



JUDGE THOMAS A. CAPEHART
LEHIGH COUNTY COURTHOUSE
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CIVIL PRE-TRIAL AND TRIAL PROCEDURES
FOR CASES ASSIGNED TO JUDGE THOMAS A. CAPEHART

(Revised October, 2024)

NOTE: Wherever the word “counsel” appears, it shall also include self-represented parties acting as their own counsel.

Interpreter: If a party or witness for a party requires the use of an interpreter at any Court proceeding, the party is responsible for notifying the Lehigh County Interpreter Office so that arrangements can be made for an interpreter. The request form can be accessed at <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>. Email the completed form to interpretingunit@lehighcounty.org. **Only certified court interpreters will be permitted to serve.**

A. GENERAL AND PRE-TRIAL PROCEDURES

- 1. CORRESPONDENCE.** The Court will not entertain or respond to letters requesting relief. All requests for relief **must** be e-filed with the Court by motion, petition, application, or stipulation. Communications with chambers personnel regarding scheduling and non-substantive matters only are permitted. The contact information for Judge Capehart’s Assistant:

Vanessa Nicklin

Telephone: 610-782-3930

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- 2. MOTIONS AND PETITIONS.** All motions and petitions will be decided in accordance with the Pennsylvania Rules of Civil Procedure (Pa.R.Civ.P.) and the Lehigh County Rules of Civil Procedure (Leh.R.C.P.). If a pending motion or petition becomes moot or is being withdrawn, counsel for the moving party **must file a praecipe** withdrawing the motion. If a pending motion is resolved prior to argument or hearing, counsel shall sign a stipulation and file it along with a proposed order approving the stipulation for the judge to sign. Otherwise, the Court will proceed to address the motion and petition.

3. **ORAL ARGUMENT.** Generally, the Court will determine whether oral argument on a pending motion is appropriate. However, if counsel or self-represented parties wish oral argument, they must submit a written request which may either be by stipulation or motion. If the Court grants oral argument, each party will generally have ten (10) minutes to present their argument. If a party requires additional time or rebuttal time, it must be requested and approved before oral argument begins.
4. **ATTENDANCE AT COURT PROCEEDINGS.** Counsel or self-represented parties must appear for all court proceedings unless express permission otherwise has been granted by the Court and shall be prompt, professionally attired, and well prepared.
5. **CONTINUANCES.** Continuance requests must be requested through use of a completed Lehigh County Court of Common Pleas Application for Continuance form found on the Lehigh County website at www.lccpa.org. The Application must be fully completed and signed by all counsel and/or parties and then submitted to Court Administration for filing through the Lehigh County Odyssey E-Filing System. Continuances will only be granted upon good cause shown; the timing of the request is a factor the Court will consider in deciding the request.
6. **STATUS CONFERENCE.** A Status Conference will be held via remote conferencing (Zoom). Typically, the Status Conference is scheduled three (3) to five (5) months after the complaint is filed. At the Status Conference, the Court will review issues regarding service of the Complaint, status of the pleadings and the procedural posture of the case, and will set dates for discovery, expert reports, dispositive motions, Pre-Trial Conference and Trial. Calendars for trial counsel shall be available to facilitate scheduling. All counsel and self-represented parties must attend the Status Conference. Five (5) days prior to the Status Conference, Counsel or self-represented parties shall submit to the Court a Status Conference Memorandum which is only provided to the Court and opposing counsel or pro se party. **The memorandum shall not be filed of record.** The Status Conference Memorandum should be no more than two pages, double spaced, with a brief summary of the factual background, legal basis for the cause of action/defense, and the settlement demand, if any, as well as the name and email identification for counsel/party attending the conference. Counsel attending the Status Conference shall be fully informed about the case, be prepared, and authorized to discuss case management dates, and have access to the calendar of Trial Counsel for the twenty-four (24) months following the Status Conference in order to commit Trial Counsel to dates for case management, Pre-Trial Conference and Trial.
7. **SETTLEMENT CONFERENCE.** The Court will conduct a Settlement Conference provided all parties e-file a stipulation or joint motion to Judge Capehart setting forth the following: 1) a request for a Settlement Conference; 2) a representation that they will participate in good faith to attempt to resolve the case; and 3) a representation that all decision-makers for that party will attend the Settlement Conference, including without limitation, insurance adjusters with express authority to settle the matter.

8. **COMPULSORY ARBITRATION.** If, at any point in litigation, the Plaintiff wishes to remove the case from the jury/non-jury trial track to the compulsory arbitration track, the Court must receive a motion from Plaintiff's counsel and, if a counterclaim has been filed, Defendant's counsel must clearly and unequivocally agree to Plaintiff's motion. Unless and until such motion is received and counsel receive an order striking the case for compulsory arbitration, the parties and counsel must appear at all court proceedings as ordered.
9. **SETTLEMENT/BINDING ARBITRATION.** If, at any point in litigation, your case settles, the Court must receive an email from Plaintiff's counsel addressed to Judge Capehart's assistant and, if a counterclaim has been filed, Defendant's counsel, which clearly and unequivocally states that the case is settled. **A case will not be removed from the trial list because it has settled unless a Praecepto to Settle, Discontinue, and End is filed or an Application for Continuance is submitted and granted.** If the parties agree to Binding Arbitration, the Court must receive a stipulation from counsel for each party which clearly states that the case is to be resolved by Binding Arbitration. Unless and until such correspondence/documents are received and counsel are notified by the Court that a proceeding has been cancelled, the parties and counsel must appear at all court proceedings as ordered. Once the settlement has been consummated or Binding Arbitration completed, Plaintiff shall e-file a Praecepto to Settle, Discontinue, or End.

10. PRE-TRIAL CONFERENCE.

- a. **Trial Counsel** must attend the Pre-Trial Conference ("PTC"). The Court may permit substitute counsel to appear, but only upon advance written request and only if exceptional cause is shown and Trial Counsel represents in writing that the substitute has full knowledge of the case and full settlement authority.
- b. No less than fifteen (15) calendar days prior to the PTC, counsel/parties shall e-file their Pre-Trial Submission with the Clerk of Judicial Records–Civil Division, and serve a time stamped copy on opposing counsel/parties. The required details for the Pre-Trial Statement/Submission will be contained in the Pre-Trial Conference Scheduling Order. Judge Capehart does not require a hard copy. The Pre-Trial Submission shall consist of the following:
- (1) A Pre-Trial Statement in conformity with Pa.R.Civ.P. 212.2(a) which also includes settlement status, an estimate of the length of trial and the name, address and telephone number of trial counsel (Witnesses and/or exhibits not specifically identified by the time of the PTC are precluded from being presented at trial in a party's case-in-chief, subject to applicable law. No unilateral reservations to amend are permitted; leave of court is required). **As an attachment to the Pre-trial Statement, counsel shall supply the Court and opposing counsel with a final list of trial exhibits. Counsel shall provide opposing counsel with pre-marked copies of all trial exhibits.**
 - (2) Points For Charge in accordance with Leh.R.C.P. 226. Pennsylvania Suggested Standard Jury Instructions ("SSJI") shall be listed by number

and title only. Additional points for charge shall be listed one point per page and include legal citations and, if editing a SSJI, the number and title and any deviations from the exact SSJI in italics.

- (3) Motions in limine on anticipated complex legal trial issues. NOTE: Each motion in limine on a particular issue shall be filed as a separate document. Do not file one document listing several motions in limine.
 - (4) Proposed voir dire questions that are additional to those listed in Pennsylvania R.C.P. 220.3(b).
 - (5) A proposed verdict slip.
- c. No later than five (5) days prior to the PTC, the parties or their trial counsel shall e-file with the Clerk of Judicial Records–Civil Division, and serve a time stamped copy on opposing counsel/parties, any Pre-Trial Submission Responses consisting of i) Objections to Voir Dire Questions, ii) Objections to Points for Charge, and Responses to any Motions in Limine. Judge Capehart does not require a hard copy.
- d. At the PTC, typically held three (3) weeks prior to trial, the Court will review all Pre-Trial Submissions and Pre-Trial Submission Responses, discuss logistics and legal trial matters, and will conduct settlement negotiations. Therefore, counsel must be prepared to articulate their settlement positions, have full settlement authority, and have their clients available by telephone. Counsel and self-represented parties, and adjusters, if any, must be prepared to dedicate significant time and effort to resolve the matter. Plaintiff shall serve a written settlement demand on Defendant(s) at least seven (7) days prior to the PTC. At the PTC, Defendant(s) shall articulate a settlement offer or a state that, after thorough review, the defense position is no payment.
- e. At the PTC, typically held three (3) weeks prior to trial, the Court will review all Pre-Trial Submissions and Pre-Trial Submission Responses, discuss logistics and legal trial matters, and **will conduct settlement negotiations**. Therefore, counsel must be prepared to articulate their settlement positions, have full settlement authority, and have their clients available by telephone. Counsel and self-represented parties, and adjusters, if any, must be prepared to dedicate significant time and effort to resolve the matter. Plaintiff shall serve a written settlement demand on Defendant(s) at least seven (7) days prior to the PTC. At the PTC, Defendant(s) shall articulate a settlement offer or a state that, after thorough review, the defense position is no payment.

B. TRIAL PROCEDURES

1. **TRIAL LIST.** Prior to commencement of a particular two (2) week Trial Term, the court will endeavor to provide counsel with a Trial List from the Court, via facsimile or email. This list will identify the cases scheduled for that Trial Term in the order in which they will be called for Trial. The list will contain the names and telephone numbers of the attorneys in all cases on the list to facilitate the exchange of information among counsel regarding the status of their cases. Counsel may also call Chambers for information

regarding the status of the cases on the Trial List. If you are not given a specific date and time to appear, you will receive either a facsimile or email no later than mid-afternoon on the day before you must appear to commence your Trial.

2. TRIAL CONFERENCE. The Court will briefly conference with counsel immediately prior to jury selection or start of a non-jury trial. The purpose of this Conference is only to address outstanding motions, voir dire questions, logistic and legal trial matters. The Court will rarely discuss settlement at this time.

3. JURY SELECTION.

- a. Jury selection will take place immediately after the Trial Conference and immediately prior to the commencement of Trial and will be presided over by Judge Capehart.
- b. Jury selection will take place in a location to be determined by Judge Capehart, depending upon the size of the jury panel. The Court will welcome the jurors, inform the jury panel of the length of the trial, ask whether that creates a hardship for any panel members, introduce voir dire and allow counsel to conduct voir dire. The Court will rule on all hardship requests and motions to strike for cause.
- c. Counsel are restricted to the proposed voir dire questions approved by the Court in advance, except for appropriate follow-up questions.

4. COURT SCHEDULE.

- a. Trial will usually be held from approximately 9:30 a.m. to approximately 4:30 p.m., rarely going past 5:00 p.m., with a fifteen (15) minute morning break, a one (1) hour lunch break and a fifteen (15) minute afternoon break. The Court will generally hold conferences with counsel at 9:00 a.m. and after adjourning court, as needed.
- b. The Court will make every effort to commence proceedings at the time set. Promptness is expected from counsel, the parties, and witnesses.
- c. If a witness was on the stand at a recess or adjournment, the witness should be on the stand ready to proceed when Court is resumed.
- d. Counsel must make sure that they do not run out of witnesses. If a party is out of witnesses and there is more than a brief delay, the Court may assume that the party has rested. If there will be a problem with the scheduling of any witness, counsel shall inform the Court as early as possible, preferably at the Pre-Trial Conference, but no later than the Trial Conference.

5. DIFFICULT TRIAL ISSUES.

- a. If counsel has reason to anticipate that a difficult question of law or evidence may arise during the Trial, counsel must alert his/her opponent and supply the Court with a memorandum of law as early as possible, preferably at the Pre-Trial Conference, but,

in the event of a surprise, no later than one (1) day prior to the time it is anticipated that the question will arise.

- b. If counsel intends to challenge the testimony of a proposed expert witness on the ground that the witness's methodology does not meet the *Frye* test of general acceptance in the relevant scientific community, a motion in limine must be filed in advance of trial in accordance with the deadline set forth in the Order of Case Management and Trial Attachment so that there is sufficient time to allow for a pre-trial hearing on the issue if the Court deems such a hearing necessary.
- c. Counsel shall not request stipulations within the hearing of the jury.

6. COURTROOM LOGISTICS.

- a. Under local practice, the defense table is closest to the jury box.
- b. If there is a request for more than one counsel table for all plaintiffs or all defendants, counsel shall notify the Court at the Pre-Trial Conference.
- c. Only counsel and parties may sit at counsel table. Witnesses, paralegals, and interns shall sit in the gallery only.
- d. No food, beverages, or gum may be brought into the courtroom. Water will be provided at counsel tables. All cell phones **must** be turned off completely before entering the courtroom. Counsel shall ensure that all their clients, witnesses, and others comply with this.
- e. The courtroom has an easel with a large tablet and markers available for use by counsel. However, the Court does not provide video or audio equipment.
- f. Counsel must make their own arrangements in advance of Trial for video, audio or other visual aid equipment that may be needed. If such items are used, they must be set up in the courtroom at times when the Court is not in session. Counsel should inform the Court if they are using such equipment at the Pre-trial Conference and the Court will make the courtroom available for such equipment to be set up at the beginning of Trial.
- g. All counsel, parties and witnesses shall wear proper courtroom attire. Counsel shall wear appropriate formal business attire. Male counsel shall wear business suits and ties or appropriate jacket and tie. Female counsel shall wear business suits or dresses or a combination of top and skirt or pants. Counsel shall instruct all witnesses and parties to wear appropriate attire in court. Business casual dress is required for parties and witnesses. Men should wear an appropriate jacket and tie and appropriate accompanying clothing. Men must wear socks. Women should wear an appropriate suit or dress or combination of top and skirt or pants. Counsel, parties, and witnesses may not wear the following: shorts, jeans, sneakers, tee-shirts, sweat shirts, halter tops, tank tops, or flip-flops.

7. DECORUM.

- a. The Trial shall, at all times, be conducted in a dignified, formal, professional, and civil manner.
- b. Counsel shall stand when addressing the Court.
- c. Conversations between counsel are permitted only to expedite the Trial. Argument between counsel is not permitted; all remarks shall be addressed to the Court. Counsel are never to act or speak disrespectfully to the Court, opposing counsel or anyone else in the courtroom.
- d. Counsel shall not exhibit familiarity with the Court, the parties, witnesses, jurors or opposing counsel and shall not use first names; all participants shall be referred to by their last names. At no time may counsel, a party or witness address any juror individually or by name.
- e. Counsel shall not exhibit any opinion, adverse or favorable, by facial expression, nodding, or other conduct, concerning any testimony which is being given by a witness.

8. OPENING STATEMENTS.

- a. The purpose of the opening statement is to state briefly what counsel expects the evidence to show. Counsel may not use the opening statement to argue the case. Brief reference to the law is permitted, but only to the extent that it aids the jury in understanding what counsel expects to prove.
- b. The use of an exhibit in an opening statement will only be permitted if it has been provided to the Court and counsel or self-represented litigant during the Trial Conference and if it is agreed to by the opposing counsel or self-represented party.

9. OBJECTIONS.

- a. When objecting, counsel or a self-represented party shall state only to what they are objecting and the specific ground(s) for the objection. For example, "Objection" or "I object," followed by a single word, phrase or sentence stating the specific ground of objection such as "Hearsay," "Leading," or "Irrelevant." Counsel or self-represented parties shall not use objections to make a speech, recapitulate testimony, or guide the witness. Argument on an objection will not be heard unless permission is given or argument is requested by the Court.
- b. If counsel knows, or should know, in advance of Trial that opposing counsel will seek to introduce objectionable evidence, counsel should be prepared with applicable law to hand up to the Court or file a motion in limine.

10. EXAMINATION OF WITNESSES.

- a. Counsel may conduct examination of witnesses from any location in the courtroom, provided counsel does so in a professional manner. Counsel and self-represented parties shall treat witnesses with fairness and consideration and shall not shout at or abuse witnesses in any manner.
- b. Counsel should request permission to approach a witness, the first time they approach that witness only and are generally not required to request permission thereafter. However, in the event the Court is of the opinion that counsel's behavior in doing so is inappropriate, the Court will direct counsel to step back and may state, on the record and in front of the jury, that counsel's behavior is inappropriate.
- c. Except for good cause shown, examination of a witness is limited to direct, cross, redirect and recross.
- d. If there are two or more trial attorneys for a party, only one of those attorneys may be involved in the examination of a witness. The first attorney to speak when a witness is on the stand, whether by question or objection, is the attorney who **must** handle that witness on behalf of the party.
- e. The Court will permit witnesses to be taken out of turn in appropriate circumstances.

11. EXHIBITS.

- a. All trial exhibits must be pre-marked with a sticker identifying the proposed exhibit numbers (Exhibits shall be referred to by exhibit number [e.g., P-1, D-1] but may include Bates stamps.)
- b. An exhibit may not be read or shown to the jury unless and until it has been admitted into evidence and a motion to publish it has been granted.
- c. When counsel refers to an exhibit, they shall refer to its exhibit number. Witnesses should be directed to do the same.
- d. Once an exhibit is admitted into evidence, it remains in the custody of the court reporter. The only exceptions are for firearms, ammunition, or contraband, for which special storage arrangements may be required. If counsel wishes to retain an original exhibit, he or she must obtain a stipulation from opposing counsel to replace the original with a copy and then seek such permission from the Court.
- e. When admitting any exhibit that is something other than an 8½ by 11-inch piece of paper, counsel must present the Court with an 8½ by 11-inch piece of paper

version of the exhibit. This may mean a photograph of the exhibit or a reduced copy of a larger piece of paper.

- 12. SIDE-BAR CONFERENCES.** Side-bar conferences are discouraged, should be infrequent, and sought only when necessary.
- 13. CHARGE CONFERENCE.** The Court will hold a Charge Conference prior to closing arguments, at which time the parties' proposed jury instructions and verdict slips will be reviewed. The Court will announce its rulings prior to closing arguments.
- 14. CLOSING ARGUMENTS.** Usually, the Court places no time limit on the amount of time for closing arguments. Upon request, Plaintiff will be permitted rebuttal, usually not to exceed five (5) minutes with the Court typically prompting counsel after four (4) minutes that one (1) minute remains.
- 15. JURY DELIBERATIONS.**
 - a. During jury deliberations, counsel and the parties may leave the courthouse, but must leave their cell phone numbers with the Court Crier and be able to return to the courthouse within fifteen minutes.
 - b. The Court will determine on a case by-case basis what exhibits should be sent out to the jury for deliberations.
- 16. TRANSCRIPTS.** Counsel shall complete a Request for Transcript or Copy pursuant to Pa.R.J.A. 4007(A). The form may be found on the Court's website at: www.lccpa.org/courtadmin/transcription.nex