

INDIVIDUAL MOTION PRACTICE AND RULES OF
JUDGE JOSEPH F. BIANCO
United States District Court
Eastern District of New York

100 Federal Plaza
Central Islip, NY 11722

Chambers: 631-712-5670
Fax: 631-712-5677
Chief of Staff: Michele Savona
Telephone: 631-712-5676

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

I. COMMUNICATIONS WITH CHAMBERS

Except as provided below, communications with Chambers shall be by letter electronically filed with the Court, see infra Part II, ECF, with copies simultaneously delivered to all counsel. Courtesy copies must be delivered to Chambers in accordance with infra Part II.C. Telephone calls to Chambers are permitted in specific circumstances, see infra Part I.A and I.B.

A. Docketing, Scheduling, or Calendar Matters

For these matters in criminal cases, **call Courtroom Deputy Michele Savona at 631-712-5676.**

For these matters in civil cases, **call Chambers at 631-712-5670.**

To request an adjournment or extension of time, see infra Part I.D.

B. Letters and Telephone Calls

Communications with Chambers generally must be by letter electronically filed with the Court, see infra Part II, ECF, with copies simultaneously delivered to all counsel. The Court only requires courtesy copies of certain filings, see infra Part II.C. **Copies of correspondence between counsel shall not be sent to the Court.**

Telephone calls to Chambers are permitted. Chambers staff cannot and will not, however, discuss the merits of any matter or provide legal assistance to any parties or counsel. Further, as noted above, **for inquiries regarding criminal cases, call Chief of Staff Michele Savona.**

C. **Faxes**

Faxes to Chambers are permitted only when the document is to be filed under seal or will otherwise not be filed on ECF. Faxes of any other document are not permitted without prior approval by Chambers. Pro se parties without ECF access shall file through the Clerk's Office and shall not fax any document to Chambers without prior approval, unless the document is to be filed under seal or will otherwise not be filed on ECF.

D. **Requests for Adjournments or Extensions of Time**

All requests for adjournments or extensions of time must be in writing and state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether those 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 date, a proposed revised date must be provided. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least forty-eight hours prior to the scheduled appearance.

II. **ELECTRONIC CASE FILING ("ECF")**

- A. All documents in civil actions shall be filed electronically. Orders will be posted electronically, and non-pro se parties not registered on ECF will not receive them.
- B. For questions regarding ECF, please call 718-613-2571. For technical ECF assistance, call 631-712-6080. Attorneys should also refer to the Court's website at: http://www.nyed.uscourts.gov/CM_ECF/cm_ecf.html. Chambers staff are unable to assist with filing via ECF.
- C. Hard copies of the following papers filed electronically **and addressed to Judge Bianco** must be provided to Chambers: **motion papers, orders to show cause, and accompanying exhibits (or other included papers)**. All such submissions must be clearly marked "Courtesy Copy" and indicate that the original was filed by ECF. **Courtesy copies of documents filed under seal are required. No courtesy copies are required of letters (except those filed under seal), stipulations (except those filed under seal), copies of the complaint(s) and answer(s), and filings addressed to the magistrate judge.** The Court does not require multiple copies of the same documents. For instance, if a party files three oppositions to three motions in one matter, and any accompanying exhibits overlap, the party does not need to send three courtesy copies of those exhibits.
- D. Parties filing voluminous or non-text exhibits that are impracticable to file electronically should contact Chambers prior to filing. Further, where an exhibit or other filing is of substantial length, the filer should consider submitting the hard copy in a binder for ease of use.

- E. Pro se parties are automatically exempt from mandatory electronic filing. Parties represented by counsel, however, must file documents electronically, even in pro se cases. For questions about filing and serving documents in cases where one or more parties are proceeding pro se, contact the pro se office at 718-613-2665. Chambers mails copies of any orders to pro se parties. Pro se parties are responsible for maintaining a current address on file with the Court.

III. MOTIONS

A. Pre-Motion Conferences

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 motion pursuant to Federal Rule of Civil Procedure (“FRCP”) 12 or 56, any motion for a change of venue, any motion to amend a pleading pursuant to FRCP 15 where leave of the Court is required, and motions for class certification.

To request a pre-motion conference, the moving party shall submit a letter not to exceed three pages in length setting forth the basis for the anticipated motion. All parties so served may, but are not required to, serve and file a letter response, not to exceed three pages, prior to the date of the pre-motion conference. Service of the letter by the moving party within the time requirements of FRCP 12 shall constitute timely service of a motion made pursuant to FRCP 12(b).

Note that these provisions do **not** apply to motions other than those specifically enumerated. For example, discovery motions, habeas corpus/prisoner petitions, social security appeals, and bankruptcy appeals do not require a pre-motion conference. Similarly, motions pursuant to FRCP 50, 59, and 60, do not require a pre-motion conference, and counsel should be aware that the Court of Appeals will not accept an argument that compliance with district court motion rules should excuse non-compliance with Federal Rule of Appellate Procedure Rule 4.

B. Courtesy Copies

As noted supra, courtesy copies of **motion papers, exhibits, and orders to show cause and accompanying papers**, marked as such, shall be submitted to Chambers via U.S. Mail. Courtesy copies are not to be faxed to chambers unless the document will not be docketed on ECF. (See also supra Part II, ECF.)

C. Memoranda of Law

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to **twenty-five pages**, and reply memoranda are limited to **ten pages**. Memoranda of ten pages or more shall contain a table of contents and authorities.

D. Briefing Schedule

A briefing schedule will be established by the Court at the pre-motion conference, or, in the case of habeas petitions and social security appeals, in a scheduling order issued by the Court. For all other motions in civil matters, except where otherwise ordered by the Court, the Court follows Local Civil Rule 6.1(b). No changes in the briefing schedule may be made without permission from the Court.

E. Oral Argument

Where the parties are represented by counsel, oral argument on motions will ordinarily be heard. The date and time for oral argument will be designated at the pre-motion conference or, if no conference is required, in a scheduling order issued by the Court.

F. Magistrate Appeals and Objections to Magistrate Reports and Recommendations

Timing. In accordance with FRCP 72, all appeals and objections must be served upon all parties and filed with the Court within 14 days of service of the challenged order or report. The party or parties opposing the appeal or objections shall file their opposition within 14 days of service. A reply, if any, shall be filed within seven days of service of the opposition.

Content. All appeals and objections must set forth in detail those specific aspects of the order or report that are being challenged. The appeal or objection must also provide a copy of the actual order or report being challenged. The Court will not consider appeals or objections where a copy of the actual order or report being challenged is not provided.

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

As indicated above, these practices do not require a pre-motion conference when strictly enforced time limits must be met to preserve rights. Regardless, 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.

IV. PRETRIAL PROCEDURES

A. Joint Pretrial Orders in Civil Cases

Unless the Court has set a briefing schedule for a summary judgment motion, or unless otherwise ordered by the Court, within sixty days from the date for

the completion of discovery in a civil case, the parties shall electronically file and provide courtesy copies to the Court for its approval a joint pretrial order, which shall include the following:

1. The full caption of the action.
2. The names, addresses (including firm names), and 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 matters, but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which 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. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
7. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
8. A list by each party of witnesses (fact and expert) 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.
9. 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.
10.
 - (a) A statement of stipulated facts, if any;
 - (b) 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 will 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. Only exhibits listed will be received in evidence except for good cause shown; and

- (c) 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.

- 11. In cases where a substantive motion (such as a motion for summary judgment) has been submitted to the Court, the pre-trial order shall be due thirty days prior to the scheduled trial date.

B. Filings Prior to Trial in Civil Cases

1. One Week Prior to Jury Trial

- (a) **Legal Memoranda.** Counsel for each party shall electronically file and provide courtesy copies to the Court of legal memoranda addressing all contested legal issues and anticipated evidentiary problems.
- (b) **Voir Dire Requests.** Counsel for each party shall electronically file and provide courtesy copies to the Court of any voir dire requests that pertain specifically to the case at issue. Routine voir dire requests are not required.
- (c) **Requests to Charge.** Each party shall electronically file and provide courtesy copies to the Court of written requests to charge the jury.

2. One Week Prior to Non-Jury Trial

- (a) Each party shall electronically file and provide courtesy copies to the Court of the proposed exhibits in a suitable binder.
- (b) Each party shall electronically file and provide courtesy copies to the Court of proposed findings of fact and conclusions of law, not to exceed fifteen pages without the express approval of the Court.
- (c) Each party shall electronically file and provide courtesy copies to the Court of a legal memorandum addressing all contested legal issues.

V. MISCELLANEOUS

A. Technology and Internet Access

The Court does not have audiovisual technology available for use during hearings or trials. A party seeking to bring and use audiovisual technology during a proceeding must submit an order for the Court's approval

approximately one week prior to the hearing or trial date, listing the names of the attorney(s) and/or technician(s) and the devices to be used. There is no wired Internet access in the courtroom.

B. Transcripts of Recorded Hearings

The Court's practice is to record proceedings during which no court reporter is present. For a copy of the transcript of such a proceeding, **contact the Clerk's Office at (631) 712-6000 with the information from the relevant minute entry on the matter's docket, including the date and time of the recording.**