

## JUDICIAL POLICIES AND PROCEDURES

### **Judge Kelley B. Hodge**

United States District Court for the Eastern District of Pennsylvania

James A. Byrne United States Courthouse

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Philadelphia, Pennsylvania 19106

Telephone: 267-299-7550

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#### **I. GENERAL INFORMATION**

##### **A. Communication with Chambers**

Judge Hodge permits communications with Chambers by telephone, or letter sent via email or facsimile regarding scheduling and other non-substantive matters. **An email request without a letter will not be considered.** All other issues must be addressed by an appropriate motion or other document filed on the docket. Under no circumstances may any party or counsel communicate *ex parte* with any Chambers personnel concerning substantive matters. Law clerks may not render advice to counsel and have no authority to grant continuances or any other relief. For civil and criminal scheduling, case management and general inquiries contact:

Leesa Ciamaichelo, Deputy and Courtroom Services Clerk

Telephone: 267-299-7550 (Chambers) or 267-299-7559 (Direct Dial)

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[Leesa\\_ciamaichelo@paed.uscourts.gov](mailto:Leesa_ciamaichelo@paed.uscourts.gov) or

[Judge\\_Hodge\\_Chambers@paed.uscourts.gov](mailto:Judge_Hodge_Chambers@paed.uscourts.gov)

##### **B. Telephone Conferences**

Counsel may request a telephone conference with Judge Hodge to resolve straightforward discovery disputes and other issues, but complicated matters should be resolved by formal motion and briefing. Counsel must make a substantive effort to address all discovery disputes with opposing counsel before requesting Judge Hodge's assistance. Counsel should submit a letter by email or facsimile to Chambers summarizing the reason for the requested telephone conference. **An email request without a letter attached will not be considered.**

##### **C. Stipulations**

Any stipulations requiring Court approval or the Judge's signature must be submitted by email or facsimile to Chambers.

#### **D. Electronic Case Filing**

Judge Hodge requires all counseled parties to use Electronic Case Filing (“ECF”). ECF provides greater efficiency and timeliness in the filing of pleadings, automatic e-mail notice of case activity, as well as electronic storage of documents for remote access by the Court, the Bar, and the litigants. Attorneys are urged to register as ECF Users in accordance with *Rule 5.1.2 of the Local Rules of Civil Procedure*, referencing the Procedural Order on Electronic Case Filing. Proposed orders should be attached to corresponding motions or memoranda of law. Transmittal of pleadings, motions, or other filings to Chambers instead of by ECF is not permitted.

#### **E. Courtesy Copies**

Counsel **must provide two (2) courtesy copies** to the Court of any document submitted which is **twenty-five (25) pages or more, including exhibits**. If exhibits to a motion are voluminous, the exhibits in the Court’s courtesy copies shall be clearly marked, tabbed and bound in a 3-ring binder. Courtesy copies should be delivered by first-class mail or other delivery service. **Courtesy copies will not be accepted via email.**

#### **F. Document formatting**

All documents shall be filed in 12-point Times New Roman font with one-inch margins.

#### **G. Standing Orders**

Judge Hodge does not have any standing orders.

#### **H. Conflicts of Interest**

Counsel is expected to inform the Court of any change of ownership so that potential conflicts of interest can be avoided.

#### **I. General Expectations**

Judge Hodge expects all counsel to be prompt, prepared and professional adhering to the [\*ABA Model Rules of Professional Conduct\*](#) at all times, both in the presence of the Court and otherwise. Decorum is of paramount importance and arguments should be presented zealously, thoughtfully, and thoroughly to the Court not to one another. Judge Hodge expects counsel to be punctual for all conferences, hearings, and trials. For virtual hearings and conferences, counsel is expected to appear on video and check that the camera is working in advance of the scheduled call.

The Court believes in the opportunity for growth and development of all attorneys. Thus, Judge Hodge encourages all counsel, regardless of years in the profession, who have skilled knowledge on the matter to be given the opportunity to appear and make argument before the Court.

## II. CIVIL CASES - PRETRIAL

### A. Rule 16 Conference

Judge Hodge views the Rule 16 conference as an important step in the management of a case. Judge Hodge will schedule a Rule 16 conference once an answer is filed or, in some instances, while a motion to dismiss or other preliminary motion is pending. Judge Hodge will issue an Order for a Rule 16 scheduling conference to be held by telephone, video-conferencing or in person (or, in the case of pro se parties, on the record).

The parties **must** file on ECF (unless leave of Court is requested) and email to Chambers a Rule 26(f) report using the template provided on Judge Hodge's website at least **seven (7) days** before the Rule 16 conference. The report should include a statement as to whether and when the parties will be prepared to discuss settlement. The report should also include specific dates for all pretrial deadlines. Lead trial counsel must participate in the Rule 16 conference and must enter an appearance before the conference unless Judge Hodge approves a substitution. All applications to appear *pro hac vice* must be approved before the conference. After the conference, Judge Hodge will issue a Scheduling Order to govern further proceedings in the case.

### B. Rule 26(f) Meeting

Judge Hodge relies on good-faith compliance in all respects with Federal Rule of Civil Procedure 26(f). The Rule 26(f) meeting shall take place as soon as possible and no later than **fourteen (14) days** before the Rule 16 scheduling conference. The meeting should not be viewed as perfunctory, but rather as a meaningful and substantive discussion to formulate the discovery plan required by the Rule. Compliance is mandatory. Parties who do not comply will have no voice at the scheduling conference and may be subject to sanctions. Outstanding motions will not excuse the parties from holding the Rule 26(f) meeting and submitting a report in a timely manner.

Before the Rule 16 conference, counsel will have discussed the nature and basis of the parties' claims and defenses, the possibility of a prompt settlement, and a discovery plan pursuant to Rule 26(f). Counsel must be prepared to present argument at the conference on any pending motions. At the conference, counsel should be prepared to discuss the strengths and weaknesses of the case and should therefore be conversant in the essential facts and issues involved. Counsel must have full authority to negotiate a settlement of the case or be accompanied by a client or client representative who has such authority or arrange for the client to be available by telephone for the duration of the conference.

### C. Settlement Conferences

Judge Hodge addresses the possibility of settlement at all stages in the proceedings. In addition, consistent with Local Rule of Civil Procedure 53.3, Judge Hodge directs all parties to consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Judge Hodge also encourages early referral to a Magistrate Judge for settlement

discussions. Upon reaching a settlement, counsel must notify Judge Hodge's Chambers immediately and request dismissal of the action pursuant to Local Rule of Civil Procedure 41.1.

#### **D. Requests for Extension of Time and Continuances**

Where compelling circumstances exist, counsel may request an extension of a filing or other deadline. Extension requests should be made by letter sent via email or facsimile and counsel requesting the extension shall state the position of opposing counsel. Any counsel opposing the extension shall submit a responsive letter via email setting forth the reasons for opposition. Counsel may not extend any deadlines without Court approval. **An email request without a letter attached will not be considered.** For unopposed extension requests, counsel must submit a stipulation signed by counsel for all parties sent via email with a signature line for Judge Hodge. Unopposed extension requests are not automatically granted. Counsel should make every effort to file such stipulations as early as the need for an extension is known. If the stipulation or motion is filed less than two business days before the deadline, the Court does not guarantee a decision will be made before the deadline.

Since trial dates are set in advance, Judge Hodge is extremely reluctant to grant continuances especially if the attorneys have not been diligent in moving the case forward. However, the Court will consider such continuance requests upon a showing of compelling circumstances and good cause.

#### **E. Final Pretrial Conference**

There will be a final pretrial conference scheduled on a date by the Court in advance of the trial date. During this conference, the court will address factual and legal issues, the admissibility of exhibits, scheduling issues, and settlement. See section III.F. below for information on pretrial memoranda.

### **III. CIVIL CASES – SUBMISSIONS TO THE COURT**

#### **A. Discovery Matters**

When a discovery dispute arises, counsel are strongly urged to settle it among themselves. However, if after making a good faith effort, counsel are unable to resolve a disputed issue, 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** describing the disputed issue(s). Within **seven (7) days** of the filing of the motion, any counsel opposing the motion shall file with a Court a response to the motion not to exceed **five (5) pages** in conformity with Local Rule 26.1(b). The Court will determine the need for a telephone conference with counsel to discuss the motion on a case-by-case basis. In most cases, the Court expects to rule promptly on discovery motions and may decide such motions during a telephone conference. All motions must contain the certification required under Local Civil Rule 26.1(f).

## **B. Oral Argument on Motions**

A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading. If Judge Hodge believes oral argument will be helpful in deciding a matter, she will schedule it, particularly when it involves a dispositive motion. Not all requests for oral argument will be granted but will be determined by the judge **on a case-by-case basis**.

## **C. Length 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. Any brief or memorandum filed in support of the motion should be limited to **twenty-five (25) pages**. Any brief or memorandum filed in opposition or in response to a motion is subject to the same page limitation. If a party requires more **than twenty-five (25) pages** to explain its position to the Court, a motion to exceed the page limit should be filed prior to the memorandum deadline, setting forth good cause for granting an exception to this rule.

## **D. Reply and Surreply Briefs**

Reply briefs, addressing only issues raised in the brief in opposition and not repeating arguments in the brief, may be filed within **seven (7) days** of service of the opponent's brief in opposition and shall be limited to **ten (10) pages**. A surreply may only be filed with permission of the Court upon good cause shown and may not exceed **five (5) pages**.

## **E. Rule 56 Motions - Motion for Summary Judgment**

Initial Filing of Moving Party: A party moving under Rule 56 may move without reference to supporting affidavits or other evidence and, in doing so, the party making the motion shall: (1) identify in outline form the issue(s) and/or sub-issue(s) as to which the Motion is directed; (2) affirm, on the basis prescribed in Rule 11, that there is no legally sufficient evidentiary basis for the non-movant to prevail upon the issues so identified; (3) provide a separate, concise Statement of Stipulated Material Facts, as described below; and (4) request judgment.

The initial filing by the moving party should **not exceed twenty-five (25) double-spaced, typewritten pages**, excluding the Statement of Stipulated Material Facts. No later than **fourteen (14) days** before the case dispositive motion deadline, the parties shall meet and confer about the facts material to the case. The initial filing of the moving party must include a concise Statement of Stipulated Material Facts, which sets forth, in numbered paragraphs, the material facts that the parties agree are not in dispute. Only those facts which are material to the issues in dispute shall be included in the enumerated statement of facts. Each factual assertion shall be accompanied by a citation to the specific portion(s) of the record that support the assertion, including the exhibit, page, and line number.

Response of Non-Moving Party: The non-moving party shall file a response within **twenty-eight (28) days** after the Motion for Summary Judgment is served, unless otherwise ordered by the Court. The response shall be supported with affidavits, depositions, documents or other evidence permitted by Rule 56. All material facts set forth in the Statement of Stipulated Material Facts served by the movant shall be deemed undisputed unless specifically controverted by the opposing party. Where applicable, references to such evidence must include specific citations to exhibit, page, and line number. The response may not exceed **twenty-five (25) pages**.

Reply of Moving Party: The movant shall file a reply and the reply must be filed not later than **fourteen (14) days** after the response from the non-moving party is served, unless otherwise ordered by the Court. The reply must specify the relevant exhibit, page, and line numbers when referring to the record. The reply may not exceed **ten (10) pages**.

Surreply of Non-Moving Party (Optional): The non-moving party may, **within seven (7) days after the reply is received**, file a surreply. The surreply must specify the relevant exhibit, page, and line numbers when referring to the record and may not exceed **ten (10) pages**.

#### **F. Pretrial Memorandum**

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). For jury trials, Judge Hodge requires the parties to submit the following filings by a date set by the Court, which is normally approximately three weeks prior to the trial date:

- 1) Jointly-proposed *voir dire*;
- 2) Jointly-proposed jury instructions;
- 3) Jointly-proposed verdict sheet;
- 4) Motions *in limine*; and
- 5) Final pretrial memorandum pursuant to Local Civil Rule 16.1(a)

Jointly-proposed jury instructions shall be accompanied by the appropriate citations of legal authority – including use of the Model Civil Jury Instructions for the Third Circuit, where applicable (see <http://www.paed.uscourts.gov>, “Third Circuit Model Jury Instructions” bullet). Where one party objects to the other party’s proposal, the joint submission should note such and include the objecting party’s rationale.

For non-jury trials, the Court requires that each party submit proposed findings of fact and conclusions of law **that identify the issues to be addressed and the law controlling on those issues**. Proposed conclusions of law shall be supported by appropriate citation to legal authority.

Courtesy copies of all trial documents must be submitted in Microsoft Word format and sent to chambers via email.

## **G. Confidentiality Agreements**

Judge Hodge will only consider entry of stipulated confidentiality or sealing orders if the parties demonstrate that “good cause” exists pursuant to Fed. R. Civ. P. 26(c)(1)(G). See Pansy v. Borough of Stroudsburg, 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 disclosure of any subject covered by this stipulation or to modify this stipulation at any time in the interest of justice.*”

## **H. Experts**

Parties should identify expert witnesses and provide the experts’ written reports pursuant to the scheduling order entered in the case. Failure to do so will bar the use of the expert’s testimony at trial.

## **I. Injunctions**

When a temporary restraining order or preliminary injunction is requested, Judge Hodge will schedule a conference to decide the TRO or injunction as soon as possible. Generally, Judge Hodge permits expedited discovery for injunctive matters. Judge Hodge may require submission of proposed findings of fact and conclusions of law.

## **J. Case In Suspense**

If a case is stayed or in suspense, the attorneys shall, unless directed otherwise by the Court, file a joint report as to the status of the case **every sixty (60) days** until the case is either terminated or placed back on the active list.

*For any civil litigation issues not addressed above, please consult the Local Rules of Civil Procedure for the Eastern District of Pennsylvania at:*

<https://www.paed.uscourts.gov/documents/locrules/civil/cvrules.pdf>

# **IV. CRIMINAL CASES**

## **A. Motions Practice**

All pretrial motions — including motions *in limine* and any motions challenging the indictment, seeking suppression of evidence, or raising any dispositive matters—shall be controlled by the Scheduling Order. Any responses to a pretrial motion must be filed in accordance with the Scheduling Order. Except in rare circumstances, hearings on any pretrial motions and responses will be heard on a date before the scheduled trial date.

In multi-defendant proceedings, all motions will be heard jointly. **Defendants may not join in codefendants’ pretrial motions without leave of the Court.** Counsel are advised to provide Judge Hodge with supporting memoranda as soon as possible and **no later than seven**

**(7) days before the hearing.** Such supporting memoranda **shall not exceed twenty (20) double-spaced pages.**

All post-trial motions must be filed in accordance with the Federal and Local Rules of Criminal Procedure. Response memoranda **shall not exceed twenty (20) double-spaced pages.** **Reply and surreply memoranda may be filed only with leave of Court and shall not exceed ten (10) double-spaced pages.**

#### **B. Continuance Request**

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 motions stating the reasons for the request.** Any such motion must be accompanied by a proposed form of Order which, if approved by the Court, would grant the relief sought by the motion. The proposed form of Order must be consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161(h)(7), and 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. Requests by letter are **not** permitted.

#### **C. Pretrial Conference**

If requested by counsel or needed, Judge Hodge will schedule a pretrial conference with counsel at least **three (3) days** before the scheduled trial date. The conference may be conducted by telephone or on a virtual platform, in limited circumstances. Any issues related to *voir dire*, motions *in limine*, jury instructions, and jury verdict forms will be addressed at that time.

#### **D. Voir Dire**

Counsel may submit proposed *voir dire* questions via email to Chambers and should do so in accordance with the Scheduling Order. Judge Hodge will conduct most of the *voir dire* in criminal jury matters. Counsel will be permitted to address the venire with follow-up questions.

#### **E. Proposed Jury Instructions and Verdict Forms**

Each party must submit to the Court and serve on opposing counsel proposed points for charge and any proposed jury interrogatories in accordance with the Scheduling Order. Each point for charge and proposed jury interrogatory shall be numbered and on a separate sheet of paper identifying the name of the requesting party. Each proposed instruction must be submitted with authority. If a model jury instruction is used, the party submitting it shall state whether the proposed instruction is unchanged or modified. If a party modifies a model instruction, the modifications must be clearly identified. Additions shall be underlined and deletions shall be placed in brackets.



## **F. Guilty Plea**

Before a defendant offers a guilty plea, the guilty plea memorandum, guilty plea agreement (if applicable), and acknowledgment of rights must be completed and reviewed with the defendant and must be provided to the Court via email and/or hard copy to Chambers **seven (7) days** prior to the change of plea hearing. The guilty plea memorandum should include: the elements of each offense to which the defendant will plead guilty and legal citations for the elements, the statutory maximum penalties for each offense, the terms of any plea agreement, and the factual basis for the plea.

## **G. Sentencing**

If the Court accepts a guilty plea or there is a conviction at trial, Judge Hodge will schedule a speedy sentencing for a date selected at the time of the plea or verdict. Judge Hodge discourages continuance of sentencing, and sentencing will be continued for good cause only. Judge Hodge will generally not consider any request for a continuance exceeding 90 days.

**Sentencing motions and supporting memoranda must be filed at least fourteen (14) days before the scheduled sentencing date, and any response thereto must be filed at least seven (7) days before the scheduled sentencing date.** Sentencing memoranda (exclusive of motions) must be filed **no later than seven (7) days** before the scheduled sentencing date.

*For any criminal litigation issues not addressed above, please consult the Local Rules of Criminal Procedure for the Eastern District of Pennsylvania at:*  
<http://www.paed.uscourts.gov/documents/locrules/criminal/crrules.pdf>