

## RULES OF PRACTICE

Magistrate Judge Viktor V. Pohorelsky  
Brooklyn Courthouse  
Telephone: 718-804-2721  
Fax: Permitted by Express Authorization Only

### Electronic Case Filing (ECF) Requirements:

On June 22, 2004, the Board of Judges of the Eastern District of New York issued an Administrative Order requiring that "Beginning on August 2, 2004, electronic case filing will be mandatory for all civil cases other than pro se cases and for all criminal cases." A copy of that order is available on the District's web page at [www.nyed.uscourts.gov](http://www.nyed.uscourts.gov).

### **FAILURE TO COMPLY WITH ECF REQUIREMENTS WILL RESULT IN THE REJECTION OF PAPERS THAT ARE NOT ELECTRONICALLY FILED.**

*Attorneys will receive decisions and notifications from the court electronically. Accordingly, attorneys are responsible for keeping their e-mail addresses current with the Clerk's Office.* Please go to the [www.nyed.uscourts.gov](http://www.nyed.uscourts.gov) web page for additional information about electronic case filing and training, or contact Evelyn Levine in Brooklyn at (718) 613-2312.

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

#### I. *MOTIONS*

**A. Judge to Whom Motions Are to Be Made.** Unless otherwise specifically ordered, all non-dispositive pretrial motions, including discovery motions, are to be made to the magistrate judge. All dispositive motions, including summary judgment motions and motions to dismiss, are to be made to the district judge unless the parties have consented in writing to determination by the magistrate judge in accordance with 28 U.S.C. § 636 (c)(1). For motions to amend pleadings or to bring third-party actions, the parties should follow the Rules of Practice of the district judge to whom the case is assigned. (If the parties have consented to jurisdiction by the magistrate judge for all purposes, these Rules apply.)

**B. Discovery Motions.** For discovery motions, follow Local Civil Rules 37.3 and 6.4, and in particular the requirement of Local Civil Rule 37.3(a) that counsel discuss their disputes *in person or by telephone* before seeking judicial intervention. ***Discovery motions are to be made by letter and are to be filed via ECF as "Motions."*** No pre-motion conference with the court is required before making discovery motions. If the motion involves interrogatories, document requests, or requests for admissions, copies of the disputed requests and the written responses thereto should be annexed to the letter motion. Letters in opposition shall be filed within five business days after the letter motion is filed. Submissions are limited to the movant's letter and

the letter in opposition; unauthorized replies will not be considered. For motions other than discovery motions, see “Pre-Motion Conferences in Civil Cases” below.

**C. Pre-Motion Conferences in Civil Cases.** For dispositive motions in cases in which the parties have not consented in writing to determination by the magistrate judge, *see* 28 U.S.C. § 636(c)(1), the parties shall follow the rules of practice of the district judge to whom the case is assigned.

For motions to amend pleadings or to bring third-party actions (in cases where such motions have been referred by the district judge to the magistrate judge or where the parties have consented to jurisdiction by the magistrate judge), a pre-motion conference is required. A party seeking to make such a motion shall request such a conference by filing a three-page letter via ECF setting forth the reasons for the motion and shall attach a copy of the proposed amended pleading or third-party complaint. Within five business days thereafter, any party that wishes to oppose the motion shall file a three-page letter via ECF. If no opposition is submitted the court may grant the motion without further proceedings.

No pre-motion conference is required for discovery motions (see above), for non-dispositive motions other than those identified above, and for dispositive motions in cases in which the parties have consented in writing to determination by the magistrate judge in accordance with 28 U.S.C. § 636 (c)(1).

**D. Briefing and Filing of Motion Papers.** For discovery motions, see above. For other motions addressed to the magistrate judge, the parties are to set their own briefing schedule. If agreement cannot be reached, an application shall be made to the magistrate judge. All motion papers shall be filed via ECF by each party when they are due.

**E. 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, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

**F. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

**G. Courtesy Copies.** Courtesy copies of papers filed via ECF are not required unless specifically requested by the court.

**H. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time shall be made by letter and filed via ECF as “Motions.” Requests must state (1) the original date, (2) the number of previous requests for adjournment or extension, and (3) 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 dates, a proposed

Revised Scheduling order must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance. **UNDER NO CIRCUMSTANCES SHOULD COUNSEL MAKE A REQUEST FOR ADJOURNMENT BY TELEPHONE.**

**I. 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.

**II. COMMUNICATIONS WITH CHAMBERS**

**A. Letters.** Letters seeking judicial action of any kind must be filed via ECF as “Motions.” (See I(A), (B), and (H) above.) Letters otherwise submitted to the court shall be filed via ECF under “Other Documents.” Correspondence between counsel shall not be filed via ECF or otherwise submitted to the court.

**B. Telephone Calls.** Telephone calls to chambers are permitted for civil cases. Calls regarding new arrests, bail issues, arraignments and other matters handled by the Magistrate Judge on criminal duty should generally be directed to the Magistrate Clericals at (718) 613-2620.

**C. Faxes.** Faxes to chambers are not permitted without prior authorization.

**III. PRETRIAL PROCEDURES (CASES WHERE THE PARTIES HAVE CONSENTED TO JUDGE POHORELSKY FOR TRIAL)**

**A. Joint pretrial orders** are not required unless specifically directed by the court in a particular case.

**B. Pretrial Submissions.** Not later than two weeks prior to the commencement of the trial the parties shall provide to each other and to the court the following:

- i. A list of any fact and expert witnesses whose testimony is to be offered at trial, indicating whether the witnesses will testify in person or by deposition.
- ii. A list of exhibits to be offered at trial with the designations (numbers for plaintiff, letters for defendant) they will have at trial. All exhibits shall be pre-marked and shall be made available to opposing counsel for inspection and copying at reasonable times upon request.
- iii. Only listed witnesses will be permitted to testify and only listed exhibits will be

admitted in evidence except when prompt notice has been given and good cause shown.

On the first day of trial each party shall submit to the court a complete set of copies of the pre-marked exhibits on their respective exhibit lists.