

INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE JUDITH C. McCARTHY

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 Second Circuit 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 McCarthy hear their case for all purposes, they must complete a Notice, Consent, and Reference of a Civil Action to a Magistrate Judge Form, which can be found here: https://www.nysd.uscourts.gov/sites/default/files/practice_documents/AO%2085%20Consent%20to%20Proceed%20Before%20US%20Magistrate%20Judge_5.pdf.

Unless otherwise ordered by Judge McCarthy, matters before her shall be conducted in accordance with the following practices. These practices are applicable to matters before Judge McCarthy if the matter is within the scope of the District Judge's Order of Reference or if the case is before Judge McCarthy 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.

Nothing in Judge McCarthy's Individual Practices supersedes a specific time period for filing a motion specified by statute or Federal Rule -- including but not limited to Fed. R. Civ. P. 50, 52, 54, 59, and 60, and Fed. R. App. P. 4 -- where failure to comply with the specified time period could result in forfeiture of a substantive right.

1. Communications With Chambers

- A. Letters.** Except as otherwise provided in Paragraph 3(B), communications with chambers shall be by letter and filed on ECF, with copies simultaneously delivered to all parties. Letters 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 identify by docket entry number which letter is being responded to. Copies of correspondence between counsel shall **not** be sent to the Court. Courtesy copies, as set forth in Paragraph 2(B), *infra*, must be provided for all letters in excess of 10 pages, inclusive of exhibits. *In the event a letter filed on ECF requires immediate attention, counsel shall contact chambers by telephone to alert the Court of the filing.*
- B. 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. The letter motion must state: (1) the original due date, (2) the number of prior requests for adjournment or extension, (3) whether these prior 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. All requests for adjournments must be made 48 hours before the scheduled conference or expiring deadline, absent an emergency. *Parties seeking adjournments or extensions of time within 48 hours of a scheduled Court conference or expiring deadline, or for any other urgent request, shall contact chambers by telephone to alert the Court of the filing.*

- C. Telephone Calls.** Telephone calls to chambers are permitted. The phone number is (914) 390-4124.
- D. Faxes and E-mails.** Faxes and e-mails are **not** permitted without prior approval of chambers. If granted, the fax must not exceed five (5) pages. Copies of faxed or e-mailed submissions must be simultaneously sent to all other counsel. The Court's e-mail address is McCarthy_NYSDChambers@nysd.uscourts.gov.
- E. Docketing, Scheduling, and Calendaring Matters.** For docketing, scheduling and calendaring matters, call the Courtroom Deputy at (914) 390-4124 between 9:00 a.m. and 5:00 p.m. 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.

2. Motions

- A. Pre-Motion Conferences in Civil Cases.** For discovery motions, follow Local Civil Rule 37.2 requiring the moving party to request an informal conference with the Court before the filing of any such motion. Strict adherence to Fed. R. Civ. P. 37(a)(1) – the “meet and confer” rule – is required. The parties should be prepared to describe the time, place and duration of the meeting, and to identify the counsel involved.

A pre-motion conference with the Court is required before making any other motions, except motions for admission *pro hac vice*, motions for re-argument or reconsideration, motions pursuant to Fed. R. Civ. P. 11(c)(2), or motions for which the Court has already set a briefing schedule. To arrange a pre-motion conference, 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 opposing party shall submit a response via ECF, not to exceed three pages in length, within 3 business days from the date the moving party's letter was filed. The Court will notify the parties if a pre-motion conference is required.

- B. Courtesy Copies.** *Courtesy copies of all motion papers, marked as such, shall be submitted to chambers at the time the papers are served.* They must be securely bound and tabbed. For those parties permitted to file documents on ECF, all courtesy copies must bear proof of electronic filing.
- C. Format.** The typeface, margins, and spacing of all motion papers presented for filing must meet the following requirements: (1) all text must be 12-point type or larger, except for text in footnotes which may be 10-point type; (2) all documents must have at least one-inch margins on all sides; and (3) all text must be double-spaced, except for headings, text in footnotes, or block quotations, which may be single-spaced. (*See* Local Civ. R. 7.1(b)).

D. Memoranda of Law. Unless prior permission has been granted, the following rules apply to the permitted lengths of memoranda of law:

- i. **Memoranda filed by a party not represented by an attorney and prepared by a computer, or filed by an attorney:** Briefs in support of and in response to a motion (except for a motion for reconsideration) may not exceed 8,750 words, and reply briefs may not exceed 3,500 words. Memoranda of 3,500 words or more shall contain a table of contents. Any such brief must include a certificate by the attorney, or party who is not represented by an attorney, that the document complies with the word-count limitations. The person preparing the certificate may rely on the word count of the word-processing program used to prepare the document. The certificate must state the number of words in the document. To the extent the court permits a party to submit briefs longer than these limits, and expresses those limits in pages, each additional page must not contain more than 350 additional words.
- ii. **Memoranda filed by a party not represented by an attorney and handwritten or prepared with a typewriter:** Briefs in support of and in response to a motion (except for a motion for reconsideration) may not exceed 25 pages, and reply briefs may not exceed 10 pages.

See Local Civ. Rule 7.1(c). Note that these limits do not include the caption, any index, table of contents, table of authorities, signature blocks, or any required certificates, but do include material contained in footnotes or endnotes.

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

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.

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.

Unredacted courtesy copies of all documents to be filed under seal shall be sent to chambers at the time the motion is filed.

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. Joint Pretrial Orders shall include the information required by Fed. R. Civ. P. 26(a)(3) and the following:

- i. The full caption of the action;
- ii. The names (including firm names), addresses, email addresses, and telephone numbers (including cellular, if available) for each member of the trial team, and identification of each party's lead trial counsel;
- iii. A brief statement by plaintiff as to the bases 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 relied on and relevant facts as to citizenship and jurisdictional amount;
- iv. A brief summary by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed. If there is to be a jury trial, a statement as to whether the parties consent to less than a unanimous verdict pursuant to Rule 48 of the Federal Rules of Civil Procedure is required;
- v. A statement of damages claimed, itemizing each component or element of the damages sought with respect to each claim, including the manner and method used to calculate the claimed damages;
- vi. A joint statement summarizing the nature of the case, to be read to potential jurors during jury selection;

- vii. Proposed witnesses and exhibits, pursuant to Federal Rules of Civil Procedure 26(a)(3)(A)(i)-(iii);
- viii. Objections, if any, to proposed witnesses and exhibits;
- ix. Any stipulations to facts, witnesses or exhibits;
- x. Witness availability, if any issues are anticipated;
- xi. Whether any party intends to include deposition testimony or video testimony in lieu of live trial testimony;
- xii. Anticipated electronic equipment required and whether the Court needs to issue an order permitting such equipment into the courthouse; and
- xiii. Anticipated motions *in limine* without going into the merits of the same (*e.g.*, plaintiff will move to prohibit “x”).

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)(A)(i) and (ii);
- ii. In all cases, complete exhibit lists in accordance with Federal Rule of Civil Procedure 26(a)(3)(A)(iii);
- iii. In jury cases, requests to charge, proposed *voir dire* questions, and a proposed verdict sheet;
- iv. In nonjury cases, a statement of the elements of each claim or defense involving each party, together with proposed findings of fact and conclusions of law;
- v. 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);
- vi. 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 21 days before trial); and
- vii. 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-vii immediately above to Judge McCarthy’s chambers by e-mailing it, in Word format, to McCarthy_NYSDChambers@nysd.uscourts.gov.

C. Marking Exhibits for Trial. Five court days before the date set for the final pretrial conference, each party must provide each other party, and the Court, with a tabbed binder or binders containing copies of its trial exhibits and deposition designations.

5. Personal Electronic Devices

S.D.N.Y. Standing Order M10-468 (Revised), dated February 27, 2014 (available on the Court's website) defines "Personal Electronic Devices" and sets forth the requirements for an attorney to bring such a device into the Courthouse. An attorney who meets those requirements may bring a Personal Electronic Device into the courtroom, but the device must be turned off (not merely placed in vibrate mode or otherwise silenced). If an attorney needs access to such a device during a proceeding (such as when a subsequent appearance is being scheduled), permission to activate the device should be requested of the Court. Attorneys may use their devices in the hallway outside the courtroom (although not in the vestibule to the courtroom), but are asked to be discreet and to keep their voices down.

The court may adopt additional policies governing the possession or use of electronic equipment within the courthouse. Be sure to check the Court website or with the relevant courthouse to identify any additional policies.

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 a closure, all conferences will be canceled and a new conference date will be scheduled shortly after the Courthouse reopens. In the event of severe weather conditions when the Courthouse is open, counsel with scheduled appearances should call chambers to confirm that Judge McCarthy is holding court.

7. Forms

Many commonly used forms (*i.e.*, notice of appearance, consent to Magistrate Judge jurisdiction) are available at: <http://www.uscourts.gov/forms-rules/forms>.