

**INDIVIDUAL MOTION PRACTICES OF
JUDGE ARTHUR D. SPATT**

United States District Court
100 Federal Plaza
P.O. Box 9014
Central Islip, New York 11722

Courtroom 1020

Telephone: (631) 712-5620

Contact: Mary Ellen Kirchner, Case Manager
Telephone: (631) 712-5625

THESE INDIVIDUAL RULES WILL BE IN EFFECT AS OF DECEMBER 6, 2018

I. COMMUNICATIONS WITH CHAMBERS

A. Delivery. All documents in civil and criminal actions, including motions, letters and stipulations, shall be filed via electronic case filing (ECF). Counsel are encouraged, but not required, to make all electronically filed documents word searchable. In civil actions, hard copies of the following papers filed electronically and addressed to Judge Spatt shall be provided to Chambers: motion papers, orders to show cause, and accompanying exhibits (or other included papers). The Court does not require multiple copies of the same documents. For instance, if a party files three oppositions to three motions in one matter, and any accompanying exhibits overlap, the party does not need to send three courtesy copies of those exhibits. In criminal actions, hard copies of all papers shall be provided to Chambers.

All hard copies must be clearly marked "Courtesy Copy," and indicate that the original was filed by ECF. For more information regarding ECF, see IV(A) infra. All courtesy copies should be mailed to the Honorable Arthur D. Spatt, United States District Judge, P.O. Box 9014,

Central Islip, New York 11722-9014, or delivered to the Clerk's Office. No courtesy copies should be hand delivered to chambers.

B. Letters. Except as provided below, communications with chambers shall be by letter with copies simultaneously served on all counsel. Copies of correspondence between counsel shall not be sent to the Court.

C. Telephone Calls. Counsel are urged to communicate by letter whenever possible. In addition, the Court will accept phone calls only from counsel, and not from administrative personnel calling on behalf of counsel. All calls concerning the scheduling of matters should be made to Mary Ellen Kirchner, Deputy Clerk, at (631) 712-5625. For questions concerning procedure, please refer to the Federal Rules of Civil or Criminal Procedure, the Local Rules of the Eastern District of New York, and these Individual Rules. Law Clerks and the Deputy Court Clerk cannot give legal or procedural advice. Ordinarily, it will not be necessary or appropriate to refer, on the trial record, or in open court, to oral discussions with chambers staff.

D. Fax Transmissions. Faxes to chambers will not be accepted unless the communication is of an urgent nature and prior permission to fax the document has been obtained from chambers staff.

E. Internet. Other than electronic filing, no communication with the Court may take place through any aspect of the internet, including e-mail.

F. Requests for Extensions of Time. No extensions of time will be granted over the telephone. Instead, a written request must be submitted to chambers. Please note that prior to a request for an extension, the parties must contact their adversaries to determine whether they

assent to the extension. Written requests for extension of time must contain the following information: (i) the originally scheduled date; (ii) the number of previous requests for adjournment or extensions by all parties in the action; (iii) whether these previous requests, if any, were granted or denied; and (iv) whether the adversary consents and, if not, the reason they provided for declining to assent. NOTE: All requests for an extension of time to answer or otherwise respond to a complaint should be addressed in writing to Judge Spatt.

G. Ex Parte Correspondence Prohibited. All correspondence with the Court must include a certificate of service, cc:, or other indication that a copy of the correspondence was served on all other parties in the case. The Court will not consider any correspondence or documents submitted ex parte except as permitted by the Federal Rule of Civil Procedure 65(b) and the Local Rules.

II. FORM OF PAPERS

A. Footnotes not Permitted. Footnotes are not permitted in any papers, including letters, filed with the Court.

B. Full Caption Required. All papers filed with the Court, other than letter requests, shall set forth the full caption of the case and the docket number on the front page. The use of “et al.” or other shortened caption forms is not permitted.

C. Amended Caption Required for Uncontested Additions, Substitutions, or Partial Dismissals of Parties. Any stipulation or uncontested application which seeks to add, substitute, or dismiss one or more parties from the case but which does not dispose of the entire

case shall include a document setting forth an amended caption, in standard caption format, reflecting the parties remaining in the case.

D. Courtesy Copies of Motions Required. All parties filing formal motions with the Clerk of the Court shall also mail a courtesy copy of all accompanying papers to Chambers.

E. Non-conforming Papers. Papers submitted to the Court in violation of the above rules will not be docketed and will be returned to the sender or disregarded.

F. Self-Addressed Envelope. If a party wishes to be provided a hard copy of any application to be “So Ordered”, that party shall include a self-addressed envelope for the return of the signed order. If no self-addressed envelope is provided, notice will be provided only via the ECF system.

III. CONFERENCES

A. Time and Place. Conferences will usually be held in chambers, Room 1024, at 9:00 a.m., unless otherwise directed by the Court. All parties shall appear at the Central Islip Courthouse promptly at the scheduled hour and wait in Courtroom 1020 until called into chambers.

B. Preparation for Conferences. Counsel appearing at conferences should be fully familiar with the case, prepared to discuss all aspects of the case, and be authorized to consummate settlements. In this regard, counsel are expected to be fully familiar with Fed. R. Civ. P. 16 before attending any conferences.

C. Adjournments. Applications for adjournment of conferences or motions must be made in writing and should be directed to Ms. Kirchner. Adjournments shall be granted only

upon a showing of good cause. Requests for adjournments of conferences shall be made at least two (2) business days prior to the scheduled conference.

IV. MOTION PRACTICES

A. Electronic case filing (ECF). All documents in civil and criminal actions shall be filed electronically. Parties filing voluminous or non-text exhibits that are impracticable to file electronically shall only file two sets of hard copies. If exhibits are not electronically filed, one copy must be clearly marked “Original” and the other marked “Courtesy Copy.” Related papers that are electronically filed should clearly indicate that exhibits have been filed by hard copy.

Pro se parties are automatically exempt from mandatory electronic filing. However, parties represented by counsel in pro se cases must file documents electronically and mail a hard copy of the document to the pro se litigant. Requests for exemption from ECF requirements may be made before the Magistrate Judge assigned to the case. However, no request will be granted until the attorney has registered for ECF and sought ECF training. Questions regarding ECF filing or training should be directed to the Court’s docketing department at (631) 712-6010.

B. General Motion Rules. Unless specifically discussed herein, Rule 6 of the Federal Rules of Civil Procedure, Local Civil Rule 6.1, and Local Criminal Rule 12.1 shall govern the service and filing of motion papers on all civil motions, petitions, applications and exceptions other than motions for: (i) summary judgment, (ii) admission pro hac vice, (iii) motions in conjunction with bankruptcy and social security appeals, (iv) motions objecting from a Magistrate Judge’s Report and Recommendation, and (v) petitions for writs of habeas corpus.

In addition, all motions shall comply with Local Civil Rule 7.1, which requires a notice of motion, a memorandum of law, and supporting affidavits and exhibits. No letter motions will be accepted.

(i) **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. All memoranda of law shall be produced in a font of 12 (twelve) point or higher and shall have one inch margins on all sides. Memoranda of 10 pages or more shall contain a table of contents. All memoranda of law shall begin with a statement of facts. Memoranda of law shall not contain footnotes. All citations to cases and other authority shall be set forth in the body of the text.

(ii) **Return date, oral argument.** The notice of motion need not contain a return date. Parties may request oral argument by letter at the time their motion papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of an argument date. Counsel will only receive notice if the request for oral argument is granted.

(iii) **Cross-motions.** Should the non-movant seek to make a cross-motion, this cross-motion must follow the same procedures as utilized for making the motion.

(iv) **Pre-motion conference not required.** Except as provided for below with respect to motions for summary judgment or unless required by law, leave of the Court or a pre-motion conference is not required prior to making a motion.

(v) **Non-complying motions rejected.** Motions not in conformity with the rules set forth herein will be returned to the movant undocketed or disregarded.

C. Discovery Motions. Motions made pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall be made in accordance with the Local Civil Rules and the Individual Practices of the presiding United State Magistrate Judge.

D. Motions for Summary Judgment. No motion for summary judgment will be accepted for filing and docketing unless the movant has complied with the following procedures.

(i) Exchange of statements pursuant to Local Rule 56.1. Any party wishing to make a motion for summary judgment must first serve upon all parties a statement pursuant to Local Civil Rule 56.1 (“Rule 56.1”) setting forth those items on which there is no material issue of fact. The moving party shall also provide all other parties with an electronic copy of the moving party’s Rule 56.1 statement. Each statement of material fact must be followed by a citation to evidence which would be admissible, as set forth and required by Rule 56(e) of the Federal Rules of Civil Procedure.

All parties receiving such a Rule 56 statement and wishing to oppose the motion must serve on the movant, within seven days of receiving the movant’s Rule 56.1 statement, an original and two copies of a counter-statement pursuant to Rule 56 setting forth those items on which there exists a genuine issue of material fact. The non-moving party shall also provide all other parties with an electronic copy of its Rule 56.1 counter-statement. The counter-statement should specifically admit or dispute each individual allegation in the movant’s Rule 56.1 statement before asserting any additional facts in dispute, and each statement of disputed material fact must be followed by a citation to supporting evidence which would be admissible. Exhibits shall not be attached to Rule 56.1 statements.

Should the non-movant require additional time to file a Rule 56.1 counter-statement, the parties may agree among themselves to a reasonable extension.

Until the movant requests a pre-motion conference as set forth in the following subsection, Rule 56.1 statements and counter-statements shall not be filed with the Court.

(ii) Requesting a pre-motion conference. After receiving the counter-statement of the non-movant, should the movant still wish to move for summary judgment, the movant must write to the Court and request a pre-motion conference. In no more than two pages, the letter should briefly state the basis for the anticipated motion. The letter shall also contain the movant's Rule 56.1 statement and the non-movant's counter-statement, by reproducing each entry in the moving party's Rule 56.1 Statement and setting out the opposing party's response directly beneath it. Within seven days of the movant's letter, the non-movant may submit a response letter of no more than two pages, setting forth the nature of the opposition to the motion. The request for a pre-motion conference must be made with the Court prior to any deadline established by the Magistrate Judge for the making of dispositive motions. Exception: A pre-motion conference is not required of a party that is appearing *pro se*.

(iii) Making the motion. Following the pre-motion conference, if the movant decides to make a motion for summary judgment, the Court will provide a briefing schedule for the parties. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

E. Motions for Admission Pro Hac Vice. All motions for admission pro hac vice should be directed to the United States Magistrate Judge assigned to the case. The motion shall include a proposed Order. Although there is no need to file a memorandum of law, this motion

must comply with the Rules of the Eastern District of New York for admission pro hac vice and must indicate on behalf of which party the attorney is seeking to appear. Should any party object to the motion, opposition papers must be served and filed within five days of the filing of the motion. Reply papers will not be accepted.

F. Bankruptcy Appeals. The Court directs the parties to Bankruptcy Rules 8001 - 8013 regarding the filing deadlines for notices of appeal and submission of briefs, as well as the form and length of briefs. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

G. Social Security Appeals. The parties in social security cases shall adhere to the schedule outlined in Administrative Order 2015-05. Upon receipt of all motion papers, the defendant will then file the entire set of motion papers and the administrative record with the Court.

H. Objections from Magistrate Judge Decisions. The time parties have to file objections to Magistrate Judges' Reports and Orders is governed by Federal Rule of Civil Procedure 72. All briefs in support of or opposition to such objections must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

I. Habeas Corpus Petitions. Upon the filing of a habeas corpus petition, the Court shall issue an order setting forth a schedule for the filing of answer by the Respondent and a reply by the Petitioner. Unless otherwise directed by the Court, any ground for dismissing the petition should be addressed in the Respondent's answer and not in a motion to dismiss. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

J. Briefing Schedules. Except as provided herein, or otherwise ordered by the Court, the Local Civil Rules govern briefing schedules for motions in civil cases and the Local Criminal Rules govern briefing schedules for motions in criminal cases. No changes in the briefing schedule may be made without written permission from the Court.

V. PRETRIAL PROCEDURES

A. Joint Pretrial Orders in Civil Cases.

Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- a. The full caption of the action;
- b. The names, addresses and telephone numbers of trial counsel;
- c. A brief statement by the Plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each 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;
- d. A brief statement by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried;

- e. 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;
- f. Any stipulation or agreed statement of facts or law which have been agreed to by all parties;
- g. A list by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown;
- h. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designation and objections by any other party;
- i. A list by each party of exhibits to be offered in its case in chief. The respective lists should specify the exhibits to which no party objects and the exhibits to which there is an objection.

B. Filings Prior to Trial in Civil Cases

Unless otherwise ordered by the Court, in advance of the date set for commencement of trial each party shall file :

- a. Requests to charge and proposed voir dire questions. Requests to charge should be limited to the elements of the claims, the damages sought and defenses.
- b. Motions addressing any evidentiary or other issues which should be resolved in limine.

VI. DEFAULT JUDGMENTS.

Any plaintiff making a motion for a default judgment shall serve a copy of the motion on the Defendant in default in the manner provided for by Rules 5(b) and (d) of the Federal Rules of Civil Procedure. No default judgment will be granted in the absence of a certificate of service indicating that the application has been served on the Defendant in default. A motion for default judgment may not be made until a Certificate of the Clerk of the Court noting the default has been obtained. All motions for a default judgment must include the Certificate of the Clerk of the Court noting the default and a proposed default judgment.

VII. MISCELLANEOUS

A. Non-Jury Trials

Unless otherwise ordered by the Court, no later than 30 days after the conclusion of a non-jury trial, each party shall electronically file and provide courtesy copies to Chambers of proposed findings of fact and conclusions of law, not to exceed fifteen pages without the express written approval of the Court.

B. Sentencing Memoranda

Unless otherwise ordered by the Court, copies of all sentencing memoranda shall be served on the United States Probation Officer.