Judge Weilheimer's Guidelines

TABLE OF CONTENTS

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 defined as substantive verbal communication, not just 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 from 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), the length of the discussion, 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 timeframe to attempts to communicate from the filing party may result in sanctions for the non-responding party. See sample meet and confer form here.

If during the meet and confer described herein, a party is alerted to a deficiency in their complaint by opposing counsel, the filing party is permitted to submit an amended complaint which rectifies all, or some, of the issues addressed at the meeting. The party filing the amended complaint 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). If meeting and conferring results in the intention to file an amended pleading, the party who intends to file an amended pleading should let the Court know of that intention by way of a letter placed on the docket, which will serve to ensure the Court not enter default against the party who otherwise would have an obligation to respond to the initial pleading.

IV. Rule 16 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. Patent cases have a separate 26(f) format which can be found 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.

This Court expects discovery to commence immediately upon the issuance of the Order scheduling the Rule 16 Conference—not from the date of the Conference itself. Accordingly, by the time of most Rule 16 Conferences, fact discovery should already be well underway. If the Parties feel that settlement talks would be most productive before discovery commences, the Parties should inform the Court of that immediately upon the scheduling of the Rule 16 Conference so early settlement talks can be facilitated while still leaving adequate time for discovery if such talks do not resolve the case. Parties who have a discovery dispute before their Rule 16 Conference should follow the procedures listed *infra* for such disagreements.

A Pretrial Conference will be scheduled either at the time of the Rule 16 Conference if dispositive motions are not anticipated or if necessary after a ruling on dispositive motions. At the Pretrial Conference a date certain 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 the Court to consider a request to extend any deadlines provided in the Scheduling 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 issuance of the Order scheduling the Rule 16 Conference. 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 are 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 extensive 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 Copy

When the total number of pages in the exhibits/attachments to any filing exceeds 20 pages, within 48 hours of the docketing of the filing, one hard copy of the exhibits is 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 on 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.

With the exceptions of motions *in limine*, briefs and memoranda 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 the maximum allowable 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 the e-mail listed above. 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. If the Court grants leave to file a reply, the order will clearly specify the scope of the reply and the due date.

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 entering into a joint statement of undisputed facts (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, and/or may reject the filings and require both parties to submit a revised Joint Statement.

2. Time to Respond

The Court will typically set a deadline by which a party opposing summary judgment must file its opposition in its Scheduling Order. In the absence of a deadline set by the Court in a Scheduling Order, parties have 30 days to respond to a motion for summary judgment.

XI. Procedure for Removal

If a case is brought before this Court by way of a Notice of Removal, the party removing the action, if they have not done so in their original Notice of Removal, is required to file an Amended Notice of Removal, attaching the State Court Complaint as a separate exhibit, named consistent with the naming convention outlined for exhibits to motions, *supra*. The filing of an Amended Notice of Removal will have no impact on any case deadlines which run from the removal of the case.

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.

Judge Weilheimer's assigned Magistrate is Judge Lynne Sitarski.

Bench trials: All settlement conferences for bench trials will be referred to Judge Sitarski 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: Settlement conferences for jury trial can be conducted by Judge Sitarski, participation in the Court's mediation program (*see https://www.paed.uscourts.gov/mediation)* 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 Judge Weilheimer's Settlement Conference Memorandum can be found here. Judge Sitarski or the approved mediator will provide separate instructions regarding their pre-conference submissions.

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 cases.

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

At the Pretrial Conference, counsel should be aware of 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. Motions *in Limine*

Deadlines for motions *in limine* will be provided at the Pretrial Conference. In an attempt to resolve any evidentiary issue, counsel shall meet and confer in advance of the filing of any motion *in limine*. In all cases, civil **and** criminal, motions *in limine* and their responses are limited to **ten pages,** double spaced, in 12-point Times New Roman font with one-inch margins and numbered pages.

Reply briefs are not permitted without leave of court. (See above).

The Court will notify counsel, in advance of trial, if a hearing is needed on a motion *in limine*. Most often rulings are made based on the written submissions.

XV. 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 at least one week in advance of trial.

A. Exhibits

Three copies of all exhibits expected to be introduced at trial are to be provided at the commencement of trial. (One copy will be used for the witness and retained for 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. The text table of contents should be in at least 12-point font, in table format with separate columns for the exhibit numbers, exhibit description, indication of identification and admission. See example of preferred exhibit list here.

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. Use of Exhibits During Opening Statements

Exhibits or demonstrative evidence may not be used in opening statements without agreement of opposing counsel or leave of Court.

No less than five business days before opening statements, a party wishing to display exhibits in their opening statement must inform all other parties of that intention and provide all other parties with a complete list of the exhibits intended to be used in opening.

No less than three business days before opening statements, a party served with such a list must respond with a list of objections, if any, or certify to the requesting counsel that they have no objections to the exhibits listed. Failure to object may be considered a waiver of objections.

No less than two business days before opening statements, the parties are to meet and confer regarding the listed exhibits and objections thereto and are strongly encouraged to compromise and resolve such disputes without need of the Court's intervention. If the Parties require the Court to rule on whether a specific document may be shown to the jury during opening statements, parties should inform the Court by the **close of business the day the parties met and conferred**. The Court will rule on any such objections shortly before opening statements and no additional preparation time will be given if the Court prohibits a party from displaying a document they intended to present.

If the Court concludes that an objection has been lodged in bad faith or that a party proposed to use a document which was clearly the subject of a potentially meritorious objection, sanctions may be imposed.

E. Objections in Video Trial Depositions

If any party intends to use a recorded video trial deposition, the Court strongly encourages the parties to resolve any objections raised during the deposition without Court involvement. If the parties are unable to reach an agreement, the party seeking to introduce the video testimony must submit a copy of the deposition transcript, along with a list of the unresolved objections, far enough in advance to allow the Court to carefully consider the objections and issue rulings. This timeline should also provide the presenting party with adequate time to edit the video to exclude any portions deemed inadmissible.

F. 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.

G. Cumulative Evidence

Cumulative evidence and cumulative witnesses are *strongly* disfavored. Counsel are encouraged to raise objections to cumulative evidence via motions *in limine*. Out of respect for the jury's time, Judge Weilheimer will intervene *sua sponte*, if needed, to prohibit cumulative evidence or argument evocative of the same. This applies with special force to expert testimony. While Judge Weilheimer will take an active role in enforcing this particular evidentiary rule, parties can and should make motions to the Court if the Court has not acted *sua sponte*.

Further, Judge Weilheimer will not permit advocates in opening and closing statements to suggest to the jury that because their side has more experts or more witnesses, they should prevail. If this argument is made, Judge Weilheimer will interrupt as needed and give a curative

instruction and/or whatever other sanctions might be appropriate. Counsel must also refrain from asking questions in direct or cross-examination of witnesses intended to lead the jury to a similar conclusion.

Parties should abide by both the letter and the spirit of Judge Weilheimer's rulings.

H. Courtroom Technology

Not every Courtroom has advanced technological capabilities. Counsel should contact Chambers to determine whether the parties need to supply their own technology or if the courtroom offerings are sufficient.

I. 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.

J. 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.

XVI. 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.

XVII. 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 provides 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*.

Pro hac vice counsel is expected to review and comply with the EDPA local rules as well as Judge Weilheimer's protocols.

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 or may discontinue the *pro hac vice* admission.