

**CHAMBERS PRACTICES OF
JUDGE KIYO A. MATSUMOTO**

(Revised as of October 25, 2022)

United States District Court
Eastern District of New York
225 Cadman Plaza East Brooklyn,
New York 11201 Chambers:
Room S905 Courtroom: 6C South

Telephone: (718) 613-2180

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Fax Page Limit: 5 pages

Unless otherwise ordered, matters before Judge Matsumoto shall be conducted in accordance with the following practices:¹

I. MANDATORY ELECTRONIC CASE FILING (ECF)

A. All documents must be filed electronically, except that *pro se* parties are exempt from electronic case filing. All documents directed to Judge Matsumoto must be filed electronically via the Court's Electronic Case Filing system pursuant to Administrative Order 2004-08.² ECF procedures are available from the district court's web site <http://www.nyed.uscourts.gov>. For questions regarding ECF, you may call the Court's Docket Section at 718-613-2610. For technical assistance, call 718-613-2290. ECF training may be scheduled by calling 718- 613-2312.

(i) *As discussed further below, pre-motion conference requests for summary judgment must be filed not only electronically, but also by courtesy hard copy to Chambers. Any courtesy copies to Chambers must be sent via FedEx or messenger, not by email or hard drive to the Court. Emailing the the Court will not suffice as providing Chambers the required courtesy copies.*****

B. Notifications and orders by the Court: Attorneys will receive notifications from the Court electronically. Hard copies will not be mailed to attorneys

¹ For questions about procedures not covered by these Individual Practices, please refer to the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, and the Local Civil and Criminal Rules for the Eastern District of New York, available at https://www.nyed.uscourts.gov/sites/default/files/local_rules/localrules.pdf.

² Pursuant to Administrative Order 2004-08, dated June 22, 2004, the Board of Judges of the United States District Court for the Eastern District of New York has mandated that as of August 2, 2004, all civil cases other than *pro se* cases and all criminal cases must be filed by ECF. In accordance with the Administrative Order, all documents must be filed electronically.

registered for ECF. Accordingly, attorneys are responsible for keeping

their email addresses current with the Clerk's Office. Attorneys are responsible for ensuring that they are registered with the Clerk's Office to receive email notifications in each and every matter in which they appear before Judge Matsumoto. All parties, including *pro se* parties, are responsible for ensuring that their case addresses are current on ECF. For assistance, call 718-613-2610.

- C. **Classification of electronic filings:** Any letters to Judge Matsumoto requesting court intervention, including those requesting an adjournment or extension of deadlines, must be electronically filed under "Motions" and not as a "Letter" under "Other Documents." For more information regarding the Court's mandatory electronic case filing system, visit http://www.nyed.uscourts.gov/CM_ECF/Learning_More_About_It/learning_more_about_it.html
- D. **Sealed documents:** Written submissions to be filed under seal, if the Court grants leave to do so, should also be filed on ECF. Instructions for e-filing sealed documents are available on the Eastern District's website at <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCV.pdf> (civil) and <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCR.pdf> (criminal). If, for good cause, prior approval to file under seal has not been granted, each such submission shall be accompanied by an explanation of why sealing is necessary.
- E. **Exemptions for *Pro Se* Litigants:** Litigants proceeding *pro se* are exempt from ECF requirements. Requests by attorneys for an exemption to the mandatory ECF policy must be submitted to the assigned Magistrate Judge.
- F. **State Court Records filed in Habeas Corpus cases:** The respondent shall electronically file the State Court Record, with **no individual attachment to the entry exceeding 5 megabytes**. The respondent shall also supply a hard copy of the State Court Record to chambers. See ¶ II, *infra*, for further details.

II. **COMMUNICATIONS WITH CHAMBERS**

- A. **Letters:** Except as provided below, communications with chambers shall be by letter **filed on ECF**, with copies simultaneously delivered to all counsel. All correspondence must include the (i) case name, (ii) docket number and (iii) initials of the judge(s) assigned to the case. A request for a conference with the Court shall be made by a letter setting forth the specific issues requiring judicial intervention. Copies of correspondence between counsel, including settlement position statements, shall not be sent to the Court.

- B. **Faxes:** With the exception of submissions related to guilty pleas, sentencings, or sealed/*ex parte* matters and requests, parties are not permitted to fax submissions without prior authorization.
- C. **Telephone Calls:** Except as set forth below in Paragraph (D), telephone calls to chambers are permitted **only in emergency situations requiring immediate attention. ***NOTE: The Court will not engage in *ex parte* communications with the parties about their cases.*****
- D. **Docketing, Scheduling, Calendar Matters and Deposition Disputes:** Attorneys should review the ECF docket prior to contacting chambers with questions regarding the docket and the scheduling of conferences.

If parties encounter problems at a deposition, they should first make every effort to resolve the dispute. If a satisfactory resolution cannot be achieved, the parties are directed to refer to the assigned Magistrate Judge's individual practices.

- E. **Requests for Adjournment or Extension of Time:** Do not call chambers to request an adjournment of a court date except in an emergency. **All requests for adjournments of conferences or extensions of time must be made in writing, at least two business days in advance of the deadline or scheduled appearance and must be filed by ECF**, and must state (1) the original date; (2) the reason for the request; (3) how much additional time is needed; (4) the number of previous requests for adjournment or extension by either party and whether these previous requests were granted or denied; (5) that the requesting party first conferred with all other parties to discuss alternative, mutually agreeable dates; (6) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent; and if so, (7) mutually agreeable proposed alternative dates. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

III. MOTIONS

- A. **Discovery or Other Non-Dispositive Motions:** For discovery motions, follow Local Civil Rules 37.3. Discovery and other non-dispositive motions including requests for extensions of time to serve, answer, or file amended pleadings, to withdraw or substitute counsel, and for admission *pro hac vice* shall be addressed to the assigned Magistrate Judge and made in accordance with that Magistrate Judge's individual practices. Likewise, motions to quash subpoenas and applications to "so order" stipulations amending pleadings, transferring venue, and confidentiality/protective orders shall be addressed to the assigned Magistrate Judge.

- B. Civil Motions on Notice Require Pre-motion Conferences:** A pre-motion conference with the Court is required before the filing of any motion with the exception of *habeas corpus* petitions, default motions, social security, and bankruptcy appeals.
1. To arrange a pre-motion conference, the moving party shall submit a letter not exceeding three (3) pages setting forth the basis for the motion and a proposed briefing schedule. All parties so served shall submit a response not to exceed three (3) pages within three business days. Replies are not permitted unless specifically authorized. Service of the letter by the moving party within the time required by Federal Rule of Civil Procedure 12 shall constitute timely service of a motion pursuant to Federal Rule of Civil Procedure 12(b).
 2. Request a pre-motion conference under the “Motion for a Pre-Motion Conference” event and not as a “Letter.” Failure to request a pre-motion conference under the accurate ECF event may result in a denial of the pre-motion conference request without prejudice to refile.
 3. **Procedures for *Pro Se* Litigants:** In cases involving one or more *pro se* litigants, the Court may dispense with the requirement for a pre-motion conference on a case-by-case basis. Accordingly, unless the case fits into an exception noted *supra*, even in cases involving *pro se* litigants the parties shall follow the pre-motion conference request procedure outlined *supra*.
 4. **Motions for Summary Judgment:**
 - a) Except for *pro se* parties, pre-motion conference requests regarding an intended motion for summary judgment must be accompanied by a statement pursuant to Local Civil Rule 56.1, also known as the 56.1 Statement, 56.1 Counterstatement, and 56.1 Reply. Non-moving parties shall have fifteen (15) business days from service of a pre-motion letter and accompanying 56.1 statement to respond to each. Parties shall have ten (10) business days from receipt of an opposing 56.1 statement to file a reply 56.1 statement. No reply letter shall be permitted.
 - b) ATTENTION: As well as filing on ECF, parties requesting a pre-motion conference for a summary judgment motion must send two bound courtesy copies (hard copies only) of all pre motion conference papers and exhibits to Chambers, via FedEx or messenger. Emailing Chambers or providing a hard drive of such courtesy copies is not acceptable.**

- c) A party's 56.1 Counter Statement to a 56.1 Statement must quote, verbatim, the 56.1 Statement, including all citations, and respond to the moving party's statements of fact immediately beneath each statement. If an opposing party chooses to include additional material facts alleged to be in dispute in their 56.1 Counter Statement, they must do so in a separately titled section, with each of the paragraph numbers consecutively following the response paragraphs. A moving party's 56.1 Reply Statement must quote, verbatim, the opposing party's 56.1 Counter Statement, including all citations. A moving party's 56.1 Reply statement may only respond to the opposing party's Counter Statement of additional material facts and must do so by stating the moving party's response immediately beneath each statement of additional material fact. Reply statements may not introduce any new material facts.
- d) Each paragraph in a 56.1 Statement must contain an assertion of a material undisputed fact, not a description of evidence. For example, "John Smith testified at deposition that he crossed the street" is not a statement of fact. The statement of fact is "John Smith crossed the street. (Citation to Deposition.)"
- e) No statement of fact should be included in a 56.1 Statement unless it can be established by direct admissible evidence. Factual contentions that parties believe are undisputed by circumstantial evidence should be argued in memoranda.
- f) Any evidence cited in a party's 56.1 Statement, Counter Statement, or Reply Statement must be attached as an exhibit to a declaration and filed along with a party's 56.1 Statement.
- g) No procedural history should be included in a 56.1 statement unless relevant to the motion (for example, if the motion raises a statute of limitations issue).
- h) The 56.1 Statements submitted in connection with the pre-motion conference shall be relied upon by the Court in considering any motion for summary judgment. Accordingly, material facts in any pre-motion letter or memorandum of law in connection with a motion for summary judgment must cite to relevant paragraphs of 56.1 Statements.
- i) Supplements to a 56.1 statement are not permitted absent leave of the Court and a showing of good cause.

C. General Practices for Motions on Notice:

1. **Service and filing:**

- (a) **No motion papers shall be filed via ECF until the motion has been fully briefed, except that upon notice to the Court and all parties, a party may file a motion before briefing is completed if waiting to file a fully briefed motion would result in the loss of an appellate or other right.**
- (b) **ATTENTION: As well as filing on ECF, parties requesting a pre-motion conference for a summary judgment motion must send two bound courtesy copies (hard copies only) of all pre motion conference papers and exhibits to Chambers, via FedEx or messenger. Emailing Chambers or providing a hard drive of such courtesy copies is not acceptable.**
- (c) Subject to Court approval, the parties are to propose their own briefing schedule. No changes in the approved schedule may be made without prior Court approval. Approval of the briefing schedule may be sought at the pre-motion conference or by subsequent letter filed by ECF. No party is to serve any motion papers prior to obtaining court approval for the schedule.
- (d) Each party shall be responsible for filing all of its own motion papers (via ECF) once the motion is fully briefed, unless a party is *pro se*, in which case the represented party shall file all motion papers. A filing party shall also file a cover letter specifying each document filed in the motion package. The Notice of Motion shall not contain a return date, but rather shall state that the return date will be set by the Court.

2. **Memoranda of law:** The Court expects parties to exercise judgment as to the lengths of memoranda. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions on notice are limited to 30 pages (excluding tables of contents and authorities and exhibits), and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. Memoranda must set forth the points and authorities relied upon in support of or in opposition to the motion, and must be divided, under appropriate headings, into as many parts as there are points to be determined. Case citations must contain pinpoint cites to specific page references. All memoranda must use one-inch margins, double spacing, and 12-point font. No letter briefs shall be permitted. **Any memoranda of law not complying with the requirements set forth herein may be returned.** Local Civil Rule 7.1.

3. **Deposition Transcripts Used in Summary Judgment Motions:** All parties moving for or opposing a motion for summary judgment shall

confer and prepare a Joint Deposition Transcript Appendix that contains all excerpts of all deposition transcripts each party is relying upon in its respective submissions. The Joint Deposition Transcript Appendix shall be filed on ECF when the motion is fully briefed.

- (a) Each deposition transcript included in the Joint Deposition Transcript Appendix shall include the cover page and appearances page, and shall be individually marked with a number or letter, as jointly agreed upon by the parties.
- (b) **All parties shall refer to the Joint Deposition Transcript Appendix numbers or letters when citing to any deposition transcript in their respective submissions.** This includes any citations to deposition transcripts in a party's Rule 56.1 Statement or Counterstatement of undisputed facts.
- (c) One courtesy copy of the Joint Deposition Transcript shall be provided to chambers when the summary judgment motion has been fully briefed. *****Any courtesy copies to Chambers must be sent via FedEx or messenger, not by email or hard drive to the Court.*****

4. The parties shall notify the Court immediately by ECF if they reach a settlement or resolve the pending motion.

5. **Stipulations of Fact for Social Security Motions:** All parties moving for or opposing motions for judgment on the pleadings in social security cases shall confer and prepare a stipulation of facts with a chronology of medical treatment, to be filed on ECF when the motion is fully briefed. The stipulations shall set forth all relevant facts in the administrative record, including information contained in the treatment and medical records, in chronological order and with citations to the record.

The stipulation and chronology shall be limited to the facts contained in the administrative record. As such, although arguments should be reserved for the parties' motions, to the extent the parties are unable to reach agreement with respect to any particular facts, they may file a short letter setting forth the specific objections with appropriate supporting citations to the record.

D. Motions in Criminal Cases:

- 1. *****Any courtesy copies to Chambers must be sent via FedEx or messenger, not by email or hard drive to the Court.*****
- 2. Counsel shall advise the Court of any contemplated motions at a

status conference scheduled by the Court or in accordance with the Court's pretrial order.

3. Applications regarding sentencing adjournments shall be made in writing by defense counsel at least five business days prior to the date of sentencing. The Government's response, if any, shall be made in writing at least two business days before the date of sentencing.
4. Defendant's sentencing memorandum, if any, is due two weeks prior to sentencing. The Government's response, if any, is due one week prior to sentencing. If the defendant and the Government agree that the case presents no material factual or legal disputes, they may modify this schedule and shall advise the Court if they do so.
5. Any party appealing a Magistrate Judge's order of release or order of detention shall include with such motion a copy of the transcript of the proceeding before the Magistrate Judge.

- E. Oral Argument:** A party seeking oral argument on a motion shall file a separate letter, titled "Request for Oral Argument," at the time the fully-briefed motion is filed on ECF. The Court will determine whether oral argument will be heard and, if so, will advise counsel of the argument date. Once scheduled, oral argument may be adjourned with the consent of all parties, provided that the Court is notified in writing no later than one week prior to the scheduled argument.

The Court strongly encourages lead counsel to permit lawyers with six or fewer years of experience to examine witnesses at trial and to present argument to the Court. If a lawyer with six or fewer years of experience will be arguing a motion, the Court will consider permitting more experienced counsel of record the ability to provide assistance, where appropriate, during oral argument. All attorneys will be held to the highest professional standards. All attorneys appearing in court are expected to be adequately prepared and thoroughly familiar with the factual record and the applicable law, and to have a degree of authority to speak on behalf of a client commensurate with the proceedings.

- F. 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.

IV. CIVIL CASES - PRETRIAL PROCEDURES

- A. Joint Pretrial Orders in Civil Cases:** Unless otherwise ordered by the Court, within 60 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, which shall include the following:
1. **Caption:** The full caption of the action.
 2. **Parties and Counsel:** The names, addresses (including firm names), telephone, and fax numbers of trial counsel.
 3. **Jurisdiction:** A brief statement by plaintiff as to the basis of subject matter jurisdiction and a brief statement by each 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. **Claims and Defenses:** A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter 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. **Damages and Relief:** A brief statement of the categories, method of calculation, and amounts of damages claimed or other relief sought, and the opposing party's position.
 6. **Jury or Bench Trial:** A statement by each party as to whether the case is to be tried with or without a jury, proposed number of jurors, and the number of trial days needed.
 7. **Consent to Magistrate Judge:** A statement as to whether all parties have consented to trial of the case by a Magistrate Judge. The statement shall not identify which parties have or have not consented.
 8. **Stipulations:** Any stipulations or statements of fact or law which have been agreed to by all parties.
 9. **Witnesses:** A schedule by each party designating names and addresses of fact and expert witnesses whose testimony is to be offered in its case in chief, and possible witnesses whose testimony may be offered only for impeachment or rebuttal purposes, together with a brief narrative statement of the expected testimony of each listed witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and a lack of prejudice and good cause are shown.

10. **Deposition Testimony:** A designation by each party and copies of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
11. **Exhibits:** A schedule by each party designating all 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 in rebuttal. Copies of statements proposed to be read to the jury as “learned treatises” pursuant to Federal Rule of Evidence 803(18) shall be listed as exhibits. **Parties are expected to resolve before trial all issues of authenticity, chain of custody, and related issues.** Meritless objections based on these grounds may result in the imposition of sanctions.

The parties will list and briefly describe in the pretrial order the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. **A party’s failure to object to an exhibit in the pretrial order waives all objections at trial, except objections as to relevance.** Only exhibits listed in the pretrial order shall be offered in evidence except when prompt notice has been provided, and good cause and a lack of prejudice are shown.

- (a) **Format for Trial Exhibits:** In order to facilitate trial testimony and clarity in the trial record, the parties must adhere to the following requirements for trial exhibits:
 - (1) **All exhibits must be pre-marked for the trial, exchanged with the other parties, and provided to chambers at least 10 days before trial.**
 - (2) Plaintiff’s exhibits shall contain the docket number and be identified by number, and defendant’s exhibits shall be identified by letter.
 - (3) All trial exhibits shall be individually paginated, meaning that each exhibit shall be numbered starting on the first page of the exhibit with the number one (“1”), and that each subsequent exhibit will also be numbered starting on the first page of the exhibit with the number one (“1”).
 - (4) **Two courtesy copies of pre-marked, individually paginated exhibits should be provided to chambers in binders with tabs reflecting each exhibit’s corresponding number or letter at least ten days before trial, as noted above. Email does not suffice, courtesy copies should be sent via FedEx or messenger.**

B. Pretrial Filings in Civil Cases:

1. Unless otherwise ordered by the Court, each party shall file the following **45 days before trial**:
 - (a) Motions addressing any evidentiary or other issues which should be resolved *in limine*; and

2. Unless otherwise ordered by the Court, each party shall file the following **15 days before trial**:
 - (a) Proposed *voir dire* questions, proposed jury charges, and proposed verdict forms. Jury charges should be limited to the elements of the claims, the damages sought, and defenses. General instructions will be prepared by the Court. When feasible, in addition to a written version, these materials should be provided on a CD in Microsoft Word format. A detailed statement regarding damages and other relief sought organized by claim.

 - (b) In non-jury cases, a statement of the elements of each claim or defense alleged by each respective party, together with a summary of the facts relied upon by that party to establish each element.

 - (c) A pretrial memorandum, unless otherwise ordered by the Court; and

3. Unless otherwise ordered by the Court, each party shall file the following **7 days before trial**:
 - (a) Any objections to the any other party's proposed jury charges and verdict forms, including the legal basis and authority for the objections.

V. CRIMINAL CASES - PRETRIAL PROCEDURES

- A. Pretrial Conference in Criminal Cases:** Assistant United States Attorneys are responsible for informing chambers by calling the Case Manager Sandra Williams-Jackson at 718-613-2180 when a new case has been assigned to Judge Matsumoto. Upon such notification, an initial pretrial conference will be scheduled.

- B. Pretrial Filings in Criminal Cases:** All pretrial filings in criminal cases shall be made in accordance with a Criminal Pretrial Scheduling Order issued by the Court.

VI. TRIAL PROCEDURES

A. Procedures at Trial:

1. **Voir dire:** Unless otherwise notified, the Court will conduct all *voir dire*.
2. **Schedule:** For jury trials, the Court generally sits from 9:00 a.m. until 5 or 6:00 p.m. with a break for lunch from 12:45 to 1:45 p.m. For bench trials, the Court's schedule may vary considerably to accommodate other court proceedings.
3. **Witnesses:** No later than the end of each trial day, counsel must notify each other and the Court of witnesses to be called the following trial day.
4. **Use of Electronic Equipment:** Any party wishing to present marked exhibits to the jury in digital form who has not previously used the Court's electronic equipment is directed to meet with the Chief Deputy Clerk for Automation Services and my case manager at least 20 days prior to the commencement of the trial to review the available equipment for the presentation of digital evidence. Counsel should be accompanied by the audio-visual personnel who will be operating any equipment that will be used at trial. Following such meeting, such party shall file a confirmation in writing via ECF that this meeting has occurred.
5. **Sidebars:** Sidebar conferences will be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to avoid wasting the jurors' time.

VII. POST TRIAL PROCEDURES FOR CIVIL BENCH TRIALS

In non-jury trials, parties shall file proposed findings of fact and conclusions of law no later than 10 days after the conclusion of trial or at such other time set by the Court. No responses to such submissions shall be permitted.