

# **Guidelines for Counsel**

Judge Gerald Austin McHugh

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## **General Matters**

Practicality, civility, and professionalism facilitate the orderly resolution of cases. All counsel are urged to read and be guided by the American College of Trial Lawyers' Code of Pretrial Conduct and Code of Trial Conduct (as endorsed by the last three Chief Justices of the United States), available [here](#).

### ***Communication with Chambers***

Counsel are expected to reply with reasonable promptness to inquiries from Chambers. Any discourtesy toward Chambers staff will be viewed as disrespect toward the Court.

Counsel should not hesitate to contact Chambers where necessary to facilitate the progress of a case, by phone (267-299-7301), fax (267-299-5020), or email ([Chambers\\_of\\_Judge\\_Gerald\\_McHugh@paed.uscourts.gov](mailto:Chambers_of_Judge_Gerald_McHugh@paed.uscourts.gov)).

Any communication addressing a substantive issue should also be filed on ECF, and it should be self-evident that no counsel should seek to engage in advocacy during any *ex parte* contact with any member of the judge's staff.

Chambers Mailing address is: Room 9613, United States Courthouse  
601 Market Street  
Philadelphia, PA 19106

### ***Magistrate Judge***

The Honorable Richard A. Lloret is the designated magistrate judge for cases on Judge McHugh's docket. The time of a federal Magistrate Judge is a valuable and scarce commodity. Counsel who seek assistance from Judge Lloret in discussing settlement must request an order of referral from Judge McHugh.

### ***Extensions of time***

Counsel may agree to extend any filing or discovery deadline that will not delay the scheduling of trial. Routine extensions as a courtesy to opposing counsel, particularly at the outset of a case, are encouraged but do require court approval. If counsel agree to extend a specific deadline, they should email a Stipulation to Chambers and cite these Guidelines. Such Stipulations will be honored unless they are patently unreasonable and interfere with the orderly progress of the case.

Any Stipulation that requires court approval is to be emailed to Chambers at:  
[Chambers\\_of\\_Judge\\_Gerald\\_McHugh@paed.uscourts.gov](mailto:Chambers_of_Judge_Gerald_McHugh@paed.uscourts.gov).

### ***Preliminary Pretrial Conference***

A Rule 16 Pretrial Conference will be held as soon as possible after the Answer to the Complaint is served. Counsel share responsibility for the progress of the case. If the Court has not scheduled a Rule 16 conference within a reasonable time after the filing of an answer, counsel should contact Chambers to request a conference. Lead trial counsel must appear in person. If lead trial counsel is absolutely unable to attend, the conference will be rescheduled. *Pro hac vice* motions are liberally granted, but any counsel so admitted must be prepared to participate **in person** in all proceedings from the inception of the case.

Judge McHugh considers a Rule 16 Conference to be a case management conference, addressing the **substantive** issues in the case, not merely a scheduling conference. Counsel should be prepared to discuss the strengths and weaknesses of the case and be completely conversant with the essential issues and facts. Whenever possible, essential documents identified in self-executing discovery should be **produced** to opposing counsel in advance of the conference, unless such production is impractical. Counsel shall be familiar with and prepared to discuss critical documents.

The Rule 26(f) Report should **attach** critical documents for review by the Court (e.g., in a contract case, the document(s) comprising the contract; in a personal injury case, photographs of the scene, etc.).

If e-discovery is an issue, counsel should reach an agreement in advance of the conference. If they cannot, a default e-discovery order will be entered, located [here](#).

### ***Discovery Matters***

Judge McHugh has endorsed the principles of the Sedona Conference, available [here](#).

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.

The vast majority of discovery disputes should be settled by the parties through civility and common sense. Judge McHugh expects the parties to have met and conferred in good faith before submitting a discovery dispute. He no longer permits counsel to submit such disputes by letter; a motion must be filed.

If a dispute arises during a deposition, counsel are invited to call Chambers in the event that the Judge is available to supply an immediate ruling.

### ***Protective Orders and Confidentiality Agreements***

Public policy favors transparency in judicial proceedings. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 784 (3d Cir. 1994). 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 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 Protective Order is to be emailed to Chambers at:  
Chambers\_of\_Judge\_Gerald\_McHugh@paed.uscourts.gov.

### ***Motions Practice***

Joint or unopposed motions should be clearly identified as such in the **title** of the pleading, so that they can be given expedited consideration.

Oral argument will generally only be heard in those cases where the Judge has concluded that it is likely to facilitate resolution of a motion.

Counsel are encouraged to post **searchable** versions of their briefs to ECF. If counsel posts a scanned copy of a physical brief, that brief should, if possible, be saved in a digital format using Optical Character Recognition software.

In all motions and pleadings, references to other documents on the docket, e.g. “Plaintiff’s Second Amended Complaint,” should identify those documents by their ECF number to facilitate retrieval.

Supplemental briefs, reply briefs, and sur-reply briefs may be filed without seeking leave, but once an initial opposition brief has been filed, the Court will begin considering the merits of the issue.

Counsel are reminded that the persuasiveness of any responsive brief is a product of how focused and illuminating it truly is.

When filing a Motion for Summary Judgment, except for a formal stipulation setting forth facts agreed to in their entirety by all parties, no party shall unilaterally file a “Statement of Undisputed Facts” setting forth its interpretation of the record, or any separate “Statement of Facts” apart from its memorandum of law. All references to the facts must be contained within the party’s memorandum and cite **to the record**. Failure to abide by this instruction may result in the motion being denied or a filing being stricken.

### ***Courtesy Copies***

Exhibits filed on ECF are difficult to access in an efficient way. If the number of exhibits accompanying a filing exceeds three, counsel must submit a courtesy copy with **tabbed** exhibits to Chambers.

### ***Arbitration***

A Pretrial Conference will not be scheduled for cases that are assigned to arbitration. Judge McHugh expects all discovery to be completed prior to the date assigned by the Clerk for the arbitration. Counsel may seek the assistance of the Court, if necessary, to complete discovery in advance of the scheduled arbitration date.