

**United States District Court
for the Eastern District of Pennsylvania**

U.S. District Judge C. Darnell Jones, II

**Policies and Procedures:
General Matters, Civil Cases, and Criminal Cases
(Revised November 18, 2013)**

GENERAL CHAMBERS AND COURTROOM MATTERS

Judge Jones expects all counsel, and all parties they represent, to maintain the highest ethical standards at all times, and to strictly adhere to the opportunities, requirements, limitations, and deadlines set forth herein.

A. Correspondence with the Court

1. Counsel may write to Judge Jones to request an unopposed extension of time and for unopposed requests pertaining to scheduling. However, Judge Jones does not permit correspondence in lieu of opposed extension requests, contested discovery or substantive motions, or other disputed substantive matters which should be made of record via motion practice. Correspondence may be faxed to Judge Jones at 267-299-5057 (maximum 5 pages by fax, otherwise by mail or hand delivery).

2. Judge Jones does not accept carbon copies of letters to opposing counsel.

3. Judge Jones does not permit *ex parte* communication with the Court, written or

otherwise.

B. Communication with Law Clerks

Judge Jones generally does not permit counsel to directly communicate with law clerks. If a law clerk contacts counsel, it is at Judge Jones's direction.

Usually, communication with Chambers shall occur via Judge Jones's Civil Deputy, Ms. Betty Harper, at 267-299-7750.

C. Telephone Conferences

Judge Jones uses telephone conferences for scheduling changes and similar matters. He also holds telephone conference calls on discovery and other motions as necessary. Judge Jones usually requests that counsel initiate any such call.

D. Oral Arguments and Evidentiary Hearings

Judge Jones does not set aside specific days or times for oral arguments or evidentiary hearings. Judge Jones will hear oral argument on a motion if he believes argument will assist him in deciding the motion. A party may request argument in writing. Arguments and hearings are scheduled on an *ad hoc* basis.

E. Pro Hac Vice Admissions

Judge Jones expects applications for *pro hac vice* admissions to be submitted in writing using the forms found on the Court's website at www.paed.uscourts.gov. He requires the attorney seeking such admission to (1) submit the signed affidavit or certification stating that he or she is a member in good standing of the bar of another state, and (2) pay all *pro hac vice* admission fees.

F. Thorough Review of Filings

In order to avoid confusion, when counsel receives an electronic notification of a court order filed in a case, counsel is directed to open the order on the docket and review the contents of the order. Occasionally the docket's description of an order is inaccurate; counsel are responsible for making themselves aware of the actual content of every docket entry.

G. Joinder in Motions

Judge Jones strongly disfavors joinder in the substantive motions of other parties, and normally does not permit such.

H. Punctuality and Civility

Judge Jones expects counsel to be punctual for all conferences, hearings, and trials. Judge Jones also expects counsel at all times to be civil to one another as well as to all parties, witnesses, and court personnel – whether in front of a jury or the Court.

I. Communication with Opposing Counsel

In general, Judge Jones expects counsel to bring matters, including those that arise during trial, to his attention only after they have been discussed with opposing counsel.

J. Cases Involving Out-of-Town Parties or Witnesses

Judge Jones has no special policy for matters involving out-of-town attorneys, parties, or witnesses. Counsel are free to raise any issues they deem necessary.

K. Examination of Witnesses Out of Sequence

Judge Jones is willing to take witnesses out of turn for their convenience, particularly when there is no objection by opposing counsel.

L. Videotaped Testimony

Judge Jones requires counsel to view all videotaped depositions for the purpose of editing the videotapes and resolving material objections before offering any videotape as evidence.

M. Hearing and Trial Dates

1. The Court's calendar is generally set well in advance. Parties and counsel rely on assigned hearing and trial dates and Judge Jones is reluctant to reschedule set dates without good cause. If counsel becomes aware of a professional or personal conflict that may affect any significant scheduled event (including trial), they should immediately notify Judge Jones and opposing counsel.

2. Judge Jones generally sets a firm trial date for all matters. On the day of trial, Court promptly convenes at 9:30 a.m. and may sit until 5:00 p.m. or later. Dependent on juror transportation concerns, Judge Jones adjusts the schedule for subsequent trial days as necessary.

3. Counsel may contact Chambers the day prior to any hearing or trial to ascertain the assigned courtroom.

N. Voir Dire

Judge Jones's practice in civil and criminal matters is to personally conduct the *voir dire*. Counsel are free to submit proposed (at least three business days prior to the trial date) and supplemental questions (on the trial date) to Judge Jones. Should the need for follow-up questioning arise, Judge Jones permits counsel to either do so themselves or submit follow-up questions for Judge Jones to ask.

O. Courtroom Procedure

1. Unless counsel have secured the Court's permission, Judge Jones expects counsel to stand when addressing the Court, the jury, or when examining witnesses. Counsel may stand where they choose, except that they may not crowd the witness or the jury.

2. Counsel may approach a witness with the permission of the Court. If counsel needs to approach the witness many times, Judge Jones may instruct the attorney that he or she need not continue to ask. Nonetheless, once the attorney has accomplished his or her reason for approaching the witness (however many times), he or she should return to the place from which he or she is questioning.

3. Judge Jones does not permit speaking objections in front of a jury. Counsel should give the basis for the objection in a word or phrase (*e.g.*, "hearsay").

4. Judge Jones does not allow "continuing objections;" counsel must state every objection for the record.

5. If counsel wishes to have a sidebar to argue on an objection, the Court will usually grant the request as long as the numbers of sidebars remains reasonable. Counsel are strongly encouraged to bring evidentiary questions to the attention of the Court outside the presence of the jury.

6. All counsel are reminded that re-direct is still direct examination, and not cross.

7. Judge Jones does not have a strict policy concerning examination beyond re-direct and re-cross. However, "beyond the scope" and "asked and answered" will be strictly enforced.

8. Counsel has the responsibility to advise their witnesses that no witness should talk to any jury member at any time.

9. Judge Jones does not permit more than one attorney for a party to examine the same witness.

10. Judge Jones does not have a specific practice as to reading stipulations, pleadings, or discovery materials into the record. If counsel request the Court to read such, the written material must be prepared and submitted in advance of trial.

11. Judge Jones allows jurors to take notes.

12. Judge Jones will always have a clerk in the courtroom during a jury trial who will give the jurors any exhibits or other items that counsel requests be given to them. Counsel should never approach the jury to distribute exhibits unless permitted by Judge Jones.

13. Judge Jones considers a jury trial a formal affair and asks all counsel to act accordingly. Extraneous clothes and food/containers should not be left within sight of the jury. Boxes of exhibits or briefcases should not be on counsel table. Bottled water should be poured in a paper cup, and the bottle removed from counsel table.

14. Opposing counsel should not engage in extended conversations with each other in front of a jury without the Court's permission. The Court will allow counsel to have a private conversation if it is requested and efficient. However, lawyers absolutely should never argue with either opposing counsel or the Court in front of the jury.

P. Exhibits

Counsel must mark and exchange exhibits before commencement of a hearing or trial. Counsel should provide Judge Jones with two (2) copies of each exhibit and a schedule which briefly describes each exhibit. These must be submitted in binders for ease of use by the Court.

Judge Jones has no strict policy as to when exhibits should be offered into evidence. When the number of exhibits in a case is large, Judge Jones strongly prefers counsel to reach advance agreement as to the admission of as many exhibits as possible.

Q. Opening and Closing Statements

While Judge Jones is flexible with regard to time limits on opening statements and summations, he does not allow open-ended presentations. Judge Jones usually will discuss the time needed with counsel in advance.

Counsel should be prepared to begin closing arguments immediately following the close of all evidence.

R. Directed Verdict Motions

Judge Jones permits motions for a directed verdict outside the hearing of the jury.

S. Jury Deliberations

1. Written Jury Instructions

Judge Jones provides counsel with a copy of his final jury instructions for review prior to trial (and in advance of a charge conference if any changes have been made). Judge Jones permits counsel to put objections to jury charges on the record before the jury retires.

2. Exhibits in the Jury Room

Judge Jones will evaluate requests from the jury for particular exhibits on a case-by-case basis. Counsel will always be contacted prior to a decision on any such requests.

3. Availability of Counsel During Jury Deliberations

Counsel must be available in case questions arise from the jury during its deliberations. Judge Jones prefers counsel to be within 15 minutes distance of the courthouse

during jury deliberations.

4. The Verdict Form and Special Interrogatories

In most civil cases, Judge Jones submits written interrogatories to the jury. In criminal cases, Judge Jones submits a verdict form to the jury with interrogatories as necessary. Copies are provided to jurors.

5. Polling the Jury

The Court will poll the jury if counsel so requests.

CIVIL CASES

A. Pre-trial Procedure

1. Pre-trial Conference

Judge Jones may schedule a Fed. R. Civ. Proc. 16 conference to occur via telephone, in Chambers, or in a courtroom. Judge Jones requires the parties to commence discovery immediately upon receipt of the Order scheduling the Rule 16 conference, and he expects the parties to conduct substantial discovery before the Rule 16 conference.

The Court's procedures rely upon the good faith of counsel and diligent compliance with Fed. R. Civ. Proc. 26(f). A Rule 26(f) meeting shall take place as soon as possible, and at least ten days prior to the Rule 16 conference. Without exception, counsel must, at least five business days prior to the Rule 16 conference, file with the Clerk of Court a completed report of their Rule 26(f) meeting

2. At the Rule 16 conference, counsel are expected to discuss jurisdictional defects; the possibility of amicable settlement (including by referral for settlement discussions facilitated by a U.S. Magistrate Judge); alternative dispute resolution; time limitations for joining parties

and amending pleadings, if necessary; scheduling for discovery deadlines, expert reports, motion practice, pre-trial memoranda, and future pre-trial conferences; scheduling a trial date; and any other appropriate matter. In addition, Judge Jones usually inquires whether the parties would be amenable to having their entire matter transferred to the jurisdiction of a U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. Proc. 73. Parties are expected to have conferred with each other about each of these items prior to the conference (especially as to settlement and transfer to the jurisdiction of a U.S. Magistrate Judge).

Judge Jones usually enters a comprehensive Case Management Order following the Rule 16 conference, which sets firm dates for the completion of discovery, the exchange of expert reports, the filing of dispositive motions, and the commencement of trial.

3. Continuances and Extensions

Since trial dates are set well in advance, Judge Jones is extremely reluctant to grant continuances – especially if the attorneys have not been diligent in moving the case forward. However, the Court will consider motions for extension of discovery deadlines upon showing of good cause.

4. Motion Practice

Except as set forth herein, motion practice will be conducted in accordance with Local Civil Rule 7.1. Unless otherwise directed, Judge Jones requires that counsel deliver to chambers, via U.S. mail or hand delivery, two courtesy copies of any dispositive motion, response, or reply. Courtesy copies of other motions or responses are discouraged where the pleadings have been filed electronically.

5. Reply and Sur-reply Briefs

A party may move to file a reply or sur-reply brief. A motion for leave to file such must be accompanied by (1) a short memorandum indicating why the party wishes to supply the court with additional information, and (2) the proposed reply or sur-reply brief itself. Judge Jones will strike repetitive pleadings. Any motion for leave to file a reply or sur-reply brief must be filed within five business days of service of the brief in opposition. Except with leave of Court for good cause shown, no reply or sur-reply brief shall exceed ten pages.

6. Proposed Orders

Judge Jones requires a proposed order to be filed along with every motion and response. Proposed orders should not contain an attorney's name or address.

B. Discovery Matters

1. Length of Discovery Period

The length of time permitted for discovery depends on the nature of each case. Judge Jones generally permits 3-6 months of discovery, except for more complex litigation.

2. Discovery Disputes

When a discovery dispute arises, counsel are strongly urged to settle it amongst themselves. However, if, after making a good faith effort, counsel are unable to resolve a disputed issue, counsel for the aggrieved party shall file with the Court a motion in conformity with Local Civil Rule 26.1(b), with a proposed order, and a brief not to exceed ten pages. After a response, also limited to ten pages, is filed, the Court will either: (1) issue a ruling; (2) hold a teleconference or hearing; (3) refer the dispute to a U.S. Magistrate Judge for a determination; or (4) order additional briefing. The Court normally rules promptly on discovery motions.

As a reminder, all discovery motions must contain the certification required under Local Civil Rule 26.1(f). Lack of civility between counsel during discovery and depositions will not be tolerated.

3. Confidentiality Agreements

Judge Jones will approve a confidentiality order if the order includes a detailed statement demonstrating that good cause exists. All such orders must contain the following language or language substantially similar: “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.”

4. Expert Witnesses

Parties should identify expert witnesses and engage in expert discovery pursuant to the scheduling order entered in the particular case. Failure to do so may bar the use of the expert’s testimony at trial.

C. Settlement

Judge Jones usually refers settlement conferences to a U.S. Magistrate Judge. However, if warranted, Judge Jones may refer a matter to a settlement master with the parties bearing the cost thereof.

D. Summary Judgment Motions

All summary judgment motions and oppositions to such motions must contain a recitation of facts with complete and accurate citation to the record. To this end, Judge Jones requires the parties to file separate statements of material facts (*i.e.*, not simply a factual narration section of a brief), as follows:

1. Any motion for summary judgment shall include a separate Statement of Undisputed Material Facts which sets forth, in numbered paragraphs, the material facts that the moving party contends are undisputed and entitle the movant to judgment as a matter of law. Only those facts which bear on dispositive material issues shall be included in the Statement of Undisputed Material Facts.

2. The papers opposing a motion for summary judgment shall include a separate Statement of Undisputed and/or Disputed Material Facts that responds to the numbered paragraphs set forth in the moving party's Statement of Undisputed Material Facts, either admitting those facts are undisputed, or contending they are disputed and, as such, are genuine issues to be tried. The responding party may also set forth, in separate numbered paragraphs, any Additional Disputed Material Facts which the respondent contends preclude summary judgment.

3. If a responding party sets forth additional disputed material facts, the moving party shall, within 7 business days, file a response either admitting those facts are disputed, or contending they are undisputed and, as such, are not genuine issues to be tried.

4. Without exception, all facts set forth shall be deemed admitted unless addressed by the opposing party as set forth herein.

5. The Court will not consider any description of a fact that is not supported by citation to the record. Statements of Material Facts in support of or in opposition to a motion for summary judgment must include specific and not general references to the parts of the record that support each of the statements, such as the title of or numbered reference to a document, the name of a deponent and the page(s) of the deponent's deposition, or the identity of an affidavit or declaration and the specific paragraph relied upon. Pinpoint citations are required.

Summary judgment motion practice that fails to follow these procedures to the letter will be stricken.

E. Pre-trial Submissions

Unless otherwise specified, Judge Jones requires the parties to submit the following by a date set by the Court, which is normally approximately three weeks prior to the trial date:

1. Jointly-proposed *voir dire* questions;
2. Jointly-proposed jury instructions;
3. Jointly-proposed verdict sheet;
4. Motions *in limine*; and
5. Final pretrial memoranda pursuant to Local Civil Rule 16.1(c).

Parties shall submit to the Court two copies of proposed points for charge and special jury interrogatories, along with a disk containing the documents.¹

a. The proposed points for charge and special jury interrogatories shall be prepared and submitted jointly. Counsel are expected to work together to achieve agreement on as many items as possible before submission to Judge Jones. Proposed points for charge should be accompanied by appropriate citations of legal authority – including use of the Model Civil Jury Instructions for the Third Circuit, where applicable (see <http://www.paed.uscourts.gov>, “Third Circuit Model Jury Instructions” bullet).

b. Each proposed point for charge shall be numbered and on a separate sheet of paper.

¹ Documents must be submitted in WordPerfect or Microsoft Word formats – .pdf format is not acceptable.

c. Where counsel cannot agree on a particular point for charge or interrogatory, the joint submissions shall provide the alternative version proposed by each party and the rationale for each.

d. Where one party proposes a point for charge or interrogatory and the other party objects to the proposal in its entirety (*i.e.*, wishes nothing be used, as opposed to an alternative version), the joint submission shall note such and include the objecting party's rationale.

e. Supplemental points for charge will be permitted during and at the conclusion of trial.

F. Motions *in Limine*

As noted above, motions *in limine* usually are due three weeks before trial. A response to any motion *in limine* is due within five business days of the filing of the motion. Judge Jones will usually rule on outstanding motions *in limine* prior to or during the final pre-trial conference.

G. Final Pre-trial Conference

Judge Jones usually holds the final pre-trial conference in Chambers approximately two weeks prior to the trial date. In preparation for the conference, Judge Jones expects counsel to communicate with each other on a number of matters, including exhibit designations, objections to exhibits, use of expert depositions, and stipulations of fact. The parties should be prepared to once again discuss the possibility of settlement or alternative dispute resolution in lieu of trial.

H. Injunctions

1. Scheduling and Expedited Discovery

When a temporary restraining order is requested, Judge Jones will schedule a conference as soon as counsel have appeared and it is possible to properly consider the request. Judge Jones requires all counsel to be present unless the urgency of circumstances precludes notice to opposing counsel. Judge Jones rarely grants *ex parte* temporary restraining orders.

2. Hearings

Prior to any formal hearings, Judge Jones holds a conference with counsel. Judge Jones schedules preliminary and permanent injunctions hearings as soon as practicable and combines the two hearings if appropriate. Judge Jones usually permits expedited discovery when preliminary injunctive relief is requested.

3. Proposed Findings of Fact and Conclusions of Law

Judge Jones requires the submission of proposed findings of fact and conclusions of law in injunction cases, in accordance with Fed R. Civ. P. 52(a).

I. Trial Briefs

Counsel may submit trial briefs when they are likely to be helpful to the Court.

J. Proposed Findings of Fact and Conclusions of Law

Judge Jones may require the submission of proposed findings of fact and conclusions of law in non-jury cases.

CRIMINAL CASES

A. Pre-trial Conferences

Judge Jones holds pre-trial conferences in all criminal cases.

B. Pre-trial Motions

The parties must file any pre-trial motions, including *Starks* motions or motions to suppress evidence, as soon as possible and no later than three weeks prior to the commencement of trial (or as otherwise permitted by the Court's Case Management Order). The opposing party must respond to any pre-trial motion no later than seven days after the motion is filed.

Judge Jones will consider requests for oral argument on *Starks* motions or motions to suppress; if Judge Jones grants any such request, he will hold argument separate from and in advance of trial. Counsel for the moving party is required to file proposed findings of fact and conclusions of law no later than two days after a motion hearing.

Judge Jones normally rules upon any motions *in limine* in advance of trial.

C. Pre-trial Submissions

1. At least three weeks before the case is listed for trial, the parties shall submit to the Court two copies of proposed points for charge and proposed jury verdict form, along with a disk containing the documents.² Proposed points for charge should be accompanied by appropriate citations of legal authority. If a proposed point for charge is a model jury instruction, the submission shall state whether the model jury instruction is unchanged or modified. If counsel modifies a model jury instruction, additions shall be underlined and deletions shall be

² Documents must be submitted in WordPerfect or Microsoft Word formats – .pdf format is not acceptable.

placed in brackets. In addition:

- a. The proposed points for charge and jury verdict form shall be prepared and submitted jointly. Counsel are expected to work together to achieve agreement on as many items as possible before submission to Judge Jones.
- b. Each proposed point for charge shall be numbered and on a separate sheet of paper.
- c. Where counsel cannot agree on a particular point for charge or on the verdict form, the joint submissions shall provide the alternative version proposed by each party and the rationale for each.
- d. Where one party proposes a point for charge or element of the jury verdict form and the other party objects to the proposal in its entirety (*i.e.*, wishes nothing be used, as opposed to an alternative version), the joint submission shall note such and include the objecting party's rationale.

Supplemental points for charge will be permitted during and at the conclusion of trial.

2. At least three weeks before the case is listed for trial, the government shall file a trial memorandum. At a minimum, the trial memorandum shall specify the essential elements of the crime(s) charges, discuss any anticipated evidentiary issues, and contain a witness list. Any defense response to the government's trial memorandum shall be filed within seven days.

3. The government must file any motion to admit evidence under Fed. R. Evid. 404(b) at least fourteen days before trial. Any defense response is due within 5 business days.

D. Guilty Plea Memoranda

Judge Jones requires the government to submit a guilty plea memorandum *no later than fourteen (14) days prior to the guilty plea date*. A guilty plea memorandum shall include the elements of each offense to which the defendant is pleading guilty and legal citations for such elements; the maximum (and mandatory minimum, if any) statutory penalties for each offense; the terms of any plea agreement; and the factual basis for the plea.

In addition to filing a guilty plea memorandum with the Clerk of Court - and unless the matter is sealed - counsel shall simultaneously send a digital copy of same in either Microsoft Word or WordPerfect format directly to Judge Jones's Criminal Court Deputy, Ms. A'iShah El-Shabazz. Counsel's failure to strictly adhere to this protocol will likely result in sanctions.

E. Motions for Downward Departure or Variance

A motion for downward departure or variance must be filed *no later than fourteen (14) days prior to the sentencing date*. The motion should include legal and factual support for the proposed departure or variance.

In addition to filing any such motions or response thereto with the Clerk of Court - and unless the matter is sealed - counsel shall simultaneously send a digital copy of same in either Microsoft Word or WordPerfect format directly to Judge Jones's Criminal Court Deputy, Ms. A'iShah El-Shabazz. Counsel's failure to strictly adhere to this protocol will likely result in sanctions.

F. Sentencing Memoranda

Judge Jones requires both the government and the defendant to submit sentencing memoranda *no later than fourteen (14) days prior to the sentencing date*. Sentencing

memoranda must set forth any legal authority relied upon by the party.

In addition to filing sentencing memoranda with the Clerk of Court - and unless the matter is sealed - counsel shall simultaneously send a digital copy of same in either Microsoft Word or WordPerfect format directly to Judge Jones's Criminal Court Deputy, Ms. A'iShah El-Shabazz. Counsel's failure to strictly adhere to this protocol will likely result in sanctions.

/s/ C. Darnell Jones, II

C. Darnell Jones, II

U.S. District Judge

U.S. District Court for the Eastern District of Pennsylvania

February 13, 2012