

HONORABLE ELIZABETH L. TOPLIN

United States Magistrate Judge

James A. Byrne U.S. Courthouse

Room 3038

601 Market Street

Philadelphia, PA 19106

267-299-7500

Chambers_Judge_Toplin@paed.uscourts.gov

Tashia Reynolds

Courtroom Deputy:

267-299-7501

POLICIES AND PROCEDURES

I. PRELIMINARY GENERAL MATTERS

A. Correspondence with the Court

Judge Toplin permits correspondence from counsel on any matter, providing all other counsel in the matter are provided copies of such correspondence; and unless otherwise specified. Judge Toplin sometimes permits letter motions in lieu of formal motions.

B. Communications with Courtroom Deputy and Law Clerks

Judge Toplin permits counsel to communicate with her courtroom deputy and law clerks on scheduling and administrative matters, but never on the merits of a case.

C. Confidentiality Agreements

Judge Toplin will approve confidentiality or sealing orders consistent with applicable legal standards. *See, In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662 (3d Cir. 2019).

D. Telephone Conferences

Judge Toplin prefers telephone conferences to be utilized for matters such as scheduling conferences, scheduling changes, extensions of time and routine discovery disputes. It will be the responsibility of all counsel seeking relief to initiate any such conference by contacting the Judge's courtroom deputy, Tashia Reynolds.

E. Oral Arguments and Evidentiary Hearings

To the extent deemed necessary by Judge Toplin, oral arguments and evidentiary hearings will be scheduled through the courtroom deputy. All reasonable efforts will be made to accommodate the schedules of counsel.

F. *Pro Hac Vice* Admissions

Counsel must complete and submit an Attorney Admission Application (*Pro Hac Vice*) before the date of the non-admitted attorney's first appearance. The requisite forms are available on the United States District Court Eastern District of Pennsylvania website.

II. CIVIL CASES

A. Pretrial Procedure

Judge Toplin will schedule status conferences, settlement conferences, and final pretrial conferences as required by the circumstance of each case. Judge Toplin will work with counsel to schedule either a telephone conference or a conference in chambers to resolve any issues that may arise during the progress of the case.

Judge Toplin requires that counsel make all good faith efforts to resolve any disputed matter between themselves before seeking involvement of the Court. Judge Toplin expects counsel to be mindful of the mandate of Federal Rule of Civil Procedure: that the procedural rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

B. Continuances and Extensions

Counsel will have substantial input in the setting of dates in the Rule 16 Order; Judge Toplin expects counsel to comply with the dates set out in that Order. Extensions will be entertained upon a good cause showing that the progress of the case circumstances has been hampered by circumstances beyond the reasonable expectation of counsel. Should such circumstances arise, Judge Toplin requires a letter brief requesting an extension.

C. General Motions Practice

Except as described below, motion practice is governed by Local Rule 7.1.

1. Citations

Every assertion of fact in a memorandum must be supported by a citation to the record where that fact may be found. Both legal citations and citations to the record must include pinpoint cites.

2. Memoranda

Memoranda must not exceed twenty-five (25) pages in length (excluding table of contents and appendices), must be double spaced and must use 12-point font. Memoranda over fifteen (15) pages in length must include a table of contents and table of authorities.

D. Oral Arguments on Motions

Judge Toplin will schedule oral argument on motions if it appears likely that such argument would be helpful to the Court's resolution of the matter. Counsel may request oral argument if considered appropriate.

E. Reply and Sur-Reply Briefs

Judge Toplin will permit reply briefs not to exceed fifteen (15) pages. Judge Toplin will not normally permit sur-reply briefs; counsel desiring to file a sur-reply must first seek permission of the Court by letter brief, before such a brief will be accepted.

F. Chambers Copy of Motions Papers

Judge Toplin requires a courtesy copy of all motion papers to be sent directly to chambers via email. If exhibits are over twenty (20) pages, a hard copy must be sent to chambers.

G. Discovery Matters

1. Length of Discovery Period and Extensions

Judge Toplin normally permits from ninety (90) to one hundred and twenty days (120) for the completion of discovery; however, she will consider the informed view of counsel as to the time that will be required for discovery in a particular case. Additional time will be allowed in complex cases or upon a specific showing of need. Judge Toplin will also consider staged discovery. She will encourage that the most essential discovery be undertaken early in the case so that it will foster early settlement opportunities and minimize the costs of litigation.

2. Discovery Disputes

Judge Toplin expects the parties to resolve discovery disputes without Court intervention. Should counsel be unable, in good faith, to resolve their dispute, Judge Toplin permits contact with the Court through her courtroom deputy to set up telephone or chambers conferences to resolve outstanding issues. The use of motion practice in discovery matters is discouraged.

3. Expert Witnesses

The parties will identify expert witnesses and provide expert reports pursuant to the Rule 16 Scheduling Order entered in the case. A failure to do so may bar the use of the expert's testimony at trial.

H. Settlement (when jurisdiction remains with the District Court Judge)

1. Scheduling a Settlement Conference

When a case is referred to Judge Toplin for a settlement conference by a district judge, counsel will receive an email from Judge Toplin's Deputy, Tashia Reynolds, with Judge Toplin's availability and instruction regarding schedule a settlement conference. If you have any questions about scheduling a settlement conference, email [Chambers of Magistrate Judge Elizabeth Toplin@paed.uscourts.gov](mailto:Chambers_of_Magistrate_Judge_Elizabeth_Toplin@paed.uscourts.gov).

2. Settlement Conference Memoranda

Judge Toplin requires counsel to submit a brief, written conference summary one week prior to the scheduled conference. In addition, the parties must provide the Court with an updated demand and offer four (4) days before the scheduled conference. The summary should not exceed five (5) pages, excluding attachments. If attachments are over twenty (20) pages, a hard copy is to be sent to Judge Toplin's chambers by the date the summaries are due. Do not include any documents that are already filed on the docket as exhibits. If you would like Judge Toplin to take notice of these documents, reference them in your summary. Judge Toplin requires that counsel exchange their summaries. The summaries are not to be filed with the Clerk's Office.

3. Demands and Offers

Judge Toplin requires the parties to engage in good faith settlement discussions prior to the submission of the written conference summary. Upon submission of the written conference summary and prior to the conference, the parties are required to update their settlement positions and submit a joint letter setting forth

updated positions to Judge Toplin. This timeline will be set forth in Judge Toplin's settlement conference order.

4. Parties' Attendance and Participation

Judge Toplin requires in-person attendance at the conference by the parties, or the parties' representatives, with knowledge of the case and settlement authority. If Judge Toplin determines that a virtual conference is appropriate, she will advise in the settlement conference order, and the same requirements will apply. In exceptional circumstances, Judge Toplin will permit a person to virtually participate in an in-person conference. Counsel seeking relief must contact chambers as soon as they are aware of a problem with attendance. Counsel and the parties must strictly adhere to this procedure.

At the conference, Judge Toplin will expect counsel to:

- Be prepared to discuss the weaknesses, as well as the strengths of their case.
- Prepare the client. Judge Toplin will speak to them directly.
- Organize and bring critical documents. Judge Toplin wants to see them.
- Attach relevant summary of expert reports to the conference memos. Judge Toplin will review them.
- Bring any photographs, sketches, diagrams, and charts. Judge Toplin will review them.
- Be patient. Settlement is a process. It takes time.
- Be flexible. Avoid bottom lines or top numbers.
- Be creative.
- Manage their clients' expectations.
- Manage their own expectations.

5. Follow-up Contact

Judge Toplin will, if appropriate, continue to work with counsel after the settlement conference if the matter is not resolved at the conference.

6. Continuances

Settlement conferences are scheduled by order of the Court and are not discretionary. Counsel and participants should make all efforts to be available for this conference. Due to the large number of cases scheduled for settlement conferences, any need to reschedule the conference could cause a delay of that conference for several weeks. For this reason, any continuance requests should be made within fourteen (14) days of receipt of the notice scheduling the conference. Continuance requests will only be granted for the most compelling reasons.

I. Consent Cases (when jurisdiction for all purposes has been assigned to Judge Toplin)

1. Preliminary Telephone Conference

When the parties have agreed to consent to a magistrate judge for all future proceedings and the matter is assigned to Judge Toplin, a Rule 16 teleconference with counsel will be held. If counsel has not previously filed a joint Rule 26(f) report, Judge Toplin requires one to be filed on the docket one week before the Rule 16 conference.

At the time of the telephone conference, counsel will be expected to discuss deadlines, discovery issues, possible motions to be filed and the status of settlement discussions (if any). In the interest of streamlining the litigation, Judge Toplin will encourage counsel to participate in settlement discussions as early as practicable and to stage discovery to facilitate settlement and control costs.

2. Settlement Conferences in Jury Matters

Judge Toplin may, after discussion with counsel, conduct her own settlement conferences utilizing the procedures above. If Judge Toplin determines that it is not appropriate for her to conduct the settlement conference, and if a conference is deemed worthwhile, Judge Toplin will obtain the assistance of another magistrate judge to assist with settlement discussions.

3. Settlement Conferences in Non-Jury Matters

Judge Toplin will not take part in settlement discussions in a non-jury matter. A settlement conference may, however, be arranged with another magistrate judge.

4. Arbitration

a) General Approach to Arbitration Cases

Judge Toplin will automatically refer cases to arbitration when appropriate. If a matter settles before the scheduled arbitration date or the parties need to continue the arbitration, counsel is to notify Judge Toplin's chambers immediately.

b) Scheduling Trial De Novo from Arbitration

Judge Toplin will schedule trial promptly when a demand for trial de novo is filed following arbitration.

5. *Pretrial Memoranda*

Unless specifically provided for by a separate order, Judge Toplin will require the use of the short form pretrial memorandum described in Rule 16.1(c) of the Local Rules of Civil Procedure for the Eastern District of Pennsylvania. In certain cases, Judge Toplin may require that counsel stipulate uncontested facts as generally set out in Local Rule 16.1(d)(2)(b)(2)(A-E).

6. *Trial Procedure*

a) *Scheduling of Cases*

Judge Toplin's cases will be specially listed for trial based upon the Court's calendar and the availability of counsel, the parties, experts and critical witnesses. Judge Toplin will generally schedule jury selection the Friday before trial starts.

b) *Conflicts of Counsel*

Given the manner of scheduling, conflicts will normally not occur. Should counsel, however, have a professional or personal conflict which may affect the trial schedule, notice should be provided immediately to opposing counsel and the Court.

c) *Parties or Witnesses*

Judge Toplin will make reasonable attempts to accommodate the schedules and availability of parties, experts and critical witnesses. In the alternative, the parties should be prepared to present testimony by video or virtual means so as not to delay the trial schedule.

d) *Note Taking by Jurors*

Judge Toplin will consider note taking by jurors on a case-by-case basis.

e) *Trial Briefs*

Trial briefs are due in accordance with Judge Toplin's pretrial scheduling order.

f) *Voir Dire*

Judge Toplin will take the lead in conducting *voir dire* of potential jurors. Should circumstances arise that require additional questions from counsel, Judge Toplin will confer with all counsel before permitting counsel to ask additional questions.

g) Sidebar

Judge Toplin discourages the use of sidebar conferences. Counsel is encouraged to raise evidentiary issues before trial whenever possible, or during recesses or adjournments.

h) In Limine Motions

Judge Toplin will accept motions *in limine* in advance of the final pretrial conference and in accordance with her scheduling order to allow her an opportunity to consider the merits of the motion.

i) Examination of Witnesses Out of Sequence

Judge Toplin will permit witnesses to be taken out of turn in appropriate circumstances.

j) Opening Statements and Closing Arguments

Judge Toplin will discuss with counsel the time necessary for opening and closing statements but will give counsel reasonable latitude.

k) Examination of Witnesses or Argument by More than One Attorney

Judge Toplin will not normally permit more than one attorney for the party to examine the same witness. Similarly, one attorney may present argument on behalf of the party on the same point.

l) Examination of Witnesses Beyond Re-Direct or Re-Cross

Judge Toplin will generally restrict counsel from examining witnesses beyond re-direct and re-cross.

m) Videotaped Testimony

Judge Toplin requires counsel to review all videotaped depositions and to have them edited such as to fairly and accurately present only the essential evidence of the witnesses involved. Counsel is expected to resolve all matters pertaining to objections before offering the video into evidence.

n) Reading of Material into the Record

Judge Toplin has no special practice regarding reading stipulations, pleadings or discovery materials into the record.

o) Preparation of Exhibits

Prior to commencement of trial, counsel must meet and confer to prepare *one* set of pre-marked trial exhibits for use at trial. The use of duplicate exhibits at trial is discouraged. Counsel should provide Judge Toplin with two (2) exhibit binders that consist of a schedule of exhibits with a brief description of each and copies of each exhibit. Counsel is encouraged, however, to provide the Court with only the essential and relevant portions of bulky exhibits, together with sufficient material to provide context for the relevant portion of the exhibits. On the morning of trial, counsel shall provide the ESR/court reporter with a copy of the joint exhibit list and a copy of the witness lists.

p) Offering Exhibits into Evidence

Judge Toplin expects counsel to reach agreement in advance as to the admission of exhibits. Judge Toplin defers to counsel as to when they request that an exhibit be formally offered into evidence; however, an exhibit must be in evidence before it is published to the jury.

q) Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings

Motions for Judgment as a Matter of Law or Motions for Judgment on Partial Findings in non-jury trials may be submitted in writing or orally. Judge Toplin will ordinarily request oral argument on these motions.

r) Proposed Jury Instructions and Verdict Forms

Judge Toplin requires the submission of jointly proposed jury instructions, with notations as to areas of agreement, as well as objections. The points for charge should be submitted with appropriate citations of legal authority and shall be provided to the Court in accordance with the deadline set forth in the scheduling order. Judge Toplin prefers use of the Third Circuit Model Jury Instructions whenever possible.

Counsel must submit a jointly prepared verdict form or proposed special interrogatories in accordance with the deadline set forth in the scheduling order. If counsel is unable to agree, they may submit separate proposed forms of interrogatories. Judge Toplin will encourage counsel to agree upon a less than unanimous verdict.

s) Proposed Findings of Fact and Conclusions of Law

Judge Toplin requires counsel to submit proposed findings of fact and conclusions of law in non-jury cases at the final pretrial conference, or at a date set forth in a

scheduling order. A supplement will be permitted at the close of trial or, in an appropriate case, after trial.

t) Jury Deliberations

(1) Written Jury Instructions

Judge Toplin will determine whether a copy of jury instructions is provided in writing to the jury on a case-by-case basis.

(2) Exhibits in the Jury Room

Judge Toplin will consider which exhibits will be provided to the jury during their deliberations on a case-by-case basis.

(3) Handling of Jury Requests to Read Back Testimony or Replay Tapes

Judge Toplin will decide on a case-by-case basis regarding requests made by counsel to read back testimony or replay tapes.

(4) Availability of Counsel During Jury Deliberations

Judge Toplin will not require counsel to remain in the courthouse during deliberations but will require counsel to be available on short telephone notice. Counsel must provide the courtroom deputy with their phone number.

(5) Taking the Verdict and Special Interrogatories

Judge Toplin has no usual practice with respect to taking a verdict. Judge Toplin will submit written interrogatories to the jury in appropriate cases. A copy of the interrogatories shall be given to the jury during their deliberations.

(6) Polling the Jury

Judge Toplin will, if requested, permit the jury to be polled.

(7) Interviewing the Jury

In most cases, Judge Toplin will permit counsel to interview jurors, but only after the verdict has been recorded, the jury has been discharged, *and* they have been told in clear terms that they have no obligation to speak with counsel.

III. CRIMINAL CASES

A. Sentencing Memoranda

All counsel should submit sentencing memoranda to Judge Toplin one (1) week before the scheduled sentencing.

B. Additional Matters

At all “criminal duty week” proceedings, whether appointed or retained, counsel must be present to permit the proceeding to go forward. Once the Court has ordered that a defendant be detained or has set conditions of release, any proposed changes thereto must be submitted to the Court by written motion.

Each defendant should have their own attorney. Judge Toplin does not favor the dual representation of defendants by a single attorney at any criminal proceeding.

Judge Toplin requires that all relevant documents be emailed to [Chambers of Magistrate Judge Elizabeth Toplin@paed.uscourts.gov](mailto:Chambers_of_Magistrate_Judge_Elizabeth_Toplin@paed.uscourts.gov) and Tashia_Reynolds@paed.uscourts.gov in advance of court. Counsel may contact Tashia Reynolds (267-299-7500) if there are any questions regarding the matters before the Court.

IV. GENERAL MATTERS

Judge Toplin expects counsel to be prompt in all appearances, to be professional and courteous to each other, both in the presence of the Court and otherwise, and to have discussions with each other about any matter in dispute before it is brought to the attention of the Court.

Counsel should feel free to contact Judge Toplin’s courtroom deputy if they have any questions about her courtroom practices and procedures.

If a decision rendered by this Court is appealed, Judge Toplin prefers to receive copies of appellate briefs.