

## **GUIDELINES FOR COUNSEL**

Judge Chad Kenney

United States District Court for the Eastern District of Pennsylvania  
6614 James A. Byrne United States Courthouse  
601 Market Street, Independence Mall West  
Philadelphia, Pennsylvania 19106  
267-299-7540 (telephone)  
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Chambers\_of\_Judge\_Chad\_F\_Kenney@paed.uscourts.gov

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### **WELCOME TO COURTROOM 6A**

**STAFF:** Caitlin Danis, Esq., Law Clerk  
Jennifer Prescott, Law Clerk  
Jennifer Berger, Esq., Law Clerk  
Shelli L. MacElderry, Civil Deputy: 267-299-7541  
Christopher T. Kurek, Criminal Deputy: 267-299-7549

### **CASE MANAGEMENT**

#### **Rule 1**

*These guidelines will be construed, administered, and employed by the Court and the parties to secure the just, speedy, inexpensive, and civil determination of every action and proceeding.*

All parties should familiarize themselves with these Guidelines, as well as the Federal and Local Rules of Civil and Criminal Procedure.

Be clear, concise and to the point. Too many positions weaken strongest positions.

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**I. PRELIMINARY GENERAL MATTERS**

**A. Correspondence with the Court**

Telephone inquiries regarding civil cases should be directed to Shelli L. MacElderry, the Civil Deputy Clerk, at 267-299-7541.

Telephone inquiries regarding criminal cases should be directed to Christopher T. Kurek, the Criminal Deputy Clerk, at 267-299-7549.

Please do not write letters or send emails directly to the Court, or send or designate copies of correspondence or emails among and between counsel to the Court, **except:**

- (1) When counsel are specifically requested by the Court to communicate some information to the Court by letter or email or in response to same by the Court;
- (2) When there is an uncontested request for a continuance of the Rule 16 Scheduling Order deadlines not affecting the trial date;
- (3) When the participation of counsel in the case is expected to be affected by a personal matter concerning counsel, a party, a witness, or counsel's immediate family, such as medical problems, vacation plans, or other similarly personal problems or questions;
- (4) When the parties seek Court approval of stipulated proposals (which should include a signature line so that Judge Kenney can indicate his approval prior to filing the stipulation on the docket); or
- (5) To confirm or advise the Court that a case has been settled, dismissed, or otherwise finally disposed.

**In those limited circumstances, counsel should fax the correspondence to Chambers at 267-299-7548.**

All other written communications with the Court concerning any case assigned to Judge Kenney's calendar should be by the filing of a pleading, motion or other filing provided for in the Federal Rules of Civil or Criminal Procedure or our Local Rules of Civil or Criminal Procedure. **Do not write letters or emails to the Court that are properly the subject of these filings unless given authorization.**

When a written communication or email concerning a case cannot timely address a problem, counsel may initiate necessary telephone communications with Judge Kenney's Chambers. Issues appropriately addressed by telephone contact include:

- (1) Scheduling of conferences or proceedings, including pretrial and trial conferences, attendance of witnesses;
- (2) Exhibit handling or arrangements for video replay;
- (3) Arrangements for telephone conferences regarding discovery disputes (a Motion should first be filed of record); and
- (4) See Section II. B for requests for extensions of time to file any response, reply, brief, memorandum of law, or the like.

All such inquiries should be directed to the appropriate Deputy Clerk. Counsel should submit current telephone numbers, email addresses, fax numbers, and any changes to the Clerk's Office and to the appropriate Deputy Clerk.

Counsel, of course, should not seek to engage in advocacy during any administrative contact with any member of the Judge's staff. It is presumed that all counsel are aware of the communication that is being made or have been cc'd on any email or correspondence.

#### **B. Telephone Conferences**

The Court will often hold telephone conferences to resolve scheduling matters or

discovery disputes. **A motion explaining the dispute and requesting a phone conference should first be filed of record. Letter Motions will not be accepted.** The Court will notify counsel of the date and time for the telephone conference. In civil cases, counsel for the moving party will be responsible for initiating the telephone conference and contacting the Court through his Civil Deputy Clerk after all parties are present on the call. In criminal cases, the United States Attorney's Office will be responsible for initiating the call and contacting Judge Kenney through his Criminal Deputy Clerk after all parties are present on the call.

**C. Oral Arguments and Evidentiary Hearings**

Arguments and hearings are scheduled on an *ad hoc* basis as warranted. They typically are conducted in the courtroom.

**D. Pro Hac Vice Admissions**

To be admitted *pro hac vice*, associate counsel of record should submit the "Attorney Admission Application (*Pro Hac Vice*)" available at <http://www.paed.uscourts.gov/documents2/forms/forms-miscellaneous>. The admission of out-of-the-jurisdiction counsel *pro hac vice* does not relieve associate counsel of responsibility for the matter before the Court. If the admission fee is not submitted at the time the application for *pro hac vice* is filed on the docket, the application will be denied pending submission of payment. **Local counsel must have a full grasp of the case and these guidelines to ensure compliance. Local counsel must be ready to step in and appear in Court or respond to Court staff if *pro hac vice* counsel is not available.**

**E. Faxes and Email**

Unless specifically requested by the Court or otherwise indicated herein, parties should not transmit pleadings, motions, or other filings by fax or email to Chambers.

## II. CIVIL CASES

### A. Pretrial Procedure

The Court holds most conferences in the courtroom and on the record.

#### 1. **Rule 16 Conference**

The Court will schedule a preliminary pretrial conference as described in Federal Rule of Civil Procedure 16(b) and (c) shortly after a defendant has filed an appearance or pleading. At least three business days prior to the pretrial conference, **counsel must complete and file on the docket the required report of the Rule 26(f) meeting.** A template for the report of the Rule 26(f) meeting is available on the Eastern District of Pennsylvania website with Judge Kenney's Policies & Procedures.

The Court relies on counsel's good faith compliance with Rule 26(f) in all respects. The Rule 26(f) meeting should take place as early in the case as possible, but no later than twenty-one days before the scheduled Rule 16 conference. The Rule 26(f) meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule. Outstanding motions will not excuse the requirements of holding the meeting and submitting the proposed discovery plan. **Parties who do not comply will have no voice at the scheduling conference and may be subject to additional sanctions.**

Initial disclosures pursuant to Rule 26(a) **shall be completed no later than seven days before the Rule 16 conference.**

It is also expected that the parties will reach an agreement on how to conduct electronic discovery. 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 conference with the Court. If the parties anticipate that the matter will involve substantial e-discovery, the parties should have their e-discovery liaisons attend the Rule 16 conference so they can coordinate the discovery between and among each other.

The parties should be prepared to draft and stipulate to an e-discovery order at the time of the Rule 16 conference if they have in good faith not been able to do so before the conference. The parties at a minimum need to have the agreed-to parameters in writing ready to be supplemented or changed based upon the outcome of the conference.

In the event the parties cannot reach such an agreement before the Rule 16 conference, the Court will enter an Order incorporating default standards, a sample of which can be found on the Eastern District of Pennsylvania website below Judge Kenney's Policies & Procedures.

At the initial pretrial conference, the parties should be prepared to address all topics listed in Local Rule of Civil Procedure 16.1(b) and Federal Rule of Civil Procedure 16(b) and (c), the progress of self-executing disclosure under Federal Rule of Civil Procedure 26(a), and any settlement or mediation proposals. The Court will issue a Rule 16 scheduling order at the conclusion of the conference.

**Lead trial counsel must attend the Rule 16 conference.** If lead trial counsel is absolutely unable to attend, the conference in most instances will be rescheduled unless lead counsel represents to the Court that another specifically named attorney is ready to proceed with

full knowledge of the case and full authority of the client.

Counsel taking part in any pretrial conference must be prepared to speak on every subject, including settlement, liability, remedies, and damages and have authority from their clients to do so. **Counsel shall be prepared to discuss all claims and defenses in detail and shall have a thorough comprehension of the facts. Counsel should prepare for and anticipate meaningful, thorough issue identification and discussion. See Fed. R. Civ. P. 11.** Parties are encouraged to be present, although not required, unless otherwise ordered by the Court.

## **2. Final Pretrial Conference**

The Court will determine and schedule final pretrial conferences on a case-by-case basis as needed. Counsel is free to request a final pretrial conference and should set forth in their request the reasons therefor if one has not been scheduled.

During this conference, the Court will address factual and legal issues, the admissibility of exhibits, scheduling issues, and settlement. At the end of the conference, the Court will then issue a final pretrial order or a final scheduling order in a complex case.

### **B. Continuances and Extensions**

**Unless there is extremely good cause to justify a change, the parties are expected to pay full attention to and strictly adhere to the dates contained in the scheduling order.** The Court will grant a continuance or extension based on a stipulation of all parties if the continuance or extension will not have an effect on the deadlines for dispositive motions, motions *in limine*, or the trial date. A continuance or extension that may affect the deadlines for dispositive motions, motions *in limine*, or the trial date must be made by motion sufficiently in advance of the deadline date. Parties should expect these motions will be DENIED unless unforeseeable,

insurmountable causes are established.

**C. General Motion Practice**

**1. Conference Prior to Filing Certain Rule 12 Motions**

Before filing a motion pursuant to Fed. R. Civ. P. 12(b)(6), (e), or (f), counsel shall first contact opposing counsel to discuss the substance of the contemplated motion and to provide an opportunity to cure any alleged pleading deficiencies or strike certain matter. This conference shall take place at least seven (7) days prior to the filing of the motion. If the parties are unable to reach a resolution that eliminates the need for any of the above-mentioned motions, counsel for the moving party shall include, along with the motion, a certification that the parties met and conferred regarding the alleged pleading deficiencies or matter sought to be stricken.

**2. Oral Argument on Motions**

If the Judge believes 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 in the body of the motion or responsive pleading. **When parties appear for oral argument on any issue, they should be prepared to discuss the status and progress of the case.**

Answers to motions should be filed at least two days before a hearing, if a hearing is scheduled. Answers to motions are most effective when they address the substance of the motion while adding details that give a full picture from the position of the Respondent. Pleading answers such as “denied as a conclusion of law, strict proof demanded” are not helpful.

**3. Reply and Surreply Briefs**

Judge Kenney has no formal policy on reply or surreply briefs. Such briefs should be concise, and counsel should evaluate carefully whether a reply or surreply brief is necessary. If



filed, the focus of a reply or surreply brief should be to respond to opposing counsel's arguments and should address the heart of the matter as succinctly as possible. Decision of a motion will not be delayed for the receipt of such briefs.

#### **4. Length and Content of Briefs or Legal Memoranda**

All grounds for relief should be set forth in a single, comprehensive motion. A motion to dismiss, for example, should not be divided into separate motions for each count, but rather should include all bases for relief. **Any brief or memorandum filed in support of the motion must be limited to twenty-five (25) pages.** If a party requires more than twenty-five pages to explain its position to the Court, a motion to exceed the page limit should be filed, setting forth good cause for granting an exception to this rule.

#### **5. Rule 56 Motions**

**No later than fourteen days prior to the filing of any summary judgment motion pursuant to Rule 56, the parties shall meet and confer about the material facts. The moving party's initial filing must include a concise statement of stipulated material facts, which sets forth (in numbered paragraphs) material facts and important background facts that the parties agree are not in dispute for purposes of summary judgment. When possible, the parties should include citations to the summary judgment record for each stipulated fact.**

To the extent that any party seeks to rely on facts not included in the concise statement of material facts, it shall set forth those facts in a concise statement of additional facts. Like the statement of stipulated facts, the statement of additional facts shall be organized in numbered paragraphs. The party shall provide citations to the precise page of the summary judgment record that support each factual assertion in the statement of additional facts.

**D. Discovery Matters**

**1. Length of Discovery Period and Extensions**

In standard track cases, the Court usually allows up to ninety days from the date of the Rule 16 conference to complete fact discovery. In special management cases, the Court will permit additional time to conduct fact and or expert discovery if the parties identify a need to do so at the Rule 16 conference, or any subsequent status conferences. A case will ordinarily be listed for trial seven months after the Rule 16 conference.

**2. Discovery Conferences and Dispute Resolution**

Parties are reminded that discovery must be proportional to the needs of the case. Parties should begin discovery as soon as permitted under the relevant Rules, without waiting for the Rule 16 Conference to be held. Furthermore, parties should not delay commencing discovery due to the pendency of a Motion to Dismiss, except where the motion could result in complete dismissal of the case.

Judge Kenney expects parties to resolve most discovery disputes between and among themselves and in a timely manner that will expedite the case and not require case management extensions. If Court assistance is required, Judge Kenney prefers that simple disputes be addressed by telephone conferences. Counsel shall file a simple, and preferably joint, motion briefly explaining the discovery dispute and requesting a conference. Motions to compel for failure to respond to a first set of discovery requests are often granted immediately. If a dispute is particularly complex, a motion with specific citation to the record should be filed. Responses to motions to compel shall be filed within five days. The Court will schedule oral argument on such motions when it believes argument will be helpful. If a discovery motion is filed, Judge Kenney expects the parties to brief the relevance of the information sought and the validity of the

asserted objection.

The Court encourages parties to consider any hearings on discovery disputes as an opportunity for associates to argue issues on the record and develop effective advocacy skills.

Judge Kenney will permit telephone conferences to resolve disputes during depositions where the deposition would otherwise have to be adjourned. If too many disputes arise during a deposition or case, he will stop accepting requests for such conferences and issue a rule to show cause requiring counsel to appear in court.

If the Court's intervention in a discovery dispute is required, the Court may impose sanctions in favor of the prevailing party.

### **3. Confidentiality Agreements**

The Court will only approve confidentiality or sealing orders for good cause shown. Public policy favors transparency in judicial proceedings. Protective orders and confidentiality agreements undermine such transparency and complicate the resolution of cases at both the trial and appellate level. They should be used sparingly and be narrowly tailored.

**No protective order or confidentiality order will be approved without language providing that “the Court reserves its inherent power to modify the terms of this agreement and permit the disclosure of information where the interest of justice so requires.”** Except in exceptional circumstances, documents or evidence that form the basis for judgment in a case are unlikely to be protected against disclosure.

**Any stipulation for a protective order should be sent to Chambers via fax at 267-299-7548 for Court approval.**

**E. Settlement**

**1. General Approach to Settlement**

Settlement will be discussed at the initial Rule 16 status conference and at any subsequent conference. Judge Kenney will not participate in settlement negotiations in non-jury cases. Each case will be assigned a particular Magistrate Judge by the Court Clerk on a rotating basis. In most instances, the Magistrate Judge will conduct settlement conferences, and Judge Kenney will preside over all other litigation matters, including discovery issues.

**2. Class Action Settlement Best Practices**

Parties seeking or objecting to an order settling a case on a class basis under Fed. R. Civ. P. 23 should fully address their positions on the best practices for implementing the 2018 Amendments to Rule 23, including those described at <https://judicialstudies.duke.edu/conferences/publications/> with the executive summary: *Guidance on new Rule 23 class action settlement provisions*, 102 JUDICATURE, no. 3, Winter 2018, at 15-21.

**F. Arbitration**

Judge Kenney will evaluate, as necessary, counsel's Arbitration Certification in non-arbitration track matters and, as appropriate, will designate a case for arbitration pursuant to Local Rule 53.2.

**1. General Approach to Arbitration**

Judge Kenney will hold a Rule 16 conference and issue a scheduling order in arbitration track cases. 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, the Court 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. Counsel are advised to inform the Court if a settlement conference would be helpful.

**G. Final Pretrial Memoranda**

Unless otherwise ordered by the Court, 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:

- (1) All stipulations of counsel.
- (2) A statement of objection to: (1) the admissibility of any exhibit based on authenticity; (2) the admissibility of any evidence expected to be offered for any reason (except relevancy); (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.
- (3) Deposition testimony (including videotaped deposition testimony) that the party intends to offer during its case-in-chief. The statement should include citations to the page and line number and the opposing party's counter-designations.

When appropriate, the Court may require the parties to prepare a joint long form Final Pretrial Order consistent with the requirements set forth in Local Rule 16.1(d)(2).

**H. Injunctions**

**1. Scheduling and Expedited Discovery**

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

## **2. Pre-Hearing Conference**

Judge Kenney will hold a pre-hearing conference to discuss discovery issues, narrow the issues of contention, and 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 Kenney requires submission of proposed findings of fact and conclusions of law for TRO and injunction hearings. The Court will set the time for submission of these items at the pre-hearing conference.

### **II a. PATENT CASES**

Judge Kenney follows the procedures developed by Judge Albright with respect to patent cases, which you can access at this [link](#).<sup>1</sup> The Rule 16 Conference, however, will still be scheduled in the courtroom according to Judge Kenney's Guidelines for Counsel at page 5 herein.

### **III. TRIAL PROCEDURE**

#### **A. Scheduling Cases**

A date for trial will be determined at the initial Rule 16 conference. Questions relating to scheduling matters should be directed to Judge Kenney's Civil Deputy Clerk.

#### **B. Cases Involving Out-Of-Town Parties or Witnesses**

Judge Kenney schedules the trial of cases involving out-of-town counsel, parties, or

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<sup>1</sup> <https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/Waco/Albright/Order%20Governing%20Proceedings%20-%20Patent%20Cases%20022620.pdf>

witnesses in the same manner as all other cases. Counsel are responsible for the scheduling of witnesses.

**C. Conflicts of Counsel**

Counsel should notify the Court immediately upon learning of any unavoidable and compelling professional or personal conflicts affecting the trial schedule.

**D. Notetaking by Jurors**

Judge Kenney permits jurors to take notes.

**E. Voir Dire**

Judge Kenney conducts *voir dire* in civil cases with an opportunity for counsel to ask questions during individual questioning at side bar.

**F. Trial Briefs**

Parties pretrial memoranda will be considered as their trial brief.

**G. Motions in Limine**

The time for filing motions *in limine* will be determined at the Rule 16 conference and will be confirmed in the scheduling order.

**H. Opening Statements and Summations**

In most cases, the Court permits twenty to thirty minutes for an opening statement and thirty to forty-five minutes for a summation.

**I. Examination of Witnesses Out of Sequence**

The Court will ordinarily permit counsel to examine counsel's own witness out of turn for the convenience of the witness.

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

More than one attorney for a party may examine different witnesses or argue different

points of law before the Court. Only one attorney for each side may examine the same witness or address the jury during the opening statement or summation.

**K. Examination of Witnesses Beyond Redirect and Recross**

The Court may permit limited re-direct and re-cross examination on matters not previously covered by cross examination or in special circumstances.

**L. Videotaped Testimony**

Videotaped testimony should begin with the witness being sworn. Counsel should bring objections to the Court's attention at the time of the final pretrial conference. After the Court rules on any objections, counsel should edit the tapes before offering the videotaped testimony at trial.

**M. Reading of Material into the Record**

Judge Kenney has no special practice or policy regarding reading stipulations, pleadings, or discovery material into the record at trial. He encourages counsel to stipulate to as many facts as possible.

**N. Preparation of Exhibits**

Exhibits should be pre-marked and exchanged in accordance with the final pretrial order. On the morning trial is scheduled to commence, counsel should supply the Court with a joint exhibit binder and a schedule of exhibits.

**O. Offering Exhibits into Evidence**

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.

**P. Directed Verdict Motions**

Motions for Judgment as a Matter of Law in jury trials and Motions for an Involuntary



Dismissal in non-jury trials can be made orally on the record with oral argument immediately to follow.

**Q. Proposed Jury Instructions and Verdict Forms**

In his scheduling order, Judge Kenney typically requires that the parties file proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories for the jury no later than fourteen days before the trial 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 page, double spaced, and should include citation to specific authority. Cases and model jury instructions that are cited should be accurately quoted and a page reference should be provided.

Judge Kenney conducts a conference on proposed jury instructions and, as necessary, will accept supplemental proposed jury instructions until the case goes to the jury.

If a model jury instruction is submitted, for instance, from Devitt & Blackmar, Federal Jury Practice and Instructions, the submitting party shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction, the additions should be underlined, and deletions should be placed in brackets.

**R. Proposed Findings of Fact, Conclusions of Law, and Verdict Slips Covering All Claims To Be Filed As If the Case Would Be Submitted to a Jury**

Proposed findings of fact and conclusions of law in non-jury cases should be filed at least seven days before the trial date. Counsel should also file at that time proposed verdict slips and points for charge on substantive matters covering all claims as if the case would be submitted to a jury. The parties shall submit revised or supplemental findings of fact and conclusions of law and verdict slips with specific reference to trial evidence. A schedule for the submission of

revised findings/conclusions/verdict slips will be discussed at the conclusion of trial.

**S. Unavailability of Witness**

If a witness is unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects an oral or videotaped deposition to be used at trial for that witness, 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.

**T. Lay Witness Opinion**

Any party expecting to offer lay opinion testimony pursuant to Federal Rule of Evidence 701 regarding issues of liability or damages shall provide the opposing parties with information or documents supporting the testimony at the time required for submission of expert reports.

**U. Jury Deliberations**

**1. Written Jury Instructions**

In the appropriate case, the Court will give the jury a copy of the written jury instructions.

**2. Exhibits in the Jury Room**

Prior to the jury being instructed, the Court and counsel will discuss which exhibits should go initially out with the jury for their consideration during deliberations and which should wait for a specific request by the jury. The jury will be told they have access to all admitted exhibits.

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

At the jury's request, the Court may permit the Deputy Clerk to read portions of testimony back to the jury or to replay the audio or video-taped testimony. In most instances, however, the court expects the jury to depend upon its recollection.

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

Unless excused by the Court, counsel must remain near the courthouse during jury deliberations.

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

Ordinarily, the Court will submit interrogatories to the jury. The Courtroom Deputy will take the verdict in the presence of the Court, counsel, and the parties.

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

If requested by counsel, the Court will poll the jury.

#### **7. Interviewing the Jury**

Judge Kenney will allow counsel to interview jurors but will instruct the jury that they are not required to talk to the attorneys.

### **IV. CRIMINAL CASES**

#### **A. Scheduling Order**

After the magistrate judge on duty conducts the Initial Appearance and Arraignment proceedings, Judge Kenney will issue a scheduling order for the case. The scheduling order will include deadlines for discovery and for the filing of pretrial motions, as well as dates for a pretrial motion hearing and the jury trial.

If counsel files a Motion to Continue, then the motion must include the following:

- (1) The exact reason for the continuance;
- (2) The Defendant's consent to a continuance (or a Speedy Trial Waiver);
- (3) The specific length of continuance being sought; and
- (4) If the Motion to Continue is opposed or unopposed.

If Judge Kenney approves the continuance, the Criminal Deputy Clerk will file an amended scheduling order on the docket. The Court expects counsel to comply with the deadlines and limitations set forth in all scheduling orders.

**B. Criminal Jury Trial**

**1. Trial Memoranda**

Counsel shall file their Trial Memoranda, witness lists, proposed *voir dire* questions, proposed jury instructions and points for charge, and proposed verdict forms at least three (3) business days prior to the commencement of jury selection. In addition, counsel must also supply the Court with two (2) copies of each trial exhibit, and three (3) copies of a schedule of exhibits which briefly describes each exhibit. These exhibit binders are to be sent to chambers at least three (3) business days prior to the commencement of jury selection.

**2. *Voir Dire***

Judge Kenney will conduct the general *voir dire* session with the jury panel in the courtroom, as well as individual *voir dire* sessions with each of the prospective jurors. The final jury panel will be composed of 12 members, along with upwards of 4 alternate jurors.

**3. Trial Procedure**

Counsel should refer to the Federal and Local Rules of Criminal Procedure, as well as the Trial Procedure section of these Guidelines.

**C. Guilty Plea Hearing**

The Assistant United States Attorney shall email a PDF copy of the Government's Plea Memorandum, as well as a PDF copy of any Plea Agreement, to the Criminal Deputy Clerk at least three (3) business days prior to the guilty plea hearing. After the Defendant enters a plea of guilty, the Criminal Deputy will file the Plea Memorandum, Plea Agreement, and any other

accompanying documents with the Clerk's Office.

**D. Sentencing Hearing**

The Assistant U.S. Attorney and Defense counsel shall file their Sentencing Memoranda, Motions, and any objections to the Probation Officer's Pre-Sentence Report at least five (5) business days prior to the sentencing hearing. Judge Kenney expects Defense counsel to thoroughly review the Pre-Sentence Report with the Defendant well in advance of the sentencing.

**E. Violation of Supervised Release/Probation Hearing**

Counsel shall carefully review the Probation Officer's Petition for Revocation prior to any Violation hearing. Judge Kenney expects counsel to have a sound understanding of the alleged violation of supervision, as well as in-depth knowledge of the Defendant's criminal history.

**F. Sealing of Judicial Documents**

Public policy favors transparency in judicial proceedings, and the public has a right to access public documents. However, in certain circumstances, the interests of the parties involved in a criminal matter may require that certain documents and proceedings be sealed. The Court will approve of Sealing Orders for good cause shown. Please notify the Criminal Deputy Clerk whenever any judicial documents are to be impounded, or whenever any court proceedings must be sealed.

**V. COURTROOM TECHNOLOGY**

Judge Kenney will be using Courtroom 6A for all judicial proceedings.

**A. Electronic Sound Recording**

All courtroom proceedings will be recorded via electronic sound recording (ESR) or by

official court reporting. Anyone who wishes to order a transcript of a proceeding must contact the Transcription Department in the Clerk's Office, Room 2609 on the second floor.

**B. Evidence Presentation Technology**

Courtroom 6A is not equipped with any video screens, touch screens, or any other evidence presentation systems. As such, if counsel wish to utilize any electronic evidence presentation apparatus, they are required to bring in their own equipment. If counsel seek to deliver evidence technology systems to the courtroom, then counsel must first notify chambers. Court staff must make the necessary arrangements with security personnel in advance.

**V. OTHER MATTERS**

**A. Briefs of Cases on Appeal**

Judge Kenney welcomes copies of appellate briefs when a decision he has made is appealed.

**B. Consultation with Opposing Counsel**

In general, Judge Kenney 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.

**C. Professionalism**

Judge Kenney will insist on punctuality and courtesy from counsel to the Court and to each other, both in the presence of the Court and otherwise. Counsel should rise to address the Court and should seek permission of the Court before approaching adverse 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 parties should

notify the Court of any issues that will need to be ruled upon at the start of the day's proceedings, or during a recess out of the jury's presence. Sidebar conferences are permitted when necessary.