



JUDGE THOMAS A. CAPEHART

LEHIGH COUNTY COURTHOUSE
455 HAMILTON STREET
ALLENTOWN, PA 18101-1614
610.782.3930
Facsimile 610.871.2792

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

(February, 2022)

A. GENERAL AND PRE-TRIAL PROCEDURES

- 1. MOTIONS.** Either oral argument or hearing will take place for all filed contested motions or petitions. If a pending motion or petition is sought to be withdrawn, counsel for the moving party must e-file a praecipe withdrawing the motion and hand deliver, mail or fax a copy of said praecipe to Chambers. Otherwise, the Court will proceed to address the motion or petition. Judge Capehart's regular day for presentation of a civil motion is typically Wednesday at 9:00 a.m.
- 2. CORRESPONDENCE.** The Court will not entertain or respond to letters requesting relief. All requests for relief must be e-filed with the Court.
- 3. CONTINUANCES.** Continuance requests must be requested through use of a completed Lehigh County Court of Common Pleas Application for Continuance form. When the Application is fully completed and signed by both counsel or self-represented parties, the Court will accept the Application via facsimile to Chambers. 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.
- 4. INTERPRETERS.** 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.

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. STATUS CONFERENCE. A Status Conferences will be held after the filing of a Civil Complaint. 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. Counsel or self-represented parties shall bring along a Status Conference Memo which is only provided to the Court and opposing counsel or pro se party. It is not filed of record. The Status Conference Memo should be only two pages, double spaced, with a brief summary of the Factual Background, Legal Basis for the Cause of Action/ Defense, and the Settlement Demand. 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.

7. 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 Statement/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.
- 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 with any of the following Trial Submission Responses: Objections to Voir Dire Questions, Objections to Pints for Charge, and Responses to any Motions in Limine.
- d. At the PTC, the Court will review all Pre-Trial Statements/Submissions and Trial Submission Responses, discuss logistics and legal trial matters, and conduct settlement discussions. Counsel and self-represented parties, and adjusters, if any, shall be prepared to dedicate significant time and effort to resolve the matter. Trial Counsel, parties, and the adjusters in the case are required to personally attend the PTC.

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 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 procedural issues before the commencement of the trial. 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 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.

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.
- d. No food, beverage or gum may be brought into the courtroom. Water will be provided at counsel tables.
- e. All cellular phones, pagers and beepers must be turned off completely before entering the courtroom.
- f. The Court does not provide video or audio equipment. 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.
- 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, 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 or self-represented parties 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 and self-represented parties 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 TO QUESTIONS.

- 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. Counsel or self-represented parties shall not use objections as an opportunity to offer argument, reiterate 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 or self-represented party knows, or should know, in advance of Trial that opposing counsel/self-represented party will seek to introduce objectionable evidence, counsel or self-represented 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. 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.

11. EXHIBITS.

- a. At the Trial Conference, counsel shall have supplied 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.
- 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.

- 14. CLOSING ARGUMENTS.** Each party will be permitted to present closing arguments to the jury or the Court in a nonjury trial. 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.

- 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.