**THE HONORABLE GERALD J. PAPPERT**
**Policies and Procedures**
Revised August 2023

## I. GENERAL MATTERS

### A. Correspondence with the Court

Counsel and *pro se* parties may correspond with the Court concerning scheduling, discovery disputes, routine matters or to advise the Court that a case has been settled. All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs or similar filing permitted by the Federal Rules of Civil or Criminal Procedure or the Local Rules of Criminal or Civil Procedure.

Telephone calls regarding civil cases should be directed to Judge Pappert's Civil Deputy Clerk, Katie Rolon, at 267-299-7530. Telephone calls regarding criminal cases should be directed to Judge Pappert's Criminal Deputy Clerk, Jeff Lucini, at 267-299-7537. Direct communication with law clerks is prohibited.

### B. Telephone Conferences

Judge Pappert may hold telephone conferences to resolve scheduling matters or discovery disputes. The Court will notify counsel of the date and time for the telephone conference. In a civil case, counsel for the moving party will be responsible for initiating the telephone conference and contacting Judge Pappert through his Civil Deputy Clerk after all parties are present on the call. In a criminal case, the United States Attorney's Office will be responsible for initiating the call and contacting Judge Pappert through his Criminal Deputy Clerk after all parties are present on the call. Counsel may not use cell phones on any telephone conferences with the Court.

### C. Oral Arguments and Evidentiary Hearings

Judge Pappert does not reserve certain days or times for oral arguments or evidentiary hearings. Judge Pappert will schedule oral arguments and evidentiary hearings when warranted.

### D. *Pro Hac Vice* Motions

Judge Pappert does not accept the *pro hac vice* admission form from the Clerk of Court. Motions for *pro hac vice* admission should be made as soon as possible and must be filed by an attorney: (1) admitted to practice and in good standing before this Court; (2) whose appearance has been entered in the case in which the motion is made; (3) describing the reasons the client requires this motion and (4) reciting the positions of all counsel regarding the motion. If any counsel opposes the motion, they must file their opposition papers within three (3) business days of the motion's filing.

The motion must also be accompanied by the affidavit of <u>each</u> attorney seeking *pro hac vice* admission swearing:

i. Year and jurisdiction of each bar admission;
ii. Status of the attorney's admission(s), *i.e.*, active or inactive, in good standing, etc.;
iii. Whether the attorney has ever been suspended from the practice of law in any jurisdiction or received any public reprimand by the highest disciplinary authority of any bar in which the attorney has been a member;
iv. That the affiant/declarant has read these Policies and Procedures and agrees to adhere to them in all respects;
v. That the affiant/declarant (a) has read the most recent edition of the Pennsylvania Rules of Professional Conduct and the Local Rules of this Court and (b) agrees to be bound by both sets of Rules for the duration of the case for which *pro hac vice* admission is sought and
vi. That, if granted *pro hac vice* status, the affiant/declarant will in good faith continue to advise counsel who has moved for the *pro hac vice* admission of the current status of the case for which *pro hac vice* status has been granted and of all material developments therein.

The admission of counsel *pro hac vice* does not relieve associate local counsel and that attorney moving the admission of responsibility for counsel admitted *pro hac vice*.

## II. CIVIL CASES

### A. Rule 16 Conference

The Court will schedule a preliminary pretrial conference as described in Federal Rule of Civil Procedure 16(b) and (c) shortly after all defendants have answered the Complaint. At least three business days prior to the pretrial conference, counsel must submit to chambers a joint report of the Rule 26(f) meeting with a proposed discovery plan. The Rule 26(f) meeting should take place as early in the case as possible. The meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule. Parties who do not comply will have no voice at the scheduling conference and may be subject to additional sanctions.

Lead trial counsel must attend the Rule 16 conference. Counsel taking part in any pre-trial conference must be prepared to speak on every subject, including settlement, and have authority from their clients to do so. Counsel shall be prepared to discuss all claims and defenses in detail, as well as all topics listed in Local Rule of Civil Procedure 16.1(b) and Federal Rules of Civil Procedure 16(b)–(c) and 26(a), and shall have a thorough understanding of the facts of the case. The Court will issue a Rule 16 Scheduling Order following the conference. The Scheduling Order will reflect counsel's input at the conference and the Court's considered assessment of the time necessary to complete discovery and all pretrial submissions.

### B. Continuances and Extensions

Parties are expected to adhere to all dates contained in the Scheduling Order unless there is a compelling reason to justify a change. Counsel should advise the Court immediately of any compelling reason justifying an extension or continuance of any scheduled date. Circumstances which do not constitute compelling reasons for the extension of a scheduled date include, but are not limited to, settlement negotiations, scheduling difficulties in the "summer months," counsel's obligations in other cases and not diligently conducting discovery prior to the request for an extension. Such a request may be made by letter, describing in detail the basis for the request, noting the agreement or disagreement of all other counsel and setting forth the period of delay requested. A request for an extension or continuance of the date on which the case is listed for trial or the deadline for filing dispositive motions will rarely be granted and will only be considered in extraordinary circumstances.

### C. Discovery

#### 1. Length of Discovery Period

In standard track cases, the Court usually allows from 90 to 120 days from the date of the Rule 16 conference to complete discovery. If counsel anticipates that additional time for discovery will be required, they should raise the issue at the Rule 16 conference or any subsequent status conference.

#### 2. Discovery Conferences and Dispute Resolution

Discovery must be proportional to the needs of the case and should focus specifically on obtaining information truly necessary to resolve the litigation. Counsel must carefully and realistically assess the actual need for the information sought.

Judge Pappert encourages parties to address routine discovery disputes through the scheduling of a telephone conference. The parties, however, shall make a reasonable effort to resolve discovery disputes before seeking Court intervention. Judge Pappert may require the parties to submit a joint letter to chambers explaining the dispute and requested relief prior to any telephone conference.

If a discovery dispute is not resolved following a conference and a motion to compel becomes necessary, the motion and any supporting memorandum, together, shall not exceed 5 pages of double-spaced 12-point font. The responding party may file a response within 5 days, also limited to 5 pages of double-spaced 12-point font. If the Court's intervention is required to resolve a discovery dispute, the Court may impose sanctions in favor of the prevailing party.

Judge Pappert permits telephone conferences to resolve disputes during depositions in cases where the deposition would otherwise have to be adjourned.

#### 3. Protective Orders, Confidentiality Agreements and Motions to Seal

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 narrowly tailored. The Court will approve protective orders, confidentiality agreements and stipulated protective orders, where absolutely necessary and for good cause shown. No protective order or confidentiality agreement 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. The fact that the parties have designated materials or information as confidential pursuant to agreement or stipulated order does **not** mean that the Court will order filings containing such information placed under seal. The public has a presumed right of access to judicial records and documents. Any party wishing to shield such records and documents from public view must prove why the interest in secrecy outweighs the presumption of public access. *See Gratz Coll. v. Synergis Educ. Inc.*, 2015 WL 9582743 (E.D. Pa Dec. 30, 2015).

### D. General Motion Practice

#### 1. Motions

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.

#### 2. Oral Argument on Motions

If Judge Pappert believes oral argument will be helpful in deciding a matter, he will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading.

#### 3. Briefs / Legal Memoranda

Absent an order stating otherwise, any brief or memorandum filed in support of or in opposition to a motion must be limited to 25 pages of double-spaced 12-point font, excluding the table of contents, table of authorities, and any attachments or exhibits. The use of footnotes is discouraged. If absolutely necessary, footnotes are to be used sparingly and should not contain citations to textual matter.

If a party believes that it will need more than 25 pages to explain its position to the Court, the party should file a motion to exceed the page limit, setting forth the reasons why the party believes it should be granted an exception to this rule. The motion to exceed the page limit should be filed prior to the memorandum deadline and allow the Court sufficient time to consider and rule on the motion. A pending motion to exceed page limits does not relieve a party of its responsibility to comply with the filing deadline for the principal filing.

Reply briefs are permitted, except for motions *in limine*. *See* Section II. I. 7.

Reply briefs must be filed within seven days of the date that a non-moving party files its opposition brief, may not exceed ten pages, and must be limited to issues newly raised in the opposing party's response. Sur-reply briefs are not permitted unless leave to file is granted upon motion of a party.

Any brief longer than ten pages shall include a table of contents and table of authorities.

Failure to comply with any of these requirements may result in the brief or memorandum being stricken from the record and not considered by the Court.

#### 4. Exhibits to Filings

Each document filed as an exhibit 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. The filing of exhibits in text searchable format is encouraged, but not required.

#### 5. Rule 56 Motions

Any motion for summary judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure must include a concise statement of material facts, in numbered paragraphs, to which the moving party contends there is no genuine issue to be tried. Any opposition to a motion for summary judgment must include a concise, paragraph-by-paragraph response to the statement of material facts, setting forth which facts the opposing party contends there is a genuine issue to be tried. The responding party may also set forth, in separate numbered paragraphs, any additional facts which the responding party contends preclude summary judgment. The Court will accept all material facts set forth in the moving party's statement as admitted unless controverted by the opposing party. All motions and responses shall include an index which clearly identifies and describes any exhibits.

Statements of material facts in support of or in opposition to a motion for summary judgment shall include specific references to the parts of the record that support the statements. Failure to cite specifically to the appropriate parts of the record may constitute grounds for denial of the requested relief.

Judge Pappert will rarely, if ever, grant summary judgment in a non-jury case.

### E. Injunctions

Judge Pappert will promptly list any request for a temporary restraining order or a preliminary injunction assigned to him. He may hold a pre-hearing conference to discuss discovery, narrow the issues in contention and allocate time for the hearing. He may also require the parties to submit proposed findings of fact and conclusions of

law prior to the hearing.

### F. Settlement

Settlement may be discussed at the initial Rule 16 status conference and at any subsequent conference. The Court's Scheduling Order will refer cases to a Magistrate Judge for a settlement conference. The Court will not participate in settlement negotiations in non-jury cases.

### G. Arbitration

Judge Pappert will evaluate, as necessary, counsel's Arbitration Certification in non-arbitration track matters and will designate the case for arbitration pursuant to Local Rule of Civil Procedure 53.2 as appropriate. Judge Pappert will not hold a Rule 16 conference or issue a Scheduling Order in arbitration track cases, unless there is a *de novo* appeal from an arbitration award. The parties are expected to complete all discovery prior to the date of the arbitration hearing. Upon demand for trial *de novo* from an arbitration award, the Court will issue a Scheduling Order setting the date for trial at the earliest date available to the Court. Ordinarily, neither discovery nor dispositive motions will be allowed after the arbitration hearing is held.

### H. Final Pretrial Proceedings

Unless otherwise ordered by the Court, the parties shall prepare pretrial memoranda in accordance with Local Rule of Civil Procedure 16.1(c), and should also include (with the exception of the materials discussed in section d below) the following:

a) All stipulations of counsel.

b) A statement of objection to: (1) the admissibility of any exhibit based on authenticity; (2) the admissibility of any evidence expected to be offered for any reason (except objections to relevancy); (3) the adequacy of the qualifications of an expert witness expected to testify and (4) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701. Such objection shall describe with particularity the ground and the authority for the objection.

c) 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.

d) Counsel must prepare one unified and agreed upon set of proposed jury instructions on substantive issues and one proposed verdict form or set of special interrogatories to the jury. If counsel cannot agree on a particular instruction, they must submit their competing versions along with a statement explaining why the Court should give their proposed instruction. Proposed jury instructions must be tailored and personalized for the case and must include accurate quotes from, and citations to, cases and pattern jury instructions where appropriate. If pattern instructions are to be given, those instructions should be taken from the Third Circuit

Model Jury Instructions wherever possible. United States Supreme Court or Third Circuit Court of Appeals cases should be cited whenever applicable. In addition to filing the proposed jury instructions and verdict form on the Court's docket, the parties must e-mail the documents in Word format to Chambers_of_Judge_Pappert@paed.uscourts.gov.

## I. Trial Procedure

### 1. Scheduling

A date for trial will be determined at the initial Rule 16 conference. Once the trial date is scheduled, counsel, parties and witnesses should be ready to start trial on the scheduled date. Questions relating to scheduling matters should be directed to Judge Pappert's Civil Deputy Clerk.

### 2. Cases Involving Out-Of-Town Parties or Witnesses

Judge Pappert 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 scheduling their witnesses.

### 3. Conflicts of Counsel

Counsel should notify the Court immediately upon hearing of any unavoidable and compelling professional or personal conflicts affecting the trial schedule.

### 4. Jury Selection in Civil and Criminal Cases

Judge Pappert will conduct *voir dire* in civil cases. Counsel should submit one unified and agreed upon set of *voir dire* questions in writing seven days before the trial date. After the *voir dire* is concluded, the Court will permit counsel to suggest follow-up questions.

### 5. Note-Taking by Jurors

Judge Pappert permits jurors to take notes.

### 6. Trial Briefs

Parties should not submit a trial brief unless requested to do so by the Court.

### 7. 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. Any brief or memorandum filed in support of or in opposition to a motion *in limine* must be limited to 5 pages of double-spaced 12-point font. Reply briefs are not permitted.

### 8. Examination of Witnesses Out of Sequence

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

### 9. Opening Statements and Summations

Judge Pappert will not ordinarily impose strict time limits for opening statements and summations. However, counsel should strive to keep opening statements under 30 minutes and summations under 45 minutes.

### 10. 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.

### 11. Videotaped Testimony

Videotaped testimony should begin with the witness being sworn. Counsel should bring objections regarding videotaped testimony to the Court's attention at the time of the filing of pretrial memoranda. After the Court rules on any objections, counsel should edit the tapes according to the Court's order before offering the videotaped testimony at trial.

### 12. Reading of Material into the Record

Judge Pappert will allow the reading of stipulations, pleadings or discovery material into the record when appropriate.

### 13. Preparation of Exhibits

Exhibits must be pre-marked and exchanged in advance of trial. In civil cases, the parties will prepare one joint exhibit book with all exhibits that counsel may use at trial. The joint exhibit book must contain an exhibit list briefly describing each exhibit. Counsel should provide two copies of the joint exhibit book to the Court at the final pretrial conference.

### 14. Offering Exhibits into Evidence

Unless the parties have an agreement as to the admissibility of a proposed exhibit, a witness may not testify as to its content until it has been admitted into evidence.

### 15. Directed Verdict Motions

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials must be in writing. Oral argument on these motions is ordinarily permitted.

### 16. Proposed Findings of Fact and Conclusions of Law

In non-jury cases, the parties shall submit proposed findings of fact and conclusions of law as specified in the Scheduling Order. The parties may submit revised or supplemental findings of fact and conclusions of law with specific reference to trial evidence at the conclusion of the case. A schedule for the submission of revised findings of fact and conclusions of law will be discussed at the conclusion of trial.

### 17. 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.

### 18. 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.

## J. Jury Deliberations

### 1. Written Jury Instructions

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

### 2. Exhibits in the Jury Room

After the jury has been instructed and taken to the jury room to begin deliberations, the Court and counsel will discuss which exhibits should go out with the jury if the jury request them.

### 3. 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.

### 4. Availability of Counsel During Jury Deliberation

Unless excused by the Court, counsel must remain in the general vicinity of the courthouse and be available on ten minutes' notice during jury deliberations.

### 5. Polling the Jury

The Court will poll the jury.

## III. CRIMINAL CASES

### A. Final Pretrial Proceedings and Trial Procedures for Civil Cases (Sections II. H and I. 2, 3, 5 and 8-14 apply in criminal cases as well.)

### B. Oral Argument and Motions

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

### C. Pretrial Conferences

Judge Pappert will generally hold a telephone scheduling conference with counsel in criminal cases shortly after arraignment. At the conclusion of the conference, the Court will issue a Scheduling Order governing speedy trial issues, discovery, time for filing motions and the trial date.

### D. Sentencing Memoranda

Judge Pappert requires the parties to submit objections to the Pre-Sentence Investigation Report and sentencing memoranda in accordance with the Notice of Sentencing, which will be issued shortly after the entry of a guilty plea or conviction.

## IV. OTHER MATTERS

### A. Briefs of Cases on Appeal

Judge Pappert welcomes copies of appellate briefs when a decision he has made is appealed.

### B. Consultation with Opposing Counsel

In general, Judge Pappert expects counsel to bring matters to his attention only after they have been discussed with opposing counsel. When communicating with the Court, counsel shall be prepared to state the position of opposing counsel.

### C. Professionalism

Counsel shall be punctual, courteous, and professional at all times, both in the presence of the Court and otherwise. Counsel should examine witnesses from the lectern or from counsel table. Counsel will direct all comments to the Court or to the witness under examination and not to other counsel or the jury. To the extent possible, the parties should notify the Court of any issues that will need to be ruled upon at the start of the day's proceedings, or during a recess out of the jury's presence. Side bar conferences are discouraged but permitted when necessary.