

# Standard Operating Procedures of the Chester County Court of Common Pleas<sup>1</sup>

## I. Pre-Trial Matters

### A. Motions, Petitions and Stipulated Orders

1. Counsel who file civil motions and petitions which require briefing, hearing, or argument should follow the procedures set forth in C.C.R.C.P. 206, et. seq. Counsel is advised to familiarize themselves with Pa.R.C.P. 206, C.C.R.C.P. 206.4(C)(4) and C.C.R.C.P. 206.5 before presenting a matter on petition or answer, for disposition to the Court.

2. Motions in *limine* should be presented at least one (1) week prior to the selection of a jury. However, motions in *limine* involving complex legal issues shall be submitted two (2) weeks prior to the scheduled trial date. Motions in *limine* brought to jury selection or in violation of the above time requirements may be denied as unreasonably late and any issues raised therein deemed waived.

3. Stipulated orders may be submitted at any time. Advance notice of such submission should be given to the opposing counsel.

### B. Oral Argument

Counsel should be prompt, professionally attired and well prepared for oral argument. Do not merely repeat what your brief asserts. Be prepared to engage in a colloquy with the court and to cite applicable legal authority for your position. Oral argument should only be requested where there are *unique*

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<sup>1</sup> These procedures have been adopted by all Chester County judges except Judge Shenkin. All references to counsel herein equally apply to unrepresented parties. These procedures do not apply to orphans' court practice except where specifically noted.

factual/legal issues. A time limit of approximately ten (10) minutes per side will generally apply. Please review C.C.R.C.P. 211.1 to request oral argument.

### **C. Conferences**

Conferences should be scheduled through the judge's secretary. It is important to distinguish between administrative conferences, settlement conferences, and pre-trial conferences. Pre-trial and settlement memorandums should be filed no later than five (5) days before the scheduled conference. Please review C.C.R.C.P. 212.1. Administrative conferences may be held telephonically at the request of all parties and the agreement of the court.

### **D. Continuances**

Continuance requests must be sought as soon as possible and are not favored. Except for certain civil judges who may accept continuance requests by letter (with a copy to opposing counsel and an indication about whether such counsel opposes the request)<sup>2</sup>, all such requests shall be submitted to the court by written motion or petition and will only be granted for a compelling reason. Requests received within forty-eight (48) hours of a scheduled court date are not likely to be granted, absent exigent circumstances. Successive continuance requests are likely to be denied. Counsel shall be forthright with the court in stating the specific reason for the continuance and shall not assume that it will be granted. The party requesting a continuance will have a significantly greater chance of having the request granted if opposing counsel has been notified of the request and consents to it. Please be prepared to discuss any continuance motion/petition with the judge either in person or by telephone, at the judge's request.

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<sup>2</sup> Counsel should check with the judge's secretary about that judge's preference before sending such a continuance letter.

In criminal cases, the standard continuance motion/order form must be used. Criminal trial continuances are generally granted only when counsel appears in person at the judge's call of the list.

A copy of any civil court continuance motion/petition and answer thereto shall be mailed, faxed or personally delivered to the assigned judge's chambers.

Family court continuance requests shall be made in accordance with the standard motion/order form described in C.C.R.C.P. 1930.1.A.(a) and shall be filed with the Family Court Administrator.

Similarly, orphans' court continuances should be requested using the form of motion and order on the Register of Wills/Clerk of the Orphans' Court website ([www.chesco.org/wills](http://www.chesco.org/wills) under the "forms and documents"). The motion should be submitted to the Orphans' Court Administrator unless otherwise directed by the judge's chambers.

Criminal, civil, orphans' and family court continuance requests shall state specifically whether opposing counsel has been notified of the request and whether opposing counsel consents to the request.

**E. Minors Compromises/Wrongful Death Claims**

Minors Compromises/Wrongful Death Claims should be scheduled through the Orphans Court Administrator if no litigation has been commenced. Where an allocation is intended between the Wrongful Death and Survival Actions, notice must be provided to the Department of Revenue, Harrisburg, for review, comment and approval. Notice must be given to defendants and insurance companies.

**F. Miscellaneous**

Counsel should contact the appropriate administrative office concerning procedural questions or filings, and counsel should ensure complete

research into any question raised before contacting any office. Specific questions about pre-trial filings, including motions, petitions and applications, may be addressed with the pre-trial clerks (the judge's clerk is not a pre-trial clerk). It is assumed that you will have familiarized yourself with Pennsylvania and local rules before making any such communication. Scheduling questions should be directed to the Court Administrator's office, unless special circumstances require that contact be made with the judge's secretary.

## **II. Court Proceedings**

### **A. Court Schedule**

1. The court normally opens at 9:00 a.m. or 9:30 a.m. (consult the individual judge's daily schedule) and closes at 4:30 p.m. During trials, the court normally closes at approximately 4:30 p.m., but may delay closing into the night if a jury is deliberating on a verdict. The court shall make every effort to commence proceedings on time. Counsel, parties, and witnesses shall be ready to proceed at the designated time. Generally, less time consuming matters will be heard first if more than one matter is scheduled for the same time. Prior to the initiation of the proceedings, counsel should make one last effort to discuss an agreed disposition with the opposing counsel. The court will make itself available to facilitate such a disposition provided the scheduled and/or other proceedings are not unduly delayed.

2. Lateness for court will not be tolerated; however, if counsel is going to be late for a court proceeding, counsel should contact the judge's chambers as soon as possible and advise the judicial secretary of your expected arrival. Unreasonable tardiness by counsel may result in sanctions, including the payment of the opposing counsel fees.

### **III. Hearing/Trial Proceedings**

#### **A. Preliminary Conferences**

Counsel shall meet with the court prior to jury selection to provide witness lists for voir dire, points for charge and discuss the court's rulings on any previously filed motions in *limine*, timing of witnesses, proof, etc. If special or unusual issues or rules of law are at issue, or if points for charge are requested which are not from standard jury instructions, written points for charge should be submitted with citations of authority for each point. Any points for charge requested or submitted from standard jury instructions shall have all blanks filled, alternatives selected, and any changes to the standard wording noted and highlighted. Individual judges may request that points for charge be e-mailed to the judge's secretary in an appropriate format. If counsel has reason to anticipate that a significant question of law or evidence will arise during trial, counsel should alert opposing counsel, and the court should be supplied with a memorandum of law, if not a motion in *limine*, on the question prior to commencement of trial. In civil trials, counsel must comply with C.C.R.C.P. 226.1.

#### **B. Voir Dire**

1. In criminal cases, voir dire will be conducted by the court.
2. Voir dire in civil cases may be conducted by counsel. If disputes arise, the court will resolve them. Counsel should exchange proposed voir dire questions prior to the commencement of voir dire.

3. The court prefers that counsel expedite voir dire, including the striking procedure. If you are taking too long, the court may take over the process.

#### **C. Court Seating**

1. Under local practice, plaintiffs and the Commonwealth's table is closest to the jury box.

2. If there is a request for more than one counsel table for all plaintiffs or defendants, or any other special requests for seating, visual aids, etc., notify the Court Administrator's office at least one (1) week before trial.

3. Generally, only counsel and parties, if desired, shall sit at counsel table. Witnesses shall sit in the public seating section unless otherwise authorized by the court. If any party desires sequestration, that motion shall be made at the outset of the trial. If sequestration is ordered, fact witnesses for all parties will be sequestered. Expert witnesses may also be sequestered. Counsel will be responsible for informing their non-party witnesses that they should remain outside the courtroom until called, and that they should not discuss their testimony with other witnesses until the trial is concluded.

4. No food or beverage may be brought to counsel table or into the courtroom. Counsel may, however, have water glasses and pitchers at counsel table. Arrangements should be made with the tipstaff.

#### **D. Decorum of Counsel**

1. Counsel shall dress in an appropriate professional manner and shall participate in any hearing or trial in a dignified and formal manner. Counsel shall not raise their voices any higher than is necessary to be clearly heard by the court, witnesses and the jury. Always address the court on a disputed issue and not opposing counsel. Colloquy between counsel is permitted only to expedite the trial and should be avoided in the presence of the judge and jury. All remarks should be addressed to the court and counsel will rise when addressing the court. Counsel will be expected to act and speak respectfully to the court and opposing counsel.

2. Counsel should be courteous and professional. Counsel shall not exhibit casual familiarity with the parties, jurors or opposing counsel while court is in session. During opening statements or closing arguments, no juror should be addressed individually or by name. Neither counsel nor the parties by

their body language or facial expression shall convey their reaction to the testimony of a witness, the questions of or argument of opposing counsel.

3. Counsel shall read the Pennsylvania Code of Civility prior to appearing in court and abide by Code Section II, The Lawyer's Duties to the Court, while in court or chambers.

#### **E. Opening Statements**

The purpose of the opening statement is to state briefly what counsel expects the evidence to show. Brief reference to the law will be permitted but only to the extent that it will aid the jury to understand what counsel expects to prove. It is not proper to use the opening statement to argue the case. Upon violation of any of these rules, the court may, *sua sponte*, interrupt the opening statement and remind counsel of the opening statement purpose.

#### **F. Objections to Questions**

When objecting, counsel should only state "objection" and then give a brief statement of the legal grounds for the objection, e.g. "objection-hearsay"; "objection-lack of foundation". Do not offer extensive argument or explanation unless requested to do so by the court. Counsel will not be permitted to state additional reasons after the court has ruled. Do not use objections for the purpose of making a speech, recapitulating testimony, or attempting to guide the witness. Such "speaking objections" may result at least in a cautionary instruction being given to the jury. If argument is necessary on an objection, ask to speak with the court at side bar.

#### **G. Examination of Witnesses**

1. It is counsel's responsibility to advise witnesses, in advance, regarding what behavior is expected in the courtroom including compliance with sequestration orders and not mentioning certain evidence such as insurance in a

civil case or suppressed evidence and excluded past crimes/bad acts in a criminal case.

2. Counsel should ordinarily conduct examination of witnesses from the lectern or while seated at counsel table. If counsel is more comfortable standing, counsel shall stand behind the counsel table. Do not approach a witness without specific permission. When permission is granted, please return to counsel table when the purpose of the permission is concluded.

3. At the beginning of a witness' testimony, have the witness state and spell their name for the court reporter's benefit.

4. Witnesses should be treated with fairness and consideration; they should not be shouted at, ridiculed, or abused in any manner. Even tough cross-examination can be done in a civilized and professional manner.

5. Allow the witness to finish answering before asking the next question.

6. Witnesses and parties should be instructed to wear proper attire to court. Shorts, tank tops, etc., are not permitted attire. Witnesses or parties not properly attired may be excluded from the courtroom.

7. Avoid the use of argumentative questions. Keep your questions clear and to the point.

8. 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. Counsel may not discuss a witness' testimony with the witness during a break before or during the witness' cross examination, and must instruct such a witness not to discuss his or her testimony with anyone else until the witness completes the witness' testimony. Make sure that you do not run out of witnesses. If you are out of witnesses and there is more than a brief delay, the court may determine that counsel is resting. If there is going to be a problem with the scheduling of any

witness(es), inform the court at the pre-trial conference and at the beginning of that day's proceedings.

9. Cell phones, pagers and like communication equipment must be turned off in the courtroom and counsel shall so instruct those persons affiliated with counsel's case.

## **H. Exhibits**

1. Be sure that exhibits are marked before the trial begins.

Arrange with the court reporter to have your exhibits marked at a time when it will not delay the proceedings. Do not ask the court reporter to give up his/her break to mark your exhibits. The assignment of the applicable court reporter to a particular trial is generally known at least one week in advance and can be determined by calling the office of court reporting at 610-344-6985.

2. Except where impractical, copies of the exhibits should be provided to all other counsel. The jury should not see an exhibit before it has been identified. Counsel should not unnecessarily request to have exhibits published to the jury.

3. Each counsel should keep a list of exhibits and should keep track of when each exhibit has been admitted into evidence. Exhibits admitted into evidence should be delivered to the court clerk.

4. Counsel should refer to an exhibit by exhibit number.

Witnesses should be asked to do the same.

5. Unless permission is granted by the court, exhibits shall not be shown to the jury during opening statements.

## **I. Side Bar Conferences**

Side bar conferences should be infrequent and sought only when necessary.

## **J. Points for Charge and Closing Arguments**

1. A charge conference will always be held prior to closing arguments. Counsel shall submit at that time, if not before, a proposed verdict slip. Any amendment to the points for charge submitted before the commencement of trial shall be made as soon as possible thereafter, but no later than the charge conference. A copy of any amendment to the proposed points for charge and verdict slip must be concurrently provided to opposing counsel.

2. All exceptions to the court's charge must be placed on the record before the jury is dismissed for deliberations.

3. The court may request counsel's good faith representation on the amount of time necessary for counsel to make closing argument, may hold counsel to that time or may impose another time limit.

## **K. Criminal Sentencing Hearings**

The attorney for the Commonwealth and defendant shall submit any sentencing memorandum to the court and opposing counsel at least five (5) days in advance of the sentencing hearing.

## **L. Miscellaneous**

1. Detailed findings of fact are very helpful in civil non-jury trials and are highly encouraged. Individual judges may request that they be e-mailed to the judge's secretary in an appropriate format.

2. In civil cases, counsel should exchange their lists of experts and the substance of their testimony prior to the beginning of trial or risk having such expert(s) barred from giving testimony. See C.C.R.C.P. 212.1. Prepare your expert examination, including questions intended to establish a proper factual foundation. Experts should be specifically asked if they hold their opinion to a reasonable degree of certainty within their field of expertise.

3. During jury deliberations, counsel shall let the tipstaff on duty know where they are, and shall be available, with their clients, to return to the court on five (5) minutes' notice.

4. From the time the jury is selected until it is discharged, counsel shall avoid all forms of contact with the individual jurors, and shall advise their parties and witnesses to do the same.

5. Do not copy the judge on correspondence between counsel. If there is a discovery dispute, the judge will only entertain a formal motion.

6. Judicial admissions, pleading averments, requests for admissions of parties, etc., can be very useful to the presentation of a case. However, they are not part of the evidence unless moved into evidence and admitted as such.

7. If use of a pre-recorded media e.g. CD, DVD, videotape, is planned for use in court, please prepare to use such media at the starting point and review any objections made on the media with the court ahead of time. Such media shown to juries must be edited to delete inadmissible testimony and unnecessary questions or statements by counsel. Counsel is expected to effectuate their own media presentation. Where use of the court's electronic equipment or services is requested, arrangements must be made with the Department of Computer and Information Services at least forty-eight (48) hours in advance of the hearing/trial date.

8. Although jury views are not encouraged, they may be done with advance arrangements by counsel with the court. Highly detailed photographs are preferred and can prove just as informative.

#### **M. Court Reporter**

The court reporter is not under the control of the parties or counsel. Counsel should not issue instructions to or impose requirements upon the reporter.

Counsel should direct their requests to the court and, if appropriate, the court will issue instructions to the reporter. During trial, be conscious of the speed at which you and your witnesses speak, particularly when a document is recited, so that the reporter can accurately transcribe the statements and testimony. In cases, such as medical malpractice cases, which require the use of complicated terminology, please provide the reporter with a glossary of terms that you plan to use throughout the trial.