

PRACTICES AND PROCEDURES OF JUDGE W. SCOTT HARDY

(Effective July 1, 2021; Amended October 8, 2021)

I. General Matters

A. Local Rules of Court

These Practices and Procedures shall be followed in addition to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Court's Local Rules.

B. Communications with the Court

Except for discovery disputes (see Section II.B(2)), communications with the Court shall be in the form of motions which shall be accompanied by a proposed order specifying the relief requested. Correspondence should not be sent to the Court unless specifically requested.

C. Communications with Law Clerks and Other Staff

Communications with Chambers Staff concerning the administration of a case are permissible, including inquiries pertaining to the status of any pending matter. No substantive legal matters should be discussed with the law clerks.

D. Filing and Service on CM/ECF

Counsel (and not the Court) is responsible for the filing of all pleadings, documents, or any other material provided to the Court and/or the Clerk, and for service upon opposing counsel or *pro se* parties. The Court is not responsible for filing and/or service of pleadings, documents, or any other material of the parties. All filings must be made on the District's CM/ECF electronic filing system unless expressly permitted or directed to do otherwise by the Court's Local Rules or Order of Court.

E. Telephonic and Video Conferences

Requests for counsel or parties to participate in conferences remotely via telephonic or video conferencing will be permitted on a case-by-case basis. Unless otherwise ordered, settlement conferences, pretrial conferences, and oral arguments will not ordinarily be conducted remotely.

Telephonic conferences will be facilitated through a Court-provided conference line, which will be supplied via ECF docket entry. If a proceeding is to be conducted via video conference, Chambers will supply log-in information to counsel and unrepresented parties in advance of such proceeding.

In addition to Court-scheduled conferences, this Court will also schedule and conduct a status conference (telephonic or in person) upon request by counsel for the parties. Counsel should confer on their agenda before contacting the Chambers to schedule the conference.

F. Alternative Dispute Resolution (ADR)

The Court follows the ADR Policies and Procedures available on the Court's website (www.pawd.uscourts.gov). ADR timelines and procedures may be adjusted for good cause on a case-by-case basis upon leave of Court.

G. Objections/Placing Proceedings on the Record

If counsel at any time has an objection to any procedure, ruling or other action of the Court, counsel should make an immediate objection by written motion or otherwise on the record at the earliest practicable time. If no court reporter is present and counsel has an objection(s), or otherwise desires the proceeding be on the record for any reason, counsel has the right to and should request a court reporter to be present and thereafter place the objection(s) or proceedings on the record. Counsel may request at any time that any proceeding or matter be placed on the record. ECF filings and Court proceedings will not be "sealed" except by Order of the Court for good cause shown in conformity with applicable law, rules, and orders of court.

H. Consultation by Counsel/Attendance of Necessary Counsel

All parties (other than those proceeding *pro se*) shall be represented at any conference by counsel who is a member of the Bar of this Court (or, who has been or will be admitted specially), has entered an appearance, and is sufficiently familiar with all legal and factual matters involved in the action (and has reviewed them with their client) so as to allow counsel to enter into appropriate stipulations and to meaningfully and fully participate in the proceedings. Ordinarily, this means lead trial counsel. At any conference, counsel shall be prepared to discuss in detail and argue any pending motions, and to discuss settlement.

All counsel are expected to confer with one another, in person or by telephone (not email), prior to any conference with the Court to review any issue which may be raised by counsel at such conference and to provide to one another their respective positions (and factual/legal authority) on all such matters. No counsel should be surprised at any conference by the position taken by any opposing party or the legal or factual basis for that position.

I. Amendment of these Practices and Procedures

The Court's Practices and Procedures are available online and will be updated periodically. Counsel are responsible for keeping aware of any such changes.

II. Civil Matters

A. Pretrial Procedures

(1) Initial Case Management Conference (ICMC)

The Court will generally issue an order setting the date of the ICMC within thirty (30) days after the filing of a responsive pleading. The Court will ordinarily conduct this conference by telephone if requested by counsel (or on its own directive). Prior to the conference, the parties are expected to meet and confer and file their report pursuant to Fed.R.Civ.P. 26(f). The parties must also file a fully completed Stipulation Selecting ADR Process prior to the conference. Incomplete Rule 26(f) reports and ADR Stipulations will be stricken with direction to refile in full compliance with the Local Rules. The Court will issue a Case Management Order at or after the conference.

(2) Additional Status and Settlement Conferences

Additional conferences may take place on request of counsel or at the direction of the Court.

(3) Extensions and Continuances

The Court will grant extensions for the filing of motions or briefs where good cause is shown for doing so. Requests for extensions of the discovery period will routinely be granted (at least as to the first such request) so long as the motion sets forth the specific discovery conducted to date and the specific discovery which will be conducted during the proposed extended period. Requests for extensions should be made by a short, written motion (accompanied by a proposed order), and the motion must include a statement regarding all opposing counsel's positions on an extension and a list of any prior requests for extensions. All such requests should be made at least five (5) business days in advance of the existing deadline when practicable. Parties opposing short extensions must be prepared to articulate the actual prejudice which would occur if the extension were granted.

Specific restrictions may be placed on further extensions.

Motions to reschedule appearances before the Court, conferences, or oral arguments will be granted for good cause when the Court is given sufficient notice, and when

rescheduling will not disrupt the Court's calendar, or prejudice other parties. The Court will reasonably accommodate trial counsel's family vacation/special event needs if given ample advance notice.

(4) Post- Fact Discovery Status Conferences

Unless otherwise ordered, the Court will schedule a Post-Fact Discovery Status Conference generally no more than thirty (30) days after the close of discovery at which the parties will discuss expert discovery, motions for summary judgment, potential trial dates, and settlement efforts. Absent leave of Court, motions for summary judgment shall not be filed until after this conference and then only in accordance with the Court's scheduling order.

The Court will schedule a status conference after ruling on all dispositive motions, if necessary, to discuss settlement and pretrial matters. The Court will issue a Pretrial Order following the conference setting forth all pertinent deadlines.

(5) Final Pretrial Conference

The Court will schedule a Final Pretrial Conference to address witness lists, exhibits, motions in limine, jury instructions, voir dire, verdict slips, and any other pretrial matters.

(6) Confidential Position Papers

For jury matters, the Court may, upon request, require the submission of a confidential position letter in advance of the Initial Case Management Conference, Post-Fact Discovery Status Conference, Pre-Trial Conference, settlement conference, or other status conference. Such position letters shall include: (i) a brief recitation of the most salient facts; (ii) a discussion of your party's strengths and weaknesses; (iii) your party's settlement posture; and (iv) any other matters requested by the Court. To ensure candor, these position letters are not to be filed or shared with opposing counsel, but rather, emailed to chambers in accordance with instructions to be provided. All position letters will be kept confidential.

B. Discovery Matters

(1) Length of Discovery Period and Extensions

Ordinarily, one hundred fifty (150) days is permitted for discovery unless the parties indicate that a different time frame is appropriate, and the Court approves of that time frame. Any such proposed variance must be addressed in the parties' Rule 26(f) Report and raised at the ICMC. Extensions of time for discovery are permitted for good cause shown,

provided that the case has been diligently advanced by counsel during the initial period of discovery. The Court will consider phased discovery in appropriate cases.

(2) Deposition and Other Discovery Disputes

For discovery disputes that arise during a deposition, the attorneys together may contact the Court by telephone to determine whether the Court wishes to resolve the matter at that time.

If a discovery dispute cannot be resolved after the parties have conferred in good faith, the parties should jointly contact chambers via telephone (412) 208-7570 or email Courtroom Deputy Clerk Kallie Sheets (kallie_sheets@pawd.uscourts.gov), with a copy to Judicial Assistant Donna Stupy (donna_stupy@pawd.uscourts.gov), to schedule a telephonic status conference to discuss the dispute. No discovery motions are to be filed until after the conference except in cases of emergency as certified by counsel.

(3) Stay of Discovery

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion but will ordinarily be granted only for good cause shown. In appropriate circumstances, discovery may be limited to those facts in support of or opposition to the dispositive motion such as a motion to dismiss for lack of personal jurisdiction.

C. Motions and Briefs

- (1) Motions should provide a short and plain statement expressing the specific relief sought, the factual and legal grounds for such relief, and a certification that the movant has discussed the matter with all other parties. The motion must also expressly indicate whether the opposing party (or parties) consent or oppose the motion and whether such party (or parties) intends to file a response. A proposed order setting forth the specific relief requested shall be filed as a separate attachment to the motion in accordance with the Court's CM/ECF Policies & Procedures. General orders (e.g., "the motion is granted") are not acceptable. Failure to conform to these requirements may result in the motion being stricken.
- (2) Briefs need not be filed for discovery motions or motions seeking extension of time or continuance. Briefs supporting or opposing dispositive motions and briefs supporting or opposing class certification are required but shall not exceed twenty-five (25) pages without leave of Court. Briefs supporting or opposing all other motions shall not exceed ten

(10) pages without leave of Court. Reply briefs relating to dispositive motions and class certification shall not exceed fifteen (15) pages and reply briefs pertaining to all other motions shall not exceed five (5) pages.

- (3) Motions may be decided with or without oral argument as determined by the Court. Any party believing that oral argument will materially assist the Court's decisional process may so advise the Court and request argument.

D. Briefing Schedules

Unless an Order of Court or applicable Court Rules provide otherwise:

- (1) Responses to motions relating to discovery and other case management motions shall be filed within seven (7) days from the date of service of the motion.
- (2) Responses to motions for summary judgment and responses to motions for class certification shall be filed within thirty (30) days from the date of service of the motion.
- (3) Responses to motions to dismiss, motions to compel arbitration, and all other types of motions not expressly addressed herein shall be filed within twenty-one (21) days from the date of service of the motion.
- (4) If the moving party believes that there is urgency to the grant or denial of a motion requiring expedited consideration due to the particular facts or circumstances of the matter, movant should so state in the motion and also advise Chambers and counsel for all other parties of same by telephone. Upon such request, the Court may consider modifying the response time.
- (5) Reply Briefs. A reply brief is defined as the second brief advocating a party's position on the same motion filed after the non-moving party's response. Reply briefs may be filed, without leave of court, seven (7) days (14 days for replies in summary judgment and class certification matters) from the date of service of the response to which they reply.
- (6) Surreply briefs, or other briefs, are disfavored and may be filed only with leave of court.
- (7) Motions for reconsideration must be filed within seven (7) days of the Order at issue.

- (8) The Court may alter any of these provisions by Order, or by notice from court staff at the Court's direction in the interests of justice.

E. Chamber Copies of Motions and Briefs

Counsel should not send courtesy copies of any motion or brief that is available on the CM/ECF System unless requested to do so.

F. Injunctions and Temporary Restraining Orders

Federal Rule of Civil Procedure 65 governs motions for preliminary injunctions and temporary restraining orders. A party seeking an injunction or temporary restraining order must demonstrate having made serious efforts to contact the opposing party or its counsel prior to seeking relief, which must be supported by affidavit in accordance with Fed.R.Civ.P. 65(b). Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order. In circumstances where a bond or deposit of security may be required if relief is granted, the moving party is expected to have that arranged at the time the motion is filed.

The papers in support of a motion for temporary restraining order or preliminary injunction should include affidavit(s) in support of the motion with all relevant documents attached thereto. Any response to the motion for temporary restraining order or preliminary injunction should be accompanied by affidavit(s). Both motions and responses must attach proposed findings of fact and conclusions of law.

All requests for injunctions and temporary restraining orders are handled as expeditiously as possible and the Court will, in its discretion and after review of the pleadings and affidavit(s), determine whether or not to conduct a hearing, and, if so, the scope of the testimony necessary to resolve the matter. Counsel filing any such motion should be prepared to proceed immediately with argument and testimony from supporting witnesses.

G. Stipulated Protective Orders.

All proposed stipulated protective orders shall include the following provision:

Pursuant to this Order, whenever a party intends to file Confidential Material or other such material with the Court that the party desires be filed under seal, such party shall first file a motion for leave to file such materials under seal. The party filing such motion shall first confer with all other parties as to their consent or opposition, and the motion shall certify that the conferral occurred and state whether each party consents or opposes the motion. All motions to seal any document or proceeding must be filed at least five (5) business days in advance of the filing deadline that pertains to the filing or proceeding sought to be sealed. Such motions must set forth

the specific factual and legal basis and necessity for sealing, with particularity as to each item to be sealed, in accordance with prevailing law. Absent exceptional circumstances, any proposed Order must include this language: “This Order may be vacated and sealing lifted for cause shown upon the motion of any party or other person with a recognized interest, or after due notice by the Court upon the Court’s own motion.”

H. Motions to File Under Seal.

Whenever a party intends to file confidential material with the Court that the party desires be filed under seal, such party shall first file a motion for leave to file such materials under seal. The party filing such motion shall first confer with all other parties as to their consent or opposition, and the motion shall certify that the conferral occurred and also state whether each party consents or opposes the motion. All motions to seal any document or proceeding must be filed at least five (5) business days in advance of the filing deadline that pertains to the filing or proceeding sought to be sealed. Such motions must set forth the specific factual and legal basis and necessity for sealing, with particularity as to each item to be sealed, in accordance with prevailing law. *See In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019). The proposed order shall also set forth each item to be sealed with particularity, and must also include this language: “This Order may be vacated and sealing lifted for cause shown upon the motion of any party or other person with a recognized interest, or after due notice by the Court upon the Court’s own motion.”

The parties are reminded that all proceedings in federal court are presumptively open to the public, including those in which “sealed” material may be discussed.

III. Criminal Matters

A. Motions for Extensions of Time

The Court considers requests for extensions on a case-by-case basis. Prior to requesting an extension of time to file pretrial motions, counsel for the moving party must confer with opposing counsel to obtain consent, and state in the motion whether consent was obtained. Appropriate language excluding delay for purposes of the Speedy Trial Act must be included in the proposed order accompanying the motion.

B. Motions for Pre-Plea Presentence Report

The Court will not grant a motion for a pre-plea presentence report unless the defendant has consented to the submittal and disclosure of such report, consistent with Federal Rule of Criminal Procedure 32(e)(1). The defendant’s written consent/waiver shall be deemed acceptable to the Court if it is in the following form:

DEFENDANT’S CONSENT TO SUBMITTAL AND DISCLOSURE OF A LIMITED PRESENTENCE INVESTIGATION REPORT AND WAIVER OF FEDERAL RULE OF CRIMINAL PROCEDURE 32(e)(1)

I, [NAME OF CRIMINAL DEFENDANT], after having been fully advised of my rights pursuant to Federal Rule of Criminal Procedure 32(e)(1), the text of which is set forth below, consent to the submittal and disclosure of a limited presentence investigation report by the United States Probation Office. This report shall be for the limited purpose of obtaining a criminal history calculation as it applies to career offender status and its impact on my criminal history score and offense level. I consent to the review of my presentence investigation report by a judge at any time, including the time prior to entry of a plea of guilty or nolo contendere. I further acknowledge the report will be made available for review to the parties in this case, including the prosecution.

Federal Rule of Criminal Procedure 32(e)(1) provides that: “[u]nless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty.”

I have read, or had read to me, the foregoing consent and waiver and fully understand it.

[SIGNATURE OF CRIMINAL DEFENDANT]

C. Motions to Travel

The Court requires the filing of a motion for leave to travel outside the Western District of Pennsylvania by a defendant. Such motion should specify the position of the Government and the Probation/Pretrial Services Officer.

D. Status/Pretrial Conferences

Status conferences will be scheduled as necessary or upon the request of counsel. Additionally, following the Court’s ruling on pretrial motions, the Court will conduct a status conference at which defense counsel should be prepared to advise the Court of the defendant’s intention to proceed to trial or plead guilty. A pretrial conference will be conducted in advance of trial.

E. Guilty Pleas

The Court has no special rules regarding guilty pleas, or deadlines for accepting or rejecting plea agreements.

F. Trial

The Court will issue a pre-trial order, which sets forth pre-trial deadlines and outlines trial procedures.

G. Sentencing

The Court will issue a presentence order, which outlines deadlines for the filing of each party's Position With Respect to Sentencing Factors, issuance of the Court's Tentative Findings and Rulings, and the filing of each party's Sentencing Memorandum, as well as any other supplemental information for consideration at sentencing.

The Court does not usually hold a sentencing conference prior to the sentencing hearing but may hold one if requested by counsel.

H. Other Criminal Practices and Procedures

The Court will include recommendations to the Bureau of Prisons in the judgment order if appropriate.

/s/ *W. Scott Hardy*
W. Scott Hardy
United States District Judge