

Judge Margo K. Brodie
Individual Practices and Rules

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Unless otherwise ordered by the court in a specific case, matters before the court shall be conducted in accordance with the following practices:

1. *Case Filings*

A. *Electronic Case Filing (ECF)*

Pursuant to Administrative Order 2004-08, **all case documents must be filed electronically via ECF** for all civil cases other than *pro se* cases and for all criminal cases. The Eastern District's User Guide for electronic case filing is available at <http://www.nyed.uscourts.gov/pub/docs/local/ecf-usermanual.pdf>. This manual also contains contact information for questions regarding ECF. **Parties are advised not to contact chambers with questions regarding ECF registration, filing, or other technical issues.**

B. *Filing Under Seal*

Written submissions to be filed under seal should also be filed on ECF in accordance with the instructions for e-filing sealed documents on the Eastern District's website at <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCV.pdf> (civil) and <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCR.pdf> (criminal). Unless prior approval to file under seal has already been granted, each submission shall be accompanied by an explanation of why sealing is necessary.

C. *Court's Review of ECF Submissions*

As a general matter, materials filed via ECF are reviewed by chambers the first business day after submission. If your submission requires immediate attention, please notify chambers by telephone after you file via ECF.

D. *Courtesy Copies*

Parties shall deliver to chambers a courtesy copy of all written submissions filed on ECF that are 25 pages in length or more, inclusive of any exhibits or attachments. Parties are encouraged to use double-sided printing for their courtesy copies, and to spiral-bind larger documents or packets on the left side. Preferably, the courtesy copies will be reproductions of the document as filed on ECF, with the ECF numbering appearing at the top of the page. If not, the courtesy copy should be prominently labeled “*Courtesy Copy - Original was electronically filed and assigned document number X.*”

E. *Word-Processing Files of Proposed Orders, Requests to Charge, etc.*

Proposed orders, jury instructions, and other such writings a party wishes the Court to adopt should be submitted to chambers in Microsoft Word format as well as filed on ECF in PDF format. However, parties need not submit word-processing files of stipulations of dismissal or settlement unless specifically requested to do so. Counsel may send the files to Brodie_Chambers@nyed.uscourts.gov.

F. *Requests for Adjournments or Enlargement of Time*

All requests for adjournments or enlargement of time must be in writing and state:

- i. The original date;
- ii. The number of previous requests for adjournment or enlargement;
- iii. Whether these previous requests were granted or denied; and
- iv. Whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent.

If the requested adjournment or enlargement of time affects any other scheduled dates, proposed revised dates must be provided. Absent an emergency, all requests for adjournment or enlargement of time shall be made at least 48 hours prior to the scheduled deadline or appearance.

2. *Communications with Chambers*

A. *Written Communications with Chambers*

All communications with chambers shall be in writing and filed on ECF, with copies simultaneously delivered to all parties who do not receive automatic notification through ECF. Copies of correspondence between counsel shall not be sent to the Court.

B. *Telephone Calls*

Telephone calls to chambers are permitted, but parties seeking clarification of these Individual Rules or case-specific action should docket their request in a letter to ECF. Please review this document before calling chambers with questions. For docketing, scheduling or calendar matters, call Michelle Brucella at (718) 613-2145.

C. *Faxes*

Faxes to chambers are permitted only if prior authorization is obtained.

3. *Motions*

Motions Returnable: Set by the court. The Court will schedule oral argument if necessary in a specific case.

A. *Pre-Motion Conference Requests in Civil Cases*

For discovery motions, follow Local Civil Rules 37.3 and 6.4. For motions other than discovery motions, in all cases in which the proposed movant is represented by counsel, except habeas corpus/prisoner petitions and Social Security and bankruptcy appeals, a pre-motion conference with the court must be requested before making:

- i. Any motion pursuant to Fed. R. Civ. P. 12 or 56;
- ii. Any motion for a change of venue; or
- iii. Any motion to amend a pleading pursuant to Fed. R. Civ. P. 15 where leave of court is required.

To request a pre-motion conference, the moving party shall file and serve a letter not to exceed three (3) pages in length setting forth the basis for the anticipated motion. All parties served may, but are not required to, serve and file a letter response, not to exceed three (3) pages within seven (7) days from service of the notification letter.

Rule 12(a) prescribes time requirements for the filing of answers and for the filing of motions permitted under Rule 12. Similarly, Rule 56(b) prescribes time requirements for the filing of a motion for summary judgment. For the purposes of these timing requirements, a pre-motion conference letter requesting permission to file a motion permitted by Rules 12(a) and 56(b) shall be considered the equivalent of the motion itself.

In some cases, it will be apparent from the letter requesting a pre-motion conference that such a conference will not be a useful expenditure of the parties' time, and a motion schedule will be set without a pre-motion conference. In other cases, the usefulness of a pre-motion conference will be clear based on the request. Counsel are informed that such decisions are commonly made before the

time for filing response letters has expired, but any such decisions are revisited upon the filing of a timely response letter.

Note that these provisions do *not* apply to motions other than those specifically enumerated. For example, letters requesting pre-motion conferences are not required for motions pursuant to Fed. R. Civ. P. 50, 59 and 60, and counsel should be aware that the Court of Appeals will not accept an argument that compliance with district court motion rules should excuse noncompliance with Fed. R. App. P. 4.

B. *Memoranda of Law*

Unless prior permission has been granted, memoranda of law in support of or in opposition to motions are limited to 25 pages, double spaced, and reply memoranda are limited to 10 pages, double spaced. Parties should use Times New Roman 12-point font and one-inch margins.

C. *Briefing Schedule*

The parties are to set up their own briefing schedule and submit it to the Court for approval. Approval may be given at the pre-motion conference or by subsequent letter. No changes to the schedule may be made without Court approval.

D. *Filing of Motion Papers*

As a courtesy to the Court, the Court requests that the parties refrain from filing motion papers until the motion has been fully briefed. If the parties elect to file their motion only once it is fully briefed, the notice of motion and all supporting papers are to be served on the other parties along with a cover letter setting forth whom the movant represents and the papers being served. Only a copy of the cover letter shall be electronically filed in advance of the fully-briefed motion, and it must be filed as a letter, not as a motion.

On the day the motion is fully briefed, each party shall electronically file its moving papers. In addition, the moving party (unless *pro se*) shall furnish chambers with a full set of courtesy copies of the motion papers, together with a letter specifying each document in the package. Courtesy copies should comply with Rule 1.D of these rules. A copy of the cover letter shall be sent to the assigned magistrate judge and to opposing counsel, and shall also be electronically filed.

Parties moving pursuant to rules Fed. R. Civ. P. 50, 59 and 60, and counsel should be aware that the Court of Appeals will not accept compliance with this rule as an excuse for noncompliance with the time limits set forth in Fed. R. App. P. 4.

E. *Motions Implicating Fed. R. App. P. 4(a)(4)(A) or Similar Time-Limiting Rules*

As indicated above, these practices do not require a pre-motion conference or that a motion be fully briefed before it is filed when strictly enforced time limits must be met to preserve rights. Regardless, if any party concludes in good faith that delaying the filing of a motion, in order to comply with any aspect of these individual practices, will deprive the party of a substantive right, the party may file a motion within the time required by the Federal Rules of Civil and/or Appellate Procedure, together with an explanation of the basis for the conclusion.

4. *Pretrial Procedures*

A. *Joint Pretrial Orders in Civil Cases*

Unless otherwise ordered by the court, within 60 days from the date for the completion of discovery in a civil case, the parties shall submit to the court a proposed pretrial order, which shall include the following:

- i. *Caption:* The full caption of the action.
- ii. *Parties and Counsel:* The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. *Jurisdiction:* 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 and legal doctrines relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. *Claims and Defenses:* A brief summary by each party of the elements of the claims and defenses that party has asserted which remain to be tried, including citations to all statutes relied on.
- v. *Jury or Bench Trial:* 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.
- vi. *Witnesses:* A list of names and addresses by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.
- vii. *Deposition Testimony:* 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.
- viii. *Stipulations:* A statement of stipulated facts, if any.
- ix. *Exhibits:* A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. Plaintiff's exhibits shall be identified by numbers, defendant's exhibits shall be identified by letters. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits

to be offered by any other party. Parties are expected to resolve before trial all issues of authenticity, chain of custody and related grounds. Only exhibits listed will be received in evidence except for good cause shown.

- x. Exchange of Exhibits: All exhibits must be premarked for the trial and exchanged with the other parties at least ten days before trial. Where exhibits are voluminous, they should be placed in binders with tabs.

B. *Filings Prior to Trial in Civil Cases*

Unless otherwise ordered by the court, requests to charge and proposed *voir dire* questions in jury cases should be submitted one week before trial. Requests to charge should be limited to the elements of the claims, the damages sought and defenses. General instructions will be prepared by the court. Word-processing files of proposed charges should be submitted to chambers pursuant to Section 1.E of this document.

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. By claim, a detailed statement regarding damages and other relief sought;
- ii. 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; and
- iii. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*.

C. *Filings Prior to Trial in Criminal Cases*

Unless otherwise ordered by the court, requests to charge and proposed *voir dire* questions in jury cases should be submitted one week before trial. General instructions will be prepared by the court. Word-processing files of proposed charges should be submitted to chambers pursuant to Section 1.E of this document.

5. *Sentencing Motions*

A. *Applications*

Applications regarding sentencing shall be made in writing by defense counsel at least nine business days prior to the date of sentencing.

B. *Response*

The Government's response, if any, shall be made in writing at least six business days before the date of sentencing.