

Policies and Procedures – General Guidance and Civil Matters
Judge John F. Murphy

United States District Court
Eastern District of Pennsylvania
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1. Communication with Chambers

All requests and written communication with chambers should be made through an appropriate ECF filing. Requests for relief should almost always be made by motion. E-mail (murphy_chambers@paed.uscourts.gov) or other written communication is permitted only when directed or because of a scheduling emergency.

Questions of any type may be directed to:

Kerri Christy, Deputy
267-299-7510

We typically hold case conferences by video, using Microsoft Teams.

2. ECF Filings Generally

All ECF filings must be text-searchable, including exhibits. Within the limits of what the ECF system allows, ECF descriptions and filenames must reflect the contents of the filing (e.g., use “Ex. A - Contract” or “Ex. B - Smith Dep. Transcript” instead of “Exhibit A”).

When referencing a document already on the docket, do so by docket number so that it may easily be retrieved (e.g., DI 12). If the docket entry lacks its own page numbering, use the ECF header page numbers.

Do not attach as exhibits any documents that are already on the docket.

You must attach as exhibits copies of any web pages relied upon.

Proposed orders should be filed on ECF along with the relevant request for relief, and not e-mailed unless specifically requested.

3. Extensions of Time

Requests for extensions of time must be made by motion or stipulation filed by ECF (and not sent to the Clerk of Court, e-mailed to chambers, or requested by telephone). Such requests — even if joint or unopposed — must show good cause for proposed extension. Lack of diligence generally defeats good cause.

Trial dates certain will not be continued absent truly extraordinary justification.

All requests must be made at least 7 days before the closest relevant deadline or, if made within 7 days, must further justify the last-minute request.

4. *Pro Hac Vice* Motions

Motions for *pro hac vice* admission must be made using the Eastern District of Pennsylvania’s form, available on the Court’s website: <https://www.paed.uscourts.gov/documents2/forms/forms-miscellaneous> (under the heading “Attorney Admission Application (Pro Hac Vice)").

Sponsoring counsel and other associated members of the bar of the Eastern District of Pennsylvania are responsible for the conduct of *pro hac vice* co-counsel and for the integrity of all representations to the Court. *See* Fed. R. Civ. P. 11. Absent leave, the presence of at least one member of the bar of the Eastern District of Pennsylvania is required at hearings and trials.

5. Rule 12 Motions to Dismiss and Amended Pleadings

Any Rule 12 motion to dismiss must be accompanied by a certification (preferably filed separately on the docket) that the parties have met and conferred on the substance of the motion, and a statement of each party's position and reasons for whether or not discovery should proceed while the Rule 12 motion is pending. The parties should take into consideration applicable factors such as: (i) whether the motion addresses all counts of the complaint or has the potential to fully resolve or greatly simplify the case; (ii) the complexity of the motion; (iii) the potential for avoiding wasted time; and (iv) the need for expeditious resolution of the case. Judge Murphy will take the likelihood of success of the motion into consideration but does not require the parties to discuss that beyond the merits briefing itself.

If Judge Murphy decides that discovery should commence, we will issue an appropriate order. The parties are, of course, always free to engage in voluntary discovery.

Amended pleadings must always be accompanied by a redline version indicating the amendments that were made.

6. Rule 16 Conferences and Discovery Planning

We will schedule a Rule 16 conference either after an answer is filed, or after a Rule 12 motion is filed, if we determine that discovery should proceed while the motion is pending.

Counsel must conduct an initial Rule 26(f) conference as soon as possible, and in any event no later than 21 days before the initial Rule 16 conference. The parties must exchange Rule 26(a)(1) initial disclosures no later than 14 days before the initial Rule 16 conference. The parties must file a joint Rule 26(f) report no later than 7 days before the initial Rule 16 conference. The parties must address at least the topics shown in Judge Murphy's sample Rule 26(f) report, available on his page on the Court's website.

Absent leave, lead counsel must participate in the Rule 26(f) conference(s); attend Rule 16 conferences; and be prepared to thoroughly discuss:

- all substantive aspects of the merits and goals of the case;
- every aspect of the Rule 26(f) report, including the detailed plan for discovery;
- any pending motions;
- settlement; and
- the case schedule.

The requirements of section 4, above, apply as well.

7. Discovery and Discovery Disputes

Local Rule 26.1 must be followed.

Prompt and early discovery is encouraged to make progress in the case and to make discovery planning more realistic and productive.

The vast majority of discovery disputes should be settled by counsel through diligence, civility, and common sense. We expect the parties to have met and conferred in good faith before filing a motion related to a discovery dispute. The Local Rule 26.1 certification should be specific and substantive. Failure to do so will usually bar relief.

When ripe for resolution, discovery disputes must be presented by an appropriate motion. The motion must include an appropriate proposed order setting forth the specific relief requested. Local Rule 26.1(g) will be enforced whenever applicable. Otherwise, Judge Murphy will typically order expedited opposition briefing and a conference.

When used, privilege logs must provide information sufficient for the opposing party to understand the basis for the assertion of privilege. For claims of privilege covering multiple e-mails, the party asserting privilege must describe the specific e-mails that are being withheld, as opposed only to the e-mail at the top of the e-mail string, and the basis for withholding each e-mail. Where several e-mails are exchanged between individuals, and the same privilege claim applies to all of those e-mails, the party asserting privilege may describe the e-mails collectively, rather than one-by-one.

8. Protective Orders, Confidentiality Agreements, and Filings Under Seal – Civil Cases

Judge Murphy will not enter a protective order on confidentiality in a civil case unless statutorily required or for demonstrated good cause, but will enforce private confidentiality agreements as a matter of contract law. *See In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 924 F.3d 662, 671-73 (3d Cir. 2019). Any proposed protective order must include language to the following effect: “The Court retains the right to allow disclosure of any subject covered by this order or to modify this order at any time in the interest of justice.”

Unless it is an emergency, documents may not be filed under seal in a civil case absent leave. Before attempting to file documents under seal, parties should carefully consider whether the purportedly confidential information could simply be omitted, redacted, or made available upon request because it is of little or no relevance. That often-overlooked approach avoids the need to justify sealing.

A party seeking to file documents under seal should follow this procedure:

- (i) Well ahead of any applicable deadline, move to file under seal, proposing sealed material as narrowly as possible and articulating good cause consistent with applicable precedent. The motion to file under seal should be filed on the public docket by ECF. Any unredacted documents accompanying the motion should be contemporaneously e-mailed to chambers. The moving party should indicate the consent of opposing counsel.
- (ii) If the motion to file under seal is granted, file the complete, unredacted versions of the documents under seal by ECF on the docket (observing appropriate deadlines). Consistent with representations made when seeking leave to file under seal, and any related order, counsel should highlight the non-public portions of sealed documents.
- (iii) Within 30 days of the filing under seal (or as otherwise ordered), file thoughtfully and narrowly redacted, public versions of the same documents by ECF on the docket.

Documents filed under seal should be filed appropriately using ECF. Any documents filed under seal should also be sent to chambers in the same manner as courtesy copies (*see* section 10, below). Paper copies will not be accepted.

9. Motions

Local Rule 7.1 must be followed except where these policies and procedures vary.

Reply briefs are encouraged where thought to be helpful; may be filed without leave; and must be filed no later than 7 days after the opposition brief. Judge Murphy may decide a motion at any time after the opposition is filed.

All briefs must be double-spaced, in at least 12-point font with at least 1-inch margins. Footnotes must be in the same font size as the body of the brief. Any brief longer than 10 pages must include a table of contents and table of authorities.

Page limits, absent leave:

- Opening brief: 25 pages or 8,750 words
- Response/opposition: 25 pages or 8,750 words
- Reply: 10 pages or 2,450 words

Counsel may exceed the page limits (*e.g.*, to include figures or diagrams) if an appropriate word count certification is included.

Absent leave, a party is entitled to file only one single Rule 56 motion (typically at the time designated in the scheduling order) that addresses whatever issues the party wishes to raise within the page or word limit.

Rule 56 motions must be accompanied by a statement of numbered undisputed material facts with specific and exact citations to the record. The non-movant should respond to each such material fact by first quoting the material fact in full and then: (i) stating it is undisputed; (ii) explaining exactly how it is disputed with specific and exact citations; or (iii) explaining how it is immaterial with specific and exact citations. The non-movant may also provide additional undisputed materials facts, to which the movant should respond along with a reply brief. Failure to respond will usually be interpreted as an admission. Fed. R. Civ. P. 56(e)(2).

For motions with voluminous exhibits, such as Rule 56 motions, we encourage using a single consecutively numbered appendix with a table of contents rather than individual exhibits.

We order argument on motions when it will be helpful. Requests for argument will almost certainly be granted when the request indicates that a junior lawyer will have a speaking role. *See* Section 11, below. Thoughtful demonstratives (timelines, highlighted copies of key documents, photographs, etc.) are welcome.

10. Courtesy Copies

For any dispositive motion or brief (*e.g.*, Civil Rule 12, 50, 56) or responsive brief that includes exhibits, counsel must send (by e-mail or file transfer service) a PDF courtesy copy to chambers (murphy_chambers@paed.uscourts.gov). The PDF copy must:

- be as-filed, *i.e.*, with the ECF notations at the top of each page;
- include the main documents and all exhibits in one single PDF file;
- use PDF bookmarks for exhibits and for sections in longer documents;
- be text-searchable, including exhibits; and
- have a file name that reflects the case number, docket number(s), and a description.

Do not send paper courtesy copies to chambers unless requested.

11. Development of Trial Lawyers

We encourage counsel to assign speaking roles in court to less-experienced lawyers, particularly where the lawyer in question is more familiar with the matter at hand. We will draw no inference about the importance or merits of a matter from counsel's decision to involve a junior attorney (or decision not to do so). To the contrary, we will make every appropriate effort to accommodate junior lawyers, including additional time and allowing co-counsel to speak when helpful. To that end, counsel may notify us when a junior lawyer intends to argue.

Civil Pretrial and Trial Procedures

12. Final Pretrial Memoranda and Other Pretrial Matters

We will typically set a trial date certain and related pretrial deadlines during a case management conference after the close of discovery. When a party files a summary judgment motion, Judge Murphy may not set the trial date until after resolution of summary judgment.

Unless otherwise ordered, the parties must meet and confer and prepare a single integrated pretrial memorandum. Absent agreement or order otherwise, plaintiff is responsible for the assembly and filing of the memorandum at the time ordered, or otherwise, no later than 14 days before trial. The parties will not submit a trial brief unless requested. The integrated pretrial memorandum must address at least the subjects listed below and include appropriate attachments. Where a joint statement is called for below, separate statements may be provided only to explain an unresolvable dispute.

- A. A joint statement of the nature of the action and the basis on which the jurisdiction of the court is invoked;
- B. A joint statement of the issues to be tried;
- C. A joint statement summarizing any contested issues of law or pending motions;
- D. Any stipulations of counsel, including as to basic undisputed facts and facts previously stipulated to in the Rule 26(f) report;
- E. Each party's brief statement of facts and contentions as to liability (e.g., claims and defenses);
- F. Each party's list of every item of monetary damages claims, including (as appropriate) computations of lost earnings and loss of future earning capacity, medical expenses (itemized), property damages, etc. If relief other than monetary damages is sought, information adequate for framing an order granting the relief sought shall be furnished;
- G. Each party's witness list, identifying names, addresses, a substantive summary of the expected testimony, and whether the witness is expected to testify live, by written deposition, or by video deposition;
- H. Either: (1) each party's identification — including citations to pages and lines — of deposition testimony that the party intends to offer during its case-in-chief, together with any counter-designations from the other party; **OR** (2) an explanation of an agreement made between the parties to timely exchange deposition designations, counter-designations, and objections (see section 13, below);
- I. A joint exhibit list and each party's exhibit list, identifying documents not only by a trial exhibit number but also by a description, date, and relevant markings (e.g., Bates number or deposition exhibit number, etc.);
- J. An explanation of how the parties propose to handle witness identification as well as objections to exhibits and deposition designations (see section 13, below);

- K. Each party's proposed questions for *voir dire* (including at least a joint list of names that should be screened to determine whether or not the jurors are familiar with the names and how);
- L. An estimate of the number of days required for trial;
- M. The parties' views on whether the trial should be timed, and if so, the length of time each side should have, and any relevant agreements (such as how to count sidebar time, deposition counter-designation time, and so forth); and
- N. Any other matter pertinent to the case to be tried.

After the pretrial conference, the integrated pretrial memorandum shall have the force and effect of a Rule 16(e) final pretrial order except as modified during the conference or in other orders from Judge Murphy.

13. Objections to Exhibits and Deposition Designations

The most efficient way to resolve objections to exhibits and deposition designations will depend on the case. In cases with a compact record and fewer disputes — or for critical disputes that will greatly affect planning for trial — counsel should exchange their objections, meet and confer, and seek resolution from Judge Murphy in a motion *in limine* or during the pretrial conference. The party advancing the objection is responsible for providing Judge Murphy with the necessary exhibits, highlighted deposition transcripts, or other information necessary to rule.

In cases with a more expansive record, where resolving all possible objections is impractical, the parties should agree to a system for identifying specific exhibits and testimony to each other on a rolling basis before and during trial. Following a meet and confer, the parties would then present objections to Judge Murphy with sufficient advanced notice to give Judge Murphy time to rule and the parties time to adapt to the ruling. The parties should explain their agreement in the pretrial memorandum (see section 12, above).

14. Jury Instructions and Verdict Sheet

At the time ordered, or otherwise no later than 7 days before trial, the parties shall file proposed verdict sheets and proposed jury instructions, together with objections, as follows:

- The parties will exchange their proposed instructions and verdict sheets with each other; meet and confer to resolve as many disputes as possible; and then provide each other with written objections to be filed along with the proposals.
- All proposals (and objections thereto) should cite specific legal authority in footnotes, whether it be to model jury instructions, caselaw, instructions from other trials in this Court, or otherwise. Variation from the Third Circuit's Model Jury Instructions should be explained.

- Each proposed instruction should start on a new page; relevant objections should follow each proposed instruction.
- The plaintiff (unless agreed or ordered otherwise) will file any agreed instructions or verdict sheet. Each party will file its own proposals for those on which there is a dispute.
- Proposed instructions should be limited to substantive ones relating to the claims and defenses absent particularized need. Counsel should customize the instructions to the parties or events of the case in a neutral manner so that they may be more easily understood by the jury.
- Microsoft Word versions of the proposed instructions and proposed verdict sheets must be e-mailed to chambers.

We will aim to resolve disputes earlier rather than later, but because the course of the trial may affect the charge, we anticipate that a final charging conference will be necessary in most cases.

15. Final Pretrial Conference

The final pretrial conference will be scheduled for a time between the filing of the integrated pretrial memorandum and the beginning of the trial. At the conference, counsel must be prepared to discuss all aspects of the memorandum; any pending motions; any objections that have been raised; the jury instructions and verdict sheet, if they have been filed; how exhibits will be handled and other trial logistics; and any other aspect of trial planning.

16. Trial

Once a trial date certain has been set, continuances will be granted only for truly extraordinary reasons.

Parties are welcome to contact chambers to schedule time to visit the courtroom, test equipment, and the like. We typically try cases in courtroom 3B, which is an electronic courtroom. If the parties intend to bring anything larger than laptops, they must contact us at least two weeks before trial so arrangements can be made.

Below are several miscellaneous guidelines for trial. We appreciate that not every trial is the same, and where counsel agree on a different approach, they are encouraged to raise their needs with us in advance of trial.

- Judge Murphy uses a version of the struck jury method and will typically aim to seat eight jurors. First, drawing on the suggestions of counsel, Judge Murphy will ask the jurors a series of yes-or-no questions. Second, jurors who answered yes to any question

will be called individually to sidebar for follow up. Counsel may be invited to ask follow-up questions as well. Judge Murphy will rule on cause or hardship for each juror immediately after he or she returns to the gallery. Third, from the list of remaining jurors, each side will independently exercise three peremptory strikes and return those privately to Judge Murphy. No additional strikes will be granted if the parties' selections overlap. Fourth, Judge Murphy will then seat the jury from all those who remain, starting with the lowest juror number and working up.

- Absent objection, Judge Murphy permits jurors to take notes. Juror binders are encouraged but must be approved in advance.
- Typical trial days will run 9 a.m. to 4:30 p.m. (Four 90-minute blocks with 15-minute breaks and a one-hour lunch).
- The parties are not required to provide the Court in advance with a complete set of exhibits from the exhibit lists, but may do so if the record is small enough to make that an efficient approach. In most cases, it will be better to have several paper copies handy of exhibits and demonstratives actually used to facilitate discussion of objections in the courtroom as needed. At the end of trial, the parties will work together to submit a set of admitted exhibits electronically to the Court by e-mail or file transfer service.
- Absent written agreement of the parties, exhibits must be offered into evidence through a witness, who must at least be shown the exhibit. Exhibits may not be published, displayed, or otherwise shown to the jury (e.g., on a demonstrative) until after they have been admitted into evidence. Once admitted, counsel may publish exhibits to the jury without requesting to do so.
- Demonstratives may be admitted only by agreement of the parties. Demonstratives may be used during opening statements only absent objection and by agreement of the parties.
- The parties are responsible for keeping track of admitted exhibits using AO Form 187, and after conferring to ensure accuracy, will provide a completed form to the Court after each trial day.
- Counsel must make every effort to avoid consuming the jury's time with objections by resolving disputes in advance of trial or during a break. When the jury is present, objections must be made without further explanation.
- Motions for JMOL must be summarized briefly on the record, and may be submitted in writing if counsel wishes.
- Summations will typically follow the jury charge.

- Absent objection, juries will be provided with the complete written jury instructions and will have access to any admitted exhibit upon request.

17. Special Considerations for Bench Trials

Bench trial days will be determined on a case-by-case basis. Judge Murphy is open to discussing ways to save time as may be appropriate for the needs of the case. Typically Judge Murphy will prefer to take evidentiary objections under advisement but will provide rulings during trial for compelling reasons.

Counsel should plan to submit any video deposition testimony to Judge Murphy electronically, both in written transcript and video format. It is unlikely that we will use courtroom time to watch deposition videos.

We may require proposed findings of fact and conclusions of law. Counsel should prepare and pay for prompt transcripts. A schedule for the submission of findings/conclusions will be addressed at the conclusion of trial.

18. How to Voluntarily Dismiss Your Case

Attempts to voluntarily dismiss a case often reflect some confusion. Counsel shall review and adhere to Rule 41 and Local Rule 41.1(b). Absent a scheduling emergency, do not call or send chambers informal correspondence asking us to mark your matter as settled. That accomplishes nothing. In most cases, you have the following options and no others:

- (i) If it is “before the opposing party serves either an answer or a motion for summary judgment,” then plaintiff may file a notice of dismissal under Rule 41(a)(1)(A)(i);
- (ii) At any point, the plaintiff may file “a stipulation of dismissal signed by all parties who have appeared.” Rule 41(a)(1)(A)(ii) (emphasis added in hopes counsel will see it and comply);
- (iii) An appropriate motion seeking court order. Rule 41(a)(2); or
- (iv) A request — filed on the docket — for a dismissal under Local Rule 41.1(b) because the case has settled. If you settle your case with the help of a magistrate judge, he or she may also enter the Local Rule 41.1(b) order.