

POLICIES AND PROCEDURES
JUDGE MARY KAY COSTELLO

I. GENERAL MATTERS

A. Correspondence with the Court

Counsel and *pro se* litigants may correspond with the Court concerning scheduling, routine matters, or to advise the Court that a case has been settled. All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs, or similar filings permitted by the Federal Rules of Civil or Criminal Procedure or the Local Rules of Civil or Criminal Procedure.

Communications regarding civil and criminal cases should be directed to Judge Costello's Courtroom Deputy Clerk, Michael Coyle, at 267.299.7720 or chambers_costello@paed.uscourts.gov. Direct communication with law clerks is prohibited.

In general, Judge Costello expects counsel to bring matters to her attention only after they have been discussed with opposing counsel.

B. Telephone/Video Conferences

Judge Costello may hold telephone or video conferences to resolve scheduling matters or discovery disputes.

C. Oral Arguments and Evidentiary Hearings

In civil cases, Judge Costello will schedule oral arguments and evidentiary hearings when warranted. In criminal cases, Judge Costello will generally permit oral argument on a substantive motion upon request.

D. Magistrate Judge

The Honorable José R. Arteaga is the designated magistrate judge for Judge Costello's docket. Parties may request that Judge Arteaga preside over a settlement conference and Judge Costello will issue a referral order.

E. Professionalism

Counsel shall be punctual, courteous, and professional at all times, both in the presence of the Court and otherwise. Counsel should stand when addressing the Court unless directed otherwise by Judge Costello. Counsel may make argument and examine witnesses from the lectern or from counsel table. Counsel will direct all comments to the Court or to the witness under examination and not to other counsel.

II. CIVIL CASES

A. Rule 16 Conferences

The Court will schedule a preliminary pretrial conference as described in Federal Rule of Civil Procedure 16 shortly after all defendants have answered the Complaint. At least three business days prior to the pretrial conference, counsel must submit to Chambers a joint report of the Rule 26(f) meeting with a proposed discovery plan. The Rule 26(f) meeting should take place as early in the case as possible. The meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule.

Counsel taking part in any pretrial conference must be prepared to speak on every subject, including settlement, and have authority from their clients to do so. Counsel shall be prepared to discuss all claims and defenses in detail, as well as all topics listed in Federal Rules of Civil Procedure 16(b)–(c) and 26(a) and shall have a thorough understanding of the facts of the case. The Court will issue a Rule 16 Scheduling Order following the conference. The Scheduling Order will reflect counsel’s input at the conference and the Court’s assessment of the time necessary to complete discovery and all pretrial submissions.

B. Continuances and Extensions

Parties are expected to adhere to all dates contained in the Scheduling Order unless there is a compelling reason to justify a change. Counsel should advise the Court immediately of any compelling reason justifying an extension or continuance of any scheduled date. Such a request may be made by letter, describing in detail the basis for the request, noting the agreement or disagreement of all other counsel and setting forth the period of delay requested. A request for an extension or continuance of the date on which the case is listed for trial or the deadline for filing dispositive motions will rarely be granted and will only be considered in extraordinary circumstances.

C. Discovery

1. Length of Discovery Period

In standard track cases, the Court usually allows 120 days from the date of the Rule 16 conference to complete discovery. If counsel anticipates that additional time for discovery will be required, they should raise the issue at the Rule 16 conference or any subsequent status conference.

2. Discovery Disputes

Discovery must be proportional to the needs of the case and should focus specifically on obtaining information truly necessary to resolve the litigation. Counsel must carefully and realistically assess the actual need for the information sought.

The vast majority of discovery disputes should be settled by the parties through civility and common sense. Judge Costello expects the parties to have met and conferred in good faith by telephone, by video conference, or in person before submitting a dispute. If the Court’s intervention is required to resolve a discovery dispute, the Court may impose sanctions in favor of the prevailing party.

Parties may request a telephone or video conference with Judge Costello for straightforward discovery disputes (*e.g.*, no response or objection has been timely served, refusal to schedule deposition). Counsel should file a motion or letter on the docket explaining the dispute prior to any such conference. The letter or motion and any supporting memorandum shall not exceed five pages of double-spaced 12-point font. The responding party may file a response within five days, also limited to five pages of double-spaced 12-point font.

While straightforward discovery disputes may be raised by letter and handled through a conference with the Court, more complicated or involved discovery disputes must be submitted by motion. The motion and any supporting memorandum, together, shall not exceed ten pages of double-spaced 12-point font. The responding party may file a response within five days, also limited to ten pages of double-spaced 12-point font. Judge Costello may require oral argument before deciding any such motions.

Judge Costello permits telephone conferences to resolve disputes during depositions in cases where the deposition would otherwise have to be adjourned.

D. Protective Orders and Motions to Seal

Public policy favors transparency in judicial proceedings. Protective orders and confidentiality agreements undermine such transparency and complicate the resolution of cases at both the trial and appellate level. They should be used sparingly and narrowly tailored. The Court will approve protective orders, confidentiality agreements and stipulated protective orders, where absolutely necessary and for good cause shown. No protective order or confidentiality agreement will be approved without language providing that “the Court reserves its inherent power to modify the terms of this agreement and permit the disclosure of information where the interest of justice so requires.” Except in exceptional circumstances, documents or evidence that form the basis for judgment in a case are unlikely to be protected against disclosure. The fact that the parties have designated materials or information as confidential pursuant to agreement or stipulated order does not mean that the Court will order filings containing such information placed under seal. The public has a presumed right of access to judicial records and documents. Any party wishing to shield such records and documents from public view must prove why the interest in secrecy outweighs the presumption of public access. *See In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 924 F.3d 662, 671-73 (3d Cir. 2019).

E. Motions Practice

1. Motions

All grounds for relief must be set forth in a single comprehensive motion, accompanied by a proposed order, and an attached memorandum. Parties opposing the motion must attach a proposed order referring to the motion. Reply briefs and sur-reply briefs may be filed without seeking leave and must be filed no later than seven days after the filing to which the brief responds.

2. Briefs/Legal Memoranda

Absent an order stating otherwise, any brief or memorandum filed in support of or in opposition to a motion must be limited to twenty-five pages of double-spaced 12-point font, excluding the table of contents, table of authorities, and any attachments or exhibits. Reply briefs

must not exceed ten pages and must be limited to issues newly raised in the opposing party's response. Sur-reply briefs must not exceed five pages and must be limited to issues newly raised in the opposing party's reply. Failure to comply with any of these requirements may result in the brief or memorandum being stricken from the record and not considered by the Court. In those rare instances in which a party believes additional pages are necessary, counsel should seek leave to exceed the page limit by motion.

3. Exhibits

Each document filed as an exhibit 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. The filing of exhibits in text searchable format is encouraged but not required. When submitting deposition testimony as an exhibit, parties are requested to submit the entire deposition transcript.

4. Conferences Before Filing Rule 12 Motions

Except in cases involving a *pro se* litigant, or in bankruptcy or social security appeals, counsel contemplating filing a motion under Federal Rule of Civil Procedure 12(b)(6), (e), or (f), shall first contact opposing counsel to discuss the substance of the contemplated motion and to provide an opportunity to cure any alleged pleading deficiencies or strike certain matter. This conference shall take place at least seven days before the filing of the motion. If the parties are unable to resolve the issue without a motion, then the moving party must state in the motion the date the conference took place and certify that the parties were unable to resolve the issue during the conference. The Court will deny any motion filed pursuant to Federal Rule of Civil Procedure 12(b)(6), (e), or (f) that fails to conform with these requirements.

5. Motions for Summary Judgment

Except for a formal stipulation setting forth facts agreed to in their entirety by all parties, no party shall file a statement of undisputed material facts or a separate statement of facts setting forth its interpretation of the record. Instead, all references to the facts must be included in the party's memorandum with pinpoint citations to the record, including the page of any document or line and page number of any deposition to which reference is made. Failure to cite specifically to the appropriate parts of the record may constitute grounds for denial of the requested relief or may cause a filing to be stricken.

Judge Costello will rarely grant summary judgment in a non-jury case.

F. Injunctions

Judge Costello will promptly list any request for a temporary restraining order ("TRO") or preliminary injunction. Unless the nature of the emergency precludes it, Judge Costello requires the petitioner to serve any motion for a TRO on the respondent and notify the respondent of the date and time of the hearing or argument. Judge Costello may hold a pre-hearing conference to discuss discovery, narrow the issues in contention and allocate time for the hearing. Judge Costello may also require the parties to submit proposed findings of fact and conclusions of law prior to the hearing.

G. Arbitration

Judge Costello will evaluate, as necessary, counsel's Arbitration Certification in non-arbitration track matters and will designate the case for arbitration pursuant to Local Rule of Civil Procedure 53.2 as appropriate. Judge Costello will not hold a Rule 16 conference or issue a Scheduling Order in arbitration track cases, unless there is a *de novo* appeal from an arbitration award. The parties are expected to complete all discovery prior to the date of the arbitration hearing. 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, neither discovery nor dispositive motions will be allowed after the arbitration hearing is held.

H. Final Pretrial Proceedings

Judge Costello will typically set a trial date and related pretrial deadlines during a trial readiness conference after the close of discovery or after dispositive motions are decided.

I. Trial Procedure

1. Jury Selection

Judge Costello will typically conduct *voir dire*. However, the Court will permit counsel to suggest follow-up questions.

2. Note-Taking

Judge Costello permits jurors to take notes.

3. Motions *in Limine*

The time for filing motions *in limine* will be determined at the trial readiness conference and will be confirmed in the Final Pretrial Scheduling Order. Any brief or memorandum filed in support of or in opposition to a motion *in limine* must be limited to five pages of double-spaced 12-point font. Reply briefs are not permitted.

4. Recorded Testimony

Video recorded testimony should begin with the witness being sworn. Counsel should bring objections regarding video recorded testimony to the Court's attention in a motion *in limine* or at the time of the final pretrial conference. After the Court rules on any objections, counsel should edit the tapes according to the Court's order before offering the video recorded testimony at trial.

5. Reading of Material into the Record

Judge Costello will allow the reading of stipulations, pleadings, or discovery material into the record when appropriate.

6. Trial Exhibits

One day prior to trial, each party shall submit to Chambers a list of all witnesses expected to be called at trial, a list of all exhibits the parties intend to use at trial, and two hard copies of each exhibit in binders with each exhibit separately tabbed. If the parties intend to present evidence electronically, then the exhibits shall also be submitted electronically (on a memory stick, CD, or DVD) with each exhibit as a separate file. If the volume of exhibits makes it impracticable to provide hard copies of all exhibits, then they may be submitted electronically only. However, the parties must be prepared to provide the Court with paper copies of specific exhibits upon request.

At the close of evidence, the parties should prepare a joint exhibit list of admitted exhibits to be provided to the jury in aid of their deliberations. After the jury has been instructed and taken to the jury room to begin deliberations, the Court and counsel will discuss the joint exhibit list and determine which exhibits should go back to the jury if the jury requests them.

7. Objections and Sidebars

Judge Costello discourages speaking objections. Instead, counsel lodging an objection should state “objection” and cite the relevant rule. Judge Costello will permit sidebars only sparingly.

8. Proposed Findings of Fact and Conclusions of Law

In non-jury cases, the parties shall submit proposed findings of fact and conclusions of law as specified in the Court’s Final Pretrial Scheduling Order. The parties may submit revised or supplemental findings of fact and conclusions of law with specific reference to trial evidence at the conclusion of the case. A schedule for the submission of revised findings of fact and conclusions of law will be discussed at the conclusion of trial.

9. Unavailability of Witness

If a witness is unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(4), the Court expects an oral or video recorded deposition to be used at trial for that witness, whether the witness is a party, a non-party or an expert. The unavailability of such witness will not be a ground to delay the commencement or progress of trial.

10. Lay Witness Testimony

Any party expecting to offer lay opinion testimony pursuant to Federal Rule of Evidence 701 regarding issues of liability or damages shall provide the opposing parties with information or documents supporting the testimony at the time required for submission of expert reports.

11. Written Jury Instructions

The Court will give the jury a copy of the written jury instructions in appropriate cases.

III. CRIMINAL CASES

A. Scheduling Order

The Court will enter a scheduling order setting deadlines for pretrial motions, proposed *voir dire* questions, proposed jury instructions, proposed verdict sheets, and trial memoranda.

B. Pretrial Conference

The Court will schedule a pretrial conference a few days before the scheduled trial date. Motions *in limine*, evidentiary issues, and any issues related to *voir dire*, jury instructions, and verdict forms will be addressed at that time.

C. Trial Procedures

Sections 1, 2, and 5-7 of Trial Procedures for Civil Cases apply in criminal cases as well.

D. Guilty Pleas

The Government must submit a guilty plea memorandum prior to any guilty plea hearing. The memorandum should include the elements of each offense to which the defendant is pleading guilty, the statutory maximum penalties, the terms of the plea agreement (if applicable), and the factual basis for the plea. The guilty plea memorandum should be provided to the Court at least three days before the guilty plea hearing.

E. Sentencing

Judge Costello will enter an Order for a Presentence Investigation Report (“PSR”) shortly after the entry of a guilty plea or conviction. Counsel should comply with the deadlines in the Order for lodging objections to the PSR. Sentencing memoranda and motions should be filed seven days before the sentencing hearing. Counsel should serve a copy of all sentencing motions and sentencing memoranda on the U.S. Probation Office.