

Judge Weilheimer's Guidelines

I. General Principles

Judge Weilheimer is committed to the efficient and fair resolution of cases; to accomplish this she expects all counsel to be civil, honest and responsive to each other and to Chambers. Counsel are expected to have substantive communications regarding disputes prior to requesting Court intervention. Communication is substantive verbal communication, not emails or letters.

Zealous advocacy is expected and encouraged, as is courtesy and professionalism. Arguing in Court should not prevent congeniality outside of the arena.

II. Communication with Chambers

Counsel are welcome to contact Chambers via phone or email with any procedural questions or where communication will assist in facilitating the progress of a case. All communication regarding substantive issues must be docketed. Counsel may contact Chambers to provide notification of a substantive filing that needs prompt attention by the court.

Chambers email: **Chambers.Weilheimer@paed.uscourts.gov**
Chambers phone: 267-299-7760

Chambers address: 7614 United States Courthouse
601 Market Street
Philadelphia, PA 19106

Judge Weilheimer's staff cannot give legal advice. *Ex parte* advocacy on any substantive issue is prohibited.

Counsel are expected to respond with reasonable promptness to communication from Chambers and should be courteous in their interaction. Any discourtesy to Chambers staff will be viewed as a disrespect for the Court.

III. Meet and Confer Certification

Prior to filing discovery motions, 12(b) motions, or other dispositive motions, counsel contemplating the filing of these motions shall contact opposing counsel to discuss the substance of the anticipated motion and to provide an opportunity to cure any alleged deficiencies or to try to resolve the conflict prior to the filing of the Motion.

This communication must occur at least five days prior to the filing of the Motion. “Communication” means substantive verbal communication.

Should the parties be unable to resolve the dispute, the filing party shall file a Certification indicating that they have communicated with the non-filing party or parties in an attempt to resolve the dispute and the date(s) of discussion(s), as well as a brief (no more than one sentence each) description of the issues which were discussed. Failure to communicate by the filing party may result in the motion being denied. Failure to respond within a reasonable time-frame to attempts to communicate from the filing party may result in sanctions for the non-responding party. See sample meet and confer form [here](#).

A party who files an amended complaint in response to meeting and conferring with opposing counsel prior to the filing of a motion pursuant to Rule 12(b) should attach to the amended complaint a certification that such amendment was the result of compliance with this protocol. If such certification is attached, the amended complaint will be deemed filed with leave of Court under Fed. R. Civ. P. 15(a)(2), and therefore not exhaust the party’s amendment as of right under Fed. R. Civ. P. 15(a)(1).

IV. Preliminary Pretrial Conference

A Rule 16 Pretrial Conference will be held as soon as possible after all defendants have docketed an Answer to the Complaint. If the Court has not scheduled a Rule 16 conference within a reasonable time after the filing of the Answer, counsel should contact Chambers to request a conference. Lead trial counsel must appear for this conference. If lead counsel is on trial, substitute counsel with deep knowledge of the case may attend. **This conference is not limited to scheduling.** Counsel should be prepared to address the substance, settlement, and scheduling of this case.

Five days in advance of the Rule 16 Conference, the parties shall jointly submit a Rule 26(f) report. Judge Weilheimer’s required format is available [here](#).

At the conclusion of the Rule 16 Conference, a Case Management Order will be issued with dates provided through the responses to dispositive motions. As necessary, after a ruling on dispositive motions or in the absence of dispositive motions, a Pretrial Conference will be scheduled by Chambers during which a trial date and associated deadlines will be provided.

V. Requests for Extensions

Subject to the limited exceptions below, requests for extensions, including joint and uncontested requests, must be submitted to this Court by filing a motion on the docket. Even with the agreement of all parties, good cause must be shown for to Court to consider a request to extend any deadlines provided in the Case Management Order. Requests for extension should be made as far in advance as possible. Requests made on the date of the deadline will typically be denied, absent good cause that arose on the day of the deadline.

The parties may jointly stipulate to extend the time to Answer or make a motion with respect to an initial Complaint by no more than 30 days. Such joint stipulation should be filed on the docket with a signature line provided for the judge. The parties may also jointly agree to extend discovery deadlines provided such agreement does not alter the dispositive motion deadline. This type of agreement need not be filed with the Court.

VI. Discovery matters

Parties are expected to begin discovery promptly after the Complaint is answered, without waiting for the Rule 16 conference to be held. Parties should not delay discovery due to the pendency of a Motion to Dismiss except where the motion could result in complete dismissal of the case. The time for discovery will be calculated from the date the Rule 16 Scheduling Order is issued, NOT the date of the Rule 16 conference.

If e-discovery is an issue and counsel is unable to reach an agreement, a default e-discovery order will be entered, located [here](#).

Counsel are expected to work cooperatively and civilly to address discovery disputes. *See supra*. The parties are expected to meet and confer prior to requesting Court intervention. Should the parties be unable to resolve a discovery dispute in good faith, they may request the assistance of the Court.

For straightforward disputes, the parties may request a virtual conference via letter or email to Chambers. This correspondence should summarize the reason for the requested conference. A motion should be filed for any discovery dispute for which Judge Weilheimer needs to review materials or for which the conflict cannot be addressed in a brief conference.

Responses to discovery motions are due seven days after the filing of the Motion.

If a dispute arises during a deposition, counsel are invited to call Chambers in the event that the Judge is available to supply an immediate ruling. If Judge Weilheimer is not immediately available, the parties should note the objection, have the question answered and the Judge will issue a ruling prior to trial. If the objecting party refuses to have a witness answer the “objectionable” question and the Court determines that witness shall be re-deposed on that issue, the costs of the re-deposition will be borne entirely by the objecting party.

VII. Confidentiality Agreements

Judge Weilheimer will consider entry of a stipulated confidentiality or sealing orders if the parties demonstrate that “good cause” exists pursuant to Fed. R. Civ. P. 26(c)(1)(G). *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d. Cir. 1994). All such orders must contain the following language: *“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.”*

VIII. Filing Under Seal and Redactions

Where a confidentiality order which covers the duration of litigation has already been entered by the Court, filings which include information subject to that confidentiality order may be filed under seal without the filing of a separate motion to seal. If no such confidentiality order has been entered, any filing placed under seal must be accompanied by a contemporaneous motion to seal.

Within seven days of the docketing of anything filed under seal (or, in the case of a motion, within seven days of the close of briefing on a given motion), a filing party of any sealed submission shall publicly file a redacted version of the filing(s). All parties to the litigation should collaborate and, if possible, agree upon the redactions. If there is dispute as to whether a specific portion of a filing should be redacted, the filing party should redact the disputed portion. Any party, including a party which has filed a redacted version with redactions demanded by their opposition, may move to strike a redaction. Third parties may file motions to unseal consistent with their general right to access judicial proceedings, and the parties before the Court will be given the opportunity to respond.

IX. Courtesy Copies:

When the total number of pages in the exhibits/attachments to any filing are in excess of 20 pages, within 48 hours of the docketing of the filing, two hard copies of the exhibits are to be provided to Chambers. If the provided attachments are for more than two exhibits, the documents should be placed in a binder, tabbed with a table of contents that corresponds to the related pleading.

In the case of a Joint Statement of Undisputed Facts (*see infra*), the moving party should provide the courtesy copy, if any. In the case of cross motions for summary judgment, the parties should agree who will provide the courtesy copy (or in the absence of agreement, the Plaintiff shall do so).

X. Motions Practice:

All litigants should familiarize themselves with the Court's meet and confer requirements (listed above).

A. Document Length/Formatting:

The persuasiveness of a brief is related to the quality of its content, not its length.

Briefs and memorandum filed in support of or in opposition to a motion are limited to 25 pages in length. If a party sincerely believes that more than 25 pages are required to explain its position, leave of court is required to exceed the page limit. A motion to exceed the page limit shall be filed prior to the deadline, establishing good cause for the request.

All documents shall be filed in 12-point Times New Roman font, double spaced with one-inch margins and numbered pages.

All PDF documents filed must be text searchable.

B. Exhibits

All exhibits must be filed as a separately numbered attachment to the main document and must be clearly titled with an objective description of the document so that the nature of the exhibit and its relevance are clearly discernible without the need to open the file (e.g., 6/14/19 Deposition of John Doe).

C. Reply Briefs:

Reply briefs are not permitted without leave of court. Motions for Leave to file a Reply shall be docketed within five days of the docketing of the response with a courtesy copy sent to chambers via email to Chambers.Weilheimer@paed.uscourts.gov. Motions for Leave should highlight the specific issues raised in the response brief to which a reply is requested. Counsel should not prepare and attach their proposed reply to their Motion. A ruling will be made on the Motion for Leave without a response from opposing counsel.

D. Oral Argument:

Oral argument will be scheduled by Chambers when it is beneficial to the Court. Parties may request oral argument, but the Court will frequently decide a motion on the papers even where such a request is made.

E. Motions for Summary Judgment

1. Joint Statement of Undisputed Facts

At least 28 days in advance of a motion for summary judgment, all parties are required to meet and confer regarding the possibility of agreement to a formal stipulation setting forth facts which are agreed to by all parties (the “Joint Statement”). The Joint Statement should include all facts upon which any party expects to rely in moving for or opposing summary judgment and about which there is no factual dispute between the parties. The Joint Statement should include exhibits, where relevant. The Court expects that in virtually all cases, at least some basic relevant facts should be easily includable in a Joint Statement.¹ The Joint Statement should be drafted neutrally and factually (without needless adjectives) so as to best facilitate a filing which will be useful to the Court.

Inclusion of a given fact in a Joint Statement will not be considered a concession by any party that a given fact is relevant or material. Accordingly, relevance or materiality is not a basis on which a party should refuse to include a fact in the Joint Statement.

Agreeing upon the submission of a Joint Statement will not preclude a party from arguing in briefing that there are *other* undisputed facts besides those on which the parties were able to agree. But no party shall unilaterally file a “Statement of Undisputed Facts” setting forth its interpretation of the record. All references to facts not included in the Joint Statement described above must be contained within the party’s memorandum and cite to the record.

Where the parties agree upon a Joint Statement, all factual citations should be made to the Joint Statement, to the extent they can be.

¹ Examples of facts a Joint Statement might address in a contract case are that there was a contract, that a particular exhibit is the contract, and that delivery of the widgets was not made on time.

By way of further example a Joint Statement in an employment case might address that the Plaintiff was employed by the Defendant, that Plaintiff received an employee handbook, that the handbook stated that employment was at will, and that the Plaintiff received no written warnings before termination.

If the parties cannot come to an agreement on a Joint Statement, the filing party is required to include a certification that no agreement could be reached. If the Court later concludes from briefing that the parties do agree on enough material facts to justify submission of a Joint Statement, the Court may *sua sponte* schedule a hearing and/or request briefing from the parties to determine whether sanctions are appropriate for failure to comply with these protocols.

2. Time to Respond

The Court will typically set a deadline by which a party opposing summary judgment must file its opposition in its Case Management Order. In the absence of a deadline set by the Court in a Scheduling Order, parties have 21 days to respond to a motion for summary judgment.

XI. Procedure for Removal

When filing a Notice of Removal, the party removing the action is required to attach the State Court Complaint as a separate exhibit, named consistent with the naming convention outlined for exhibits to motions, *supra*.

Any party who has already filed an Answer in the underlying State Court Action must docket that Answer without revision within 21 days of removal.

Any party who has Preliminary Objections or some other dispositive motions pending in the State Court Action at the time of removal must, within 21 days, either: (1) reformat the preliminary objections or dispositive motion to be consistent with the Federal Rules of Civil Procedure, the Eastern District of Pennsylvania's Local Rules, and this Court's preference and place the same on the docket; or (2) file an Answer, which will be constituted as a withdrawal of the pending preliminary objections or dispositive motion (though not a waiver of any issue of law).

XII. Settlement Conferences:

When all parties are sincere in their interest in actively engaging in settlement discussions they may contact Chambers via letter or email and request a settlement conference.

Bench trials: Judge Weilheimer does not have an assigned magistrate. All bench trials will be referred to the magistrate pool for assignment or the parties may choose to participate in the Court's mediation program. The list of Court approved mediators can be found [here](#).

Jury trials: These matters can be referred to the magistrate pool for assignment, participate in the Court's mediation program or upon the agreement of all parties, Judge Weilheimer can conduct settlement conferences. If the parties are requesting Judge Weilheimer address settlement, the parties must agree, in writing or on the record, that should this matter not resolve it will proceed as a jury trial and there is no objection to the Judge continuing to preside over the matter. The settlement conference with Judge Weilheimer will be held in the Courthouse with all parties, along with any additional individuals with settlement authority in attendance. Seven days in advance of the conference the parties will be required to submit a confidential Settlement Conference Memorandum. This memorandum shall NOT be docketed and should NOT be shared with opposing counsel. While such memorandum should include key documents such as contracts, photographs or expert reports, counsel should be cognizant not to provide so much information to the Court that it cannot easily extract the most important and persuasive information relative to settlement.

The information to be provided in the Settlement Conference Memorandum can be found here.

XIII. Pretrial Conference:

After a ruling on dispositive motions or if dispositive motions have not been filed, Chambers will schedule a Pretrial Conference during which trial dates and associated deadlines will be provided. This will be a substantive conference, not just a scheduling conference and lead trial counsel is required to attend. If lead counsel is unavailable, substitute counsel may attend provided substitute counsel has deep working knowledge of the case.

Seven days prior to the Pretrial Conference counsel shall submit Pretrial Conference Memorandum, the requirements are attached here.

Note: The Court may preclude at trial any witness or exhibit not disclosed in the Pretrial Conference Memorandum.

Date certain trial dates will be given in the vast majority of the cases.

Trial is expected to be scheduled 60-90 days after the Pretrial Conference.

At the Pretrial Conference, counsel should be aware of the any dates for which counsel, the parties, and/or material witnesses are unavailable. "Unavailable" means attached for trial, has a scheduled medical procedure, a verified pre-paid trip, or a significant family event such as a graduation or wedding. The Court will accommodate all verified conflicts for counsel and the parties and will work to avoid known conflicts for material witnesses. If the Court cannot accommodate

scheduling for a witness, that witness shall be deposed on video prior to the commencement of the trial.

XIV. Trial

Absent verified, truly emergency circumstances, trial dates will not be continued.

Judge Weilheimer does not have an assigned courtroom. Counsel will be notified by chambers of the courtroom assignment in advance of trial.

A. Exhibits

Three copies of all exhibits are to be produced at the commencement of trial. (One copy will be used for the witness and retained in the record, one Court copy and one law clerk copy).

Exhibits shall be placed in a three-ring binder, pre-marked and tabbed with a table of contents.

A joint exhibit binder is preferred, but not required.

B. Courtroom Presentation

Counsel must stand when addressing the Court.

Counsel may be seated when questioning a witness.

A podium is available and may be used, but is not required.

Counsel may walk freely around the well of the Court when presenting argument or questioning a witness, unless such action becomes objectionable.

Counsel may not approach a witness or the jury without leave of court.

C. Objections

Speaking objections are prohibited. When objecting the word “objection” and the basis should be given succinctly. Such as - “objection - hearsay” or “objection - leading.” If the court needs more explanation, counsel will be given the opportunity to argue at sidebar.

D. Examination of Witnesses

Judge Weilheimer will not permit more than one attorney for a party to examine the same witness. The examining attorney is the only one permitted to raise objections during the opposing party's questioning.

E. Courtroom Technology

Not every Courtroom has advanced technological capabilities. Counsel should contact the Courtroom Deputy, Rich Thieme, richard_thieme@paed.uscourts.gov to determine whether counsel needs to supply their own technology or if the courtroom offerings are sufficient.

F. Order of Proof

At the end of each day, Counsel will inform the Court and opposing counsel of the witnesses expected to be called to testify the following day.

G. Note Taking by Jurors

Judge Weilheimer permits note taking by jurors during the presentation of evidence. Jurors are not permitted to take notes during argument or the Court's instruction on the law.

XV. Professional Development for Newer Attorneys:

Judge Weilheimer believes the courtroom provides the opportunity for growth and development for the newest members of our profession and encourages senior counsel to give their associates, who have skilled knowledge on the matter, the opportunity to appear and make argument to the Court. When a party chooses to avail itself of this opportunity, counsel should notify the court either at sidebar on the day of argument or in advance via email to Chambers of the name of the associate who will be representing the party and the name of senior/supervising counsel. Supervising counsel will be given an opportunity to supplement their associate's argument.

XVI. Counsel *Pro Hac Vice*

Counsel who seek admission *pro hac vice* before this Court should familiarize themselves with the Pennsylvania Rule of Professional Conduct 5.5(c)(1), which require that a lawyer not barred in Pennsylvania associate with local counsel and that local counsel "actively participates in the matter. . . ."

Counsel applying for admission before the Court *pro hac vice* may use the Eastern District's standard form. While a motion for leave to appear *pro hac vice* is pending, local counsel must be present at every appearance before the Court, including those held on the phone or virtually. After motion for leave to appear *pro hac vice* is granted, local counsel need not be present at every appearance, except as outlined *infra*.

Local counsel must always appear at the Court's Rule 16 conference, even if admission *pro hac vice* has already been granted.

If *pro hac vice* counsel shows an unfamiliarity with the Local Rules of Civil Procedure or this Court's protocols, this Court may issue an order requiring local counsel to appear at all future appearances.