

**INDIVIDUAL PRACTICE RULES OF
MAGISTRATE JUDGE PEGGY KUO**

Effective April 21, 2020

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
718.613.2400

Courtroom 11C South
Courtroom Deputy – Ryan O’Neil-Berven: 718.613.2404

I. Communications with Chambers

A. *Written Communications*

All communications with Chambers must be through the Court’s Electronic Case Filing system (ECF). (For more information on ECF, see Section II below.) In emergency situations requiring immediate attention, telephone calls to alert the Court to a filing are permitted.

All documents filed on ECF with the Court on a non-business day will be deemed filed on the next business day.

B. *Telephone Calls*

Telephone calls to Chambers are not permitted except when immediate attention is required.

C. *Faxes*

Faxes are not permitted except with the prior permission of Chambers.

D. *E-mail*

E-mails are permitted only for sending confidential settlement statements to Chambers, or as otherwise directed by the Court.

II. Case Filings

A. *Mandatory Electronic Case Filing (ECF)*

1. Counsel must file all documents via ECF. If you are encountering difficulties using ECF, call the ECF Help Desk at 718.613.2312 for assistance. Do not call Chambers.
2. Orders and other notices from the Court will be posted via ECF. Only parties registered for ECF or attorneys who have filed a Notice of Appearance in a particular case will receive notifications. No notifications will be sent to anyone who has not entered an appearance in a case.
3. Filing procedures for *pro se* cases
 - a. *Pro se* litigants are not required to file on ECF but must follow instructions from the Clerk's Office on communicating with the Court. *Pro se* litigants must keep current contact information on file with the Court, or risk dismissal of claims or other sanctions.
 - b. Counsel in cases involving *pro se* litigants must send copies of all documents filed on ECF to the *pro se* party.
 - c. Court orders will be provided to *pro se* litigants by U.S. mail, unless otherwise directed by the Court.
 - d. All *pro se* litigants and represented parties in cases involving *pro se* litigants are directed to the relevant Local Civil Rules, including 7.2, 12.1, 33.2, and 56.2.
 - e. *Pro se* litigants may register to receive notifications via ECF. Please inquire with the Clerks' Office for instructions. If a *pro se* litigant registers to receive notifications via ECF, II(A)(3)(b) and (c) do not apply.

B. *Sealing of Submissions*

Motions for leave to file documents under seal must be filed via ECF in accordance with the EDNY's instructions for electronically filing sealed documents. The proposed sealed document(s) must be attached to the motion for leave to file under seal. Instructions for filing sealed documents in civil cases are at:

<https://img.nyed.uscourts.gov/files/forms/EfilingSealedCV.pdf>. Instructions for filing

sealed documents in criminal cases are at:

<https://img.nyed.uscourts.gov/files/forms/EfilingSealedCR.pdf>.

For instructions on submitting confidential settlement statements, see "Settlement Conferences," at Section III (B) below.

C. *Courtesy Copies or Other Correspondence*

Do not submit courtesy copies unless asked to do so by the Court. Copies of correspondence between or among counsel should not be sent to Chambers or filed via ECF. Discovery materials should not be filed on ECF, unless it is necessary for a request for judicial intervention. (See Section VI(A)(1) below.)

III. Conferences

A. *Initial Conferences*

The parties must comply with the Initial Conference Order. **Ten (10) business days** before the Initial Conference, the parties must meet and confer, exchange initial disclosures, and complete the Proposed Discovery Plan/Scheduling Order (<https://www.nyed.uscourts.gov/pub/PK-.pdf>). The completed Proposed Discovery Plan/Scheduling Order must be filed on ECF at least **five (5) business days** before the Initial Conference. At the Initial Conference, the parties must be prepared to give an overview of the facts and issues of the case, discuss the dates in the Proposed Discovery Plan/Scheduling Order, and outline the anticipated discovery. **Counsel with knowledge of the case must attend.**

B. *Settlement Conferences*

1. Each party, or someone with settlement authority for each party (other than counsel), must be present at the conference unless prior permission has been granted to participate by telephone.
2. The parties must exchange a demand and offer before the Settlement Conference.
3. Confidential *ex parte* settlement statements must be e-mailed to Chambers (kuo_chambers@nyed.uscourts.gov) at least **seven (7) business days** before the conference, except as otherwise directed by the Court. Each settlement statement must contain the last demand and offer made, a realistic assessment of the strengths and weaknesses of the case, information on what is important to the client, any barriers to settlement, and anything else that will assist the Court in helping the parties reach an agreement.

C. *Requests to Adjourn or Otherwise Change a Conference*

1. All requests for adjournment of a court date or other changes (such as a request to appear by telephone) must be made by letter and filed via ECF as a “**Motion**,” not a Letter.
2. Each request must state:
 - a. the original date of the conference (if for an adjournment) and the number of previous requests;
 - b. the reason for the request; and

whether the other parties consent to the request, and, if not, the reasons given for not consenting; or, if the other parties could not be reached for input, efforts made to reach those parties.

3. If a requested adjournment affects any other scheduled dates or deadlines, a Revised Proposed Discovery Plan/Scheduling Order must be attached.
4. Absent an emergency, requests must be made at least **two (2) business days** prior to the conference. Under no circumstances should counsel make a request for adjournment by telephone. (Counsel may, however, call the Court's attention to a last-minute emergency request after it is filed on ECF.)

IV. Extensions of Time

- A. All requests for an extension of time to file or respond by a court-imposed deadline must be made by letter and filed via ECF as a "**Motion.**"
- B. Each request must state:
 1. the original deadline;
 2. the reason for the request;
 3. the number of previous requests; and
 4. whether the other parties consent, and, if not, the reasons given for not consenting; or if the other parties could not be reached for input, efforts made to reach those parties.
- C. If a requested extension affects any other scheduled dates or deadlines, a revised Proposed Discovery Plan/Scheduling Order must be attached, and the requesting party should also request to adjourn any scheduled conferences believed to be affected.
- D. Absent an emergency, requests must be made **at least two (2) business days** prior to the deadline for which an extension is sought.

V. Confidentiality Order

- A. If a party deems it necessary to have a confidentiality order in place, that order shall be in the form of the Proposed Confidentiality Order on the Chamber's website (<https://www.nyed.uscourts.gov/content/magistrate-judge-peggy-kuo>).
- B. If a party believes that changes to the Proposed Confidentiality Order are warranted due to the circumstances of the case, it must submit any proposed changes to the Court, clearly indicating what those changes are by, for example, using a "Track Changes" function or similar method.

VI. Motions

A. *Non-Dispositive Motions*

All **non-dispositive** pretrial motions, including discovery motions, are to be made to the Magistrate Judge, unless otherwise specifically ordered.

1. Discovery Motions

- a. Counsel are required to discuss their disputes with one another in person or by telephone before seeking judicial intervention. Local Civil Rule 37.3(a).
- b. If, after conferring in accordance with VI(A)(1)(a) above, the parties are unable to resolve their discovery dispute, the parties are directed to file a **joint** letter briefly setting out the disputed issue. The letter may be no more than **three (3) pages** and must be filed via ECF as a “**Motion**.” If the parties’ dispute relates to a specific discovery request or requests, the parties should attach the request or requests to their joint letter. The Court will then schedule a conference to discuss the dispute, usually over the telephone.
- c. If the dispute cannot be resolved during the conference, the Court may order the parties to brief a motion to compel.
- d. Unless it is necessary for a joint discovery letter or a Court-ordered motion to compel, **no discovery material should be filed on the docket**.

2. Non-Discovery Motions

- a. At least two days prior to filing a non-dispositive non-discovery motion, the moving party must contact the other parties to inform them of the moving party’s intent to file the motion and give the non-moving parties the opportunity to consent. The motion, when filed, must be accompanied by a letter certifying compliance with this rule, and stating whether the non-moving parties consent to the motion or, if the other parties could not be reached for input, the moving party’s efforts to reach them.
- b. No pre-motion conference with the Court is required before making non-dispositive non-discovery motions.
- c. Unless otherwise ordered by the Court, responses in opposition to a non-dispositive non-discovery motion must be filed within **ten (10) business days** after the motion is filed. Replies must be filed within **five (5) business days** after the response is filed.
- d. Unless prior permission has been granted, memoranda of law in support of, or in opposition to, motions are limited to **twelve (12) pages, double-spaced** and reply memoranda are limited to **five (5) pages, double-spaced**.

B. *Dispositive Motions*

All dispositive motions, including summary judgment motions and motions to dismiss, are to be made to the District Judge, unless all parties have consented in writing to determination by the Magistrate Judge in accordance with 28 U.S.C. § 636 (c)(1).

Parties wishing to consent to the Magistrate Judge's jurisdiction for the entire case, should complete and file this form: <https://www.uscourts.gov/forms/civil-forms/notice-consent-and-reference-civil-action-magistrate-judge>.

Parties wishing to consent to the Magistrate Judge's jurisdiction for a particular dispositive motion, should complete and file this form: <https://www.uscourts.gov/forms/civil-forms/notice-consent-and-reference-dispositive-motion-magistrate-judge>.

For all dispositive motions before Judge Kuo on consent, the following rules apply:

1. A motion requesting a pre-motion conference is required before any dispositive motion may be filed. The request must be accompanied by a summary of the proposed motion, not to exceed **three (3) pages**. Responses are limited to **three (3) pages** and must be filed within **five (5) business days** of the request. Replies are not permitted. The time in which to respond may be modified at the request of the parties or *sua sponte*.
2. A briefing schedule for the motion will be set at the pre-motion conference, if necessary.
3. Unless prior permission has been granted, memoranda of law in support of or in opposition to dispositive motions are limited to **twenty-five (25) pages, double-spaced**, and reply memoranda are limited to **ten (10) pages, double-spaced**. Length limitations may be modified at the pre-motion conference.

C. *Motions Implicating Federal Rule of Appellate Procedure 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 Practice Rules will deprive the party of a substantive right, the party may file the motion within the time required by the Federal Rules of Civil Procedure and/or the Federal Rules of Appellate Procedure, together with an explanation of the basis for the conclusion.

D. *Oral Argument*

Parties may request oral argument by letter accompanying moving, opposition, or reply papers. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date and time. The Court may also order oral argument *sua sponte*. The parties are not limited to one oralist per side. More than one person may speak on behalf of each party at oral argument, but the division of responsibility must be

conducive to the orderly conduct of oral argument, and the person with the best knowledge of the issue is encouraged to speak to that side.

VII. Trials on Consent

A. *Proposed Joint Pretrial Order in Civil Cases*

Unless otherwise ordered by the Court, within **sixty (60) days** from the date of the completion of discovery in a civil case, the parties must submit to the Court a proposed Joint Pretrial Order, which shall include the following:

1. Caption: The full caption of the action.
2. Parties and Counsel: The names (including firm names), addresses, telephone numbers, fax numbers, and e-mail addresses of trial counsel.
3. 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 must include citations to a) all statutes and legal doctrines relied on and b) relevant facts as to citizenship and amount in controversy.
4. Claims and Defenses: By each party, a brief summary of the elements of the claims and defenses that the party has asserted and that remain to be tried. The summary must include citations to all relevant statutes.
5. Damages: A brief statement of the categories and amounts of damages claimed or other relief sought.
6. 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.
7. Stipulations: A statement of stipulated facts, if any.
8. Witnesses: From each party, a list of names and addresses for the fact and expert witnesses whose testimony is to be offered in the party's case-in-chief, as well as any anticipated rebuttal witnesses, together with a brief narrative statement of each witness's expected testimony. Only listed witnesses will be permitted to testify unless prompt notice is given and good cause is shown.
9. Deposition Testimony: By each party, a designation of deposition testimony to be offered by the party in its case-in-chief, along with any cross-designations and objections by any other party.
10. Exhibits: A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties offering each exhibit. The schedule shall also include possible impeachment documents and/or exhibits, and exhibits to be offered only on rebuttal. Plaintiff's exhibits are to be identified with the prefix "P" followed by a number. Defendant's exhibits are to be identified by the prefix "D" followed by a

number. The parties must list and briefly describe the basis for any objections to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve before trial all issues concerning authenticity, chain of custody, and other related grounds. Only exhibits listed will be received in evidence, except for good cause shown.

11. *Motions in Limine*: A list of any proposed motions addressing evidentiary or other issues that should be resolved *in limine*.

B. *Exchange of Exhibits*

All exhibits must be pre-marked for trial and exchanged between or among the parties at least **ten (10) business days** before trial. If an exhibit is voluminous, it should be placed in a binder with tabs. The Court needs four (4) copies of all exhibits for use at trial.

C. *Additional Filing Prior to Trial in Jury Cases*

Unless otherwise ordered by the Court, requests to charge and proposed *voir dire* questions for the jury shall be filed on ECF **one (1) week** before trial. Requests to charge are limited to the elements of the claims, the damages sought, and defenses. General instructions will be prepared by the Court.

D. *Additional Filing Prior to Trial in Non-Jury Cases*

In non-jury cases, a statement of the elements of each claim or defense involving that party, together with a summary of the facts relied upon to establish each element shall be filed on ECF **one (1) week** before trial.

VIII. Courtroom Opportunities for Relatively Inexperienced Attorneys

- A. The participation of relatively inexperienced attorneys in all Court proceedings, including, but not limited to, initial conferences, status conferences, settlement conferences, and hearings on discovery and dispositive motions, is strongly encouraged.
- B. All attorneys appearing should have the degree of authority consistent with the proceeding. For example, an attorney attending an initial conference on behalf of a party must have the authority to commit that party to a discovery schedule and should be prepared to address other matters likely to arise, including the party's willingness to participate in mediation or a settlement conference.
- C. Relatively inexperienced attorneys who seek to participate in hearings of substantial complexity (*e.g.*, oral argument for a dispositive motion), should be accompanied and supervised by a more experienced attorney, but the less experienced attorney should be given a full opportunity to present the arguments and answer the Court's questions.