

**INDIVIDUAL PRACTICE RULES OF  
MAGISTRATE JUDGE JAMES ORENSTEIN  
225 Cadman Plaza East  
Brooklyn, New York 11201  
Chambers: Room 1227 South  
Courtroom: 11D South  
Telephone: (718) 613-2110 Fax: (718) 613-2115  
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Courtroom Deputy Alicia Guy: (718) 613-2114**

**I. Electronic Case Filing (ECF)**

A. ECF Registration and Filing Requirements; Exemptions.

1. **All documents must be electronically filed** on the court's ECF system pursuant to Administrative Order 2004-08. **Documents sent exclusively by mail or fax will not be considered**, except as set forth in Rule I.B. Accordingly, each attorney of record must file a Notice of Appearance as to each represented party, and must register to receive ECF notifications **before** filing any motions, letters, or other documents. Information about ECF docketing procedures are available on the district court's web site: <http://www.nyed.uscourts.gov>. Questions regarding ECF filing or training should be directed to Deputy Clerk Terry Vaughn at (718) 613-2331.
2. All orders by Magistrate Judge Orenstein will be transmitted to attorneys **only** by electronic notification. Each attorney of record is therefore responsible for keeping a current e-mail address on file with the Clerk's office.
3. *Exemptions.* Litigants proceeding *pro se* are automatically exempt from ECF requirements. Any attorney wishing to be exempted from ECF requirements must first complete ECF training and then, if an exemption is still desired, may make a written application to Magistrate Judge Orenstein. Such requests will be granted only in limited circumstances.

B. Exceptions to Mandatory Electronic Filing.

1. *Courtesy Copies.* Hard copies of documents filed by ECF should generally not be submitted other than under Rule III.C.3, except that parties filing (1) non-text exhibits; or (2) materials in excess of 25 pages shall submit a courtesy copy of the entire filing. The court will determine whether the submission of courtesy copies would be useful in all other instances and if so, will advise counsel accordingly.

2. *Time-sensitive Submissions.* **After** filing by ECF, a copy of time-sensitive submissions, such as requests for adjournments, must be faxed to Chambers, subject to Rule II.D.
3. *Statements of Settlement Position.* When parties are ordered to submit *ex parte* statements of settlement position prior to a conference, such statements should be submitted by fax only and not by ECF.

## II. Communications With Chambers

### A. Requests for Adjournments or Extensions of Time.

1. *Non-Emergency Requests.* Any request to adjourn a court appearance, absent an emergency, must be made **at least 48 hours in advance** of the appearance **and must be made by ECF**. Any such request, or any request for an extension of an existing deadline, must state: (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether those previous requests were granted or denied, (4) whether the adversary consents (including any reasons given by the adversary for withholding consent), and (5) whether the request affects any other scheduled deadline (in which case alternative dates must be proposed).
2. *Emergency Requests.* In the event of an emergency, a request to adjourn a court appearance **must first be filed by ECF**, and then faxed to chambers according to Rule I.B.2.

### B. Letters. **Any letter to the Court must be filed via ECF.** Copies of correspondence between counsel shall **not** be filed or sent to the Court.

### C. Telephone Calls. With the exception of requests for adjournments or extensions of time, telephone calls to chambers are permitted. Questions regarding any aspect of a criminal matter should be directed to Alicia Guy at (718) 613-2114. Other questions should be directed to the main chambers number at (718) 613-2110. Attorneys should review the ECF docket prior to contacting chambers with questions regarding the scheduling of conferences.

### D. Faxes. Faxes not exceeding four pages, including cover sheet and attachments, are permitted without prior authorization. Longer faxes require permission. Except for *ex parte* settlement statements, papers faxed to chambers **must first be filed by ECF** and must be faxed to all other parties.

### E. Email. Parties may not submit documents via email unless instructed to do so.

### III. Motions

#### A. Discovery and Other Non-Dispositive Motions.

1. *Generally.* Pursuant to Local Civil Rule 26.5, any party wishing to make a discovery motion or any other motion for non-dispositive relief must **first** make a good-faith effort to resolve the matter on consent. **That effort must include personal contact with counsel for all relevant parties, either by telephone or in person.** If such efforts do not resolve the dispute, any motion submitted pursuant to this rule must include a report of the efforts made to resolve the matter on consent.

2. *Letter Motions.*

a. A discovery motion or a motion seeking any other form of non-dispositive relief may be made by letter motion, pursuant to Local Civil Rules 37.1 and 37.3. No pre-motion conference is required.

b. Any party wishing to respond to a letter motion must file a written response no later than three business days after the motion is filed. Failure to respond may result in the motion being granted as unopposed.

c. Replies and sur-replies are not permitted on letter motions.

3. *Motions on Notice.* Although parties are encouraged to make discovery motions and motions for other forms of non-dispositive relief by letter pursuant to Local Rule 37.3, such motions may be made on notice pursuant to Local Rule 6.1. A pre-motion conference with the court is required before the filing of a motion on notice. The moving party shall submit a letter setting forth the basis for the motion; a response shall be submitted within three business days. Replies and sur-replies are not permitted.

4. *Length of Letters.* Any letter submitted pursuant to this rule must be no longer than three pages in length, exclusive of attachments.

B. Dispositive Motions. Dispositive motions, such as motions to dismiss and motions for summary judgment, must be made in conformance with the individual practice rules of the assigned district court judge, unless the parties have consented to refer the case to Magistrate Judge Orenstein for all purposes.

C. General Practices for Motions on Notice Made to Magistrate Judge Orenstein.

1. *Service and Filing.*

- a. No motion papers shall be filed until the motion has been fully briefed.
- b. The parties are to set their own briefing schedule. The parties may revise the schedule on consent, informing chambers by letter.
- c. The original moving party shall be responsible for filing all motion papers. Such party shall also file a letter specifying each document filed in the motion package.

2. *Memoranda of Law.* Unless prior permission has been granted, memoranda of law in support of and in opposition to motions on notice are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. Case citations must contain pinpoint cites. All memoranda of law must use one-inch margins, double spacing, and 12-point font. Legal arguments must be set forth in a memorandum of law; affidavits or affirmations containing legal argument will be rejected. *See* Local Civil Rule 7.1. **Any memoranda, affidavits, or affirmations not complying with the requirements set forth herein will be rejected.**

3. *Courtesy Copies.* After electronic filing, one hard copy of the motion papers, marked as "Courtesy Copy," should be submitted to Magistrate Judge Orenstein. Courtesy copies of dispositive motions made to the district judge should **not** be provided to Magistrate Judge Orenstein.

4. *Oral Argument on Motions.* Parties may request oral argument. The court will determine whether argument will be heard, and, if so, will advise counsel of the argument date.

D. Summary Judgment Motions Submitted to Magistrate Judge Orenstein.

1. *Statements Pursuant to Local Civil Rule 56.1.* Any party wishing to make a motion for summary judgment must first serve upon all parties a statement pursuant to Local Civil Rule 56.1 ("Rule 56.1"), **as amended on March 26, 2004.** If the non-movant is proceeding *pro se*, the movant must also comply with Local Civil Rule 56.2. Any party receiving a Rule 56.1 statement and wishing to oppose the motion must serve on the movant, within seven days of receiving the movant's Rule 56.1 statement, an original and two copies of a counter-statement pursuant to Rule 56.1,

**as amended on March 26, 2004.** The parties may agree among themselves to a reasonable extension of time for the non-movant to prepare a Rule 56.1 counter-statement. The Rule 56.1 statement and counter-statement should **not** be filed with the court prior to the request for a pre-motion conference.

2. *Pre-motion Conference.* Should the movant still assert that summary judgment is warranted after receiving the counter-statement, the movant may request a pre-motion conference in a letter of no more than two pages stating the basis for the proposed motion. The letter shall also enclose copies of the Rule 56.1 statement and counter-statement. Within seven days, the non-movant may submit a responsive letter of no more than two pages, setting forth the nature of the opposition to the motion.

E. Motions for Admission *pro hac vice*. A motion for admission *pro hac vice* must comply with the Rules of the Eastern District of New York as set forth on the district court's website.<sup>1</sup> Counsel seeking such admission must provide a certificate of good standing from **each** state in which the applicant is admitted to practice. These motions shall be on submission. If any party objects to the motion, opposition papers must be served and filed at least two days prior to the return date. No reply papers are permitted.

F. Motions Pursuant to Fed. R. App. P. 4(a)(4)(A). Nothing in these individual rules should be construed to require a pre-motion conference for motions pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A), and such motion should be filed when made.

#### **IV. Pretrial Procedures in Civil Trials Referred To Magistrate Judge Orenstein**

A. Joint Pretrial Orders. In cases referred for trial before Magistrate Judge Orenstein in which a pretrial order has already been filed pursuant to the individual practice rules of another judge, no additional filing is required under this rule. In cases where no pretrial order was filed prior to the referral to Magistrate Judge Orenstein, the parties shall, on the date specified in the scheduling order, submit a joint pretrial order that includes the following:

1. The full caption of the action;
2. The names (including firm names), addresses, and telephone and fax numbers of trial counsel;

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<sup>1</sup> [http://www.nyed.uscourts.gov/General\\_Information/Court\\_Forms](http://www.nyed.uscourts.gov/General_Information/Court_Forms)

3. 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 cite relevant statutes and facts regarding citizenship and jurisdictional amounts.
  4. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defense previously asserted that are not to be tried.
  5. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- B. Filings Prior to Trial. Unless otherwise ordered by the Court, each party shall file the following according to the schedule indicated below:
1. 15 Days Before Trial:
    - a. Proposed *voir dire* questions.
    - b. Requests to charge, limited to the elements of the claims, the damages sought and defenses. General instructions will be prepared by the court.
    - c. In non-jury 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.
    - d. Motions *in limine*.
    - e. If a party believes it would be useful, a pretrial memorandum.
  2. Three Business Days Before Trial:
    - a. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
    - b. A list by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Only listed witnesses will be permitted to testify except when good cause is shown.

- c. A designation by each party of the deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party. Designations should be specific as to transcript pages and lines. Deposition testimony not so specified in advance of trial will be excluded.
- d. A list by each party of exhibits to be offered in its case in chief, preferably in the following format. To the extent practicable, counsel should identify (by reference to the pertinent Federal Rule of Evidence) any anticipated objections to an opposing party's exhibits. Any objection not so identified will be deemed waived absent good cause.

Preferred format for exhibit list:

Ex. #	Description	Offered	Objection	Admitted

3. Start of Trial:

- a. A complete set of pre-marked trial exhibits.
- b. A joint list of the names of all witnesses or persons about whom testimony is expected, to be provided to prospective jurors during *voir dire*.

C. Procedures at Trial:

- 1. Voir Dire: The court will conduct all *voir dire*.
- 2. Witnesses:
  - a. No later than the end of each trial day, counsel must notify each other and the court of witnesses to be called the following trial day.
  - b. Absent a contrary ruling made before the start of a witness's direct testimony, cross-examination in a civil case may go beyond the scope of direct to avoid making the witness return to testify in the opposing party's case. However, to the extent cross-examination exceeds the scope of the direct pursuant to this rule, counsel should not ask leading questions (unless the witness is hostile or otherwise associated with the opposing party).

3. Sidebars: Sidebar conferences will be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to avoid wasting the jurors' time.
4. Closing Arguments:
  - a. Closing arguments will start with the defendant and conclude with the plaintiff. There will be no rebuttal. *See* Local Rule 39.2.
  - b. Any application for a different order of argument must be made before jury selection.

Revised as of June 15, 2009