

**United States District Court
Middle District of North Carolina**

U.S. District Judge Loretta Copeland Biggs

**Policies and Procedures:
General Matters, Civil Cases, and Criminal Cases**

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GENERAL CHAMBERS AND COURTROOM MATTERS

Judge Biggs expects all counsel, and all parties they represent, to maintain the highest ethical standards at all times, and to strictly adhere to the opportunities, requirements, limitations, and deadlines set forth herein. Counsel are expected to be familiar with and comply with both the Federal Rules and the Local Rules of this Court.

A. Correspondence with the Court

1. Judge Biggs does not permit correspondence in lieu of opposed extension requests, contested discovery or substantive motions, or other disputed substantive matters which should be made of record via motion practice.

2. Judge Biggs does not accept carbon copies of letters to opposing counsel.

3. Judge Biggs does not permit *ex parte* communication with the Court, written or otherwise.

4. Judge Biggs does not accept faxes or e-mail.

5. Please do not contact Chambers with legal or procedural questions that are covered by the Local Rules of this Court or the Federal Rules of Civil Procedure. Case related questions should be directed to Courtroom Deputy Mrs. Tina K. Samuel-Priestley at 336-332-6044.

B. Communication with Law Clerks

Judge Biggs does not permit counsel to directly communicate with law clerks.

If a law clerk contacts counsel, it is at Judge Biggs' direction.

Any communication that does occur shall not address the merits of the case or any pending motion.

C. Telephone Conferences

Judge Biggs may use telephone conferences for scheduling changes and similar matters. She may also hold telephone conference calls on motions as necessary. Judge Biggs usually requests that counsel initiate any such call.

D. Oral Arguments and Evidentiary Hearings

Judge Biggs does not set aside specific days or times for oral arguments or evidentiary hearings. Judge Biggs will hear oral argument on a motion if she believes argument will assist her in deciding the motion. A party may request argument in writing. Arguments and hearings are scheduled on an *ad hoc* basis.

E. Thorough Review of Filings

In order to avoid confusion, when counsel receives an electronic notification of a court order filed in a case, counsel is directed to open the order on the docket and review the contents of the order. Occasionally the docket's description of an order is inaccurate; counsel are responsible for making themselves aware of the actual content of every docket entry.

F. Punctuality and Civility

Judge Biggs expects counsel to be punctual for all conferences, hearings, and trials. Judge Biggs also expects counsel at all times to be civil to one another as well as to all parties, witnesses, and court personnel – whether in front of a jury or the Court.

G. Communication with Opposing Counsel

In general, Judge Biggs expects counsel to bring matters, including those that arise during trial, to her attention only after they have been discussed with opposing counsel.

H. Cases Involving Out-of-Town Parties or Witnesses

Judge Biggs has no special policy for matters involving out-of-town attorneys, parties or witnesses. Counsel are free to raise any issues they deem necessary.

I. Examination of Witnesses Out of Sequence

Judge Biggs is willing to take witnesses out of turn for their convenience, particularly when there is no objection by opposing counsel.

J. Videotaped Testimony

Judge Biggs requires counsel to view all videotaped depositions for the purpose of editing the videotapes and resolving material objections before offering any videotape as evidence.

K. Hearing and Trial Dates

1. The Court's calendar is generally set well in advance. Parties and counsel rely on assigned hearing and trial dates and Judge Biggs is reluctant to reschedule set dates

without good cause. If counsel becomes aware of a professional or personal conflict that may affect any significant scheduled event (including trial), they should immediately notify Judge Biggs and opposing counsel, via motion practice.

2. Judge Biggs generally sets a firm trial date for all matters. On the day of trial, Court promptly convenes at 9:30 a.m. and may sit until 5:00 p.m. or later. Dependent on juror transportation concerns, Judge Biggs adjusts the schedule for subsequent days as necessary.

L. Voir Dire

Judge Biggs' practice in civil and criminal matters is to personally conduct the *voir dire*. Counsel are free to submit proposed (at least five (5) business days prior to the trial date) and supplemental questions (on the trial date) to Judge Biggs. Should the need for follow-up questioning arise, Judge Biggs permits counsel to submit follow-up questions.

M. Courtroom Procedure

1. Judge Biggs expects counsel to be familiar with and adhere to Local Civil Rule 83.2.

2. Consistent with Local Civil Rule 83.2(b), counsel may approach a witness with the permission of the Court. If counsel needs to approach the witness many times, Judge Biggs may instruct the attorney that he or she need not to continue to ask. Nonetheless, once the attorney has accomplished his or her reason for approaching the witness (however many times), he or she should return to the place from which he or she is questioning.

3. Judge Biggs does not permit speaking objections in front of a jury. Counsel should give the basis for the objection in a word or phrase (*e.g.*, “hearsay” or “objection, hearsay”).

4. Judge Biggs does not allow “continuing objections;” counsel must state every objection for the record.

5. If counsel wishes to have a sidebar to argue on an objection, the Court will usually grant the request as long as the number and length of sidebars remains reasonable. Counsel are strongly encouraged to bring evidentiary questions to the attention of the Court outside the presence of the jury.

6. All counsel are reminded that re-direct is still direct examination, and not cross.

7. Judge Biggs does not have a strict policy concerning examination beyond re-direct and re-cross. However, “beyond the scope” and “asked and answered” will be strictly enforced.

8. Counsel has the responsibility to advise their witnesses that a witness should not talk to any jury member or potential jury member at any time. The same holds true for counsel as well. Further, once the sequestration rule has been imposed and a witness has commenced testimony, counsel may not speak with that witness until he or she is excused.

9. Judge Biggs does not permit more than one party for an attorney to examine the same witness.

10. Judge Biggs does not have a specific practice as to reading stipulations, pleadings, or discovery materials in the record. If counsel requests the court to read such, the written material must be prepared and submitted in advance of trial.

11. Judge Biggs allows jurors to take notes.

12. Judge Biggs will always have a clerk in the courtroom during a jury trial who will give the jurors any exhibits or other items that counsel requests be given to them. Counsel should never approach the jury to distribute exhibits unless permitted by Judge Biggs.

13. Judge Biggs considers a jury trial a formal affair and asks all counsel to act accordingly. Extraneous clothes should not be left within sight of Judge Biggs and/or the jury. Food, including bottled water, is not permitted in the courtroom or conference rooms. Boxes of exhibits or briefcases should not be on counsel table.

14. Opposing counsel should not engage in extended conversations with each other in front of a jury without the Court's permission. The Court will allow counsel to have a private conversation if it is requested and efficient. However, lawyers absolutely should never argue with either opposing counsel or the Court in front of the jury.

N. Exhibits

Counsel must mark and exchange exhibits before commencement of a hearing or trial. Counsel should provide Judge Biggs with two (2) copies of each exhibit and a schedule which briefly describes each exhibit. These must be submitted in binders for ease of use by the Court. Counsel may wish to provide copies of exhibits for the court reporter.

Judge Biggs has no strict policy as to when exhibits should be offered into evidence. However, once an exhibit is admitted into evidence, it is in the custody of the Court and should not be retrieved, changed or be removed from the presence and possession of the deputy clerk without permission from the Court. When the number of exhibits in a case is large, Judge Biggs strongly prefers counsel to reach advance agreement as to the admission of as many exhibits as possible. In the case of a voluminous exhibit, Judge Biggs strongly prefers counsel identify and mark as an exhibit the specific page(s) that the parties will present as evidence during a hearing or trial.

O. Opening and Closing Statements

While Judge Biggs is flexible with regard to time limits on opening statements and summations, she does not allow open-ended presentations. Judge Biggs usually will discuss the time needed with counsel in advance.

Counsel should be prepared to begin closing arguments immediately following the close of all evidence.

P. Directed Verdict Motions

Judge Biggs permits motions for a directed verdict outside the hearing of the jury.

Q. Jury Deliberations

1. Written Jury Instructions

Judge Biggs provides counsel with a copy of her final jury instructions for review prior to trial (and in advance of a charge conference if any changes have been made).

Judge Biggs permits counsel to put objections to jury charges on the record before the jury retires.

2. Exhibits in the Jury Room

Judge Biggs will evaluate requests from the jury for particular exhibits on a case-by-cases basis. Counsel will always be contacted prior to a decision on any such requests.

In criminal actions, weapons, ammunition, and controlled substances will not be sent to the jury room. Instead, upon receipt of a written request from the jury foreperson and consultation with counsel, those items may be shown to the jury.

3. Availability of Counsel During Jury Deliberations

Counsel must be available in case questions arise from the jury during its deliberations. Judge Biggs prefers counsel to be within five (5) minutes distance of the courthouse during jury deliberations.

4. The Verdict Form and Special Interrogatories

Judge Biggs will submit a verdict form to the jury with interrogatories as necessary.

5. Polling the Jury

The Court will poll the jury if counsel so requests.

CIVIL CASES

A. Pre-trial Procedure

1. Continuances and Extensions

Since trial dates are set well in advance, Judge Biggs is extremely reluctant to grant continuances – especially if the attorneys have not been diligent in moving the case forward. However, the Court will consider motions for continuances upon showing of good cause.

2. Motion Practice

Except as set forth herein, motion practice will be conducted in accordance with Local Civil Rule 7.3.

3. Reply and Sur-reply Briefs

Judge Biggs strongly urges the parties to comply with Local Civil Rule 7.6. Except with leave of Court and for good cause shown, no reply or sur-reply brief shall exceed ten pages.

4. Proposed Orders

Judge Biggs requires a proposed order be filed along with every motion and response, except dispositive motions. Such orders should be submitted in Word or WordPerfect to Judge Biggs' ECF mailbox. Proposed orders, although only a proposal, should nonetheless be titled "Order" and should not contain an attorney's name, address or client number.

5. Working Copies

Unless otherwise directed, a courtesy copy of injunctive relief, any dispositive motion and/or brief, response, or reply, which has an appendix and/or tabs shall be delivered to the Clerk's Office within three (3) days upon filing. All courtesy copies should be bound and exhibits, if any, must be tabbed. Courtesy copies of other motions or responses are discouraged.

B. Settlement Conferences

Judge Biggs usually conducts settlement conferences for matters scheduled for a jury trial. However, if warranted, Judge Biggs may refer a matter to the U.S. Magistrate Judge for settlement discussions. Cases designated for a bench trial will automatically be referred to the U.S. Magistrate Judge.

C. Summary Judgment Motions

All summary judgment motions and oppositions to such motions must contain a recitation of facts with complete and accurate citation to the record. The Court will not consider any description of a fact that is not supported by citation to the record. Statements in support of material facts in support of or in opposition to a motion for summary judgment must include specific and not general references to the parts of the record that support each of the statements, such as a title of a numbered reference to a document, the name of a deponent and the page(s) of the deponent's deposition, or the identity of an affidavit or declaration and the specific paragraph relied upon. Pinpoint citations are required.

Summary judgment motion practice that fails to follow this procedure may be stricken.

D. Pre-trial Submission

Unless otherwise specified, Judge Biggs requires the parties to submit the following by a date set by the Court, which is normally approximately three (3) weeks prior to the trial date:

1. Jointly-proposed *voir dire* questions;
2. Jointly-proposed jury instructions;
3. Jointly-proposed verdict sheet;
4. Motions *in limine*; and
5. Trial briefs

Parties shall submit to the Court two (2) copies of points for charge and special jury instructions in an editable format to jbiggs@ncmd.uscourts.gov.

The proposed points for charge and special jury interrogatories shall be prepared and submitted jointly. Counsel are expected to work together to achieve agreement on as many items as possible before submission to Judge Biggs. Proposed points for charge should be accompanied by appropriate citations of legal authority.

Where counsel cannot agree on a particular point for charge or interrogatory, the joint submission shall provide the alternate version proposed by each party and the rationale for each.

Where one party proposes a point for charge or interrogatory and the other party objects to the proposal in its entirety (*i.e.*, wishes nothing to be used, as opposed to an alternate version), the joint submission shall note such and include the objection party's rationale.

Supplemental points for charge will be permitted during and at the conclusion of trial.

E. Motion in Limine

As noted above, motions *in limine* usually are due three (3) weeks before trial. A response to any motion *in limine* is due within five (5) business days of the filing of the motions. Judge Biggs will usually rule on outstanding motions *in limine* prior to or during the final pre-trial conference. A reply will not be allowed.

F. Final Pre-Trial Conference

Judge Biggs usually holds the final pre-trial conference approximately two (2) weeks prior to the trial date. In preparation for the conference, Judge Biggs expects counsel to communicate with each other on a number of matters, including exhibit designations, objections to exhibits, use of expert depositions, and stipulations of fact. The parties should be prepared to once again discuss the possibility of settlement in lieu of trial.

G. Injunctions

1. Scheduling and Expedited Discovery

When a temporary restraining order is requested, Judge Biggs will schedule a conference as soon as counsel have appeared and it is possible to properly consider the request. Judge Biggs requires all counsel to be present unless the urgency of circumstances precludes notice to opposing counsel. Judge Biggs rarely grants *ex parte* temporary restraining orders.

2. Hearings

Judge Biggs schedules preliminary and permanent injunctions hearings as soon as practicable and combines the two hearings if appropriate. Judge Biggs usually permits expedited discovery when preliminary injunctive relief is requested.

3. Proposed Findings of Fact and Conclusions of Law

Judge Biggs requires the submission of proposed findings of fact and conclusions of law in injunction cases, in accordance with Fed. R. Civ. P. 52(a).

H. Trial Briefs

Counsel may submit trial briefs when they are likely to be helpful to the Court.

I. Proposed Findings of Fact and Conclusions of Law

Judge Biggs may require the submission of editable proposed findings of fact and conclusions of law in non-jury cases. Editable proposed finding of fact and conclusions of law may also be submitted in Word or WordPerfect to the ECF mailbox

jbiggs@ncmd.uscourts.gov.

CRIMINAL CASES

Judge Biggs expects the parties to comply with the deadlines established in the Scheduling Orders that governs disposition of a particular criminal term.

A. Extensions and Continuances

Counsel shall comply with Local Civil Rule 6.1 and file such requests well in advance of the beginning of the term. Proposed orders should be submitted in Word or WordPerfect to jbiggs@ncmd.uscourts.gov.

B. Plea Agreements and Factual Basis Documents

Plea Agreements and factual basis documents should be filed with the Clerk of Court consistent with each term's Scheduling Order. If not, proposed plea agreements and factual basis documents must be submitted two (2) business days in advance of a Defendant's plea hearing. Failure to do so will result in the case being removed from the calendar.

C. Sentencing Memoranda

Judge Biggs expects counsel to comply with all the requirements of Fed. R. Crim. P. 32(f) and Local Criminal Rule 32.2. Any sentencing memoranda, position paper, or brief directed to Presentence Report ("PSR") objections or to the 3553(a) factors must be filed at least two (2) full business days before the sentencing hearing. The Court discourages joint requests by the parties seeking a change in the guideline calculation after the final PSR is filed, as such requests reflect a failure to follow the procedures in Local Criminal Rule

32.2(c) and (d). If there is such a request, it must be made in writing and filed at least three (3) full business days before the sentencing hearing.

D. Departures and Variances

Requests for departures and variances should be made in writing at least three (3) business days before the sentencing hearing. Failure to comply with this request may result in the case being removed from the Court's sentencing calendar.