

## 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. Should counsel wish to consent to have Judge Smith hear their case for all purposes, the necessary form is available at <http://www1.nysd.uscourts.gov/judge/Smith>.

Unless otherwise ordered by Judge Smith, matters before her shall be conducted in accordance with the following practices. These practices are applicable to cases 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. According to SDNY ECF procedures, letters shall not be filed via ECF.

**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 without express prior permission. However, faxes may not exceed 10 pages (excluding cover sheet) in length. If permission to send a fax is granted, then parties shall not send hard copies of the same correspondence to chambers.

**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.

**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. A courtesy copy of all pleadings, marked as such, shall be submitted to chambers, as soon as practicable after filing.
2. A courtesy copy of all motion papers, marked as such, should be submitted to chambers at the time the papers are served.

Courtesy copies are required in both ECF and non-ECF designated cases.

**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.** In both ECF and non-ECF cases, 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.** 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); and
- ii. In all cases, complete exhibit lists in accordance with Federal Rule of Civil Procedure 26(a)(3).

Unless otherwise ordered by the Court, each party shall file, 14 days before the date of commencement of trial:

- i. In jury cases, requests to charge, proposed verdict sheets, and proposed voir dire questions;
- 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, any objections to a party's witness and/or exhibit lists, in accordance with Federal Rule of Civil Procedure 26(a)(3)(B);
- iv. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*; and
- v. In any case where such party believes it would be useful, a pretrial memorandum.

Unless otherwise ordered by the Court, each party shall file, 7 days before the date of commencement of trial:

- i. In all cases, opposition papers addressed to any motion *in limine*.

#### **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](http://www.uscourts.gov/forms/uscforms.html).