

POLICIES AND PROCEDURES

JUDGE CATHERINE HENRY

United States District Court for the Eastern District of Pennsylvania

United States District Court
Holmes Building
101 Larry Holmes Drive
Easton, Pennsylvania 18072
(610) 333-1833

James A. Byrne United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106
(267) 299-7440

Chambers_of_Judge_Catherine_Henry@paed.uscourts.gov

I. COMMUNICATIONS WITH CHAMBERS

A. General Inquiries

Email is the preferred method of communication. All general inquiries, including questions about these policies, may be emailed to Chambers_of_Judge_Catherine_Henry@paed.uscourts.gov

Telephone calls should be directed as follows:

Court Services Clerk: Tanya Allender
(610) 333-1836
Tanya_Allender@paed.uscourts.gov

Faxes and regular mail are strongly discouraged.

B. Case Communications

Communications regarding cases must be made through filing a pleading, motion, or application through Electronic Case Filing (ECF) whenever possible.

Email correspondence regarding cases is permitted in the following situations:

- To advise the Court of unanticipated schedule changes (less than seven (7) business days in advance of a deadline) or schedule changes due to personal or medical issues that counsel does not wish to file on the docket.
- To promptly advise the Court that a case has been settled.

C. *Pro Se* Communications

All *pro se* communications must be sent to the clerks' office to be docketed. *Pro se* litigants may not contact Judge Henry or her chambers directly.

D. Internship and Clerkship Applicants

Judge Henry's highly preferred method for receiving applications is through OSCAR. OSCAR will be consistently updated with deadlines and instructions. Applicants and schools may, however, email Chambers_of_Judge_Catherine_Henry@paed.uscourts.gov with questions that are not resolved in OSCAR.

II. OTHER GENERAL POLICIES

A. Magistrate Judge:

Judge Henry is paired with Magistrate Judge José Arteaga. Parties may request that Judge Arteaga preside over settlement discussions at the Rule 16 Conference or as soon thereafter as possible. Judge Henry will then issue a referral order.

B. Continuance Requests

Continuance requests for motions and discovery deadlines, hearings, and trial must be filed in the form of a motion. Joint continuance requests must be filed as a joint motion and include a proposed order. If a party files a motion for a continuance, all other parties have three (3) business days to file an opposition, which must state the reasons for the opposition.

A joint request for a continuance related to discovery may be filed in the form of a motion or as a joint stipulation. Judge Henry will generally grant joint discovery continuance requests if (1) they do not impact key motions deadlines or trial dates, and (2) they are made at least seven (7) business days before the scheduled deadline.

Judge Henry seldom grants continuances that will impact (1) motion deadlines in which oral argument has been scheduled or (2) trial dates. Such continuance requests must be made at least fourteen (14) business days before the applicable deadline or trial date, and they must provide good cause.

C. Courtesy Copies

Courtesy copies are not to be submitted unless specifically requested by chambers.

D. *Pro Hac Vice* Motions and Local Counsel

Local counsel must file a motion for *pro hac vice* admission of another attorney. The motion must specify (1) the attorney's admissions, (2) why the party desires that attorney to participate in litigation, and (3) why that attorney is particularly qualified to represent the party. Additionally, counsel must comply with instructions in the Clerk's Office forms available on the Court's website https://www.paed.uscourts.gov/sites/paed/files/documents/forms/app_x.pdf.

E. Artificial Intelligence

Parties who use Artificial Intelligence in preparing papers filed with the Court must declare the use of AI, which AI was used and must certify that the signer checked that all cited authorities are proper.

III. CIVIL PRETRIAL PROCEDURE

A. Rule 26(f) Meeting and Report

Parties are required to meet and confer to compile a joint Rule 26(f) report. Parties may meet in person or through video conference; email correspondence is insufficient. The Rule 26(f) meeting should include a meaningful discussion of the parties' settlement positions, factual and legal positions, and the proposed discovery plan.

Parties must fill out the Rule 26(f) form available on Judge Henry's Court webpage (<https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/henpolb.pdf>). The parties may attach any supplemental information desired to this form; the form is a minimum requirement. Parties are encouraged to attach any key documents for the Court's review ahead of the Rule 16 conference (*e.g.*, a disputed contract).

The parties are expected to meet at least fourteen (14) days before the Rule 16 Conference. The Rule 26(f) report must be submitted no later than five (5) days before the Rule 16 conference. Parties are also expected to submit all possible threshold motions no later than (5) days before the Rule 16 conference, including any motions to dismiss, transfer, or add parties.

Flawed or incomplete submissions will be returned to counsel for revision and resubmission. A party that fails to participate in good faith in the Rule 26(f) meeting, report, or revision requests will have no voice at the initial Rule 16 conference.

Continuance requests must be made in writing and must include the reason and opposing party's position related to the request.

B. Rule 16 Conference

Judge Henry generally has Rule 16 Pretrial Conferences via telephone. A Rule 16 conference will be scheduled shortly after the answer is filed, or in some instances, while a motion to dismiss or other preliminary motion is pending. If a Rule 16 conference has not been scheduled within a reasonable time following the filing of the answer, counsel should email Judge Henry's Chambers to request a conference.

Lead counsel must attend the Rule 16 conference. If the attorneys in attendance do not have full authority to negotiate a case's settlement, then the client or a representative who can authorize settlement must be available by telephone for the entirety of the Rule 16 conference.

Parties must attend the Rule 16 conference ready to discuss (1) discovery progress, (2) all claims, defenses, and relief sought, (3) filed and anticipated motions, (4) key factual disputes, (5) the likelihood of settlement, and (6) the case schedule. Judge Henry may request argument on pending motions at the Rule 16 conference.

A scheduling order will be issued after the conclusion of the Rule 16 conference. Thus, all Rule 16 conference participants must come to the conference ready to set the case's schedule, and any counsel that does not attend the Rule 16 conference must submit their schedule to co-counsel.

C. Discovery

The parties must begin discovery upon receipt of notice of the Rule 16 conference. Pending motions do not excuse counsel from proceeding with discovery.

Judge Henry expects parties to exercise civility and common sense to attempt to resolve discovery disputes on their own. If an unresolvable discovery dispute arises, the aggrieved party must file the following:

- A motion that (1) complies with Local Civil Rule 26.1(f) by certifying that the parties, after reasonable effort, are unable to resolve the dispute, and (2) specifies whether the parties request a telephone conference with Judge Henry to resolve the matter;
- A proposed order; and
- A brief of up to five (5) pages that (1) outlines the efforts the parties have made to resolve the dispute and (2) cites any applicable legal authority.

Judge Henry will promptly review the motion and either issue a decision, schedule a phone conference, or order responsive briefing. Judge Henry routinely acts upon filed discovery motions without waiting for a response or scheduling a telephone conference. Parties are encouraged to call chambers when an unresolvable discovery dispute arises; if Judge Henry is available, she may resolve the dispute.

D. Sealed and Redacted Documents

Parties are not permitted to file documents under seal without leave of the Court, unless an emergency arises. Judge Henry will permit parties to file documents under seal or with redactions only after a showing of good cause or presentation of an enforceable private confidentiality agreement contracted prior to litigation. Parties cannot stipulate to sealing documents to avoid showing good cause. *See In re Avandia Mktg., Sales Prac. & Prods. Liab. Litig.*, 924 F.3d 662, 672-73 (3d Cir. 2019) (balancing multiple factors to assess whether good cause warranted sealing documents from public view), and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786-87 (3d Cir. 1994) (same).

All proposed orders must contain language to this effect: “The Court reserves its inherent power to modify the terms of this Order and permit the disclosure of information in the interest of justice.”

If the Court orders that a document be filed under seal, a redacted copy of the document must be filed, unless the Court’s order specifies otherwise, or redaction would render the document unreadable.

E. Motions Practice and Oral Argument

1. Page Limits & Reply Restrictions

Any dispositive motion and its supporting memorandum of law must not exceed twenty (25) pages. This page limit applies to argument only. A party need not include a summary of argument or questions presented section in a memorandum. If a filing exceeds these page limits due only to the size of pictures or charts embedded within the filing, then the party may file the oversize brief and must certify that that is why the brief is oversize. Otherwise, parties must seek leave from the Court to file an oversize brief at least three (3) business days prior to a filing deadline.

One reply brief may be filed within fourteen (14) days of service of the opponent’s brief in opposition; parties must seek leave from the Court to file any additional supplemental briefings. Reply or supplemental briefings must not exceed ten (10) pages and must be limited to new concerns raised by the response brief.

Multiple plaintiffs or multiple defendants must file joint motions with their co-parties, unless there are conflicts in their position.

2. Oral Argument

Parties may request oral argument in their motions. Judge Henry will grant requests for oral argument only if oral argument would illuminate any aspect of the pleadings or briefs.

3. Injunctions & Motions for Temporary Restraining Order

Judge Henry attempts to hold a prompt conference with counsel seeking and defending requests for temporary restraining orders and preliminary injunctions following an affidavit of service. Unless there is risk of extraordinary imminent harm, a hearing will be held. Judge Henry usually handles filed motions for expedited discovery at the initial conference or hearing. Judge Henry expects a party seeking pretrial injunctive relief to be prepared to imminently move to a hearing within a month. If not ready for an imminent hearing, the party may seek expedited discovery and Judge Henry will then set the pretrial injunction hearing.

4. Threshold Motions

Threshold motions (*e.g.*, motions to transfer or substitute parties) should be filed at least seven (7) days before the Rule 16 conference. Parties may be asked to address the merits of these motions at the Rule 16 conference, even if they are not fully briefed at that time.

5. Rule 56 Motions for Summary Judgment

A statement of facts must accompany a moving party's motion for summary judgment. The parties may jointly file a statement of stipulated material facts. Alternatively, the moving party may file *proposed* undisputed material facts. Regardless of which option the parties choose, the moving party must file that initial statement of material facts as a separate document with the moving party's Rule 56 motion. Each fact must be in a separately numbered paragraph and accompanied by pinpoint citations that cite not only the relevant exhibit, but the relevant page and line number of that exhibit.

Unless the parties file joint stipulated facts, the nonmoving party must respond to each numbered material fact by either (1) stating that the fact is undisputed, (2) explaining exactly how it is disputed and providing appropriate citations, or (3) explaining why the fact is immaterial to resolution of any claim with appropriate citations. The nonmoving party may also provide additional undisputed material facts; the movant may respond to these facts in kind in a document separate from any reply brief. These factual statements must be brief and generally nonargumentative and cannot be used to evade page-limit requirements for briefs; factual statements do not count towards the 25-page limit for briefings unless there are substantial argumentative passages.

Parties are encouraged to submit a joint appendix with the moving party's briefings. If that is not practical, then the parties may file separate appendices, with the following restrictions: (1) the

moving party must submit documents in their full relevant context rather than excerpts of documents, and (2) the responding party must cite to the moving party's appendix wherever possible and is encouraged to mark exhibits as a continuation of the moving party's appendix pages or exhibit numbers.

If there are any evidentiary issues that may be key to the resolution of a motion for summary judgment, parties may file motions to preclude such evidence *as separate motions* at the same time as their motion or response. Judge Henry may consider the evidentiary motion jointly with the motion for summary judgment, or she may hold the motion under advisement until the case approaches trial.

6. Amended Filings or Briefings

Parties are encouraged to promptly correct any material misstatements of fact or law. Parties may amend filings once; additional amendments require leave of the Court. Amended pleadings must include a brief descriptive summary of all changes and clearly indicate the additions or corrections made by the filing of both a clean copy and a redlined copy. Parties may also advise the Court of their own misunderstandings of the law, if necessary, by filing a supplemental briefing. The supplemental briefing does not need to repeat the entire argument but must clearly reference the misstated point of law.

7. Motions in *Limine*

Motions in *limine* must be filed before trial to reduce the number of sidebar discussions required. Complex motions must be filed at least seven (7) business days before the final pretrial conference. If motions cannot be resolved at that conference, they will be heard on a specific date or before a witness is called. Judge Henry may refuse to hear any untimely motion or sidebar objection that disrupts trial and could have been anticipated as a motion in *limine*.

F. Final Pretrial Conference and Pretrial Preparation

Judge Henry generally holds a final pretrial conference ten (10) days before a trial, but the conference may be held earlier. At the final pretrial conference, parties should be prepared to discuss all outstanding motions and any unresolvable disputes regarding evidence or witnesses. Parties will also update the Court on any scheduling issues and any efforts made to settle the case.

1. Pretrial Memoranda

Pretrial memoranda must be submitted at least (7) business days prior to the final pretrial conference and must include the following:

- A list of witnesses and the substance of each witness's testimony.

- All expert witnesses' reports and CVs, if not previously submitted.
- A list and brief description of any motions in *limine*.
- Notice of any depositions (written or video) that the party intends to use at trial.
- Any objections to witnesses and exhibits that the parties have been unable to resolve. Wherever applicable, the objecting party must identify the page of an exhibit and page and line number of a deposition that the party objects to and state the basis of the objection.
- A list of any joint stipulations that the parties plan to enter at trial.
- Proposed joint questions for *voir dire*.
- Proposed joint jury instructions and verdict forms.

2. Trial Exhibits

Prior to *voir dire*, counsel must submit:

- One full set of exhibits that is organized in a tabbed binder with all exhibits numbered consecutively (not separately numbered by party).
- One additional set of exhibits that are not hole punched or marked with anything besides exhibit numbers, which may be presented to witnesses and jurors.

IV. ADDITIONAL PROCEDURES IN CRIMINAL CASES

Incorporating the Polices to the extent applicable in criminal cases, Judge Henry also requires in criminal cases:

A. Motions practice.

All pretrial motions – including any motions challenging the indictment, seeking suppression of evidence, or raising dispositive matters – must be filed in accord with the deadline set forth in the scheduling order and represent the position of all parties on the requested relief. Upon filing a motion, the parties shall advise Judge Henry whether they intend to present testimony in support of or in opposition to the motion and the expected duration of any such testimony so Judge Henry can schedule a hearing, if necessary. Judge Henry will generally permit oral argument in criminal matters on substantive motions upon request.

B. Trial continuances.

Any request for a continuance must be filed no later than fourteen days in advance of the scheduled trial date. Requests for a continuance must be filed as a motion stating the reasons for the request, the position of the other side, the amount of time sought, and existing conflicts potentially impacting scheduling of a new trial date. Any such motion must be accompanied by a consent form signed by the defendant. The proposed form of order must be consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8), and must include a proposed

finding explaining in reasonable detail why the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial.

Continuances are strongly discouraged, and, if multiple continuances are sought, counsel may be required to appear in person to argue the matter.

C. Pretrial conferences.

Judge Henry does not generally hold telephone conferences with counsel in criminal cases, unless counsel specifically requests one or Judge Henry finds a conference is appropriate. A final pretrial conference may address pending motions, and issues arising from the review of filed proposed *voir dire*, jury instructions, and jury verdict.

D. Voir Dire.

Parties should be prepared to discuss voir dire preferences and desired questioning at the final pretrial conference.

E. Guilty pleas.

1. Before a defendant offers a guilty plea, counsel must complete the guilty plea memorandum, guilty plea agreement, and acknowledgement of rights and review those documents with the defendant. Counsel must also provide copies of those documents to Judge Henry.

2. The guilty plea agreement must state whether the plea is a general plea of guilty, a conditional plea, or a plea of *nolo contendere*. The guilty plea agreement also must disclose to the defendant and Judge Henry whether the plea is entered under Federal Rule of Criminal Procedure 11(c)(1)(A), (B) or (C), relating to the obligation of the United States regarding other charges under subsection (A), a non-binding sentencing recommendation under subsection (B), or a binding sentencing recommendation under subsection (C).

3. The United States must submit a guilty plea memorandum at least one week prior to the change of plea hearing. The memorandum shall include the elements of each offense to which the defendant is pleading guilty and legal citations for the elements, the maximum statutory penalties for each offense, the terms of any plea agreement and the factual basis for the plea. The change of plea memorandum shall be submitted to chambers by email to [Chambers of Judge Catherine Henry@paed.uscourts.gov](mailto:Chambers_of_Judge_Catherine_Henry@paed.uscourts.gov).

4. If an agreement has been reached to request Judge Henry set an expedited sentencing, the United States must notify Chambers and the probation office at least two days prior to the change of plea hearing.

F. Trial memorandum.

The government must file a trial memorandum by no later than one week before jury selection setting forth the essential elements of the offenses, the facts which it intends to present, the identity of each witness it intends to call, a statement of the substance of each witness' testimony and any legal issues. The defendant is not required to file a trial memorandum but may do so.

G. Sentencing

1. Sentencing will be scheduled on the day Judge Henry accepts a defendant's guilty plea or after a defendant is convicted at trial.

2. To avoid delay in sentencing, all objections to the Presentence Investigation Report must be sent to the probation officer in advance of sentencing.

3. Counsel must file sentencing motions and supporting memoranda at least seven days prior to the scheduled sentencing date, and any response thereto must be filed at least three days prior to the scheduled sentencing date. The memorandum must set forth any legal authority relied upon by the party. No replies may be filed without leave.

4. Sentencing memoranda (exclusive of motions), by both the United States and the defense must be filed no later than seven days before the scheduled sentencing date, and any response thereto must be filed at least three days prior to the scheduled sentencing date.

5. If a defendant may be responsible for restitution, the United States must submit sufficient information in its sentencing memorandum to enable Judge Henry to determine entitlement, the name and the address of each victim, the amount of loss for each victim, and documentary support for each amount. If liability for restitution is joint and several, the United States shall itemize the restitution amount for which each defendant may be responsible.

6. All Pre-Sentence Investigation Reports and Sentencing Memoranda shall also be promptly delivered to chambers in Microsoft Word Format by email to [Chambers of Judge Catherine Henry@paed.uscourts.gov](mailto:Chambers_of_Judge_Catherine_Henry@paed.uscourts.gov).

For any civil or criminal litigation issues not addressed above, please consult the Local Rules of Civil and Criminal Procedure for the Eastern District of Pennsylvania, available at <http://www.paed.uscourts.gov>