INDIVIDUAL PRACTICES OF
MAGISTRATE JUDGE LISA MARGARET SMITH

Unless otherwise ordered by the assigned Magistrate Judge, matters before the Magistrate Judge shall be conducted in accordance with the following practices. These practices are applicable to matters before the Magistrate Judge if the matter is within the scope of the District Judge's Order of Reference or if the case is before the Magistrate Judge pursuant to the parties' consent under 28 U.S.C. § 636(c). Otherwise, the practices of the District Judge to whom the case is assigned apply. Additional rules applicable to Electronically Filed Cases begin at page 3, *infra*.

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.

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. Faxes to chambers are not permitted.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Jim Galvin, 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.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time 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. 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. 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.

1. Courtesy copies of all pleadings, marked as such, shall be submitted to chambers, as soon as practicable after filing.

2. Courtesy copies of all motion papers, marked as such, should be submitted to chambers at the time the papers are served.

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. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court in a particular case, pretrial order submissions, including the information required by Federal Rule of Civil Procedure 26(a)(3), are to be filed within 30 days after the completion of discovery.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

i. In jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in WordPerfect version 5.1 or higher format;

ii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

iii. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*; and

iv. In any case where such party believes it would be useful, a pretrial memorandum.

4. Forms

Please note that many commonly used forms (e.g., notice of appearance, consent to Magistrate Judge jurisdiction) are available at www.uscourts.gov/forms/uscforms.html.

Rules for Electronically Filed Cases

ECF1. Introduction

Effective December 1, 2003, all civil cases assigned to the United States District Judges sitting in White Plains, whether or not those cases are referred to a Magistrate Judge, and all civil cases before Magistrate Judge Smith pursuant to the parties' consent under 28 U.S.C. § 636(c), will be designated as electronically filed cases (ECF cases), except as noted *infra*. For cases assigned to District Judges not sitting in White Plains, counsel should check the Southern District of New York's website, to determine if that Judge requires that cases be designated as ECF. *See* www.nysd.uscourts.gov. All counsel in ECF cases will be required to file all documents electronically via the ECF system over the Internet. In addition to the rules contained in this subsection, ECF cases remain subject to the remainder of the Individual Rules of the District Judge to whom the case is assigned, or the Individual Rules of Magistrate Judge Smith if the parties have consented under 28 U.S.C. § 636(c), as well as the Local Rules of the Southern District of New York, and the Federal Rules of Civil and Criminal Procedure.

A. Criminal Cases. Criminal cases initiated by the filing of an indictment or information on or after December 1, 2003, will be designated as ECF cases.

B. Exceptions. Electronic filing procedures shall not apply to *pro se* cases, habeas corpus petitions and social security cases.

ECF2. Opening and Responding to a Civil Case

A. Filing. Upon the filing of papers initiating a civil action, and the payment of any applicable fee, the filing party, who must be a registered ECF Filing User with this Court (if not already an ECF Filing User, go to www.nysd.uscourts.gov), is directed to send a copy of those filed documents to the Clerk of Court by email within 24 hours of filing the papers at the courthouse. The documents must be in .pdf format and must contain the case number and the Judge's name. Email the filed documents to:

wpclerk@nysd.uscourts.gov

Failure to email the .pdf copy of the documents to the Clerk within 24 hours may result in a delay in adding the case to the Court's electronic docket.

B. Service. The filing party is also directed to serve all parties a copy of these individual rules together with those documents initiating the action.

C. Registration Requirement. Upon receipt of papers initiating a civil action in an electronically filed case, counsel for the answering party is required to register immediately to be an ECF Filing User with this Court (if not already an ECF Filing User, go to www.nysd.uscourts.gov).

D. Answering Electronically. In all cases assigned to the ECF system, counsel for the answering party is required to file electronically all documents, including the answer and all subsequent pleadings.

E. Requests for Exceptions to ECF. Any request by counsel to file documents in hard copy, and not on the ECF system, shall be raised at the initial pre-trial conference or at a time set by the Court.

Counsel are reminded that the Clerk of Court maintains an ECF Help Desk in both Manhattan and White Plains, with electronic scanning facilities for use by the public, to assist in filing documents electronically.

ECF3. Proposed Orders & Stipulations

A. Form. All proposed orders and stipulations shall be in the form prescribed by the Clerk in the Guidelines for Electronic Case Filing.

B. Orders to Show Cause. In all cases assigned to the ECF system, all Orders to Show Cause seeking a stay shall be submitted in the traditional manner, in person before the Court. All Orders to Show Cause that do not seek a stay shall be submitted in the form prescribed by the Clerk in the Guidelines for Electronic Case Filing.

ECF4. Motions

A. Filing. The manner in which motions are filed before this Court shall not change under the ECF system. In all cases assigned to the ECF system, all motions shall be electronically filed in accordance with these Individual Rules, and in the traditional manner for those cases not assigned to the ECF system.

B. Courtesy Copies. All courtesy copies of motions shall be provided to the Court in the traditional manner and in accordance with these Individual Rules.

ECF5. Appeals

In all cases assigned to the ECF system, upon the filing of an appeal and payment of any applicable fee, the filing party is directed to send a copy of the filed documents to

the Clerk of Court by email within 24 hours of filing the papers at the courthouse. The documents must be in .pdf format, and must contain the District Court case number and the Judge's name. Email the documents to:

wpclerk@nysd.uscourts.gov

Failure to email the .pdf copy of the documents to the Clerk within 24 hours may result in a delay in adding the appeal to the Court's electronic docket.

ECF6. Courtesy Copies

Unless the Court directs otherwise, in all cases assigned to the ECF system counsel are directed to submit courtesy copies in paper form of all electronically filed documents, clearly marked as courtesy copies, and addressed to chambers. In cases which have been referred to Magistrate Judge Smith, courtesy copies are required to be submitted to Magistrate Judge Smith even if the assigned District Judge does not require courtesy copies, and even if courtesy copies are also provided to the assigned District Judge.

ECF7. Documents Filed in Error

In all cases assigned to the ECF system, if a document is electronically filed in error parties are directed as follows:

A. Wrong Case. If the document is filed in the wrong case, the Clerk of Court has the authority to remove it from the docket without further order of the Court upon written or email notification to the Clerk.

B. Wrong Document. If the wrong document is filed in the correct case, the filer shall immediately notify the Clerk of Court in writing, and the Clerk shall seek further guidance from the Court.

C. Erroneous Filing Sensitive Document. If the document filed in error contains sensitive information, the Clerk of Court, upon written or oral notice, shall seal the docket entry immediately so as to remove it from public view. The Clerk shall then seek further guidance from the Court.

8. Electronic Document Size

A. Exhibits. In all cases assigned to the ECF system, any exhibit larger than 2.5 megabytes (approximately 50 pages) shall be submitted to the Court in paper form. (See also SDNY ECF Procedures, excerpt provision, section 5).

B. Large Documents. In all cases assigned to the ECF system, no single document totaling more than 15 megabytes (even if separated into smaller individual computer files) shall be electronically filed without prior permission of the Court.