POLICIES AND PROCEDURES FOR COUNSEL

Judge Chad F. Kenney

United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
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Chambers_of_Judge_Chad_F_Kenney@paed.uscourts.gov

CHAMBERS STAFF

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CASE MANAGEMENT

These policies and procedures will be employed by the Court and the parties to secure the just, speedy, inexpensive, and civil determination of every action and proceeding. (See Rule 1, Federal Rules of Civil Procedure). All attorneys appearing before the Honorable Chad F. Kenney should carefully and thoroughly review these guidelines.

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I. GENERAL MATTERS

Counsel are reminded to submit current telephone numbers, email addresses, and any changes of contact information to the Clerk's Office and the appropriate deputy clerk.

A. Communications

Communications regarding civil cases should be directed to Shelli L. MacElderry, the Civil Deputy Clerk, at **(267) 299-7541** or **Chambers_of_Judge_Chad_F_Kenney@paed.uscourts.gov**.

Any contact should only come after notifying other counsel of the intent to reach out to Chambers. Emails with any Chambers personnel should copy the Chambers email address.

Communications regarding courtroom matters or criminal cases should be directed to Christopher T. Kurek, the Courtroom Deputy Clerk, at telephone number **(267) 299-7549** or via email at **Christopher_T_Kurek@paed.uscourts.gov**.

Parties should not email Chambers on substantive matters. Parties may contact Chambers via email in the following situations:

(1) When counsel are specifically requested by the Court to communicate some information by letter or email or in response to same by the Court;

(2) When there is an uncontested request for a continuance of the Rule 16 Scheduling Order deadlines not affecting the summary judgment date and dates thereafter including trial;

(3) When the participation of counsel in the case is expected to be affected by a personal matter concerning counsel, a party, a witness, or counsel's immediate family, such as medical problems, vacation plans, or other similarly personal problems or questions;

(4) When the parties seek Court approval of stipulated proposals (which should include a signature and date line so that Judge Kenney can indicate his approval

prior to filing on the docket);

(5) When the parties have remaining administrative or scheduling questions after reading the Policies;

(6) To confirm or advise the Court that a case has been settled, dismissed, or otherwise finally disposed; or

(7) If counsel has not received a disposition on a motion for class certification, for summary judgment, or a motion requiring a decision regarding qualified immunity within ninety days of the motion being fully briefed (and argued where applicable); or sixty days for all other motions.

All other communications with the Court concerning any case assigned to Judge Kenney's calendar should be made by the filing of a pleading, motion or other filing provided for in the Federal Rules of Civil or Criminal Procedure or the Local Rules of Civil or Criminal Procedure. Do not write letters or emails to the Court that are properly the subject of these filings unless given authorization. The Court does not do litigation by letter.

When a written communication concerning a case cannot timely address a last-minute development, counsel may initiate necessary telephone communications with Chambers.

Counsel should not seek to engage in advocacy during any administrative contact with Chambers staff. It is presumed that all counsel are aware of any communication made with Chambers and have been copied on any emails or other correspondence.

B. Telephone Conferences

The Court will on occasion hold telephone conferences to resolve scheduling matters or discovery disputes. A motion explaining the dispute and requesting a phone conference should first be filed on the record unless it is a dispute arising during a deposition. Letter Motions will not be accepted. The Court will notify counsel of the date, time and teleconferencing phone numbers and

access code.

C. Oral Arguments and Evidentiary Hearings

Arguments and hearings are scheduled on a case-by-case basis as warranted. They are conducted in the courtroom unless there are exigent circumstances that allow for them to be conducted electronically.

D. Pro Hac Vice Admissions

To be admitted pro hac vice, local counsel of record should submit the "Attorney Admission Application (Pro Hac Vice)" available at http://www.paed.uscourts.gov/documents2/forms/forms-miscellaneous. The admission of out-of-the-jurisdiction counsel pro hac vice does not relieve local counsel of responsibility for the matter before the Court. If the admission fee is not submitted at the time the application for pro hac vice is filed on the docket, the application will be denied pending submission of payment. Local counsel must have a full grasp of the case and these Policies to ensure compliance and be ready to appear before the Court or respond to Chambers staff if pro hac vice counsel is not available.

II. CIVIL CASES

A. Pretrial Procedure

Mentoring: Recent discussions with experienced practitioners expressing their concerns have prompted the court to promote a renewed commitment to mentoring of young lawyers. For many reasons including the structure of multi-layered, multi-generational law firms, mentoring of the young lawyer is quickly becoming a dormant, almost lost art and we have seen a continual, general sidelining of the unspoken obligation built within a firm's culture for the senior attorneys to help develop the courtroom and discovery skills of the younger attorneys. This development has been one cause for dissatisfaction in the profession, the inability to retain attorneys in a firm, and the failure to develop in-house talent. Counsel are encouraged to have other trial team members argue all or parts of motions, as well as participate in Rule 16 conferences as long as counsel is giving the team member access to the client and to all information needed to properly prepare. Counsel are also encouraged to have trial team members prepare and present ancillary witnesses for trial testimony. On occasion, during a hearing, the court will turn to any one of the trial team members in the courtroom and ask a question about the issue being argued.

PREPARING FOR THE RULE 16 CASE MANAGEMENT CONFERENCE

The Rule 16 conference represents a critical step in the litigation and management of the case. As one accomplished practitioner recommended while presenting as a panel member at a CLE: "you should prepare for the Rule 16 as if you are preparing to argue a Motion for Summary Judgement." Accordingly, counsel must be prepared to respond to bench questions about every facet and detail of their case including details regarding the client's characteristics pertinent to the case, liability, damages, remedies, legal issues, identity of witnesses, discovery issues, demands and offers made, and if none, why so. Counsel needs to be thoroughly versed in the factual foundations for each position taken. The Rule 16 courtroom conference sets the stage for the entire course of the litigation and culminates in a Scheduling Order the parties must adhere to. It may be the only appearance counsel makes before the court in the litigation. Rule 16's and any subsequent case management conferences are held in the courtroom on the record. Telephone Rule 16s are not favored and are granted only upon exigent circumstances. Counsel are litigating in this District so they need to be readily available then to appear in court in person in the District. The Court will schedule a Rule 16 conference for all non-arbitration cases (except ERISA claims). Since conferences are not conducted for arbitration designated cases, the amount claimed is assumed to be greater than $150,000 and the filing of the claim has the court's full attention, and it expects the full attention of counsel to the controversy.

Once the Complaint has been filed and the Summons served, Counsel should peruse Rule 16 in tandem with Rules 26 and 37. Before the pretrial conference, the Court expects counsel to have begun in earnest to investigate their side of the facts to fully comply with Rule 26(a).

In most instances, the Court will schedule a Rule 16 conference shortly after the defendant has filed a responsive pleading. **At least three business days before the pretrial conference**,

counsel shall file on the docket the required report of the Rule 26(f) meeting. If the 26(f) is not timely filed, the Rule 16 may be cancelled with an Order that counsel file a status report addressing the failure. A template for the report of the Rule 26(f) meeting is available on the Eastern District of Pennsylvania District Court website with Judge Kenney's Policies. The Court will not conduct a Rule 16 conference in ERISA cases. Instead, the Court will instruct counsel to submit a briefing schedule. Rule 16's will also not be conducted in Arbitration designated cases as those cases have their own built in timelines counsel must follow.

The Court relies on counsel's good faith compliance with Rule 26(f). *See* Fed. R. Civ. P. 37(f). The Rule 26(f) meeting should take place as early in the case as possible, but no later than twenty-one days before the scheduled Rule 16 conference. The Rule 26(f) meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule. Outstanding motions will not excuse the requirements of holding the meeting and submitting the proposed discovery plan**.**

Initial disclosures pursuant to Rule 26(a) **shall be completed no later than seven days before the Rule 16 conference.**

It is also expected that the parties will reach an agreement on how to conduct electronic discovery. The parties shall discuss the parameters of their anticipated e-discovery at the Rule 26(f) conference and shall be prepared to address e-discovery at the Rule 16 conference with the Court. If the parties anticipate that the matter will involve substantial e-discovery, the parties should have their e-discovery liaisons attend the Rule 16 conference so they can coordinate the discovery between and among each other.

The parties should be prepared to draft and stipulate to an e-discovery order at the time of the Rule 16 conference if they have in good faith not been able to do so before the conference. At a minimum, the parties must have the agreed-to parameters in writing ready to be supplemented or

changed based upon the outcome of the conference. In the event the parties cannot reach such an agreement before the Rule 16 conference, the Court will enter an Order incorporating default standards, a sample of which can be found on the Eastern District of Pennsylvania Court website below Judge Kenney's Policies.

At the conference, the parties should be prepared to address all topics listed in Local Rule of Civil Procedure 16.1(b) and Federal Rule of Civil Procedure 16(b) and (c), the progress of self-executing disclosure under Federal Rule of Civil Procedure 26(a), and any settlement or mediation proposals. Counsel should bring with them photographs, contracts, leases, or other important documents that pertain to the action.

The Court will issue a Rule 16 scheduling order shortly after the conclusion of the conference and the Order will contain the name of the magistrate assigned to the case who will conduct settlement conferences.

Counsel may choose to file a Notice, Consent, and Reference of a Civil Action to a Magistrate Judge (AO 85) consenting that a case be referred to a United States Magistrate Judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Upon the Court's approval of the Consent, the Magistrate Judge is chosen by the Administrator on a random assignment basis.

It is highly recommended that lead counsel attends the Rule 16 conference. If lead trial counsel, for good cause, is unable to attend, then the court will consider the reason why as well as the request to have another specifically named attorney present to represent the client. There must be an affirmation that this counsel is prepared to proceed with full knowledge of the case pursuant to the requirements of these guidelines. Parties are permitted to be present, although not required, unless otherwise ordered by the Court.

After the Rule 16 conference Scheduling Order issues, the court will order in-court, follow-

up, case management conferences to get a case back on track if the filings of the parties' signal that the case has bogged down.

1. Final Pretrial Conference and Final Trial Preparation

The Court will schedule final pretrial conferences on a case-by-case basis as needed. Final pretrial conferences will be scheduled one (1) to two (2) weeks prior to the date certain trial date depending on the case-specific circumstances that warrant the necessity of such conference. In the majority of cases, the Court's practice is to conduct the final pretrial preparations through a series of interactions between counsel and the Court—with the assigned law clerk serving as the liaison—to obtain as much consensus on *voir dire*, verdict slips, and points for charge before trial as possible. During this period, counsel should be conferring with the aim of agreeing on trial exhibits, designations, and objections to resolve as many issues before trial as possible to avoid slowing down the progress of trial. The conferring between counsel equips the parties to present to the Court only narrow issues at the beginning of the trial.

In more complex cases, Counsel may identify the need for a more extended pretrial conference. In such complex cases, or any other circumstances for which the Court deems it necessary to require a final pretrial conference, at least seven (7) days prior to the scheduled pretrial conference, parties shall submit jointly a proposed final pretrial order in compliance with Local Rule of Civil Procedure 16.1(d)(2). Parties should take particular care to comply with the form and substance requirement of Local Rule of Civil Procedure 16.1(d)(2)(b). During such a conference, the Court will address factual and legal issues, the admissibility of exhibits, scheduling issues, and settlement. At the end of the conference, the Court will then issue a final pretrial order or a final scheduling order.

B. Continuances and Extensions

Unless there is extremely good cause to justify a change, the parties are expected to strictly adhere to the dates contained in the scheduling order. The Court will grant a continuance or extension based on a stipulation of all parties if the continuance or extension will not affect the deadlines for filing motions for summary judgment, motions *in limine*, or the trial date. A continuance or extension that may affect the deadlines for filing motions for summary judgment, motions *in limine*, or the trial date must be made by motion sufficiently in advance of the deadline date. Parties should expect these motions will be DENIED unless unforeseeable, insurmountable causes are established.

Counsel should file of record stipulations needing Court approval with a copy emailed to Chambers at Chambers_of_Judge_Chad_F_Kenney@paed.uscourts.gov. **Counsel should make every effort to file such stipulations or motions 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.**

C. General Motions Practice

1. Conference Prior to Filing Certain Rule 12 Motions

Except in cases where either side is pro se, or in bankruptcy or social security appeals, upon the filing of a complaint, the Court will file an order requiring moving counsel, before filing a motion pursuant to Fed. R. Civ. P. 12(b)(6), (e), or (f), to first contact opposing counsel to discuss the substance of the contemplated motion and to provide an opportunity to cure any alleged pleading deficiencies or strike certain matter. 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 any of the above-mentioned motions, counsel for the moving party shall include, along with the motion, a certification that the parties met and conferred regarding the alleged pleading deficiencies or matter sought to be stricken. **The Court will deny any motion that fails to conform with these requirements.**

2. Oral Argument 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.

Responses to motions should be filed in accordance with the Federal Rules of Civil Procedure unless otherwise ordered and, if a hearing is scheduled, at least two days before a hearing unless otherwise directed. Responses to motions are most effective when they address the substance of the motion while adding details that give a full picture from the position of the respondent. Responses to motions that contain language such as "denied as a conclusion of law, strict proof demanded" are not helpful.

3. Reply and Surreply Briefs

Once a Motion and a Response are filed parties can file reply or surreply briefs if they decide they need to do so without seeking permission from the court. There is no timeline for these filings, but the court will not delay a decision on the motion in anticipation of receiving these filings unless the court has itself requested this further briefing.

4. Legal Support, Length and Content of Briefs or Legal Memoranda

Counsel needs to double check or have cross checked cites in briefs that have been drafted for them prior to filing. More often than one would expect, the court finds that a case used to support a proposition does not nearly at all do so. Sometimes the case supports the opposite proposition. This effects your credibility moving forward and slows the court down in its preparation in attempting to resolve the issue. **Counsel must identify where an exhibit referred to in the Motion or Response can be found in the record pursuant to the instructions set forth herein in the Summary Judgment section.**

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 must be limited to twenty-five pages.** If a party requires more than twenty-five 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.

5. Rule 56 Motions (Motions for Summary Judgment)

No later than fourteen days before filing any summary judgment motion pursuant to Rule 56, the parties shall meet and confer about the material facts. The movant's initial filing must include a concise statement of stipulated material facts, setting forth in numbered paragraphs the material facts and important background facts that are not in dispute for purposes of summary judgment. Citations to the summary judgment record should be included for each stipulated fact where possible. Counsel must include with their Rule 56 Motion an index clearly identifying each referenced exhibit and indicating where it can be found in the filing.

To the extent that any party seeks to rely on facts not included in the concise statement of material facts, it shall set forth those facts in a concise statement of additional facts. Like the statement of stipulated facts, the statement of additional facts shall be organized in numbered paragraphs. The party shall provide citations to the precise page of the summary judgment record that supports each factual assertion in the statement of additional facts.

Parties, when referring to a document in their motion must identify exactly by ECF number and exhibit number and page number in the exhibit where the court can find the document referred to. In almost all instances, documents already in the record are buried there somewhere and classified under different exhibit numbers than the ones referenced in the motion, and the court and the clerks spend an inordinate amount of time scouring the records looking for the referenced document. The best practice is to file an index of exhibits referenced

in the Motion or Response with the Motion or Response, identifying the exhibit, its content, and where it can be found on the ECF.

6. Disposition

In all instances, the Court attempts to dispose of motions promptly. For decisions on class certification, summary judgment, motions to compel arbitration, and decisions regarding qualified immunity, counsel may send an email inquiry if the Court has not ruled on the motion within ninety days after full briefing (and argument if applicable). In all other instances, counsel may reach out and inquire after sixty days.

D. Discovery Matters

1. Length of Discovery Period and Extensions

In standard track cases, the Court usually allows up to ninety days from the date of the Rule 16 conference to complete fact discovery. (Keep in mind that the court assumes that the parties have already engaged in a month or two of significant, required discovery as required by Rule 26(a)(1)(A) by the time of the Rule 16.) If the parties believe ninety days are insufficient for discovery, they should provide an explanation in their 26(f) Report. In special management cases, the Court will permit additional time to conduct fact and or expert discovery if the parties identify a need to do so at the Rule 16 conference, or any subsequent case management conferences. A case will ordinarily be listed for trial seven to nine months after the Rule 16 conference.

2. Discovery Conferences and Dispute Resolution

Discovery requires zealous advocacy combined with the finesse to be able to proceed with comity and collegiality. Ninety-five percent of the bar ably brings both this zealous advocacy and finesse to the litigation in their interactions, communications, correspondence, and into the conference room for conducting depositions as well as into the courtroom. However, the other five percent are a continual reality on every docket. Discovery also requires cooperation and responsiveness so that

opposing counsel can prepare their case for trial as well. Unresponsiveness and lack of cooperation is a poor litigation practice which undermines not only your credibility and the credibility of your case but directly affects also my ability to handle cases efficiently and requires me to hold course correcting case management conferences and hearings which I will hold when need be.

Counsel set the tone for the litigation, not the parties. Counsel should allow for the common courtesies that are standard in litigation practice and work with each other to accommodate schedules especially as deadlines draw near. While litigation requires insistence at times it does not require sharp practices. Sharp practices are not sound litigation practices because they chip away at your credibility to the point that your filings and representations in all your cases are subject to closer scrutiny because these practices put you and your client's credibility at issue which is not a good posture for your case.

Once a case is assigned to me, it is my case as well as your case, and a high degree of professionalism is expected of counsel throughout whether it be on the phone with opposing counsel or in the conference room before, during, or after a deposition. Counsel is also expected to manage and control the conduct of their clients in these venues which are an extension of the courtroom and is part of the administration of justice. I will step in if need be during the course of a deposition to address any belligerent, harassing, disrespectful, demeaning, or biased behavior that I would not permit if it occurred in the courtroom, and in those circumstances, I approach the conduct with a like meets like symmetry to ensure we are connecting at the same level that counsel or their client feel free to connect with others.

Discovery must be proportional to the needs of the case. Parties should begin discovery as soon as permitted under the relevant Rules, without waiting for the Rule 16 conference to be held. By the time of the Rule 16, it is expected that all of the required disclosures under Rule 26(a) have been made. In most instances, the initial set of interrogatories and requests for production of documents

should have been served on each of the respective parties and either answered or soon to be answered by the time of the Rule 16 conference. Inquiry regarding the initial exchanges of discovery will be made at the conference. Further, parties should not delay commencing discovery due to the pendency of a motion to dismiss, except where the motion could result in complete dismissal.

Judge Kenney expects the parties to timely confer in good faith and resolve discovery disputes to avoid case management extensions. Disputes that reach an impasse must be brought to the Court's attention by motion as soon as possible. Counsel shall file a simple motion briefly explaining the discovery dispute. If a dispute is particularly complex, a motion with specific citation to the record, if any, should be filed. If a discovery motion is filed, Judge Kenney expects the parties to address the proportional relevance of the information sought as it applies to the facts, theories, claims, and defenses as developed on the record as of the date of the filing of the motion.

Motions to compel for failure to respond to a first set of discovery requests are often granted immediately without a response. **Responses to motions to compel and motions to quash subpoenas shall be filed within five days unless otherwise ordered.** The Court will schedule oral argument when it believes argument will be helpful.

The Court encourages parties to consider some hearings on discovery disputes as an opportunity for associates to argue issues on the record and develop effective advocacy skills.

Judge Kenney permits telephone conferences to resolve disputes during depositions understanding that in most instances counsel can preserve objections for another day without adjourning the deposition. Judge Kenney considers depositions to be in-court proceedings and under the umbrella of "administration of justice" and expects that counsel shall treat all other counsel and witnesses with respect. If impertinent or demeaning conduct is demonstrated either by counsel or a witness during the deposition, Judge Kenney is available to address such misconduct and encourages counsel to contact Judge Kenney immediately and not to wait until after the deposition is completed.

Judge Kenney considers disrespectful conduct between and among counsel a case management issue and a significant impediment to the proper, unbiased, and equitable administration of justice.

3. General Objections to Discovery and Conducting a Reasonable Search for Requested Documents

General objections are not acceptable. Parties must conduct a reasonable search for requested documents. Counsel must review this Court's view of general discovery objections refer to the attached Order authored by Special Master Joseph Crawford, Esq. (see Exhibit A, page 25) prior to responding to discovery requests.

4. Confidentiality Agreements

The Court will only approve confidentiality or sealing orders for good cause shown.

Public policy favors transparency in judicial proceedings. Protective orders and confidentiality agreements undermine such transparency and complicate the resolution of cases at both the trial and appellate level. They should be used sparingly and be narrowly tailored. The parties may redact highly sensitive Personally Identifiable Information (PII) that is not relevant to the disposition of the case without leave of Court.

No protective order or confidentiality order will be approved without 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." Except in exceptional circumstances, documents or evidence that form the basis for judgment in a case are unlikely to be protected against disclosure.

Any stipulation for a protective order should be sent to Chambers via email for Court approval.

E. Settlement

1. General Approach to Settlement

Settlement may be discussed at the initial Rule 16 status conference and at any subsequent

conference. In most instances, the assigned Magistrate Judge will conduct settlement conferences, and Judge Kenney will preside over all other litigation matters, including discovery issues. Counsel shall be respectful of the Magistrate Judge's time and should review the Magistrate Judge's guidelines and requirements in settlement conferences[1]. Counsel should meet all scheduling order deadlines so that counsel has conducted all discovery needed by the time of the scheduled conference. Judge Kenney will likely deny a continuance that delays a settlement conference with a Magistrate Judge unless it is clear counsel have been diligent. Upon denial, counsel will be required to detail discovery already exchanged and discovery planned in the future.

2. Class Action Settlement Best Practices

Parties seeking or objecting to an order settling a case on a class basis under Fed. R. Civ. P. 23 should fully address their positions on the best practices for implementing the 2018 Amendments to Rule 23, including those described at https://judicialstudies.duke.edu/bolch-duke-guidelines/ in the executive summary: *Guidance on new Rule 23 class action settlement provisions*, 102 JUDICATURE, no. 3, Winter 2018.

F. Arbitration

Judge Kenney will evaluate, as necessary, counsel's Arbitration Certification in non-arbitration track matters and, as appropriate, will designate a case for arbitration pursuant to Local Rule 53.2.

1. General Approach to Arbitration

Judge Kenney does not typically hold Rule 16 conferences or issue scheduling orders in arbitration-track cases. First extension requests should be made to the arbitration clerk. For subsequent extensions, or any other extension requiring the Court's approval, the parties shall certify

[1] http://www.paed.uscourts.gov/judges-info/magistrate-judges/lynne-a-sitarski

they have completed discovery; or if the extension is necessary to complete discovery, the parties shall describe the discovery completed, remaining discovery to be conducted, and the reasons for the delay by filing a Motion on ECF.

Counsel are advised to consult the materials available on the Eastern District of Pennsylvania's website at https://www.paed.uscourts.gov/services/arbitration and direct questions or correspondence regarding the arbitration hearing to the arbitration clerk at PAED_arbitration@paed.uscourts.gov.

2. Scheduling of Trial De Novo from Arbitration

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, neither discovery nor dispositive motions will be allowed after the arbitration hearing is held. Counsel are advised to inform the Court if a settlement conference with a Magistrate Judge would be helpful.

G. Pretrial Memoranda

[Counsel must peruse opposing pretrial memoranda and immediately file a separate motion alerting the Court to any claims of "surprise".]

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 1 - 7), and should also include the following items:

(1) All stipulations of counsel.

(2) A statement of objection to: (a) the admissibility of any exhibit based on authenticity; (b) the admissibility of any evidence expected to be offered for any reason (except relevancy); (c) the adequacy of the qualifications of an expert witness expected to testify; and (d) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701. Such

objection shall describe with particularity the ground and the authority for the objection.

(3) 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.

In addition, for jury trials, the Court requires that the parties file proposed voir dire, proposed jury instructions, and a proposed verdict slip at the same time as their pretrial memoranda.

For non-jury trials, the Court also requires proposed jury instructions, a proposed verdict slip, and proposed findings of fact and conclusions of law because it helps the parties and the court to frame the issues to be addressed and the law controlling on those issues. The initial proposed findings then are supplemented after trial with reference to the record.

When appropriate, the Court may require the parties to prepare a joint long-form Final Pretrial Order consistent with the requirements set forth in Local Rule 16.1(d)(2).

H. Injunctions

1. Scheduling and Expedited Discovery

Judge Kenney will promptly list any request for a temporary restraining order ("TRO") or a preliminary injunction assigned to him. In all instances the Court will carefully scrutinize representations made in the ex parte TRO request in anticipation of an expedited hearing. Counsel are directed to closely follow the dictates of Fed. R. Civ. P. 65 when requesting injunctive relief and should include a proposed order addressing the required security. If the initial filing does not meet all the requirements of the rule or if the proposed order does not do so, counsel should immediately supplement the filing.

2. Notices and Orders for TROs and Preliminary Injunctions

Upon issuing a TRO, Judge Kenney will also issue notices or orders describing next steps for counsel. These notices and orders will address timing, expedited discovery issues, and will establish evidentiary hearing dates. Counsel may have the opportunity to submit their own comprehensive, stipulated order to address these same issues on a timeline they consider more conducive to putting a finished record together for the hearing and give counsel time to resolve the issues if possible.

3. Required Submissions for Preliminary Injunctions

If the parties cannot agree to a stipulated record prior to argument on a preliminary injunction, the Court will conduct an evidentiary hearing prior to argument. In those instances where the parties cannot stipulate to a full record, Judge Kenney requires the submission of either a stipulation of disputed and undisputed facts or the proposed findings of fact and conclusions of law. The Court will set the time for submission of these items at the pre-hearing conference.

III. PATENT CASES

Judge Kenney follows the procedures developed by Judge Albright with respect to patent cases available at:

https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/Waco/Albright/Order%20Governing%20Proceedings%20-%20Patent%20Cases%20022620.pdf

The Rule 16 conference, however, will still be scheduled in the courtroom according to Judge Kenney's Policies for Counsel. *See supra* at 4–5.

IV. TRIAL PROCEDURE

A. Scheduling Cases

A date certain for trial will be determined at the initial Rule 16 conference. Questions relating to scheduling matters should be directed to Judge Kenney's Civil Deputy Clerk or the Law Clerk assigned to the case.

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

Judge Kenney schedules the trial of cases involving out-of-town counsel, parties, or witnesses in the same manner as all other cases. Counsel are responsible for the scheduling of witnesses or stipulating to taking their trial testimony by deposition. In some instances, the court will permit a stipulation to have a witness testify by video.

C. Conflicts of Counsel

Counsel should notify the Court immediately upon learning of any unavoidable and compelling professional or personal conflicts affecting the trial schedule. Once a trial schedule is set counsel should not make pre-paid vacation plans or any other travel plans unless something extraordinary occurs, in which case the Court must first be notified. All experts must be informed of the schedule and if not available then a trial deposition must be taken.

D. Notetaking by Jurors

Judge Kenney permits jurors to take notes.

E. *Voir Dire*

Judge Kenney conducts *voir dire* in civil cases with an opportunity for counsel to ask questions during individual questioning at side bar. Judge Kenney's practice is to individually voir dire each juror at side bar until there are enough qualified to seat the jury.

F. Trial Briefs

Parties' pretrial memoranda will be considered as their trial brief.

G. 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.

H. Opening Statements and Summations

In most cases, the Court permits twenty to thirty minutes for an opening statement and thirty

to forty-five minutes for a summation.

I. Examination of Witnesses Out of Sequence

The Court will ordinarily permit counsel to examine counsel's own witness out of turn for the convenience of the witness.

J. Examination of Witnesses or Argument by More Than One Attorney

More than one attorney for a party may examine different witnesses or argue different points of law before the Court. Only one attorney for each side may examine the same witness or address the jury during the opening statement or summation.

K. Examination of Witnesses Beyond Direct and Cross

The Court may permit limited re-direct and re-cross examination on matters not previously covered by cross examination or in special circumstances.

L. Videotaped Testimony

Videotaped testimony should begin with the witness being sworn. Counsel should bring objections to the Court's attention after the parties have discussed designations and as part of the pretrial memoranda. After the Court rules on any objections, counsel should edit the tapes before offering the videotaped testimony at trial.

M. Reading of Material into the Record

Judge Kenney has no special practice or policy regarding reading stipulations, pleadings, or discovery material into the record at trial. He encourages counsel to stipulate to as many facts as possible.

N. Preparation of Exhibits

Exhibits should be pre-marked and exchanged in accordance with the scheduling order or final pretrial order. On the morning trial is scheduled to commence, counsel should supply the Court with two copies of a joint exhibit binder and a schedule of exhibits.

In non-jury cases the court requires two binders, one of which would be for the use of the assigned law clerk.

O. Offering Exhibits into Evidence

It is presumed that exhibits that are being referenced are admissible. Therefore, typically we can wait for a time when the jury is taking a break to formally admit. However, if there is an issue with any particular exhibit then we will take the issue of admission up at side bar for a ruling before a witness can testify as to its contents.

P. Directed Verdict Motions

Motions for Judgment as a Matter of Law in jury trials and Motions for an Involuntary Dismissal in non-jury trials can be made orally on the record with oral argument immediately to follow.

Q. Proposed Jury Instructions and Verdict Forms

In his scheduling orders, Judge Kenney typically requires that the parties file proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories for the jury no later than fourteen days before the trial date. Jury instructions need only be submitted with respect to substantive issues in the case. Proposed instructions on procedural matters such as the burden of proof, unanimity, and credibility are not necessary.

Model Jury Instructions are favored. In Pennsylvania law, diversity cases the Pennsylvania Standard instructions are favored. In federal question cases, the Third Circuit Model Jury Instructions are favored. Each proposed standard instruction need only reference the Standard Instruction Number as well as the title of the volume and the publication date of the instruction. Counsel should search for and use the most recent volume. If there is a non-standard instruction or a supplement to the standard, this needs to be pointed out with a citation to the specific authority and the reason in this specific case why it is needed. Those non-standard instructions should be each on a separate page,

double spaced, and include the exact citation relied upon. Cases and model jury instructions that are cited should be accurately quoted and a page reference should be provided.

Judge Kenney conducts a conference on proposed jury instructions and, if necessary, will consider supplemental proposed jury instructions until the case goes to the jury.

If a model jury instruction is submitted, for instance, from Devitt & Blackmar, Federal Jury Practice and Instructions, the submitting party shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction, the additions should be underlined, and deletions should be placed in brackets.

R. Proposed Findings of Fact, Conclusions of Law, and Verdict Slips Covering All Claims To Be Filed As If the Case Would Be Submitted to a Jury

Proposed findings of fact and conclusions of law in non-jury cases should be filed at least seven days before the trial date. Counsel should also file at that time proposed verdict slips and points for charge on substantive matters covering all claims as if the case would be submitted to a jury. The parties shall submit revised or supplemental findings of fact and conclusions of law and verdict slips with specific reference to trial evidence. A schedule for the submission of revised findings/conclusions/verdict slips will be discussed at the conclusion of trial. The court does math only if it requires very simple calculations. Counsel are specifically directed to do their own math especially as to calculating lost pay and interest. Counsel for defendants should address the lost pay calculations and consider whether it should also suggest lost pay calculations that would encompass less than worst case scenarios presuming the possibility of a loss on the liability issue.

S. Unavailability of Witness

If a witness is unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(4), 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.

T. 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 the opposing parties with information or documents supporting the testimony at the time required for submission of expert reports.

U. Jury Deliberations

1. Written Jury Instructions

In the appropriate case, the Court will give the jury a copy of the written jury instructions.

2. Exhibits in the Jury Room

Prior to the jury being instructed, the Court and counsel will discuss which exhibits should go initially out with the jury for their consideration during deliberations and which should wait for a specific request by the jury. The jury will be told they have access to all admitted exhibits.

3. Handling of 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 testimony back to the jury or to replay the audio or video-taped testimony. In most instances, however, the Court expects the jury to depend upon its recollection.

4. Availability of Counsel During Jury Deliberation

Unless excused by the Court, counsel must remain near the courthouse during jury deliberations.

5. Taking the Verdict and Special Verdicts

Ordinarily, the Court will submit interrogatories to the jury. The Courtroom Deputy 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 Kenney will allow counsel to interview jurors but will instruct the jury that they are not required to talk to the attorneys.

GENERAL OBJECTIONS TO DISCOVERY

EXHIBIT A

Summary of Controlling Legal Principles on General and Pattern Objections and Reasonable Efforts to Search for Responsive Documents

The responses and objections served by the Responding Parties to the requests for production of documents did not comply with Rule 34(b)(2) of the Federal Rules of Civil Procedure, which expressly requires that "an objection must state whether responsive materials are being withheld on the basis of . . . [an] objection.". Of course, documents are "withheld" not only when a party intentionally chooses not to produce particular documents of which the responding party is well aware, but also when the responding party makes no effort to search for the responsive documents. In that situation, under the plain language of Rule 34(b)(2), the responding party is in fact relying solely on the objection or objections – which may or may not be meritorious – and must in the Rule 34 response state whether documents responsive to the request are being withheld or, put another way, are not being searched for or produced based on the objection or objections.

In many cases, the documents being withheld do not lend themselves to concise or exact summary. This is particularly true when the searches for documents have not yet been fully formulated or completed, and so the proper method of complying with Rule 34(b)(2) inevitably will vary depending upon the nature of the case and the language of the particular request for production of documents. But, at a minimum, compliance with this Rule requires some statement

of whether and to what extent documents are being withheld based on the objections.

Here, in response to almost every single request for production of documents, the Responding Parties responded using this familiar language:

> "Defendants incorporate the **General Objections** stated above in this answer as though set forth in full herein. Subject to the **General Objections, but without waiving same,** and subject to mutually agreed upon confidentiality/ protective and electronic discovery orders, **any responsive documents will be produced** and /or made available for Third-Party Plaintiffs' inspection and copying at a mutually agreeable time."

The **General Objections** included boilerplate objections "to the extent" the document requests are "irrelevant" or "vague and ambiguous" or "unduly burdensome" or beyond the scope of discovery under the Federal Rules and numerous other pattern objections. This type of response made it impossible to determine the extent to which the Responding Parties were standing on their objections and whether all, some or none of the documents responsive to particular requests were being searched for and produced.

Responding Parties were: (a) objecting in their entirety (and refusing to produce any documents in response) to certain requests; (b) producing some, but not all of the requested documents in response to other requests and (c) were not objecting in any way to certain requests. In response to pointed questions about what documents were (and were not) being searched for and produced, failures to search for and produce documents with the diligence required under Rule 34 became apparent.

One of the problems with using this "Subject to and without waiving General Objections, documents will be produced" mantra as a response to nearly every document request is that it can lead even a well-intentioned lawyer to fail to focus carefully on the extent to which they objecting to (or complying with) each particular request for production of documents. Yet, some form of this response is a common – perhaps even the most common – response that parties serve

in response to requests for production of documents under Rule 34. Indeed, many of us learned as young lawyers to do it this way and followed some form of that approach for quite some time. Although we and those who taught us did not realize it, this practice was always incorrect, and it has been resoundingly discredited by the federal courts with increasing frequency.

There are several reasons why this type of response is a violation of Rule 34. As noted above, Rule 34(b)(2), which became part of the Federal Rules in 2015, is quite clear on this point. But Rule 34(b)(2) essentially codified the case law before 2015. Indeed, calling discovery objections "general objections" is actually a pejorative—an insult hurled at one's own Objections—because "general objections" do not comply with the Rules of Civil Procedure. *See Roesberg v. Johns-Manville Corp.,* 85 F.R.D. 292 (E.D. Pa. 1980) (Troutman, J.) ("An objection to a document request must set forth the **specifics** of the objection **and how that objection relates to the documents being demanded.")** (emphasis added). Federal courts in other districts cited *Roesberg* for that now settled proposition. *See, e,g., Obiajulu v. City of Rochester,* 166 F.R.D. 293, 295 (W.D.N.Y. 1996).

The fact that "general objections" do not pass muster under the Federal Rules does not mean that a responding party cannot properly, for example, state attorney-client privilege objections once at the beginning of the Rule 34 response, rather than having to repeat the same objection in response to each specific document request. Privilege objections are, after all, highly specific objections. The party asserting the privilege objection must eventually produce a log that provides considerable information about the documents being withheld and the basis for the assertion of privilege. The same is true for an objection that the time period covered by the document requests is excessive and should be limited to a smaller, defined period. The point is that the objections must be reasonably specific—not that they must be repeated mindlessly if the objections apply to all or most of the document requests.

The federal courts have repeatedly used the phrases "familiar litany" and "boilerplate objections"—and not as words of praise—in holding that the practice of asserting essentially the same standard objections to nearly every single interrogatory or request for production of documents is an impermissible form of general objection that violates Rules 33 and 34 of the Federal Rules of Civil Procedure. For example, in *Kontonotas v. Hygrosol, Pharmaceutical Corp.,* U.S. Dist. LEXIS 52214 (E.D. Pa. 2009), Magistrate Judge Hart noted that the defendant had made "objections stated in—for the most part—identical language" to every single document request. Judge Hart then quoted this well-settled Third Circuit rule: "Mere recitation of the familiar litany that an interrogatory or document production request is 'overly broad, burdensome, oppressive and irrelevant' will not suffice.", *quoting Momah v. Albert Einstein Medical Center,* 164 F.R.D. 412, 417 (E.D. Pa. 1996) and *citing Joseph v. Harris Corp.,* 677 F.2d 985, 992 (3d Cir. 1982).

As Magistrate Judge Lloret explained more recently in *Flynn v. Manufacturers and Trades Trust Company,* 2018 WL 5296371 *1 (E.D .Pa. 2018):

> "Objections have to be noted with specificity. Fed. R. Civ. Pro. 33(b) (4). *See Covington v. Sailormen, Inc.,* 274 F.R.D. 692, 93-94 (N.D. Fla.2011) ("Common sense should have been enough for Defendant to know that boilerplate, shotgun-style 'General Objections,' incorporated without discrimination into every answer were not consistent with Fed. R. Civ. Pro. 33 (b) (4)'s directive that "[t]he grounds for objections to an interrogatory must be stated with specificity." The same holds for requests for production of documents. Fed. Civ. Pro. 34 (b) (2)".

Other federal courts have condemned the practice of combining improper general objections with vague responses that some document production will occur "subject to and without waiving the general objections". *See, e.g.*, *Athridge v. Aetna Casualty & Surety Co.,* 184 F.R.D. 181, 190 (D.D.C. 1998) ("This type of answer hides the ball…. Asserting a relevance objection, then proceeding to agree to produce 'relevant, non-privileged' document[s] 'subject to and without waiving' that objection, serves only to obscure potentially discoverable information….") ; *DL v. District of Columbia,* 2008 WL 2555101 at *3 (D.D.C. 2008)

(overruling objections stating : "[s]ubject to the General Objections above, the …[Defendant] will produce documents responsive to this request.")

The American Bar Association has also criticized this type of response to discovery and identified the potential danger it creates of withholding production of relevant documents:

> "The practice of producing documents 'subject to these objections' or 'without waiving these objections' often leaves the party who served the requests unclear as to whether all responsive documents or only a sub-set is being provided. In addition, withholding documents after asserting such a response can be a violation of the discovery rules, including the certification requirement of the attorney who signs the response. *E.g., Washington State Physicians Ins. Exch. & Ass'n v. Fison Corp.,* 858 P.2d 1054, 1081 (Wash. 1993) (en banc) (awarding sanctions where key documents were withheld after response stated that "[w]ithout waiver of these objections and subject to these limitations [defendant] will produce documents responsive to this request. ABA CIVIL DISCOVERY STANDARDS 24 (2004)."

Counsel for the Responding Parties did not try to mislead anyone by asserting this "subject to and without waiving the General Objections" pattern response in response to nearly every document request. On the contrary, when one examines the multitude of documents that the Responding Parties have actually produced so far, it becomes quite apparent that the pattern responses actually reflect an attempt to largely ignore the requests for production of documents and instead produce documents that the Responding Parties prefer to search for and produce.

It is true that the Responding Parties have thus far produced voluminous pages of documents—although it may have required some work to process or print so many pages, it certainly was not difficult to search for and find these technically responsive, but possibly useless documents. What these voluminous documents have in common is that they appear to have been relatively easy to find and produce.

Conspicuous by its absence in the Responding Parties' document production is even a single email. Nor is there any financial record showing the revenue and expenses even of the relevant entities.

No wonder the Defending Parties chose to use pattern "Subject to General Objections" responses to virtually every single document request. The alternative of actually complying with Rule 34 (b)(2) would have revealed that they were in most cases ignoring the requests for production or rewriting them into something more to their liking.

V. CRIMINAL CASES

A. Attorney Filing Procedures & ECF

Counsel are required to file all attorney documents directly by using the court's Electronic Case Filing (ECF) system or with the Office of the Clerk of Court. If counsel file public documents, then counsel shall submit and upload the documents directly to the case docket by using ECF. If counsel file sealed documents, then counsel must submit the sealed documents, and a motion to impound, to the Office of the Clerk of Court via email at **ECF_Documents@paed.uscourts.gov**. Counsel are reminded to execute service at the time of filing.

In addition, counsel are required to manage, file, and serve all attorney documents. Counsel **SHALL NOT** rely upon or expect any member of chambers staff to copy, scan, print, file, or serve any attorney documents or submissions, before or after any court proceeding.

Lastly, the attorneys of record are reminded to maintain current contact information in their respective ECF user accounts. All attorney contact information displayed on the docket must be updated as needed.

B. Scheduling Order

For criminal cases that proceed by way of indictment, the magistrate judge on duty will conduct the initial appearance and the arraignment. Following these preliminary proceedings, Judge Kenney will issue a scheduling order for the case. The scheduling order will include directives on discovery, establish deadlines for attorney filings, and provide a date for trial.

In accordance with the Speedy Trial Act, if counsel files a motion to continue the trial date, then counsel must include the reason for the continuance, the length of continuance being sought, and whether the motion is opposed or unopposed. Should the Court grant a motion to continue, a new scheduling order will be issued. The Court expects counsel to comply with the deadlines and limitations set forth in all scheduling orders.

C. Criminal Jury Trial

Counsel must file their pretrial memoranda and witness lists, as well as proposed *voir dire* questions, jury instructions, and verdict forms at least **fourteen (14) days** prior to the date of jury selection unless otherwise ordered. In addition, counsel must also supply the Court with two copies of a joint exhibit binder and exhibit schedule on the morning of jury selection.

Judge Kenney will conduct the general *voir dire* with the jury selection panel in the courtroom and proceed with individual *voir dire* with each prospective juror and counsel in a private setting. The final jury panel will consist of twelve (12) jurors and a specified number of alternates to be determined by the Court.

Upon commencement of trial, counsel shall comply with the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of this district, and the *Trial Procedure* section of these policies.

D. Guilty Plea Hearing

If a criminal defendant decides to plead guilty to an indictment or an information, counsel shall contact the Court's deputy clerk to schedule a hearing. The attorney for the United States shall submit the plea memorandum, a copy of any guilty plea agreement, motions, and other related documents, at least **seven (7) days** prior to the hearing. The attorney for the United States may email the plea documents to the Court's deputy clerk *in lieu of* filing these documents directly to ECF or with the Clerk of Court. Counsel should exercise discretion regarding the direct filing of plea

documents prior to any plea hearing, pursuant to the interests of both parties. Following the conclusion of the in-court proceeding, the courtroom deputy clerk will file any final plea documents or signed paperwork, if necessary.

E. Sentencing

1. Attorney Requirements

The Court expects the attorneys and the defendant to review the probation officer's presentence investigation report in advance of the sentencing hearing.

The attorney for the United States and the attorney for the defendant must file their sentencing memoranda, motions, and exhibits at least **seven (7) days** prior to the sentencing hearing. Counsel are permitted to submit supplemental sentencing documents **one (1) day** prior to the hearing, if necessary. However, this supplemental deadline is strictly limited to the submission of additional or amended documents only. Counsel must understand that the supplemental deadline is **NOT** a secondary deadline for original filings. Judge Kenney requires counsel of record to abide by these deadlines.

Pursuant to this Court's filing procedures, counsel **SHALL NOT** rely upon or expect chambers staff to file any attorney documents. The attorneys must file their own memoranda, motions, and other materials directly to ECF or with the Clerk of Court. Additionally, counsel must be fully prepared prior to the hearing in the courtroom. Specifically, counsel are not permitted to submit late exhibits or other papers on the day of sentencing. Also, counsel **SHALL NOT** expect the courtroom deputy clerk to scan, copy, or print any paperwork on the day of the hearing. The Court expects the attorneys to manage, copy, and exchange all necessary papers in advance of sentencing.

2. Sentencing Memoranda

Regarding the preparation of sentencing memoranda, counsel must furnish professional court filings. The attorneys shall proofread their memoranda for accuracy and specificity as to the

appropriate defendant. Additionally, counsel are advised that this Court **DOES NOT ACCEPT** boilerplate memoranda that merely include vague references to the United States Sentencing Guidelines, court opinions, or statutory citations.

Given the serious nature of criminal sentencing, in which a defendant may be ordered to serve a significant term of imprisonment or pay substantial financial penalties, the Court expects counsel to advance the strongest positions on behalf of their respective clients. Indeed, the sentencing memoranda must include thorough legal and factual analysis. Counsel shall also incorporate the vital arguments that this Court must consider, and the attorneys must articulate their strongest points and positions in a thoughtful and deliberate manner.

Counsel are strongly advised that this Court may **REJECT** any sentencing memoranda that are deemed untimely or inadequate, and as a result, may also order a new date for sentencing. Defense attorneys appointed pursuant to the Criminal Justice Act are further advised that Judge Kenney may **DENY PAYMENT** for attorney services if counsel present any memoranda that are regarded as inadequate boilerplate submissions.

F. Revocation of Supervised Release or Probation

If the probation officer has reason to believe that there has been a violation of the terms and conditions of a defendant's supervision, the probation officer may file a violation report and petition for a hearing. Should the Court order a hearing on the matter, the attorneys must thoroughly review the probation officer's report(s) and review the defendant's criminal history and background. Defense counsel must also meet and confer with the defendant regarding the violation report(s). The attorney for the United States and defense counsel shall also confer on the applicable guideline range prior to any revocation hearing.

G. Evidentiary Hearing

Should the Court decide to schedule an evidentiary hearing, counsel must make all necessary

preparations in advance of the court proceeding. Specifically, counsel shall disclose witness lists, exhibit lists, and pre-marked exhibits at least **seven (7) days** prior to the hearing, unless otherwise ordered. In addition, counsel should electronically file the exhibits and witness lists through ECF or provide courtesy copies of these materials to chambers staff and opposing counsel via email. Counsel shall advise the Court as to the estimated length of any evidentiary proceeding.

VI. COURTROOM PROCEDURE

A. In-Person Proceedings

Judge Kenney will use courtroom 11B for all judicial proceedings, unless otherwise ordered. Counsel are advised that Judge Kenney does not conduct any court proceedings remotely, virtually or telephonically. Consequently, all attorneys and case participants are required to appear **in person** for all hearings, conferences, trials, and other official court proceedings. On rare occasion, Judge Kenney may permit the attorneys and other case participants to appear virtually or telephonically, provided there are extenuating circumstances and good cause is shown. However, counsel shall note that any request to appear remotely may or may not be granted.

B. Court Recording

All courtroom proceedings in this district are recorded via electronic sound recording (ESR) or by way of official stenographic court reporting. Judge Kenney typically employs the use of ESR for most in-court matters. If any attorney, party, or other case participant would like to order a transcript, then the ordering party must contact the transcription department with the Clerk of Court. The transcription services webpage on the U.S. District Court website provides further instruction and all relevant contact information.

C. Courtroom Technology

Courtroom 11B is not equipped with audio and video systems for the presentation of exhibits.

As such, if the attorneys would like to use any electronic presentation technology, then counsel must supply their own equipment. In this instance, counsel must contact the deputy clerk in chambers and make the proper arrangements. The deputy clerk will need to provide security clearance for those individuals or firms delivering any technology systems to the courtroom.

Counsel are advised that it is the responsibility of the attorneys and technology operators to deliver, install, troubleshoot, operate, and remove all such equipment from the courtroom. The Court also prefers that counsel coordinate the operational use of one technology system.

VII. OTHER MATTERS

A. Entry of Appearance

Every attorney before this Court must be admitted to the Eastern District of Pennsylvania or be admitted *pro hac vice*. All entries of appearances must be properly filed to the case docket on ECF prior to appearing in the courtroom for any proceeding.

B. Exhibits

Throughout civil litigation and criminal prosecutions, counsel will often file exhibits to the case docket on ECF. The attorneys will also present exhibits in open court during hearings, evidentiary proceedings, and trial. The Court understands that not all exhibits will necessarily be filed to ECF, based on the nature and format of certain exhibits. Regardless of whether certain exhibits are filed to ECF or not, it is the responsibility of counsel to disclose, serve, and maintain copies of all exhibits pursuant to the Federal and Local Rules. It is also the responsibility of counsel to retain copies of all exhibits following the conclusion of any court proceeding, or upon termination of any action.

C. Consultation with Opposing Counsel and Court Officers

In general, Judge Kenney expects counsel to bring matters to his attention only after such matters have been discussed with opposing counsel. When communicating with the Court, counsel shall be prepared to state the position of opposing counsel. Regarding criminal matters, counsel must also confer with any assigned officer, pretrial services officer or probation officer, prior to communicating with the Court.

D. Professionalism

The Court insists on punctuality for all scheduled matters. Judge Kenney also expects mutual courtesy between counsel and the Court, both inside and outside of the courtroom.

During evidentiary and trial proceedings, counsel should rise to address the Court, as well as seek permission before approaching any adverse witness or the bench. Counsel will direct all comments to the Court or to the witness under examination, and not to other counsel or to the jury. Furthermore, counsel shall not use only first names when referring to parties or witnesses in the courtroom. Rather, counsel shall refer to all parties and witnesses formally during official court proceedings.

During trial proceedings, the parties should notify the Court of any issue that requires a ruling at the beginning of the day, or during a recess, outside of the jury's presence. As to objections, most objections are readily understood by the Court given a few words. If further explanation of any objection becomes necessary, please ask the Court to confer at sidebar. Sidebar conferences are expected, rather than argument on objections in the presence of the jury.

E. Briefs of Cases on Appeal

Anytime this Court's decision or final ruling is appealed to the United States Court of Appeals, Judge Kenney welcomes courtesy copies of appellate briefs from counsel.