

Judge Ann Donnelly
Individual Practices and Rules
225 Cadman Plaza East | Brooklyn, New York 11201
Courtroom: 4G | Chambers: N 415
Donnelly_chambers@nyed.uscourts.gov

Unless otherwise ordered, matters will be conducted pursuant to the following practices and rules:

1. *Communications with Chambers*

All communications with chambers are to be via letter filed on ECF, with copies delivered to all parties who do not receive automatic notification through ECF (i.e., *pro se* parties). Parties should not delivery courtesy copies of letters to chambers.

2. *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, and are permitted to mail filings to the *Pro Se* Office at 225 Cadman Plaza East, Brooklyn, NY 11201. 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 be filed on ECF. Both the redacted and unredacted versions of a document should be filed on ECF, with the unredacted version filed under seal. 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. *Courtesy Copies*

Parties should only send courtesy copies of ECF filings 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, courtesy copies may be delivered within seven (7) days of the filing.

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.

D. *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. Counsel may contact chambers for an email address to which the files may be sent.

E. *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.

Judge Donnelly will entertain up to two requests for adjournments on the same hearing or motion on consent of the parties. Any further requests for adjournment or enlargement or extension of time must be premised upon good cause. Protracted settlement negotiations do not constitute good cause.

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, attorneys participating in a pre-motion conference should have the authority to commit their clients 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 witnesses at trial) should be accompanied and supervised by more experienced attorneys.

4. *Motions*

Motion papers are to be filed promptly. Do not hold motion papers until all briefing is complete. In other words, the Court does not follow a “bundling” rule.

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 must be requested before making any of the following motions:

- i. any dispositive motion; or
- ii. any motion for a change of venue.

The pre-motion conference requirement is excused if the moving or opposing party is *pro se*, and in all habeas corpus petitions, prisoner petitions, social security appeals or bankruptcy appeals.

To request a pre-motion conference, the moving party is to file and serve a letter motion not to exceed three pages setting out the bases for the anticipated motion. Letter motions should be filed using the motion event via ECF. The opposing party or parties must respond with a letter not to exceed three pages within seven days. **The parties must use Times New Roman 12-point font, and one-inch margins.** If warranted, the Court will schedule a pre-motion conference hearing after it has received the response.

If the motion is for summary judgment under Rule 56, the pre-motion conference letter must also include a copy of the movant’s Rule 56.1 Statement and the non-movant’s Rule 56.1 Counterstatement. Accordingly, the movant must exchange its Rule 56.1 statement with opposing counsel, and obtain opposing counsel’s counterstatement before requesting a pre-motion conference. The movant must submit a copy of both parties’ statements **in accordance with Rule 4B.i., below. Further, both the Rule 56.1 Statement and the Counterstatement must be submitted in Times New Roman 12-point font, with one-inch margins.**

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.

B. *Motions for Summary Judgment*

- i. Local Rule 56.1 Statements

Before any party moves for summary judgment, the moving party must send opposing counsel a Local Rule 56.1 statement of undisputed fact. Opposing counsel must respond with a Local Rule 56.1 counterstatement. The counterstatement must include each of the movant's allegations, verbatim, and the opposing party must place its responses immediately beneath each of the movant's statements of fact. The counterstatement may, if necessary, include a separate section of additional material facts alleged to be in dispute.

The moving party must request a pre-motion conference in advance of a motion for summary judgment. The movant should file a letter, not to exceed 3 pages, explaining the basis for its motion and should attach: (i) the moving party's Local Rule 56.1 Statement, and (ii) the opposing party's counterstatement, in one document, as described above. The supporting exhibits need not be filed with the Court until the parties file their memoranda of law on summary judgment.

Each paragraph in the Local Rule 56.1 statement must contain an assertion of a material undisputed fact, not a description of evidence. Each assertion must include a citation to admissible evidence, and each response to an assertion must include a citation to admissible evidence. If a response does not cite admissible evidence, the assertion will be deemed admitted.

Pro se parties are exempt from the pre-motion conference requirements of Rule 4B.i.

ii. Exhibits

If parties cite deposition transcripts, the full deposition transcripts should be filed on ECF and sent to the Court.

If parties attach multiple exhibits to affidavits or declarations, they should file each exhibit as a separate attachment to the affidavit or declaration on ECF (*e.g.*, ECF No. 80 (affidavit), 80-1 (exhibit 1), 80-2 (exhibit 2)). In other words, do not group all exhibits into a single file.

Each exhibit should be accompanied by a cover page.

iii. Against *Pro Se* Litigants

In any case where a summary judgment motion is filed against a *pro se* litigant, the moving party must comply with Local Civil Rule 56.2, and file notice that they have complied via ECF.

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 PDFs must 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, the Court will set a briefing schedule. 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. *Oral Argument on Motions*

Parties may request oral argument by separate letter entitled “Request for Oral Argument,” at the time they file their moving or opposing or reply papers. Parties should file this request as a **motion** via ECF. The Court will determine whether argument is necessary and, if so, will advise counsel of the argument date.

F. *Audio or Video Exhibits*

To file an audio or video exhibit, a party must submit a short letter motion requesting leave to file the digital exhibit. If the Court grants the motion, it will provide instructions on how to file the exhibit on the Court’s Box.com account.

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 the 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. These statements must 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 all parties have consented to trial of the case by a magistrate judge. The statement should not 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 of the fact and expert witnesses whose testimony each party will offer during its case in chief, together with a brief narrative 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 list of the exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule should 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 Civil Bench Trials*

Unless otherwise ordered by the Court, 15 days before the trial commences, each party is to file the following:

- i. The final version of the parties' Joint Pre-Trial Order, which should include any changes the parties have made to their initial pre-trial order;
- ii. A detailed statement regarding damages and other relief sought as to each claim;
- iii. In non-jury cases, proposed findings of fact and conclusions of law; and
- iv. 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.

Proposed findings of fact and conclusions of law in non-jury trials should be styled as a brief, and must include detailed proposed factual conclusions for the Court to consider, as well as specific conclusions of law supported by record evidence and legal citations.

One week before trial, the parties are to deliver to chambers three courtesy copies in black or white three-ring binders of: (i) all pre-marked trial exhibits; (ii) a list of all fact and expert witnesses; and (iii) a list of all exhibits with accompanying descriptions for each exhibit. Exhibit descriptions should not exceed one sentence.

C. *Filings After Civil Bench Trials*

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. As noted above, proposed findings of fact and conclusions of law should be styled as a brief, and contain detailed analysis with citations to record evidence and relevant law.

D. *Jury Trials*

Unless otherwise ordered by the Court, 7 days before the commencement of all jury trials, the parties are to submit i) joint proposed voir dire questions and ii) joint proposed jury instructions. The parties should endeavor to agree to the extent possible. The parties must submit a single, joint document for the proposed voir dire questions, and a single, joint document for the jury instructions, including all agreed-upon questions or instructions. Where no agreement is reached, the parties should indicate the objection and the proposed alternative. Jury instructions should be limited to the elements of the claims, the damages sought, and defenses. The Court will prepare general instructions. The parties should email a Word version of the proposed questions and instructions to chambers pursuant to Section 1.E of this document.

6. *Sentencing Motions*

The PSR is due at least 35 days before the date of sentencing.

Objections to the PSR are due within 14 days of the filing of the PSR.

A. *Defense Submissions*

The defendant's sentencing submissions are due 14 days before the date of sentencing.

B. *Government Submissions*

The Government's sentencing submission are due at least 7 days before the date of sentencing.

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