

POLICIES AND PROCEDURES

Honorable Joshua D. Wolson

United States District Court for the Eastern District of Pennsylvania

James A. Byrne United States Courthouse

601 Market Street, Room 3809

Philadelphia, Pennsylvania 19106

267-299-7320

Chambers_of_Judge_Wolson@paed.uscourts.gov

GUIDELINES INDEX

I. GENERAL MATTERS	1
A. Correspondence With The Court.....	1
B. Conventions For Emails With The Court	1
C. E-Filing Guidelines	1
D. Sealed And Redacted Documents.....	2
E. Courtesy Copies.....	3
F. Unpublished Decisions	3
Parties should provide a Westlaw citation to all unpublished decisions, not a Lexis citation.	3
G. <i>Pro Hac Vice</i> Motions	3
II. CIVIL CASES.....	4
A. Pretrial Procedures.....	4
1. Affirmative defenses	4
2. Pretrial conferences	4
3. Arbitration matters	5
4. Stipulations and proposed Orders	5
B. Motion Practice	5
1. Formatting requirements	5
2. Replies and sur-replies	6
3. Page limits.....	6
4. Dispositive motions.....	7
5. Reconsideration.....	8
C. Discovery Matters	8
1. Discovery disputes	8
2. Privilege logs.....	9

D. Extensions	9
E. Protective Orders and Confidentiality Agreements	10
III. CRIMINAL CASES	11
A. Motions.....	11
B. Trial Continuances.....	11
C. Pre-Trial Hearings	12
D. Pre-Trial Conferences.....	12
E. <i>Voir Dire</i>	12
F. Trial Memoranda	12
G. Proposed Jury Instructions and Verdict Forms.....	13
H. Guilty Plea Memoranda.....	13
I. Sentencing	13
IV. COURTROOM AND TRIAL PROCEDURES.....	15
A. Motions <i>In Limine</i>	15
B. Courtroom Technology	15
C. Jury Selection	15
D. Note Taking By Jurors.....	15
E. Courtroom Protocol.....	15
F. Jury Deliberations.....	16
G. Development of Young Lawyers.....	16

I. GENERAL MATTERS

A. Correspondence With The Court

Counsel should direct communications concerning administrative or procedural matters to the Courtroom Deputies or Chambers. Letters may be submitted to the Court via email, but such communications should be limited to routine matters for which no opposition is anticipated or required. Responsive letters should only be submitted at the Court’s request.

B. Conventions For Emails With The Court

Emails to the Court should include the case name and docket number in the subject line. The Court will filter emails based on certain terminology in the subject line. Therefore, to ensure that emails receive prompt attention, where appropriate, emails to the Court should also use the following verbiage in the subject line:

Contents of email	Required verbiage
Letters seeking extensions	“request for extension”
Letters seeking continuances	“request for continuance”
Proposed orders	“proposed order”
Stipulation	“stipulation”
Rule 26(f) reports	“26(f) report”
Letters seeking leave to exceed a page limit	“page limits”
Letters confirming that the parties have set aside dates for depositions	“deposition scheduling”
Letters updating the Court on the status of settlement discussions	“settlement status”

C. E-Filing Guidelines

1. When submitting exhibits via ECF, Parties should submit each exhibit as a separate document on the CM/ECF system, rather than as a single file. If the Court receives a filing with a single document marked “Exhibits,” it will strike the filing. In addition, when parties submit

exhibits via ECF, they must give each document a name identifying the document. Thus, it is not sufficient to label a file “Exhibit A.” Instead, the name should be “Contract,” “Declaration of John Smith,” or some other reference to permit the Court to identify what the exhibit is without having to open the file.

2. Deposition testimony and other transcripts shall be submitted to the Court as full-sized pages, not manuscripts. In addition, parties submitting deposition transcripts should provide only a cover page identifying the witness and relevant pages from the transcripts. Parties should not submit the entire transcript unless the entire transcript is relevant to the issue before the Court. The Court will request the entire transcript if it deems it necessary.

3. Parties should not submit to the Court unpublished decisions that are available on Westlaw or Lexis.

4. Parties should not submit pleadings from this case to the Court. For example, there is no need to attach a copy of a complaint to a Motion to Dismiss. The Court can retrieve those documents from the CM/ECF system.

5. Any exhibit provided to the Court must be text-searchable. To the extent that a document is scanned, as opposed to converted from Word or another format, the party submitting the document must use optical character recognition (OCR) technology to ensure the exhibit’s searchability.

D. Sealed And Redacted Documents

Except in emergency situations, no documents may be filed under seal without first obtaining leave. All motions for leave to seal documents should be filed of record with a courtesy copy of all documents that the party proposes to file under seal. In recognition of the common law

right of public access, the Court will generally require the parties to file redacted versions of any sealed documents on the public record, unless the redactions would be so extensive as to render the document unreadable.

E. Courtesy Copies

The Court generally does not require courtesy copies, with the following two exceptions. First, for any filings made under seal, the filing party shall provide two (2) courtesy copies to Chambers the same day as the filing. Second, for any motions with more than five (5) exhibits or more than fifty (50) pages of exhibits, the parties shall provide the Court with a courtesy copy of the exhibits within three (3) days of filing. Courtesy copies should be submitted in hard copy, either spiral-bound or in three-ring binders. An email attaching a pdf or other file does not satisfy the obligation to provide the Court with courtesy copies.

F. Unpublished Decisions

Parties should provide a Westlaw citation to all unpublished decisions, not a Lexis citation.

G. *Pro Hac Vice* Motions

Counsel seeking admission *pro hac vice* should use the form available on the Court's website (<http://www.paed.uscourts.gov/documents2/forms/forms-miscellaneous>). The Court will deny *pro hac vice* motions for which no fee is submitted. Any lawyer admitted *pro hac vice* must register for the Court's CM/ECF system within seven days of the Order. The Court will not mail orders to lawyers admitted *pro hac vice* who do not register for CM/ECF.

II. CIVIL CASES

A. Pretrial Procedures

1. Affirmative defenses

Parties are reminded that Fed. R. Civ. P. 11 only permits parties to assert affirmative defenses for which they have a good faith basis. Parties may not assert affirmative defenses prophylactically. If a party asserts affirmative defenses without a good faith basis, the Court will strike the entire answer.

2. Pretrial conferences

The Court will schedule a preliminary pre-trial conference pursuant to Fed. R. Civ. P. 16 once each defendant has appeared in the case. The Court expects lead trial counsel to attend the conference in person. If lead trial counsel is unable to attend, the Court will reschedule the conference. However, any such request must be made as early as possible and must be based on a pre-existing commitment.

Pending motions do not stay the parties' obligations to meet and confer pursuant to Fed. R. Civ. P. 26(f) or to attend a conference pursuant to Fed. R. Civ. P. 16. The parties should begin discovery as soon as permitted under the applicable rules, without waiting for the Rule 16 conference and regardless of whether a motion is pending. If a party wishes to stay discovery during the pendency of a motion, it should present its request in person at the Rule 16 conference. However, the Court will grant a stay of discovery only in extraordinary circumstances.

A joint status report pursuant to Fed. R. Civ. P. 26(f) is due at least seven (7) days prior to the Rule 16 conference and must be submitted to the Court via email. The parties must use the

Court's sample Rule 26(f) form that will be attached to the order scheduling the Rule 16 conference. This form is also available on Judge Wolson's page on the Court's website.

Lead counsel shall participate in the Rule 26 conference, attend the Rule 16 conference, and be deemed lead counsel for all future proceedings. A designation of "lead counsel" will mean that counsel will attend all court proceedings and will deliver an opening statement and closing argument at trial, absent a written request from the client to have someone else perform those tasks.

3. Arbitration matters

The Court will generally not conduct a pretrial conference for cases that are assigned to the Court's arbitration track. Judge Wolson expects the parties to complete all discovery prior to the date that the Clerk assigns for the arbitration. Counsel may seek the assistance of the Court, if necessary, to complete discovery in advance of the scheduled arbitration date.

If a party seeks a trial *de novo* after an arbitration, the Court will expect to schedule the trial within 60 days of the request.

4. Stipulations and proposed Orders

Contrary to Local Civil Rule 5.1.2(10), all stipulations and proposed orders must be emailed to Chambers rather than sent to the Clerk of Court.

B. Motion Practice

1. Formatting requirements

Except as set forth herein, motion practice will be conducted in accordance with Local Civil Rule 7.1.

All written submissions to the Court must be prepared in 12-point, Times New Roman font, with at least one-inch margins. All footnotes shall appear in 12-point font as well. Motion papers

and memoranda of law must be double-spaced. Any briefs longer than ten (10) pages must include a table of contents. Counsel are encouraged to post searchable versions of their briefs to the CM/ECF system.

The parties shall not include substantive arguments in footnotes. **The Court will not consider substantive arguments made in footnotes, nor will it deem those arguments preserved.**

In all written submissions to the Court, citations to documents on the docket, e.g., “Amended Complaint,” should identify those documents by ECF number.

2. Replies and sur-replies

Replies and sur-replies should be filed only when necessary. Such briefs must be concise and address only new issues raised by opposing counsel. The Court discourages any replies or sur-replies that repeat or rehash previous arguments.

Any replies or sur-replies must be filed as soon as practicable, but in any event, no later than seven (7) days after the previous filing.

3. Page limits

Opening briefs in support of and in opposition to a motion shall not exceed twenty-five (25) pages. Replies and sur-replies must be limited to ten (10) and seven (7) pages, respectively. Any request to exceed an applicable page limit must be made at least seven (7) days before the filing is due and may be made through a letter emailed to Chambers with the words “page limits” in the subject line. Counsel making such a request should confer with opposing counsel and set forth opposing counsel’s position in the letter.

4. Dispositive motions

Before filing a motion pursuant to Fed. R. Civ. P. 12(b)(6), counsel shall first contact opposing counsel to discuss the substance of the contemplated motion and to provide an opportunity to cure any alleged pleading deficiencies. This conference shall take place at least seven (7) days prior to the filing of the motion. If the parties are unable to reach a resolution that eliminates the need for a 12(b)(6) motion, counsel for the moving party shall include, along with the 12(b)(6) motion, a certification that the parties met and conferred regarding the alleged pleading deficiencies. These efforts must include substantive verbal communications, whether by phone or in person. Exchanges of letters or e-mails are not sufficient. It is not sufficient to report that opposing counsel was not available or that the parties made “reasonable efforts.” The Court will deny a 12(b)(6) motion that does not meet these requirements.

A motion for summary judgment, pursuant to Fed. R. Civ. P. 56, must be accompanied by a separate statement of undisputed material facts, in numbered paragraphs, with appropriate citations to the record. The response to the motion for summary judgment must include a separate statement of material facts that responds to the movant’s numbered paragraphs and explains which facts are in dispute or why a fact is immaterial, with appropriate citations to the record. Parties are encouraged to refer to prior paragraphs rather than repeat the allegations contained therein.

If a party’s motion for summary judgment, or an opposition thereto, is based in whole or in part on an argument that expert testimony is not admissible, the party must raise such argument in a contemporaneous *Daubert* motion.

5. Reconsideration

Reconsideration motions should only be filed sparingly. Parties shall not respond to a motion for reconsideration absent a Court Order. Any motion for reconsideration of a discovery order must itself comply with the page limits in Section II.C.1., below.

C. Discovery Matters

1. Discovery disputes

The Court urges the parties to settle discovery disputes among themselves. However, if the parties remain unable to resolve a dispute despite making a good faith effort, counsel for the aggrieved party shall file with the Court a motion in conformity with Local Civil Rule 26.1(b), with a form of order and short brief, not to exceed five (5) pages (not including exhibits), describing the dispute. All discovery motions must attach the discovery requests at issue, as well as the written response. The Court will schedule a telephone conference with counsel to discuss the motion before the filing of any responsive brief.

In filing a discovery motion, the certificate of counsel must provide **specific** details of the parties' efforts to resolve the dispute informally. These efforts must include verbal communications, whether by phone or in person. Exchanges of letters or e-mails are not sufficient. It is not sufficient to report that opposing counsel was not available or that the parties made "reasonable efforts." The Court will deny a discovery motion that does not meet these requirements.

In most cases, the Court expects to rule promptly on discovery motions and often decides such motions during the telephone conference. All motions must contain the certification required under Local Civil Rule 26.1(f).

Counsel should contact the Court telephonically for any issues that arise during depositions. Counsel should not walk out of a deposition before making an effort to contact the Court and obtain guidance.

2. Privilege logs

Parties preparing privilege logs must provide information sufficient for the opposing party to determine the basis for the assertion of privilege. For claims of privilege covering multiple e-mails, the party asserting privilege must describe the specific e-mails that are being withheld, as opposed only to the e-mail at the top of the e-mail string, and the basis for withholding each e-mail. Where several e-mails are exchanged between individuals, and the same privilege claim applies to all of those e-mails, the party asserting privilege may describe the e-mails collectively, rather than one-by-one.

D. Extensions

The Court is reluctant to grant continuances of trial dates and other scheduled court events and will only do so in extreme circumstances. The Court will consider other requests for extensions on an appropriate showing of good cause. Requests for continuances or extensions may be made by letter, which can be emailed to Chambers. Any request for a continuance or extension must include the words “request for continuance” or “request for extension,” as appropriate, in the subject line of the email. The Court expects counsel for the party requesting an extension to confer with opposing counsel and state opposing counsel’s position in the letter. **Any request for an extension or continuance must be made at least seven (7) days before the applicable deadline or include a showing of good cause as to why the Party making the request could not comply with that requirement.**

E. Protective Orders and Confidentiality Agreements

Any request for a protective order or approval of a confidentiality agreement must be made by motion. The Court will not accept stipulated proposed orders in lieu of a motion. All such motions must satisfy the requirements of *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 924 F.3d 662, 672-73 (3d Cir. 2019) and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994).

III. CRIMINAL CASES

A. Motions

All pre-trial motions must be filed no later than twenty (20) days in advance of the trial date and, except in rare circumstances, will be heard on a date prior to the scheduled trial date.

All written submissions to the Court must be prepared in 12-point, Times New Roman font, with at least one-inch margins. All footnotes shall appear in 12-point font as well. Motion papers and memoranda of law must be double-spaced. Any briefs longer than ten (10) pages must include a table of contents. Counsel are encouraged to post searchable versions of their briefs to the CM/ECF system.

The parties shall not include substantive arguments in footnotes. **The Court will not consider substantive arguments made in footnotes, nor will it deem those arguments preserved.**

In all written submissions to the Court, citations to documents on the docket, e.g., “Indictment,” should identify those documents by ECF number.

B. Trial Continuances

Any request for a continuance must be filed no later than fourteen (14) days in advance of the scheduled trial date. Requests for a continuance must be filed as a motion stating the reasons for the request. Any such motion must be accompanied by a proposed order consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The order shall include a proposed finding that explains in reasonable detail why the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial. Any motion for a continuance of a trial date must be accompanied with a speedy trial waiver. The speedy trial waiver form can be found as an attachment to the first trial listing. For a Government

continuance request, where the defendant will not sign a waiver, a hearing will be held. The Court does not permit continuance requests by letter.

C. Pre-Trial Hearings

The Court typically holds suppression, *Starks*, and *Daubert* hearings at least fourteen (14) days prior to trial. Following a hearing on a motion to suppress, the Court might request the submission of post-hearing briefs or proposed findings of fact and conclusions of law. The Court will establish a schedule of these submissions after the suppression hearing.

D. Pre-Trial Conferences

Pre-trial conferences with counsel will occur at least three (3) days prior to trial. Any issues relating to *voir dire*, motions *in limine*, jury instructions, and jury verdict forms will be addressed at that time.

E. Voir Dire

The Court will conduct *voir dire*. Counsel may submit proposed *voir dire* questions and may be permitted to address the venire with follow-up questions, after approval by the Court.

F. Trial Memoranda

At least seven (7) days prior to the trial date, the Government must file a pre-trial memorandum setting forth the essential elements of the offense(s), the facts that it intends to present, the identity of each witness it intends to call, a statement of the substance of each witness's testimony, and any legal issues. The defendant is not required to file a pre-trial memorandum but may do so on the same schedule as the Government.

G. Proposed Jury Instructions and Verdict Forms

The Court will generally require the parties to submit a joint proposed set of jury instructions. The Court's pretrial order will detail how the parties should present contested jury instructions. Each point for charge and proposed jury interrogatory shall be numbered and on a separate sheet of paper. Each proposed instruction must be submitted with corresponding legal authority. If a model jury instruction is used, then the party submitting it shall state whether the proposed instruction is unchanged or modified. If a party modifies a model instruction, then additions and deletions must be noted.

H. Guilty Plea Memoranda

The Government must submit a guilty plea memorandum at least three (3) days prior to the change of plea hearing. The memorandum shall include the elements of each offense to which the defendant is pleading guilty and legal citations for the elements, the maximum statutory penalties for each offense, the terms of any plea agreement, and the factual basis for the plea.

I. Sentencing

Sentencing motions and supporting memoranda must be filed at least seven (7) days prior to the scheduled sentencing date. Responses to any sentencing motions must be filed at least three (3) days prior to the scheduled sentencing date. Motions filed pursuant to U.S.S.G. § 5K1.1 shall be filed no later than seven (7) days prior to sentencing. Sentencing memoranda (exclusive of motions) must be filed no later than seven (7) days prior to the scheduled sentencing date, and any response(s) thereto must be filed at least three (3) days prior to the scheduled sentencing date.

The Court will set a sentencing date at the time the Court accepts a guilty plea or there is a conviction at trial. The Court discourages requests for continuances of sentencing and will continue a sentencing for good cause only. The Court will not consider any request for a continuance exceeding ninety (90) days.

In the rare event of a ninety-day continuance, if counsel for both the Government and the defendant(s) believe that good cause exists for an additional continuance beyond the initial ninety-day period, then counsel may jointly request in writing an additional continuance. Any such request must state why good cause exists. If the Court grants such a request, counsel shall be required to submit in writing a joint status update every forty-five (45) days until judgment of sentence is entered.

If a defendant is responsible for restitution, then the Government must submit information in its sentencing memorandum to enable the Court to determine entitlement, the name and the address of each victim, the amount of loss for each victim, and documentary support for each amount. If liability for restitution is joint and several, then the Government shall itemize the restitution amount for which each defendant is responsible.

IV. COURTROOM AND TRIAL PROCEDURES

A. Motions *In Limine*

Absent leave of court, a party shall not file more than five (5) motions *in limine*.

B. Courtroom Technology

The Court holds proceedings in Courtroom 3-B, which is generally equipped for electronic presentation of evidence. Parties expecting to employ courtroom technology are encouraged to contact the Courtroom Deputy in advance of trial and to conduct a trial run in order to minimize disruptions during the trial itself.

C. Jury Selection

Judge Wolson conducts *voir dire*, and will generally allow narrowly-focused follow-up questions from counsel. Judge Wolson entertains challenges at the conclusion of *voir dire*. Judge Wolson generally calls all prospective jurors to sidebar or into the jury room for individual *voir dire* after asking general questions that elicit non-verbal responses.

D. Note Taking By Jurors

Judge Wolson generally permits jurors to take notes.

E. Courtroom Protocol

During oral arguments outside the presence of a jury, counsel can address the Court from counsel table or the podium, at counsel's discretion. When examining a witness or addressing a jury, counsel should speak from the podium. Counsel may approach the witness without asking permission. Counsel shall direct all comments and questions to the Court or the witness, not to opposing counsel or the jury.

The Court does not permit speaking objections. If counsel needs to be heard on a matter immediately, request a sidebar. The Court generally prefers to avoid sidebars, however. Therefore, the Court encourages counsel to raise evidentiary issues at the final pretrial conference or outside the presence of the jury, whenever possible.

Absent leave of Court, only one attorney for each side may examine the same witness or address the jury during the opening statement or summation.

F. Jury Deliberations

The Court will generally provide the jury with multiple, written copies of the jury instructions.

After the jury has been instructed and taken to the jury room, the Court and counsel will confirm the admitted exhibits to be presented to the jury for its consideration during deliberations if the jury requests.

Counsel who seek to depart the courthouse during jury deliberations must first seek leave of Court.

G. Development of Young Lawyers

The Court encourages trial counsel to assign court presentations to less-experienced attorneys, particularly where the less-experienced attorney is more familiar with the matter at hand (*e.g.*, discovery hearings). If necessary, the Court will permit two lawyers to make an argument in order to ensure that a more experienced counsel has an opportunity to buttress a younger lawyer's presentation, as long as the request is made in advance. The Court will draw no inference from a party's decision to have a younger lawyer make a particular presentation, including as to whether the client deems the issue "important."