The Honorable Edward G. Smith
United States District Court
Eastern District of Pennsylvania
The Holmes Building, 4th Floor
101 Larry Holmes Drive
Easton, Pennsylvania 18042
Telephone: 610-333-1833
Fax: 610-252-5599
Chambers_of_Judge_Edward_G_Smith@paed.uscourts.gov

I. GENERAL INFORMATION

Federal Rule of Civil Procedure 1 provides that the Federal Rules "should be construed, administered, and employed *by the court and the parties* to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1 (emphasis added). In explaining the importance of the highlighted words, Chief Justice Roberts has emphasized that our legal system works best when judges and lawyers work together towards achieving the common goal of protecting the "public's interest in speedy, fair, and efficient justice." Chief Justice John G. Roberts, 2015 Year-End Report on the Fed. Judiciary 11 (2015). Taking this cooperative spirit to heart, the undersigned has established the below policies and procedures to open a dialogue between the court and counsel that ensures that each individual case is disposed of in a way that embodies "values we all ultimately share," namely "the just, speedy, and inexpensive determination of every action and proceeding." *Id.* at 10.

A. Communication with Chambers

Communications with chambers are permitted by e-mail (preferred), telephone, letter, or facsimile regarding scheduling and other non-substantive matters. All other issues, except discovery disputes, must be addressed by motion or other filing. Under no circumstances may any party or counsel communicate *ex parte* with any chambers personnel concerning substantive matters.

Telephone inquiries should be directed to the civil or criminal deputy, as appropriate, at the telephone numbers listed below. If the appropriate deputy is unavailable, attorneys may speak to the law clerks regarding scheduling matters; however, law clerks may not render advice to counsel and counsel should not attempt to solicit advice from the law clerks.

Civil Deputy Clerk: Shana Restucci
Telephone: 610-333-1833
Fax: 610-252-5599
E-mail: Shana_Restucci@paed.uscourts.gov (An e-mail does not constitute filing.)
Contact for matters relating to civil case management and requesting telephone conferences.

Criminal/Courtroom Deputy Clerk: Jennifer Fitzko
Telephone: 610-333-1837
E-mail: Jennifer_Fitzko@paed.uscourts.gov (An e-mail does not constitute filing.)
Contact for matters relating to criminal case management and court procedures.

B. Stipulations and Consent Decrees

Any stipulations, consent decrees, or other documents requiring court approval or signature may be in a form using electronic signature. For all stipulations, the parties should refer to Rule 6(b) of the Federal Rules of Civil Procedure and Local Rule of Civil Procedure 7.4. Stipulations are not effective until approved by the court.

C. Telephone Conferences

Judge Smith 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, unless the court notifies the parties otherwise, counsel for the moving party will be responsible for initiating the telephone conference and contacting Judge Smith 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 Smith through his Criminal Deputy Clerk after all parties are present on the call.

D. Courtesy Copies

Courtesy copies need not be provided to chambers unless chambers requires them.

E. Courtroom Location and Courtroom Technology

All trials and other proceedings (except for jury selection) will generally be held in the Holmes Building, 4th Floor, 101 Larry Holmes Drive, Easton, Pennsylvania. This courtroom is a technology courtroom. Nonetheless, counsel should be aware that they will not have internet access (wireless or ethernet) in the courtroom in Easton. If counsel require internet access, counsel may bring in an internet provider. The court requires advance notice if a party seeks building access for setting up courtroom technology. Questions regarding courtroom technology should be directed to the Criminal/Courtroom Deputy Clerk, Jennifer Fitzko.

If Judge Smith is presiding over a trial or other proceeding in Philadelphia, any requests concerning courtroom technology, including requests for an Electronic Courtroom, should be directed to Michael Hearn (267-299-7039) or Ed Morrisy (267-299-7044). Requests for an Electronic Courtroom should be submitted as far in advance of trial as possible.

When presiding in Philadelphia, Judge Smith's chambers are located at Room 4006; telephone (267) 299-7600; fax (267) 299-5071.

F. Transcripts

To request a transcript, please contact David Hayes (267-299-7041) or Joan Carr (267-299-7104). To order a transcript, you will need: (1) the caption of the case or docket number; (2) the exact date(s) of proceeding; (3) the name of the presiding judge; and (4) the courtroom location.

II. CIVIL PRETRIAL MATTERS

A. Requests for Extension of Time

Where compelling circumstances so require, counsel may request an extension of a filing or other deadline. The court will only extend the deadlines for filing dispositive motions in very limited circumstances and where genuinely necessary. Counsel shall confer with all opposing counsel prior to requesting an extension. If a request for an extension is unopposed, counsel must so state and may submit the request via joint stipulation. Opposed requests must so state and be filed as a motion.

B. Initial Pretrial Conference (Rule 16)

The initial pretrial conference pursuant to Rule 16 is an important step in the management of a case. Judge Smith will schedule an initial pretrial conference once an answer is filed or, in some instances, while a motion to dismiss is pending. Unless a substitution is approved in advance, lead trial counsel must attend the initial pretrial conference and must enter his or her appearance prior to the conference. If lead trial counsel is appearing *pro hac vice*, local counsel must also attend the initial pretrial conference. All applications to appear *pro hac vice* must be approved prior to the conference. Requests to continue an initial pretrial conference or to conduct such conferences telephonically are strongly discouraged.

The court relies on counsel's good faith compliance in all respects with Rule 26(f). The Rule 26(f) meeting shall take place as soon as possible, and should be viewed not as perfunctory, but rather as a meaningful and substantive discussion among professionals to formulate the discovery plan required by the Rule. Outstanding motions will not excuse counsel from timely holding a meeting.

Before the initial pretrial conference, counsel will have discussed the nature and basis of the parties' claims and defenses, the possibility of a prompt settlement, and a discovery plan pursuant to Rule 26(f). The parties must also complete the Joint Status Report Pursuant to Rule 26(f) included in these policies and procedures, and must e-mail the completed report to chambers no later than three (3) days before the initial pretrial conference.

At the conference, counsel should be prepared to discuss the strengths and weaknesses of the case and should therefore be conversant in the essential facts and issues involved. Motions to dismiss, transfer venue, or add parties and other threshold motions should be filed before the initial pretrial conference. Counsel should be prepared to discuss any pending motions at the

conference. The court will issue a scheduling order after the conference to govern further proceedings in the case.

C. Discovery

1. Discovery Management

Parties are expected to manage discovery pursuant to Federal Rule of Civil Procedure 26 without involving the court, except in the rarest of cases.

2. Length of Discovery Period and Extensions

In standard track cases, the court usually allows up to 90 days from the date of the initial pretrial conference to complete discovery. In special management cases, the court will permit additional time to conduct discovery if the parties identify a need to do so at the initial pretrial conference, or any subsequent status conference. The court will ordinarily list a case for trial 30 to 45 days after the completion of discovery or the resolution of dispositive motions.

3. Discovery Disputes

Counsel must exhaustively address all discovery disputes among themselves before requesting the court's assistance. If the parties are unable to resolve a discovery dispute on their own, counsel should request a teleconference with the court by e-mailing a letter to chambers briefly outlining the nature of the dispute. The letter must certify that counsel have made a good faith effort to resolve the issue themselves as required by Local Rule of Civil Procedure 26.1. Parties should not file motions to compel or other discovery motions until the court holds a teleconference.

4. Expert Reports

The parties must exchange expert reports and supporting documentation/information in advance of trial pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. The Scheduling Order ordinarily will set forth the time for exchanging expert reports. A violation of the disclosure requirements of the Rule may result in the barring of expert testimony at trial. Any deposition of an expert under Rule 26(b)(4)(A) must be conducted before the deadline for submission of dispositive motions.

5. Appointment of a Discovery Master

With the parties' consent, the court may approve the appointment of a discovery master in accordance with Rule 53 of the Federal Rules of Civil Procedure.

D. Settlement Conferences

The possibility of settlement will be addressed at all stages in the proceedings. Additionally, consistent with Local Rule of Civil Procedure 53.3, the parties shall consider the

use of an alternative dispute resolution process at an appropriate stage in the litigation. The parties are also encouraged to request early referral to a Magistrate Judge for settlement discussions if they believe it will be productive.

E. Motions Practice

1. Motions for Injunctive Relief

The court will promptly list any request for a temporary restraining order ("TRO") or preliminary injunction for a hearing. The court will hold a pre-hearing conference with counsel to discuss any discovery issues and the possibility of resolving the request for a TRO or preliminary injunction. If appropriate, the court will order expedited discovery.

The parties will be required to submit proposed findings of fact and conclusions of law for TRO and injunction hearings. The court will set the time for these submissions at the pre-hearing conference.

2. Electronic Case Filing

Counsel shall use electronic case filing and comply with the court's Electronic Filing ("ECF") Procedures pursuant to Local Rule of Civil Procedure 5.1.2, unless excused from ECF registration. *Pro se* litigants are not required to file electronically.

3. Oral Argument

Although the court regularly decides motions on the papers, the parties are encouraged to request oral argument when it will assist the court with resolving a dispositive issue. Even if the parties do not request oral argument, the court may require the parties to appear for oral argument on a motion. Counsel are encouraged to bring their clients to oral argument on dispositive motions.

4. Motions for Summary Judgment

Any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure must be accompanied by a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. The moving party shall include only those facts that are material to the issues in dispute in the enumerated statement of facts. The moving party shall accompany each factual assertion with a citation to the specific portion(s) of the record that support the assertion, including the exhibit, page, and line number. When a factual assertion cites to a deposition transcript, counsel shall attach a copy of the entire transcript containing the cited testimony to the motion. The court will not consider a factual assertion unsupported by a citation to the record.

A party opposing a motion for summary judgment shall file a separate, short, and concise statement responding to the numbered paragraphs set forth in the moving party's statement of undisputed facts and shall either concede the facts as undisputed or state that a genuine dispute

exists. If the opposing party asserts a genuine dispute exists as to any fact, the party shall cite to the specific portion(s) of the record that create the dispute, including the exhibit, page, and line number. The opposing party shall also set forth in enumerated paragraphs any additional facts that the party contends preclude summary judgment. All facts set forth in the moving party's statement of undisputed facts shall be deemed admitted unless controverted.

If a defendant is moving for summary judgment in a matter involving a *pro se* plaintiff, the moving defendant shall serve and file as a separate document, together with the papers in support of the motion for summary judgment, a "Notice to Pro Se Litigant Opposing Motion for Summary Judgment" in the form indicated below:

NOTICE TO PRO SE LITIGANT OPPOSING MOTION FOR SUMMARY JUDGMENT

The defendant has moved for summary judgment against you. This means that the defendant is telling the judge that there is no disagreement about the important facts of the case. The defendant is also claiming that there is no need for a trial of your case and is asking the judge to decide that the defendant should win the case based on its written argument about what the law is.

In order to defeat the defendant's request, you need to do one of two things: you need to show that there is a dispute about important facts and a trial is needed to decide what the actual facts are *or* you need to explain why the defendant is wrong about what the law is.

Your response must comply with Rule 56 of the Federal Rules of Civil Procedure, which should be available at a law library. You should focus on the factual statements made by the defendant in its request for summary judgment, and your statement should have numbered paragraphs responding to each paragraph in the defendant's statement of facts. If you disagree with any fact offered by the defendant, you need to explain how and why you disagree with the defendant. You also need to explain how the documents or declarations that you are submitting support your version of the facts. If you think that some of the facts offered by the defendant are immaterial or irrelevant, you need to explain why you believe that those facts should not be considered.

In your response, you must also describe and include copies of documents which show why you disagree with the defendant about the facts of the case. You may rely upon your own declaration or the declarations of other witnesses. A declaration is a signed statement by a witness. The declaration must end with the following phrase: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct," and *must* be dated. If you do not provide the court with evidence that shows that there is a dispute about the facts, the judge will be required to assume that the defendant's factual contentions are true, and, if the defendant is also correct about the law, your case will be dismissed.

> If you choose to do so, you may offer the court a list of facts that you believe are in dispute and require a trial to decide. Your list of disputed facts should be supported by your documents or declarations. It is important that you comply fully with these rules and respond to each fact offered by the defendant, and explain how your documents or declarations support your position. If you do not do so, the judge will be forced to assume that you do not dispute the facts which you have not responded to.
>
> Finally, you should explain why you think the defendant is wrong about what the law is.[1]

5. Reply Briefs

Parties may submit reply briefs without leave of court in support of any motion. A reply brief should not exceed ten (10) pages and should address only issues raised in opposition to the motion, without repeating arguments included in the initial brief. Parties shall file a reply brief no later than seven days after the opposition is filed. When referring to the record (such as when a party is submitting a reply brief in support of a motion for summary judgment), the reply brief must specify the relevant exhibit, page, and line numbers. A party may file a sur-reply brief only with permission of the court upon good cause shown. The sur-reply brief may not exceed five (5) pages.

6. Motions to Seal

The court will only grant motions to seal upon good cause shown. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994). When submitting a proposed order for the court's approval, the order must contain the following language or language substantially similar: "The court retains the right to allow disclosure of any subject covered by this stipulation or to modify this stipulation at any time in the interest of justice."

7. Other Motions

For all other motions, counsel are expected to follow the requirements of Local Rule of Civil Procedure 7.1.

F. Arbitration

Judge Smith generally will not hold an initial pretrial conference or issue a scheduling order in arbitration track cases, unless there is a *de novo* appeal from an arbitration award. 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, the court will not allow discovery or the filing of dispositive motions after an arbitration hearing. Therefore, the parties are expected to complete all discovery prior to the date of the arbitration hearing.

[1] In almost all respects, this notice follows Rule 56.2 of the Local General Rules promulgated by the United States District Court for the Northern District of Illinois. *See* N.D. Ill. Loc. Gen. R. 56.2.

G. Final Pretrial Conference

The court will use the final pretrial conference to resolve any outstanding motions and to discuss *voir dire* and other trial procedures. The court routinely sets forth the final pretrial conference date in the scheduling order. Generally, the court will hold the final pretrial conference no later than 30 days after the close of discovery, unless it appears that the parties intend to file dispositive motions.

Ordinarily, the court will assign a case for trial with a date certain. The court will schedule the final pretrial conference for the Wednesday preceding the trial date. Jury selection will occur the Monday after the pretrial conference, with the trial starting immediately thereafter. All parties, witness, and counsel can expect their cases to be tried on the specified trial date and should arrange their schedules accordingly. In appropriate cases, time limits may be imposed on the parties' trial presentations. *See Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604, 609-10 (3d Cir. 1995).

The court will generally schedule 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.

The court will resolve any disputes regarding deposition designations and preserved objections within depositions at the final pretrial conference. To facilitate the timely resolution of such disputes, the parties must exchange deposition designations at least one week prior to the pretrial conference and counter-designations must be exchanged at least three days prior to the pretrial conference. The parties must submit any objections to designations and counter-designations to the court in writing no later than one day before the pretrial conference. The parties should raise any objections by letter; a formal motion is not required.

III. TRIALS

A. General Procedures

1. Civility is the foundation of Judge Smith's courtroom procedures. Counsel and the parties shall rise when the judge and the jury enter and leave the courtroom.

2. Court normally begins at 9:30 a.m. The court will make every effort to commence proceedings on time. Counsel, parties, and witnesses shall be on time.

3. Counsel should instruct witnesses and parties to wear proper attire to court. Shorts, tank tops, etc. are not permitted attire. Witnesses or parties not properly attired may be excluded from the courtroom.

4. Cell phones and other electronic devices must be turned off (not on silent or vibrate mode) before entering the courtroom. Recording or taking photographs in the courtroom is strictly prohibited. A violation of these rules may result in confiscation of the cell phone or

device and prosecution. Attorneys are responsible for their own electronic devices and those of their witnesses and clients.

5. Food, drink, and chewing gum are prohibited in the courtroom and witnesses should be so instructed.

B. Decorum of Counsel

1. Counsel shall dress in an appropriate professional manner. The parties shall conduct the trial in a dignified and formal manner. Counsel shall not raise their voices any louder than is necessary to be clearly heard by the court, witnesses, and the jury. All remarks should be addressed to the court and not opposing counsel. Counsel should never act or speak disrespectfully to the court or opposing counsel.

2. Counsel's demeanor should be one of courtesy and professionalism. Counsel shall not exhibit familiarity with the parties, jurors, or opposing counsel, and should avoid using first names. During opening statements and closing arguments, no juror should be addressed individually or by name. Neither counsel nor the parties by their body language or facial expression shall convey their reaction to the testimony of a witness.

3. Counsel must rise to address the court and should request permission before approaching witnesses or moving about the courtroom.

C. Continuances

The court strongly discourages requests for continuances. In civil cases, counsel must have good cause for the request. If good cause exists, a party must seek a continuance as soon as possible. Requests for continuances must be in writing and should be e-mailed to chambers with a copy to opposing counsel. The court does not require a formal motion.

The party requesting a continuance must present the position of opposing counsel. If opposing counsel opposes the request, the requesting party must set up a conference call with the court to resolve the matter.

D. Conflicts of Counsel

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

E. Notetaking by Jurors

In appropriate cases, notetaking by jurors will be permitted.

F. *Voir Dire*, Points for Charge, and Verdict Slip

1. Counsel are typically permitted to conduct *voir dire*. In civil cases, the parties shall exchange proposed statements of the facts for *voir dire* and questions for *voir dire*. Two business days prior to the final pretrial conference, the parties shall also provide the court with copies of those questions by sending them by e-mail to Chambers_of_Judge_Edward_G_Smith@paed.uscourts.gov in Microsoft Word format. The court will determine the number of allowable questions for each party at the final pretrial conference.

2. Counsel are permitted to use social media during jury selection in accordance with the ABA Formal Opinion 466, "Lawyer Reviewing Juror's Internet Presence." Specifically, counsel may passively review a juror's public presence on the internet, but may not communicate with a juror (or potential juror).

3. In civil cases, the parties shall also submit joint requested points for charge and a joint verdict slip with only the disputed points highlighted. The proposed instructions shall conform to the Third Circuit Model Jury Instructions unless there is a compelling argument for deviation. Each proposed instruction should be on a separate sheet of paper, double-spaced, and should include citation to specific legal authority. Cases and model instructions that are cited should be accurately quoted and a page reference should be provided. The joint requested points for charge and joint verdict slip shall be filed on the docket and shall be sent by e-mail to Chambers_of_Judge_Edward_G_Smith@paed.uscourts.gov in Microsoft Word format. Unless requested by chambers, the parties shall not e-mail any other trial document to Chambers. An e-mail to chambers does not constitute filing.

4. Counsel will have the opportunity to file supplemental points for charge during trial as necessary.

5. If a model jury instruction is submitted, 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.

6. The court will hold argument on disputed points for charge and the verdict slip at the final pretrial conference and, if necessary, during the charge conference, at the close of testimony, and before closing arguments.

7. Counsel will have an automatic exception for any point not given as submitted. All other exceptions must be made to the court before the jury is dismissed for deliberations.

G. Court Seating

1. Under local practice, the party with the burden of proof (generally the plaintiff in civil cases, the government in criminal cases) is seated at the table closest to the jury box.

2. Any requests concerning seating (e.g., requests for more than one counsel table for all plaintiffs or all defendants or special requests for seating, visual aids, etc.) should be submitted to the Criminal/Courtroom Deputy Clerk, Jennifer Fitzko, at least one week before trial.

3. Only counsel and parties, if desired, shall sit at counsel table. Witnesses shall sit in the spectator section only, unless otherwise authorized by the court. If any party desires sequestration, the party shall move for sequestration at the outset of the trial. If the court orders sequestration, all witnesses for all parties shall be sequestered. Counsel are responsible for informing their non-party witnesses that they should remain outside the courtroom until called, and that they should not discuss their testimony with other witnesses until the trial is concluded.

H. Exhibits

1. In civil trials, counsel shall pre-mark and exchange exhibits in accordance with the scheduling order and Local Rule of Civil Procedure 16.1(d). Each party shall also provide the court with one (1) exhibit binder for the court's use during trial, which the court will return to counsel at the conclusion of trial. The exhibit binders shall contain a tabbed copy of each exhibit with a schedule of exhibits, which shall briefly describe each exhibit. In cases involving multiple exhibit binders, counsel shall prepare a master table of contents that also specifies the volume in which each exhibit appears. In addition to the exhibit binder for the court's use, counsel shall ensure that a copy is available for use by witnesses. Exhibits may be moved for admission at any time during counsel's case.

2. At the conclusion of trial, all exhibits and exhibit binders will be returned to counsel or the parties. Counsel are responsible for removing all exhibits and exhibit binders from the courtroom. Counsel shall maintain the exhibits entered into evidence for purposes of the record on appeal.

I. Motions *in Limine*

Counsel presenting motions *in limine* with respect to legal matters that the parties reasonably expect to arise during trial must submit the motions in accordance with the deadline established in the scheduling order. The court will only consider motions *in limine* filed after the deadline upon a showing of good cause.

J. Witnesses

The rule of civility is absolute in addressing witnesses, whether on direct or cross examination. Witnesses should be treated with fairness and consideration; they should not be shouted at, ridiculed, or abused in any manner. Counsel shall not approach a witness without leave of court.

Counsel shall facilitate having their witness present in the courtroom when the witness is called to testify.

Counsel on direct must ensure that a witness is speaking into the microphone for ease of recording and hearing.

If a witness was on the stand at a recess or adjournment, the witness should be on the witness stand ready to proceed when court resumes. Counsel are reminded that they may not discuss a witness's testimony with him or her once that witness has begun testifying until the witness is excused.

If there will be a problem with the scheduling of any witness, counsel should inform the court at the pretrial conference or at the beginning of that day's proceedings. The court will permit counsel to examine his/her own witnesses out of turn for the convenience of a witness.

K. Opening Statements and Closing Arguments

In most cases, the court permits up to 30 minutes for an opening statement and up to 45 minutes for a summation or closing argument. For summations in civil cases, the court generally follows Local Rule of Civil Procedure 39.1, which provides that the plaintiff's counsel closes first, followed by the defendant's counsel, followed by a brief rebuttal by the plaintiff. The plaintiff's counsel must reserve time from his or her closing to use for rebuttal. The failure to reserve time for rebuttal will constitute a waiver of rebuttal.

L. Examination of Witnesses

1. After the witness is sworn, the court will ask the witness to state and spell his or her name for the benefit of the ESR operator. The court will then allow counsel to proceed with questioning the witness.

2. Counsel should examine witnesses from the lectern unless counsel has obtained the court's permission to examine witnesses from another appropriate location in the courtroom.

3. 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.

4. Judge Smith permits direct, cross, and re-direct examination of a witness. Judge Smith generally permits re-cross examination only "[w]here new evidence is opened up on re-direct examination." *See United States v. Riggi*, 951 F.2d 1368, 1375 (3d Cir. 1991) (explaining that "the privilege of recross-examination as to matters not covered on redirect examination lies within the trial court's discretion." (citation omitted)).

5. If counsel wishes to examine a witness based on prior written statements made by the witness, and the court has not yet received the statements into evidence, the witness shall first be shown the statement and asked whether he or she acknowledges having made it.

6. If counsel wishes to cross-examine a witness based on a deposition, counsel must give a copy of the deposition to the witness, who will be permitted to read the deposition and to adopt or deny the testimony before counsel may proceed with cross-examination.

M. Videotaped Testimony

Videotaped testimony should begin with the witness being sworn. Counsel should bring objections to the court's attention at the time of the final pretrial conference. After the court rules on any objections, counsel should edit the tapes before offering the videotaped testimony at trial.

N. Reading of Material into the Record

The court has no special practice or policy regarding reading stipulations, pleadings, or discovery material into the record at trial. Additionally, admissions, pleadings, requests for admissions, admissions of parties contained in depositions, and interrogatories are not part of the evidence at trial unless counsel moves for their admission and the court admits them.

O. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law in non-jury cases should be submitted at least seven days before the trial date. Counsel should submit them to chambers by e-mail to Chambers_of_Judge_Edward_G_Smith@paed.uscourts.gov in Microsoft Word format. The parties may submit revised or supplemental findings of fact and conclusions of law with specific reference to the trial evidence at the conclusion of the case. The court will discuss a schedule for submitting revised findings/conclusions at the conclusion of trial.

P. Stipulations

Counsel are strongly encouraged to stipulate to as many matters as possible before trial, including undisputed facts, exhibits, jury instructions, and special interrogatories.

Q. Objections to Questions

1. When objecting, counsel should only state "objection" and cite to the evidentiary rule or principle upon which the objection is based in a word or two. Counsel shall not offer argument or explanation in front of the jury unless requested to do so by the court. The court will not permit counsel to state additional reasons for an objection after the court has ruled.

2. If necessary, particularly in instances where the court requires argument or explanation about an objection, the court will ask the parties to approach for a side bar conference. The court will not permit counsel to argue objections in the hearing of the jury or witnesses.

R. Jury Deliberations

1. During jury deliberations, counsel and their clients may leave the courthouse, but they must leave cell phone numbers with the Courtroom Deputy Clerk and be able to return to the courthouse within ten to fifteen minutes.

2. Ordinarily, the court will submit interrogatories to the jury. The court will take the verdict in the presence of counsel and the parties.

3. If requested by counsel, the court will poll the jury.

4. Counsel are permitted to interview jurors after the verdict, but the court will instruct the jury that they are not required to talk to the attorneys.

5. In the first instance, exhibits do not typically go out with the jury during deliberations; however, the court will hear argument on whether certain exhibits should go out with the jury. The court will instruct the jury that they may request to review any exhibit during deliberations.

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

IV. CRIMINAL CASES

A. Motions Practice

1. Parties must file all pretrial motions – including motions *in limine* and any motions challenging the indictment, seeking suppression of evidence, or raising any dispositive matters – in accordance with the deadlines set forth in the scheduling order entered in the case. Upon the filing of any motion, the parties shall advise the court whether they intend to present testimony in support of or in opposition to the motion and the expected duration of any such testimony, so that the court can schedule a hearing, if necessary. The court will generally permit oral argument on substantive motions in a criminal case upon request.

2. The government is required to file proposed findings of fact and conclusions of law prior to the commencement of the hearing. The parties may request leave to supplement proposed findings of fact after the hearing.

B. Trial Continuances

A party requesting a continuance must file the request (1) as a motion stating the reasons for the request, and (2) no later than 14 days in advance of the scheduled trial date. Any such motion must be accompanied by a waiver signed by the defendant and a proposed form of order which, if approved by the court, would grant the relief sought by the motion. The proposed form of order must be consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8), and must include a proposed finding that explains 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.

The court may require a telephone conference before granting the first continuance of a trial. Any subsequent continuance is strongly discouraged, and, if a further continuance is sought, counsel may be required to appear in person to argue the matter.

C. Pretrial Conferences

The court does not generally hold a telephone scheduling conference with counsel in criminal cases, unless counsel specifically request one or the court finds that a conference is appropriate. The Criminal Deputy Clerk handles all scheduling of criminal matters. If the court holds a pretrial conference, any issues related to *voir dire*, motions *in limine*, jury instructions, and jury verdict forms must be submitted at least seven days prior to the pretrial conference.

D. *Voir Dire*

In criminal cases, the court will conduct the initial *voir dire* regarding hardships, the general suitability of the jurors, etc. Counsel may then ask additional, preapproved questions. Counsel should submit proposed *voir dire* questions in writing seven days before the trial date.

E. Guilty Pleas

1. Before a defendant offers a guilty plea, counsel must complete the guilty plea memorandum, guilty plea agreement, if applicable, and acknowledgement of rights and review those documents with the defendant. Counsel must also provide copies of those documents to the court.

2. 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 the court whether the plea is entered pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (B) or (C), relating to the obligation of the Government 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 the court, pursuant to Rule 11(c)(3)(B), that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request if the plea is entered under Rule 11(c)(1)(B).

3. The government must submit a guilty plea memorandum at least two 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.

F. Trial Memorandum

At least one week prior to the trial date, the government must file a trial memorandum setting forth the essential elements of the offenses, the facts which it intends to present, the identity of each witness it intends to call, a statement of the substance of each witness' testimony and any legal issues. The defendant is not required to file a trial memorandum but may do so.

G. Sentencing

1. The court will schedule sentencing on the day the court accepts a defendant's guilty plea or after a defendant is convicted at trial. Sentencing will generally take place 100 days after a guilty plea or trial. The court discourages continuances of sentencing and will continue sentencing for good cause only.

2. If both counsel for the Government and defense counsel believe that good cause exists for a continuance of sentencing, counsel may jointly submit a written request for a continuance, explaining why good cause exists. The court does not require a formal motion for joint continuance requests, other than a continuance of trial, as noted in section B, above.

3. To avoid delay in sentencing, all objections to the Presentence Investigation Report ("PSR") 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.

4. Counsel must file sentencing motions and supporting memoranda at least 14 days prior to the scheduled sentencing date, and any response thereto must be filed at least seven days prior to the scheduled sentencing date. The memorandum must set forth any legal authority relied upon by the party.

5. Sentencing memoranda (exclusive of motions), by both the Government and the defense must be filed no later than one week before the scheduled sentencing date, and any response thereto must be filed at least three days prior to the scheduled sentencing date. Counsel shall serve a copy on the United States Probation Office.

6. If a defendant is responsible for restitution, the government must submit sufficient information in its sentencing memorandum to enable the court 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 government shall itemize the restitution amount for which each defendant is responsible.

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