

INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE LISA MARGARET SMITH

Cases come before Magistrate Judges in one of two ways: for one or more specific purposes pursuant to an Order of Reference by the assigned District Judge, or, on consent of the parties, for all purposes pursuant to 28 U.S.C. § 636(c). When a District Judge approves an all-purposes consent form signed by counsel, the Magistrate Judge assumes the role of the District Judge. Any appeal is directly to the Court of Appeals, and the right to a jury trial is preserved.

It is the uniform practice of the Magistrate Judges in this District to schedule trials in civil consent cases for firm dates, rather than using a trailing trial calendar or requiring counsel to be available for trial on short notice. Additionally, because Magistrate Judges rarely try criminal cases, such firm trial dates are unlikely to be changed to accommodate criminal trials. If counsel wish to have Judge Smith hear their case for all purposes, the necessary form is available at <http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge>.

Unless otherwise ordered by Judge Smith, matters before her shall be conducted in accordance with the following practices. These practices are applicable to matters before Judge Smith if the matter is within the scope of the District Judge's Order of Reference or if the case is before Judge Smith for all purposes pursuant to 28 U.S.C. § 636(c). Otherwise, the practices of the District Judge to whom the case is assigned apply.

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall **not** be sent to the Court. Unless there is a request to file a letter under seal, or a letter contains **confidential information**, letters should be filed on ECF. Letters to be filed under seal or containing confidential information should be delivered to the Court by sending such a letter by mail, fax, or hand delivery, and such letters must be visibly designated as "NOT FILED VIA ECF DUE TO CONFIDENTIAL CONTENT." Whether filed on ECF or not, letters on subjects other than discovery disputes may not exceed 5 pages, exclusive of exhibits, unless prior permission is received from the Court. Letters on discovery disputes are limited in length by the discovery order issued in the case. Responsive letters must be filed on ECF in accordance with these rules, and must identify by docket entry number which letter is being responded to.

B. Telephone Calls. In addition to Paragraph 1(D) below, telephone calls to chambers are permitted. For matters other than docketing, scheduling or calendaring, call chambers at (914) 390-4130.

C. Faxes. Brief faxes to chambers are permitted *with prior permission*, but delivery to the Court via ECF is preferred. Do not send faxes exceeding five (5) pages without prior permission from Chambers. If you are granted permission to send a fax, do not follow up with a

hard copy or filing by ECF. Copies of faxed submissions must be simultaneously sent, by fax or e-mail, to all other counsel.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Magistrate Judge Smith's Courtroom Deputy, at (914) 390-4133, between 8:30 A.M. and 5:00 P.M. For scheduling and calendar matters, the caller must either be in possession of at least three dates and times that all counsel agree are acceptable for the schedule or calendar issue, or must include in the call a representative of all counsel, capable of making calendar decisions for such counsel. 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.

E. Requests for Adjournments or Extensions of Time for Filing of Papers. All requests for adjournments or extensions of time with regard to filing deadlines must be made in writing and filed on ECF as letter-motions. (If a request is to be filed under seal or contains confidential information, it may be submitted as set forth in Paragraph 1(A), *supra*.) The letter-motion must state: (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these 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 dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. In the event such a letter-motion filed on ECF requires immediate attention, counsel shall contact chambers by telephone to alert the Court of the filing, but only if the motion is on consent or the matter is fully submitted.

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, the moving party shall submit a letter via ECF, not to exceed three pages in length, setting forth the basis for the anticipated motion. The Court will notify the parties if a pre-motion conference is required. A pre-motion conference with the court is required before making a motion for summary judgment. To arrange 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.

B. Courtesy Copies. Courtesy copies of all motion papers, marked as such, shall be submitted to chambers at the time the papers are served. Courtesy copies are required in both ECF and non-ECF cases. The exception is that in social security matters and petitions for writ of *habeas corpus* a courtesy copy of the underlying administrative or original state court record is not required to be provided.

C. 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.

D. Filing of Motion Papers. Motion papers shall be filed promptly after service.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. Any such request shall state whether opposing counsel agrees that oral argument is desirable. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

3. Electronic Filing Under Seal in Civil and Miscellaneous Cases

A. Sealing/Redactions Not Requiring Court Approval. Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court.

B. Sealing/Redaction Requiring Court Approval. Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, including the proposed sealed document(s), must be filed electronically through the court's ECF system in conformity with the court's standing order, 19-mc-00583, and ECF Rules & Instructions, section 6.

The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal and should not include confidential information sought to be filed under seal. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal.

The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include confidential information sought to be filed under seal.

Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the proposed redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion.

Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

4. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Pretrial orders are not required unless specifically directed by the Court in a particular case.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 30 days before the date of commencement of trial:

- i. In all cases, complete witness lists in accordance with Federal Rule of Civil Procedure 26(a)(3)(i) and (ii); and
- ii. In all cases, complete exhibit lists in accordance with Federal Rule of Civil Procedure 26(a)(3)(iii).

Unless otherwise ordered by the Court, each party shall file on ECF, 15 days before the commencement of trial,

- i. In jury cases, requests to charge, proposed voir dire questions, and a proposed verdict sheet;
- ii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with proposed findings of fact and conclusions of law;
- iii. In all cases, any objections to a party's witness and/or exhibit lists, in accordance with Federal Rules of Civil Procedure 26(a)(3)(B);
- iv. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine* (any responses to motions *in limine* shall be filed no later than 5 days before trial); and
- iv. In any case where such party believes it would be useful, a pretrial memorandum.

Unless otherwise ordered by the Court, each party shall provide courtesy copies of the items identified in i and ii immediately above to Judge Smith's chambers by emailing it, in Word or WordPerfect format, to ChambersNYSDSmith@nysd.uscourts.gov.

5. Settlement Conferences

The parties may, but are **not** required to, submit *ex parte* position statements prior to their scheduled settlement conference. If a party chooses to make such a submission, it must be no more than two (2) pages long and must be provided to the Court at least two (2) days prior to the conference. Submissions should be emailed, in Word or WordPerfect format, to ChambersNYSDSmith@nysd.uscourts.gov.

6. Inclement Weather or Other Emergency

White Plains Courthouse delays or closures are announced by 6:00 am. Call (914) 390-4220 to hear a recorded message. In the event of severe weather conditions when the Courthouse is open, counsel with scheduled appearances should call chambers to confirm that Judge Smith is holding court.

7. Forms

Please note that many commonly used forms (e.g., notice of appearance, consent to Magistrate Judge jurisdiction) are available at <http://www.uscourts.gov/FormsAndFees/Forms/CourtForms.aspx>.