

Hon. James C. Fox
Senior District Judge
Practice Preferences and Procedures

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I. GENERAL PREFERENCES AND PRACTICES

- A. **Formatting.** All papers submitted to the court shall be formatted in Times New Roman size 12 font with 1 inch margins. This formatting requirement also applies to footnotes.
- B. **Filing and Briefing Requirements.** The parties shall adhere to the [Local Rules](#) as well as the [Electronic Case Filing Administrative Policies and Procedure Manual](#).

When referring to the record in the briefing on any motion, counsel must specify the relevant exhibit, page, and line numbers. Where practicable, motions and memoranda citing exhibits filed previously or contemporaneously with the motion or memorandum shall include hyperlinks to the exhibits, preferably to the specific page of the exhibit cited.

If excerpts of a **deposition transcript** are referenced in memoranda, a party shall file the **entire transcript in its original form** (i.e., transcripts reduced in size are unacceptable).

- C. **Courtesy Copies.** Counsel shall provide a courtesy copy of ALL documents **containing thirty (30) or more pages**, including all attachments and/or exhibits. All courtesy copies should be mailed or delivered to Judge Fox's Chambers, U.S. District Court, Eastern District of North Carolina, 2 Princess St., Wilmington, North Carolina 28401.
- D. **Proposed Amended Pleadings.** Any motion seeking to amend a pleading shall include as exhibits both the proposed amended pleading and a red-lined version of the proposed amended pleading showing changes proposed to be made. The proposed pleading **must be properly signed**.

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- E. **Emergency Motions** (e.g., TROs and select discovery motions). Attorneys filing emergency motions should not call chambers unless or until the matter is assigned to Judge Fox. If Judge Fox is assigned, the intake deputy clerk should be advised that the matter requires immediate attention. Except in admiralty matters, Judge Fox generally asks counsel initiating an emergency action to communicate with opposing counsel in an attempt to agree on temporary injunctive action pending a hearing on the motion for preliminary injunction.
- F. **Proposed Documents.** Parties shall submit proposed orders, jury instructions, or findings & conclusions in PDF format through the CM/ECF system. For ease of use, PDF documents created through methods other than scanning are encouraged. (See [Electronic Case Filing User's Manual](#) for further information on creating PDF documents.)
- G. **Decorum.** Counsel's demeanor should be one of courtesy and professionalism. Counsel should never act or speak disrespectfully to the Court or opposing counsel in any manner. The court expects punctuality by all persons involved in a courtroom proceeding. Judge Fox is zealously protective of the integrity of the federal court and the legal profession. Counsel are cautioned that gamesmanship, sandbagging, name-calling, or any other type of behavior unbecoming a member of the bar of this court will not be tolerated.

II. TERMS OF COURT

- A. **Monthly Terms.** Judge Fox holds up to two court terms per month. Each court term commences on a Monday, barring a Federal holiday.
- B. **Criminal & Civil Cases.** A term of court encompasses both criminal and civil cases.
- C. **Criminal Trials Preempt.** Criminal trials always preempt civil trials due to statutory and constitutional speedy trial requirements.
- D. **Case Order.** Arraignment hearings and hearings for entries of guilty pleas are conducted on the first day of a term of court. Sentencing, resentencing and revocation of supervised release hearings and other criminal proceedings (e.g., Fed. R. Crim. P. 35(b)) follow and continue into the week as necessary. Upon conclusion of these hearings and proceedings, any scheduled criminal trials will commence followed by any scheduled civil trials.
- E. **Start Time.** All civil and criminal hearings start at 10:00 a.m. Jury selections in criminal and civil trials start at 10:00 a.m. Thereafter, court resumes at 9:00 a.m. until conclusion of the trial.

- F. **Calendar Changes.** All requests for calendar changes **must be made by motion** for the court's consideration with a proposed order. The court **will not entertain calendar changes made via email** to chambers or the Clerk's office.
- G. **Scheduling Conflicts.** Attorneys anticipating scheduling conflicts should direct "conflict letters" to each judge whose docket will be affected. The court's staff will resolve the conflict and notify counsel.

Attorneys with the United States Attorney's Office and Federal Public Defender's Office should endeavor to resolve as many such conflicts internally as possible before seeking the court's intervention; that is, federal lawyers should "hand off" a routine matter whenever possible.

III. TRIAL PROCEDURES GENERALLY

- A. **Jury Selection.** All juries to sit during a term are selected on the same day.
- B. **Opening Statements.** Counsel may not make arguments in their opening statements, and the court will stop an attorney who begins to argue during opening.
- C. **Closing Arguments.** Counsel will be permitted to choose the length of time for closing arguments, and both sides will be afforded the same amount of time.
- D. **Trial Exhibits.** All exhibits **shall be pre-marked** pursuant to [Local Civil Rule 39.1\(b\)](#).

The parties must prepare a tabbed notebook containing trial exhibits for the court and the law clerk. Large exhibits must be reduced to 8 1/2" x 11" for preservation in the record.

- E. **Questioning of Witnesses.** Counsel must question witnesses from a seated position at counsel's table unless it is necessary for counsel to discuss an exhibit with the witness at the witness stand.

The court will not permit a witness to hedge and dodge a question, and will instruct the witness to answer counsel's questions. Also, the court will not permit counsel to argue with a witness.

- F. **Courtroom Technology.** Counsel must adhere to the requirements set forth in Local Civil Rule 16.1(3) and 39.1(c). Counsel may bring laptops or tablet computers into the courtroom but any such equipment shall be without Internet access. Counsel shall adhere to [Standing Order 05-PLR-7](#). For further technology requirements, visit the District Court's [website](#).

IV. CRIMINAL PROCEDURES

- A. **Motions to Continue & Proposed Orders.** Motions to continue, either by attorneys or the United States Probation Office, must be filed **at least seven (7) business days** prior to the **first day of a court term**, absent exigent circumstances.

Motions to continue must include a proposed order which, if approved by the court, would grant the relief sought by the motion. The proposed order must be consistent with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161(h), and must include a proposed finding that **explains in reasonable detail** why the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial.

- B. **Motions in Limine.** Motions in limine must be filed **at least seven (7) business days** prior to the **first day of a court term**, absent exigent circumstances.
- C. **Miscellaneous Non-Emergency Motions.** Any motion of a non-emergency nature not filed **at least seven (7) business days** prior to the **first day of a court term** will be heard in open court at the start of the session.
- D. **Arraignment Hearings.** Prior to any arraignment, counsel shall confirm the Government's **penalty sheet** correctly advises as to the following: (1) the maximum and minimum terms of imprisonment; (2) the statutory terms of supervised release, (3) the maximum fine; and (4) the term of imprisonment upon revocation of supervised release. The penalty sheet must be consistent with the Memorandum of Plea Agreement, where applicable.

If a **Criminal Information** is the subject of a Memorandum of Plea Agreement, counsel shall confirm that the Memorandum nowhere refers to the charging document as an "Indictment" or "Superseding Indictment."

If a defendant is pleading guilty to more than one charge, counsel shall confirm that the **Memorandum of Plea Agreement**, if any, includes an accurate statement of the cumulative total minimum and maximum penalties, including fines and restitution, to which the guilty plea exposes his or her client.

All defendants scheduled for an arraignment hearing during a court term must be present in the courtroom at 10:00 a.m. to hear the court's fifteen minute "litany." Any defendant out on bond who arrives late will be taken into custody.

- E. **Sentencing Hearings.** Relevant motions (e.g., motions for departure or variance), sentencing memoranda and character letters shall be filed no later than 4:00 p.m. at **least four (4) business days** prior to the **first day of the court term**.

If a sentencing hearing will include live testimony, counsel shall notify the Clerk **at least two (2) business days** before the first day of the court term and advise as to the anticipated length of said testimony.

Counsel shall mail character letters for a defendant's sentencing directly to Judge Fox at P.O. Box 2143, Wilmington, N.C. 28402.

- F. **Revocation of Supervised Release Hearings.** **Seven (7) business days** before the first day of a court term, defense counsel must file a notice providing the following information: (1) whether any violations supporting the USPO's motion remain pending; (2) whether the defendant intends on pleading no contest to any violations; and (3) any other pending issues (e.g., housing concerns).
- G. **Trials.** The United States Attorney must advise of any anticipated trials and the expected length of each **at least seven (7) business days** before the first day of the court term.

Motions in limine must be filed **at least seven (7) business days** prior to the first day of a court term. Any motion of a non-emergency nature filed after that date must be received in the Clerk's Office by 4:00 p.m. on the date filed, and will be heard in open court, at which time all parties and counsel must be present.

Proposed jury instructions must be filed no later than 4:00 p.m. **at least seven (7) business days** prior to the first day of the court term. Proposed instructions must include a citation reference to each proposed instruction.

The court conducts voir dire. In addition to the court's standard questions, the parties are invited to suggest other questions which may be pertinent in light of the circumstances of the case. The parties shall file **proposed voir dire**, if any, no later 4:00 p.m. **at least seven (7) business days** prior to the first day of the court term.

V. CIVIL PROCEDURES

- A. **Pretrial Conference.** The conference usually precedes trial by approximately two weeks. The court will not automatically continue the pretrial conference if dispositive motions remain pending.
- B. **Pretrial Hearing.** The court generally conducts a hearing near the date of trial in order to rule on objections identified in the Pretrial Order to the extent possible. At trial, all exhibits will be deemed admitted except those upon which ruling has been reserved.
- C. **Referral to USMJ.** Most pretrial matters are referred to the assigned magistrate judge until the calendar is published, except in complex litigation.
- D. **Consent to USMJ Jurisdiction.** Civil litigants may consent to Magistrate Judge jurisdiction, including a trial on a date certain.
- E. **Opinion Witnesses.** Material regarding expert witnesses – called "opinion witnesses" by the court – including curricula vitae, reports, depositions and objections to qualifications, must be submitted to chambers **at least fourteen (14) days** in advance of trial so that the court may conduct its gatekeeping function.
- F. **Motion Hearings.** Hearings on civil motions are rare. The parties shall set forth their arguments and the authority therefor in the memoranda submitted in support of, and in opposition to, dispositive motions.
- G. **Proposed Voir Dire.** The court conducts voir dire. In addition to the court's standard questions, the parties are invited to suggest other questions that may be pertinent in light of the circumstances of the case. The parties are directed to pay close attention to the deadline set in their case for submission of additional voir dire.