POLICIES AND PROCEDURES

Judge John M. Gallagher

United States District Court for the Eastern District of Pennsylvania

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I. GENERAL MATTERS

A. Communication with the Court

Counsel or *pro se* parties may correspond with the Court by letter, email or telephone concerning routine scheduling and administrative matters. The Court expects counsel and *pro se* parties to copy opposing counsel or *pro se* parties on their written communications with the Court. All communications with the Court should be directed to the deputy clerk or chambers.

Deputy Clerk:

Christine C. Stein – 610-391-7012 – christine_stein@paed.uscourts.gov

Counsel should submit current telephone numbers, fax numbers, e-mail addresses and any changes to the Clerk's Office and Judge Gallagher's deputy clerk.

Counsel should not communicate with the law clerks unless directly contacted by a law clerk or instructed by the Court to do so. Law clerks may not render advice to counsel and have no authority to grant continuances or to give advice on substantive or procedural matters.

B. Telephone Conferences

Judge Gallagher may hold telephone conferences to resolve scheduling matters or discovery disputes. The Court will notify counsel of the date and time for the telephone conference. Counsel for the moving party will be responsible for providing telephone conferencing details to all parties and to Judge Gallagher through his deputy clerk. Parties are prohibited from recording any conferences or proceedings without prior written approval of the Court.

C. E-Filing Guidelines

Judge Gallagher requires all attorneys to use Electronic Case Filing (ECF). Attorneys appearing before Judge Gallagher are required to register as ECF Filing Users in accordance with Local Rule of Civil Procedure 5.1.2. *Pro se* parties are not required to use ECF.

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 "Exhibit A: Contract," "Exhibit B: Declaration of John Smith," or some other reference to permit the Court to identify what the exhibit is without having to open the file.

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 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.

Parties should not submit to the Court unpublished decisions that are available on Westlaw or Lexis.

D. Filing Under Seal and Redacting Documents

Public policy favors transparency in judicial proceedings. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 784 (3d Cir. 1994).

Except in emergency situations, no documents may be filed under seal without first obtaining leave. All motions for leave to file documents under seal should be filed on the public

docket. Insofar as a motion contains or refers to information that the movant seeks to file under seal, the movant may redact that information in the copy of the motion filed on the docket. When a movant files a motion with redacted materials, the movant must also provide the Court and all other parties with an unredacted copy of the motion. The movant must also provide the Court and all other parties with unredacted copies of the motion and all documents that the party proposes to file under seal.

In recognition of the common law right of public access to judicial records, a motion for leave to file under seal must articulate, clearly and specifically, why the moving party's "interest in secrecy" outweighs the "presumptive right of public access." *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019). The motion—and the proposed order attached to the motion—must identify "clearly defined and serious injur[ies]" the movant will suffer if the materials are not kept under seal. *Avandia*, 924 F.3d at 672.The Court will not grant a motion for leave to file under seal that fails to identify the movant's interests in nondisclosure with specificity.

Even when the Court grants a motion for leave to file under seal, the Court will generally still expect the parties to file redacted versions of the sealed documents on the public docket unless the redactions would be so extensive as to render the document unreadable. Proposed orders attached to motions for leave to file under seal must include language requiring the parties to file redacted versions of the sealed documents to the public docket. If a movant omits this language from its proposed order, the movant must explain in its motion why redaction would render the documents unreadable.

E. Pro Hac Vice Motions

To be admitted *pro hac vice*, associate counsel of record should submit a written motion for admission. The admission of out-of-the-jurisdiction counsel *pro hac vice* does not relieve associate counsel of responsibility for the matter before the Court. The Court will deny *pro hac vice* motions for which no fee has been submitted and recorded on the docket.

II. CIVIL CASES

A. Pretrial Procedures

1. Rule 16 Conferences

The Court will schedule a preliminary pretrial conference pursuant to Federal Rule of Civil Procedure 16 once each defendant has appeared in the case. **Lead trial counsel must attend the Rule 16 conference in person.** Counsel taking part in any pre-trial conference must be prepared to speak on every subject, including settlement, and have authority from their clients to do so. Counsel should be prepared to discuss all claims and defenses in detail and shall have a thorough understanding of the facts.

At least seven calendar days prior to the pretrial conference, counsel must submit to chambers a joint status report pursuant to Federal Rule of Civil Procedure 26(f). The parties must use the Court's sample Rule 26(f) form that will be attached to the order scheduling the Rule 16 conference.[1] This form is also available on Judge Gallagher's page on the Court's website.

The Court relies on counsel's good faith compliance with Rule 26(f) in all respects. The Rule 26(f) meeting should take place as early in the case as possible. Pending motions do not stay the parties' obligations to meet and confer pursuant to Federal Rule of Civil Procedure 26(f) or to attend a conference pursuant to Federal Rule of Civil Procedure 16. The meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule. This discussion should include anticipated deposition witnesses, a proposed deposition schedule, and the need for any third-party subpoenas and waiver from the opposing party.

[1] In certain types of cases, it may be necessary for counsel to adapt the shell 26(f) form to accommodate the proposed deadlines, i.e. class actions, ERISA, FAPE, etc.

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**.

At the initial pretrial conference, the parties should be prepared to address all topics listed in the Local Rule of Civil Procedure 16.1(b) and Federal Rule of Civil Procedure 16(b) and (c), the progress of initial disclosure under Federal Rule of Civil Procedure 26(a) and any settlement or mediation proposals. The Court will issue a Rule 16 Scheduling Order following the conference.

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.

2. Final Pretrial Conference

There will be a final Pretrial Conference within ten days of the trial. Counsel shall comply with Local Rule 16.1 regarding the submission of a pretrial memorandum. Unless otherwise specified in a scheduling order, these memoranda shall be filed no later than then ten days prior to the Pretrial Conference.

During this conference, the Court will address factual and legal issues, the admissibility of exhibits and scheduling issues. At the conclusion of the conference, the Court will issue a final pretrial order or a final scheduling order in a complex case.

3. Continuances and Extensions

Unless there is good cause to justify a change, the parties are expected to adhere to the dates contained in the scheduling order. **The Court will not entertain extension requests that are based on developments that could reasonably have been anticipated at the time of the Rule 16 conference.** Parties' failure to conduct discovery in a timely manner is not good cause for an extension or continuance.

If an extension does not affect the deadlines for dispositive motions or trial dates, the parties may present their request for an extension via signed stipulation. Pursuant to Local Rule of Civil Procedure 7.4(b)(2), no stipulation of counsel regarding an extension shall be effective until approved by the Court. Accordingly, on any stipulation regarding an extension, counsel must include a blank signature line for the Court.

If an extension will affect the deadline for filing dispositive motions or the trial dates, counsel must make a written request that sets forth the basis for the extension and indicates whether the other parties agree to or oppose the request and proposes amended dates. A request for an extension of the deadline for filing dispositive motions or a continuance of the trial date must be made sufficiently prior to the due date to allow time for the Court to consider it. These requests should be made by motion, although an unopposed request may be made by letter to the Court.

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. Oral Arguments on Motions

If the judge believes oral argument will be helpful in deciding a matter, he will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter.

2. Formatting Requirements

Except as set forth herein, motion practice will be conducted in accordance with Local Rule of Civil Procedure 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 pages must include a table of contents. Counsel shall post searchable versions of their briefs to the CM/ECF system.

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

3. Replies and Sur-Replies

Replies and sur-replies are **not permitted** unless leave to file them is granted upon motion of a party. Such briefs should be attached to a motion for leave as an exhibit, 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 days after the previous filing.

4. Page Limits and Content of Briefs or Legal Memoranda

All grounds for relief should be set forth in a single, comprehensive motion. A motion to dismiss, for example, should not be divided into separate motions for each count but rather should include all bases for relief. Opening briefs filed in support of and in opposition to a motion should be limited to twenty pages. This includes the table of contents and any attachments or addenda. If a party requires more than twenty pages to explain its position to the Court, a motion to exceed the page limit should be filed setting forth good cause for granting an exception to this rule. Replies and sur-replies, where granted, must be limited to ten and seven pages, respectively.

5. Dispositive Motions

Before filing a motion pursuant to Federal Rule of Civil Procedure 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 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.

When filing a motion for summary judgment, all parties must comply with the following requirements in addition to the requirements of Federal Rule Civil Procedure 56:

Statements of Material Facts

a. The movant shall file, in support of the motion for summary judgment, a separate "statement of undisputed facts" that set forth, in numbered paragraphs, all material facts the movant contends are undisputed.

b. The respondent shall file, in opposition to the motion for summary judgment, a separate "statement of disputed facts" responding to the numbered paragraphs set forth in the movant's statement of undisputed facts. If the respondent disputes a fact, the respondent must explain its basis for disputing the fact and cite evidence in the record supporting the respondent's position. The respondent shall also set forth, in separate paragraphs under the heading "statement of additional facts," any additional facts which the respondent contends preclude summary judgment.

c. All material facts set forth in the statement of undisputed facts will be deemed admitted unless specifically controverted by the opposing party. If a party disputes a fact without citing supporting evidence, the fact will be deemed admitted.

d. Statements of material facts in support of or in opposition to a motion for summary judgment shall include specific and not general references to the parts of the record which support each of the statements. Each stated fact and each statement that a material fact is disputed shall cite to the source relied upon, including the title, page and line of the document supporting the statement.

Appendices

a. The movant shall file an appendix containing all the evidence to which the movant refers in its motion. The respondent shall file a supplemental appendix containing any additional evidence to which the respondent refers in its response.

b. Insofar as practicable, a movant shall file its appendix in the same ECF entry in which the movant files its motion or response.

c. When more than one party intends to move for summary judgment at the same time, the parties shall submit a joint appendix containing all the exhibits that will be referenced in any party's motion. When more than one party intends to respond, the parties shall submit a supplemental joint appendix containing all the exhibits that will be referenced in any party's response.

d. When the parties are relying on a joint appendix, the parties shall file the joint appendix in its own ECF entry separate from the ECF entry in which any party has filed its motion or response. The joint appendix shall be filed on the same day the first motion for summary judgment is docketed.

e. The parties shall "bates stamp" their appendices. All references to the appendix made in the motions and responses shall identify the bates number of the referenced page.

f. Judge Gallagher will not consider any evidence not included in a timely filed and appropriately formatted appendix.

* * *

A movant's failure to follow the foregoing procedures for dispositive motions in all respects will result in a denial of the motion. Respondent's failure to comply with these procedures in all respects will result in the Court's considering the motion uncontested.

6. No Courtesy Copies

Do not send copies—physical or digital—of filings to chambers. If the Court desires a courtesy copy of any particular filing, the Court will reach out and request one specifically.

7. Reconsideration

Motions for reconsideration should be filed sparingly. 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. Length of Discovery Period and Extensions

The parties are required to commence discovery immediately upon receipt of notice of the Rule 16 conference. Pending motions will not excuse counsel from proceeding with discovery. Counsel will be required to report on the progress of discovery at the Rule 16 conference.

The Court usually allows up to 120 days from the date of the Rule 16 conference to complete discovery. A case will ordinarily be listed for trial 120 days after the completion of discovery.

2. Discovery Conferences and Dispute Resolution

The Court urges the parties to settle discovery disputes among themselves. If Court assistance is required, Judge Gallagher prefers that simple disputes be addressed by telephone conferences. Counsel should provide the Court with a brief letter explaining the discovery dispute and requesting a conference. Such letters should be filed on ECF. For complex disputes, if the parties remain unable to resolve the dispute after the reasonable efforts required by Local Civil Rule 26.1(f), the Court will consider a motion to compel under Local Civil Rule 26.1(b). Counsel for the aggrieved party shall file with the Court a motion in conformity with Local Civil Rule 26.1(b). **The motion shall not exceed five pages and shall not contain exhibits and shall not include a brief or memorandum of law.**

Once a motion to compel is filed, the Court will schedule a telephone or in-person conference with counsel as soon as possible to resolve the dispute. The responding party must file

a response within five days. The response should also be limited to five pages and shall not include exhibits or a brief or memorandum of law. If the parties resolve the dispute, the conference will be cancelled. Judge Gallagher permits telephone conferences to resolve disputes during depositions in cases where the deposition would otherwise have to be adjourned. Counsel should not walk out of a deposition before making an effort to contact the Court and obtain guidance. If it is at any time determined that counsel walked out of a deposition without good cause, the Court may require counsel and/or counsel's client to pay all the expenses the parties incur in rescheduling and completing the deposition.

In a filed discovery motion, the certificate of counsel must provide **specific** details about 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. All motions must contain the certification required under Local Civil Rule 26.1(f).

3. 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 to only 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, 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. Settlement and Settlement Conferences

Settlement may be discussed at the initial Rule 16 status conference and at any subsequent conference. The Court will not participate in settlement negotiations in non-jury cases. A case may be referred to a magistrate judge for a settlement conference, but counsel should not expect the Court to stay discovery or trial dates merely because the parties are awaiting their appointment with the magistrate judge and wish to avoid incurring further costs. Accordingly, if counsel foresee a reasonable probability that they will be interested in scheduling a settlement conference, they should submit a request for a referral for a settlement conference as early as possible in the discovery period.

Should the parties reach a settlement, case dismissal will not be stayed pending the payment of settlement funds.

E. Confidentiality/Protective Orders

Public policy favors transparency in judicial proceedings. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 784 (3d Cir. 1994).

Requests for confidentiality/protective orders must be made by formal motion. The Court will not accept stipulated proposed orders in lieu of a motion. As required by Federal Rule of Civil Procedure 26(c), a motion seeking a confidentiality/protective order must explain why there is good cause for the Court to issue the order. *See In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 671 (3d Cir. 2019) (setting forth factors courts may consider in determining whether good cause exists). The proposed order attached to the motion must itself also state the reasons good cause exists and state that the private interests in nondisclosure outweigh the public interests in disclosure.

As required under Federal Rule of Civil Procedure 26(c), the parties must confer and attempt to reach an agreement regarding the confidentiality of discovery materials before seeking the Court's intervention. If the parties are able to form a mutually acceptable confidentiality agreement but still desire that agreement to be memorialized in a court order, the parties must, in their motion seeking entry of the order and their proposed order, state why there is good cause to enter an order rather than leave the confidentiality of discovery materials to be governed by the parties' mutual agreement. *Cf. Pansy*, 23 F.3d at 788–89 ("[I]f parties cannot demonstrate good cause for a court order of confidentiality over the terms of settlement, they have the option of agreeing privately to keep information concerning settlement confidential, and may enforce such an agreement in a separate contract action.").

When a proposed confidentiality/protective order would permit a party to file any material to the docket under seal, the motion and the proposed order must identify justifications for sealing the materials that would overcome the "presumptive right of public access," as discussed further in section I.E, *supra*. *Id.* at 672.

The Court will not approve a protective order containing language that gives the parties discretion to file materials under seal without the Court's prior and specific approval. In cases involving large scale discovery, however, the Court will consider approving protective orders that grant protection to discovery materials on a categorical basis so long as each protected category is reasonably well defined. If a party later challenges such a protective order, the party seeking to maintain protection over the materials will bear the burden of justifying those materials' continued protection on an item-by-item basis. *See Avandia*, 924 F.3d at 671 n.5.

Further, the Court will not approve any protective order unless it contains language providing that "the court reserves its inherent power to modify the terms of this agreement and permit the disclosure of information where the interest of justice so requires."

F. Final Pretrial Memoranda

Unless otherwise ordered by the Court, the pretrial memorandum should be prepared in accordance with the provisions of Local Rule of Civil Procedure 16.1(c) and should also include the following items:

1. All stipulations of counsel.
2. A statement of objection to: (1) the admissibility of any exhibit based on authenticity; (2) the admissibility of any evidence expected to be offered for any reason except relevancy; (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. These objections must describe with particularity the ground and the authority for the objection.
3. An identification of deposition testimony (including videotaped deposition testimony) that the party intends to offer during its case-in-chief. The statement should include citations to the page and line number and the opposing party's counter-designations.
4. A statement of any anticipated important legal issues on which the Court will be required to rule as well as counsel's single best authority on the issue.

G. Arbitration

Judge Gallagher will not hold a Rule 16 conference or issue a **s**cheduling **o**rder in arbitration track cases unless there is a *de novo* appeal from an arbitration award hearing.

The parties are expected to complete all discovery prior to the date of the arbitration hearing. Upon demand for trial *de novo* from an arbitration award, the Court will issue a scheduling order setting the date for trial at the earliest date available to the Court. Ordinarily, discovery will not be allowed after the arbitration hearing is held. Nor will dispositive motions be allowed after the arbitration hearing unless the motion was filed prior to the arbitration hearing and left unresolved.

III. COURTROOM AND TRIAL PROCEDURES

A. Scheduling Cases

A date for trial will be determined at the initial Rule 16 conference. Once a case is listed for trial, counsel, parties and witnesses should be ready to start trial on the listed date, and counsel should consider themselves formally attached for trial as of that date. Questions relating to scheduling matters should be directed to Judge Gallagher's deputy clerk.

B. Motions In Limine

The time for filing motions in limine will be determined at the Rule 16 conference and will be confirmed in the scheduling order.

C. Courtroom Technology

The Court holds proceedings in Courtroom 4B, which is equipped for electronic presentation of evidence. Parties expecting to employ courtroom technology are required to contact the Courtroom Deputy no later than the final pretrial conference to discuss their technological needs. The Courtroom Deputy will then schedule a preliminary run to minimize disruptions during the trial itself.

D. Jury Selection in Civil Cases

Counsel must submit *voir dire* questions to the deputy clerk at least two days before jury selection. Insofar as counsel agree that certain questions should be asked, they may submit a list of those questions jointly. Insofar as counsel do not agree upon any questions, they may submit those questions independently. The Court will then review all the questions submitted and determine which will be asked.

Ordinarily, the Court will not permit counsel to present questions to the jury panel but will permit counsel to question prospective jurors once they are brought in for individual *voir dire*.

Strikes for cause and hardship will be considered by the Court at the conclusion of each individual *voir dire*. Once a sufficient number of viable prospective jurors have been identified, the parties will have an opportunity to exercise peremptory challenges. Peremptory challenges will be exercised by alternate strikes, plaintiff first, until each side has exercised each of its strikes or opts not to use the remainder of their strikes.

Judge Gallagher will typically seat eight jurors in a civil case.

E. Note Taking By Jurors

Judge Gallagher permits jurors to take notes.

F. Trial Briefs

Parties should submit a trial brief only if a new or unique point of law is involved.

G. Examination of Witnesses Out of Sequence

The Court will permit counsel to examine his/her own witnesses out of turn for the convenience of a witness.

H. Opening and Closing Statements

Judge Gallagher does not ordinarily put time limits on opening statements or closing arguments. However, depending upon the issues in the case and the length of trial, time limits may be imposed. Rebuttal must not be a rehashing of closing argument. Judge Gallagher will charge the jury after counsels' closing arguments.

I. Videotaped Testimony

Videotaped testimony should begin with the witness being sworn. Counsel should bring objections to videotaped testimony to the Court's attention during the final pretrial conference. After the Court rules on any objections, counsel should edit the tapes before offering the videotaped testimony at trial.

J. Preparation of Exhibits

Exhibits should be exchanged in accordance with the scheduling order.

In civil cases, after exhibits have been exchanged, the parties must prepare joint exhibit binders containing all the exhibits counsel may use at trial, including those for which admissibility remains contested. Exhibits that are ruled inadmissible will simply not be used but need not be extracted from the binder.

The parties may choose whether to label any given exhibit as a "Plaintiff," "Defense," or "Joint" exhibit, but no single exhibit may have more than one designation. All exhibits should be numbered consecutively, tabbed and contained in three-ring binders. Each binder must begin with a table of contents that identifies all the trial exhibits, provides a brief description of each trial exhibit, and identifies the binder in which the trial exhibit can be found. Audio and video exhibits should be reflected in the exhibit binders with a single piece of paper identifying the contents of the exhibit (e.g., "Exhibit 22: Audio recording of phone call on August 20, 2019"). At the final pretrial conference, the parties shall provide the Court with two copies of the exhibit binders.

In criminal cases, the Court ordinarily does not expect defendants to exchange exhibits with the Government ahead of trial or to prepare joint exhibit binders. Criminal defendants and the Government should, however, prepare their exhibits in compliance with the formatting requirements set forth in the preceding paragraph.

K. Offering Exhibits into Evidence

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. But the Court strongly encourages counsel to reach agreements before trial as to the admissibility of exhibits. Insofar as counsel reach any agreements regarding the admissibility of exhibits, they should state those

agreements on the record or submit the agreements to the Court in writing so that the Court may incorporate the agreements into the record.

L. Directed Verdict Motions

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials may be made orally during trial.

M. Proposed Jury Instructions and Verdict Forms

Counsel must meet and discuss proposed jury instructions and verdict forms. Judge Gallagher's scheduling order will designate the date on which the parties must submit their proposed jury instructions and verdict forms to the deputy clerk. Jury instructions and verdict forms should be submitted to the deputy clerk as Microsoft Word files. Counsel must submit their proposed jury instructions and verdict forms in a joint submission that indicates which instructions and forms have been agreed upon and which remain contested.

Insofar as the parties disagree on any proposed jury instruction, the joint submission should contain a concise statement that identifies each party's position on the instruction, the reasons supporting the party's position, and citation to the best authorities supporting each party's position. These statements should be no longer than a few sentences for each party. These statements may be included as footnotes following the contested instruction or as comments attached to particular portions of the contested instruction.

Insofar as the parties disagree on the verdict form to be used, they may include a brief statement supporting their positions in their joint submission. Ordinarily, however, the Court will address disagreements over the verdict form during the final pretrial conference.

The Court prefers to instruct the jury using the model jury instructions that have been adopted in the relevant jurisdiction.[2] 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 the party must highlight the additions or deletions and must attach a comment that describes how the original text has been changed.

Proposed jury instructions must be double-spaced, have one-inch margins and be prepared in 12-point, Times New Roman font. Citations to authority should be reflected in footnotes or comments appended to the text and should not appear in the body of the proposed instructions.

N. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law in non-jury cases should be submitted at least seven days before the trial date. The parties may submit revised or supplemental findings of fact and conclusions of law with specific reference to trial evidence at the conclusion of the case. A schedule for the submission of revised findings/conclusions will be discussed at the conclusion of trial.

O. Unavailability of Witness

If a witness is unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects an oral or videotaped deposition to be used at trial for that witness, 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.

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[2] Model jury instructions for the Third Circuit are available online at **http://www.ca3.uscourts.gov/model-jury-instructions**.

P. Objections

Judge Gallagher does not permit speaking objections. Objections should be made by reciting the appropriate rule number or a one-word basis.

Q. Lay Witness Opinion

Any party expecting to offer lay opinion testimony pursuant to Federal Rule of Evidence 701 regarding issues of liability or damages shall provide opposing parties with information or documents supporting the testimony at the time required for submission of expert reports.

R. Jury Deliberations

1. Written Jury Instructions

The Court will give the jury a copy of the written jury instructions.

2. Exhibits in the Jury Room

During the charging conference, the Court and counsel will discuss which exhibits should go out with the jury for their consideration during deliberations. Electronic/digital exhibits can be given to the jury on a court-issued laptop that does not have internet access. If the parties would like the jury to be able to review electronic/digital exhibits during their deliberations, the parties must prepare a thumb drive that contains the exhibit and can be read by a computer running a Windows operating systems. The deputy clerk will load these files from the thumb drive onto the court-issued laptop and give each party an opportunity to inspect the laptop before it goes back to the jury.

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

At the jury's request, the Court may permit the deputy clerk to read portions of the testimony back to the jury or to replay the audio or video-taped testimony.

4. Availability of Counsel During Jury Deliberation

Unless excused by the Court, counsel must remain within ten minutes of the courthouse during jury deliberations.

5. Taking the Verdict

The deputy clerk will take the verdict in the presence of the Court, counsel and the parties.

6. Polling the Jury

If requested by counsel, the Court will poll the jury.

7. Interviewing the Jury

Judge Gallagher, upon request from counsel, will ask jurors if they wish to speak to counsel. Judge Gallagher will allow counsel to interview jurors but will instruct the jury that they are not required to talk to the attorneys.

S. Offers of Proof

Counsel must confer privately to resolve any unanticipated evidentiary issues that may arise during trial. Only if they are unable to reach agreement should counsel bring the matter to the deputy clerk's attention at the beginning of the day or during an appropriate break when the jury is not present.

T. Development of Young Attorneys

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. 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. 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."

IV. CRIMINAL CASES

A. Oral Argument and Motions

The Court will generally permit oral argument on a substantive motion in a criminal case upon request.

A motion to continue a criminal case must include the following: (1) the length of time the party requests the case to be continued, (2) whether the motion is opposed, (3) the reason for the request, and (4) an executed Speedy Trial Waiver form, such that the Court can conduct a speedy trial analysis.

B. Pre-Trial Conferences

If a motion for continuance is filed, Judge Gallagher will generally hold a telephonic scheduling conference with counsel. At the conclusion of the conference, the Court will issue a scheduling order governing speedy trial issues, discovery, time for filing motions and the trial date.

C. Pre-Trial Hearings

The Court typically holds suppression, *Starks*, and *Daubert* hearings at least fourteen 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. Voir Dire

In criminal cases, Judge Gallagher will conduct *voir dire*, based in part, on questions submitted by counsel. After *voir dire* is concluded, the Court will permit counsel to suggest follow-up questions. Counsel should submit proposed *voir dire* questions in writing seven days before the trial date.

E. Trial Memoranda

At least seven 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.

F. Proposed Jury Instructions and Verdict Forms

The Court will generally require the parties to submit a joint proposed set of jury instructions and verdict forms. The Court's pretrial order will detail when the parties should submit their proposed jury instructions. Jury instructions and verdict forms should be submitted to the deputy clerk as Microsoft Word files. Counsel's submission must indicate which instructions and forms have been agreed upon and which remain contested.

Insofar as the parties disagree on any proposed jury instruction, the joint submission should contain a concise statement that identifies each party's position on the instruction, the reasons supporting the party's position, and citation to the best authorities supporting each party's position. These statements should be no longer than a few sentences for each party. These statements may be included as footnotes following the contested instruction or as comments attached to particular portions of the contested instruction.

Insofar as the parties disagree on the verdict form to be used, they may include a brief statement supporting their positions in their joint submission. Ordinarily, however, the Court will address disagreements over the verdict form during the final pretrial conference.

The Court prefers to instruct the jury using the model criminal jury instructions that have been adopted in the relevant jurisdiction.[3] 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 the party must highlight the additions or deletions and must attach a comment that describes how the original text has been changed.

Proposed jury instructions must be double-spaced, have one-inch margins and be prepared in 12-point, Times New Roman font. Citations to authority should be reflected in footnotes or comments appended to the text and should not appear in the body of the proposed instructions.

G. Guilty Plea Memoranda

The Government must submit a guilty plea memorandum at least seven 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.

H. Sentencing

Judge Gallagher requires the parties to submit objections to the pre-sentence investigation report and sentencing memoranda in accordance with the Notice of Sentencing, which will be issued shortly after the entry of a guilty plea.

Any sentencing motions shall be submitted at least fourteen days prior to the sentencing hearing, and any responses thereto must be filed at least seven days prior to the sentencing date. All sentencing memoranda, exclusive of motions, must be filed at least seven days prior to the sentencing date, and any responses thereto must be filed at least three days prior to the sentencing

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[3] Model jury instructions for the Third Circuit are available online at **http://www.ca3.uscourts.gov/model-jury-instructions**.

date. Counsel shall serve a copy of all sentencing motions and sentencing memoranda on the U.S. Probation Office.