

Judge Ann Donnelly
Individual Practices and Rules
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Unless otherwise ordered, matters will be conducted pursuant to the following practices and rules:

1. *Case Filings*

A. *Electronic Case Filing (ECF)*

All case documents must be filed electronically on ECF for all civil cases other than *pro se* cases and for all criminal cases.

Pro se parties are exempt from mandatory electronic filing. However, parties represented by counsel in cases involving a *pro se* litigant must still use ECF, and they must mail a copy of all documents to the *pro se* litigant.

The Eastern District's User Guide for electronic case filing is available at <https://www.nyed.uscourts.gov/forms/cmecf-user-manual>. Parties are not to contact chambers with technical questions regarding ECF.

B. *Filing Under Seal or in Redacted Form*

Written submissions to be filed under seal or with redactions should also be filed on ECF. Instructions for e-filing sealed documents are on the Eastern District's website. Unless prior approval to file under seal or in redacted form has already been granted, each submission is to be accompanied by an explanation of why sealing or filing with redactions 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 call chambers after you file.

D. *Courtesy Copies*

The parties are to deliver a courtesy copy of all written submissions and exhibits filed on ECF that are more than 25 pages in length. As discussed below, the parties are to file submissions electronically by the dates that they are due.

However, the parties are to deliver one uniform set of courtesy copies within seven days of the close of briefing.

All courtesy copies should contain the ECF numbering at the top of each page, and should be submitted in a three-ring binder. Parties are encouraged to use double-sided printing for their courtesy copies.

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

Proposed orders, jury instructions, and other submissions that a party would like the court to adopt should be emailed to chambers in word-processing format and filed on ECF. Parties need not submit word-processing files of stipulations of dismissal. Microsoft Word is preferred; Corel WordPerfect is acceptable. Counsel may contact chambers for an email address to which the files may be sent.

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

If the requested adjournment affects any other scheduled dates, proposed revised dates must be provided. Absent an emergency, all requests for adjournment are to 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 are to be in writing and filed on ECF, with copies delivered to all parties who do not receive automatic notification through ECF.

B. *Telephone Calls*

When calling chambers, please state the full case name and docket number. Only attorneys and their staff may call chambers; the parties themselves may not. For docketing, scheduling, or calendar matters, call Donna Greene at (718) 613-2225.

C. *Faxes*

Faxes to chambers are permitted only with prior authorization. All faxes should be simultaneously provided to all counsel and followed with an electronic filing.

3. *Courtroom Opportunities for Relatively Inexperienced Attorneys*

The participation of relatively inexperienced attorneys in all court proceedings—including but not limited to pre-motion conferences, pre-trial conference, hearings on discovery motions and dispositive motions, and examination of witnesses at trial—is strongly encouraged.

All attorneys appearing should have the degree of authority consistent with the proceeding. For example, an attorney attending a pre-motion conference should have the authority to commit his or her party to a motion schedule, and should be prepared to address other matters likely to arise, including the party's willingness to participate in a settlement conference with the assigned Magistrate Judge.

Relatively inexperienced attorneys who seek to participate in evidentiary hearings of substantial complexity (e.g., examining at witness at trial) should be accompanied and supervised by a more experienced attorney.

4. *Motions*

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

For discovery motions, follow Local Civil Rules 37.3 and 6.4. A pre-motion conference with the Court is required before making any of the following motions, *unless one or more of the parties does not have legal counsel, or the case is a habeas corpus petition, a prisoner petition, a social security appeal, or a bankruptcy appeal*:

- 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 is to file and serve a letter not to exceed three pages setting out the bases for the anticipated motion. All parties served must serve and file a letter response, not to exceed three pages, within seven days of service of the notification letter. **If the motion is for summary judgment under Rule 56, the pre-motion conference letter is to also contain a copy of the movant's Rule 56.1 Statement and the non-movant's Rule 56.1 Counter-Statement (see below).** The supporting exhibits need not be filed with the Court until the parties submit their supporting memoranda.

Rules 12(a) and 56(b) set out time requirements for the filing of answers and motions permitted under those rules. For the purposes of these requirements, a pre-motion conference letter will be considered the equivalent of the motion itself.

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.

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.

B. *Motions for Summary Judgment*

A party seeking to file a motion for summary judgment must first serve a statement pursuant to Rule 56.1 of the Local Rules setting out the material facts as to which the moving party contends there is no genuine issue to be tried. Each statement of material fact must be followed by a citation to admissible evidence, as required by Rule 56(e) of the Federal Rules of Civil Procedure.

All parties receiving a Rule 56.1 Statement who wish to oppose the motion must serve on the movant, within fourteen days of receiving the movant's Rule 56.1 Statement, a counter-statement pursuant to Rule 56.1(b) ("Rule 56.1 Counterstatement"). The counter-statement should include both the text of the initial Rule 56.1 Statement and the response below. The paragraphs in the counter-statement must correspond with the paragraphs in the movant's statement. Should the non-movant require additional time, the parties may agree among themselves to a reasonable extension.

Rule 56.1 Statements and Counter-Statements are not to be filed with the Court until the moving party requests a summary judgment pre-motion conference (see above). Adherence to Local Civil Rule 56.1 is required. The court will not hold a pre-motion conference until the parties are in compliance with Local Civil Rule 56.1.

Once the court sets a briefing schedule for the motion(s) for summary judgment, the moving party must file a final version of its Rule 56.1 Statement with its opening brief, and the opposing party must file a final version of its Rule 56.1 Counter-Statement with its opposition brief.

C. *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. All memoranda 10 pages or longer are to contain a table of contents and table of authorities. All documents should be uploaded in a text-searchable format.

Requests to file memoranda exceeding the page limits must be made in writing five days prior to the due date, except with respect to reply briefs, in which case the written request must be made at least one day prior to the due date.

D. *Briefing Schedule*

At the pre-motion conference, if the movant decides to make a motion, a briefing schedule will be set by the court. If the court determines that a pre-motion conference is unnecessary, a motion schedule will be set without a pre-motion conference. No changes to the schedule may be made without court approval.

E. *Filing of Motion Papers*

Motion papers are to be filed promptly. Do not hold motion papers until all briefing is complete.

Each party must file its moving papers electronically. In addition, the parties (unless all parties are *pro se*) are to furnish chambers with a full set of courtesy copies of the motion papers at the close of briefing, 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 is to be sent to the assigned magistrate judge and to opposing counsel, and also electronically filed.

F. *Oral Argument on Motions*

Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The court will determine whether argument is necessary and, if so, will advise counsel of the argument date.

In those instances where the court is inclined to rule on the submissions, a representation that the argument would be made by a less experienced lawyer will weigh in favor of holding a hearing.

G. *Summary Judgment Motions Against Pro Se Litigants*

In any case where a summary judgment motion is filed against a *pro se* litigant, the moving party is directed to comply with the notice required by Local Civil Rule 56.2 entitled Notice to Pro Se Litigants Opposing Summary Judgment.

5. *Pretrial Procedures*

A. *Joint Pretrial Orders in Civil Cases*

Unless otherwise ordered by the court, within 60 days of the date for the completion of discovery in a civil case, the parties are to submit to the court one **joint** proposed pretrial order, which is to 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 are to 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. *Damages*: A brief statement of the categories and amounts of damages claimed or other relief sought.
- vi. *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.
- vii. *Consent to Trial by a Magistrate Judge*: A statement as to whether or not all parties have consented to trial of the case by a magistrate judge. The statement are not to identify which parties have or have not consented.
- viii. *Stipulations*: A statement of stipulated facts, if any.
- ix. *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.
- x. *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. (The parties should indicate if the deposition testimony will be offered for impeachment purposes only.)
- xi. *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. (The parties should indicate if a document is offered for impeachment

purposes only.) The plaintiff's exhibits are to be identified by numbers, defendant's exhibits are to 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. 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.

- xii. Exchange of Exhibits: 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 in Civil Cases*

Unless otherwise ordered by the court, 15 days before the date of commencement of trial, each party is to file the following:

- i. By claim, a detailed statement regarding damages and other relief sought;
- ii. In non-jury cases, proposed findings of fact and conclusions of law; and
- iii. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*. The non-movant is to respond to the motion(s) *in limine* within 7 days.

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.

One week before trial, the parties are to deliver 3 courtesy copies of all pre-marked trial exhibits. The parties also are to deliver 3 copies of a witness list and a list of the exhibits which explains of what each exhibit is. The description should be no less and no more than one sentence.

C. *Filings After Trial in Non-Jury Civil Cases*

Unless otherwise ordered by the court, within 30 days of the conclusion of trial, each party is to file amended proposed findings of fact with citations to the record at trial, and amended proposed conclusions of law.

D. *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.

6. *Sentencing Motions*

A. *Applications*

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

B. *Response*

The Government's response, if any, is to be made in writing at least five business days before the sentencing.

The Government should advise the Court if a victim will be making a victim impact statement.