Revised: June 2, 2017

INDIVIDUAL RULES OF PRACTICE OF JUDGE KEVIN NATHANIEL FOX

Cases come before magistrate judges in one of two ways: for one or more specific purposes pursuant to an order of reference by the assigned district judge, or, on consent of the parties, for all purposes pursuant to 28 U.S.C. § 636(c). When a district judge approves an all-purposes consent form signed by counsel or counsel and any pro se litigant(s), the magistrate judge assumes the role of the district judge. Any appeal is directly to the Court of Appeals and the right to a jury trial is preserved.

It is the uniform practice of the magistrate judges in this District to schedule trials in civil consent cases for firm dates, rather than using a trailing trial calendar or requiring parties to be available for trial on short notice. Additionally, because magistrate judges in this judicial district rarely try criminal cases, such firm trial dates are unlikely to be changed to accommodate criminal trials. Should counsel or counsel and any pro se litigant(s) wish to consent to have Judge Kevin Nathaniel Fox hear their case for all purposes, the necessary form is available at http://www1.nysd.uscourts.gov/judges/Fox.

Unless otherwise ordered by Judge Fox, matters before him shall be conducted in accordance with the following practices. These practices are applicable to cases before Judge Fox if the matter is within the scope of the district judge's order of reference or if the case is before Judge Fox for all purposes pursuant to 28 U.S.C. § 636(c). Otherwise, the practices of the district judge to whom the case is assigned apply.

Nothing in Judge Fox's Individual Rules of Practice supersedes a specific time period for filing a motion specified by statute or Federal Rule – including but not limited to Fed. R. Civ. P. 50, 52, 54, 59, and 60, and Fed. R. App. P. 4 – where failure to comply with the specified time period could result in forfeiture of a substantive right.

N.B. Failure to comply with a court order or an applicable rule may result in the imposition of a sanction(s), including the dismissal of the action.

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, no longer than 5 pages, including exhibits, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Except as provided in Paragraph l(D) below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at (212) 805-6705.

C. Faxes. Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. **No document longer than 10 pages, including exhibits, may be faxed to chambers without prior authorization.** Do not follow with a hard copy. The fax number is (212) 805-6712, available during regular business hours, 9:00A.M. - 5:00P.M.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Laura Midwood at (212) 805-6710 between 9:30A.M. and 5:00P.M.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance.

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2. For motions other than those governed by Local Civil Rule 37.2, pre-motion conferences are not required.

B. Courtesy Copy. A courtesy copy, marked as such, of: (a) all motion papers; and (b) sealed attachments to letter motions, should be submitted to chambers.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, exclusive of exhibits, and reply memoranda are limited to 10 pages, exclusive of exhibits. Memoranda of 10 pages or more shall contain a table of contents.

D. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel and any pro se litigant(s) of the argument date.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the court for its approval a joint pretrial order, which shall include the following:

i. the full caption of the action.

ii. the names, addresses (including firm names), and telephone and fax numbers of trial counsel.

iii a brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.

iv. a brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

v. a statement by each party respecting whether the case is to be tried with or without a jury, and the number of trial days needed.

vi. a statement respecting whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).

vii. any stipulations or agreed statements of fact or law which have been agreed to by all parties.

viii. a statement by each party identifying each witness whose testimony is to be offered in its case in chief, indicating whether the witness will testify in person or by deposition.

ix. a designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

x. a list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

i. in jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted in electronic format;

ii. in nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

iii. in all cases, motions addressing any evidentiary or other issues which should be resolved in limine;

iv. in any case where such party believes it would be useful, a pretrial memorandum; and

v. in all cases, copies of each party's premarked trial exhibits.