

October 4, 2017

## **STANDARD OPERATING PROCEDURES**

**For**

**The Honorable Michael F. Marmo**

**817 City-County Building**

**414 Grant Street**

**Pittsburgh, PA 15219**

**Phone: 412-350-5716**

**Facsimile: 412-350-5699**

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### **Purpose**

It is our intention to broadly distribute the standard operating procedures of Judge Marmo. Hopefully this will assist attorneys, litigants and others to adequately prepare for proceedings before Judge Marmo. In addition, the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Evidence and the Rules of Court of Allegheny County will apply.

### **Unrepresented/Pro Se Litigants**

While litigants are able to represent themselves before the Court, they must also follow the proper procedures. This can be very difficult and confusing.

For example, the most common error made by pro se litigants involves cross examination of witnesses. Pro se litigants must be careful to only ask questions during cross examination. Pro se litigants have the opportunity to testify or give their side of the case at another point in the trial other than when they are cross examining witnesses.

Please consider the benefits of obtaining an attorney. Do not wait until the last minute to get an attorney as most attorneys will have scheduling conflicts unless they have advance notice of a trial.

Here are sources that may be helpful to you in finding an attorney:

**Neighborhood Legal Services: 412-255-6700**

**Allegheny County Bar Association Pro Bono Center: 412-402-6677**

**Allegheny County Bar Association Lawyer Referral Service: 412-261-5555**

## **NON-JURY TRIAL PROCEDURES**

Honorable Michael F. Marmo  
Court of Common Pleas  
Allegheny County, Pennsylvania

817 City-County Building  
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### **Trial Schedule**

Each day of trial will begin promptly at 9:30 a.m. Counsel should be present in the courtroom not later than 9:15 a.m. Counsel should have executed any necessary waivers to proceed with a non-jury bench trial and should have addressed their envelopes for receipt of the verdict.

Generally, the lunch break is from 12:00 p.m. until 1:30 p.m. Trial will resume promptly at 1:30 p.m. Testimony will continue until 4:00 p.m. The Judge will then meet with counsel as necessary.

### **Preliminary Conferences**

Before commencement of the trial, any party may request a preliminary conference with the court and all counsel in order to address any difficult question of law, evidence or procedure that is anticipated to arise during the course of the trial.

The Court will allow reasonable time before the start of the trial for earnest efforts at conciliation.

### **Courtroom Seating and Decorum**

Counsel and (at counsel's discretion) counsel's party, shall sit at counsel table. Parties who are not represented by counsel shall sit at counsel table. Non-party witnesses shall sit in the spectator section directly behind the Plaintiff or Defendant table. Plaintiffs sit at the table closest to the jury box.

The presentation of a case shall be courteous and concise. Counsel shall comply with the Code of Civility adopted by Order of the Pennsylvania Supreme Court, *per curiam* December 6, 2000.

### **Special Concerns**

Any special needs, concerns or any questions regarding standard procedure should be addressed to the tipstaff at the earliest possible moment and, to the extent possible, in advance of the commencement of the morning or afternoon session.

### **Witness List**

Each party should develop and provide to the Court Reporter at the commencement of trial, a complete list of potential witnesses, together with a list of any unusual names of other individuals, places or things likely to be referenced during testimony.

### **Joint Exhibits and Stipulations**

The parties are strongly encouraged to identify exhibits that may be jointly entered into the record and to arrive at stipulations of fact, pertinent dates or appropriate measures of damages. The parties may propose stipulations as to testimony in order to abbreviate background or corroborative testimony.

### **Trial Memoranda**

The Court welcomes memoranda on points of law pertinent to the matter before the Court.

Parties are encouraged to submit Trial Memoranda of reasonable length in advance of the commencement of trial or at the earliest moment that a party discerns a need for such memorandum. Parties who wish to submit post-hearing memoranda, should expressly reserve the right to do so.

Proposed Orders of Court may be submitted by each party.

All opposing counsel/parties shall be provided with copies of any Trial Memorandum at or before the time of presentation to the Court.

### **Opening/Closing Statements**

Parties should present an opening statement, which shall be brief. Absent consent of all parties or prior permission from the Court, exhibits shall **not** be used or offered during an opening statement.

**Parties are encouraged to present a closing statement which should not exceed ten (10) minutes.**

### **Examining Witnesses**

Each side shall provide a list of respective witnesses to the court prior to commencement of trial. The listing should also include the approximate time needed with each witness.

Examination of witnesses should be civil, disciplined and focused. The Court may intervene whenever interrogation or presentation seems to be repetitive, strays into areas of marginal relevance, subjects witnesses to harassment or undue embarrassment, constitutes argument or “testimony” by the attorney or otherwise fails to move the case forward.

The Court may request an offer of proof before allowing any re-direct examination.

### **Presenting Documentary or Demonstrative Evidence**

Any party who intends to present documents or exhibits, including photographs, as part of a case, shall have sufficient copies for all parties and for the Court. Easels and dry-erase boards are available for use as necessary by the parties. Requests for such equipment should be made to the tipstaff at the outset of the trial. Equipment should be set up before the commencement of the morning or afternoon trial session during which the equipment will be used.

A copy of any exhibits shall be marked and shall be presented to opposing parties before being offered to the Court. **Plaintiff exhibits should be marked by**

**number. Defense exhibits should be marked by letter.** All exhibits must be in a binder with one copy for the Judge and another for the witness stand.

*\*Note: After trial, counsel shall retrieve exhibit binders.*

Exhibits should be offered into evidence at the conclusion of counsel's case.

### **Appeals from Arbitration**

Parties to a trial *de novo* pursuant to an appeal from an award of arbitrators in compulsory arbitration should review Pa. R.C.P. Rule 1311.1 regarding admission of documentary evidence. That rule permits admission of certain documentary evidence without authentication or certification in a manner similar to that permitted under Rule 1305.

### **Objections During Trial**

To raise an objection during the testimony of a witness, a party should **briefly** describe the objection. Examination of a witness shall be suspended whenever an objection is stated and shall not continue until the objection is resolved or counsel is directed to go forward. When making an objection, counsel should state only the legal basis. If counsel believes further argument is necessary, a request for sidebar conference should be made.

### **4:00 p.m. Meeting**

In the event of a trial extending beyond a single day, a meeting may be convened at 4:00 p.m. on each day of hearing or at such time as the proceedings conclude for the day. At the meeting, parties shall raise and address any issues likely to arise during the next day of trial. Parties must be prepared to stay until all matters are resolved.

At the meeting, any party who will be presenting evidence on the next day of trial must identify the witness(es) who will be called and the evidence that will be presented. Requests for offers of proof should be made during the meeting.

**STANDARD JUDICIAL OPERATING PROCEDURES**

Honorable Michael F. Marmo  
Court of Common Pleas  
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**Contacts with the Court**

1. All matters requesting action by the Court shall be presented in the form of a motion or petition to the Court. The Court will not accept unsolicited letters. The Court will not entertain requests for action that are submitted by unsolicited mail, fax, telephone or unsolicited electronic mail.
2. No counsel or party shall engage in *ex parte* communication with the Court or its staff regarding any matter pending before the Court
3. No counsel or party shall correspond with the Court by electronic mail unless specifically requested to do so. Any such request shall be in written form.
4. Inquiries concerning Court procedures should be directed to court staff at 412-350-5716.

**NOTE: Rule 1007.1. Jury Trial. Demand. Waiver**

(c)(2) A demand for a trial by jury on behalf of a party shall be deemed withdrawn if at the time a case is called for trial that party, without satisfactory excuse, fails to appear or appears but is not ready. Any other party appearing and ready who has not already demanded a trial by jury

shall forthwith demand a trial by jury or shall be deemed to have waived the same.

The amendments to Rules 218 and 1007.1 provide that the right to a trial by jury shall be deemed waived by a Defendant who fails to appear at the call of a case for trial or who appears but is not ready to proceed without satisfactory excuse. The matter may then be heard by the court without a jury. However, because other parties may have relied upon the jury demand of the Defendant who fails to appear or is not ready, those parties are given the opportunity to then demand a jury trial.

### **Jury Motions in Limine, Points of Charge & Verdict Slip**

Motions in Limine with a proposed Court Order shall be presented to the Court prior to trial, along with a proposed Verdict Slip. Each proposed charge must contain the section number in the standard charge book. Points of Charge to the jury must use the most recent version of Pennsylvania Suggested Standard Civil Jury Instructions (now Fourth Edition with 2013 Supplement). Likewise, a proposed Verdict Slip shall be submitted to the Court at the onset of trial.

## **Exhibit Books**

In advance of trial, counsel should prepare a tabbed exhibit book containing each exhibit that counsel plans to show to a witness, to introduce through a witness or to otherwise introduce into evidence<sup>1</sup>. At the commencement of the trial, in advance of testimony, copies of the exhibit book shall be given to all opposing counsel/unrepresented parties. A copy shall also be provided to the Court. Additionally, a copy shall be provided for use by witnesses, and may be placed on and remain on the witness stand during the trial.

The inclusion of an exhibit in the exhibit book does not impose any obligation to introduce the exhibit and the failure to do so cannot be commented on by other counsel.

*\*Note: After trial, counsel shall retrieve exhibit binders.*

## **Witness List**

Each party shall provide to the Court Reporter and the Court at the commencement of trial a complete list of potential witnesses, together with a list of any unusual names of other individuals, places or things likely to be referenced during testimony.

The list should additionally note:

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<sup>1</sup> This does not include the portions of medical records or other voluminous records that will not be specifically referenced through testimony.

1. Any witness whose testimony will be received by deposition or videotape; and
2. The particular area of expertise of any expert witness.

### **Joint Exhibits and Stipulations**

The parties are strongly encouraged to identify exhibits that may be jointly entered into the record and to arrive at stipulations of fact, pertinent dates or appropriate measures of damages. The parties may propose stipulations as to testimony in order to abbreviate background or corroborative testimony.

### **Instructions Delivered by the Court to the Jury**

Opening instructions to the jury will include a preliminary discussion of the law that will govern the case. The opening instruction is drawn from PSSCJI No. 1.01. The Court will deliver a concluding instruction drawn from PSSCJI No. 20.00. The parties need not duplicate matters covered in these standard charges in their proposed points for charge.

### **Opening Statements**

An opening statement shall not exceed **thirty (30)** minutes without prior permission from the Court obtained during the preliminary conference. Upon violation of any of this guideline or any guideline established during the preliminary conference, the Court, *sua sponte*, might interrupt an opening statement. Closing arguments should not exceed **thirty (30)** minutes.

### **Examining Witnesses**

A frequent complaint by jurors is the time spent on repetitive questioning and on matters that have little to do with the major issues in a case. Counsel should maintain a disciplined, focused examination of witnesses. The Court will intervene whenever interrogation or presentation seems to be repetitive, strays into areas of marginal relevance, subjects witnesses to harassment or undue embarrassment, or otherwise fails to move the case forward. The Court will intervene in the least intrusive manner necessary, but as appropriate, to ensure an efficient, fair trial.

The Court may request an offer of proof before allowing re-direct examination.

### **Objections During Trial**

Any objection made within the hearing of the jury shall **briefly** be described by counsel. The Court may rule at that time. If counsel disagrees with a ruling, believes that the objection or the issue was not correctly understood, or wishes to place an explanation on the record to preserve the issue, counsel should then ask to approach the bench.

Examination of a witness shall be suspended whenever an objection is stated and shall not continue until the objection is resolved or counsel is directed to go forward.

This procedure is not intended to discourage parties from fully stating on the record their objections or their disagreements with the Court's rulings, but is intended only to have such matters conducted outside the hearing of the jury.

### **Depositions for Use at Trial**

A party using depositions at trial must have all objections resolved in advance. The party using the deposition shall furnish a copy of the full transcript of the deposition to the Court not later than the time that the deposition is used at trial.

### **Use of Videotaped Depositions**

It is solely the responsibility of the party using a videotaped deposition to obtain equipment, provide an operator and to ensure in advance of the presentation that all necessary equipment is in place at such time so as not to interfere with the trial schedule.

Equipment should be in place before the commencement of the morning or afternoon trial session during which the videotape will be played.

### **Exhibit Aids**

Easels and dry-erase boards are available for use as necessary by the parties. Requests for such equipment should be made to the tipstaff at the outset of the trial. Equipment should be set up before the commencement of the morning or afternoon trial session during which the equipment will be used.

### **Jury Instructions**

Proposed points for charge should be submitted **as soon as possible** and, to the extent feasible, at the commencement of the trial. Parties may supplement or amend proposed points at any time. *\*Note: Always use the most recent edition of the Pennsylvania Suggested Standard Civil Jury Instructions (now Fourth Edition with 2013 Supplement) for these charges. And further, the proposed charge must cite to the section number in the standard charge book.*

The Court will usually use the following procedure in reviewing points for charge with counsel:

Before meeting with you, the Court will have reviewed your proposed points for charge and will have prepared the instructions that are tentatively planned to be given to the jury. These instructions will have taken into consideration your proposed points.

Second, the Judge will read to you his tentative instructions and ask if there is anything in these instructions that should be deleted or modified.

Third, the Court will ask you if there are any other Standard Instructions or portions of Standard Instructions that should be included. If you have a proposed instruction that could also be covered in a Standard Instruction, it is your responsibility to bring that Standard Instruction to the Court's attention. Otherwise, the Court's rejection of your proposed language might result in an unintended rejection of a Standard Instruction.

Fourth, the Judge will go over any of your proposed points for charge that were not included in his tentative instructions. The burden is on you to convince the Court that these additional matters should be covered. As to any proposed instruction that is not a Standard Instruction, you must convince the Court that the case raises unusual issues requiring instructions supplemental to matters covered through Standard Instructions.

### **Exhibits for Jury Deliberation**

Counsel shall determine which exhibits, if any, shall be given to the jury during deliberation. Any disagreement shall be brought to the immediate attention of the Court.

### **Jury Verdict Form**

A Proposed Jury Verdict Form shall be submitted **as soon as possible** and to the extent feasible, at the commencement of trial. Counsel shall collaborate on a jury verdict form. Again, any disagreement shall be brought to the immediate attention of the Court.

## **NON- JURY TRIAL PROCEDURES- APPEALS FROM ARBITRATION**

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Parties to a trial *de novo* pursuant to an appeal from an award of arbitrators in compulsory arbitration should review Pa. R.C. P. Rule 1311.1 regarding admission of documentary evidence.

### **Trial Schedule**

Counsel/Pro Se litigants should be present in the courtroom not later than fifteen (15) minutes in advance of the scheduled starting time, and should have executed any necessary waivers to proceed non-jury and should have addressed their envelopes for receipt of the Verdict.

### **Preliminary Conferences**

Before commencement of the trial, any party may request a preliminary conference with the court to address any difficult question of law evidence or procedure that is anticipated to arise during the course of the trial. The Court will allow reasonable time before the start of the trial for earnest efforts at conciliation.

### **Courtroom Seating**

Counsel and (at counsel's discretion) counsel's party, shall sit at counsel table. Parties who are not represented by counsel, shall sit at counsel table. Non-party witnesses shall sit in the spectator section. Plaintiffs sit at the table closest to the jury box.

### **Special Concerns**

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### **Trial Memoranda**

The Court welcomes memoranda on points of law pertinent to the matter before the Court. All opposing counsel/parties shall be provided with copies of any Trial Memorandum at or before the time of presentation to the Court.

## CONCILIATION PROCEDURES

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1. All parties shall timely file and serve their respective Pre-Trial Statements with the Department of Court Records, in compliance with Pa. R.C.P. 212 and local rules of Court. Failure to comply fully with notice and filing requirements or to report as scheduled will result in appropriate sanctions.

2. Counsel must attend with their respective clients and/or an adjustor who possessed authority to settle the case. Please be punctual. The Court requires the physical attendance of the parties or adjustor. Only on rare occasions will the physical attendance of a party or representative be excused.

3. In the event that the case settles before the conciliation date, please forward a letter confirming the fact to the Judge's chambers via mail or fax at 412-350-5699. The parties are advised to consult to Pa. R.C.P. 229 and 229.1 as to the discontinuance and/or settlement of any case.

4. All other Pre-Trial Rules published by this Division shall be followed.

## **POST-TRIAL MOTION PROCEDURES**

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A copy of a Post-Trial Motion must be served on Judge Marmo. The Post-Trial Motion must contain a copy of the request for the transcript of the trial testimony, and whoever is the moving party must promptly see that the Court Reporter is timely paid for preparing the transcript.

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