



JUDGE J. BRIAN JOHNSON

LEHIGH COUNTY COURTHOUSE
455 HAMILTON STREET
ALLENTOWN, PA 18101-1614
610.782.3122
Facsimile 610.871.2866

CIVIL PRE-TRIAL AND TRIAL PROCEDURES
FOR CASES ASSIGNED TO JUDGE J. BRIAN JOHNSON

(Revised February 15, 2019)

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

A. GENERAL AND PRE-TRIAL PROCEDURES

- 1. MOTIONS** All motions and petitions will be decided in accordance with the Pennsylvania Rules of Civil Procedure (“Pa.R.C.P.”) and the Lehigh County Rules of Civil Procedure (“Leh.R.C.P.”). If a pending motion or petition becomes moot or is to be withdrawn, counsel for the moving party **must** file a praecipe withdrawing the motion and deliver, mail or fax a copy of said praecipe to Chambers. Otherwise, the Court will proceed to address the motion or petition. Judge Johnson’s regular day for presentation of a civil motion is most Tuesdays at 9:00 a.m. Cancellations for walk-in motions court can be found on the Court’s website at www.lccpa.org.
- 2. CORRESPONDENCE** The Court will not entertain or respond to letters requesting relief. All requests for relief **must** be presented to the Court by motion, petition or stipulation. When corresponding with Judge Johnson, do so either by mail or facsimile, not both. However, motions, pleadings, briefs or other documents may not be faxed; they must be mailed or delivered in accordance with the Lehigh County Rules of Civil Procedure.
- 3. CONTINUANCES** Continuance requests will only be entertained when submitted either: 1) pursuant to motion practice as set forth in the Lehigh County Rules of Civil Procedure; or 2) through use of a Lehigh County Court of Common Pleas Application For Continuance form which is fully completed and contains the signatures of all counsel and/or parties, which the Court will accept via facsimile. 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. Application For Continuance forms can be found on the Court's website at www.lccpa.org.

4. **STATUS CONFERENCE** Status Conferences are held in person, not by telephone. At the Status Conference, usually held three (3) to five (5) months after a complaint is filed, the Court will review the procedural posture of the case and settlement possibilities, and will set dates for discovery, expert reports, dispositive motions, Pre-Trial Conference and Trial. All counsel and self-represented parties must attend the Status Conference in person and are not to call Chambers requesting to participate by telephone. It is preferred, but not required, that Trial Counsel appear at the Status Conference. A substitute may attend in place of Trial Counsel, provided said substitute is fully informed about the case, is prepared and authorized to discuss case management dates, and has 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.
5. **ATTENDANCE AT COURT APPEARANCES** Counsel or self-represented parties must appear for all court appearances unless express permission otherwise has been granted by the Court and shall be prompt, professionally attired and well prepared.
6. **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 along with submission of their motion or reply thereto. If the Court grants oral argument, each party will have fifteen (15) minutes to present their argument. If a party requires additional time or rebuttal time, it must be requested and approved before oral argument begins.
7. **SETTLEMENT CONFERENCE** Usually, the Court will conduct a Settlement Conference only if all parties submit letters to Judge Johnson 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 insurance adjusters.
8. **SETTLEMENT** If, at any point in litigation, your case settles, the Court **must** receive a letter from Plaintiff's counsel and, in the event of a counterclaim, Defendant's counsel, which clearly and unequivocally states that the case is settled. Unless and until such a letter is 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, Plaintiff shall provide Judge Johnson with a filed, time-stamped copy of the Praecipe To Settle, Discontinue Or End.

9. PRE-TRIAL CONFERENCE

- a. **Trial Counsel** must attend the Pre-Trial Conference (“PTC”) and shall arrive fifteen (15) minutes prior to the scheduled time. 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 later than fifteen (15) calendar days prior to the PTC, counsel/parties shall file with the Clerk of Judicial Records – Civil Division, serve on opposing counsel/parties and, in addition to service through e-filing, **deliver a hard copy to Court Administration:**
 - (1) A Trial Submission consisting of the following separate documents:
 - i. A Pre-Trial Statement in conformity with Pennsylvania R.C.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).
 - ii. Points For Charge in accordance with Lehigh R.C.P. 226. Pennsylvania Suggested Standard Jury Instructions (“SSJI”) shall be listed all on one page by number and title only. Additional Points For Charge shall include legal citations and, if editing a SSJI, the number and title and any deviations from the exact SSJI in italics, one additional point for charge to a page.
 - iii. 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.
 - iv. Proposed voir dire questions that are additional to those listed in Pennsylvania R.C.P. 220.1(16).
 - v. A proposed verdict slip;
- c. No later than five (5) days prior to the PTC, the parties or their trial counsel shall file with the Clerk of Judicial Records – Civil Division, serve on opposing

counsel/parties and, in addition to service through e-filing, **deliver a hard copy to Court Administration:**

- (1) Trial Submission Responses consisting of the following:
 - i. Objections to Additional Voir Dire Questions;
 - ii. Objections to Additional Points For Charge; and
 - iii. Responses to any Motions In Limine.

- d. At the PTC, usually held approximately three (3) weeks prior to Trial, the Court will review all Trial Submissions and 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 for the entire day on which the Pre-Trial Conference is scheduled. Plaintiff shall serve a written settlement demand on Defendant at least seven (7) calendar days prior to the PTC. At the PTC, Defendant shall articulate its settlement offer or a statement that, after thorough review, the defense position is no payment.

10. JUDICIAL STAFF AND FACILITIES

- a. Counsel are not permitted to have correspondence faxed to them in care of Chambers. The Court will not accept deliveries on behalf of counsel or the parties. Counsel are responsible for all of their documents, exhibits and equipment and shall not store such items in the courtroom except upon prior approval of the Court. During a multi-day trial, the parties will usually be permitted to leave their files and equipment, but not personal valuables, in the courtroom overnight.

- b. The court reporter, court crier and tipstaves are employed by, and assist, the Court. Counsel may not issue instructions to or make requests of these individuals. Counsel shall direct any requests to the Court and, if appropriate, the Court will issue instructions to the appropriate staff member.

- c. Counsel must make their own arrangements for telephones. The telephone located in the ante room to the courtroom, in the secretary's office and the law clerk's office are not for the use of attorneys unless special permission is granted by the Court.

11. INTERPRETERS If a party or witness for a party requires the use of an interpreter at any Court proceeding, that party is responsible for making arrangements for an interpreter. Only certified court interpreters will be permitted to serve. A list of certified court interpreters is available from the Family Court Administrator's Office.

B. TRIAL PROCEDURES

1. TRIAL LIST Approximately (2) weeks prior to commencement of a particular two (2) week Trial Term, counsel will receive 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 meet with counsel immediately before jury selection, usually at 9:00 a.m. At that time, the Court may address outstanding motions, voir dire questions, logistic and legal Trial matters, points for charge and verdict slips. 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.
- b. Jury selection will take place in a location to be determined by Judge Johnson, 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 will be provided with seating charts for the jury panel.
- d. 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 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. 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 shall sit in the gallery only.
- e. No food, beverage or gum may be brought into the courtroom. Water will be provided at counsel tables.
- f. All cellular phones, pagers and beepers **must** be turned off completely before entering the courtroom.
- g. 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.
- h. 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 and the Court

will make the courtroom available for such equipment to be set up in advance of Trial.

- i. 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, halters, tank tops or flip-flops.

6. 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.

7. DECORUM

- a. The Trial shall, at all times, be conducted in a dignified and formal 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 must be approved by the Court at the Trial Conference. Such approval will be granted only if all counsel agree that the exhibit may be admitted into evidence.

9. OBJECTIONS TO QUESTIONS

- a. When objecting, counsel shall state only that counsel is objecting and, if counsel chooses, the specific ground of 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 shall not use objections to make a speech, recapitulate testimony, or attempt to 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 shall treat witnesses with fairness and consideration and shall not shout at or abuse witnesses in any manner.
- b. Counsel are not required to request permission to approach witnesses. 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 might state, on the record and in front of the jury, that counsel's behavior is inappropriate.

- c. Except for good cause shown, counsel shall be limited in the examination of a witness 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.

11. EXHIBITS

- a. At the Trial Conference, counsel shall supply the court and opposing counsel with a final list of trial exhibits, along with pre-marked copies of all trial exhibits. No exhibit will be admitted unless specifically identified on this list and a copy provided in advance of Trial to opposing counsel.
- 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 shall 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. Usually, the Court will announce its rulings during the Charge Conference, but sometimes may announce its rulings just prior to closing arguments.

- 14. CLOSING ARGUMENTS** Usually, the Court places no time limit on the amount of time for closing arguments. Plaintiff will be permitted rebuttal, usually not to exceed five (5) minutes and the Court will prompt counsel after four (4) minutes that one (1) minute remains.

- 15. 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 www.lccpa.org.

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