

POLICIES AND PROCEDURES

JUDGE KAI N. SCOTT

United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
Courtroom 13B
601 Market Street, Room 5614
Philadelphia, Pennsylvania 19106
(267) 299-7590
Chambers_of_Judge_Kai_Scott@paed.uscourts.gov

I. COMMUNICATIONS WITH CHAMBERS

A. General Inquiries

Email is the preferred method of communication. All general inquiries, including questions about these policies, may be emailed to Chambers_of_Judge_Kai_Scott@paed.uscourts.gov.

Telephone calls should be directed as follows:

Judicial Assistant: Tayai Lester (267) 299-7590
Tayai_Lester@paed.uscourts.gov
Contact about civil scheduling, case management, events,
and general procedures.

Courtroom Deputy: Sue Flaherty (267) 299-7598
Susan_Flaherty@paed.uscourts.gov
Contact about all criminal matters, trial setup, courtroom
logistics, and courtroom procedures.

Faxes and regular mail are strongly discouraged.

B. Case Communications

Communications regarding cases must be made through filing a pleading, motion, or application through Electronic Case Filing (ECF) whenever possible.

Email correspondence regarding cases is permitted in the following situations:

- To advise the Court of unanticipated schedule changes (less than seven (7) days in advance of a deadline) or schedule changes due to personal or medical issues that counsel does not wish to file on the docket.
- To promptly advise the Court that a case has been settled.

Court staff have no authority to give advice on substantive or procedural matters.

C. *Pro Se* Communications

All *pro se* communications must be sent to the clerks' office to be docketed. *Pro se* litigants may not contact Judge Scott or her chambers directly.

D. Internship and Clerkship Applicants

Judge Scott's highly preferred method for receiving applications is through OSCAR. OSCAR will be consistently updated with deadlines and instructions. Applicants and schools may, however, email [Chambers of Judge Kai Scott@paed.uscourts.gov](mailto:Chambers_of_Judge_Kai_Scott@paed.uscourts.gov) with questions that are not resolved in OSCAR.

II. OTHER GENERAL POLICIES

A. Magistrate Judge: The Honorable Elizabeth T. Hey

The Honorable Elizabeth T. Hey is the designated magistrate judge for Judge Scott's docket. Judge Hey's contact information, policies, and forms are available on Judge Hey's Court webpage <https://www.paed.uscourts.gov/judges-info/magistrate-judges/elizabeth-t-hey>.

Parties may request that Judge Hey preside over settlement discussion at the Rule 16 Conference or as soon as possible after the Rule 16 Conference. Judge Scott will then issue a referral order.

B. Continuance Requests

Continuance requests for motions and discovery deadlines, hearings, and trial must be filed in the form of a motion. Joint continuance requests must be filed as a joint motion and include a proposed order. If a party files a motion for a continuance, all other parties have three (3) days to file an opposition, which must state the reasons for the opposition.

A joint request for a continuance related to discovery may be filed in the form of a motion or as a joint stipulation. Judge Scott will generally grant joint discovery continuance requests if (1) they do not impact key motions deadlines or trial dates, and (2) they are made at least seven (7) days before the scheduled deadline.

Judge Scott seldom grants continuances that will impact (1) motion deadlines in which oral argument has been scheduled or (2) trial dates. Such continuance requests must be made at least fourteen (14) days before the applicable deadline or trial date, and they must provide good cause.

C. Format of Filings

1. General Formatting

All filings must be filed electronically through ECF in compliance with federal and local rules.

Filings exceeding two pages of text must be filed as searchable PDFs.

All writings submitted to Judge Scott's chambers must be in 12-point font and generally must be double-spaced and have 1 to 1.5 inch margins. (The Rule 26(f) report, single-page motions or requests, and proposed orders may be single-spaced.)

Any briefing exceeding twenty (25) pages must include a table of contents.

2. Courtesy Copies

A courtesy copy must be submitted only if (1) there are large attachments to a motion or (2) a document is filed under seal. A filing has large attachments if the appendices or exhibits attached to the filing exceed 50 pages or there are five (5) or more exhibits. The courtesy copy of a filing with large attachments must be submitted to Judge Scott's chambers as a binder with tabbed exhibits and an exhibit index. Additionally, parties must submit copies of trial exhibits prior to the day *voir dire* begins, as specified in Part III.F.2.

D. Pro Hac Vice Motions and Local Counsel

Local counsel must file a motion for *pro hac vice* admission of another attorney. The motion must specify (1) the attorney's admissions, (2) why the party desires that attorney to participate in litigation, and (3) why that attorney is particularly qualified to represent the party.

Additionally, counsel must comply with instructions in the Clerk's Office forms (available on the Court's website https://www.paed.uscourts.gov/sites/paed/files/documents/forms/app_x.pdf).

III. CIVIL PRETRIAL PROCEDURE

A. Rule 26(f) Meeting and Report

Parties are required to meet and confer to compile a joint Rule 26(f) report. Parties may meet in person or through video conference; email correspondence is insufficient. The Rule 26(f) meeting should include a meaningful discussion of the parties' settlement positions, factual and legal positions, and the proposed discovery plan.

Parties must fill out the Rule 26(f) form available on Judge Scott's Court webpage (<https://www.paed.uscourts.gov/judges-info/district-court-judges/kai-n-scott>). The parties may attach any supplemental information desired to this form; the form is a minimum requirement.

Parties are encouraged to attach any key documents for the Court's review ahead of the Rule 16 conference (*e.g.*, a disputed contract).

The parties are expected to meet at least fourteen (14) days before the Rule 16 Conference. The Rule 26(f) report must be submitted no later than (7) days before the Rule 16 conference. Parties are also expected to submit all possible threshold motions no later than (7) days before the Rule 16 conference, including any motions to dismiss, transfer, or add parties.

Flawed or incomplete submissions will be returned to counsel for revision and resubmission. A party that fails to participate in good faith in the Rule 26(f) meeting, report, or revision requests will have no voice at the initial Rule 16 conference.

B. Rule 16 Conference

Judge Scott has in-person Rule 16 Pretrial Conferences at Judge Scott's Chambers. A Rule 16 conference will be scheduled shortly after the answer is filed, or in some instances, while a motion to dismiss or other preliminary motion is pending. If a Rule 16 conference has not been scheduled within a reasonable time following the filing of the answer, counsel should email Judge Scott's Chambers to request a conference.

Lead counsel must attend the Rule 16 conference. If the attorneys in attendance do not have full authority to negotiate a case's settlement, then the client or a representative who can authorize settlement must be available by telephone for the entirety of the Rule 16 conference.

Parties must attend the Rule 16 conference ready to discuss (1) discovery progress, (2) all claims, defenses, and relief sought, (3) filed and anticipated motions, (4) key factual disputes, (5) the likelihood of settlement, and (6) the case schedule. Judge Scott may request argument on pending motions at the Rule 16 conference.

A scheduling order will be issued after the conclusion of the Rule 16 conference. Thus, all Rule 16 conference participants must come to the conference ready to set the case's schedule, and any counsel that does not attend the Rule 16 conference must submit their schedule to co-counsel.

C. Discovery

The parties must begin discovery upon receipt of notice of the Rule 16 conference. Pending motions do not excuse counsel from proceeding with discovery.

Judge Scott expects parties to exercise civility and common sense to attempt to resolve discovery disputes on their own. If an unresolvable discovery dispute arises, the aggrieved party must file the following:

- A motion that (1) complies with Local Civil Rule 26.1(f) by certifying that the parties, after reasonable effort, are unable to resolve the dispute, and (2) specifies whether the parties request a telephone conference with Judge Scott to resolve the matter;
- A proposed order; and
- A brief of up to five (5) pages that (1) outlines the efforts the parties have made to resolve the dispute and (2) cites any applicable legal authority.

Judge Scott will promptly review the motion and either issue a decision, schedule a phone conference, or order responsive briefing. Judge Scott routinely acts upon filed discovery motions without waiting for a response or scheduling a telephone conference. Parties are encouraged to call chambers when an unresolvable discovery dispute arises; if Judge Scott is available, she may resolve the dispute.

D. Sealed and Redacted Documents

Parties are not permitted to file documents under seal without leave of the Court, unless an emergency arises. Judge Scott will permit parties to file documents under seal or with redactions only after a showing of good cause or presentation of an enforceable private confidentiality agreement contracted prior to litigation. Parties cannot stipulate to sealing documents to avoid showing good cause. *See In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672-73 (3d Cir. 2019) (balancing multiple factors to assess whether good cause warranted sealing documents from public view), and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786-87 (3d Cir. 1994) (same).

All proposed orders must contain language to this effect: “The Court reserves its inherent power to modify the terms of this Order and permit the disclosure of information in the interest of justice.”

If the Court orders that a document be filed under seal, a redacted copy of the document must be filed, unless the Court’s order specifies otherwise, or redaction would render the document unreadable.

E. Motions Practice and Oral Argument

1. Page Limits & Reply Restrictions

Any dispositive motion and its supporting memorandum of law must not exceed twenty (25) pages. If a filing exceeds these page limits due only to the size of pictures or charts embedded within the filing, then the party may file the oversize brief and must certify that that is why the brief is oversize. Otherwise, parties must seek leave from the Court to file an oversize brief at least three (3) business days prior to a filing deadline.

One reply brief may be filed within fourteen (14) days of service of the opponent's brief in opposition; parties must seek leave from the Court to file any additional supplemental briefings, and Judge Scott rarely grants such requests. Reply or supplemental briefings must not exceed ten (10) pages and may not simply repeat arguments already made.

Multiple plaintiffs or multiple defendants must file joint motions with their co-parties, unless there are conflicts in their position.

2. Oral Argument

Parties may request oral argument in their motions. Judge Scott will grant requests for oral argument only if oral argument would illuminate any aspect of the pleadings or briefs.

3. Injunctions & Motions for Temporary Restraining Order

Judge Scott attempts to hold a prompt conference with counsel seeking and defending requests for temporary restraining orders and preliminary injunctions following an affidavit of service, unless there is risk of extraordinary imminent harm a hearing will be held. Judge Scott usually handles filed motions for expedited discovery at the initial conference or hearing. Judge Scott expects a party seeking pretrial injunctive relief to be prepared to imminently move to a hearing within a month. If not ready for an imminent hearing, the party may seek expedited discovery and Judge Scott will then set the pretrial injunction hearing.

4. Threshold Motions

Threshold motions (*e.g.*, motions to dismiss, transfer, or substitute parties) should be filed at least seven (7) days before the Rule 16 conference. Parties may be asked to address the merits of these motions at the Rule 16 conference, even if they are not fully briefed at that time.

5. Rule 56 Motions for Summary Judgment

A statement of facts must accompany a moving party's motion for summary judgment. The parties may jointly file a statement of stipulated material facts. Alternatively, the moving party may file *proposed* undisputed material facts. Regardless of which option the parties choose, the moving party must file that initial statement of material facts as a separate document with the moving party's Rule 56 motion. Each fact must be in a separately numbered paragraph and accompanied by pinpoint citations that cite not only the relevant exhibit, but the relevant page and line number of that exhibit.

Unless the parties file joint stipulated facts, the nonmoving party must respond to each numbered material fact by either (1) stating that the fact is undisputed, (2) explaining exactly how it is disputed and providing appropriate citations, or (3) explaining why the fact is immaterial to resolution of any claim with appropriate citations. The nonmoving party may also provide

additional undisputed material facts; the movant may respond to these facts in kind in a document separate from any reply brief. These factual statements must be brief and generally nonargumentative and cannot be used to evade page-limit requirements for briefs; factual statements do not count towards the 25-page limit for briefings unless there are substantial argumentative passages.

Parties are encouraged to submit a joint appendix with the moving party's briefings. If that is not practical, then the parties may file separate appendices, with the following restrictions: (1) the moving party must submit documents in their full relevant context rather than excerpts of documents, and (2) the responding party must cite to the moving party's appendix wherever possible and is encouraged to mark exhibits as a continuation of the moving party's appendix pages or exhibit numbers.

If there are any evidentiary issues that may be key to the resolution of a motion for summary judgment, parties may file motions to preclude such evidence *as separate motions* at the same time as their motion or response. Judge Scott may consider the evidentiary motion jointly with the motion for summary judgment, or she may hold the motion under advisement until the case approaches trial.

6. Amended Pleadings or Briefings

Parties are encouraged to promptly correct any material misstatements of fact or law. Parties may amend pleadings once; additional amendments require leave of the Court. Amended pleadings must clearly indicate the additions or corrections made through comments, track changes, or both (the party may file both a clean copy and a copy with track changes). Parties may also advise the Court of their own misunderstandings of the law, if necessary, by filing a supplemental briefing. The supplemental briefing does not need to repeat the entire argument but must clearly reference the misstated point of law.

7. Motions in *Limine*

Motions in *limine* must be filed before trial to reduce the number of sidebar discussions required. Complex motions must be filed at least seven (7) days before the final pretrial conference. If motions cannot be resolved at that conference, they will be heard on a specific date or before a witness is called. Judge Scott may refuse to hear any untimely motion or sidebar objection that disrupts trial and could have been anticipated as a motion in *limine*.

F. Final Pretrial Conference and Pretrial Preparation

Judge Scott generally holds a final pretrial conference seven (7) to ten (10) days before a trial, but the conference may be held earlier, if jointly requested by the parties. At the final pretrial conference, parties should be prepared to discuss all outstanding motions and any unresolvable

disputes regarding evidence or witnesses. Parties will also update the Court on any scheduling issues and any efforts made to settle the case.

1. Pretrial Memoranda

Pretrial memoranda must be submitted at least (7) days prior to the final pretrial conference and must include the following:

- A list of witnesses and the substance of each witness's testimony.
- All expert witnesses' reports and CVs, if not previously submitted.
- A list and brief description of any motions in *limine*.
- Notice of any depositions (written or video) that the party intends to use at trial.
- Any objections to witnesses and exhibits that the parties have been unable to resolve. Wherever applicable, the objecting party must identify the page of an exhibit and page and line number of a deposition that the party objects to and state the basis of the objection.
- A list of any joint stipulations that the parties plan to enter at trial.
- Proposed questions for *voir dire*. *See infra* Part V.A.
- Proposed jury instructions and verdict forms. *See infra* Part V.F.

2. Trial Exhibits

Prior to *voir dire*, counsel must submit:

- One full set of exhibits that is organized in a tabbed binder with all exhibits numbered consecutively (not separately numbered by party).
- One additional set of exhibits that are not hole punched or marked with anything besides exhibit numbers, which may be presented to witnesses and jurors.

IV. Criminal Cases

Once a defendant has an initial appearance and/or arraignment on an indictment, counsel for the Government and Defendant(s) are required to attend a telephone scheduling conference within thirty (30) days of the initial appearance/arraignment.

1. Trial Continuances in Criminal Matters

Any request for a continuance must be filed no later than fourteen (14) days in advance of the scheduled trial date. Requests for a continuance must be filed as a motion stating the reasons for the request. Any such motion must be accompanied by a speedy trial waiver consent form (found on Judge Scott's Court website) signed by the defendant(s) and defendant(s) attorney(s), together with proposed form order consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8), and must include a proposed finding explaining in reasonable detail why the ends of justice served by granting the requested continuance outweigh the best interest of the public and

the defendant in a speedy trial. Continuances are strongly discouraged, and, if multiple continuances are sought, counsel may be required to appear in person to argue the matter.

2. Guilty Pleas

Before a defendant offers a guilty plea, counsel for the Government must complete the guilty plea memorandum, guilty plea agreement, and acknowledgement of rights and counsel for the defendant must review those documents with the defendant. Counsel must also provide copies of those documents to Judge Scott.

The guilty plea agreement must state whether the plea is a general plea of guilty, a conditional plea, or a plea of nolo contendere. The guilty plea agreement also must disclose to the defendant and Judge Scott whether the plea is entered under Federal Rule of Criminal Procedure 11(c)(1)(A), (B) or (C), relating to the obligation of the United States regarding other charges under subsection (A), a non-binding sentencing recommendation under subsection (B), or a binding sentencing recommendation under subsection (C). In addition, the plea agreement must inform the defendant and remind Judge Scott, under Rule 11(c)(3)(B), the defendant has no right to withdraw the plea if Judge Scott does not follow the recommendation or request if the plea is entered under Rule 11(c)(1)(B).

The United States must submit a guilty plea memorandum at least three (3) days prior to the change of plea hearing. The memorandum shall include the elements of each offense to which the defendant is pleading guilty and legal citations for the elements, the maximum statutory penalties for each offense, the terms of any plea agreement and the factual basis for the plea. The change of plea memorandum shall be provided in Microsoft Word Format by email to Susan_Flaherty@paed.uscourts.gov.

If an agreement has been reached to request Judge Scott set an expedited sentencing, the United States must notify Chambers and the probation office at least seven (7) days prior to the change of plea hearing.

3. Sentencing

Sentencing will be scheduled on the day Judge Scott accepts a defendant's guilty plea or after a defendant is convicted at trial. Sentencing will generally occur approximately one hundred (100) days after a guilty plea or trial. Sentencing will be continued for good cause only.

To avoid delay in sentencing, all objections to the Presentence Investigation Report must be sent to the probation officer in advance of sentencing. In no event shall counsel raise objections for the first time in a sentencing memorandum.

Counsel must file sentencing motions and supporting memoranda at least seven (7) days prior to the scheduled sentencing date, and any response thereto must be filed at least three (3) days prior to the scheduled sentencing date. The memorandum must set forth any legal authority relied upon by the party. No replies may be filed without leave.

Sentencing memoranda (exclusive of motions), by both the United States and the defense must be filed no later than seven (7) days before the scheduled sentencing date, and any response

thereto must be filed at least three (3) days prior to the scheduled sentencing date. Counsel shall serve a copy on the United States Probation Office.

Counsel shall provide all character letters by email at least seven (7) days before sentencing to Susan_Flaherty@paed.uscourts.gov.

If a defendant may be responsible for restitution, the United States must submit sufficient information in its sentencing memorandum to enable Judge Scott to determine entitlement, the name and the address of each victim, the amount of loss for each victim, and documentary support for each amount. If liability for restitution is joint and several, the United States shall itemize the restitution amount for which each defendant may be responsible.

Pre-Sentence Investigation Reports and Sentencing Memoranda shall also be promptly delivered to chambers in Microsoft Word Format by email to Susan_Flaherty@paed.uscourts.gov.

V. COURTROOM AND TRIAL PROCEDURES

A. Voir Dire

The parties must submit proposed *voir dire* questions at least seven (7) days before the final pretrial conference. Parties are encouraged to prepare joint questions wherever possible. Judge Scott will advise parties of approved lines of questioning before *voir dire* begins.

Attorneys may briefly introduce themselves during group *voir dire* but are not permitted to address questions to the entire panel. After Judge Scott concludes her questioning of each individual venireperson, counsel may ask the venireperson any pre-approved questions and relevant follow-up questions.

B. Objections

Objections must be made by reciting the appropriate rule number or a word or brief phrase; attorneys cannot argue the basis for objections unless the Court requests argument.

C. Trial Scheduling and Sidebar Discussions

Counsel are expected to meet each morning before trial begins to discuss the general order in which witnesses will be called and evidence will be presented. Counsel must inform the Court of the anticipated order. If any evidentiary disputes arise that counsel cannot resolve amongst themselves, counsel must advise the Courtroom Deputy either in the morning before trial resumes or during a break when the jury is not present.

Sidebar discussions are permitted only in unanticipated, time-sensitive situations that cannot be resolved during a break.

D. Witnesses

A list of witnesses must be provided to the Courtroom Deputy within two (2) business day prior to trial. Only one attorney for each party may examine a single witness or provide oral argument for the same legal point. Parties may question their own witnesses out of turn.

E. Offering Exhibits into Evidence

Exhibits are admitted into evidence at the close of each party's case-in-chief. Exhibits may be published to the jury at the end of the party's examination of the witness or prior to a break. Judge Scott permits an exhibit to be published during a witness's testimony only if (1) the moving party seeks permission to do so before the witness takes the stand, and (2) the exhibit is necessary to explain a witness's testimony.

F. Proposed Jury Instructions and Verdict Forms

Counsel must submit a joint proposed set of jury instructions and verdict forms with any special interrogatories prior to the final pretrial conference. Instructions must cite legal authority. If a model jury instruction is used, the parties must submit a copy of the model instruction, and the proposed instruction must note any modifications made to the model instruction (use bold font and footnotes as needed to emphasize changes). If the parties cannot agree on a specific instruction, they may propose alternative instructions and cite any relevant authority for the proposed language.

Submitting a joint jury instruction does not constitute waiver of an objection—it merely agrees to the language used if that instruction must be given. Thus, counsel should err on the side of proposing some instructions on a contingency basis rather than requesting additional instructions during trial. Counsel may separately submit objections to instructions or notify the Court of that party's position on the circumstances in which the instruction would be warranted.

Counsel may request additional unanticipated jury instructions by emailing the Court and all parties during the same day or night that the basis for the instruction arose. If the request arises on the day that the Court plans to charge the jury, the party must immediately notify the Courtroom Deputy by passing a note or requesting a sidebar discussion.

G. Jury Deliberations

Judge Scott may permit jurors to take notes.

After the jury retires to deliberate, counsel will review the exhibits to determine which exhibits will be provided to the jury. The Court will promptly settle any disputes that arise.

Judge Scott provides the jury with a copy of the complete written jury instructions that were read to the jury.

Counsel must be able to return to the courtroom within fifteen (15) minutes during jury deliberations.

Judge Scott will poll the jury only if counsel requests it.

After the jury is discharged, the Court will ask counsel whether counsel wishes to speak with jurors. If so, Judge Scott and counsel will speak to the jurors only with the jurors' consent; jurors are instructed that they do not need to speak with counsel or anyone else about their deliberations.

For any civil or criminal litigation issues not addressed above, please consult the Local Rules of Civil and Criminal Procedure for the Eastern District of Pennsylvania, available at <http://www.paed.uscourts.gov>