

INDIVIDUAL PRACTICE RULES OF
MAGISTRATE JUDGE A. KATHLEEN TOMLINSON
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014
Courtroom 910
Chambers: (631) 712-5760
Fax: (631) 712-5766
Courtroom Deputy Edher Montero: (631) 712-5765

I. Communications with Chambers

A. *Telephone Calls*

Telephone calls to Chambers are permitted with all parties on the line, subject to the rules set forth below in Rule I.D. All questions regarding docketing, scheduling or criminal matters should be directed to Edher Montero. Other questions should be directed to the Law Clerks at the main Chambers number.

B. *Letters*

All letters sent to the Court are to be filed via ECF (see Rule II below) unless otherwise directed by the Court, with copies simultaneously delivered to all parties, and with service on all parties indicated on the face of the letter.

C. *Faxes*

Faxes are permitted only in the following circumstances: 1) time sensitive requests that have already been electronically filed, and 2) cases not subject to ECF requirements. **Faxes may not exceed four pages, including cover sheet and attachments.** Longer faxes require advance permission. Papers faxed to Chambers must also be simultaneously faxed to all other parties.

D. *Requests for Adjournments or Extensions of Time*

All requests for adjournments of a court appearance, absent an emergency, shall be made **in writing at least 48 hours prior to the scheduled appearance.** Further, 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 those previous requests were granted or denied, (4) **the reason(s) why an adjournment or extension is necessary,** and (5) whether the adversary consents (including any reasons given by the adversary for withholding consent). Both requests for adjournments and for extensions of time **must** be filed electronically as “MOTIONS.” If the requested adjournment or extension affects any other scheduled date, a proposed revised date(s) must be provided. Courtesy copies of time sensitive

submissions, such as requests for adjournments, **must also be faxed** to Chambers.

II. Electronic Case Filing (ECF)

- A. Regardless of the district judge assigned, **all documents** directed to Magistrate Judge Tomlinson in civil actions filed after October 1, 2002 **MUST** be filed electronically, with limited exceptions as stated in Rule II.E. below. ECF procedures are available on our Website [<http://www.nyed.uscourts.gov>]. Questions regarding ECF filing or training should be directed to Cinthia Mahon in Central Islip at (631) 712-6011, or Terry Vaughn in Brooklyn at (718) 260-2330.
- B. In all cases assigned to Magistrate Judge Tomlinson, no matter which district judge is assigned, attorneys must make an appearance and register to receive ECF notifications prior to filing any letters, motions or other documents.
- C. All orders issued by Magistrate Judge Tomlinson will be transmitted only electronically. Hard copies will not be mailed to attorneys. Accordingly, attorneys are responsible for keeping their e-mail addresses current with the Clerk's Office.
- D. Hard copies or courtesy copies *generally* do not need to be sent to Chambers, with the following exceptions: (1) where a letter motion with exhibits or attachments exceeds 20 pages, or (2) motions referred from District Court Judges or motions on notice made to Magistrate Judge Tomlinson. All such papers must be clearly marked "Courtesy Copy" and indicate that the original was filed by ECF.
- E. The following documents are exempt from electronic filing and should only be filed in hard copy:
 - i. Non-text exhibits or materials in excess of 50 pages. If attachments to a letter motion exceed this limit, the movant must electronically file the letter only, indicating in the docket entry that the attachments exceed 50 pages and will be filed in hard copy, and submit the attachments for filing, with a courtesy copy to Magistrate Judge Tomlinson.
 - ii. Documents filed under seal or subject to a court-ordered confidentiality agreement.
 - iii. *Ex parte* settlement statements.
- F. Exemptions. Litigants proceeding *pro se* are exempt from ECF requirements. Parties represented by counsel, however, must file documents electronically, even in *pro se* cases.

III. Motions

A. *Discovery or Other Non-Dispositive Motions*

1. Letter Motions: *Discovery or other non-dispositive motions may be made by letter motion, pursuant to Local Civil Rules 37.1 and 37.3, and filed electronically as a "MOTION."* No pre-motion conference is required. Such letter motions may not exceed three pages in length, exclusive of attachments. A response not exceeding three pages in length, exclusive of attachments, must be served and filed within three business days of receipt of the letter motion. Replies are not permitted on letter motions. Parties must make a good faith effort, pursuant to Local Civil Rule 26.5, to resolve disputes, including in-person contact either by telephone or in person, **before** making a motion.
2. Motions on Notice: Although parties are encouraged to make discovery and other non-dispositive motions by letter pursuant to Local Rule 37.3, such motions may be made on notice pursuant to Local Civil Rule 6.1 and must comply with Rule III herein. No pre-motion conference is required.

B. *Dispositive Motions*

Dispositive motions, such as motions to dismiss and motions for summary judgment, must be made to the presiding district court judge, in conformance with his or her individual rules, unless the parties have consented to Magistrate Judge Tomlinson's jurisdiction for all purposes in accordance with 28 U.S.C. § 636 (c)(1).

C. *General Motion Practices for Motions on Notice Made to Magistrate Judge Tomlinson*

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 which is then to be submitted to the Court for approval. No revisions to the schedule will be made without the Court's approval.
 - c. Each party shall be responsible for filing its own motion papers via ECF on the date the reply brief is scheduled to be filed or any return date stated in the approved briefing schedule. Parties are to confer to ensure that all papers are being filed on the same day.

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 ten (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 Tomlinson. Courtesy copies of dispositive motions made to the district judge should **not** be provided to the magistrate judge.

4. Oral Argument on Motions

Where the parties are represented by counsel, oral argument will be held on motions. Within one week of filing fully briefed motions, the parties are to contact the Court to set a mutually acceptable date for oral argument.

D. Submission of Summary Judgment Motions in Cases Before Magistrate Judge Tomlinson for All Purposes

1. No pre-motion conference is required. However, prior to filing such a motion, the movant is required to submit a letter of no more than two pages in length (a) briefly stating the basis for the motion, **and** (2) setting forth a briefing schedule that has been agreed upon by the parties. The briefing schedule is subject to approval by the Court and no papers may be filed until such approval is given.
2. All motions for summary judgment must comply with Rule 56 of the Federal Rules of Civil Procedure as well as 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.
3. Summary judgment motions are also subject to the requirements set forth above in

Rule III.C.1 through C.4.

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

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 the 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.

F. *Motions for Admission “Pro Hac Vice”*

A motion for admission *pro hac vice*, together with a proposed order admitting the attorney *pro hac vice*, shall be served and filed electronically at least seven days prior to the return date designated in the notice of motion. Although there is no need to file a memorandum of law, this motion must comply with Local Civil Rule 1.3. 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.

IV. Pretrial Procedures in Cases before Magistrate Judge Tomlinson for All Purposes

A. *Joint Pretrial Orders.* On the date specified in the scheduling order, the parties shall submit a joint pretrial order which includes the following:

1. the full caption of the action;
2. the names, addresses (including firm names), telephone and fax numbers of trial counsel;
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 include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
4. 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 on which the party is relying. The parties shall also list all claims and defenses 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;

6. any stipulations or statement of facts that have been agreed to by all parties;
7. a list by each party as to the fact witnesses 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 for good cause shown;
8. 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; and,
9. a list of exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties who will be offering them. The schedule must also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties must 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 the exhibits listed will be received in evidence except for good cause shown. All exhibits must be pre-marked 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.* Unless otherwise ordered by the Court, each party shall electronically file the following items ten (10) days prior to the commencement date of trial:

1. Proposed Voir Dire Questions and Final Witness List: in jury cases, 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. Proposed jury charges must also be submitted on a CD or diskette in WordPerfect format;
2. Claims for Relief: by claim, a detailed statement regarding damages and other relief sought;
3. Elements of Claims and Defenses: 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;
4. Pre-Trial Memorandum: required to be submitted by each party;
5. Motions in Limine: all motions addressing any evidentiary or other issue which should be resolved *in limine* are to be filed fifteen (15) days prior to jury selection, with a courtesy copy to Chambers so indicating. Any opposition should be filed seven (7) days prior to jury selection, with a courtesy copy to Chambers so

indicating. Any reply should be made in the same manner three (3) days prior to jury selection.