

Individual Practice Rules

Judge Denis R. Hurley

100 Federal Plaza

Central Islip, New York 11722

Telephone: (631)712-5650 (Chambers)

For Scheduling Inquiries Contact: Lisa Lundy, Courtroom Deputy

Telephone: (631)712-5652

For All Other Inquiries (*but see* Rule 2B *infra*): (631)712-5650

These rules will become effective on October 10, 2020

Unless otherwise ordered by the Court in a specific case, litigation before this Court shall conform to the following rules and practices:

1. Electronic Case Filing (“ECF”)

- A.** All documents (including voluminous exhibits) in civil and criminal actions shall be filed electronically. The Court strongly prefers that memoranda, affidavits and Rule 56.1 statements be filed as *text searchable documents*. **Orders will be posted electronically, and parties not registered on ECF will not receive them.** Electronic posting of Orders is considered sufficient notice of same.
- B.** *Pro se* parties are automatically exempt from mandatory ECF filing. However, parties represented by counsel must file documents electronically, even if that party’s adversary is *pro se*. For questions about filing and serving documents in cases in which one or more parties are proceeding *pro se*, contact the *pro se* office at (631)712-6063.
- C.** For questions regarding ECF, call Cinthia Mahon at (631)712-6011. Attorneys should also refer to the Court’s website:
http://www.nyed.uscourts.gov/CM_ECF?em_ecf.html.
- D.** Hard copies of all motion papers and correspondence must be provided to chambers. All such papers must be clearly marked “**Courtesy copy - original filed by ECF under Docket Entry No. ____.**” If a document has been filed under seal, the courtesy copy should be labeled “**Filed under Seal.**”
- E.** Counsel are advised not to transmit original stipulations or settlement agreements to the Court or to chambers unless requested to do so.

2. Communications with Chambers

- A. Letters.** Except as provided below, or otherwise provided by the Court in the

context of an individual matter, all communications with the Court shall be via electronically filed letter. In accordance with Federal Rule of Civil Procedure (“FRCP”) 5(a), all such letters shall also be served upon all other parties. However, copies of correspondence between the parties shall not be filed with the Court.

- B. Telephone Calls.** All scheduling and calendar inquiries should be directed to the Courtroom Deputy, Lisa Lundy. *See* Rule 2E *infra* regarding adjournments and extensions of time. For questions concerning procedure, please refer to the FRCP, the Local Rules of the Eastern District, and these Individual Rules. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such emergency situations, calls should be placed to (631)712-5650.
- C. Faxes.** Faxes to chambers are not permitted without permission. Permission will only be granted in extraordinary circumstances. Hard copies of faxes need not be sent to Chambers.
- D. Docketing, Scheduling and Calendar Matters.** All such matters should be discussed with the Courtroom Deputy, Lisa Lundy, at (631)712-5652.
- E. Request for Adjournments or Extensions of Time in Civil Cases.** All requests for adjournments or extensions of time, including modifications of briefing schedules, must be made by ECF letter (*pro se* litigants need not file by ECF) and must state:
 1. The original applicable date;
 2. The number of previous requests for adjournment or extension;
 3. Whether these previous requests were granted or denied;
 4. Whether the adversary consents, and, if not, the reasons by the applicant, and by the adversary, for and against the relief requested; and
 5. All other dates previously scheduled, including dates for conferences with the Court, and a suggested modified schedule, agreed to by all other counsel.

Absent an emergency, **a request for adjournment of a court appearance or extensions of time, including modifications of briefing schedules must be made in writing filed on ECF at least 48 hours prior to the scheduled appearance.**

3. Motions in Civil Cases

<u>Motion Rules At A Glance</u>	
Permission to File	Yes, but see Rule 3A(i) for important exceptions
Motion Returnable:	Date of filing
Oral Argument:	Note “Oral Argument Requested” in caption of Notice of Motion or opposing memorandum
Filing Rules:	In accordance with ECF Filing System and Bundle Rule (<i>see</i> Rule 3F). Motions listed in Rule 3A(i) are not subject to the Bundle Rule
Courtesy Copies:	Required
Page Limit:	Yes (<i>see</i> Rule 3E)
Table of Authorities:	Required for memoranda exceeding 10 pages

A. Leave to File Certain Motions.

(i) **The following motions shall be made without leave of court and are not subject to the Court’s bundle rule:**

- a. Motions pursuant to FRCP 50, 52, 59 or 60 (*see* FRCP 6(b))
- b. Motions for reconsideration pursuant to Local Rule 6.3
- c. Orders to show cause
- d. Motions pursuant to Fed. R. App. P. 4(a)(5)
- e. Motions for admission *pro hac vice*
- f. Motions to proceed *in forma pauperis*
- g. Habeas motions by incarcerated prisoners

(ii) **For all motions other than those listed in Rule 3A(i)**, a pre-motion conference with the Court must be requested before making a motion. *Note:* Incarcerated *pro se* litigants are not required to request a pre-motion conference, but their adversaries must. *Note:* Objections to and Appeals of Magistrate Judge Orders and/or Reports and Recommendations are **not** motions and therefore the pre-motion conference requirement does not apply.

B. Pre-Motion Conference Letter. To request a pre-motion conference, the moving party shall submit a letter, not to exceed three (3) pages in length, setting forth the basis for the anticipated motion. All parties so served must serve and file a letter response, not to exceed three (3) pages, within ten (10) days from service. Unless otherwise directed, no replies shall be served or filed. **Requests for a pre-motion**

conference should be filed as a letter; do not file a request as a motion.

In many 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 briefing schedule will be set (or the parties will be directed to set one) without convening a pre-motion conference.

Note that this provision does *not* apply to the motions listed in Rule 3A(i). Parties are advised that compliance with district court motion rules does not excuse noncompliance with Fed. R. App. P. 4. *See, e.g., Camacho v. City of Yonkers*, 236 F.3d 112 (2d Cir. 2000).

- C. Effect of a Pre-Motion Conference Letter.** Service of a pre-motion conference letter within the time provided by FRCP 12(a) will constitute timely service of a motion made pursuant to FRCP 12(b). *But see* FRCP 6(b) (listing motions for which a court may not enlarge the time of service and filing). Service of a pre-motion conference letter does not affect the time to file an amended pleading as a matter of course pursuant to FRCP 15(a)(1).
- D. Form of Motion.** There shall be a notice of motion, a separate initial memorandum and whatever supporting documentation is appropriate. There shall then be an opposition memorandum and whatever supporting documentation is appropriate. No matter how many cross-motions are filed, the party opposing the motion or motions shall always provide either a consent to the relief requested or a substantive opposition to each motion. The filing of a reply memorandum for each motion is advised but not required. No sur reply is permitted. In the event that a recent decision is issued applicable to the issues addressed in the motion, a party may submit a letter brief, not to exceed three (3) pages in length, informing the Court of this development. A copy of the relevant decision should be attached to said letter brief.
- E. Memoranda.** Initial and opposition memoranda should not exceed twenty-five (25) pages in length and reply memoranda should not exceed ten (10) pages. Requests to exceed these pages are freely granted when a motion addresses numerous claims and so these pages limits are not an excuse for failing to fully brief an issue. In all other respects, all memoranda must conform with requirements set forth in Rule 5 *infra*. All memoranda exceeding ten (10) pages shall include a table of contents and a table of authorities.

- F. No Motion Papers (*excepting those listed in Rule 3A(i)*) Shall Be Filed Until The Motion Is Fully Briefed (the “Bundle Rule”).** The Court will not accept motion papers submitted in a piecemeal manner. Instead, the moving party must file all motion papers together, along with a complete set of courtesy copies for the Court (a complete set of courtesy copies includes both the moving and non-moving parties’ papers), on the filing date provided in the briefing schedule. Motion papers filed prior to the relevant filing date will be terminated on the Docket and not acted upon until properly refiled in accordance with the Bundle Rule. **The Bundle Rule does not apply to motions listed in Rule 3A(i).**
- G. Courtesy Copies.** A complete set of courtesy copies of all motion papers shall be provided to Chambers. Courtesy copies should be mailed to Chambers on the filing date; overnight or expedited mail is not required unless the Court orders otherwise. The Court will not consider a submitted motion until courtesy copies are provided. All courtesy copies must be clearly marked “**Courtesy copy - original filed by ECF under Docket No. _____.**”
- H. Oral Argument.** The parties may request oral argument in connection with any motion. Such a request must be made in writing by the notation “Oral Argument Requested” in the caption of Notice of Motion or opposing memoranda. The Court will contact the parties if it elects to hold oral argument on any motion. However, the parties should not depend upon oral argument in order to present further evidence or argument. Instead, the parties must submit all of their evidence and arguments in the written motion.
- I. Pinpoint Citations.** In any motion made to the Court, whether before, during, or after trial, the parties must provide pinpoint citations for all cited authorities and for all references to the record. Parties are hereby advised that the failure to provide pinpoint citations may result in the non-consideration of the position presented.
- J. Motions In Matters With *Pro Se* Litigants.** Strict adherence to the requirements of a “Notice to *Pro Se* Litigants” set forth in Local Rules 12.1 and 56.2 shall be required. Failure to comply with said provisions *will* result in denial of the motion.
- K. Further Requirements to Local Rule 56.1(b).** In addition to the

requirements set forth in subsection (b) of Local Rule 56.1, the papers opposing a motion for summary judgment shall reprint the movant's numbered paragraphs before providing a responsive paragraph.

- L. Motions Implicating Fed. R. Civ. 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. 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.

4. Magistrate Appeals and Objections to Reports and Recommendations of Magistrate Judges

- A. Timing.** In accordance with FRCP 72, all appeals and objections must be **served** upon all parties **and filed** with the Court within fourteen (14) days of service of the challenged order or report. A party opposing the appeal or objections shall file its opposition within fourteen (14) days of service. A reply may be filed within five (5) days of service of the opposition.
- B. Content.** All appeals and objections must set forth in detail those specific aspects of the order or report that are being challenged including pinpoint citations to said order or report. The appeal or objection must also provide a copy of the actual order or report being challenged.
- C. Format.** Unless permission is sought and granted, memoranda should not exceed than twenty-five (25) pages in length. In all other respects, all memoranda must conform with requirements set forth in Rule 5 *infra*.

5. Format for all Submissions to the Court

- A. Binding.** All courtesy copies must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.
- B. Paper Size, Line Spacing, Color and Margins.** All submitted documents must be on 8½ by 11 inch paper. For papers filed in

connection with a motion, all text must be double-spaced. However, quotations more than two lines long may be indented and single-spaced. Moreover, for papers filed in connection with a motion, headings and footnotes may be single-spaced. For all letters, the text may be single-spaced. For the body of all submissions, only white or grey paper may be used. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

- C. **Page Numbering.** Except for the first page, all pages must be numbered in a clear and consistent manner.
- D. **Typeface.** Either a proportionally spaced or a monospaced typeface may be used.
- E. **Footnotes.** Although they may be single-spaced, footnotes must otherwise be the same font, typeface, and typestyle as the rest of the document. Footnotes must also utilize the same one inch margins as the balance of the document.

6. Pre-Trial Procedures

- A. **Joint Pre-Trial Orders in Civil Cases.** Unless otherwise ordered by the presiding Magistrate Judge, within sixty (60) days from the date that discovery is certified as being completed in a civil case, the parties must submit to the Court a joint pre-trial order. This joint pre-trial order shall contain:
 - (i) The full caption of the action;
 - (ii) The individual names, firm names, business addresses, telephone and fax numbers for all trial counsel;
 - (iii) A brief statement by each party regarding the basis for or absence of subject matter jurisdiction. These statements shall contain citations to authority and a recitation of the pivotal facts;
 - (iv) A summary of the case's procedural history, including the content and disposition of any pre-trial motions;
 - (v) A listing of all remaining claims and defenses. This listing shall include a brief summary of each claim or defense along with citations to the authorities relied upon for those remaining claims and defenses;

- (vi) A statement by each party as to whether a jury trial is sought;
- (vii) A statement indicating whether the parties have all consented to trial before the presiding Magistrate Judge;
- (viii) All stipulations of law and/or facts that are agreed upon by the parties;
- (ix) A list by each party of all fact and expert witnesses whose testimony is to be offered at trial. Only witnesses listed in the joint pre-trial order will be permitted to testify at trial;
- (x) A list identifying all deposition testimony that will be offered in the case; and
- (xi) A list identifying all exhibits that will be presented in the case. A notation shall be made next to each listed item of whether there is an objection to that particular exhibit and, if so, a brief statement of the basis for the objection along with supporting authority.
- (xii) An estimate of the number of days needed to try the case.

B. Filings Prior to Trial in Civil Cases

- (i) Detailed briefing schedules will be set at the final pre-trial conference.
- (ii) All *in limine* motions must be fully briefed and filed no later than **two (2)** weeks prior to trial. No extensions will be granted.
- (iii) The parties must file their proposed voir dire, proposed requests to charge, and proposed verdict sheet no later than **two (2)** weeks prior to trial and provide the court with courtesy copies of same. Requests to charge must be submitted in complete sentence form as to any claim, affirmative defense, or other issue specific to the case **and include supporting citations**. It is unnecessary to submit requests for general charges (i.e., witness credibility, role of the jury). Form charges are permissible, provided they are written out completely and include full citations to their source.
- (iv) All plaintiffs and counter-claimants must file a detailed statement with regard to damages and other relief sought for each individual claim no later than **two (2)** weeks prior to trial.
- (v) Each party must file a pre-trial memorandum no later than **two (2)** weeks

before trial. Pre-trial memorandum shall address all contested and/or anticipated legal issues and anticipated evidentiary issues. In addition, pre-trial memorandum shall indicate the elements of each claim or defense asserted.

- (vi) In non-jury cases, each party must file a statement, no later than **two (2)** weeks prior to the trial, indicating the elements of each claim or defense asserted as well as a summary of facts that will, if proven, establish each relevant element. The parties shall file proposed findings of fact and conclusions of law no later than ten (10) days after conclusion of the trial. No responses to these submissions shall be permitted.

C. Pre-Trial/Trial Rules

- (i) **Exhibits.** All exhibits must be exchanged prior to jury selection. If a physical exchange of the documents has not been accomplished prior to jury selection, the exhibit may not be offered at trial. If an exhibit cannot be turned over for some reason, the party endeavoring to offer this exhibit into evidence must serve and file a letter explaining the reasons for this failure. As much as possible, the parties shall mark all exhibits as evidence and shall identify for the Court those exhibits that will be offered as evidence. In marking the exhibits, the plaintiff's exhibits shall be indicated by numbers while the defendant's exhibits shall be indicated by letters. Unless the Court first grants permission to do otherwise, exhibits may not be published to the jury until deliberation begins. Additionally, on the day of jury selection, the parties must provide a courtesy copy of all exhibits in three-ring binders to the Court, together with a listing of said exhibits containing space for the Court to note if the exhibit has been admitted.
- (ii) **Witnesses.** Witnesses that were not identified in the joint pre-trial order may not be called at trial. If a witness was unavailable or unidentified at the time that the joint pre-trial order was prepared, the party proposing to offer this unidentified witness shall serve and file a letter as soon as possible, identifying the witness and explaining the reasons for nondisclosure.
- (iii) **Expert Reports.** All expert reports must be turned over to the opposing parties prior to jury selection in accordance with the schedule as established by the Magistrate Judge. If a report is not turned over in a timely manner, the expert may not be called.
- (iv) **Depositions.** If a party intends to read the depositions of a party or witness at trial, at least seven (7) days prior to trial, it must file a notice

setting forth the pinpoint designations of the selections that the party intends to introduce. If notice is not given in a timely manner and with adequate particularity, these depositions may not be read into evidence at trial. If opposing counsel has an objection to the designated portions or believes that s/he has the right to read other portions of the relevant deposition transcript, s/he shall file a notice, no later than three (3) days prior to trial, setting forth the basis for any objection and/or that belief and also provide pinpoint cross-designations to the relevant deposition transcript.

- (v) **Full Work Days.** For every scheduled day of the trial, except for the day of jury selection, the Court expects to work from 9:30 a.m. until 5:30 p.m. Lunch usually occurs between 12:30 p.m. and 1:30 p.m. The parties must be prepared to present openings, witnesses, and summations for every scheduled minute until the case is presented to the jury.
- (vi) **Promptness.** The Court expects the parties to be prepared to start promptly at the beginning of each session. If something unforeseen has delayed a party or counsel, call the Courtroom Deputy, Lisa Lundy, as soon as possible to advise of the delay.

7. **Criminal Case Filings**

- (A) **ECF** - As a general rule, filings in criminal cases should be done on ECF and the Court provided with a courtesy copy of the filing.
- (B) **Voir Dire and Requests to Charge** - proposed voir dire, requests to charge, and proposed verdict sheets must be filed no later than one week prior to trial and a courtesy copy of same provided to Chambers. If requests to charge are voluminous, the parties are encouraged to submit same to Chambers on a CD in word processing format.
- (C) **Objections to PreSentence Reports** - Objections to presentence reports should be filed **under seal on ECF** and served upon opposing counsel and the probation department at least **two weeks prior** to sentencing. Responses, if any, must be filed one week prior to sentencing. Failure to timely file objections or responses may result in the adjournment of sentencing proceedings. Please contact the Clerk's Office if you need assistance filing under seal.
- (D) **Sentencing Submissions** - Sentencing submissions, including memoranda and 5K1.1 letters, must be filed on ECF at least seven (7) business days prior to the sentencing date.

(E) **Motions** - In any motion made to the Court, whether before, during, or after trial, the parties must provide pinpoint citations for all cited authorities and for all references to the record (including, without limitation, pinpoint citations to transcripts for testimony referenced in a motion). Parties are hereby advised that the failure to provide pinpoint citations may result in the non-consideration of the position presented.

8. These Individual Practice Rules Shall Not Curtail or Otherwise Limit Judge Hurley's Discretion Over All Matters Relating To Cases Over Which he Presides. Nor Shall These Rules Be Interpreted to Curtail or Otherwise Limit the Discretion of the Magistrate Judges Assigned to a Particular Case.