JUDGE GENE E.K. PRATTER'S

GENERAL PRETRIAL AND TRIAL PROCEDURES

REVISED JANUARY 2020

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JUDGE PRATTER'S BACKGROUND

Judge Gene E.K. Pratter was born in Chicago, Illinois. She grew up in Southern California, earned an A.B. from Stanford University and a J.D. from the University of Pennsylvania Law School. 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. While in practice and now in public service, Judge Pratter has been active in a host of diverse professional and community activities, charities and projects. She is an adjunct instructor of Trial Advocacy at the University of Pennsylvania Law School. Judge Pratter was sworn into the United States District Court for the Eastern District of Pennsylvania on June 18, 2004.

PRELIMINARY GENERAL MATTERS[1]

I. Applicability

These rules replace all previous versions of Judge Pratter's pretrial and other case management rules. It also incorporates the previously-separate documents "Scheduling and Discovery Policy" and "Guidelines for Trial and Other Proceedings in The Courtroom" into one document to guide lawyers and litigants appearing before Judge Pratter.

II. Professionalism and Civility

A lawyer "should strive at all times to uphold the honor and to maintain the dignity of the profession." ABA INAUGURAL CANONS OF PROFESSIONAL ETHICS, ¶ 29 (1908). Formality governs everything we do. Counsel will rarely be criticized if he or she acts with the utmost decorum and

[1]All of the matters addressed in these Procedures apply to all counsel **and all *pro se* litigants** in any matter pending before Judge Pratter.

courtesy consistent with the high standards applicable to the legal profession and the high esteem to which it aspires.

Counsel and their clients should be polite, courteous and otherwise civil to one another, as well as to all parties, witnesses and court personnel at all times. Gratuitous hyperbole, deliberate or reckless misstatements, uncooperative attitudes, "Rambo" tactics, over-reaching in discovery or other demands, pointless or personal 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 as well as their colleagues, affiliates, and clients. Written material of similar ilk, especially when included in submissions to the Court, are rarely—if ever—relevant to the matter at issue, much less persuasive, and may be cause for the submission to be returned to counsel for appropriate editing and possible re-submission without the offending material.

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 case.

In general, counsel should bring disputed 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.

Counsel and their clients should be punctual for all conferences, hearings, oral arguments and trials.

III. Correspondence with the Court

Correspondence may be directed to the Court concerning scheduling, or other routine matters. Correspondence to advise the Court that a case has been settled or withdrawn is also appropriate.[2] Likewise, correspondence is permitted on any matter when specifically requested by the Court. Any written communication requesting action by the Court on such subjects should include at a minimum: (1) a very brief description of the situation requiring the Court's attention; (2) the position of the opposing party(ies) (e.g., consent or opposition); and (3) the specific relief sought. All counsel should be copied on any correspondence with the Court.

All other communications with the Court should be made by the formal filing of pleadings, motions, petitions, applications, briefs or legal memoranda. For example, discovery or other disputes should be handled by formal motion, not by correspondence unless specifically invited by the Court. Counsel **should not** send Judge Pratter or her law clerks copies of letters between parties unless specifically invited by the Court to do so. This includes copies of email correspondence and messages.

IV. Communication with Staff and Clerks

Communications with law clerks about any pending matter, other than ministerial (i.e., housekeeping) matters, are strongly discouraged. Law clerks and the Deputy Clerks are not permitted to render advice to counsel and have no authority to grant continuances or to speak on behalf of the Court. Counsel should not adopt an overly familiar tone with the law clerks or Deputies and must always address them by their formal title (e.g., Mr. or Ms.) and surname. Unless directed otherwise by the Court, counsel should never contact law clerks for advice on substantive

[2] Indeed, the Court expects to be promptly advised in writing whenever any case has been resolved.

matters. 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.

In the event counsel find it absolutely necessary to have a non-lawyer from counsel's office contact the Court's Chambers, it is counsel's responsibility to make sure the non-lawyer is familiar with all appropriate etiquette for communicating with the Court and is fully knowledgeable about the purpose of the call and is also prepared to promptly contact the caller's supervising counsel if requested by the Court. 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.

V. Telephone Conferences

Telephone conferences with all counsel 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. In that regard, counsel should be mindful that cell phones typically do not perform well for multi-party conference calls. Failure to observe basic phone courtesy will result in the Court's refusal to use phone conferences in matters involving the offending participants.

VI. 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 on an *ad hoc* basis as warranted. They typically are conducted in the courtroom. The Court endeavors to provide counsel with appropriate advance notice of scheduled hearings, arguments and conferences and expects counsel to refrain from last minute (i.e., less than 48 hours) requests to cancel, postpone or reschedule such matters in the absence of actual emergencies.

Judge Pratter generally schedules oral argument on dispositive motions and as otherwise necessary. She also **strongly encourages junior counsel to present all oral arguments**.

VII. *Pro Hac Vice* Admissions

Judge Pratter **does not accept** the standard form made available from the offices of the Clerk of Court. Rather, the motion for *pro hac vice* admission must contain the information outlined below. Furthermore, the admission of out-of-the-jurisdiction counsel *pro hac vice* does not relieve associate local counsel of responsibility for the matter before the Court.

All motions for the *pro hac vice* admission of counsel must be made by an attorney who is (1) admitted to practice and in good standing 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) (e.g., active, 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 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.

All motions for *pro hac vice* admission must be filed on the ECF system only. The Court will not accept hard copy or faxed motions for *pro hac vice* admission unless the Court explicitly states otherwise.

VIII. Use of Electronic Court Filings (ECF)

The Court expects all counsel to be registered on the ECF system for the District Court of the Eastern District of Pennsylvania. All official filings submitted to the Clerk of the Court must be filed directly by the filing attorney onto ECF. The Court's orders, opinions and other docketed materials will be filed onto ECF and notice of the filing 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.

IX. *Pro Se* (Unrepresented) Litigants: Assistance from a Lawyer

Pro se litigants who are not being formally represented by lawyers, but have received substantive assistance (e.g., help, guidance, direction or the like with the development of strategy

or tactics, drafting pleadings, motions or briefs, etc.) from an attorney for any material filed with the Court shall, in the filed material, identify the attorney, the attorney's contribution to the filing, and the scope of the attorney's limited representation. Failure to identify any such attorney will amount to a representation by the *pro se* litigant that the submission is the *pro se* litigant's submission for which no substantive assistance from an attorney was received.

X. Court Contact Information

A. Mailing Address

Chambers of Judge Gene E.K. Pratter

Room 10613, United States Courthouse

601 Market Street

Philadelphia, PA, 19106

B. Fax Number

267-299-5070

C. Telephone Number

267-299-7350

D. Email Address

Chambers_of_Judge_Gene_E_K_Pratter@paed.uscourts.gov

CIVIL CASES

I. Pretrial Procedure

A. Initial Pretrial Conferences

Judge Pratter schedules an in-person initial pretrial conference ("IPTC") pursuant to Rule 16 soon after the complaint or notice of removal is filed or soon after the case is transferred to her.[3] Generally, the conference will be held in Chambers and last approximately 30 minutes.

1. Pre-IPTC Submissions

Three (3) days prior to the IPTC, counsel must submit to Chambers:

1) An initial pretrial conference 26(f) status report.[4] This report should include:

a. Any pending preliminary motions, or any planned preliminary motions (e.g., motions to dismiss, motions to transfer, add parties, and other threshold motions);

b. A proposed discovery plan, including deadlines for (1) self-executing discovery (2) fact discovery (3) plaintiff and defense expert reports (4) expert depositions (5) *Daubert* and dispositive motions and (6) a trial pool date picked in accordance with the below guidance; and

c. Certification regarding the expedited trial alternative (*see* Section VII, *infra* at 18).

2) In Special Management Track cases, a proposed case management plan pursuant to section 3:01 of the Civil Justice Expense and Delay Reduction Plan.

[3] If one of the parties is *pro se*, the Court will generally forego the IPTC and issue a scheduling order shortly after parties are served.

[4] *A template is available at*: https://www.paed.uscourts.gov/documents/procedures/prapol5.pdf.

2. Rescheduling the IPTC

The IPTC will be scheduled via written notice to counsel. Counsel should not wait to start discovery until after an IPTC has been held. The IPTC will not be moved unless there are extraordinary circumstances. Examples of instances that do not qualify as extraordinary include: "prepaid" vacations, being "close to a settlement," inconvenience, or lack of appearance on behalf of a party to the case. Given that this is primarily a scheduling conference, if lead counsel cannot attend, another lawyer at the firm may attend in his or her stead. Requests to reschedule should be made as far in advance of the scheduled conference as possible. Last minute requests should be accompanied by verifiable excuse both for the delay in making the request and the reason for the request. In very rare cases the conference may be by telephone. Counsel having to travel long distances (via air) may request to appear by telephone.

3. IPTC Agenda

Counsel taking part in the IPTC should be prepared to speak knowledgeably and with client authority on these subjects:

a. Jurisdictional defects, if any;

b. Time limits to join other parties and to amend pleadings;

c. Prospects of amicable settlement;

d. Establishing schedules for remaining pretrial proceedings, including discovery, pretrial filings, exchange of exhibits, exchange of expert reports, dispositive motions, etc.;

e. Those topics listed in Local Rule of Civil Procedure 16.1(a) and Federal Rule of Civil Procedure 16(b) and (c); and

f. The progress of self-executing disclosures pursuant to section 4:01 of the Civil Justice Expense and Delay Reduction Plan.

B. Post-IPTC Schedule

Following the IPTC, the Court will issue a scheduling order setting 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. A trial pool date is not a date certain for trial but is used for planning purposes. The Court will generally set a trial date certain at the final pretrial conference (see below) after the deadline for summary judgment motions, and the date certain will fall sometime after the trial pool date. 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). Unexcused violations of scheduling orders are subject to sanctions upon motion or upon the Court's own initiative.

C. Final Pretrial Conferences

Typically, Judge Pratter will hold a final pretrial conference (FPTC) approximately one week prior to the trial pool date. At the FPTC, outstanding issues concerning the trial, scheduling, or dispositive motions are discussed. 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. In standard cases, a trial date certain will be set at 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.

II. Continuances and Extensions

A. General Policy

Discovery deadlines do not require leave of the Court to continue or extend so long as the post-deadline activities are the result of co-operative consideration. All other dates for required submissions to the Court will not change unless there is good cause to justify a change and the Court so rules.

B. Requests for Extensions and Continuances

Generally, Judge Pratter will grant a short (usually two weeks or less) continuance or extension that will not affect the discovery cutoff or trial date (e.g., 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 with the agreement of all parties. Such a request should be submitted via fax to the Court as a stipulation (not filed on the docket). Such a request will generally be granted so long as the schedule of the Court permits it.

Any other request for a continuance or extension (for example, a request for an extension or continuance of longer than two weeks or a request for any change to the trial date or the deadline for filing dispositive motions) should be set forth in writing, detailing the basis for the request and whether it is agreed to or opposed by the opposing party (or parties). It must be made sufficiently prior to the due date to allow time for the Court to consider it. Such requests are extraordinary and should set forth compelling reason(s) for the relief sought. They must note if the request in question

is opposed or unopposed. Do not ask for repetitive extensions without presenting *very* compelling reasons.

III. 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.

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 must be pinpoint cites.

A. Memoranda of Law

Parties are strongly encouraged to include, in all memoranda of law, a table of contents and a table of authorities.

B. 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 hear oral argument on dispositive motions, or if either party requests oral argument.

Judge Pratter prefers junior counsel on a case to conduct oral argument. Generally, the moving party should go first. Judge Pratter imposes no time limits on the parties, though brief is usually better. She also allows parties to go back and forth until each party has nothing more to argue.

C. Reply and Surreply Briefs

Reply and surreply briefs are strongly discouraged unless it is apparent on the face of the submission that such additional briefing is necessary to rebut an issue or point of law not anticipated in or otherwise discussed in the initial briefs. Reply and surreply briefs may be filed without leave of Court. They must 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, must 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 (1) without leave of Court and (2) for good cause shown.

D. Chambers Copies of Motions

Counsel must send to Chambers one courtesy copy of any motions (and related briefs) filed with the Clerk of Court, **even if filed on ECF**. Such courtesy copies should be single-sided.

E. Amended Pleadings

All amended pleadings and motions to amend a pleading must include a redline or document otherwise showing the changes made to the original pleading.

F. Time to Respond to Rule 12(b) and Rule 56 Motions

Parties have 21 days after service of a motion to dismiss under Federal Rule of Civil Procedure 12(b) or a motion for summary judgment under Federal Rule of Civil Procedure 56 to file their response. *Note that this is longer than the time period outlined in the local rules.*

IV. Discovery Matters

A. Length of Discovery Period

The length of time permitted for discovery depends upon the nature of the case. Judge Pratter gives wide latitude to parties to coordinate discovery amongst themselves and allows the parties to manage their own discovery. The Court will, however, give a rough schedule that the parties will be held to if they cannot work cooperatively. These parameters can be changed upon the consent of all parties. The only deadlines that the parties cannot change without leave of Court are motion and conference deadlines. Discovery may take place after the scheduled deadlines only by agreement of the parties, so long as the continued discovery is not used as an excuse for delaying resolution of a dispositive motion and so long as trial will not be delayed and trial preparation will not unreasonably be disrupted. The Court will not entertain motions to compel discovery after the deadline date for the failure to timely serve the discovery or file such motion before the deadline (absent a showing of good cause).

Generally, discovery will be permitted for up to six (6) months from the date the complaint is responded to by answer or motion, but in most cases, all discovery should be completed within 90-120 days after appearances have been filed for all defendants. Actual discovery dates will be promulgated at the IPTC. ***In all employment cases alleging adverse action, parties shall comply with the rules set forth in and use the Pilot Program Regarding Initial Discovery Protocols for Employment Cases Alleging Adverse Action.***[5] Parties should not assume that the filing of a motion to dismiss will be sufficient reason to extend this six-month period. The parties are expected to continue discovery while a motion to dismiss is pending. The Court will only entertain a discovery stay in extraordinary circumstances. In Special Management cases, Judge Pratter will permit

[5]See http://www.paed.uscourts.gov/documents/procedures/prapol3.pdf.

additional time for discovery depending upon the need to do so identified by the parties at the IPTC, and any subsequent status conferences. The Court will ordinarily schedule a conference approximately forty-five days after the dispositive motion deadline to schedule a trial.

B. Discovery Disputes and Conferences

Experience dictates that discovery disputes are generally avoidable and rarely need intervention by the Court. However, when a discovery dispute occurs, Judge Pratter will assist in the resolution of the dispute. *See* E.D. Pa. Local R. Civ. P. 26.1(f) & (g). The parties must file a formal motion (not a request or simple written correspondence) for the Court to assist them to resolve the discovery dispute unless the dispute arises as an unanticipated emergency. Prior to submission of any discovery dispute to the Court for resolution, counsel must consult Local Rule 26.1(f), which requires counsel to make reasonable efforts to resolve the discovery dispute before submitting it to the Court for resolution. 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. Such a certification must be **substantive, specific 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 can result in summary denial without substantive consideration.

Once a motion to compel is filed, the Court likely will schedule a telephone or in-person conference within 14 days to resolve the dispute, with or without a formal written response from the non-moving party. 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 promptly or request a delay in the conference to permit the filing of a written response if the Court has not requested one. If the Court has not scheduled a conference to address a motion to compel, the non-moving party should submit a written response to the motion within seven (7) days of service of the motion. If the parties work out the dispute amicably, they should notify the Court and the scheduled conference, if any, will be canceled.

The motion and the response must each be accompanied by a requested order and brief not to exceed five 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).

During depositions, Judge Pratter permits telephone conferences to resolve discovery disputes in cases where the deposition would otherwise have to be adjourned. However, counsel should resort to such efforts only sparingly and certainly only after making all appropriate efforts to resolve the impasse amicably, professionally and realistically. Of course, counsel should not assume that last-minute efforts to reach the Court for such disputes will be successful.

C. Confidentiality Agreements, Protective Orders, Etc.

Judge Pratter will consider entry of stipulated, narrowly fashioned confidentiality, protective or seal orders if the proposed order includes a detailed statement demonstrating that good cause exists for the order. *See Pansy v. Borough of Stroudsberg*, 23 F.3d 772, 786 (3d Cir. 1994).

All such orders must contain the following language (or language substantially similar): "The Court retains the right to allow, *sua sponte* or upon motion, disclosure of any subject covered by this [stipulation/order] or to modify this [stipulation/order] at any time in the interest of justice."

D. 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), generally will be set forth in the scheduling order issued after the IPTC. Requests after the conclusion of discovery for expert witnesses will be entertained only upon a showing of good cause and an explanation as to why the need for experts was not anticipated earlier.

V. Settlement

Settlement may be discussed at the IPTC, at subsequent status conferences, and at the FPTC. However, settlement of a case is primarily the responsibility of the parties and, unless requested by all parties, Judge Pratter will *not* set required or mandatory settlement conferences. Judge Pratter generally does not participate in settlement conferences. However, by agreement of the parties (or, in multi-party cases, between two parties adverse to each other) a case in which settlement prospects are promising may be referred to a magistrate 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.

VI. Arbitration and Trials *De Novo*

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, and within 90 days of the request for trial *de novo*. Ordinarily, neither discovery nor dispositive motions will be allowed after the arbitration hearing is held. The parties are free to mutually agree to waive this rule and conduct additional discovery, provided that there is no impact upon the Court's scheduling of the case for trial. Absent an agreement, additional discovery can be requested by motion and may be granted upon good cause shown as to why the discovery requested could not have been reasonably anticipated and completed prior to the arbitration.

VII. Expedited Trial Alternative

The parties may elect to take a case directly to trial—whether jury or bench trial—*without* discovery and *without* motion practice. The intent of this expedited trial alternative is to afford parties a ready trial forum in which cases can be resolved without the time and expense normally required for discovery and motion practice. Should parties agree, the following differences from the standard practice will occur:

1) No formal discovery or motion practice will occur. The parties may informally agree to provide discovery-like information to each other.
2) The Joint Case Management Report required by Rule 26(f) need not include the information called for concerning discovery or motion practice.
3) At the IPTC, the Court will set a Final Pretrial Conference within approximately two months of the IPTC. At the Final Pretrial Conference, the Court will give the parties a firm trial date, usually within one or two months of the Final Pretrial Conference. Thus, the expedited trial may occur within four months of the Initial Pretrial Case

Management Conference and approximately six or seven months of the commencement of the action. It can occur even earlier upon agreement.

Counsel for each party is required to discuss this expedited trial alternative with his or her client before the Rule 26(f) conference. As part of this discussion, counsel must provide his or her client with two good faith estimates of the costs (including attorneys' fees) of litigating this case to completion: (a) an estimate of the cost if an expedited trial is elected, and (b) an estimate of the cost if an expedited trial is not elected and typical discovery and motion practice occur. The intent of this requirement is to help clients clearly understand the potential cost savings of an expedited trial.

Each counsel must certify in the Joint Case Management Report that he or she has held the client discussion required in the immediately preceding paragraph. Each *pro se* litigant must certify that he or she has considered the expedited trial alternative. If the parties identify other expedited procedures that might reduce the cost of litigating this case to completion, they may propose such procedures in the Rule 26(f) Joint Case Management Report.

VIII. 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 all of those 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 that party agrees or disagrees that the fact(s) as stated by the moving party are undisputed. If a party contends that a fact is in dispute, citation must be made 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. When the parties include deposition transcripts as record evidence, the record **must** include the **full deposition transcript**.

When replying to the movant's statement of undisputed facts, a numbered list of "admitted" or "denied" is insufficient. Parties shall cut and paste the initial statement of facts, repeating the numerical layout of the opening brief, and put the response in italics. Any additional facts to be added should be placed underneath with an (a) or (b) designation as necessary, so as to preserve the initial numbering. For example:

1. Jane Doe was at the corner of 7th and Market in Philadelphia at 10:05 p.m. on April 11, 2018. Pl. Dep. at 12, 5-6.
    a. *Admitted*
    b. *Jane Doe remained at the corner until 10:40. Pl. Dep. at 12, 7-8.*
2. The defendant approached Ms. Doe at 10:15 p.m. the same day. Pl. Dep. at 12, 9-10.
    a. *Denied.*
    b. *The defendant approached Ms. Doe at 10:30. Def. Dep. at 8, 3-4.*

The filing of a motion for summary judgment will not operate to postpone or delay an arbitration in the absence of a specific order from the Court.

IX. 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 due date for these final pretrial memoranda will be set forth in the scheduling order.

X. Injunctions

Judge Pratter will list promptly any request for a temporary restraining order (TRO) or preliminary injunction. She will hold a pre-hearing conference to discuss discovery to narrow the issues in 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.

XI. Trial Procedure

A. Scheduling

Judge Pratter's practice is to assign a date for placing the case in the trial pool at the IPTC. The trial pool is **not** a date certain for trial but is simply a scheduling tool. At the pretrial conference shortly in advance of the trial pool date, the Court will set a trial date certain, taking into account the schedule of the Court, the parties, and counsel. 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.

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

Other than in rare and exceptional circumstances, 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.

C. 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. These will generally be discussed at the FPTC. Once a trial date has been set, the Court expects that obligation to take precedence over other matters (except serious, unanticipated personal or professional emergencies). "Prepaid vacations" or other conflicts that arise after the trial date certain has been agreed upon will not be grounds for changing the trial date certain.

D. Notetaking by Jurors

Judge Pratter decides whether to permit jurors to take notes on an *ad hoc* basis. Generally it is permitted. Jurors are not permitted to pose questions to be asked of witnesses unless the parties persuade the Court to allow such a practice.

E. *Voir Dire*

Judge Pratter will conduct *voir dire*. The parties may submit proposed *voir dire* questions, but counsel is not permitted to question the entire panel. After the Court has concluded *voir dire*, in most cases, individual follow-up *voir dire* is conducted at side bar with counsel and the specific juror. Counsel may suggest or pose follow-up questions on an individual basis with the jurors who responded during the Court's initial *voir dire*. Counsel may only question individual jurors at the Court's invitation.

F. Trial Briefs

Judge Pratter requires the submission of trial briefs no later than seven (7) days before the trial pool date or the specified trial date. The parties must also submit a "joint statement of the case" for use by the Court at the beginning of *voir dire* to advise the jurors of the nature of the case and the issues to be decided by the jury. The statement should be brief (normally two or three paragraphs in length) and neutral in tone and content.

G. *In Limine* Motions

Except as may otherwise be ordered, Judge Pratter requires motions *in limine* to be submitted in writing no later than fourteen (14) days before the trial date certain.

H. Examination of Witnesses Out of Sequence

Generally, counsel will 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.

I. Opening Statements and Summations

Judge Pratter does not have strict time limits. However, in most cases, 20 to 30 minutes should be more than adequate for an opening statement, and 30 to 45 minutes should be adequate for summation. Confine opening statements to what counsel expects the evidence to show. It is not proper to use the opening statement to argue the case, instruct as to the law, or explain the purpose of an opening statement. Presumably the Court has already done so. In opening statements or closing arguments, no lawyer may call a witness or opposing counsel 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 openings or closings.

During summation, counsel should never assert personal opinion of: (1) the credibility of a witness (2) the culpability of a civil litigant or (3) the guilt or innocence of an accused. Never

assert personal knowledge of a fact in issue or a fact not in evidence, and do not argue the "Golden Rule." (This essentially prohibits admonishing the jurors to stand in another's shoes.)

J. 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 per party may examine the same witness, and only one attorney per party may address the jury for the opening statement and for the summation.

K. Examination of Witnesses Beyond Redirect and Recross

Re-direct and re-cross will be 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.

L. 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 must edit the tapes before offering the videotaped testimony at trial. All material objections should be resolved before offering the videotape as evidence.

M. Reading Material into the Record

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

N. 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 binders containing a copy of each exhibit and a copy of a schedule of exhibits should be provided to the Court by each party. Equipment and

the smooth presentation of exhibits in video or other electronic form is the responsibility of counsel and should be attended to with care. Back-up plans in the event of equipment failure should be available.

O. 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. The Court strongly urges counsel to refrain from trying to offer evidence twice—e.g., once by testimony and once by having a witness read an exhibit verbatim.

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 should be in writing if at all possible. Oral argument on such motions is ordinarily permitted.

Q. Proposed Jury Instructions and Verdict Forms

Proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories should be submitted no later than seven (7) days before the trial date certain. A courtesy copy of the proposed jury instructions (or findings of fact and conclusions of law) should be submitted to Chambers. Remember: less is better than more, and "advocacy" instructions will be rejected. Joint submissions of instructions may be required.

Jury instructions need only be submitted with respect to substantive issues in the case. 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 the Third Circuit Model Instructions, 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 and prior to summations. Judge Pratter conducts a charging conference in all cases.

R. Proposed Findings of Fact and Conclusions of Law

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

S. 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 opposing 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, or at least no later than as soon as practicable.

T. 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 <u>any</u> <u>witness</u> 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.

U. 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 counsel with the same information and/or documents required with respect to such witnesses.

V. Transcripts

It is counsel's obligation to make all necessary arrangements for securing a transcript of the proceedings. Counsel may discuss this with the court reporter at an appropriate time, and outside the presence of the jury.

W. Courtroom Logistics

A whiteboard, markers, white paper, pens, a pointer, screen, TV and DVD player are available. Every two jurors share a computer screen on which exhibits that the Court rules publishable appear. However, if counsel wants a tape recorder, computer, power point or other equipment, counsel must furnish it or make arrangements with the Courtroom Deputy in advance, preferably no later than the final pretrial conference.

XII. Jury Deliberations

A. Written Jury Instructions

Judge Pratter will generally provide the jury with a copy of the instructions, but such copies will be devoid of citations or titles.

B. Exhibits in the Jury Room

Unless cause is shown, Judge Pratter will permit all exhibits containing substantive or real evidence to go into the jury room for deliberations. 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, preferably in advance of the oral delivery of the Court's instructions.

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

At the jury's request, if the transcript is available, Judge Pratter may consider allowing the reading of the appropriate portions back to the jury and the replaying of audio and video tapes. However, this should be considered to be a very infrequent occurrence.

D. Availability of Counsel During Jury Deliberation

Unless excused by the Court, counsel should remain in or near the courthouse during jury deliberations, and, in any event, be no more than 15 minutes away from the courthouse. Otherwise, the right to be present may be waived, and counsel's absence may be taken as counsel's consent for proceedings to take place in the courtroom during counsel's absence. Updated cell phone information must be provided to the Courtroom Deputy to allow expeditious contact.

E. 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.

F. Polling the Jury

Judge Pratter will poll the jury upon request.

G. Interviewing the Jury

Ordinarily, Judge Pratter will allow counsel to speak with jurors following conclusion of the trial but will set certain conditions for such communications. At a minimum, jurors will be told

that they are under no obligation to talk with counsel, but counsel will be free to discuss with the jury after the Judge excuses them.

CRIMINAL CASES

In general, policies and procedures for criminal cases are the same as those set forth above for civil cases, with the following changes:

I. Oral Argument and Motions

If requested, Judge Pratter generally will 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.

II. Pretrial Conferences

Judge Pratter will hold a scheduling conference with counsel in criminal cases on an as-needed basis or if requested by counsel. 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.

III. *Voir Dire*

Voir dire in criminal cases is conducted in the same manner as civil cases.

IV. Indictments and Informations

Generally, Judge Pratter does not permit the jury to have a copy of the indictment or information during deliberations.

V. 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 in conjunction with the entry of a guilty plea or judgment. The Judge expects substantive memoranda from both counsel for the Government and defense counsel.

VI. 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. The defendant's written agreement with the request must be submitted to the Court at the time of the defense motion.

OTHER GENERAL MATTERS

I. Briefs of Cases on Appeal

Judge Pratter welcomes copies of appellate briefs concerning decisions rendered by her.

II. 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," or "opposing counsel opposes the request to show photographs to the jury during opening statements," etc.

III. Professionalism in the Courtroom

Judge Pratter expects the highest standard of professional from lawyers appearing before her. As members of the legal profession, lawyers are expected to hold themselves to the highest standards in our society, and lawyers must comport themselves with the utmost dignity and decorum. It is not a circus, an audition or a stage for demonstrating dramatic ability; nor is it an oratorical contest. It should be a dignified proceeding at all times.[6] The following guidelines go to satisfy that end:

1) Promptness: Known scheduling issues, or requests for scheduling changes should be raised with the Court at the earliest possible time. Schedule changes will be announced as soon as they are known. Judge Pratter expects punctuality and courtesy from counsel to the Court and to each other, both in the presence of the Court and otherwise.

[6] If there are complaints about anyone's civility, please bring the matter to the immediate attention of the Court by asking for a conference in Chambers.

2) Stand when the jury or Judge enters or leaves the courtroom.

3) Address all remarks to the Judge, not to opposing counsel. Colloquy or argument between or among attorneys is prohibited.

4) Stand when addressing the Judge and when making objections. (This also calls the Judge's attention to objecting counsel and makes it much easier for the court reporter to correctly note the speaker.)

5) When offering a stipulation in a jury case, first confer with opposing counsel so that there are no misunderstandings.

6) Do not exhibit excessive familiarity with witnesses, jurors, or opposing counsel. For example, do not use first names for witnesses, parties or opposing counsel. During jury argument, do not address any juror individually or by name.

7) Do not bring food or beverages into the courtroom without the Court's express advance permission. (During lengthy proceedings the Court will allow counsel to keep unobtrusive mints and the like at counsel table.) Do not allow witnesses, co-counsel, legal assistants or visitors to chew gum, bring in packaged snacks, etc. Water will be available on the witness stand and on counsel tables.

8) When court is in session, do not address the reporter, law clerk or Courtroom Deputy. All requests made of court personnel should be addressed to the Court.

9) Stand a respectful distance from the jury at all times.

10) Please try to remember to address the Court as "Your Honor," not "Ma'am."

11) All cell phones or similar devices must be **turned off (not "airplane" mode or on "silent") and remain off for the duration of proceedings before the Court**

unless the Court gives express permission to the contrary. This rule is categorical and cannot be modified without leave of Court.

12) Do not ever, by facial expression or other conduct, exhibit any opinion concerning any witness' testimony. Counsel are to admonish their clients and witnesses about this common occurrence.

13) A jury trial is a formal affair and all counsel are to act accordingly. Coats, coffee cups, crumpled papers, water bottles, candy wrappers, baseball caps, and the like should not be left within sight of the jury.

14) 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.

IV. Courtroom Procedure

The following are general guidelines for how parties should comport themselves during various phases in front of the Court.

A. Witness Examination

1) Examine witnesses while seated at counsel table, standing behind counsel table, or at the lectern, as directed by the Court. Generally, the Court expects counsel to use the lectern.

2) Do not approach a witness or the bench without leave of Court. Do not hover over a witness, even when permission has been granted to approach the witness. Maintain a respectful distance from the witness. If counsel needs to approach one witness many times, a single request for permission will suffice.

3) If there is need to point to an exhibit or to use the easel when asking a question, return to counsel table or the lectern as soon as possible. Do not linger in the well of the court.

4) Treat witnesses with fairness and consideration. Do not shout at, ridicule or abuse witnesses. Do not engage in argumentative "talking over" a witness who explains an answer. If appropriate, counsel should ask the Court to curtail an unresponsive witness.

5) Do not ask the stenographer/ESR operator to mark testimony. Address all requests for re-reading of questions and answers to the Judge.

6) Cross Examination: It is unnecessary to greet or introduce oneself to adverse witnesses. Commence cross-examination without preliminaries. The right to cross-examine is neither a right to examine crossly nor to ask the witness to pass on the credibility of another witness.

7) If a witness is on the stand at a recess or adjournment, have the witness back on the stand ready to proceed when the proceedings resume.

8) Do not delay proceedings by writing out witnesses' answers during questioning. Charts and diagrams, where possible, should be prepared in advance, but counsel may use the writing board for opening statements and closing arguments.

9) Counsel has the responsibility to advise witnesses that no witness may talk to the jury at any time during the pendency of the case. 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 questions.

B. Objections

1) When objecting, stand and state only that there is an objection and briefly specify the technical nature of the ground(s). For example, "Objection, Hearsay." Do not use objections to make a speech, recapitulate testimony, or to guide the witness.

2) Do not argue an objection until the Judge grants permission or requests argument.

3) Give the Judge advance notice if there is reason to anticipate that any question of law or evidence is difficult, unusual, obscure or will provoke an argument.

4) Sidebar or Chambers conferences during trial are not to be utilized for discussion of evidentiary issues that could be addressed during recesses. If the issue is important enough to justify interruption of the trial, the jury will be excused and the matter heard in open court.

C. Exhibits

1) Normally, all exhibits should be marked in advance. *See* Section XI.N., *supra* at 25.

2) If counsel desires to display exhibits to the jury, sufficient additional copies must be available to provide each juror with a copy. Alternatively, use enlarged photographic, projected copies or juror notebooks. When copies have been provided (as is expected), the law clerk or Courtroom Deputy will hand out copies to the jurors unless the Court expressly permits counsel to do so.

3) Counsel should not ask the jurors if they can see or hear something. If counsel is concerned, counsel should say something like: “Your Honor, would the Court ask if the jury can see or hear?”

4) Each counsel is responsible for any exhibits secured from the Deputy. At each noon-time or end-of-the-day adjournment, return all admitted exhibits to the Deputy. It is strongly recommended that counsel work together to make sure at least one extra set of clean exhibits is available in the courtroom.

5) If at all possible, let the Deputy or the Court know in advance the exhibits your next witness will be using.

6) Do not approach the witness with an exhibit without permission from the Judge.

7) Show documents and other exhibits, where practical, to opposing counsel <u>before</u> their use in court.

a. In a rare case, when it is necessary to mark an exhibit in open court, ask that the reporter or Deputy mark it and briefly describe the nature of the exhibit.

8) Exhibits should be offered in evidence when they become admissible rather than as a group at the end of counsel’s case.

9) When referring to an exhibit, mention the exhibit number so that the record will be clear.

10) Counsel must review and certify on the record that what goes to the jury is correct before closing arguments.

11) Ordinarily, exhibits will be returned to counsel at the end of trial.

D. Deposition Use

1) All depositions used at the trial must be in accordance with the Local Rules.

2) Portions of depositions used for impeachment may be read to the jury during cross-examination, with pages and lines indicated for the record before reading. The witness should be asked whether he or she was asked the question(s) and gave the answer(s) on the date of the deposition(s).

Remember: <u>professionalism</u> is paramount and helps everyone achieve a fair, expeditious and economical trial.

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