JUDGE GENE E.K. PRATTER'S

GENERAL PRETRIAL AND TRIAL PROCEDURES

COUNSEL IS ALSO ADVISED TO READ JUDGE PRATTER'S GUIDELINES FOR TRIAL AND OTHER PROCEEDINGS IN THE COURTROOM

JUDGE GENE E.K. PRATTER

Judge Gene E.K. Pratter was born in Chicago, Illinois. She grew up in Southern California, earned an A.B. from Stanford University and a J.D. from the University of Pennsylvania Law School. From 1975 to 2004, Judge Pratter was in private practice in Philadelphia, Pennsylvania engaging in general civil litigation with a concentration in professional liability matters. She served as general counsel to a multi-state 500-lawyer firm from 1999-2004. While in practice and now in public service, Judge Pratter has been active in a host of diverse community activities, charities and projects. She is an adjunct instructor of Trial Advocacy at the University of Pennsylvania Law School. Judge Pratter was inducted to the United States District Court for the Eastern District of Pennsylvania on June 18, 2004.

I. PRELIMINARY GENERAL MATTERS[1]

A. Professionalism and Civility.

Counsel and their clients should be polite, courteous and otherwise civil to one another, as well as to all parties, witnesses, and court personnel at all times. Gratuitous hyperbole, deliberate or reckless misstatements, uncooperative attitudes, "Rambo" tactics, over-reaching in discovery or other demands, pointless or personal insults, refusals to accommodate reasonable requests for scheduling adjustments and the like are deleterious to the efficient and fair conduct of litigation and detract from the effectiveness and reputation of those who engage in such conduct as well as their colleagues, affiliates, and clients. Written material of similar ilk, when included in submissions to the Court, are rarely - - if ever - - relevant to the matter at issue, much less persuasive, and may be cause for the submission to be returned to counsel for appropriate editing and possible re-submission without the offending material.

Judge Pratter expects counsel to confer with and keep their respective clients up to date (1) with respect to substantive submissions to the Court, (2) in advance of court appearances and (3) as to material developments in the client's case.

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[1]All of the matters addressed in these Procedures apply to all counsel **and all pro se litigants** in any matter pending before Judge Pratter.

In general, counsel should bring matters to the Judge's attention only after they have been discussed with opposing counsel and a reasonable effort has been made to resolve a dispute and the positions of all interested counsel on the matter needing the Court's attention have been shared with all other counsel.

Counsel and their clients should be punctual for all conferences, hearings, oral arguments and trials.

B. Correspondence with the Court.

Correspondence may be directed to the Court concerning scheduling, or other very routine matters. Correspondence to advise the Court that a case has been settled or dismissed is also appropriate,[2] as is correspondence on any matter when specifically requested by the Court. Any written communication requesting action by the Court on the foregoing subjects should include at a minimum: (1) a very brief description of the situation requiring the Court's attention; (2) the position of the opposing party(ies) (i.e., consent or opposition); and (3) the specific relief sought. All counsel should be sent a contemporaneous copy of all correspondence sent to the Court. All other communications with the Court should be made by the formal filing of pleadings, motions, applications, briefs or legal memoranda. For example, discovery or other disputes should be handled by formal motion, not by correspondence unless specifically invited by the Court. Counsel **should not** send Judge Pratter copies of letters counsel send to each other unless specifically invited by the Court to do so.

C. Communication with Law Clerks.

[2]Indeed, the Court expects to be promptly advised in writing whenever any case has been resolved.

Judge Pratter permits communications by counsel with her law clerks on appropriate matters. Counsel should avoid adopting an overly familiar tone with the law clerks or Deputies and, for example, should always address them by their surnames. Unless directed otherwise by the Court, counsel should never contact law clerks for advice on substantive or procedural matters other than of a very rudimentary nature (such as to confirm the Court's administrative policies and procedures or to alert the Court of some actual emergency that cannot be timely handled by conventional correspondence or formal filings). Communications with the Court about scheduling matters should be directed to Judge Pratter's Courtroom Deputy for criminal matters or to the Judicial Secretary/Deputy Clerk for civil matters.

Communications from counsel purporting to justify counsel's conduct because "Your Honor's law clerk [or Deputy] said..." are highly disfavored and are never appropriate as an explanation of counsel's strategic or tactical choices.

D. Telephone Conferences.

Telephone conferences with all counsel may be used at the Court's discretion to resolve scheduling matters, time extensions, or certain discovery disputes. Counsel will be notified of the date and time for the telephone conference. It will be the responsibility of counsel for the moving or initiating party to arrange the telephone conference and to contact Judge Pratter through her Judicial Secretary/Civil Deputy after all parties are present on the call. Counsel are reminded to be especially careful to avoid being discourteous during phone conferences by failing to listen to other speakers, failing to identify themselves prior to each statement, failing to speak loudly or slowly enough to be heard, and the like. In that regard, counsel should be mindful that cell phones typically do not perform well for multi-party conference calls. Failure

to observe basic phone courtesy will result in the Court's refusal to use phone conferences in matters involving the offending participants.

E. Oral Arguments and Evidentiary Hearings.

Judge Pratter does not set aside specific days or times for oral argument, motions or evidentiary hearings. Hearings and arguments are scheduled on an *ad hoc* basis as warranted. They typically are conducted in the courtroom. The Court endeavors to provide counsel with appropriate advance notice of scheduled hearings, arguments and conferences and expects counsel to refrain from last minute (i.e., less than 48 hours) requests to cancel, postpone or reschedule such matters in the absence of actual emergencies.

F. Pro Hac Vice Admissions.

All motions for the pro hac vice admission of counsel must be made by an attorney who is (1) admitted to practice and in good standing before the District Court for the Eastern District of Pennsylvania and (2) whose appearance has been entered in the case in which the motion is made. Judge Pratter does ***not*** accept merely the standard form made available from the offices of the Clerk of Court. Each such motion *must* be accompanied by the affidavit or similar declaration of each attorney being proposed for pro hac vice admission in which the affiant/declarant includes the following information and undertakings:

a. Year and jurisdiction of each bar admission;

b. Status of the attorney's admission(s), i.e., active or inactive, in good standing, etc.;

c. Whether the attorney has ever been suspended from the practice of law in any jurisdiction or received any public reprimand by the highest disciplinary authority of any bar in which the attorney has been a member;

d. That the affiant/declarant (I) has in fact read the most recent edition of the Pennsylvania Rules of Professional Conduct and the Local Rules of this Court and (ii) agrees to be bound by both sets of Rules for the duration of the case for which pro hac vice admission is sought; and

e. That, if granted pro hac vice status, the affiant/declarant will in good faith continue to advise counsel who has moved for the pro hac vice admission of the current status of the case for which pro hac vice status has been granted and of all material developments therein.

The admission of out-of-the-jurisdiction counsel pro hac vice does not relieve associate local counsel of responsibility for the matter before the Court.

G. Use of Electronic Court Filings ("ECF")

Counsel are also advised that the Court expects all counsel to be registered on the ECF system of this District Court. All official filings submitted to the Clerk of the Court must be filed directly by the filing attorney onto ECF. The Court's orders, opinions and other docketed materials will be filed onto ECF and notice thereof will be communicated to counsel either by ECF or ordinary first-class mail. Requests to be excused from ECF registration must be made in writing directly to Judge Pratter.

H. *Pro Se* Litigants - - Assistance From A. Lawyer

Pro se litigants who have received substantive assistance (i.e., help, guidance, direction or the like with the development of strategy or tactics, drafting pleadings, motions or briefs, etc.) from an attorney for any material filed with the Court shall, at the time the material is filed, identify the attorney, the attorney's contribution to the filing, and the scope of the attorney's

limited representation. Failure to identify any such attorney will amount to a representation by the pro se litigant that the submission is the pro se litigant's submission for which no substantive assistance from an attorney was received.

II. CIVIL CASES

A. Pretrial Procedure.

Judge Pratter regularly schedules an in-person initial pretrial conference ("IPTC") pursuant to Rule 16 soon after the answer or other material response to the complaint is filed or soon after the case is transferred to her. Generally a preliminary motion (such as a Rule 12(b)(6) motion to dismiss) will not prompt the scheduling of an IPTC. Prior to the IPTC, counsel may be required to submit to Chambers an initial pretrial conference information or other status report. Generally, the conference will be held in Chambers. In very rare cases the conference (or the participation of one or more counsel) may be by telephone. A written notice concerning the IPTC will be sent to counsel. Counsel should not wait to start discovery until after an IPTC has been held. In fact, the Court expects that discovery will be underway in advance of the IPTC.

At the IPTC, counsel should be prepared to discuss those topics listed in Local Rule of Civil Procedure 16.1(a) and Federal Rule of Civil Procedure 16(b) and (c). Counsel should also be prepared to discuss the progress (and, preferably, the completion) of initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). In Special Management Track cases, the parties should provide the Court with a proposed case management plan pursuant to section 3:01 of the Civil Justice Expense and Delay Reduction Plan (the "Plan") three (3) days prior to the IPTC. Counsel taking part in the IPTC should be prepared to speak knowledgeably, and with

client authority, on these subjects.

A Scheduling Order will be issued following the IPTC setting deadlines for the completion of discovery, the filing of dispositive motions, the filing of pretrial submissions, and a date when the case will be placed in the trial pool or specially listed for trial. Where appropriate, a date for another interim status conference(s) may be set. In certain cases, particularly in Special Management Track cases, the Scheduling Order may provide a date by which the parties will be required to prepare and submit to the Court for approval a Final Pretrial Order pursuant to Local Civil Rule 16.1(d)(2).

Typically, Judge Pratter will hold a final pretrial conference ("FPTC") prior to the date the case will be placed in the trial pool or is scheduled for trial. At the FPTC outstanding topics that were the subject of the IPTC and issues concerning the trial are typically discussed, as well as the subject of settlement possibilities. A Final Pretrial Order or a Final Scheduling Order in a Complex Case, as the case may be, may be issued at the conclusion of the FPTC.

Prior to attending any pretrial conference, counsel should confer with each other about the topics expected to be discussed at the conference, including a substantive discussion of potential settlement. Counsel are also expected to have discussed with their respective clients prior to the conference the issues to be addressed at any conference with the Court and to come to the conference with all necessary authority.

B. Continuances and Extensions.

1. General Policy.

Counsel should expect the Court to maintain the dates contained in the Scheduling Order, unless there is good cause to justify a change.

2. Requests for Extensions and Continuances.

Generally, Judge Pratter will grant a short (i.e., two weeks or less) continuance or extension that will not affect the discovery cutoff or trial date (i.e., the date that a brief is due, the date of an evidentiary hearing, or the date of an oral argument on a non-dispositive motion), if requested with the agreement of all parties. Any other request for a continuance or extension should set forth in detail the basis for the request and whether it is agreed to or opposed by the opposing party(ies). A request for an extension or continuance of longer than two (2) weeks or of the trial date, discovery cutoff date, or the deadline for filing dispositive motions must be made sufficiently prior to the due date to allow time for the Court to consider it and should set forth compelling reason(s) for the relief sought. An unopposed request may be made by letter to the Court and should include the reasons for the request.

C. General Motion Practice.

Except as set forth here, motion practice will be conducted in accordance with Local Rule 7.1. The originals of all motions and briefs should be filed with the Clerk's Office.

Every factual assertion considered by the submitting party to be important to that party's position in a motion, opposing papers or brief must be supported by citation or other specific reference to the record where that fact may be found. Legal and record citations must be

"pinpoint cites."

1. Oral Argument on Motions.

If the Court determines that oral argument will be helpful in deciding a matter, the Judge will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading. The Court is very likely to hear oral argument on dispositive motions.

2. Reply and Surreply Briefs.

Reply and surreply briefs are strongly discouraged unless it is apparent on the face of the submission that such additional briefing is necessary to rebut an issue or point of law not discussed in the initial briefs. Reply and surreply briefs may be filed and served within seven (7) days of service of the brief to which the reply or surreply responds unless the Court sets a different schedule. Reply and surreply submissions should not contain a repeat recitation of the facts of the case and, without leave of Court for good cause shown, must not exceed 15 pages in toto. The Court will not necessarily delay its decision while awaiting a reply or surreply brief.

No other briefs may be filed without leave of Court for good cause shown.

3. Chambers Copies of Motions.

Notwithstanding compliance with the Court's procedure regarding use of ECF, counsel should send to Chambers two (2) courtesy copies of any motions (and related briefs) filed with the Clerk of Court.

4. Time to Respond to Rule 12(b) and Rule 56 Motions

For cases pending before Judge Pratter, parties have 21 days after service of a motion to dismiss under Federal Rule of Civil Procedure 12(b) or a motion for summary judgment under

Federal Rule of Civil Procedure 56 to file their response.

D. Discovery Matters**.**

1. Length of Discovery Period and Extensions.

The length of time permitted for discovery depends upon the nature of the case. Generally, discovery will be permitted for up to six (6) months from the date the complaint is responded to by answer or motion. ***In all employment cases alleging adverse action, parties shall comply with the rules set forth in and use the Pilot Program Regarding Initial Discovery Protocols for Employment Cases Alleging Adverse Action.***[3] Parties should not assume that the filing of a motion to dismiss will be sufficient reason to extend this six-month period, although the Court will entertain a reasonable specific request by any party for an order staying discovery during the pendency of a motion to dismiss the complaint, provided that the request is made no later than promptly after the response to the motion is filed. In Special Management cases, Judge Pratter will permit additional time for discovery depending upon the need to do so identified by the parties at the IPTC, and any subsequent status conferences. A case ordinarily will be scheduled to be listed for trial or included in the trial pool approximately sixty (60) days after the scheduled completion of all discovery without regard to the filing or non-filing of a summary judgment motion.

2. Discovery Conferences and Dispute Resolution**.**

When a discovery dispute occurs, Judge Pratter will consider a motion to compel under Local Civil Rule 26.1(g). Prior to submission of any discovery dispute to the Court for resolution, counsel must consult Local Rule 26.1(f) which requires counsel to make reasonable

[3]See http://www.paed.uscourts.gov/documents/procedures/prapol3.pdf.

efforts to resolve the discovery dispute before submitting it to the Court for resolution. The Rule requires that counsel who is submitting the dispute to the Court include a certification that a good faith resolution effort has been made by counsel involved in the dispute. Judge Pratter expects that such a certification will be substantive, specific and meaningful. For example, it is *not* sufficient for the certification to simply recite that "reasonable efforts have been made but were unsuccessful", that "counsel have conferred in good faith", that "counsel repeatedly conferred with opposing counsel", or similar generalities. See, e.g., Naviant Marketing Solutions, Inc. v. Larry Tucker, Inc., 339 F.3d 180, 186 (3d Cir. 2003); Evans v. American Honda Motors Co., Inc., 2003 WL 22722417 at *1-2 (E.D. Pa. Nov. 26, 2003).

Accordingly, when counsel elect to submit a discovery dispute to Judge Pratter, the submission must include a Rule 26.1(f) certification that delineates with specificity the actual efforts made to resolve the discovery dispute amicably. Failure to include such a certification will subject the submission to summary denial without substantive consideration.

Once a motion to compel is filed, the Court likely will schedule a telephone or in-person conference to resolve the dispute to be held within fourteen (14) days or less of the Court's receipt of the motion, with or without a formal written response from the non-moving party. If the non-moving party wishes the Court to consider the response in advance of ruling and/or a conference, such party should arrange to have the response delivered to Chambers promptly or request a delay in the conference to permit the filing of a written response if the Court has not requested one. If the Court has not scheduled a conference to address a motion to compel, the non-moving party should submit a written response to the motion within seven (7) days of service of the motion. If the parties work out the dispute amicably, they should notify the Court

and the scheduled conference, if any, will be canceled.

The motion and the response must each be accompanied by a form of order and a brief not to exceed five (5) pages describing the disputed issue(s). Discovery motions and responses and the accompanying briefs should not recount the allegations of the complaint, the factual underpinnings of the defense or the history of the case except as absolutely necessary for an understanding and resolution of the specific discovery dispute at issue. In many instances, the Court expects to rule promptly on discovery motions and often decides such motions during the telephone conference if one is held. The Court may act on discovery motions prior to receipt of responsive briefs by initiating a telephone conference for that purpose. A reminder : All motions must contain the certification required under Local Civil Rule 26.1(f).

Judge Pratter permits telephone conferences to resolve discovery disputes during depositions in cases where the deposition would otherwise have to be adjourned. However, counsel should resort to such efforts only sparingly and certainly only after making all appropriate efforts to resolve the impasse amicably, professionally and realistically. Of course, counsel should not assume that last-minute efforts to reach the Court for such disputes will be successful.

3. Confidentiality Agreements**.**

Judge Pratter will consider entry of stipulated, narrowly fashioned confidentiality, protective or seal orders if the proposed order includes a detailed statement demonstrating that good cause exists for the order. See Pansy v. Borough of Stroudsberg, 23 F.3d 772, 786 (3rd Cir. 1994). All such orders must contain the following language (or language substantially similar):

"The Court retains the right to allow, sua sponte or upon motion,

disclosure of any subject covered by this [stipulation/order] or to modify this [stipulation/order] at any time in the interest of justice."

4. Expert Witnesses.

The time for disclosure of the identity of experts, submission of curricula vitae and for discovery pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), generally will be set forth in the Scheduling Order issued at the conclusion of the IPTC. Requests after the conclusion of discovery for scheduling orders relating to expert witnesses will be entertained only upon a showing of good cause and an explanation as to why the need for experts was not anticipated earlier.

E. Settlement**.**

Settlement will be discussed at the IPTC, at subsequent status conferences, and at the FPTC. However, settlement of a case is primarily the responsibility of the parties and, unless requested by all parties, Judge Pratter generally will not set required or mandatory settlement conferences. Judge Pratter will only very rarely participate in settlement negotiations in non-jury cases or cases where dispositive motions are pending. By agreement of the parties, a case in which settlement prospects are promising may be referred to a magistrate judge or to a senior District Court judge for a settlement conference. Judge Pratter welcomes all reasonable suggestions by counsel with respect to options for the pursuit of potential settlement at any time during the pendency of the case.

F. Arbitration.

Upon demand for trial de novo from an arbitration award, Judge Pratter will issue an

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 except that the parties are free to mutually agree to additional discovery, provided that there is no impact upon the Court's scheduling of the case for trial.

G. Summary Judgment Motions.

All summary judgment motions and oppositions to such motions must contain a numbered paragraph-by-paragraph recitation of facts with specific citations to the record for the support of all of those facts. The Court will not consider any assertion of a fact that is not supported by a citation to the record. A party opposing summary judgment must state in similar paragraph form whether that party agrees or disagrees that the fact(s) as stated by the moving party are undisputed. If a party contends that a fact is in dispute, citation must be made to the record evidence that supports the party's view of that particular fact. Failure to address the moving party's factual contentions in this manner will lead to the Court's consideration of the moving party's factual assertion(s) as undisputed.

The filing of a motion for summary judgment will not operate to postpone or delay an arbitration in the absence of a specific order from the Court.

H. Final Pretrial Memoranda.

Unless otherwise ordered, each party shall prepare its own pretrial memoranda and should include the topics addressed in Local Rule of Civil Procedure 16.1©, and should also include the following items:

a. All stipulations of counsel;

b. Any objection to: (1) the admissibility of any exhibit based on

authenticity; (2) the admissibility for any reason (except relevancy) of any evidence expected to be offered; (3) the adequacy of the qualifications of an expert witness expected to testify; and, (4) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701. Such objection shall describe with particularity the ground(s) and the authority for the objection;

c. Deposition testimony (including videotaped depositions) to be offered during a party's case-in-chief (with citations to the page and line number), including the opposing party's counter-designations.

The Scheduling Order, or such other order as may be entered, will set forth the due date for the final pretrial memoranda.

I. Injunctions**.**

Judge Pratter will list promptly any request for a temporary restraining order ("TRO") or a preliminary injunction assigned to her. She will hold a pre-hearing conference to discuss discovery to narrow the issues in contention and to allocate time for the hearing. Expedited discovery will be discussed and, when appropriate, ordered at the conclusion of the pre-hearing conference.

Submission of proposed findings of fact and conclusions of law for TRO and injunction hearings will be required. The time for submission of these items will be set at the pre-hearing conference.

J. Trial Procedure**.**

Counsel must read and review with clients and courtroom colleagues the Court's "Guidelines For Trial and Other Proceedings In the Courtroom". Those Guidelines will be applied by the Court, and counsel is expected to be familiar with the Guidelines.

1. Scheduling**.**

Judge Pratter's practice is to assign either a date for placing the case in the trial pool or a specific trial date at the time of the IPTC. Once a case is placed in the trial pool, counsel, parties, and witnesses should be ready to start trial upon 48 hours telephone notice, although all reasonable efforts will be made to provide at least 72 hours notice, often even longer lead time will be provided. Generally, notice will be considerably longer. The trial day typically will be from 9:30 a.m. until 4:30 p.m., so that the early morning and late afternoon periods can be used for addressing matters outside the presence of the jury. Questions relating to scheduling matters should be directed to Judge Pratter's Deputy Clerks (Civil or Criminal), as appropriate.

2. Cases Involving Out-Of-Town Parties or Witnesses.

Other than in rare and exceptional circumstances, Judge Pratter schedules the trial of cases involving out-of-town counsel, parties, or witnesses the same as all other cases, leaving the scheduling of witnesses to counsel.

3. Conflicts of Counsel**.**

Counsel should notify the Court and opposing counsel immediately upon hearing of any unavoidable and compelling professional or personal conflicts affecting the trial schedule. Once a trial date has been set the Court expects that obligation to take precedence over other matters (except serious, unanticipated personal or professional emergencies).

4. Notetaking by Jurors.

Judge Pratter decides whether to permit jurors to take notes on an ad hoc basis. Generally it is permitted. Jurors are not permitted to pose questions to be asked of witnesses.

5. Voir Dire.

Ordinarily, Judge Pratter will conduct voir dire. The parties are afforded an opportunity to submit proposed voir dire questions. After the Court has concluded voir dire, in most cases, counsel may suggest or pose directly follow-up questions. If allowed, counsel should typically use generic questions of the entire panel unless, at the Court's invitation, limited follow-up questions of specific jurors is permitted.

6. Trial Briefs.

Judge Pratter requires the submission of trial briefs no later than seven (7) days before the trial pool date or the specified trial date.

7. In Limine Motions.

Except as may otherwise be ordered, Judge Pratter requires motions in limine to be submitted in writing no later than fourteen (14) days before the trial pool date or specified trial date.

8. Examination of Witnesses Out of Sequence.

Generally, counsel will be permitted to examine his/her own witnesses out of turn for the convenience of a witness unless it is objected to by the opposing party and prejudice would result.

9. Opening Statements and Summations.

Judge Pratter normally attempts to obtain the agreement of counsel regarding time limits

on opening statements and closing arguments. However, in most cases, twenty (20) to thirty (30) minutes should be adequate for an opening statement, and thirty (30) to forty-five (45) minutes should be adequate for summation.

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

Judge Pratter will permit more than one attorney for a party to examine different witnesses or to argue different points of law before the Court, but only one attorney per party may examine the same witness, and only one attorney per party may address the jury during the opening statement or summation.

11. Examination of Witnesses Beyond Redirect and Recross.

Re-direct and re-cross will be strictly limited to matters not previously covered by direct or cross examinations or special circumstances. Where appropriate, a proffer may be requested before it is permitted.

12. Videotaped Testimony.

Videotaped testimony should begin with the witness being sworn. Objections should be brought to the Court's attention at the time of the FPTC. After the Court rules on any objections, (ordinarily at the FPTC), counsel must edit the tapes before offering the videotaped testimony at trial. All material objections should be resolved before offering the videotape as evidence.

13. Reading Material into the Record.

Judge Pratter has no special practice or policy regarding reading into the record stipulations, pleadings, or discovery material.

14. Preparation of Exhibits.

Exhibits should be pre-marked and pre-exchanged in accordance with the Final Pretrial Order. On the day trial is scheduled to commence, two (2) binders containing a copy of each

exhibit and a copy of a schedule of exhibits should be provided to the Court by each party. Equipment and the smooth presentation of exhibits in video or other electronic form is the responsibility of counsel and should be attended to with care. Back-up plans in the event of equipment failure should be available.

15. Offering Exhibits into Evidence.

Generally, unless the parties have an agreement as to the admissibility of a proposed exhibit, a witness may not testify as to its content until it has been admitted into evidence.

16. "Directed Verdict" Motions.

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials should be in writing if at all possible. Oral argument on such motions is ordinarily permitted.

17. Proposed Jury Instructions and Verdict Forms.

Proposed jury instructions on substantive issues and proposed verdict forms or special interrogatories to the jury should be submitted no later than seven (7) days before the trial pool date. A courtesy copy of the proposed jury instructions (or findings of fact and conclusions of law) should be submitted to Chambers by electronic filing in a format discussed ahead of time with the Court's Chambers staff. Jury instructions need only be submitted with respect to substantive issues in the case. Proposed instructions on procedural matters such as the burden of proof, unanimity and credibility are not necessary.

Each proposed instruction should be on a separate sheet of paper, double spaced and include citation to specific authority. Proposed instructions without citation to specific legal authority will not be considered. Cases and model jury instructions that are cited should be

accurately quoted and a pinpoint page reference should be provided.

If a model jury instruction is submitted, for instance, from the Third Circuit Model Instructions, Devitt & Blackmar, Federal Jury Practice and Instructions or Sand, Modern Federal Jury Instructions, the submitting party shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction, additions should be underlined and deletions should be placed in brackets.

Counsel will have the opportunity to file supplemental points, or proposed findings of fact and conclusions of law, near the close of testimony and prior to summations Judge Pratter conducts a charging conference in all cases.

18. Proposed Findings of Fact and Conclusions of Law.

Proposed findings of fact and conclusions of law in non-jury cases must be submitted at least seven (7) days before the trial pool date. The parties may submit revised findings of fact and conclusions of law with specific reference to testimonial or documentary evidence which has been admitted at the close of testimony, unless otherwise provided for in the Final Pretrial Order.

19. Offers of Proof.

If any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of opposing counsel prior to the start of trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief prior to trial.

20. Unavailability of Witness.

Because a witness may be unavailable at the time of trial, as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects oral or videotaped depositions to be used at trial for any witness whose testimony the party believes essential to the presentation of that party's case,

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.

21. Lay Witness Opinion.

Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 with respect to issues of liability or damages shall, at the time required for submission of expert reports, serve the opposing counsel with the same information and/or documents required with respect to such expert witnesses.

K. Jury Deliberations.

1. Written Jury Instructions.

In some cases Judge Pratter may provide the jury with a copy of the instructions.

2. Exhibits in the Jury Room.

Unless cause is shown, Judge Pratter will permit all exhibits containing substantive or real evidence to go out with the jury. Demonstrative exhibits ordinarily will not be permitted in the jury room. Counsel should confer with each other as to which exhibits should go into the jury room.

3. Handling Jury Requests to Read Back Testimony or Replay Tapes.

At the jury's request, if the transcript is available, Judge Pratter may consider allowing the reading of the appropriate portions back to the jury and the replaying of audio and video tapes.

4. Availability of Counsel During Jury Deliberation.

Unless excused by the Court, counsel should remain in the courthouse during jury deliberations, and, in any event, be no more than 15 minutes away from the courthouse.

5. Taking the Verdict and Special Verdicts.

Ordinarily, Judge Pratter will submit written interrogatories to the jury. The verdict form

will be reviewed with counsel before it is provided to the jury.

6. Polling the Jury.

Judge Pratter will poll the jury upon request.

7. Interviewing the Jury.

Ordinarily, Judge Pratter will allow counsel to interview jurors following conclusion of the trial but will set certain conditions for the interviews. At a minimum, jurors will be told that they are under no obligation to talk with counsel.

III. CRIMINAL CASES

In general, policies and procedures for criminal cases are those set forth above for civil cases.

1. Oral Argument and Motions.

If requested, Judge Pratter generally will permit oral argument on a substantive motion in a criminal case. Evidentiary hearings typically will be set to take place very promptly following the due date of papers opposing the motion.

2. Pretrial Conferences.

Judge Pratter will hold a scheduling conference with counsel in criminal cases on an as-needed basis or if requested by counsel. At the conclusion of the conference, if trial seems likely, Judge Pratter will issue a Scheduling Order governing speedy trial issues, discovery, time for filing motions, and the trial date.

3. Voir Dire.

In criminal cases, the voir dire is conducted by Judge Pratter, based, in part, on questions submitted by counsel. After the voir dire is concluded, the Judge will permit counsel to suggest follow-up questions. Counsel should plan for submission of proposed voir dire questions in

writing seven (7) days before the trial date.

4. Indictments and Informations

Generally, Judge Pratter does not permit the jury to have a copy of the indictment or information during deliberations.

5. Sentencing Memoranda.

Judge Pratter requires the submission of objections to the Presentence Investigation Report and the submission of sentencing memoranda in accordance with the notice of sentencing issued shortly in conjunction with the entry of a guilty plea or judgment. The Judge expects substantive Memoranda from both counsel for the Government and defense counsel.

6. Continuances.

Defense counsel will be expected to consult with counsel's client and set forth in papers submitted to the Court the client's position with respect to any request for a continuance. The defendant's written agreement with the request must be submitted to the Court at the time of the defense motion.

IV. OTHER GENERAL MATTERS

1. Briefs of Cases on Appeal.

Judge Pratter welcomes copies of appellate briefs concerning decisions rendered by her.

2. Consultation with Opposing Counsel.

In general, Judge Pratter expects counsel to bring matters to her attention only after they have been discussed with opposing counsel. When communicating with the Court, counsel shall be prepared to state the position of opposing counsel, e.g., "opposing counsel does not oppose the continuance", "opposing counsel opposes the request to show photographs to the jury during

opening statements", etc.

3. Professionalism In The Courtroom.

To repeat comments set forth above, Judge Pratter expects punctuality and courtesy from counsel to the Court and to each other, both in the presence of the Court and otherwise. The examination of witnesses during hearings or trials should be conducted from the lectern or from counsel's table. Counsel always should rise to address the Court unless specifically instructed otherwise. In addition, counsel will direct all comments to the Court or to the witness under examination and not to other counsel or to the jury. To the extent possible, the Court should be alerted to issues that will need to be ruled upon during the day at the start of the day's proceedings, or during recess out of the jury's presence.

4. Miscellaneous Courtroom Conduct Issues.

a. Counsel must turn off and not operate (surreptiously or otherwise) cell phones, electronic messaging devices ("Blackberries"), PDA's, pagers and the like. All such equipment must remain off and unused for the duration of the proceeding. Counsel has the responsibility to advise their client(s), witnesses and colleagues of the Court's requirement in this regard.

b. If counsel wishes to approach the witness, counsel should ask for permission to do so. If counsel needs to approach one witness many times, a single request for permission will suffice. When counsel approaches the witness, he or she should accomplish the reason for approaching and then return to the place from which he or she is questioning.

c. If counsel wishes to make an objection, counsel should stand and state the objection along with the technical basis for the objection in a word or phrase, like

"hearsay," without making a speech. If counsel wishes to have a sidebar conference, the Court usually will grant the request if counsel does not abuse this option. Counsel is encouraged to bring any evidentiary questions to the attention of the Court outside the presence of the jury.

d. Counsel has the responsibility to advise witnesses that no witness may talk to the jury at any time during the pendency of the case. For example, if the witness has stepped down from the witness stand to testify from an exhibit, the witness should not have any private conversation whatsoever with any juror. The witness may, of course, direct his or her answers to the jury's direction, so long as the witness is still answering the lawyer's questions.

e. In opening statements or closing arguments, no lawyer may call a witness or opposing counsel a "liar" or say that the witness "lied." Such conclusions are for the jury to make. Using such language, including use of the phrases, "I believe," or "I think," is not appropriate during openings or closings.

f. There often will be a clerk in the courtroom during a jury trial who can give the jurors any exhibits or other items that counsel requests be given to them. Counsel should not walk up to the jury and start handing the jurors things unless specifically permitted by the Court to do so. Likewise, counsel should not ask the jurors if they can see or hear something. If counsel is concerned, counsel should say something like: "Your Honor, would the Court ask if the jury can see or hear."

g. A jury trial is a formal affair and all counsel are to act accordingly. Coats, coffee cups, crumpled papers, empty transit boxes, water bottles, candy wrappers and the like should not be left within sight of the jury.

h. Opposing counsel should not have extended conversations with each other in front of the jury without the Court's permission. The Court will allow counsel to have a private conversation if requested and if it will move things along. Lawyers should not argue with either opposing counsel or the Court.

I. It is counsel's obligation to make all necessary arrangements for securing a transcript of the proceedings.

5. If counsel has a specific question on a matter not addressed above, counsel is encouraged to contact the Court's Chambers staff.

5. **Criminal Continuance Form**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA Criminal No.

vs.

I, _____ (Defendant), have consulted with my counsel concerning my right under the Speedy Trial Act and my right to a speedy trial under the Sixth Amendment to the U.S. Constitution. I do not oppose a continuance of my trial, now scheduled for **(date)**, and agree that the ends of justice served by a continuance outweigh the best interest of the public and myself in a speedy trial. I understand that the time between the filing of a Motion to Continue and the new trial date to be set by the Court will be excluded for purposes of computing the time within which my trial must commence under the Speedy Trial Act, and I also agree that this delay will not deprive me of my speedy trial rights under the Sixth Amendment. I understand that if I do not wish to sign this document, the Court will hold a hearing at which I will be present.

_____ _____
Witness signature Defendant

_____
Date

6. Sample Pro Se Order

This Order will be modified as needed in cases involving Pro Se Defendants.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

XXXXX	**:**	**CIVIL ACTION**
Plaintiff	**:**	
v.	**:**	
	:	
XXXXXXXXXX	**:**	
Defendant.	**:**	**No. XX-XXXX**

O R D E R

AND NOW, on this ____ day of _____, 201_, upon consideration of Plaintiff's Complaint and *pro se* status, it is hereby **ORDERED** that:

1. Plaintiff is reminded that [his/her] status as a self-represented litigant does not insulate [him/her] from the obligations to follow the applicable rules, deadlines, requirements, and procedures relating to this case.

2. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting *pro se*). Service may be by first class, postage pre-paid mail, except as to the original Complaint, which must be served in compliance with Rule 4 of the Federal Rules of Civil Procedure. Proof that service has been

made is provided by a certificate of service. This certificate should be filed in the case along with the original papers and should show the date and manner of service. If any pleading or other paper submitted for filing does not include a certificate of service upon the opposing party or counsel for opposing party, it may be disregarded by the Court.

3. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure, Local Rules, and this Court's General Policies and Procedures[4] are to be followed. Plaintiff is specifically directed to comply with Local Civil Rule 7.1 and this Court's Policies and Procedures and serve and file a proper response to all motions within the time specified therein. Failure to do so may result in dismissal of this action or other sanction.

4. If Plaintiff has received substantive assistance (i.e., help with the development of strategy or tactics, drafting pleadings or motions or briefs, etc.) from an attorney for any material filed with the Court, [he/she] shall, at the time the material is filed, identify the attorney, the attorney's contribution to the filing, and the scope of the attorney's limited representation.

5. Plaintiff is specifically directed to comply with Local Rule 26.1(f) which provides that "[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." Plaintiff shall attempt to resolve any discovery disputes by contacting defendant's counsel directly by telephone or through correspondence.

6. No direct communication is to take place with the District Judge or United States Magistrate Judge with regard to this case, unless explicitly instructed otherwise. All relevant information and papers are to be directed to the Clerk of Court.

7. Plaintiff is directed to provide to the Clerk of Court all addresses, fax numbers,

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[4] All counsel and unrepresented parties are expected to review the Court's General Policies and Procedures available on the Court's website at www.paed.uscourts.gov concerning the conduct of the litigation. Any counsel or unrepresented party desiring a hard copy of the Court's Policies and Procedures may call the Court's Civil Deputy, Ms. Rose A. Barber, at 267-299-7350, to request a copy.

email addresses or other contact points by which [he/she] can be contacted regarding this case. *See also* Local Rule of Civil Procedure 5.1. All parties have the obligation to provide current, accurate contact information to the Court and opposing counsel. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties' legal rights.

BY THE COURT:

_____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE