

Hon. Richard E. Myers II
Chief United States District Judge
Practice Preferences and Procedures

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I. GENERAL PREFERENCES AND PRACTICES

- A. **Filing and Briefing Requirements.** The parties shall adhere to the [Local Rules](#) as well as the [Electronic Case Filing Administrative Policies and Procedure Manual](#). Leave to exceed the prescribed page length must be obtained by motion.

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).

Before filing a motion, the movant must confer with the opposing party regarding the relief requested and reflect in the motion the movant's efforts to confer and the views of the opposing party.

- B. **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 the attention of the Clerk, U.S. District Court, Eastern District of North Carolina, 1003 South 17th Street, Wilmington, NC 28401. The courtesy copies of any motion, memorandum, or brief and supporting exhibits which exceed a combined total of 100 pages shall be submitted tabbed by docket entry and exhibit number in a three-ring binder. The courtesy copy shall include the CM/ECF file stamp.
- C. **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**.

- D. **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 Myers. If Judge Myers is assigned, the intake deputy clerk should be advised that the matter requires immediate attention. Except in admiralty matters, Judge Myers 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.
- E. **Proposed Documents.** Parties shall file proposed orders, jury instructions, and findings of fact and conclusions of law 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.) Any motion requesting relief (except dispositive motions) shall be accompanied at the time of filing with a proposed form of order, stating its requested relief. Along with submitting proposed orders in PDF format through the CM/ECF system, counsel shall send proposed orders electronically in Word format to: Documents_Judge_Myers@nced.uscourts.gov.
- F. **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 Myers 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 Myers holds a minimum of two court terms per month. Terms will be added as needed. Each court term commences on a Tuesday, barring a federal holiday.
- B. **Criminal Trials Preempt.** Criminal trials always preempt civil trials due to statutory and constitutional speedy trial requirements.
- C. **Case Order.** Ordinarily, arraignment hearings are conducted on the first day of a term of court. Sentencing, resentencing, 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.
- D. **Start Time.** Ordinarily, 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.

- E. **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.
- F. **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.

III. TRIAL PROCEDURES GENERALLY

- A. **Jury Selection.** All juries to sit during a term are selected on the same day. The court utilizes the Arizona struck jury process to empanel the jury. Jurors may take notes at trial.
- 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. A charge conference will be held in advance of closing arguments. After closing arguments, the judge orally instructs the jury. The jury will receive a written copy of the judge's instructions.
- 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. Original exhibits must be handed to the clerk at time of admission by the court. See also Judicial Preference Order 20-JP-1-M.

- 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](#).
- G. The attention of counsel is directed to Local Civil Rules 45.1, 48.1 and 54.2, E.D.N.C. All counsel are reminded to review Local Civil Rules 39.1-39.4, E.D.N.C. In all cases, in addition to filing, counsel shall submit documents required by Local Civil Rules 39.1, 51.1, and 52.1 E.D.N.C. electronically to: Documents.Judge.Myers@nced.uscourts.gov (this email address is receipt only).

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 session, 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** 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.

- D. **Motions to Suppress.** All defendants have a right to full and fair consideration of any and all potential violations of their constitutional rights. Litigants moving to suppress evidence are expected to:

1. clearly identify the constitutional violation(s) and any potential exceptions to the warrant requirement that may be applicable;
2. specifically list the items/evidence sought to be suppressed; and
3. address whether there was an intervening warrant, if applicable.

The Government shall file written responses to these motions within fourteen days after they are served. The court will entertain motions for extension of time in which to respond, made in advance of the deadline the moving party seeks to extend and preferably with the consent of the other party.

If new issues are raised in the response, the moving party may move for leave to file a reply brief, to which a proposed reply brief shall be attached, within seven days after the response is served. Once fully briefed, the court may set the motion for a telephonic status conference, prior to the motion hearing, to discuss with counsel the scope of the hearing.

- E. **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 no later than 10:00 a.m. to hear the court's advice of rights. 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 Clerk, U.S. District Court, Eastern District of North Carolina, 1003 South 17th Street, Wilmington, NC 28401.

- F. **Revocation of Supervised Release Hearings.** **Seven (7) business days** before the **first day of the 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 to plead 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**.

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.