Practices and Procedures of Judge Kim R. Gibson

Chambers
United States District Court
Western District of Pennsylvania
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Effective: July 31, 2014

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I. GENERAL MATTERS

A. Correspondence with the Court

Communication with the Court should be in the form of motions (rather than letters to Chambers), accompanied by a proposed order specifying the relief requested. In an emergency situation, Judge Gibson will permit communication by e-mail or telephone, provided all parties receive notice.

B. Communications with Law Clerks

Parties may communicate with Judge Gibson's law clerks concerning administrative matters, but not the merits of a case. Such inquiries include those pertaining to the status of any pending matter. Law clerks are not permitted to provide legal advice.

C. Filing and Service on CM/ECF

Counsel is responsible for filing all pleadings, documents, and any other relevant materials, and is responsible for serving opposing counsel and pro se parties. All filings must be made on the CM/ECF system, unless otherwise permitted or directed by the Local Rules of Court. For further information on the CM/ECF system, please refer to the Western District website at www.pawd.uscourts.gov.

D. Telephone Conferences

The Court will consider requests for attorneys and parties to participate in conferences by telephone. **Attorneys should fax a request to participate by telephone to (814) 539-6364.** Unless otherwise ordered by the Court, settlement conferences, final scheduling conferences, and final pretrial conferences will not be conducted over the telephone. Status and initial scheduling conferences may be conducted by telephone, provided the Court receives advance notice.

When a telephone conference is permitted, counsel shall initiate the conference and contact the Court only after all parties are on the line.

E. Pro Hac Vice Admissions

Motions for pro hac vice admission must comply with the requirements in Local Rule 83.2B.

F. Comments to the Media

No special policy is in effect and the Rules of Professional Conduct govern.

II. MOTIONS PRACTICE

A. Oral Argument

Oral argument is entertained only on factually and legally complex matters, but not otherwise. If the Court deems oral argument necessary, it will issue an appropriate order.

B. Briefs

Briefs in support of a motion shall be filed at the same time as the motion. Briefs are not required for discovery motions, motions for extensions of time, and motions for continuances. Briefs should not exceed 25 pages, excluding tables.

With the exception of replies to the opposing party's submission under Local Rule 56.D, reply briefs and sur-replies are not to be filed without leave of Court. Replies and sur-replies are limited to 10 pages.

C. Chamber Copies of Motion Papers

Counsel are not required to send courtesy copies of motions and briefs to chambers.

D. Deadlines for Responses

1. **Motions in limine**
   Responses to motions in limine shall be filed within 7 days from the date of service of the motion.

2. **Summary judgment**
   Responses to motions for summary judgment shall be filed within 30 days from the date of service of the motion.

3. **Motions to compel**
   Responses to motions to compel and all other discovery disputes shall be filed within 7 days from the date of service of the motion.

4. **All other motions**
   Responses to all other motions shall be filed within 21 days from the date of service of the motion.

In the event that these aforementioned deadlines conflict with the deadlines provided in the initial or final scheduling order, or in any other order of court, the deadline provided in the order shall govern.

E. Magistrate Judge's Report and Recommendation

Reports and Recommendations ("R&R") to which objections have been filed generally will not be decided until a timely response is filed by the non-objecting party (or opposite party if both object). Briefs not in excess of 10 pages are encouraged. If no objections have been filed, a decision is made solely based on the R&R and the briefs already filed. Objections and appeals to Magistrate Judge orders on discretionary issues pertaining to discovery disputes are discouraged.

F. Evidentiary Hearings

In both civil and criminal matters requiring an evidentiary hearing, Judge Gibson will schedule a hearing soon after all of the appropriate motions and briefs have been filed.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court uses a standard form for Initial and Final Scheduling Orders. Other than the requirements of L.R. 16.1, no additional items are included in the order. Copies of Judge Gibson's standard Initial Scheduling Order and Final Scheduling Order are attached to this document as Exhibits "A" and "B."

2. Initial Rule 16 Scheduling Conference

An Initial Rule 16 Scheduling Conference is scheduled within 30 days of the filing of a responsive pleading. At least 21 days prior to the initial conference, the parties must conduct a Rule 26(f) conference to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, and to make arrangements for the disclosures required by Rule 26(f).

At least 14 days prior to the initial conference, the parties must file a Rule 26(f) Report. At least 7 days prior to the initial conference, counsel and unrepresented parties are jointly responsible for filing a proposed Initial Scheduling Order (see Exhibit "A").

Chief trial counsel are required to attend this conference and shall obtain full settlement authority prior to the conference unless Judge Gibson grants permission to participate by telephone. All parties shall be available by telephone.

Shortly after the initial conference, an Initial Scheduling Order will be issued after discussion with lead trial counsel as to the length of time necessary for discovery, handling of expert witnesses, and other matters. In addition, settlement and ADR options will be discussed in depth. The Court may ask the parties to agree to submit the case to final and binding arbitration or trial before a United States Magistrate Judge.

A post-discovery status conference will be held after the parties complete fact discovery. At least 7 days prior to this conference, counsel and unrepresented parties are jointly responsible for filing a proposed Final Scheduling Order (see Exhibit "B").

Additional conferences may take place on request of counsel or at the direction of the Court. Trial counsel are encouraged to request the assistance of the Court on any matter. Conferences to handle routine matters can often be conducted by telephone.

3. Settlement Conferences

The Court will consider settlement conferences on request. At least 3 days before the conference, the parties should submit brief letters to the Court detailing the relative strengths and weaknesses of their case, as well as settlement postures. The letters will **not** be filed or shared with opposing counsel. Candor is expected.

Lead trial counsel and the client representative(s) with full settlement authority shall attend all settlement conferences, in person. In cases where there is insurance coverage (or the possibility of insurance coverage), a representative(s) from the insurance carrier(s) shall attend the settlement conference. That carrier representative(s) must have full and unilateral settlement authority on behalf of the carrier(s) to the full extent of the insurance policy(ies). "Full settlement authority" means that all persons necessary to make any settlement proposal or decision, or to accept or reject any settlement offer or demand, are in actual, physical attendance.

Consistent with the initial status conference procedure, at any settlement conference, counsel shall be prepared to discuss and agree to ADR options, including follow-up ADR proceedings. At all settlement conferences, trial counsel shall be prepared to discuss any anticipated dispositive motions as well as counsels' assessment of the amount of time necessary to try the case.

4. **Extensions and Continuances**

The Court will grant extensions for the filing of motions or briefs where good cause is shown for doing so. Any request for an extension must take the form of a written motion (accompanied by a proposed order), and the motion must include a statement regarding opposing counsel's position on an extension.

Specific restrictions will be placed on further extensions when the case is not moving at a reasonable pace.

Extensions for dates regarding appearances before the Court will be granted infrequently. All such requests should be made at least 5 days in advance of the scheduled date.

B. Discovery Matters

1. **Length of Discovery Period and Extensions**

Generally, a period of 120 days is permitted for discovery unless the parties indicate that a different time frame is needed and the Court approves that time frame. Extensions of time for discovery are permitted for good cause shown, provided that the case has been advanced by counsel during the initial period of discovery.

2. **Expert Witnesses**

Judge Gibson generally schedules expert discovery and the date for a *Daubert* hearing, if necessary, after fact discovery. If the parties desire to take expert discovery earlier, he will allow it.

3. **Deposition Disputes**

If Judge Gibson is available, he will accept telephone calls from counsel in a deposition in order to resolve a dispute.

4. **Stay of Discovery**

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion and will be granted only upon a showing of good cause. In some cases, discovery may be limited to topics reasonably related to the dispositive motion.

5. **Limitations on Discovery**

No standard form restrictions on the number of interrogatories or length of depositions are employed beyond those set forth in the Federal Rules of Civil Procedure. However, the parties are expected to use their common sense and discretion in discovery matters, and the Court will entertain motions to limit discovery when the request propounded is unreasonable.

6. Rule 11 & Rule 37 Motions/Sanctions

The Court expects counsel to avoid the necessity for filing of Rule 11 and/or Rule 37 motions through the exercise of good professional judgment, common courtesy, and civility. Counsel fees and costs will be awarded in appropriate circumstances. Briefs are required.

C. Injunctions and Temporary Restraining Orders

Ex parte contact with the Court should be avoided. Therefore, in an injunction and/or temporary restraining order, the moving party must establish that good faith efforts were made to contact the opposing party or its counsel prior to seeking relief, supported by an Fed. R. Civ. P. 65(b) affidavit regarding the same. Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order.

The party moving for either a temporary restraining order or a preliminary injunction should include affidavit(s) in support of the motion with all relevant agreements attached to the affidavit(s). Any response to the motion must be accompanied by affidavits(s).

All motions for injunctions and temporary restraining orders are handled as expeditiously as possible. After a review of the pleadings and affidavit(s), the Court will determine whether to conduct a hearing and, if so, the scope of the testimony.

D. Patent Cases

All patent cases must follow the Local Patent Rules of Court. These rules can be found at http://www.pawd.uscourts.gov.

E. Trial Procedures

1. Scheduling of Cases

At or before the pretrial conference, the Court will schedule a date for trial. There will generally be one or more backup cases scheduled for the same date. Vacation schedules, family conflicts, and personal conflicts are accommodated where possible, but counsel must notify the Court of any such conflict as soon as possible.

2. Pretrial Conference

At the pretrial conference, the parties will discuss witness lists, exhibits, motions in limine, jury instructions, voir dire, verdict slips, and any other pretrial matters. Any unresolved *Daubert* motions will also be addressed. At the pretrial conference, the Court will inform the parties of the number of days they will be allotted to present testimony and evidence at trial.

3. Trial Hours/Days

Court is in trial session Monday through Friday, 9:00 a.m. to 5:00 p.m., with breaks when appropriate. Counsel must be available at 8:30 a.m. (or earlier if necessary to ensure that trial commences on time) to meet with the Court concerning scheduling, trial problems, and to obtain advance rulings on evidentiary or other issues.

4. Trial Briefs

Trial briefs are optional, but appreciated. There are no filing date restrictions, but the briefs are more useful and more likely to be given serious consideration if filed at least 10 days before trial. Trial briefs should not exceed 15 pages.

In bench trials, counsel are required to submit proposed findings of fact and conclusions of law. The Court will discuss this requirement with counsel at the pretrial conference.

5. Voir Dire

Judge Gibson generally conducts voir dire in civil cases. Unless otherwise ordered by the pretrial order, counsel are permitted to file proposed supplemental voir dire questions at least 10 days before trial. The Court will include or incorporate proposed supplemental voir dire questions as appropriate. Counsel shall attempt to obtain consent of opposing counsel prior to submission of any such supplemental voir dire. Supplemental voir dire questions to which counsel have agreed upon shall state "consented to by counsel."

6. Note Taking by Jurors

Jurors are permitted to take notes and are provided notebooks to do so.

7. Side Bars

Counsel should be considerate of the jurors' time. Side bars are therefore discouraged. Counsel are expected to file motions in limine and supporting briefs regarding any evidentiary matters in a timely manner in accordance with the final pretrial order. Counsel will meet with the Court each day at 8:30 a.m. (or earlier if necessary) to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-court objection in the presence of the jury.

8. Examination of Witnesses Out of Sequence

Where appropriate, witnesses may be examined out of sequence upon request of a party. Witnesses may be examined in any order to which counsel agrees. For example, counsel could agree that expert witnesses for each side will testify immediately after each other.

9. Opening Statements and Closing Arguments

Up to one hour is allotted to each side for opening statements and closing arguments, depending on the complexity of the case. Normally, not more than one-half hour is required for each side.

10. Examination of Witnesses or Argument by Multiple Attorneys

Except in unusual circumstances with advance leave of Court, co-counsel are not permitted to split the examination of a witness.

11. Examination of Witnesses Beyond Direct and Cross

Re-direct and re-cross examination is permitted on a very limited basis, provided counsel has shown it is necessary.

12. Videotaped Testimony

The Court has no special procedures regarding videotaped testimony except those set forth in the Local Rules.

13. Reading of Material into the Record

Counsel can devise their own methodology for reading material into the record, provided opposing counsel agrees.

14. Exhibits

All exhibits must be exchanged and marked in advance of trial. All objections are to be made and ruled upon prior to trial. Two copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least 3 days in advance of trial, unless otherwise ordered by the Court. If counsel prefer that the jury be given joint exhibit binders during trial, counsel may raise that request at the final pretrial conference.

Voluminous data shall be presented by summary exhibits pursuant to Fed. R. Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

Counsel are not to take time during trial to exchange exhibits with each other as this will have been accomplished prior to trial. With advance notice and approval of the Court, visual aids and exhibits may be used during opening statements. Exhibits need not be offered into evidence in numeric order. In the case of large exhibits, once a disposition of the case has been reached, counsel are to make arrangements for retrieval of those exhibits immediately.

15. Directed Verdict Motions

The Court requires directed verdict motions to comply with the Federal Rules of Civil Procedure.

16. Jury Instructions and Verdict Forms

All parties are required to submit proposed jury instructions and verdict slips at least 7 days prior to trial, along with a compact disc (CD)/flash drive containing the instructions in Microsoft Word format. In the alternative, counsel may submit these documents via e-mail to Judge Gibson's law clerks. Documents submitted via e-mail must also be filed on the CM/ECF System.

Near the end of trial, Judge Gibson will hold a charging conference with counsel. At that time, a ruling will be made on each point for charge objected to by a party, and a copy of the Court's proposed charge will be provided to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply proposed alternate language, together with case authority. Counsel will also be requested to approve the form of the verdict slip at the charging conference.

17. Proposed Findings of Fact and Conclusions of Law (Non-Jury)

The Court will establish a schedule for filing proposed findings of fact and conclusions of law at the conclusion of a non-jury trial.

Proposed findings of fact and conclusions of law shall be consecutively numbered. Plaintiff's proposed findings of fact shall address each contested issue of fact. Each proposed finding of fact shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. Defendant shall subsequently file consecutively numbered counter findings of fact and conclusions of law corresponding to Plaintiff's submission.

In addition to proposed findings of fact and conclusions of law, each party may file a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law. Supporting briefs shall not exceed 15 pages.

18. Offers of Proof

There should be no requests for offers of proof during trial because the parties will have discussed the witnesses at the 8:30 a.m. conference with the Court.

19. General Courtroom Rules

Counsel can conduct the trial in any manner they see fit, provided it is done with courtesy and civility and is consistent with the Rules of Professional Conduct.

20. Courtroom Equipment

Counsel are strongly encouraged to familiarize themselves with the courtroom equipment before trial. Should the parties require training or other information on use of the courtroom technology, the parties may contact Judge Gibson's law clerks.

F. Jury Deliberations

1. Written Jury Instructions

The jury will be provided with a copy of the jury instructions.

2. Exhibits in the Jury Room

Generally, the jury will be given all admitted exhibits for use in deliberations.

3. Jury Requests to Read Back Testimony During Deliberations

Requests to read back testimony during deliberations generally will be denied.

4. Jury Questions

All written questions submitted by the jury are read to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. In most cases, the jury will then be summoned to the courtroom where a verbal reply will be read. A written reply is also provided where appropriate.

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom area, but must be available by telephone so that they can promptly return to the courthouse upon being contacted by the Court.

6. Interviewing the Jury

Interviewing of jurors post-verdict is discouraged, but the jury is told that each juror may decide himself or herself whether to be interviewed.

IV. CRIMINAL CASES

A. Pretrial Motions

Motions for extension of time to file pretrial motions are generally granted, particularly if there is a significant amount of discovery material. The proposed order accompanying the motion should address the requirements of the Speedy Trial Act. (See Exhibit "C").

B. Pretrial Conferences

A status conference is scheduled in each case, well in advance of trial.

C. Guilty Pleas

There are no special rules regarding guilty pleas and no deadlines for accepting or rejecting a plea arrangement.

D. Voir Dire

Judge Gibson conducts voir dire in criminal cases. Unless otherwise ordered, counsel are permitted to file proposed supplemental voir dire questions at least 10 days before trial. The Court will include or incorporate proposed supplemental voir dire questions as appropriate. Counsel shall attempt to obtain consent of opposing counsel prior to submission of any such supplemental voir dire. Those supplemental voir dire questions to which counsel have agreed upon shall state "consented to by counsel."

E. Trial

Counsel may decide when or if they will present an opening statement. Defense counsel may not open both before and after the prosecution.

Side bars are disfavored and will not be permitted if it is to decide an issue that could have been decided before or after trial.

Unless the Court indicates otherwise, motions in limine are to be filed, together with supporting briefs, at least two weeks before trial. Responses are to be filed one week before trial.

Transcripts of tape recorded conversations are permissible.

The government is encouraged to disclose Jencks Act material as early as possible, and generally no later than 4 days before trial. All *Brady/Giglio* material within the possession or control of the government or its agents should be disclosed at least two weeks before trial, and the government is under a continuous obligation to disclose such material to the defense.

Special interrogatories to the jury will be submitted upon request of counsel in appropriate cases.

A copy of the jury instructions will be provided to the jury.

Unless otherwise ordered, counsel are required to submit proposed jury instructions at least 10 days before trial, along with a compact disc (CD)/flash drive containing the instructions in Microsoft Word format. In the alternative, counsel may submit these instructions via e-mail to Judge Gibson's law clerks. Any document submitted via e-mail must be filed on the CM/ECF System.

Near the end of trial, a charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the court's proposed charge will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply alternate language, together with case authority.

V. BANKRUPTCY APPEALS (TO THE DISTRICT COURT)

A. Filing and Scheduling

The brief for the appellant shall be served and filed within 14 days after entry of the appeal on the docket pursuant to Bankruptcy Rule 8007; the brief for appellee shall be served and filed within 14 days after service of appellant's brief. Reply briefs may be filed according to the schedule set forth in Bankruptcy Rule 8009(a)(3), upon notification to the Court that such reply brief shall be filed.

B. Oral Argument

Oral argument is not generally scheduled, but may be granted upon request.

C. Other General Practice/Procedures

Briefing schedules and other deadlines imposed by the Federal Rules of Bankruptcy Procedure will be modified, where appropriate, on the request of the party.

EXHIBIT A

INITIAL SCHEDULING ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____,	)	
	)	
Plaintiff(s),	)	**CIVIL ACTION NO. 3:13-___**
	)	
v.	)	**JUDGE KIM R. GIBSON**
	)	
_____,	)	
	)	
Defendant(s).	)	

INITIAL SCHEDULING ORDER

NOW, this _____ day of _____ 20___, **IT IS HEREBY ORDERED** that the above-captioned civil action is placed under Rule 16.1 of the Local Rules of the United States District Court for the Western District of Pennsylvania for pretrial proceedings and all provisions of the Rule will be strictly enforced.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to the Post-Discovery Status Conference, or any other status conference, in order to obtain authority for the purpose of participating in settlement negotiations to be conducted by the Court. Counsel are encouraged to appear with their principals at all such conferences, or instruct the principals to be available by telephone to facilitate the amicable resolution of all litigation.

IT IS FURTHER ORDERED that compliance with the provisions of Local Rule 16.1 shall be completed as follows:

A. Initial Case Management Plan

1. The parties shall move to amend the pleadings or add new parties by _____.

2. The parties shall make the required disclosures identified in Rule 26(a)(1)(A)(B)(C) and (D) on or before

_____.

The parties are reminded that under the rule, a party shall make its initial disclosures based on the information then reasonably available, and is not excused from making its disclosures because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

3. Modifications of the times for, and extent of, any disclosures under Fed. R. Civ. P. 26(a) and 26(e)(1) shall be made by

_____.

4. The following limits on the scope of discovery shall apply:

_____.

5. The parties shall complete all fact discovery by

_____.

All interrogatories, notices of deposition, requests for admissions and requests for production shall be served within sufficient time to allow responses to be completed and filed prior to the close of discovery.

6. The parties shall complete all expert discovery by

_____.

The parties shall make their disclosure of experts required by Rule 26(a)(2) by_____.

The depositions of all experts shall be completed by

_____.

7. The parties shall designate this case for arbitration, mediation, appointment of a special master, or other special procedure, if appropriate, by

_____.

8. A Post-Discovery Status Conference is scheduled for

_____.

(Note: The Court will fill in this date after the IR 16 conference).

The parties shall be prepared to discuss settlement and the possibility of using a method of alternative dispute resolution. Seven days prior to the date of the Post Discovery Status Conference, counsel and unrepresented parties are jointly responsible for submitting to the Court a proposed Final Scheduling Order that includes: (1) dates by which dispositive motions should be filed and responded to; (2) dates by which the parties' pretrial statements should be filed; (3) dates by which motions *in limine* should be filed and responded to; (4) dates by which *Daubert* motions should be filed and responded to; (5) dates on which argument on *Daubert* motions and motions in limine shall be heard; (6) a date for the final pretrial conference; and (7) trial dates. *See* Exhibit "B" of Judge Gibson's Practice and Procedures.

9. The parties shall file any dispositive motions that are appropriate prior to the close of discovery on or before

_____.

The nonmoving party's response to any such motion is due on

_____.

Deadlines for dispositive motions that are only appropriate after the close of discovery will be set at the Post-Discovery Status Conference. Failure to file a dispositive motion before the close of discovery will not act as a waiver of any right to file an appropriate motion after the close of discovery.

B. <u>Motion Practice</u>

(1) Motions Not Requiring Briefs

No brief is required by either movant or respondent unless otherwise directed by the Court with respect to the following motions:

(a) For extension of time for the performance of an act required or allowed to be done;

(b) To continue a Post-Discovery Status Conference;

(c) To amend the pleadings;

(d) To file supplemental pleadings;

(e) For a substitution of parties; and

(f) To compel discovery.

Any of the above-motions not requiring briefs shall be accompanied by a proposed order stating the relief requested by said motion. All other motions and responses thereto, must be accompanied by a brief. The Clerk shall not accept for

filing any motion, application, or objection requiring a brief, which is not accompanied by such brief, without permission of the Court. Briefs in support of a motion and briefs in opposition to a motion shall be limited to twenty-five (25) pages excluding tables.

C. Procedure Governing Discovery Disputes

The Federal Rules of Civil Procedure allow for liberal discovery. In the absence of a privilege, relevancy is the test for determining whether material is discoverable. Fed. R. Civ. P. 26(b)(1). This rule is construed broadly and includes "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

Discovery is not limited to the issues raised only in the pleadings, but rather is designed to define and clarify the issues. *Id.* at 351. Nor is discovery objectionable on the ground that the information sought would be inadmissible at trial, so long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Additionally, should it be determined that, given the needs of the case, compliance with a discovery request would be burdensome or expensive, this will not necessarily be grounds for nonproduction, but it may impact the Court's decision as to who must bear the cost of production.

In the event a dispute arises over a discovery request, all counsel are required to confer in good faith in an effort to resolve the issue without court intervention. It shall be the obligation of the attorney for the party seeking court intervention to initiate such conferences and to do so promptly. Refusal to confer in good faith may subject counsel to

sanctions, such as the imposition of costs, including the attorney's fees of opposing counsel, under Fed. R. Civ. P. 37(a)(4).

In the event, however, that the parties to this action are unable to informally resolve a discovery dispute and court intervention is sought, the movant shall file a Motion to Compel Discovery (or Protective Order). Attached to the motion shall be a proposed Order of Court in which the moving party shall set forth, in specific detail, its proposal for completely resolving the discovery dispute. Within fourteen (14) working days after receipt of the motion, the respondent, either singularly or in conjunction, shall file a written response. Attached to the response shall be respondent's proposed Order of Court.

BY THE COURT:

_____

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

EXHIBIT B

FINAL SCHEDULING ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____,	)	
	)	
Plaintiff(s),	)	**CIVIL ACTION NO. 3:13-___**
	)	
v.	)	**JUDGE KIM R. GIBSON**
	)	
_____,	)	
	)	
Defendant(s).	)	

FINAL SCHEDULING ORDER

NOW, this _____ day of _____ 20____, **IT IS HEREBY ORDERED** that compliance with the provisions of Local Rule 16.1.B.3 shall be completed as follows:

A. Final Case Management Plan

(1) The parties shall file motions for summary judgment, if appropriate, on or before _____.

The nonmoving party's response to the motion for summary judgment is due on _____.

No further briefing is allowed without leave of court.

(2) Plaintiff(s) pretrial narrative statement shall comply with Local Rule 16.1.C.1 and shall be filed by _____.

Defendant(s) pretrial narrative statement shall comply with Local Rule 16.1.C.2 and shall be filed by_____.

Counsel shall specify the material facts to be proved at trial. Proof of material facts not specified may be excluded at trial upon objection or by the Court *sua sponte*. ANY EXHIBIT WHICH HAS NOT BEEN IDENTIFIED BY

COUNSEL IN THE PRETRIAL NARRATIVE STATEMENT, EXCEPT AN EXHIBIT TO BE USED SOLELY FOR IMPEACHMENT PURPOSES, SHALL NOT BE ADMITTED AS EVIDENCE, UNLESS THE PARTIES OTHERWISE AGREE OR THE COURT ORDERS OTHERWISE. The parties shall not amend or supplement their pretrial statements without leave of the Court.

(3) The parties shall file any motions *in limine*, proposed points for charge and proposed voir dire no later than _____.

The nonmoving party's response to any motion *in limine* shall be due no later than _____.

NO MOTIONS *IN LIMINE* WILL BE ENTERTAINED BY THE COURT PRIOR TO _____.

(4) The Court will conduct a pretrial conference on _____, at _____ a.m. / p.m. IMPORTANT INFORMATION REGARDING ATTORNEYS' RESPONSIBILITIES AT THE PRETRIAL CONFERENCE APPEARS IN SECTION (C) OF THIS ORDER.

(5) The case shall presumptively be called for trial on

_____, at _____ a.m./p.m.

THE ABSENCE OF ANY WITNESS SHALL NOT BE SUFFICIENT CAUSE TO DELAY THE TRIAL.

(6) Other appropriate matters.

B. Motion Practice

(1) Motions Not Requiring Briefs

No brief is required by either movant or respondent unless otherwise directed by the Court with respect to the following motions:

(a) For extension of time for the performance of an act required or allowed to be done;

(b) To continue a pretrial conference, hearing, or the trial of an action;

(c) To amend pleadings;

(d) To file supplemental pleadings; and

(e) For a substitution of parties.

Any of the above-motions not requiring briefs shall be accompanied by a proposed order stating the relief requested by said motion. All other motions and responses thereto, must be accompanied by a brief. The Clerk shall not accept for filing any motion, application or objection requiring a brief not accompanied by such brief without permission of the Court. Briefs in support of a motion and briefs in opposition to a motion shall be limited to twenty-five (25) pages excluding tables.

(2) Summary Judgment Motions

The brief in support of a motion for summary judgment shall be accompanied by a separately filed document entitled "Concise Statement of Undisputed Material Facts" in strict compliance with Local Rule of Court 56.B. The statement shall contain a concise itemization of material facts that the movant

contends are not in dispute. The facts shall be numbered and appear in a form similar to plaintiff's complaint. At the conclusion of each fact, movant shall refer, with particularity, to those portions of the record upon which movant relies.

The brief in opposition to a motion for summary judgment shall be accompanied by a separately filed document entitled "Response to Movant's Concise Statement of Undisputed Material Facts" in strict compliance with Local Rule of Court 56.C. The response shall set forth, in separately numbered paragraphs corresponding to the paragraphs set forth in the movant's "Concise Statement of Undisputed Facts," an answer each of the numbered averments of fact set forth in the movant's statement and shall state whether each of the movant's averments of fact are disputed and/or material. If a fact is not admitted in its entirety (as to whether it is undisputed or material), the respondent shall state a concise counter-statement of the matter disputed. At the conclusion of each counter-statement, respondent shall refer, with particularity, to those portions of the record upon which respondent relies. The response shall further set forth in separately numbered paragraphs any other material facts that are allegedly at issue in a separate section entitled "New Matter."

The moving party may file a responsive document stating whether each of the numbered averments set forth in the "New matter" section are disputed and/or material. *For example*:

5) Admitted.

6) Denied. On the contrary [. . . .] *See* Plaintiff's deposition of November 1, 1992, at Page 7, lines 12-14.

All material facts set forth in the Movant's Concise Statement of Undisputed Material Facts shall be deemed admitted for the purpose of summary judgment unless specifically controverted as set forth herein. All parties shall attach to their Concise Statement of Undisputed Material Facts and any Response thereto, copies of the documents or portions of the record that support their respective positions.

(3) Motions *in Limine*

Prior to filing a motion *in limine*, counsel shall confer and consult so as to ensure that a genuine dispute exists with respect to the subject matter of the motion *in limine*. **A motion *in limine* must be accompanied by a certificate from the moving counsel of record certifying that he has conferred and consulted with adverse counsel with respect to each matter set forth in the motion and that the parties are unable to resolve their differences.** The certificate shall set forth the exact time and place of the conference and consultation. If the required certificate cannot be furnished, counsel for movant shall furnish an alternative certificate stating that opposing counsel has refused to so meet and confer, or to sign the required certificate, or stating such other facts and circumstances supporting the absence of the required certificate and movant's efforts to obtain compliance by opposing counsel.

C. <u>Pretrial Conference</u>

At the pretrial conference, ATTORNEYS MUST BE PREPARED TO DO EACH OF THE FOLLOWING:

(1) **Indicate** on the record whether the exhibits of any other party are agreed to or objected to, and offer the reason(s) for any such objection.

(2) If any legal issues remain undecided, **present** the proper motions, along with a brief.

(3) **Estimate** the number of days required for trial.

(4) **Identify** the witnesses that are to testify at trial.

(5) **Identify** any depositions or any portion thereof to be read into evidence. A party intending to use a discovery deposition in its case-in-chief shall: (a) identify the deposition by the name of the deponent and date of his or her deposition; and (b) designate to the Court and to the opposing party the pages and lines that will be offered at trial. Opposing counsel shall counterdesignate those lines and pages of the same deposition that will be offered at trial. Objections to the admissibility of any portion thereof to be read into evidence shall be identified at the pretrial conference. Objections to the admissibility of any portion shall be submitted to the Court at the conference. This order does not include videotaped qualifications of experts.

(6) **Identify** known or anticipated evidentiary issues.

(7) **Inquire** of their authority to settle and have their clients present or available by telephone. The Court shall inquire whether counsel have discussed settlement. Such record shall be made of the

conference as the Court orders. Failure to fully disclose in the pretrial narrative statement, or at the pretrial conference, the substance of evidence proposed to be offered at trial will result in the exclusion of that evidence at trial, unless the parties otherwise agree or the Court orders otherwise. The only exception shall be evidence used for impeachment purposes.

BY THE COURT:

_____

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

EXHIBIT C

PROPOSED ORDER ON MOTION FOR EXTENSION OF TIME TO FILE PRETRIAL MOTIONS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____,	)	
	)	
Plaintiff(s),	)	**CIVIL ACTION NO. 3:13-___**
	)	
v.	)	**JUDGE KIM R. GIBSON**
	)	
_____,	)	
	)	
Defendant(s).	)	

ORDER

NOW, this _____ day of _____ 20___, this matter coming before the Court on Defendant's Motion for Extension of Time to File Pretrial Motions,

IT IS HEREBY ORDERED that Defendant's motion is **GRANTED**.

IT IS FURTHER ORDERED that the extension of time from _____, 20___, to _____, 20___, caused by this continuance be deemed an excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq*. The Court finds that the ends of justice served by granting this continuance outweigh the best interest of the public and the Defendant to a speedy trial, since, for the reasons stated in Defendant's motion, the failure to grant such continuance would deny counsel for Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).

IT IS FURTHER ORDERED that any pretrial motions referred to in Local Criminal Rule 12.1 are due on or before _____, 20___.

BY THE COURT:

_____
KIM R. GIBSON
UNITED STATES DISTRICT JUDGE