

## **PRACTICE AND PROCEDURE MANUAL**

### **SENIOR U. S. DISTRICT JUDGE JOHN T. NIXON**

#### **I. Brief Biography**

Senior Judge John T. Nixon was appointed by President Carter in 1980. He served as Chief Judge from 1981 to August 1998, and took senior status the same month. He holds an A.B. degree from Harvard College, 1955 and an LL.B. Degree from Vanderbilt University, 1960. Judge Nixon was a Trial Attorney in the Civil Rights Division of the Justice Department 1964-69. From 1978 to 1980 he served as a General Sessions Judge in Davidson County and from 1977 to 1978 he was a Circuit Judge.

#### **II. Preliminary General Matters**

##### **A. Scheduling**

All scheduling is done with Judge Nixon's deputy clerk, Mary Conner, (615) 736-5689, except where the magistrate judge is the case manager.

##### **B. Correspondence with Court**

Judge Nixon prefers that all matters be communicated to the Court in pleadings, notices, memoranda, and briefs. If letters are absolutely necessary, the parties should be aware that they will be filed in the Clerk's Office.

##### **C. Telephone Conferences with Court**

Telephone conferences will be arranged for pretrial matters not referred to the magistrate judge if the matter involves out of town attorneys. Judge Nixon approves of telephone conferences with the magistrate judge when disputes arise during the course of depositions. He has no problem with conducting status conferences by telephone when out-of-town counsel is involved.

##### **D. Telephone Conferences with Law Clerks**

Telephone conferences with Judge Nixon's law clerks are allowed concerning the administration, but not the merits, of any case.

##### **E. Motion to Ascertain Status**

Judge Nixon states that anyone who is uncomfortable with using the Local Rule concerning a motion to ascertain the status of a case should contact Mary Conner in Judge Nixon's office to make inquiries concerning the status. Ms. Conner will make such inquiries typically without revealing the identity of the party making the inquiry.

#### **III. Pretrial Matters - Civil Cases**

## **A. Scheduling Orders**

Scheduling of all cases filed since March 1, 1994 will be conducted by the magistrate judge.

Judge Nixon usually conducts a pretrial conference in every case, even if the pretrial order has been submitted. If parties agree that the pre-trial conference is unnecessary, however, then he may not hold one.

## **B. Continuances and Extensions**

### **1. General Policy**

Requests for extension of dates not affecting the trial date should be addressed to the magistrate judge. Requests for continuances of trial should be addressed to the Court.

Judge Nixon has no problem with extensions by agreement, but if the trial date would be affected, he would want a status conference. If the parties cannot agree, and the reason for the extension is something that the moving party reasonably should not have anticipated, he will grant the extension.

### **2. Requests**

All requests for continuance and extensions should be made in a written motion.

## **C. Pretrial Motions**

### **1. Referral to Magistrate Judge**

Generally, pretrial motions are referred to a magistrate judge. All substantive motion will be considered by Judge Nixon.

### **2. Oral Argument**

Judge Nixon generally believes that oral argument can be helpful in reaching a decision. Judge Nixon occasionally asks for oral argument. Oral argument must be requested in writing. He will almost always grant oral argument when requested by counsel.

### **3. Briefs**

He has no problem with the filing of reply briefs, except it is hard to know whether one is going to be filed or not when he is planning to make a ruling. If a party desires to file a reply brief, he requests that his courtroom deputy be notified, and that the reply brief be filed within five days of the response.

### **4. Chamber Copies of Filings**

Judge Nixon does not want extra copies of filings.

## **5. Proposed Orders**

Generally, there is no need to submit a proposed order along with a motion. Judge Nixon prefers to write "granted" or "denied" at the end of the motion paper.

## **6. Expedited Ruling**

The best way to obtain a quick ruling on a motion is to inform his courtroom deputy, Mary Conner. She will put that motion on top of his stack.

## **D. Discovery**

Judge Nixon refers most discovery matters to a magistrate judge. He does not believe that any rulings by a magistrate judge on discovery questions have been appealed to him.

Telephone depositions. He permits telephone depositions, especially if impecunious parties are involved.

### **1. Discovery Period and Extensions**

See III B 1 above.

### **2. Interrogatories**

#### **(a) Number Limit**

Motions seeking leave to serve interrogatories in excess of the 30 allowed by the Local Rules should normally be made to the magistrate judge. Where they are made to him, he will usually grant them if they are not opposed. It is, however, worth opposing such motions, and his ruling will depend upon the subject matter of the case.

#### **(b) Instructions and Definitions**

These are acceptable as far as Judge Nixon is concerned.

### **3. Resolution of Discovery Disputes**

Judge Nixon does not like discovery disputes and believes lawyers should always try to work them out in good faith before bringing them to the Court. He does not agree that the imposition of sanctions are required by Rule 37. He believes that it is rare that there are clear cut questions on such matters. He treats sanctions as discretionary matters, and awards them only if the party's conduct is egregious. If a party is quibbling over discovery or trying to delay the case he might lean toward sanctions.

### **4. Confidentiality Agreements**

Those agreements and discovery matters submitted under seal should be in an envelope with a label bearing the inscription: "TO BE FILED UNDER SEAL AND HANDLED ACCORDINGLY." The envelope should be accompanied by a motion

to seal. Judge Nixon noted that when such matters are filed, they are under seal until such time as he may decide to order the matters to be unsealed.

## **5. Expert Witnesses**

He has occasionally ordered a party to allow discovery of written reports from the party's experts, but this depends upon the circumstances. Whether the filing of the Local Rule 12(c)(6)(c) expert witness statement is required will be determined on a case by case basis. For example, Judge Nixon is reluctant to require the filing of an expert witness statement where the plaintiff is impecunious.

## **E. Settlement Conferences**

He does not preside over settlement conferences in cases that are pending before him. When another judge refers a case to him for a settlement conference, he follows Local Rule 20.

## **F. Pretrial Filings**

### **1. Form**

Pretrial filings should be in the form required by the Local Rules. This applies to both non-jury and jury cases.

Findings of fact and conclusions of law are not required.

## **G. Injunctions**

### **1. Scheduling**

Scheduling should be coordinated with his courtroom deputy if the case is pending. If a TRO is requested at the time the case is filed every effort must be made to notify opposing counsel for any hearing on the TRO.

### **2. Expedited Discovery**

This will be handled on a case by case basis.

## **IV. Pretrial Matters - Criminal Cases**

### **A. Suppression Hearings**

Judge Nixon always conducts hearings on motions to suppress and they usually require an evidentiary hearing.

### **B. Motions**

Typically, the only other motions in criminal trial are in limine motions which are heard at trial and motions for plea agreements.

### **C. Pretrial Conferences**

Pretrial conferences are seldom used in criminal cases.

## **V. Trial Procedure**

### **A. Scheduling**

### **B. Out-of-Town Parties, Witnesses, or Attorneys**

Judge Nixon will try to accommodate these individuals where possible without causing hardship in other cases.

### **C. Motions in Limine**

He welcomes such motions although he rarely grants them. They are helpful in alerting him to evidentiary issues that will arise at trial. He admonishes the nonmoving party not to go into a matter that is the subject of a motion in limine until he has made a ruling.

### **D. Decorum**

His rule is that a lawyer must stay within an arm's length of the podium. This is not just ritual, but is necessary so that the jury, judge, opposing counsel, and court reporter can all hear the lawyer. He also believes that keeping a lawyer behind the podium gives lay people witnesses and jurors a sense of protection. This, however, is not so important when the lawyer's own party or witness is on the stand.

Judge Nixon is particularly disturbed when counsel makes derogatory remarks about opposing counsel. There is simply no place for such conduct in the courtroom. He is also concerned that a few younger lawyers do not appear to be prepared on how to conduct themselves in the courtroom. They seem to be more given to a lack of civility and excessive argument with the Court on objections, jury instructions, etc.

### **E. Voir Dire**

#### **1. Lawyer Voir Dire**

He gives attorneys a fair amount of latitude in conducting voir dire. It is appropriate to use voir dire to get information, but not to try the case.

#### **2. Selection Method**

In criminal cases, 12 potential jurors are seated, voir dire is conducted, and strikes are exercised. He then seats more jurors to return the number to 12, and the process continues in that manner until 12 jurors remain. Two alternates are then selected in the same way.

In civil cases, he uses the same method as Judge Wiseman. If more than six jurors remain seated at the conclusion of the trial, all will deliberate as the jury. The voir dire of all jurors is conducted at the same time. Each side is permitted to strike a juror. There are no "double strikes." That is to say the plaintiff and the defendant alternate in the striking of jurors.

## **F. Note taking by jurors**

Judge Nixon permits taking of notes by jurors. However, he gives a special instruction on the use of these notes to the jurors.

## **G. Opening statements**

### **1. Length**

He places no time limit, but he always inquires how much time a lawyer anticipates using. A concise opening statement is a mark of good advocacy. The longest opening statement in his court has been one hour.

### **2. Use of Exhibits**

He has permitted the use of stipulated exhibits during voir dire and opening statement, but permission should be obtained in advance.

## **H. Side Bar Conferences**

These are permitted.

## **I. Videotaped Testimony**

This is permitted.

## **J. Deposition Reading**

This is permitted. Counsel may install his paralegal or co-counsel in the jury box to act as the deponent.

## **K. Exhibits**

Upon request, he would allow the parties to include the stipulated exhibits in notebooks for the use of each juror. It is permissible to pass individual copies of exhibits to the jurors, but again permission is required.

He does not mind the use of visual aids during trial. In some cases, such as those involving important documents, it may be very helpful to use an enlarged copy of a document to highlight the critical language.

## **L. Motions for Judgment as a Matter of Law**

Judge Nixon will often wait until the jury has returned a verdict before ruling.

## **M. Closing Argument**

He finds it offensive for lawyers to make personal references to other lawyers during closing. There is no time limit on closing arguments; however, Judge Nixon requests that lawyers give estimates of the time they will require.

## **N. Proposed Jury Instructions and Verdict Forms**

Counsel are advised to follow the local rules.

## **O. Proposed Findings of Fact and Conclusions of Law**

These should be submitted ten days after a non-jury trial and should be submitted simultaneously by all parties. If a transcript of trial is ordered, the findings of fact and conclusions of law should be submitted ten days after the transcript is prepared and should contain citations to the transcript.

## **P. Offers of Proof**

These may be made where necessary.

## **Q. Jury Deliberation**

### **1. Copy of Instructions**

He provides copies of the jury charge to each juror to follow along as he reads it. Jurors are instructed not to underline any portions of the charge. The jurors take the charge to the jury room.

### **2. Access to Exhibits**

Exhibits are taken to the jury room, absent any objection.

### **3. Access to Transcript of Testimony or Videotaped Testimony**

Judge Nixon has a problem with allowing jurors to have access to such transcripts because they unduly emphasize the portion of the testimony which is transcribed. However, access to the transcript will be given if it gives "equal treatment" to both sides (such as an entire video tape of a doctor's deposition).

### **4. Availability of Counsel**

During jury deliberations, counsel need not be present in the courtroom. However, they should be available on short notice.

### **5. Taking the Verdict and Special Interrogatories**

### **6. Polling the Jury**

Judge Nixon always polls the jury.

### **7. Interviewing the Jury**

If counsel wishes to interview the jury, a motion for leave to interview the jury should be filed. Judge Nixon is opposed to the concept of interviewing a juror who is not at the end of his jury duty and may sit on another case in that term where the same lawyer who conducts the post-trial interview in the earlier case is counsel at the later case.

## **VI. Sentencing in Criminal Cases**

On guilty pleas and after conviction sentencing is determined by the sentencing guidelines. He expects the parties to follow the local rules on use of the presentence report and insure the defendant is fully aware of the contents of the presentence report. He always considers objections by either side to the report.

## **VII. Other Comments**

### -- Uniformity of Decision Within District.

Judge Nixon stated that it bothers the judges in this district when they reach conflicting rulings on issues. They are working on ways to become more aware of each others' decisions. The District Court Clerk's Office maintains the judges' unpublished opinions. The Court Librarian is in the process of computerizing these opinions.

### -- Publishing Opinions.

If requested by an attorney in a case, the judges will usually see that an opinion is published.

### -- Pet Peeve.

His primary criticism is of lawyers who practice infrequently in federal court, who often do not know the rules, do not know to stay away from the jury box, etc. It is difficult to deal with this situation without running the risk of prejudicing their cases by criticizing them in front of the jury. He has very few problems with lawyers who typically practice in his court. He is, however, bothered by some lawyers' insensitivity to the jury, particularly when they are not aware that they are putting the jury to sleep. In general, he has a high regard for the attorneys who practice before him and their level of preparation.

### -- Responsibility of Local Counsel.

(1) Trial Responsibility. Judge Nixon noted that this matter comes up every time he meets with this Committee. He recognizes that the involvement of local counsel in complex matters runs up the costs of litigation. He is, however, opposed to abrogating the rule requiring local counsel because local counsel have a useful communication function. He does want to know what role local counsel will play in a case, and this can be set forth in the scheduling order. He would prefer for local counsel to be present through voir dire, but otherwise they do not need to attend a trial of a case in which they have had no substantive involvement.

(2) Rule 11 Sanctions. The purpose of this rule is to deter the filing of frivolous lawsuits. He does not think that imposing sanctions on local counsel in most cases would serve that purpose. He has imposed sanctions under Rule 11 twice. He noted that a recent study by the Administrative Office has demonstrated that the fears that Rule 11 would result in stifling creative lawsuits have not been realized.