

**INDIVIDUAL PRACTICES OF
JUDGE THOMAS C. PLATT**

Long Island Courthouse
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Central Islip, NY 11722
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Fax Page Limit: 25 pages, unless permission is given by the court

Contact: Karen O'Hara
Telephone: 631-712-5605
Hours: 9:00 a.m. to 5:00 p.m.

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

1. Communications With Chambers

A. Letter. Except as provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Telephone calls to chambers are not permitted.

C. Faxes. Faxes to chambers are not permitted unless prior authorization is obtained.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling, and calendar matters, call the contact listed above during the hours specified.

E. Request for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed revised Scheduling order must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance.

2. Motions

A. Courtesy Copies. In addition to motion papers, courtesy copies of pleadings, marked as such, shall be submitted to chambers, as soon as practical after filing.

B. Memorandum of Law. Unless prior permission has been granted, memorandum of law in support of and in opposition to motions 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.

C. Filing of Motion Papers. No motion papers shall be filed until the motion is fully briefed by both sides and exchanges of all papers has been made. **No service of papers shall be made until all exchanges are complete.** On the completion date the parties shall communicate by telephone with the Court's Deputy Clerk at 631-712-5605 to schedule service, filing and return dates. **The formal service and filing of all papers is on a date 10 days before the date of oral argument scheduled by the Court.**

If the motion is one for summary judgment, within 30 days of the completion of discovery the parties must communicate by telephone with the Court's Deputy Clerk to schedule an oral argument date. Failure to schedule an oral argument date in this time frame will waive the parties right to file a summary judgment motion. No adjournments of the oral argument date will be granted. Local Civil Rule 56.1 statements must be filed with the filing of such a motion. Each statement of fact in each 56.1 statement and each counter 56.1 statement shall be stated in a single sentence separately numbered and each such statement will be followed by a reference to the factual source (e.g. Dep. of X at pg. or Exh. A. at _). Rule 56.1 statements must be read and complied with by the parties before filing. Failure to comply with this rule may result in an adverse decision.

The moving party shall be responsible for the formal service and filing of all motion papers on the date agreed upon with the Court's Deputy Clerk. Such party is further obligated to furnish chambers a full set of courtesy copies of the motion papers together with a cover letter specifying each document in the package. A copy of the cover letter shall be sent to the assigned magistrate judge and to opposing counsel.

D. Oral Argument on Motions. Where the parties are represented by counsel, oral argument will be held on all motions with the exception of motions under 28 U.S.C. Sections 2254 and 2255, and motion in the context of Social Security Appeals.

E. Social Security Appeals. Motions for judgment on the pleadings pursuant to Rule 12(c) must be made within two weeks of the filing of the transcript with the Clerk of the Court. Failure to adhere to this rule will result in dismissal of the appeal without

prejudice and with leave to refile. **No extensions will be granted.**

F. Bankruptcy Appeals. As per Section 8009 of the Rules of Bankruptcy Procedure (a) Briefs (1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007 (2) The appellee shall serve and file a brief within 15 days after service of the brief of the appellant. If appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant (3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court. No variations, extensions or exceptions will be granted.

3. 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 for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
- v. 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. A statement as to whether or not all parties have consented to trial of the case

by a magistrate judge (without identifying which parties have or have not so consented).

vii. Any stipulation or agreed statements of facts or law which have been agreed to by all parties.

viii. 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 prompt notice has been given and good cause shown.

ix. 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.

x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

i. On the Thursday before trial in jury cases, requests to charge and proposed voir dire questions. 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. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in IBM Word Perfect format.

ii. By claim, a detailed statement regarding damages and other relief sought;

iii. 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;

iv. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and

v. In any case where such party believes it would be useful, a pretrial memorandum.

18, 2002

December

PRETRIAL AND TRIAL RULES AND PROCEDURES

PRETRIAL CONFERENCE/DISCOVERY

After an answer is filed, a case is referred to a Magistrate Judge for all matters relating to discovery and the entry of a Federal Rule of Civil Procedure 16(b) scheduling order. If parties wish to pursue discovery or settlement negotiations before an answer has been filed, they may request that the Judge refer them to a Magistrate Judge for this purpose.

GUIDELINES FOR THE CONDUCT OF TRIALS AND PRETRIAL MOTIONS AND OTHER APPEARANCES

- ii **PRETRIAL IN CIVIL CASES.** Ordinarily, the Court will have determined at pretrial what claims and defenses will be tried, what witnesses will testify, and what exhibits will be received at trial. Except for proper impeachment, trial by ambush is not acceptable.

- ii **OPENING STATEMENTS.** An opening statement is simply an objective summary of what counsel expects the evidence to show. No argument or discussion of the law is permissible.

- ii **QUESTIONING OF WITNESSES.**
 - a. Conduct the examination from the lectern located at the far end of the jury box. Ask permission to approach the witness when necessary and return to the lectern as soon as practicable. Treat witnesses with courtesy and respect, do not become familiar, do not address witnesses by their first names, and do not shout at witnesses.

 - 2. Ask brief, direct, and simply stated questions. Cover one point at a time. Leading questions may be used for background or routine matters. It is helpful to write out the questions in advance, but do not read them at trial.

 - C. Cross-examination similarly should consist of brief, simple, and clearly stated questions. Again, it is helpful to write out questions in advance, but do not read them. Cross-examination should not be a restatement of the direct examination and should not be used for discovery (*i.e.*, it is not like taking a deposition).

 - iv Only one lawyer for each party may examine any one witness and may object as to questions asked of that witness on cross.

- 4. **USING DEPOSITIONS.**
 - a. The deposition of an adverse party may be used for any purpose. It is unnecessary to (although one may) ask a witness if he or she “recalls” it or otherwise lay a foundation. Simply identify the deposition and page and line numbers and read the relevant portion. Opposing counsel may then immediately ask to read such additional testimony as is necessary to complete the context.

- ii The deposition of a witness not a party may be used for impeachment or if the witness has been shown to be unavailable. For impeachment, the preferred practice is: allow the witness to read to him- or herself the designated portion first, ask simply if the witness gave that testimony, and then read it. Opposing counsel may immediately read additional testimony necessary to complete the context.
- ii A deposition of or statement offered by someone not a witness (unless previously adopted by the witness), even if it purports to contain statements made by the witness to the offeror, may not be used to impeach the witness.
- ii A deposition or statement may be used to refresh a witness's recollection by showing it to the witness, or, just as any other document, as a basis for relevant questions, but unless adopted by the witness or received in evidence, it may not be read to the witness in connection with or as a part of such question.
- ii In bench trials, do not offer depositions wholesale. Unless all of the testimony is important, copy the relevant pages only, staple the extracts from each deposition, and offer each as an exhibit.
- ii Note: It is the responsibility of counsel anticipating use of a deposition at trial to check in advance of trial that it has been made available to the witness for signature and that the original is filed with the Clerk's Office.

E. OBJECTIONS.

- a. To make an objection, **rise**, say “objection,” and briefly state the legal ground (*e.g.*, “hearsay,” “privilege,” “irrelevant”). **If you do not rise, your objection will be deemed waived and will be ignored by the Court.** Failure to rise when addressing the Court is a form of contempt and will be regarded and dealt with as such.
- iv Do not make a speech or argument, or summarize evidence, or suggest the answer to the witness. If argument is desired, ask for an opportunity to argue the objection at sidebar.
- iv Where an evidentiary problem is anticipated, bring it to the Court’s attention in advance to avoid interrupting the orderly process of a jury trial.

6. **EXHIBITS.**

- ii **All exhibits** (except proper impeachment exhibits) **must be marked before the trial starts**, using the clerk’s standard form of label. Normally, plaintiff’s exhibits will be numbered and defendant’s exhibits lettered. Copies must be provided to opposing counsel and the Court before trial.**
- ii When offering an exhibit, follow this procedure to the extent applicable (unless foundation has been stipulated):

Request permission to approach the witness;

Show the witness the document and say:

I show you (a letter) premarked Exhibit __,

dated __, from

A to B. Can you identify that document?

**This does not apply to defendants in a criminal trial.

follows:

Identification having been made, make your offer as

I offer Exhibit _____.

Note: In some circumstances, additional questions may be necessary to lay the foundation.

- ii It is the responsibility of counsel to see that all exhibits counsel wants included in the record are formally offered and ruled on, and that all of the clerk's copies of exhibits are in the hands of the clerk. Take nothing for granted.
- ii Exhibits received in evidence should be shown to the jury when so received or as soon thereafter as possible. Counsel should not hold all such exhibits until his or her adversary commences cross-examination. Questioning normally should continue while the jury examines exhibits.
- ii Tapes are normally received in evidence; transcripts are normally not. Transcripts are marked for identification only and used as guides.
- vii. **INTERROGATORIES AND REQUESTS FOR ADMISSION.** Counsel wishing to place into the record an interrogatory answer or response to request for admission should prepare a copy of the particular interrogatory or request and accompanying response, mark it as an exhibit, and offer it.
- viii. **USE OF PREPARED DIRECT TESTIMONY.** In bench trials, when the direct testimony of witnesses has previously been submitted in narrative, written statement form, the proponent of the witness must have the witness available for cross-examination unless cross-examination has been waived.

The following procedure should be followed:

When the witness is called to the stand, ask the witness to identify the statement, which should be premarked as

an exhibit, as his or her testimony and to state that it is true and correct. Then offer the exhibit.

iv **CONDUCT OF TRIAL.**

- a. The Court expects counsel and the witnesses to be present and ready to proceed promptly at the appointed hour—normally starting at 9:15 a.m. A witness on the stand when a recess is taken should be back on the stand when the recess ends. If you or your client are late, you may find the jury in the box awaiting your arrival.
- b. Bench conferences should be minimized. Raise anticipated problems at the start or the end of the trial day or during a recess.
- c. Have a sufficient number of witnesses available in court to fill the time available. Running out of witnesses may be taken by the Court as resting your case.
- d. Trials normally are conducted each day except on the day scheduled for the motion calendar (usually Friday). Do not assume that the Court will recess on any of those days at any given time or times unless prior arrangements have been made with the Court and counsel.
- e. Counsel are expected to cooperate with each other in the scheduling and production of witnesses. In civil cases, in particular, witnesses may be taken out of order where necessary. Every effort should be made to avoid calling a witness twice (as an adverse witness and later as a party's witness).
- f. Counsel should be prepared each day to discuss with the Court the next day's schedule of witnesses and exhibits.

x. **JURY TRIAL.**

- a. When trial is to a jury, counsel should present the case so that the jury can follow it. Witnesses should be instructed to speak clearly and in plain language. When documents play an important part, an overhead projector and screen should be used to display the exhibit while a witness testifies about it or extra copies should be made available to the jury and the Court.
- b. Proposed *voir dire* questions must be submitted in writing no later than the last pretrial conference.
- c. Jury instructions must be submitted no later than the last pretrial conference but may be supplemented during the trial. Only those dealing with the particular issues in the case need be presented. Instructions are to be drafted specifically to take into account the facts and issues of the particular case, and in plain language; do not submit copies from form books. Do not submit argumentative or formula instructions. Consult the Court for additional guidance.
- d. Do not offer a stipulation in the presence of the jury unless agreement has previously been reached. Preferably, such stipulations should be in writing.
- e. In final argument, do not express personal opinions or ask jurors to place themselves in the position of a party, or to consider the consequences of the litigation beyond the evidence presented. Do not make reference to or use testimony or exhibits not in evidence.
- f. Normally, the Court will instruct the jury after, but will confer with counsel before, closing arguments. Accordingly, there will be no need (and indeed it is improper for counsel to attempt) to explain the law in the closing argument.

xi. General Decorum.

1. A trial is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times, which includes appropriate dress (suits and neckties for men) and courtroom behavior. Disruptive tactics or appeals to prejudice are not acceptable.
2. Colloquy between counsel on the record is not permitted—all remarks are to be addressed to the Court.
3. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Calling attorneys, witnesses or parties by first names on the record is not appropriate.
4. Do not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client while at counsel table should indicate approval, disapproval, or other reactions to a witness's testimony or counsel's argument.
5. If you have a question or problem, talk to the Judge's courtroom deputy but not the law clerks.
6. When one lawyer is making a motion or application either before or at trial, all other lawyers should be seated, and the same is true when another is answering any such motion or application. Do not attempt to interrupt your adversary's argument unless the Court asks you a question—then rise, answer it, and resume your seat until your adversary is finished.
7. If an objection to a question has been sustained (other than on the ground of "form"), do **not** attempt to circumvent the Court's ruling by repeating the question in other words. This is a form of contempt and will be regarded as such.

8. You are bound by written stipulations or those made in open Court whether made by you or by predecessor counsel unless you have been relieved therefrom by order of the Court.
9. Histrionics, mini-summations, comments on testimony of a witness during questioning, repetitious questions, procrastination, delaying tactics, rearguments following Court rulings (except at recesses), *etc.*, will not be tolerated.
10. Prior to trial, the attorneys should attempt to stipulate the testimony of all *pro forma* witnesses, *e.g.*, if the secretary of the XYZ Corporation were called to testify, he would testify that Exhibit A was kept in the ordinary course of business, *etc.*, is admissible.
11. Repetitious cross-examination by successive (or even the same) attorney(s) on the same subject area is inappropriate and will not be permitted except for good cause shown in exceptional circumstances.

December 18, 2002