

PREFERENCES & PROCEDURES FOR CIVIL CASES
THE HONORABLE MARYELLEN NOREIKA
(NOVEMBER 2018)

Page Limits (Double Spaced Submissions Only):

Where page limits are specified by Order or Rule, the parties may alternatively use a word count limit. The word count limit is 250 words per page and shall not exceed the total word count for the page limit specified in the Order or Rule. For example, if the page limit specified is 20 pages, the maximum number of words for the submission is 5,000 (20 x 250). To the extent that a word count is used, a certification as to the total number of words must be attached as part of the submission.

Footnotes:

Footnotes in all pleadings, motions, briefs, claim construction charts, proposed orders, and letters to the Court, must appear in 12-point type.

Jury Trials:

There shall be eight jurors. The Court will conduct jury selection through the “struck juror” method, beginning with the Court reading *voir dire* to the jury panel in the courtroom, continuing by meeting with jurors individually in Chambers or at sidebar and there addressing any challenges for cause, and concluding with peremptory strikes.

Jury trial days generally run from 9:00 a.m. to 4:30 p.m. with two 15-minute breaks (morning and afternoon) and a lunch break.

Bench Trial Days:

Bench trial days will be determined on a case-by-case basis.

Timed Proceedings:

Civil trials (both jury and bench) are timed. Counsel must complete their case, including opening statements, examination of witnesses, and closing arguments, in the allotted time. If evidentiary disputes must be resolved by the Court, the time the parties take to present the dispute will be charged against them. If the Court determines that the dispute was frivolous or brought in bad faith, the Court may charge the losing party with all the time dedicated to resolving the issue.

Exhibit Lists and Use of Exhibits:

The pretrial order contains the maximum universe of exhibits to be used in any party's case-in-chief, as well as all objections to the admission of such exhibits. Exhibits not listed will not be admitted unless good cause is shown.

No exhibit will be admitted unless offered into evidence through a witness, who must at least be shown the exhibit. At some point before the completion of the witness's testimony, any party that has used an exhibit with the witness and wishes that exhibit to be admitted into evidence must formally move the exhibit into evidence by the exhibit number. Exhibits may not be published, displayed, or otherwise shown to the jury until after they have been admitted into evidence. Once admitted, counsel may publish exhibits to the jury without requesting to do so.

Exhibits not objected to will be received into evidence by the operation of the Final Pretrial Order without the need for additional foundation testimony, provided they are shown to a witness.

Demonstrative exhibits may be admitted only by agreement of the parties.

On the first day of trial, each party shall provide a completed AO Form 187 exhibit list to the Courtroom Deputy. All exhibits shall be pre-marked and include the prefix PTX, DTX or JTX, the exhibit number (all PTX, DTX, and JTX should start at exhibit 1) as well as the Civil Action Number. To the extent practicable, the parties shall identify duplicate exhibits and decide on an appropriate form of identification. In a jury trial, the "original" exhibits are given to the Courtroom Deputy once they have been admitted. In a bench trial, the "original" exhibits are maintained by the parties.

The Court will not accept copies of trial exhibits in advance of trial. For any notebooks given to a witness, the Court requests the following copies to be provided:

1. Witness
2. Judge
3. Law Clerk
4. Court Reporter

Evidentiary / Demonstrative Disputes:

Counsel are expected to bring potential disputes to the Court's attention prior to the witness taking the stand, the exhibit being offered, and / or the demonstrative being used. These disputes should be brought to the Court prior to or at the end of a trial day. Failure to conform to this procedure may result in having the objection denied without hearing.

Testimony by Deposition:

The pretrial order contains the maximum universe of deposition designations, counter-designations, and objections to admission of deposition testimony; none of the foregoing shall be supplemented without approval of all parties or leave of the Court, on good cause shown.

Counsel shall confer prior to trial to determine what testimony will be offered by deposition. If there are objections that remain to be resolved, the party calling the witness by deposition shall, no later than two (2) calendar days before the witness is to be called at trial, submit, on behalf of all parties: (i) A copy of the entire deposition testimony of the witness at issue, clearly highlighting the designations, counter-designations, and pending objections; and (ii) a cover letter clearly identifying the pending objections as well as a brief indication (*i.e.*, no more than one sentence per objection) of the basis for the objection and the offering party's response to it. Failure to comply with these procedures, absent an agreement by the parties and approval by the Court, will result in waiver of the use of the deposition testimony or waiver of objection to the use of the deposition testimony.

All irrelevant and redundant material, including colloquy between counsel and objections, will be eliminated when the deposition is read or viewed at trial.

When the witness is called to testify by deposition at trial, the party calling the witness shall provide the Court with two copies of the transcript of the designations and counter-designations that will be read or played. An additional copy shall be provided to the court reporter. The parties will be charged for all time that elapses from the time the witness is called until the next witness is called, according to the proportions to be provided by the parties.

Mode and Order of Presentation:

Examination of witnesses shall be limited to direct, cross, and redirect.

Expert Testimony:

In the pretrial order, the parties shall provide their position(s) as to whether the Court should rule at trial on objections to expert testimony as outside the scope of prior expert disclosures, taking time from the parties' trial presentation to argue and decide such objections; or whether the Court should instead defer ruling on all such objections unless renewed in writing following trial, subject to the proviso that a party prevailing on such a post-trial objection will be entitled to have all of its costs associated with a new trial paid for by the party that elicited the improper expert testimony at the earlier trial.

Post-Trial Briefing Following a Jury Trial:

Briefing shall conform to D. Del. LR 7.1.3, unless otherwise ordered.

Post-Trial Briefing Following a Bench Trial:

If the parties desire a detailed opinion from the Court post-trial, counsel should include a proposed post-trial briefing schedule, including page limits, in the proposed pretrial order.

Along with the initial brief, each party shall provide proposed Findings of Fact, separately stated in numbered paragraphs, constituting a detailed listing of the relevant material facts the party believes it has proven, in a simple narrative form, along with citations to the record. The parties shall propose page limits for the proposed Findings of Fact in the pretrial order.

- Only *admitted trial exhibits* may be relied upon in post-trial briefing.
- No appendices shall be submitted with post-trial briefs.
- Trial exhibits shall be referred to by exhibit number (PTX-, DTX- or JTX-)
- Any admitted trial exhibit that is not specifically addressed in the post-trial submissions shall be deemed stricken from the record.

Submission of Trial Exhibits After Trial:

In patent cases, the Court would like to receive hyperlinked versions of the parties' post-trial papers within a week of the filing of the last post-trial brief. When hyperlinked versions of the briefs are submitted, the Court does not require hard copies of the trial exhibits.

If hyperlinked versions of the briefs are not submitted, the Court requires that the trial exhibits be submitted, within a week of the filing of the last post-trial brief, in the following format:

- Double-sided;
- Stapled or bound;
- Each exhibit in its own file folder clearly labeled; and
- Electronically on a flash/thumb drive clearly labeled with each exhibit saved separately and clearly identified by Exhibit Number only