

**PRACTICES AND PROCEDURES OF
JUDGE TERRENCE F. McVERRY**

1. GENERAL MATTERS

A. Communications with the Court

The Court prefers that communications be in the form of a motion for docketing. However, correspondence is acceptable, provided all parties are copied. Emergency or selective situations may warrant telephone contact.

B. Communications with Law Clerks

Communications with law clerks regarding the status of cases and administrative matters are permissible.

C. Telephone Conferences

Attorneys and parties from outside the city are permitted to participate in the initial case management conference and routine status conferences by telephone upon request. However, for post discovery status conferences, settlement and pretrial conferences, trial counsel are expected to appear in person. For all telephone conferences with the Court, counsel for the moving party shall initiate the call and contact the Court only after all counsel are on the telephone.

D. Pro Hac Vice Admissions

Such motions are generally filed and handled on an informal basis, however, counsel may make the motion before or on the date of trial.

E. **Comment to the Media**

No special policy is in effect and counsel should abide by the applicable Rules of Professional Conduct. Generally, the Court does not comment to the media.

II. **MOTIONS PRACTICE**

A. **Requirement**

A motion shall be filed in all instances when a moving party seeks relief from the Court. Joint and uncontested motions should be clearly designated as such. All motions shall have a proposed order attached with requested relief specified.

Discovery motions shall have a local rule discovery dispute certificate attached.

Responses to all motions are required unless the motion is unopposed and counsel must notify the Court of non-opposition within two (2) days of filing, by

telephone or otherwise. Response schedule:

- 1) General, routine motions, i.e., extensions of time, discovery, etc. - seven (7) days;
- 2) Motion to Dismiss - twenty-one (21) days;
- 3) Other dispositive motions, i.e., Summary Judgment - twenty-eight (28) days.

Counsel shall immediately notify the Court (by telephone or otherwise) upon resolution of an outstanding motion by agreement.

B. **Briefs**

Briefs in support and opposition to substantive and dispositive motions which involve the merits of the case are required. Motions for an extension of time, continuance or a minor discovery dispute do not require a brief unless directed by the Court. Briefs shall not exceed twenty (20) pages. Reply briefs are not encouraged, but may be filed without leave of Court if filed within seven (7) days of the date the opposition brief was filed. A reply brief shall address only new

arguments advanced by the opposition and shall not exceed five (5) pages. No surreply briefs are to be filed without leave of Court upon good cause shown.

C. **Oral Argument**

Oral argument will be heard on selected factually and/or legally complex matters, but not generally. Requests for oral argument will be considered and granted when warranted in the discretion of the Court.

D. **Chambers Copies of Motion Papers**

Counsel are requested to send courtesy copies to chambers of all briefs, exhibits or attachments which exceed twenty (20) pages. Multiple exhibits must be bound and labeled by tabs.

E. **Magistrate Judge's Report & Recommendation**

A Report & Recommendation ("R&R") to which objections have been filed will not be decided until a response is filed by the non-objecting party (or opposite party if both object). Briefs not in excess of ten (10) pages are encouraged. If no objections have been filed, a decision to adopt or not will be made solely on the basis of the R & R and underlying briefs.

Objections and appeals of Magistrate Judge orders on discretionary issues pertaining to discovery disputes are permitted, but not encouraged.

F. **Evidentiary Hearing**

Any evidentiary hearing which is warranted by the filing of a pretrial motion(s) (i.e., Daubert) will be conducted in advance of trial.

G. **Motions in Limine**

Motions in limine with supporting brief(s) are required and must be filed in accordance with the trial scheduling order. Generally such motions will be ruled upon in advance of trial.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court utilizes a standard form case management order based on L.R. 16.1. Other than the requirements of L.R. 16.1, no additional items are generally included in the order. Copies of the standard form case management and pretrial orders are attached hereto as Exhibits A and B.

2. Initial Case Management Conference

An initial case management conference will be scheduled within forty (40) days of the filing of an answer, if not sooner. Trial counsel are required to attend and shall obtain full settlement authority prior to the conference. All parties shall be available by telephone.

Following the case management conference, the L.R. 16 Order (Case Management Order) will be issued after discussion with trial counsel as to settlement status, ADR options, length of time for discovery, necessity of expert witnesses and other relevant matters. In addition, the Court may encourage the parties to agree to submit the case to final and binding arbitration or trial before a United States Magistrate Judge. **Accordingly, counsel shall discuss these issues with their clients prior to attending the conference and be prepared to respond.**

3. Post Discovery Status Conference

A post discovery status conference with counsel will be scheduled immediately following the close of discovery to discuss settlement, ADR, scheduling, dispositive motions and trial, etc.

Additional status conferences may take place on request of counsel and in all cases prior to the trial date to discuss settlement and/or trial. Trial counsel are encouraged to request the assistance of the Court on any matter and conferences to handle routine problems may be conducted by telephone. (See Telephone Conferences *supra*.)

4. **Pretrial Conference**

A pretrial conference will be scheduled following the filing of pretrial statements to discuss the potentiality of settlement, ADR, scheduling of pretrial motions of all types with hearings or arguments as needed, anticipated legal or trial related issues, requirements regarding witness lists, exhibits, jury instructions, etc. Trial days must be estimated and a trial date will likely be scheduled or otherwise projected. If the parties anticipate or want the Court to engage in settlement discussions they should comply with the settlement conferences provisions hereinafter set forth.

5. **Settlement Conferences**

The Court will conduct a settlement conference upon request. At least three working days prior to such conference, each party should submit a confidential letter to the Court detailing the relative strengths and weaknesses of its case, as well as the settlement demand/offer and posture of the parties. The letters will not be filed nor shared with opposing counsel. Accordingly, candor is expected.

Trial counsel and the client with full settlement authority shall attend all settlement conferences, in person. In cases in which there is insurance coverage (or the possibility of insurance coverage), a representative(s) from the carrier(s) shall attend the settlement conference. **The carrier representative(s) must have full settlement authority** on behalf of the carrier(s).

As at the initial case management conference, counsel shall be prepared to discuss ADR possibilities at any settlement conference. 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. **Accordingly, trial counsel shall speak with their clients about both of these issues prior to attending the conference and be prepared to respond.** A mini-trial may be conducted when the parties believe it will assist settlement.

Finally, at settlement conferences trial counsel shall be prepared to discuss any dispositive motions as well as counsel's prediction regarding the amount of time projected as necessary to try the case.

6. **Extensions and Continuances**

The Court is not inclined to grant multiple extensions for the filing of motions or briefs. Any request for an extension must be by written motion (accompanied by a proposed order), and the motion must include a statement regarding opposing counsel's position on the extension request. Specific restrictions will be placed on further extensions when the case is not advancing.

Extensions for dates regarding appearances before the Court will be granted infrequently.

B. **Discovery Matters**

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

Generally one hundred twenty (120) days will be permitted for discovery unless the parties indicate that additional time will be needed for good cause. An initial request for an extension of time for discovery will generally be permitted for cause shown so long as discovery has been moving forward. However, a subsequent request(s) will be scrutinized closely.

2. **Expert Witnesses**

Discovery depositions of expert witnesses are nearly always permitted after completion of fact discovery. Expert witness discovery is to be reciprocal.

3. **Deposition Disputes**

Discovery disputes shall be presented by motion and may prompt a telephone conference request by the Court to discuss resolution. For discovery disputes that arise during a deposition, the attorneys may together contact the Court to determine whether the Court is available and/or inclined to address the matter at that time.

4. **Stay of Discovery**

The filing of a dispositive motion will not automatically stay discovery especially in the instance of a partial motion to dismiss or partial summary judgment. A stay may be sought by motion and will be granted only if the right to relief under the dispositive motion is clear or there is some other good reason. In some cases, discovery may be limited to those facts in support or opposition to the dispositive motion (e.g., Motion to Dismiss for lack of *in personam* jurisdiction).

5. **Limitations on Discovery**

No standard form restrictions on the number of interrogatories or length of depositions are in effect beyond those set forth in the Federal Rules of Civil Procedure. However, the parties are expected to use common sense and discretion in discovery matters, and the Court will entertain motion requests to limit discovery when that which has been propounded is unreasonable.

6. **Rule 11 Motions - Rule 37 Sanctions**

The Court expects counsel to work cooperatively and avoid the necessity of filing such motions through the exercise of good professional judgment, common courtesy and civility. However, counsel fees and costs will be awarded in appropriate circumstances. Briefs are required.

C. **Temporary Restraining Orders (“TRO”) and Preliminary Injunctions (“PI”)**

A copy of any motion for a TRO and/or PI must be provided to Chambers immediately upon filing. After review of the pleadings, affidavit(s) and briefs, the Court will determine whether to conduct a hearing, the scope of the necessary testimony and evidence to be presented and the matter will be scheduled for hearing as expeditiously as possible.

The moving party must establish that serious efforts have been made to contact or serve the opposing party and/or counsel prior to seeking TRO relief, supported by an F.R.C.P. 65(b) Affidavit. Hearings will be granted on a very limited basis when the opposing party has not been noticed or served. A request for expedited discovery will generally be granted, provided that all such discovery is reciprocal.

D. **Trial Procedures**

1. **Scheduling of Cases**

At or shortly after a pretrial conference, a date for trial will be scheduled. There will generally be one or more backup cases scheduled for the same week on a rolling docket basis. Counsel in backup cases will have a minimum number of two (2) days notice prior to being called to trial. Vacation schedules, family conflicts and personal/professional conflicts will be accommodated when possible, provided reasonable notice is forthcoming.

2. **Trial Days/Hours**

Court will be in trial session Monday through Thursday of each week from 9:00 a.m. to 4:30 p.m. (earlier or later if necessary) with a 10-15 minute recess in the morning and afternoon. Fridays are reserved for case management and pretrial conferences, sentencings and evidentiary hearings/arguments. Counsel must be available at 8:00 a.m. (or earlier if necessary) to meet with the court concerning scheduling, trial problems, and to obtain advance rulings on anticipated evidentiary or other issues.

3. **Trial Briefs**

Trial briefs are important, but optional. There are no filing date restrictions, but the briefs are much more useful and more likely to be given serious consideration if filed at least one (1) week before trial. Briefs should not exceed twenty (20) pages.

4. **Voir Dire**

The Judge and/or Court staff conducts voir dire in civil cases. Counsel will be permitted to supplement the standard questions provided that the proposed voir dire questions are submitted in accordance with the trial scheduling order. If counsel agree on the proposed question(s), they will likely be permitted.

5. **Notetaking and Questions by Jurors**

Jurors are permitted to take notes during trial and appropriate notebooks and pens will be provided.

Jurors are not permitted to ask questions of witnesses, counsel or the Court other than a question which may arise during deliberations.

6. **Side Bar**

Side bars are discouraged because they waste the jury's time and unduly

extend the length of the trial. Counsel are required to file motions in limine and supporting briefs in advance of trial. Counsel may meet with the Court at 8:00 a.m. (or earlier if necessary) each day to raise/argue points of evidence or other issues that may otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a ruling on the objection in Court in the presence of the jury.

7. **Opening and Closing Statements**

One-half (1/2) to one (1) hour will generally be permitted to each party for opening and closing statements, depending on the complexity of the case.

8. **Examination of Witnesses**

Witnesses are not to be addressed or questioned on a first name basis.

Witnesses are to be addressed formally, i.e., Mr., Ms. or by professional title.

9. **Examination of Witnesses Out of Sequence**

When appropriate, witnesses may be examined out of sequence in the discretion of the Court. Generally, witnesses may be examined in any order upon which counsel agree.

10. **Examination of Witnesses or Argument by More Than One Attorney**

One attorney per witness/argument. Co-counsel are not permitted to split up the examination of a witness or opening and closing arguments.

11. **Examination of Witnesses Beyond Direct and Cross**

Redirect and recross examination is permitted generally. However, no re-redirect or re-recross is permitted following the Court having questioned a witness after re-cross examination.

12. **Videotaped Testimony**

No special procedures, but for the local rules of Court.

13. **Reading of Material Into the Record**

Counsel may devise their own methodology, provided opposing counsel agrees.

14. **Exhibits**

All exhibits must be marked and exchanged in advance of trial. To avoid duplication and potential jury confusion, counsel shall confer in advance of trial and agree on one joint set of consecutively numbered exhibits. Exhibits which will be offered/utilized/relied upon at trial by both plaintiff(s) and defendant(s) shall be marked consecutively as Joint Exhibit 1, 2, 3, etc., in numerical order. Exhibits which will be offered at trial only by plaintiff(s) shall be marked consecutively as Plaintiff(s) Exhibit 1, 2, 3, etc., and exhibits which will be offered at trial only by defendant(s) shall be marked consecutively as Defendant(s) Exhibit 1, 2, 3, etc., in numerical order. Copies of all premarked exhibits shall be provided to the Court in a binder(s), labeled and numerically tabbed in advance of trial. Objections to exhibits are to be made known to the Court prior to trial and same may be ruled upon prior to trial.

Counsel will not have to take time during trial to exchange exhibits.

Exhibits need not be offered into evidence in numerical order. As exhibits are admitted into evidence at trial, each exhibit (or copy thereof) shall be provided to the Courtroom Deputy Clerk for logging, safekeeping and ultimate submission to the jury.

Counsel are encouraged to use courtroom technology to present exhibits to the witnesses, jury and judge. With advance notice to counsel and

approval of the court, visual aids and exhibits may be used during opening statements.

15. **Directed Verdict Motions**

Requirements as set forth in the Federal Rules of Civil Procedure.

16. **Jury Instructions and Verdict Forms**

The Court prefers the Third Circuit Model Jury Instructions and O'Malley, Grenig & Lee. In advance of trial, counsel for the parties shall meet and confer in an effort to agree upon a joint set of proposed jury instructions and verdict slip. Counsel shall then file a single, combined set of proposed instructions and verdict slip. Each proposed instruction shall clearly state whether or not it has been agreed upon by the parties. For proposed instructions on which the parties are unable to reach agreement, the parties' alternative instructions, along with citation to authority, shall be set forth (on the same page, if possible). If counsel are unable to agree on a verdict slip, they shall submit a single document containing the parties' alternative proposals.

During or near the end of trial, the Court will conduct a charge conference at which time a ruling will be made on each point for charge and thereafter a copy of the Court's proposed jury instructions and verdict slip will be provided to counsel. Counsel are required to state objections to the proposed charge at the charge conference and to supply proposed alternate language, together with authority. Counsel will also approve the form of the verdict slip at the conference.

17. **Proposed Findings of Fact and Conclusions of Law (Non-jury trial only)**

Plaintiff shall file consecutively numbered proposed findings of fact and

conclusions of law. The proposed findings of fact shall address each contested issue of fact and cite support by clear and explicit reference to the record evidence relied upon. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment which integrates the proposed findings of fact with the proposed conclusions of law to demonstrate why the relief requested should be granted. The supporting brief shall not exceed twenty (20) pages.

Defendant shall file consecutively numbered counter-findings of fact and counter-conclusions of law, corresponding to the same numbered findings of fact and conclusions of law proposed by plaintiff. Each proposed counter-finding shall be supported by clear and explicit reference to the record evidence. Each proposed counter-conclusion shall be supported by citation to appropriate authority. With the proposed counter-findings and counter-conclusions, defendant also shall file and serve a brief in support of judgment which integrates the counter proposed findings of fact with the counter proposed conclusions of law to demonstrate why the relief requested by plaintiff should not be granted. The supporting brief shall not exceed twenty (20) pages.

The time for filing Proposed Findings of Fact and Conclusions of Law (pre and/or post trial) will be specified in the trial scheduling order.

18. **Offers of Proof**

There should be no need for any request for an offer of proof during trial as counsel will have discussed the next day's trial witnesses at the close of testimony for the day or counsel shall raise any such issue with the Court at a conference at 8:00 a.m. before testimony commences for the day.

19. **General Courtroom Rules**

The Court has no special courtroom decorum rules. Counsel may conduct the trial in any reasonable manner which he/she deems fit, provided it is done with civility, courtesy and proper decorum.

E. **Jury Deliberations**

1. **Written Jury Instructions**

The jury will be provided with a copy of the Court's written jury instructions.

2. **Exhibits**

Generally, the jury will have all trial exhibits during its deliberation.

3. **Jury Requests to Read Back Testimony or Replay Video Tapes or Recording During Deliberations**

Such requests may be granted on a limited basis after consultation with counsel and after the jury is able to point to a specific portion of the testimony, videotape or recording.

4. **Jury Questions**

All written questions submitted by the jury will be supplied to counsel who will then meet with the Court to discuss and hopefully agree upon a reply. In most cases, a written reply will be provided to the jury. When appropriate, however, the jury will be returned to the Courtroom and an oral reply will be provided to them by the Court.

5. **Availability of Counsel During Jury Deliberations**

Trial counsel are not generally required to remain in the Courtroom area, but must be available by telephone so that they may promptly (within 15 minutes) return to the Courtroom upon being summoned by the Court.

6. **Jury Interviews**

Interviews of jurors post-verdict is not encouraged, but the jury will be instructed that it is their individual choice to decide whether or not to answer questions from counsel or the media.

IV. CRIMINAL CASES

A. **Motions**

Requests for extension of time to file pretrial motions are generally granted, especially if there may be a significant amount of discovery material or the case involves a wiretap or a complex factual scenario. Appropriate language which excludes such a delay from the operation of the Speedy Trial Act should be included in any order with such a motion.

B. **Status/Pretrial Conferences**

Status conferences will be scheduled as issues arise which warrant same or upon request of counsel.

A pretrial conference shall be conducted in every case well in advance of trial.

C. **Guilty Pleas**

There are no special rules regarding pleas of guilty and no specific deadlines for accepting or rejecting plea agreements. Counsel are encouraged to engage in plea bargain negotiations and agreements as early as reasonably possible to avoid disrupting the Court's trial schedule. Upon achievement of a plea bargain, counsel for the government shall promptly provide a copy of the plea agreement to the Court so that the plea hearing may be scheduled on the Court calendar.

A written colloquy will be utilized at the plea hearing and counsel may have a general format copy of the colloquy upon request. Counsel for Defendant and the Government will be called upon to summarize the plea agreement on the record at the plea hearing.

D. **Pretrial Procedures**

1. **Brady Material**

Brady material should be exchanged as early as reasonably possible and well in advance of trial.

2. **Jencks Act**

The government is encouraged to provide Jencks Act material as early as reasonably possible, but no later than the date on which jury selection begins.

3. Motions in limine must be filed in advance of trial with a supporting brief(s) in accordance with the trial scheduling order.

4. Transcripts of tape recorded conversations will generally be permissible.

5. Special interrogatories to the jury will be permitted upon request of counsel in appropriate cases or if warranted for sentencing.

E. **Trial Procedures**

1. With the exception of trial scheduling and voir dire, criminal trial procedures are the same as civil cases.

2. **Scheduling**

Criminal cases are scheduled for trial on a priority basis because of the Speedy Trial Act. Accordingly, following the Court's ruling(s) on pretrial motions, the Court will conduct a status conference at which counsel for defendant(s) must advise the Court of defendant(s)' intention to elect a jury/non-jury trial or to plead guilty. The Court will immediately proceed to schedule the trial or plea hearing on a date certain as reasonably soon as practicable.

3. Voir Dire

The Judge conducts voir dire in all criminal cases. Counsel will be permitted to supplement the standard questions provided that the proposed voir dire questions are submitted in accordance with the trial scheduling order. If counsel agree on the proposed question(s), they will likely be permitted.

F. **Sentencing**

1. Tentative Findings and Rulings regarding disputed factual issues or sentencing factors will be provided to counsel in advance of the sentencing hearing.
2. The parties will be notified in advance and provided with the Court's reasoning and justification when a downward or upward departure from the sentencing guidelines is contemplated.
3. Counsel must notify the Court two (2) weeks prior to the sentencing hearing as to whether numerous witnesses or extensive testimony are to be presented.

V. **PATENT CASES**

Counsel are referred to the Court's Local Patent Rules.

VI. **BANKRUPTCY APPEALS (TO THE DISTRICT COURT)**

A. **Filing and Scheduling**

In accordance with Bankruptcy Rule 8009, briefs are to be filed within fifteen (15) days by appellant and fifteen (15) days thereafter by appellee. Reply briefs are permitted in accordance with the Rule. (Amended effective May 10, 2007)

B. **Oral Argument**

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

C. **Other General Practices/Procedures**

Briefing schedules and other deadlines imposed by the Federal Rules of Bankruptcy Procedure may be modified as appropriate upon the request of a party.