

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
Email: orenstein_chambers@nyed.uscourts.gov
Courtroom Deputy Alicia Guy: (718) 613-2114

I. Electronic Case Filing (ECF)

- A. Registration. 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 is available on the district court's web site: <http://www.nyed.uscourts.gov>.
- B. Filing. Please file all documents except settlement statements electronically. *See* Administrative Order 2004-08. I will not read or consider documents that are not filed on the electronic docket, other than in circumstances noted below.
- C. Courtesy Copies. Please do not submit courtesy copies unless I ask you to do so.
- D. Orders. I will transmit orders only by electronic notification. Each attorney of record is therefore responsible for keeping a current email address on file with the Clerk's office and for reviewing emails promptly.
- E. Exemptions. *Pro se* litigants are automatically exempt from ECF requirements but may request permission to file documents and receive notices electronically. I will only consider an attorney's request to be exempted from the electronic filing requirement only after the attorney has completed ECF training. Even then, I will grant such request only in extraordinary circumstances. Please send any statement of a party's settlement position by email to orenstein_chambers@nyed.uscourts.gov; do not file it on the public docket.

II. Communications with Chambers

- A. Requests for Adjournments or Extensions of Time. If you wish to reschedule an appearance before me or adjourn a deadline, please ask all other parties for their consent first and then file your written request on the docket. I will ignore requests sent by fax or email. Please include the following information: (1) the appearance date or deadline you want to change, (2) the number of previous requests for adjournment or extension (by you or anyone else), (3) whether those previous requests were granted or denied, (4) whether other parties consent (including any reasons given for withholding consent), and (5) whether the request affects any other scheduled deadline (in which case alternative dates must be proposed). If the request is being made less

than 48 hours before the affected appearance or deadline, please also explain why you could not have made the request sooner.

- B. Letters. Please file all letters addressed to me on the electronic docket and do not send courtesy copies by any other means unless I ask you to do so. Please do not file or send me copies of discovery requests or responses or any other correspondence between counsel, except as an exhibit to a submission on a pending motion. *See* Fed. R. Civ. P. 5(d)(1).
- C. Telephone Calls. In a civil case, please do not call chambers to request any form of relief, including as to the schedule. Before calling on any matter, please review the docket, the local rules of this court, and these practice rules to see if they answer your questions. In a criminal case, please call Courtroom Deputy Alicia Guy at (718) 613-2114 to schedule a plea or other proceeding not normally handled by the magistrate judge on arraignment duty.
- D. Emails and Faxes. Please do not send emails or faxes unless I ask you to do so.

III. Court Appearances

- A. "Of Counsel" Appearances Prohibited. Only a party's counsel of record, or an attorney personally authorized to appear by the party (and not simply by the party's counsel of record) may appear on behalf of a party. If a law firm has appeared as counsel of record for a party, any attorney actually employed by that law firm may appear. An attorney acting "of counsel" for a party's counsel of record may not appear without the represented party's explicit authorization, as such an attorney has no authority to make binding representation on behalf of any party. *See* N.Y. Rules of Prof'l Conduct 1.2(c), 22 N.Y.C. R.R. § 1200 (requiring client to give "informed consent" before an attorney may make a limited appearance on the client's behalf).
- B. Familiarity with the Case. Any attorney who wishes to speak at a conference should be fully familiar with the record and prepared to address any unresolved factual or legal issue in the case as well as the possibility of settlement. If multiple attorneys will appear, they may of course divide that responsibility among themselves.
- C. Opportunities to Gain Courtroom Experience. Each party has full discretion to authorize any properly admitted attorney to speak on its behalf at any conference or hearing. However, I encourage the parties and their counsel to provide opportunities for junior lawyers to speak in court. In particular, where a junior attorney has done significant work in researching or drafting a party's memorandum, I will find that attorney's participation in the courtroom discussion particularly valuable in helping me to understand the issues before the court.

IV. Motions

A. Discovery and Other Non-Dispositive Motions.

1. *Generally.* Before filing a motion, please speak directly with opposing counsel to try to narrow or resolve the dispute on consent; please don't file a motion after simply exchanging email messages. If you can't resolve the dispute on consent, please include a report of your efforts to do so in your motion. All letters submitted in connection with motions should be no longer than three pages, excluding attachments.
2. *Letter Motions.* File a letter to move for discovery or non-dispositive relief; no pre-motion conference is required. *See* Loc. Civ. R. 37.1, 37.3. The response is due three business days later. Please don't file any other letters on the motion.
3. *Motions on Notice.* If you think a motion can't adequately be discussed in a three-page letter, you may file a letter to request a pre-motion conference. The response is due three business days later. Please don't file any other letters on the request.

B. Dispositive Motions. Unless the parties unanimously consent to refer a dispositive motion to me for decision, such a motion must conform to the presiding judge's individual practice rules. If I am going to decide the motion, or if it is referred to me for a report and recommendation, please follow the following procedures unless I approve a request to do otherwise:

1. The parties should set the briefing schedule (including, on motions for summary judgment, a schedule for exchanging factual statements pursuant to Local Civil Rule 56.1) and wait until the motion is fully briefed to file all motion papers on the docket. When filing the motion papers, please let me know if you would like to schedule an oral argument. I will schedule an argument if I think it would help me resolve the motion.
2. Opening and opposition briefs should be no longer than 25 pages, and reply briefs no longer than 10 pages; please use one-inch margins, double spacing (except in footnotes), and at least 12-point type. Please include a table of contents. I will only consider legal arguments made in a brief, not those in an affidavit, affirmation, or declaration. *See* Loc. Civ. R. 7.1.

V. Consent Cases

The following procedures apply when the parties have agreed to refer a civil case to me for all purposes including the entry of judgment.

- A. Joint Pretrial Orders. If you have already filed a joint pretrial order pursuant to the individual practice rules of a previously assigned judge, you don't have to file another one. Otherwise, on the date specified in the case management and scheduling order, please submit a joint pretrial order that includes:
1. The names, firm names, and contact information of trial counsel;
 2. 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. Please cite relevant statutes and facts regarding citizenship and jurisdictional amounts.
 3. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, as well as a summary of all claims and defenses previously asserted that are not to be tried.
 4. 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 we set a different schedule, please adhere to the following schedule:
1. Motions in Limine. Please set a briefing schedule that results in all motions *in limine* being fully briefed at least two weeks before the trial date. I will hear oral arguments on any such motion at a final pre-trial conference the week before the start of jury selection.
 2. Other Materials. Please file each of the following no later than three business days before the start of jury selection:
 - a. Proposed *voir dire* questions, including a proposed description of the case that I can use during jury selection and a list of all persons, entities, and locations that you expect to be mentioned during the trial.
 - b. Requests to charge, or, in a non-jury case, 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.
 - c. Any stipulations or agreed statements of fact or law.

- d. Witness lists, including all fact and expert witnesses to be called in your case-in-chief. You may only call a witness on your list unless I grant an exception for good cause.
- e. Designations of any deposition testimony (specifying page and line numbers) to be offered in your case-in-chief, along with your cross-designations of and objections to other parties' deposition excerpts. You may only offer designated testimony unless I grant an exception for good cause.
- g. Exhibit lists, including all exhibits to be offered in your case-in-chief, and, to the extent practical, objections to opposing parties' exhibits specifying the applicable rule of evidence. You will be deemed to have waived any objection to an exhibit not conforming to this rule unless I grant an exception for good cause. Please use the following format:

Ex. #	Description	Offered	Objection	Admitted

- h. A pretrial memorandum, if you think it would be useful.
3. Exhibits: Please provide me with a complete set of pre-marked trial exhibits no later than at the start of jury selection.

C. Trial Procedures. I will conduct all *voir dire*. At the close of each trial day, I will expect you to tell me and opposing counsel who will testify on the next trial day. Unless I order otherwise 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 your cross-examination exceeds the scope of the direct pursuant to this rule, please to not ask leading questions (unless the witness is hostile or otherwise associated with the opposing party). I will try to avoid sidebar conferences, and will expect counsel to anticipate and raise evidentiary issues during breaks in the trial to avoid wasting the jurors' time. Unless I order otherwise before the start of jury selection, he defendant will give the first closing argument, followed by the plaintiff, with no rebuttal. *See* Local Rule 39.2.

Revised as of August 24, 2017