

Guidelines for Counsel

Judge Gerald Austin McHugh

General Matters

Practicality, civility, and professionalism facilitate the orderly resolution of cases. All counsel are urged to read and be guided by the American College of Trial Lawyers' Code of Pretrial Conduct and Code of Trial Conduct (as endorsed by the last three Chief Justices of the United States), available [here](#).

Communication with Chambers

Counsel are expected to reply with reasonable promptness to inquiries from Chambers. Any discourtesy toward Chambers staff will be viewed as disrespect toward the Court.

Counsel should not hesitate to contact Chambers where necessary to facilitate the progress of a case, by phone (267-299-7301), fax (267-299-5020), or email (Chambers_of_Judge_Gerald_McHugh@paed.uscourts.gov).

Any communication addressing a substantive issue should also be filed on ECF, and it should be self-evident that no counsel should seek to engage in advocacy during any *ex parte* contact with any member of the judge's staff.

Chambers Mailing address is: Room 9613, United States Courthouse
601 Market Street
Philadelphia, PA 19106

Magistrate Judge

Judge McHugh does not have an assigned magistrate, and because of the workload of the Court's magistrate judges, a request for magistrate support will be granted only for good cause shown.

Extensions of time

Counsel may agree to extend any filing or discovery deadline that will not delay the scheduling of trial. Routine extensions as a courtesy to opposing counsel, particularly at the outset of a case, are encouraged but do require court approval. If counsel agree to extend a specific deadline, they should email a Stipulation to Chambers and cite these Guidelines. Such Stipulations will be honored unless they are patently unreasonable and interfere with the orderly progress of the case.

Any Stipulation that requires court approval is to be emailed to Chambers at:
Chambers_of_Judge_Gerald_McHugh@paed.uscourts.gov.

Preliminary Pretrial Conference

A Rule 16 Pretrial Conference will be held as soon as possible after the Answer to the Complaint is served. Counsel share responsibility for the progress of the case. If the Court has not scheduled a Rule 16 conference within a reasonable time after the filing of an answer, counsel should contact Chambers to request a conference. Lead trial counsel must appear in person. If lead trial counsel is absolutely unable to attend, the conference will be rescheduled. *Pro hac vice* motions are liberally granted, but any counsel so admitted must be prepared to participate **in person** in all proceedings from the inception of the case.

Judge McHugh considers a Rule 16 Conference to be a case management conference, addressing the **substantive** issues in the case, not merely a scheduling conference. Counsel should be prepared to discuss the strengths and weaknesses of the case and be completely conversant with the essential issues and facts. Whenever possible, essential documents identified in self-executing discovery should be **produced** to opposing counsel in advance of the conference, unless such production is impractical. Counsel shall be familiar with and prepared to discuss critical documents.

The Rule 26(f) Report should **attach** critical documents for review by the Court (e.g., in a contract case, the document(s) comprising the contract; in a personal injury case, photographs of the scene, etc.).

If e-discovery is an issue, counsel should reach an agreement in advance of the conference. If they cannot, a default e-discovery order will be entered, located [here](#).

Discovery Matters

Judge McHugh has endorsed the principles of the Sedona Conference, available [here](#).

Parties should begin discovery as soon as permitted under the relevant Rules, without waiting for the Rule 16 Conference to be held. Furthermore, parties should not delay commencing discovery due to the pendency of a Motion to Dismiss, except where the motion could result in complete dismissal of the case.

The vast majority of discovery disputes should be settled by the parties through civility and common sense. Judge McHugh expects the parties to have met and conferred in good faith before submitting a discovery dispute. He no longer permits counsel to submit such disputes by letter; a motion must be filed.

If a dispute arises during a deposition, counsel are invited to call Chambers in the event that the Judge is available to supply an immediate ruling.

Protective Orders and Confidentiality Agreements

Public policy favors transparency in judicial proceedings. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 784 (3d Cir. 1994). 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 narrowly tailored. 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 Protective Order is to be emailed to Chambers at:
Chambers_of_Judge_Gerald_McHugh@paed.uscourts.gov.

Motions Practice

Joint or unopposed motions should be clearly identified as such in the **title** of the pleading, so that they can be given expedited consideration.

Oral argument will generally only be heard in those cases where the Judge has concluded that it is likely to facilitate resolution of a motion.

Counsel are encouraged to post **searchable** versions of their briefs to ECF. If counsel posts a scanned copy of a physical brief, that brief should, if possible, be saved in a digital format using Optical Character Recognition software.

Each document filed as an exhibit on ECF must be filed as a separately numbered attachment to the main document and must be clearly titled with an objective description of the document (e.g., 6/14/19 Deposition of John Doe; 10/14/21 Letter from Smith to Jones; 3/15/20-3/23/20 Email Thread between Doe and Roe) so that the nature of the exhibit and its relevance are clearly discernible without the need to open the file. All filings must also separately include an index providing the above information.

In all motions and pleadings, references to other documents on the docket, e.g. “Plaintiff’s Second Amended Complaint,” should identify those documents by their ECF number to facilitate retrieval.

Supplemental briefs, reply briefs, and sur-reply briefs may be filed without seeking leave, but once an initial opposition brief has been filed, the Court will begin considering the merits of the issue.

Counsel are reminded that the persuasiveness of any responsive brief is a product of how focused and illuminating it truly is.

When filing a Motion for Summary Judgment, except for a formal stipulation setting forth facts agreed to in their entirety by all parties, no party shall unilaterally file a “Statement of Undisputed Facts” setting forth its interpretation of the record, or any separate “Statement of Facts” apart from its memorandum of law. All references to the facts must be contained within the party’s memorandum and cite **to the record**. Failure to abide by this instruction may result in the motion being denied or a filing being stricken.

Courtesy Copies

Exhibits filed on ECF are difficult to access in an efficient way. If the number of exhibits accompanying a filing exceeds three, counsel must submit a physical courtesy copy to Chambers. The courtesy copy must be three-hole punched and include all exhibits individually **tabbed** and **labeled**.

Arbitration

A Pretrial Conference will not be scheduled for cases that are assigned to arbitration. Judge McHugh expects all discovery to be completed prior to the date assigned by the Clerk for the arbitration. Counsel may seek the assistance of the Court, if necessary, to complete discovery in advance of the scheduled arbitration date.

The goal of this Court's arbitration program is to achieve resolution of smaller cases without the time and attention of a federal judge. With rare exceptions, Judge McHugh does not address motions for summary judgment before the arbitration hearing.