

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re Electronic Filing Procedures

ADMINISTRATIVE ORDER

97-12

-----X

WHEREAS the Eastern District of New York was selected by the Administrative Office of the United States Courts as one of the four federal district courts to engage in a prototype program of electronic filing, and

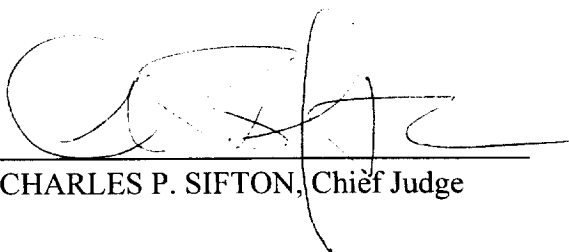
WHEREAS the Court appointed a Rules Committee including members of the bench and bar in May, 1997 to draft a comprehensive proposed Order, and

WHEREAS a proposed Administrative Order was prepared and circulated for public comment on August 1, 1997, and

WHEREAS revisions to the proposed Administrative Order were recommended to the Court following the close of the comment period on September 2, 1997,

NOW THEREFORE, following review the Board of Judges of the Eastern District of New York at a meeting held on October 21, 1997 adopted the attached Electronic Filing Procedures subject to revision from time to time as necessary.

SO ORDERED.



CHARLES P. SIFTON, Chief Judge

Dated: Brooklyn, New York
October 22, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
:
In re ELECTRONIC FILING PROCEDURES : ADMINISTRATIVE ORDER
:
:
:
-----X

WHEREAS, Rules 5 and 83 of the Federal Rules of Civil Procedure and 28 U.S.C. " 132, 136, 451, 452 and 1651 authorize this Court to enter all appropriate orders respecting practices and procedures for the filing, signing, verifying and providing public access to Court documents, including establishing such practices and procedures making use of the Internet; and

WHEREAS, this Administrative Order is intended to be applied and interpreted in connection with a proposed Electronic filing Procedures Users' Manual (the "Users' Manual") which, together with this Administrative Order, shall be termed the "Electronic Filing Procedures" or "EFP"; and

WHEREAS, the Court has solicited and considered the views of the bar and the public in formulating the EFP for civil actions, inter alia by establishing a Rules

Committee and a Users Committee to assist in the formulation of the EFP; by publishing in August, 1997 a draft version of this

Administrative Order for public comment; and by reviewing and considering the comments submitted to the Court in response to such publication; and

WHEREAS, consistent with the EFP, the Court has established a World Wide Web site ("E.D.N.Y. Public Web Site") connected to the Internet with the technological capacity to provide public access to all contents of that Web Site, including all electronically-filed papers, and to permit direct electronic filing of Court papers on that Web Site via the Internet; and

WHEREAS, the EFP make adequate provision for filing, service and notice of all papers and proceedings in civil actions, consistent with the requirements of the Federal Rules of Civil Procedure; and

WHEREAS, the EFP provide a means for counsel of record and unrepresented parties to sign papers electronically through use of a unique password and other identifying information; and

WHEREAS, the EFP require the Clerk's Office to provide adequate procedures for electronic filing of papers

by persons who are not able to access the E.D.N.Y. Public Web Site via the Internet from a remote location; and

WHEREAS, the EFP require the Clerk's Office to provide adequate public access to the records and dockets of this Court, including access for persons who are not able to access the E.D.N.Y. Public Web Site via the Internet from a remote location; and

WHEREAS, the EFP do not impose fees inconsistent with the present fee structure adopted by the Judicial Conference of the United States Courts pursuant to 28 U.S.C. ' 1914;

NOW, THEREFORE, IT IS ORDERED as follows:

1. Summons and Complaint. Nothing in the EFP shall affect the manner of filing and service of complaints (including third-party complaints) and the issuance and service of summonses, which in all civil actions shall continue to be filed, issued and served in paper form and in conformance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

2. Actions Subject to EFP.

(a) The Clerk shall maintain and post on the E.D.N.Y. Public Web Site a list of the Judges of this Court who permit use of EFP in actions assigned to them ("Participating Judicial Officers"). A magistrate

judge assigned to an action in which the assigned judge is a Participating Judicial Officer shall be deemed a Participating Judicial Officer for the purposes of that action. Upon the filing of the complaint in any action in which the Judge initially assigned is a Participating Judicial Officer, the Clerk shall provide the plaintiff(s) with a copy of a Notice Regarding Availability of Electronic Filing in a form approved by the Chief Judge. Such Notice shall be served upon the defendant(s) in the action together with the summons and complaint. At the initial scheduling conference in the action, if the assigned judicial officer consents to use of EFP, and if all parties appearing also consent to use of EFP, then the parties shall sign at the initial conference a Joint Consent to EFP satisfying the requirements of paragraph 3; otherwise the assigned judicial officer shall note on the initial Scheduling Order that the action shall not be subject to EFP. If an initial scheduling conference is not to be held in the action, within 120 days after the first appearance of any defendant, either (i) all parties appearing shall jointly apply for an order designating the action as subject to EFP by submitting a Joint

Consent to EFP, which the assigned judicial officer in his or her absolute discretion may grant or deny, or (ii) one or more parties shall file a Notice Declining EFP, in which case the action shall not be subject to EFP.

(b) In addition to the means set forth in subparagraph (a) for designating an action as subject to EFP, in any civil action in which the assigned Judge is or becomes a Participating Judicial Officer, the parties may apply at any time for an order designating the action as subject to EFP by submitting a Joint Consent to EFP, which the assigned Judge in his or her absolute discretion may grant or deny.

(c) Within ten days after an action becomes subject to EFP, each party shall refile electronically pursuant to subparagraphs (a) or (b) every paper in the action that the party previously filed.

(d) In any action subject to EFP, upon application of any party or sua sponte, the assigned Judge may terminate or modify application of EFP to the action.

3. Consents to EFP and E-Mail Addresses of Record.

(a) Any Consent to EFP shall clearly state that the submitting parties consent to the use of EFP in the action and shall set forth the Internet e-mail address of each attorney of record and each unrepresented party for the purposes of service and giving notice of each filing (the "E-Mail Addresses of Record"). Any Consent to EFP shall further state that the consenting persons have exchanged test e-mail messages successfully with each other and with all persons previously or concurrently consenting to EFP at the E-mail Addresses of Record.

(b) Each attorney of record and each unrepresented party shall provide one Internet e-mail address as the E-Mail Address of Record for that person. Parties may have multiple attorneys of record for the purpose of receiving additional e-mail notifications, and the E-mail Address of Record for an attorney of record or for an unrepresented party need not be that person's personal e-mail address.

(c) The E.D.N.Y. Public Web Site shall include for each action subject to EFP a current list of the E-Mail Addresses of Record maintained by the Clerk. Each attorney of record and each unrepresented party shall promptly serve notice upon all parties of

any change in such person's E-Mail Addresses of Record for the purposes of the action, and shall promptly notify the Clerk of such change, including identifying to the Clerk each action subject to EFP in which such e-mail address must be updated and confirming that such person has received test e-mail messages successfully from all persons who have consented to EFP in each such action.

4. Electronic Filing of Papers.

(a) In any case designated as subject to EFP, all papers required to be filed with the Clerk shall be filed electronically on the E.D.N.Y. Public Web Site pursuant to EFP, except as expressly provided herein. Electronic filing may only be conducted by a Filing User, as that term is defined in paragraph 12.

(b) Every paper filed electronically shall be signed for the purposes of Rule 11 of the Federal Rules of Civil Procedure and Rule 11.1 of the Local Civil Rules of this Court by one or more counsel of record or unrepresented parties (each, a "Rule 11 Signatory") pursuant to paragraph 5. For each Rule 11 Signatory, the paper shall provide such Signatory's name, address, telephone number, and E-mail Address of

Record; shall provide the information required pursuant to Rule 11.1 of the Local Civil Rules of this Court; and shall identify the Rule 11 Signatory as such.

(c) Electronic transmission of a paper to the E.D.N.Y. Public Web Site consistent with EFP, together with the receipt of a Notice of Electronic Filing from the Court in the form shown in the Users' Manual, shall constitute filing of the paper for all purposes of the Federal Rules of Civil Procedure and the Local Rules of this Court, and shall constitute entry of that paper on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Federal Rules of Civil Procedure. Only upon receipt of such Notice of Electronic Filing from the Court will the paper be deemed filed and entered.

(d) When a paper has been filed electronically, the official paper of record is the electronic recording of the paper as stored by the Court, and the filing party shall be bound by the paper as filed.

(e) Except in the case of papers first filed in paper form and subsequently submitted electronically, a paper filed electronically shall be

deemed filed at the date and time stated on the Notice of Electronic Filing from the Court.

(f) Any Filing User filing a paper electronically shall make and keep copies of the paper in both paper and electronic form for subsequent production to the Court if so ordered or for inspection upon request by a party until one year after final resolution of the action (including appeal, if any) in the case of the copy in paper form, and until ten years after final resolution of the action (including appeal, if any) in the case of the copy in electronic form. In the case of electronic copies, this paragraph shall not be construed to require the Filing User to duplicate the copy periodically or otherwise to prevent loss of the copy through normal degradation of the storage medium under reasonably prudent storage conditions, or to retain software or hardware sufficient to permit the viewing or interpretation of the electronic copy.

(g) Papers or sets of papers that are too bulky to permit electronic filing conveniently via the Filing User's Internet connection may be filed by bringing EFP-compliant copies on electronic media approved by the Clerk and filed electronically by the Filing User using a high-bandwidth Internet connection

and equipment to be provided by the Clerk in the Clerk's Office pursuant to subparagraph 16(a).

(h) A Filing User filing any paper electronically that requires a judicial officer's signature shall also promptly deliver such document in paper form to the judicial officer by U.S. mail or other means.

(i) Nothing in the EFP shall be interpreted to permit material prohibited by order from filing except under seal to be filed by any means except under physical seal.

(j) Individual rules of a Participating Judicial Officer requiring delivery of courtesy copies of any paper filed shall remain in force until rescinded by the Participating Judicial Officer, but the provisions of any such rule requiring equivalent service of the paper upon all parties shall be satisfied by compliance with the electronic filing and service provisions of the EFP.

5. Signatures. A paper filed with the Court electronically shall be deemed to be signed by a person (the "Signatory") when the paper identifies the person as a Signatory and the filing complies with either subparagraph

(a), (b) or (c). When the paper is filed with the Court in accordance any with these methods, the filing shall bind the Signatory as if the paper (or the paper to which the filing refers, in the case of a Notice of Endorsement filed pursuant to subparagraph (c)) were physically signed and filed, and shall function as the Signatory's signature, whether for purposes of Rule 11 of the Federal Rules of Civil Procedure, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(a) In the case of a Signatory who is a Filing User (as that term is defined in paragraph 12), such paper shall be deemed signed, regardless of the existence of a physical signature on the paper, provided that such paper is filed using the User ID and Password of the Signatory. The page on which the physical signature would appear if filed in paper form must be filed electronically, but need not be filed in an optically scanned format displaying the signature of the Signatory.

(b) In the case of a Signatory who is not a Filing User, or who is a Filing User but whose User ID and Password will not be utilized in the electronic filing of the paper, such paper shall be deemed signed

and filed when the paper is physically signed by the Signatory, the paper is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFP. The Filing User who files such paper shall retain the executed original of the paper as the copy in paper form required pursuant to paragraph 4(f).

(c) In the case of a paper that has already been filed electronically with the Court, the paper shall be deemed signed and filed by the Signatory when a Notice of Endorsement of the paper is signed and filed by the Signatory pursuant to either subparagraph (a) or (b). Such Notice must provide the title, electronic docket number, and date and time filed of the paper being so signed.

(d) In the case of a stipulation or other paper to be signed by two or more persons, the paper may be filed and signatures may be provided in a single electronic filing in which all signatures are authorized either (i) pursuant to subparagraph (b) alone, or (ii) pursuant to subparagraph (a) in the case of one Signatory who is a Filing User and pursuant to subparagraph (b) in the case of all other Signatories.

(e) In the case of a stipulation or other paper to be filed and signed by two or more persons, the paper may be filed and signatures may be provided in two or more electronic filings as follows: One Filing User shall initially confirm that the content of the paper is acceptable to all persons due to sign the paper and shall obtain the physical signatures on the paper of the Signatories who do not intend independently to transmit their signatures electronically to the Court. Such Filing User shall then file the paper and submit all such signatures electronically in a single electronic filing in which the signatures are authorized by subparagraphs (a) or (b) or both. The paper shall also list all persons whose signatures are due to be transmitted independently to the Court. Not later than the first business day after such filing, all other persons due to sign the paper shall file one or more Notices of Endorsement of the paper pursuant to subparagraph (c). The paper shall be deemed fully executed upon the filing of all Notices of Endorsement that are due.

6. Service on Parties or Other Persons Who Have Consented to EFP.

(a) An attorney or unrepresented party

filing a paper pursuant to EFP shall, within one hour following filing, send by e-mail a Notice of Filing of the paper to all E-Mail Addresses of Record. Such Notice shall provide, at a minimum, the electronic docket number and the title of the paper filed, and shall provide the date and time filed, as set forth in the Notice of Electronic Filing received from the Court. Such e-mail transmission(s) shall constitute service on the attorney or unrepresented party or other persons who have consented to EFP. Proof of such service shall be filed with the Court pursuant to the EFP, but such proof of service need not itself be served.

(b) Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the person, and such paper is filed and served electronically pursuant to EFP, one day shall be added to the prescribed period. Service pursuant to subparagraph (a) shall not constitute service by mail to which Rule 6(e) of the Federal Rule of Civil Procedure applies. Service shall be deemed complete on the date of e-mail transmission pursuant to

subparagraph (a).

(c) The filing of a Consent to EFP constitutes consent to service of all papers as provided herein as a full, adequate and timely substitute for service pursuant to Federal Rules of Civil Procedure.

7. Service on Persons Who Have Not Consented to EFP.

(a) Upon the filing of a third-party complaint pursuant to paragraph 1 in an action which is subject to EFP, the third-party plaintiff(s) shall serve notice that the action is subject to EFP upon the third-party defendant together with the third-party complaint. Concurrent with the filing of the third-party answer or other papers responsive to the third-party complaint, the third-party defendant shall either (i) file a Consent to EFP for purposes of the action, or (ii) move for exemption from EFP pursuant to subparagraph 2(d).

(b) In an action subject to EFP, when service of a paper other than a third-party complaint is required to be made upon a person who has not filed a Consent to EFP, a paper copy of the document shall be

served on the person as otherwise required by the Federal Rules of Civil Procedure or the Local Rules of this Court. If the person so served is permitted or required to respond to the paper, such time to respond shall be computed without regard to the EFP. Such person may file a Consent to EFP conforming to the requirements of paragraph 3 and thereby become subject to the EFP for the purposes of the action.

8. Docket. The E.D.N.Y. Public Web Site shall denote in a separate electronic document for each action subject to EFP the filing of any paper by or on behalf of a party and the entry of any order or judgment by the Court, regardless of whether such paper was filed electronically. The record of those filings and entries for each case shall be consistent with Rule 79(a) of the Federal Rules of Civil Procedure and shall constitute the docket for purposes of that Rule. The Clerk shall make such technical accommodations as may be necessary to permit the Court's existing PACER system to access electronic dockets for actions subject to EFP.

9. Notice and Entry of Orders and Judgments. The Clerk shall file electronically all orders, decrees, judgments, and proceedings of the Court in accordance with

the EFP, which shall constitute entry of the order, decree, judgment or proceeding on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Federal Rules of Civil Procedure. Immediately upon the entry of an order or judgment in an action subject to EFP, the Clerk shall transmit by e-mail to the E-Mail Addresses of Record a notice of the entry of the order or judgment and shall make a note in the docket of the transmission. Transmission of the notice of entry shall constitute notice as required by Rule 77(d) of the Federal Rules of Civil Procedure. When notice of the order or judgment is due to be provided to a person who has not consented to EFP, the Clerk shall give such notice in paper form pursuant to the Federal Rules of Civil Procedure.

10. Technical Failures.

(a) The Clerk shall deem the E.D.N.Y. Public Web Site to be subject to a technical failure on a given day if the Site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings shall be rejected unless accompanied by a declaration

or affidavit attesting to the filing person's failed attempts to file electronically at least two times after 12:00 p.m. separated by at least one hour on each day of delay due to such technical failure. The Clerk shall provide notice of all such technical failures on the E.D.N.Y. Public Web Site, and by means of an E.D.N.Y. Public Web Site status line which persons may telephone in order to learn the current status of the Site.

(b) If a Notice of Electronic Filing is not received from the Court following transmission of a paper for filing, the paper will not be deemed filed. The filing person must attempt to re-file the document electronically until such a Notice is received, consistent with the provisions of subparagraph (a) permitting delayed filings.

(c) If, within 24 hours after filing a paper electronically, the filing party discovers that the version of the paper available for viewing on the E.D.N.Y. Public Web site does not conform to the paper as transmitted upon filing, the filing party may file of right a Retransmitted copy of the paper. This provision (and the designation "Retransmitted") shall

not be used for the filing of corrections of typographical errors or other changes or variations from the paper as transmitted upon filing.

11. Voluntary Electronic Filing of Papers Not Otherwise Permitted to Be Filed. Notwithstanding the provisions of Local Civil Rule 5.1(a), in any action subject to EFP, the assigned Judge may enter an order authorizing the filing of discovery requests, discovery responses, discovery materials or other matter subject to Local Civil Rule 5.1(a), but only to the degree and upon terms and conditions to which all of the parties (or non-parties producing such materials) have previously agreed in a stipulation submitted to the Court. In the absence of such an order, no party shall file any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleading or other filings with the Court which must refer to such excerpts, quotations, etc.

12. Passwords and Other Attorney Information.

(a) Any attorney admitted to the Bar of this Court may register as a Filing User of the E.D.N.Y. Public Web Site. Registration shall be by paper on a form prescribed by the Clerk which shall require

identification of the action as well as the name, address, telephone number and Internet e-mail address of the attorney, together with a declaration that the attorney is admitted to the Bar of this Court.

(b) Any party to a pending civil action who is not represented by an attorney may register as a Filing User of the E.D.N.Y. Public Web Site solely for purposes of the action. Registration shall be by paper on a form prescribed by the Clerk which shall require identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the appearing attorney shall advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

(c) Each attorney of record and each unrepresented party is obligated to become a Filing User immediately upon designation of the action as being subject to EFP.

(d) Every Filing User shall notify the Clerk immediately of any change in the information provided in the Filing User's registration and such notice shall be separate and apart from the notice given pursuant to

paragraph 3 or Local Civil Rule 1.3(d).

(e) Each Filing User shall, upon registration, be issued a User Identification Designation ("User ID") and a Password by the Clerk. The Clerk shall maintain a confidential record of issued User IDs and Passwords.

(f) Each Filing User shall maintain as confidential, except as expressly provided in subparagraph (h), the User ID and Password issued by the Clerk. Upon learning of the compromise of the confidentiality of either the User ID or the Password, the Filing User shall immediately notify the Clerk, who will issue the User a new User ID or Password, as appropriate.

(g) The Clerk may at any time issue and transmit by e-mail a new User ID or Password to any Filing User. A Filing User may at any time obtain a new User ID or Password upon request to the Clerk by following secure procedures to be prescribed by the Clerk.

(h) A Filing User may authorize another person to file a paper using the User ID and Password of the Filing User, and the Filing User shall retain

full responsibility for any paper so filed.

13. Copyright And Other Proprietary Rights.

(a) The E.D.N.Y. Public Web Site shall bear a prominent notice as follows: "The contents of each filing in the electronic case files on the E.D.N.Y. Public Web Site are subject to copyright and other proprietary rights (with the exception of the opinions, memoranda and orders of this Court). Unless additional rights are expressly granted by the holder of the copyright or other proprietary right, the following terms of use shall apply: (i) Any person accessing this Web Site may view any filing, may print one copy of any filing for personal use, and may allow his or her browsing software, acting automatically, to cache locally any filing. (ii) Any other use inconsistent with such proprietary rights is prohibited, including but not limited to reproduction, adaptation, and public distribution, display and performance; and, in particular, the reproduction or other representation of such filings in an electronic database is prohibited. (iii) This notice does not purport to limit any fair use pursuant to applicable law."

(b) By consenting to EFP, each party or

other person and their counsel shall be deemed to consent to all uses of the filed materials consistent with the notice set forth in subparagraph (a).

(c) Materials filed electronically may bear copyright notices or other claims of proprietary rights for the purpose of such filing, but no such notice shall expressly claim to prohibit any of the uses permitted according to the notice set forth in subparagraph (a).

(d) By producing discovery materials in an action subject to electronic filing, or by filing any material in the action electronically or otherwise, each party or subpoenaed non-party or other non-party so producing or filing, and all of the counsel to such persons, shall be deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions of such excerpts, quotations, or selected exhibits from such discovery materials or other filed materials as part of motion papers, pleading or other filings with the Court which must

refer to such excerpts, quotations, etc.

14. Protective Order Respecting Proprietary Rights. In connection with discovery or the filing of any material in an action subject to EFP, any person may apply by motion for an order prohibiting the electronic filing in the action of certain specifically-identified materials on the grounds that such materials are subject to copyright or other proprietary rights and that, notwithstanding the existence of such rights and the notice for which subparagraph 13(a) provides, electronic filing in the action is likely to result in substantial prejudice to those proprietary rights. A motion for such an order shall be filed not less than five days before the materials to which the motion pertains are due to be produced or filed with the Court. Any material not filed electronically pursuant to such an order shall be filed with the Clerk and served as if the action were not subject to EFP. Nothing in this paragraph shall be construed to change the standard for the issuance of a protective order respecting confidentiality in an action subject to EFP.

15. Protective Order Respecting Privacy Interests. In connection with discovery or the filing of any material in an action subject to EFP, any person may

apply by motion for an order prohibiting the electronic filing in the action of certain specifically-identified materials on the grounds that the electronic filing of such materials is subject to privacy interests and that electronic filing in the action is likely to prejudice those privacy interests. A motion for such an order shall be filed not less than five days before the materials to which the motion pertains are due to be produced or filed with the Court. Any material not filed electronically pursuant to such an order shall be filed with the Clerk and served as if the action were not subject to EFP. Nothing in this paragraph shall be construed to change the standard for the issuance of a protective order respecting confidentiality in an action subject to EFP.

16. Miscellaneous Provisions.

(a) The Clerk's Office shall provide sufficient equipment and facilities, including high-bandwidth Internet access, to allow for public electronic filing of papers and for public access to all Court records. The use of such facilities and equipment for any purpose other than accessing the E.D.N.Y. Public Web Site is prohibited.

(b) Until such time as the United States Court of Appeals for the Second Circuit provides notice

to the Chief Judge that public access to the E.D.N.Y. Public Web Site obviates or modifies any need for transmittal of the record on appeal of any action subject to EFP as to which a notice of appeal to that Court of Appeals has been filed, when required, the Clerk shall deliver to the Court of Appeals, at that Court's election, either a complete paper copy of the record on appeal or an electronic reproduction of that record on appeal as such record is reflected in the E.D.N.Y. Public Web Site.

(c) This Administrative Order and the Users' Manual shall be posted on the E.D.N.Y. Public Web Site in a location which may be reached from the home page of that Site via one or more highly visible and easily found hyperlinks; shall be published periodically in the New York Law Journal; and shall be posted prominently in each of the Courthouses of this District. Any amendments to the EFP shall be similarly posted and published.

(d) This Administrative Order and the Users' Manual shall be effective when this Order is signed and may be amended by the Court from time to time on the Court's own initiative.

Dated: Brooklyn, New York
September ____, 1997

HON. CHARLES P. SIFTON
Chief Judge
United States District Court
Eastern District of New York