley may require counsel to stipulate to uncontested facts as generally set out in Local Rule 16.1(d)(2)(b)(2)(A-E).

Trial Procedure

1. Scheduling of Cases. Judge Heffley's cases will be specially listed for trial based upon the Court's calendar and the availability of counsel, the parties, experts, and critical witnesses.

2. Conflicts of Counsel. Given the manner of scheduling, conflicts will normally not occur. Should a professional or personal conflict arise that may affect the trial schedule, counsel shall immediately notify opposing counsel and the Court. The Court will hold a conference to address the conflict.

3. Parties or Witnesses. Judge Heffley will make all reasonable attempts to accommodate the schedules and availability of parties and witnesses.

4. Note-Taking by Jurors. Judge Heffley will consider note-taking by jurors on a case-by-case basis.

5. Trial Briefs. Judge Heffley encourages the submission of trial briefs when they are necessary or likely to be helpful to the Court.

6. Voir Dire. Judge Heffley conducts voir dire in civil cases. Counsel may submit proposed voir dire questions at the final pretrial conference and may, when appropriate, conduct supplemental voir dire following Judge Heffley's questions.

7. Sidebar. Judge Heffley strongly discourages the use of sidebar conferences. Counsel are encouraged to raise particular evidentiary issues before trial or during recesses or adjournments.

8. In Limine Motions. Judge Heffley requires that in limine motions be filed and served in advance of the final pretrial conference so as to give her an opportunity to consider the merits of each motion.

9. Examination of Witnesses Out of Sequence. Judge Heffley will permit witnesses to be taken out of turn in appropriate circumstances.

10. Opening Statements and Submission. Judge Heffley will discuss with counsel the length of time necessary and appropriate for opening and closing statements, but will give counsel reasonable latitude.

11. Examination of Witnesses or Argument by More Than One Attorney. Judge Heffley will normally not permit more than one attorney for the party to examine the same witness, and will normally not permit more than one attorney to present argument on behalf of the party on the same point.

12. Examination of Witnesses Beyond Redirect or Recross. Judge Heffley will generally restrict counsel from examining witnesses beyond redirect and recross.

13. Videotaped Testimony. Judge Heffley requires counsel to review all videotaped depositions and to have them edited so as to fairly present only the essential evidence of the witness involved. Counsel are expected to resolve all matters pertaining to objections before offering the videotape into evidence.

14. Reading of Material Into the Record. Judge Heffley will request that counsel read stipulations and pleadings into the record. Judge Heffley discourages reading depositions into the record. She prefers that a witness respond to the questions of counsel in open court.

15. Preparation of Exhibits. Prior to commencement of trial, counsel shall pre-mark and exchange exhibits. Counsel shall provide Judge Heffley with two sets of exhibits in a tabbed, three-ring binder, together with a schedule of exhibits that briefly describes each exhibit.

16. Offering Exhibits Into Evidence. Judge Heffley expects counsel to attempt in good faith to reach agreement in advance as to the admission of exhibits. Judge Heffley has no particular procedure as to when an exhibit may be formally offered into evidence.

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 nonjury trials may be submitted in writing or orally. Judge Heffley will ordinarily request oral argument on these motions.

18. Proposed Jury Instructions and Verdict Forms. Judge Heffley strongly encourages counsel to use the Third Circuit's Model Jury Instructions whenever possible. Judge Heffley requires counsel to submit joint proposed jury instructions noting areas of agreement as well as objections. The points for charge should be submitted with appropriate citations of legal authority and must be provided to the Court in accordance with the deadline set forth in the scheduling order.

Counsel will submit a jointly prepared verdict form or proposed special interrogatories in accordance with the deadline set forth in the scheduling order. If counsel are unable to agree, they may submit separate proposed forms of interrogatories. Judge Heffley will accept supplemental points prior to the delivery of the charge. Judge Heffley will conduct a conference on proposed jury instructions. The proposed jury instructions and verdict forms shall be submitted on paper and electronically, either on a disc delivered to chambers or via e-mail to chambers, in Microsoft Word format.

19. Proposed Findings of Fact and Conclusions of Law. Judge Heffley requires counsel to submit proposed findings of fact and conclusions of law in nonjury cases at the final pretrial conference. They shall be submitted on paper and electronically, either on a disc delivered to chambers or via e-mail to chambers, in Microsoft Word format. Supplementation will be permitted at the close of trial or in an appropriate case after trial.

Jury Deliberations

1. Written Jury Instructions. Judge Heffley has no particular practice or policy on submitting a copy of instructions to the jury.

2. Exhibits in the Jury Room. Judge Heffley will consider what exhibits should be sent out to the jury during their deliberations on a case-by-case basis.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes. Judge Heffley will seek the input of counsel and will then make a determination on a case-by-case basis when requests are made to read back testimony or replay tapes.

4. Availability of Counsel During Jury Deliberations. Judge Heffley will not require counsel to remain in the Courthouse during deliberations, but will require counsel to be available on short telephone notice and be able to be in the courtroom within 15 minutes.

5. Taking the Verdict and Special Interrogatories. Judge Heffley has no standard practice with respect to taking a verdict. Judge Heffley will submit written interrogatories to the jury. A copy of the interrogatories will be given to each juror.

6. Polling the Jury. Judge Heffley will, if requested, permit the jury to be polled.

7. Interviewing the Jury. Judge Heffley will permit counsel to interview jurors, but only after the verdict has been recorded, and the jury has been discharged and told in clear terms that they have no obligation to speak with counsel.

CRIMINAL DUTY WEEK

Practices and Procedures. When Judge Heffley is assigned to criminal duty matters, she holds all hearings in Courtroom 5A at 1:30 p.m.

At all criminal duty week proceedings, appointed or retained counsel must be present for all proceedings. Once the Court has ordered that a defendant be detained or has set conditions of release, any proposed changes thereto must be submitted to the Court by written motion.

Judge Heffley requires that all relevant documents be delivered to chambers in advance of all hearings and other proceedings. Counsel may contact Judge Heffley's courtroom deputy if there are questions regarding the matters before the Court.

OTHER GENERAL MATTERS

When a decision rendered by the Court is appealed, Judge Heffley prefers to receive copies of appellate briefs.

Judge Heffley expects counsel to be prompt in all appearances, to be professional and courteous to each other, both in the presence of the Court and otherwise, and to have discussions with each other about any matter in dispute before it is brought to the attention of the Court.

Counsel should feel free to contact Judge Heffley's courtroom deputy or law clerks if they have any questions about her courtroom practices or procedures.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PLAINTIFF,	:	CIVIL ACTION
	:	
v.	:	
	:	NO.
DEFENDANT.	:	

CONFERENCE ORDER

AND NOW, this _____ day of _____, 20____, IT IS HEREBY ORDERED that a **SETTLEMENT CONFERENCE** in the above-captioned case will be held on _____, **20____, at 9:30 A.M.**, before the Honorable Marilyn Heffley, United States Magistrate Judge, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. The courtroom will be assigned prior to the conference date.

- Please notify the Court if settlement is not a real possibility.
- The conference will not be held unless counsel has clients with **full and complete** settlement authority physically present for the duration of the conference. **Full and complete authority means the party’s representative must possess authority consistent with the most recent demand.**¹

Please complete the attached confidential settlement conference summary and either fax it to Chambers (267) 299-5053 or e-mail it to Chambers_Heffley@paed.uscourts.gov on or before _____, **20____**. These submissions shall be submitted to the Court only, and should include a candid discussion of the submitting party's strengths and weaknesses as well as an offer/demand settlement proposal. **This document is not to be shared with opposing counsel nor filed of record. It is for Judge Heffley’s eyes only.**

BY THE COURT:

MARILYN HEFFLEY
UNITED STATES MAGISTRATE JUDGE

¹ Parties include all persons, corporations or other business entities, and insurance companies with an interest in the case, and each entity with an interest in the case must attend the conference. In the case of corporate or other business entities, the corporate official with ultimate settlement authority is required to attend. Where an insurance company is involved, a representative with full and complete settlement authority is also required to attend.

CONFIDENTIAL SETTLEMENT CONFERENCE SUMMARY

CAPTION: _____

DISTRICT COURT JUDGE: _____

TRIAL POOL DATE: _____ **JURY / NONJURY (Circle One)**

COUNSEL ATTENDING SETTLEMENT CONFERENCE:

Name: _____

Address: _____

Phone: _____

Client: _____

CLIENT ATTENDING SETTLEMENT CONFERENCE:

Name of Individual with full and complete settlement authority who will be present at the settlement conference (include company and position where applicable):

MOTIONS PENDING:

OTHER RELEVANT MATTERS:

PRIOR DEMANDS/OFFERS (include demand/offer dates):

ATTACH SYNOPSIS OF CASE (The synopsis will include a candid discussion of the submitting party's strengths and weaknesses in the case as well as an offer/demand settlement proposal, and **IS STRICTLY LIMITED TO NO MORE THAN FIVE (5) PAGES.**)