

Judge Pamela K. Chen
Individual Practices and Rules

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

1. *Case Filings*

A. *Electronic Case Filing (ECF)*

Pursuant to Administrative Order 2004-08, **all case documents must be filed electronically via ECF** for all civil cases other than *pro se* cases and for all criminal cases. The Eastern District's User Guide for electronic case filing is available at <http://www.nyed.uscourts.gov/pub/docs/local/ecf-usermanual.pdf>. This manual also contains contact information for questions regarding ECF. Parties are advised not to contact chambers with questions regarding ECF registration, filing, or other technical issues.

- i. *Text-Searchability*: All written submissions and supporting materials to the Court, to the extent practicable, must be text-searchable.
- ii. *Video/Audio Exhibits*: Video/audio exhibits that are too large to file on ECF *may not* be submitted via USB or CD. The filing party should contact chambers and will receive instructions for filing such exhibits. The party must also file a cover letter on ECF describing the video/audio evidence submitted to the Court.

B. *Filing Under Seal*

All requests for filing under seal must be made in two parts:

Part 1: The filing party shall first file a motion for leave to file under seal. The motion should include a cover letter explaining the reason(s) for sealing, restricting access to, or filing a redacted version of the document, along with the document that is requested to be sealed/restricted/redacted. When seeking to file a redacted document, the filing party must submit either: (a) the unredacted and redacted versions of the document together; or (b) the unredacted version with the proposed redactions highlighted such that the text to be redacted is still visible.

Part 2: If granted, the document must be re-filed using the correct ECF filing event. If denied, counsel must file the letter publicly or not file it at all.

For help on e-filing under seal, contact the ECF help desk at 718-613-2610.

C. *Court's Review of ECF Submissions*

As a general matter, materials filed via ECF are reviewed by chambers the first business day after submission. If your submission requires immediate attention, please notify chambers by telephone after you file via ECF.

D. *Courtesy Hard Copies*

Parties shall deliver to chambers one (1) courtesy hard copy of all written submissions filed on ECF that are fifty (50) pages in length or more, including any exhibits or attachments. Parties are encouraged to use double-sided printing for their courtesy copies. The courtesy copy should be a reproduction of the document as filed on ECF, with the ECF numbering appearing at the top of the page. The emailing of such submissions in PDF to chambers or the courtroom deputy, or the provision of such submissions in electronic format, *e.g.*, on a flashdrive, does not satisfy this requirement.

E. *Word-Processing Files of Proposed Orders, Requests to Charge, etc.*

Proposed orders, jury instructions, and other such writings a party wishes the Court to adopt should be submitted to chambers in word-processing format as well as filed on ECF in PDF format. However, parties need not submit word-processing files of stipulations of dismissal or settlement unless specifically requested to do so. Microsoft Word is the preferred word-processing format, although Corel WordPerfect format is acceptable. Counsel may provide the copies on a CD, or may contact chambers to obtain an email address to which the files may be sent.

F. *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 number of previous requests for adjournment or enlargement;
- iii. Whether these previous requests were granted or denied; and
- iv. Whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent.

If the requested adjournment or enlargement of time affects any other scheduled dates, proposed revised dates must be provided. Requests for adjournments of court appearances and extensions of filing deadlines, absent an emergency, shall be made at least **two working days** prior to the scheduled appearance or filing deadline. **Any adjournment of a court appearance being requested within 24 hours of the appearance shall be accompanied by a telephone call to chambers advising the**

Court of the request.

2. *Communications with Chambers*

A. *Written Communications with Chambers*

All communications with chambers shall be in writing and filed on ECF, with copies simultaneously delivered to all parties who do not receive automatic notification through ECF. Copies of correspondence between counsel shall not be sent to the Court.

B. *Telephone Calls*

Telephone calls to chambers are permitted. Please review this document before calling chambers with questions. For docketing, scheduling, or calendar matters, call Fida Abdallah at (718) 613-2515.

C. *Faxes*

Faxes to chambers are permitted only if copies are simultaneously faxed or delivered to all counsel. No document longer than ten pages may be faxed without prior permission. Documents faxed must be electronically filed.

3. *Motion Practice in Civil Cases*

A. *Pre-Motion Conference Requests*

For discovery motions, follow Local Civil Rules 37.3 and 6.4. In all cases in which the moving party is represented by counsel (except habeas corpus/prisoner petitions and Social Security and bankruptcy appeals), a pre-motion conference with the court must be requested before making any motion: (i) pursuant to Fed. R. Civ. P. 12 or 56; (ii) for a change of venue; (iii) to compel arbitration; (iv) to remand a removed case to State court; and (v) to challenge expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

To request a pre-motion conference, the moving party shall file and serve a letter motion not to exceed three (3) pages in length setting forth the basis for the anticipated motion. Letter motions should be filed using the **motion** event via ECF. Except for *pro se* litigants, all parties so served shall serve and file a letter response, not to exceed three (3) pages within seven (7) days from service of the notification letter. Letter responses should be filed using the letter, and **not** the motion, event. Service of the letter motion within the time requirements of Fed. R. Civ. P. 12 or 56, or any other applicable filing or service deadline, shall constitute timely service of a motion made pursuant to those provisions.

In many cases, it will be apparent from the letter motion that a conference will not be a useful expenditure of the parties' time, and a motion schedule will be set without a pre-motion conference. In other cases, the usefulness of a pre-motion conference will be clear based on the request. **However, if a party advises the Court in its pre-**

motion argument request that an attorney with five years or less of experience as a licensed attorney will be representing the party at the conference, the Court will schedule a pre-motion conference.

Note that these provisions do *not* apply to motions other than those specifically enumerated. For example, letter motions requesting pre-motion conferences are not required for motions pursuant to Fed. R. Civ. P. 50, 59 and 60, and counsel should be aware that the Court of Appeals will not accept an argument that compliance with district court motion rules should excuse noncompliance with Fed. R. App. P. 4. *See, e.g., Bowles v. Russell*, 551 U.S. 205, 206-08 (2007) (holding no jurisdiction exists over appeal filed within time permitted by district court but outside time provided by Fed. R. App. P. 4(a)(6)).

B. *Memoranda of Law*

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, not including exhibits, appendices or attachments, and reply memoranda are limited to ten pages, not including exhibits, appendices or attachments.

C. *Briefing Schedule*

The parties are to set up their own briefing schedule and submit it to the court for approval. If the parties cannot agree on a schedule, the moving party will submit a proposed schedule to the court for approval, indicating the opposing party's non-consent or objection. Approval may be given at the pre-motion conference or by ECF order. No changes to the schedule may be made without court approval.

D. *Filing of Motion Papers*

As a courtesy to the Court, the parties are encouraged *not* to file their motion papers until the motion has been fully briefed, unless doing so might cause a party to miss a statutory deadline. *See Weitzner v. Cynosure, Inc.*, 802 F.3d 307, 314 n. 8 (2d Cir. 2015); *see, e.g., Bowles v. Russell*, 551 U.S. 205, 206-08 (2007) (holding no jurisdiction exists over appeal filed within time permitted by district court but outside time provided by Fed. R. App. P. 4(a)(6)). If the parties follow this practice, the notice of motion (or opposition/reply) and all supporting papers are to be served on the other parties along with a cover letter setting forth whom the filer represents and the papers being served. Only a copy of the cover letter should be filed electronically, as a letter, not as a motion. On the day the motion is fully briefed, *each* party shall electronically file its *own* moving papers, except where the non-moving party is *pro se*, in which case the moving party shall file *both* parties' papers. **However, this practice does not apply to motions for reconsideration, Social Security and bankruptcy appeals, or motions for preliminary relief, *e.g.*, motions for preliminary injunctions or temporary restraining orders. The submissions for these motions or appeals should be filed on the dates they are due under Local Civil Rules 6.3 and 6.1 or the briefing schedule set by the Court, respectively.**

With respect to all motions, whether or not filed and served simultaneously, on the day that the motion is fully briefed, unless a *pro se* non-moving party is involved, the parties shall each furnish chambers with one (1) courtesy copy of their own motion papers. In cases involving a *pro se* non-moving party, the moving party shall provide chambers with courtesy copies of *both sides'* moving papers. The courtesy copy should be a reproduction of the document as filed on ECF, with the ECF numbering appearing at the top of the page.

E. *Oral Argument on Motions*

Parties may request oral argument, but must do so by separate letter or motion. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date and time. **However, if a party advises the Court in its oral argument request that an attorney with five years or less of experience as a licensed attorney will be presenting the party's argument, the Court will schedule an oral argument.**

F. *Summary Judgment on Motions Against Pro Se Litigants*

In any case where a summary judgment motion is filed against a *pro se* litigant, the moving party is directed to comply with the notice required by Local Civil Rule 56.2.

G. *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.

4. *Pretrial Procedures in Civil Cases*

A. *Joint Pretrial Orders*

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 a proposed pretrial order, which shall 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 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 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, without reciting evidentiary matters but including citations to all statutes relied on.
- v. 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.
- vi. Consent to Trial by a Magistrate Judge: A statement as to whether or not 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.
- vii. Witnesses: A list of names and addresses by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, together with a brief narrative statement 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.
- viii. 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.
- ix. Stipulations: A statement of stipulated facts, if any.
- x. Exhibits: 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 should not include exhibits that a party intends to use *solely* for impeachment and/or rebuttal purposes. Copies of statements proposed to be read to the jury as “learned treatises” under Fed. R. Evid. 803(18) shall be listed as exhibits. Plaintiff’s exhibits shall be identified by numbers, Defendant’s exhibits shall 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 to be offered by any other party. Parties are expected to resolve before trial all issues of authenticity, chain of custody, and related grounds. Meritless objections based on these grounds may result in the imposition of sanctions. Only exhibits listed will be received in evidence except for good cause.

- xi. Motions in Limine: A list of motions *in limine* each party intends to file (pursuant to the deadline set forth in Par. 4.B. below), with a brief description of the nature of each such motion.

The Pretrial Order will use a uniform font type and size throughout. The Pretrial Order shall be prepared under the supervision of the assigned magistrate judge in accordance with the schedule set by the magistrate judge. The parties are directed to cooperate with each other in the preparation of the joint Pretrial Order. The Pretrial Order controls the subsequent course of the action unless the order is modified by

consent of the parties and the court, or by order of the court to prevent manifest injustice.

B. *Filings Prior to Trial*

Unless otherwise ordered by the court, each party shall file **fourteen (14) days** before the commencement of trial motions addressing any evidentiary or other issues which should be resolved *in limine*.

Unless otherwise ordered by the court, requests to charge, proposed verdict sheets and proposed *voir dire* questions in jury cases should be submitted no later than the **Wednesday before trial**. Requests to charge should be limited to the elements of the claims, the damages sought, and defenses. General instructions will be prepared by the court. The parties should endeavor to agree upon the requests to charge, to the extent possible, and must submit a single, joint document setting forth all agreed-upon requests to charge and, where no agreement is reached, each party's proposed charge and/or one party's proposed charge with an explanation of the other party's objection to that charge. Word-processing files of proposed charges should be submitted to chambers pursuant to Section 1.E of this document.

5. *Criminal Cases*

A. *Adjournment Requests*

Requests to adjourn any in-court proceeding shall be made at least **two (2) business days** in advance, and in the case of sentencing, at least **five (5) business days** in advance.

B. *Sentencing Submissions*

Defense counsel shall file any application regarding sentencing at least **five (5) business days** prior to the date of sentencing.

The Government shall respond to the defense's sentencing submission, or make any other application regarding sentencing, at least **two (2) business days** before the date of sentencing.

C. *Courtesy Hard Copies*

Any sentencing submission in excess of fifty (50) pages, including attachments or exhibits, in addition to being filed electronically, shall be simultaneously provided to the Court in hard copy. The emailing of sentencing submissions in PDF to chambers or the courtroom deputy, or the provision of the submission in electronic format, *e.g.*, on a flashdrive, do not satisfy this requirement.

6. *Rules to Encourage the Participation of Younger Lawyers In Court*

As reflected above (*see* Sections 3(A) and 3(E)), the Court *strongly* encourages the parties to permit less experienced attorneys to play an important role at all stages of

a case, *e.g.*, making presentations and argument, and examining witnesses, at conferences, hearings, oral arguments, and at trial.

7. *Pronouns and Honorifics*

The parties and counsel are encouraged to advise the Court if they would like to be addressed with a particular pronoun and/or honorific, *e.g.*, “Mr.,” “Ms.,” etc. People appearing before this Court may do so in writing and when appearing for conferences, hearings, or trials by speaking to the courtroom deputy. Attorneys are encouraged to identify their pronouns in their signature lines when submitting documents for filing. All parties and counsel are instructed to address each other in all written documents and court proceedings by those pronouns and/or honorifics previously identified.