

GENERAL PRETRIAL AND TRIAL PROCEDURES

JUDGE GENE E.K. PRATTER

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Judge Gene E.K. Pratter was born in 1949 in Chicago, Illinois. She grew up in Southern California, earned an A.B. from Stanford University in 1971 and a J.D. from the University of Pennsylvania Law School in 1975. From 1975 to 2004, Judge Pratter was in private practice in Philadelphia, Pennsylvania engaging in general civil litigation with a concentration in professional liability matters. She served as general counsel to a multi-state 500-lawyer firm from 1999-2004. Judge Pratter was inducted to the United States District Court for the Eastern District of Pennsylvania on June 18, 2004.

Important Notice: In all civil cases it is plaintiff's counsel's obligation to send a copy of this document to all defense counsel promptly after learning the identity of defense counsel.

I. PRELIMINARY GENERAL MATTERS

A. Professionalism and Civility.

Counsel and their clients should be punctual for all conferences, hearings, oral arguments and trials. Counsel and their clients at all times should be polite, courteous and otherwise civil to one another, as well as to all parties, witnesses, and court personnel. Gratuitous hyperbole, deliberate or reckless misstatements, uncooperative attitudes, "Rambo" tactics, over-reaching in discovery demands, pointless insults, refusals to accommodate reasonable requests for scheduling adjustments and the like are deleterious to the efficient and fair conduct of litigation and detract from the effectiveness and reputation of those who engage in such conduct.

Judge Pratter expects counsel to confer with and keep their respective clients up to date (1) with respect to substantive submissions to the court, (2) in advance of court appearances and (3) as to material developments in the client's case.

In general, counsel should bring matters to the Judge's attention only after they have been discussed with opposing counsel and a reasonable effort has been made to resolve a dispute and the positions of all interested counsel on the matter needing the Court's attention have been shared with all other counsel.

B. Correspondence with the Court.

Correspondence may be directed to the Court concerning scheduling, or other very routine matters. Correspondence to advise the Court that a case has been settled or dismissed is also appropriate, as is correspondence specifically requested by the Court. Any written communication requesting action by the Court on such subjects as outlined above should include at a minimum: (1) a description of the situation requiring the Court's attention; (2) the position of the opposing party(ies) (i.e., consent or opposition); and (3) the specific relief sought. Otherwise, all communications with the Court should be made by the formal filing of pleadings, motions, applications, briefs or legal memoranda. All counsel should be sent a contemporaneous copy of all correspondence sent to the Court. Discovery or other disputes should be handled by formal motion, not by correspondence. Counsel **should not** send Judge Pratter copies of letters sent to each other unless specifically invited by the Court to do so.

C. Communication with Law Clerks.

Judge Pratter permits, but discourages, communications by counsel with her law clerks. Unless directed otherwise by the Court, counsel should not call law clerks for advice on substantive or procedural matters other than of a very rudimentary nature (such as to confirm the Court's administrative policies and procedures or to alert the Court of some actual emergency that cannot be timely handled by correspondence or formal filings). Communications with the Court about scheduling matters should be directed to Judge Pratter's Courtroom Deputy for criminal matters or to the Judicial Secretary/Deputy Clerk for civil matters.

Communications from counsel purporting to justify counsel's conduct because "Your Honor's law clerk [or Deputy] said..." are highly disfavored and are never appropriate as an

explanation of counsel's strategic or tactical choices.

D. Telephone Conferences.

Telephone conferences with all counsel are used only sparingly by Judge Pratter but may be used at the Court's discretion to resolve scheduling matters, time extensions, or certain discovery disputes. Counsel will be notified of the date and time for the telephone conference. It will be the responsibility of counsel for the moving or initiating party to arrange the telephone conference and to contact Judge Pratter through her Judicial Secretary/Civil Deputy after all parties are present on the call. Counsel are reminded to be especially careful to avoid being discourteous during phone conferences by failing to listen to other speakers, failing to identify themselves prior to each statement, failing to speak loudly or slowly enough to be heard, and the like.

E. Oral Arguments and Evidentiary Hearings.

Judge Pratter does not set aside specific days or times for oral argument, motions or evidentiary hearings. Hearings and arguments are scheduled when warranted and on an *ad hoc* basis. They are typically conducted in a courtroom.

F. Pro Hac Vice Admissions.

All motions for the pro hac vice admission of counsel shall be made by an attorney who is (1) admitted to practice before the District Court for the Eastern District of Pennsylvania and (2) whose appearance has been entered in the case in which the motion is made. Each such motion *must* be accompanied by the affidavit or similar declaration of each attorney being proposed for pro hac vice admission in which the affiant/declarant includes the following information and undertakings:

- a. Year and jurisdiction of each bar admission;
- b. Status of the attorney's admission(s), i.e., active or inactive, in good standing, etc.;
- c. Whether the attorney has ever been suspended from the practice of law in any jurisdiction or received any public reprimand by the highest disciplinary authority of any bar in which the attorney has been a member;
- d. That the affiant/declarant (i) has in fact read the most recent edition of the Pennsylvania Rules of Professional Conduct and the Local Rules of this Court and (ii) agrees to be bound by both sets of Rules for the duration of the case for which pro hac vice admission is sought; and
- e. That, if granted pro hac vice status, the affiant/declarant will in good faith continue to advise counsel who has moved for the pro hac vice admission of the current status of the case for which pro hac vice status has been granted and of all material developments therein.

The admission of out-of-the-jurisdiction counsel pro hac vice does not relieve associate counsel of responsibility for the matter before the Court.

G. Use of Electronic Court Filings ("ECF")

Counsel are also advised that the Court expects all counsel to be registered on the ECF system of this District Court. All official filings submitted to the Clerk of the Court must be filed directly by the filing attorney on to ECF. The Court's orders, opinions and other docketed materials will be filed on to ECF and notice thereof will be communicated to counsel either by ECF or ordinary first-class mail. Requests to be excused from ECF registration must be made in writing directly to Judge Pratter.

II. CIVIL CASES

A. Pretrial Procedure.

Judge Pratter regularly schedules an in-person initial pretrial conference ("IPTC") pursuant to Rule 16 soon after the answer or other response to the complaint is filed or the case is transferred to her. Prior to the IPTC, counsel may be required to submit to Chambers an initial pretrial conference information or other status report. Generally, the conference will be held in Chambers. In rare cases the conference may be by telephone. A written notice concerning the IPTC will be sent to counsel on behalf of the Court. Counsel should not wait to start discovery until after an IPTC has been held.

At the IPTC, counsel should be prepared to discuss those topics listed in Local Rule of Civil Procedure 16.1(a) and Federal Rule of Civil Procedure 16(b) and (c). Counsel should also be prepared to discuss the progress of self-executing disclosures pursuant to section 4:01 of the Civil Justice Expense and Delay Reduction Plan (the "Plan"). In Special Management Track cases, the parties should provide the Court with a proposed case management plan pursuant to section 3:01 of the Plan three (3) days prior to the IPTC. Counsel taking part in the IPTC should be prepared to speak knowledgeably and with client authority on these subjects.

A Scheduling Order will be issued following the IPTC setting forth deadlines for the completion of discovery, the filing of dispositive motions, the filing of pretrial submissions, and a date when the case will be placed in the trial pool or specially listed for trial. Where appropriate, a date for another interim status conference(s) may be provided. In certain cases, particularly in Special Management Track cases, the Scheduling Order may provide a date by

which the parties will be required to prepare and submit to the Court for approval a Final Pretrial Order pursuant to Local Civil Rule 21(d)(2).

Typically, Judge Pratter will hold a final pretrial conference ("FPTC") approximately ten (10) days prior to the date the case will be placed in the trial pool or is scheduled for trial. At the FPTC outstanding topics that were the subject of the IPTC and issues concerning the trial are typically discussed, as well as the subject of settlement possibilities. A Final Pretrial Order or a Final Scheduling Order in a Complex Case, as the case may be, will be issued at the conclusion of the FPTC.

Prior to attending any pretrial conference, counsel should confer with each other about the topics expected to be discussed at the conference, including a substantive discussion of potential settlement. Counsel are also expected to have discussed with their respective clients prior to the conference the issues to be addressed at any conference with the Court and to come to the conference with all necessary authority.

B. Continuances and Extensions.

1. General Policy.

Counsel should expect the Court to maintain the dates contained in the Scheduling Order, unless good cause is shown that justifies a change.

2. Requests for Extensions and Continuances.

Judge Pratter generally will grant a short (i.e., two weeks or less) continuance or extension that will not affect the discovery cutoff or trial date (i.e., the date that a brief is due, the date of an evidentiary hearing, or the date of an oral argument on a non-dispositive motion), if requested by way of a stipulation agreed upon by all parties. Any other request for a continuance

or extension should set forth in detail the basis for the request and whether it is agreed to or opposed by the opposing party(ies). A request for an extension or continuance of longer than two (2) weeks or of the trial date, discovery cutoff date, or the deadline for filing dispositive motions must be made sufficiently prior to the due date to allow time for the Court to consider it and should set forth compelling reason(s) for the relief sought. An unopposed request may be made by letter to the Court and should include the reasons for the request.

C. General Motion Practice.

Except as set forth here, motion practice will be conducted in accordance with Local Rule 7.1. The originals of all motions and briefs should be filed with the Clerk's Office. Two (2) courtesy copies should be supplied to Chambers by the filing counsel. See foregoing requirements concerning ECF filings.

Every factual assertion considered by the submitting party to be important to that party's position in a motion, opposing papers or brief must be supported by citation or other specific reference to the record where that fact may be found. Legal and record citations shall be "pinpoint cites."

1. Oral Argument on Motions.

If the Court determines that oral argument will be helpful in deciding a matter, the Judge will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading. The Court is very likely to have oral argument on dispositive motions.

2. Reply and Surreply Briefs.

Reply and surreply briefs are discouraged unless it is apparent on the face of the

submission that it was necessary to rebut an issue or point of law not discussed in the initial briefs. Reply and surreply briefs may be filed and served within seven (7) days of service of the brief to which the reply or surreply responds unless the Court sets a different schedule. Reply and surreply submissions should not contain a repeat recitation of the facts of the case and, without leave of Court for good cause shown, should not exceed 15 pages in toto. The Court will not necessarily delay its decision while awaiting a reply or surreply brief.

No other briefs may be filed without leave of Court for good cause shown.

3. Chambers Copies of Motions.

Notwithstanding compliance with the Court's procedure regarding use of ECF, counsel should send to Chambers two (2) courtesy copies of any motions (and related briefs) filed with the Clerk of Court.

D. Discovery Matters.

1. Length of Discovery Period and Extensions.

The length of time permitted for discovery depends upon the nature of the case. Generally, up to six (6) months from the date the complaint is responded to by answer or motion is permitted for discovery. Parties should not assume that the filing of a motion to dismiss will be sufficient reason to extend this six-month period, although the Court will entertain a reasonable request by any party for an order staying discovery during the pendency of a motion to dismiss the complaint. In Special Management cases, Judge Pratter will permit additional time for discovery depending upon the need to do so identified by the parties at the IPTC, and any subsequent status conferences. A case will ordinarily be scheduled to be listed for trial or included in the trial pool approximately sixty (60) days after the scheduled completion of all

discovery.

2. Discovery Conferences and Dispute Resolution.

When a discovery dispute occurs, Judge Pratter will consider a motion to compel under Local Civil Rule 26.1(g). Prior to submission of any discovery dispute to the Court for resolution, counsel should consult Local Rule 26.1(f) which requires counsel for the disputing parties to make reasonable efforts to resolve the discovery dispute before submitting it to the Court for decision. The Rule requires that counsel who is submitting the dispute to the Court include a certification that a good faith resolution effort has been made by counsel involved in the dispute. Judge Pratter expects that such a certification will be substantive and meaningful. For example, it is *not* sufficient for the certification to simply recite that “reasonable efforts have been made but were unsuccessful”, that “counsel have conferred in good faith”, that “counsel repeatedly conferred with opposing counsel”, or similar generalities. See, e.g., Naviant Marketing Solutions, Inc. v. Larry Tucker, Inc., 339 F.3d 180, 186 (3d Cir. 2003); Evans v. American Honda Motors Co., Inc., 2003 WL 22722417 at *1-2 (E.D. Pa. Nov. 26, 2003).

Accordingly, when counsel elect to submit a discovery dispute to Judge Pratter, the submission must include a Rule 26.1(f) certification that delineates with specificity the actual efforts made to resolve the discovery dispute amicably. Failure to include such a certification will subject the submission to summary denial of a discovery motion without substantive consideration.

Once a motion to compel is filed, the Court likely will schedule a telephone or in-person conference to resolve the dispute to be held within ten (10) business days or less of the Court’s receipt of the motion. The non-moving party will be allowed up to five (5) business days from

the date of service of the motion to file a response, and if the non-moving party wishes the Court to consider the response in advance of ruling and/or a conference, such party should arrange to have the response delivered to Chambers within the five (5) day time frame. On occasion the Court may request the non-moving party to submit the response before the expiration of the five (5) business days. If the parties work out the dispute amicably, the conference will be canceled.

The motion and the response must each be accompanied by a form of order and a short brief not to exceed five (5) pages describing the disputed issue(s). Discovery motions and responses and the accompanying briefs should not recount the allegations of the complaint, the factual underpinnings of the defense or the history of the case except as absolutely necessary for an understanding and resolution of the specific discovery dispute at issue. In many instances, the Court expects to rule promptly on discovery motions and often decides such motions during the telephone conference if one is held. The Court may act on discovery motions prior to receipt of responsive briefs by initiating a telephone conference for that purpose. A reminder : All motions must contain the certification required under Local Civil Rule 26.1(f).

Judge Pratter permits telephone conferences to resolve discovery disputes during depositions in cases where the deposition would otherwise have to be adjourned.

3. Confidentiality Agreements.

Judge Pratter will consider entry of stipulated confidentiality or sealing orders if the proposed order includes a detailed statement demonstrating that good cause exists for the order. See Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3rd Cir. 1994). All such orders must contain the following language (or language substantially similar):

“The Court retains the right to allow disclosure of any subject

covered by this stipulation or to modify this stipulation at any time in the interest of justice.”

4. Expert Witnesses.

The time for disclosure of the identity of experts, submission of curricula vitae and for discovery pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), will be set forth in the Scheduling Order issued at the conclusion of the IPTC.

E. Settlement.

Settlement will be discussed at the IPTC, at subsequent status conferences, and at the FPTC. However, settlement of a case is the responsibility of the parties and, unless requested by all parties, Judge Pratter generally will not schedule settlement conferences. Judge Pratter will only very rarely participate in settlement negotiations in non-jury cases. By agreement of the parties, a case in which settlement prospects are promising may be referred to a magistrate judge or to another District Court judge for a settlement conference. Judge Pratter welcomes all reasonable suggestions by counsel with respect to options for the pursuit of potential settlement at any time during the pendency of the case.

F. Arbitration.

Judge Pratter neither holds an IPTC nor issues a scheduling order in arbitration track cases, unless there is a de novo appeal from an arbitration award. The parties are expected to complete all discovery prior to the date of the arbitration hearing. Upon demand for trial de novo from an arbitration award, Judge Pratter will issue an 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.

G. Summary Judgment Motions.

All summary judgment motions and oppositions to such motions must contain a numbered paragraph-by-paragraph recitation of facts with specific citations to the record for the support of such facts. The Court will not consider any assertion of a fact that is not supported by a citation to the record. A party opposing summary judgment must state in similar paragraph form whether it agrees or disagrees that the facts as stated by the moving party are undisputed. If a party contends that a fact is in dispute, it must cite to the record evidence that supports the party's view of that particular fact. Failure to address the moving party's factual contentions in this manner will lead to the Court's consideration of the moving party's factual assertion(s) as undisputed.

H. Final Pretrial Memoranda.

Unless otherwise ordered, each party shall prepare its own pretrial memoranda and should include the topics addressed in Local Rule of Civil Procedure 16.1(c), and should also include the following items:

- a. All stipulations of counsel;
- b. Any objection to: (1) the admissibility of any exhibit based on authenticity; (2) the admissibility for any reason (except relevancy) of any evidence expected to be offered; (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(s) and the authority for the objection;
- c. Deposition testimony (including videotaped depositions) to be offered

during a party's case-in-chief (with citations to the page and line number), including the opposing party's counter-designations.

The Scheduling Order, or such other order as may be entered, will set forth the due date for the final pretrial memoranda.

I. Injunctions.

Judge Pratter will list promptly any request for a temporary restraining order ("TRO") or a preliminary injunction assigned to her. She will hold a pre-hearing conference to discuss discovery issues to narrow the issues of contention and to allocate time for the hearing. Expedited discovery will be discussed and, when appropriate, ordered at the conclusion of the pre-hearing conference.

Submission of proposed findings of fact and conclusions of law for TRO and injunction hearings will be required. The time for submission of these items will be set at the pre-hearing conference.

J. Trial Procedure.

Counsel are strongly encouraged to read and review with clients and courtroom colleagues the Court's "Guidelines For Trial and Other Proceedings In the Courtroom". Those Guidelines will be applied by the Court, and counsel is expected to be familiar with the Guidelines.

1. Scheduling.

Judge Pratter's practice is to assign either a date for placing the case in the trial pool or a specific trial date at the time of the IPTC. Once a case is placed in the trial pool, counsel, parties, and witnesses should be ready to start trial upon 24 hours telephone notice, although efforts will

be made to provide at least 48 hours notice. The trial day typically will be from 9:30 a.m. until 4:30 p.m. so that the early morning and late afternoon periods can be used for addressing matters outside the presence of the jury. Questions relating to scheduling matters should be directed to Judge Pratter's Deputy Clerks (Civil or Criminal) as appropriate.

2. Cases Involving Out-Of-Town Parties or Witnesses.

Judge Pratter schedules the trial of cases involving out-of-town counsel, parties, or witnesses the same as all other cases, leaving the scheduling of witnesses to counsel.

3. Conflicts of Counsel.

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

4. Notetaking by Jurors.

Judge Pratter decides whether to permit jurors to take notes on an ad hoc basis.

5. Voir Dire.

Ordinarily, Judge Pratter will conduct voir dire. The parties are afforded an opportunity to submit proposed voir dire questions. After the Court has concluded voir dire, in most cases, counsel is afforded the opportunity to suggest or pose directly follow-up questions. If allowed, counsel should typically use generic questions of the entire panel unless, at the Court's invitation, limited follow-up questions of specific jurors is permitted.

6. Trial Briefs.

Judge Pratter requires the submission of trial briefs no later than ten (10) calendar days before the trial pool date or the specified trial date.

7. In Limine Motions.

Except as may otherwise be ordered, Judge Pratter requires motions in limine to be submitted in writing no later than ten (10) business days before the trial pool date or specified trial date.

8. Examination of Witnesses Out of Sequence.

Counsel will generally be permitted to examine his/her own witnesses out of turn for the convenience of a witness unless it is objected to by the opposing party and prejudice would result.

9. Opening Statements and Summations.

Judge Pratter normally attempts to obtain the agreement of counsel regarding time limits on opening statements and closing arguments. However, in most cases twenty (20) to thirty (30) minutes should be adequate for an opening statement and thirty (30) to forty-five (45) minutes should be adequate for summation.

10. Examination of Witnesses or Argument by More Than One Attorney.

Judge Pratter will permit more than one attorney for a party to examine different witnesses or to argue different points of law before the Court, but only one attorney may examine the same witness, and only one attorney may address the jury during the opening statement or summation.

11. Examination of Witnesses Beyond Redirect and Recross.

Re-direct and re-cross will be strictly limited to matters not previously covered by direct or cross examinations or special circumstances. Where appropriate, a proffer may be requested before it is permitted.

12. Videotaped Testimony.

Videotaped testimony should begin with the witness being sworn. Objections should be brought to the Court's attention at the time of the FPTC. After the Court rules on any objections, (ordinarily at the FPTC), counsel should edit the tapes before offering the videotaped testimony at trial. All material objections should be resolved before offering the videotape as evidence.

13. Reading Material into the Record.

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

14. Preparation of Exhibits.

Exhibits should be pre-marked and pre-exchanged in accordance with the Final Pretrial Order. On the day trial is scheduled to commence, two (2) binders containing a copy of each exhibit and a copy of a schedule of exhibits should be provided to the Court by each party.

15. Offering Exhibits into Evidence.

Generally, 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.

16. Directed Verdict Motions.

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials should be in writing if at all possible. Oral argument on such motions is ordinarily permitted.

17. Proposed Jury Instructions and Verdict Forms.

Proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury should be submitted no later than seven (7) calendar days before the

trial pool date. A courtesy copy of the proposed jury instructions (or findings of fact and conclusions of law) should be submitted to Chambers by electronic filing in a format discussed ahead of time with the Court's Chambers staff. 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 sheet of paper, double spaced and include citation to specific authority. Proposed instructions without citation to specific legal authority will not be considered. Cases and model jury instructions that are cited should be accurately quoted and a pinpoint page reference should be provided.

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

Counsel will have the opportunity to file supplemental points, or proposed findings of fact and conclusions of law, near the close of testimony.

18. Proposed Findings of Fact and Conclusions of Law.

Proposed findings of fact and conclusions of law in non-jury cases are to be submitted at least seven (7) calendar days before the trial pool date. The parties may submit revised findings of fact and conclusions of law with specific reference to testimonial or documentary evidence which has been admitted at the close of testimony, unless otherwise provided for in the Final Pretrial Order.

19. Offers of Proof.

If any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of counsel prior to the start of trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief prior to trial.

20. Unavailability of Witness.

Because a witness may be unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects oral or videotaped depositions to be used at trial for any witness whose testimony the party believes essential to the presentation of that party's case, 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.

21. Lay Witness Opinion.

Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 with respect to issues of liability or damages shall, at the time required for submission of expert reports, serve the opposing party(ies) with the same information and/or documents required with respect to such expert witnesses.

K. Jury Deliberations.

1. Written Jury Instructions.

In rare cases Judge Pratter may provide the jury with a copy of the instructions.

2. Exhibits in the Jury Room.

Unless cause is shown, Judge Pratter will permit all exhibits containing substantive or real evidence to go out with the jury. Demonstrative exhibits ordinarily will not be permitted in

the jury room. Counsel should confer with each other as to which exhibits should go into the jury room.

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

At the jury's request, if the transcript is available, Judge Pratter will consider allowing the reading of the appropriate portions back to the jury and the replaying of audio and video tapes.

4. Availability of Counsel During Jury Deliberation.

Unless excused by the Court, counsel should remain in the courthouse during jury deliberations.

5. Taking the Verdict and Special Verdicts.

Ordinarily, Judge Pratter will submit written interrogatories to the jury. The verdict form will be reviewed with counsel before it is provided to the jury.

6. Polling the Jury.

Judge Pratter will poll the jury upon request.

7. Interviewing the Jury.

Ordinarily, Judge Pratter will allow counsel to interview jurors following conclusion of the trial but will set certain conditions for the interviews. At a minimum, jurors will be told that they are under no obligation to talk with counsel.

III. CRIMINAL CASES

In general, policies and procedures for criminal cases are those set forth above for civil cases.

1. Oral Argument and Motions.

If requested, Judge Pratter will generally permit oral argument on a substantive motion in a criminal case. Evidentiary hearings typically will be set to take place very promptly following the due date of papers opposing the motion.

2. Pretrial Conferences.

Judge Pratter will hold a scheduling conference with counsel in criminal cases shortly after arraignment on an as-needed basis. At the conclusion of the conference, if trial seems likely, Judge Pratter will issue a Scheduling Order governing speedy trial issues, discovery, time for filing motions, and the trial date.

3. Voir Dire.

In criminal cases, the voir dire is conducted by Judge Pratter, based, in part, on questions submitted by counsel. After the voir dire is concluded, the Judge will permit counsel to suggest follow-up questions. Counsel should plan for submission of proposed voir dire questions in writing seven (7) calendar days before the trial date.

4. Sentencing Memoranda.

Judge Pratter requires the submission of objections to the Presentence Investigation Report and the submission of sentencing memoranda in accordance with the notice of sentencing issued shortly in conjunction with the entry of a guilty plea or judgment.

5. Continuances.

Defense counsel will be expected to consult with counsel's client and set forth in papers submitted to the Court the client's position with respect to any request for a continuance.

IV. OTHER MATTERS

1. Briefs of Cases on Appeal.

Judge Pratter welcomes copies of appellate briefs when a decision rendered by her is appealed.

2. Consultation with Opposing Counsel.

In general, Judge Pratter expects counsel to bring matters to her 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, e.g., “opposing counsel does not oppose the continuance”, “opposing counsel opposes the request to show photographs to the jury during opening statements”, etc.

3. Professionalism In The Courtroom.

To repeat comments set forth above, Judge Pratter will expect punctuality and courtesy from counsel to the Court and to each other, both in the presence of the Court and otherwise. The examination of witnesses during hearings or trials should be conducted from the lectern or from counsel's table. Counsel should rise to address the Court. 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 Court should be alerted to issues that will need to be ruled upon during the day at the start of the day's proceedings, or during recess out of the jury's presence.

4. Miscellaneous Courtroom Conduct Issues.

a. Counsel must turn off cell phones, electronic messaging devices (“Blackberries”), pagers and the like. All such equipment must remain off and unused for the duration of the proceeding. Counsel has the responsibility to advise their client(s), witnesses and

colleagues of the Court's requirements in this regard.

b. If counsel wishes to approach the witness, counsel should ask for permission to do so. If counsel needs to approach one witness many times, a single request for permission will suffice. When counsel approaches the witness, he or she should accomplish the reason for approaching and then return to the place from which he or she is questioning.

c. If counsel wishes to make an objection, he or she should stand and state the objection along with the basis for the objection in a word or phrase, like "hearsay," without making a speech. If counsel wishes to have a sidebar, the Court will usually grant the request if counsel does not ask for too many sidebars. Counsel is encouraged to bring any evidentiary questions to the attention of the Court outside the presence of the jury.

d. Counsel has the responsibility to advise their witnesses that no witness should talk to the jury at any time. For example, if the witness has stepped down from the witness stand to testify from an exhibit, the witness should not have any private conversation whatsoever with any juror. The witness may, of course, direct his or her answers to the jury's direction, so long as the witness is still answering the lawyer's questions.

e. In opening or closing statements, no lawyer may call a witness a "liar" or say that the witness "lied." Such conclusions are for the jury to make. Using such language, including use of the phrases, "I believe," or "I think," is not appropriate during opening or closing statements.

f. There will be a Clerk in the courtroom during a jury trial who will give the jurors any exhibits or other items that counsel requests be given to them. Counsel should not walk up to the jury and start handing the jurors things. Likewise, counsel should not ask the

jurors if they can see or hear something. If counsel is concerned, he or she should say something like: “Your Honor, would the Court ask if the jury can see or hear.”

g. A jury trial is a formal affair and all counsel are to act accordingly. Coats, coffee cups, crumpled papers, empty transit boxes, water bottles and the like should not be left within sight of the jury.

h. Opposing counsel should not have extended conversations with each other in front of the jury without the Court’s permission. The Court will allow counsel to have a private conversation if requested and if it will move things along. Lawyers should not argue with either opposing counsel or the Court.

i. It is counsel’s obligation to make all necessary arrangements for securing a transcript of the proceedings.

5. If counsel has a specific question on a matter not addressed above, counsel is encouraged to contact the Court’s Chambers staff.