

November 5, 2014

INDIVIDUAL RULES & PRACTICES IN CIVIL CASES
VERNON S. BRODERICK, UNITED STATES DISTRICT JUDGE

Chambers

United States District Court
 Southern District of New York
 Thurgood Marshall United States Courthouse
 40 Foley Square, Room 415
 New York, NY 10007
 (212) 805-6165

Courtroom

United States District Court
 Southern District of New York
 Thurgood Marshall United States Courthouse
 40 Foley Square, Courtroom 518
 New York, NY 10007
 Melissa Williams, Courtroom Deputy
 (212) 805-0183

Unless otherwise ordered by Judge Broderick, these Individual Rules & Practices apply to all parties in all civil matters except for civil *pro se* litigants, who must send all papers and all communications with the Court to the Pro Se Office.

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court shall be by letter, **no longer than three pages**, filed on ECF.

Parties should not submit courtesy copies of letters filed on ECF, unless the letter has an attachment greater than ten pages. In such cases, counsel should ensure that the courtesy copy is a copy of the ECF-filed version of the letter and includes the automatically-generated ECF header (that is, the text—*e.g.*, “Case 1:14-cv-01234-ABC Document 100 Filed 01/1/14 Page 1 of 1”—appearing at the top of each page of a document on the ECF system).

Letters to be filed under seal or containing sensitive or confidential information may be emailed to the Court at BroderickNYSDCChambers@nysd.uscourts.gov as a .pdf attachment. All counsel must be copied on the email. The email shall state clearly in the subject line: (1) the caption of the case, including the docket number and lead party names; and (2) a brief description of the contents of the letter (*e.g.*, “14-cv-9999 – Jones v. Smith – Request to File Under Seal”). Parties shall not include substantive communications in the body of the email; substantive communications shall appear only in the body of the attached letter. Parties are directed to Rule 5.B for additional guidance for filing documents in redacted form or under seal.

Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly-filed document).

- B. Proposed Stipulations and Orders.** Except as otherwise provided in these Rules, parties shall submit all proposed stipulations and orders that they wish the Court to sign to the Orders and Judgments Clerk at judgments@nysd.uscourts.gov in accordance with the

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ECF Rules and Instructions. Courtesy copies shall not be sent to Chambers. The parties shall email chambers at BroderickNYSDChambers@nysd.uscourts.gov immediately upon an agreement to settlement.

- C. Telephone Calls.** For docketing, scheduling, and calendar matters, call Courtroom Deputy Melissa Williams at (212) 805-0183. Otherwise, telephone calls to Chambers are permitted **only** for urgent matters. In such situations, call Chambers at (212) 805-6165.
- D. Faxes.** Faxes to Chambers are permitted only with prior authorization. Faxed submissions must clearly identify the person in Chambers who authorized the sending of the fax, and copies must be simultaneously faxed, emailed, or delivered to all counsel.
- E. Emails.** Except as otherwise noted in these Rules (*e.g.*, Rules 1.A, 1.B, and 6.B.i), parties and counsel may not send emails to Chambers without prior permission.
- F. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance to 500 Pearl Street; it may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then taken to Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, however, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- G. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions. (If such request contains sensitive or confidential information, it may be submitted by email as indicated in Rule 1.A above.) The letter-motion must state: (1) the original due date; (2) the number of previous requests for adjournments or extensions of time; (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 must be included. If the request is for an adjournment of a court appearance, absent an emergency the request shall be made at least 48 hours prior to the scheduled appearance.

2. Conferences

- A. Attendance by Principal Trial Counsel.** Absent prior authorization, the attorney who will serve as principal trial counsel must appear at all conferences with the Court.
- B. Attendance by Telephone.** Requests to appear at a conference by telephone must be made via letter filed on ECF explaining why counsel cannot appear in person.
- C. Initial Case Management Conference.** The Court will generally schedule a Fed. R. Civ. P. 16(c) conference within three months of the filing of the Complaint. The Notice of

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Initial Pretrial Conference will be made available on ECF, and plaintiff's counsel will be responsible for distributing copies to all parties. This Notice will direct the parties to file on ECF one week prior to the conference date a joint letter to the Court containing the information set forth in the order scheduling the initial conference and a proposed Civil Case Management Plan and Scheduling Order, the template for which is available on the Court's website at <http://nysd.uscourts.gov/judge/Broderick>. In accordance with the ECF Rules and Instructions, counsel are required to register as ECF filers and enter an appearance in the case before the initial pretrial conference. The pertinent instructions are available at http://www.nysd.uscourts.gov/ecf_filing.php.

- 3. Discovery Disputes.** Follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may file on ECF a letter-motion to the Court, **no longer than three pages**, explaining the nature of the dispute and requesting an informal conference. Such a letter **must** include a representation that the meet-and-confer process occurred and was unsuccessful. The representation shall include the date and approximate length of the meet-and-confer session(s). If the opposing party wishes to respond, it must call Chambers to advise that a responsive letter will be forthcoming. Responsive letters, **no longer than three pages**, must be filed on ECF within three business days of the filing of the original letter-motion. **No party shall submit a reply letter.**

4. Motions

- A. Pre-Motion Conferences in Civil Cases.** For discovery motions, follow Rule 3 above. For all other motions, a pre-motion conference with the Court is required before making a motion, except for the following: motions previously authorized by the Court; motions brought by order to show cause or for a preliminary injunction; motions in cases involving incarcerated *pro se* litigants; motions for admission *pro hac vice*; motions for reargument or reconsideration; motions for appointment of lead plaintiffs and lead counsel in class actions; motions for remand; motions brought pursuant to Local Civil Rules 1.4, 6.3; and motions described in Fed. R. Civ. P. 6(b) and Fed. R. App. P. 4(a)(4)(A).

To arrange a pre-motion conference, the moving party shall submit a letter, in accordance with Rule 1.A, **no longer than three pages**, setting forth the basis for the anticipated motion. The letter shall include citations to relevant authority and should provide a brief overview of the anticipated motion. All parties so served **must** submit a letter response, **no longer than three pages**, within three business days from service of the notification letter. Response letters shall directly address the arguments and authorities set forth in the moving party's letter. No party shall submit a reply letter. As a general matter, affidavits or exhibits are **not** permitted in connection with pre-motion letters without prior written request and permission. However, when submitting a pre-motion letter regarding a request to amend a pleading, the moving party shall attach the proposed amended pleading.

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A party's submission of a pre-motion letter seeking leave to file a pre-answer motion to dismiss will stay that party's obligation to answer or move against the complaint through the date of the pre-motion conference.

- B. Memoranda of Law.** As a general matter, citations to cases should be in the body, rather than footnotes, of 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 and a table of authorities and shall conform to Local Civil Rule 11.1. Sur-reply memoranda will not be accepted without prior permission of the Court.
- C. Unpublished Cases.** Westlaw citations shall be provided, if available, to cases not available in an official reporter. Parties must provide copies of unpublished cases that are not available on Westlaw.
- D. Affidavits and Exhibits.** Parties are limited to a total of five affidavits each in support of or in opposition to a motion. Affidavits may not exceed ten double-spaced pages. Parties may request leave, for good cause, to file additional or over-length affidavits. All exhibits shall be clearly labeled, tabbed, and indexed. For any hearing or deposition transcript submitted, the parties shall provide the Court with an electronic, text-searchable courtesy copy of the entire proceeding, if such copy is available, unless doing so would be unduly burdensome. (Parties shall provide these materials on a CD only, not on a DVD or memory stick, and not by email.)
- E. Courtesy Copies.** Two printed courtesy copies of all motion papers, marked "Courtesy Copy," shall be submitted by the movant at the time the reply is served. All courtesy copies shall be doubled-sided, three-hole punched, tabbed, and placed in binders with a table of contents. The non-moving party shall provide the movant with an unbound set of its motion papers, double-sided and three-hole punched. If the parties have redacted or filed under seal any portion of the motion papers or exhibits in compliance with Rule 5.B below, courtesy copies are to be unredacted, but the portions redacted from public filings shall be highlighted and identified, so that the Court will know to refrain from quoting those passages in opinions and orders. If providing courtesy copies in this manner will be unduly burdensome, the parties shall so advise the Court via letter filed on ECF.
- F. Motions for Summary Judgment.** Except in *pro se* cases, the moving party shall provide all other parties with an electronic copy of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. The opposing party must reproduce each entry in the moving party's Rule 56.1 Statement and set out its response directly beneath it.
- G. Letter Motions.** Letter-motions filed via ECF must comply with the S.D.N.Y. Local Rules and the S.D.N.Y. "Electronic Case Filing Rules and Instructions."

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H. Default Judgments. A plaintiff seeking a default judgment must proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.

I. Oral Argument on Motions. Parties may request oral argument at the time they file their moving, opposing, or reply papers. They may do so by filing on ECF a letter specifically requesting oral argument. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

5. Other Pretrial Guidance

A. Cases Removed from State Court. Counsel for the party or parties that removed the case must, in addition to providing a copy of all process, pleadings, and papers served upon the defendants pursuant to 28 U.S.C. § 1446(a), provide the Court with a courtesy copy of any pleading filed or served while the case remained in State court. Counsel for all parties must file a notice of appearance in this Court promptly upon removal.

B. Redactions and Filing Under Seal. Any party wishing to file in redacted form any document, or any portion thereof, must make a specific request to the Court by letter, *see* Rule 1.A above, explaining the reasons for seeking to file that document under seal. The party must attach to its letter: (1) one full set of the relevant document(s) in highlighted form (*i.e.*, with the words, phrases, or paragraphs to be redacted highlighted), and (2) one partial, loose-leaf set of solely those pages on which the party seeks to redact material. Upon receiving these documents, the Court will individually review the proposed redactions. The party shall then file under seal the unredacted pages for which the Court has approved redactions, and the redacted version of the document(s) on ECF.

C. Diversity Jurisdiction Cases. In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction shall, prior to the initial pretrial conference described in Rule 2.C above, file on ECF a letter **no longer than two pages** explaining the basis for that party's belief that diversity of citizenship exists. Where any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases where any party is a partnership, limited partnership, limited liability company, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.

D. Bankruptcy Appeals. Unless otherwise ordered, briefs must be submitted in accordance with Fed. R. Bankr. P. 8009 and 8010. The appeal may be dismissed if the opening brief is not timely filed. Counsel may apply for an extension of the dates specified in Fed. R. Bankr. P. 8009 by joint request but must do so at least two business days before the brief is due. The page limits in Rule 7.1(b) of the Local Civil Rules must be observed.

6. Trial Submissions

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- A. Joint Pretrial Order.** Unless otherwise specified by the Court, within 30 days after the close of discovery or, if any dispositive motion is filed, within thirty 30 days from the Court's decision on such motion, the parties shall file on ECF a proposed joint pretrial order, which 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, law firms, business addresses, and telephone and fax numbers of trial counsel.
 - iii.** A brief statement by the plaintiff as to the basis 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 of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. The summaries shall also identify all claims and defenses previously asserted which are **not** to be tried. The summaries should not recite any evidentiary matter.
 - v.** A statement as to the number of trial days needed and as to whether the case is to be tried with or without a jury.
 - vi.** A statement as to whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent.
 - vii.** Any stipulations or agreed statements of fact or law to which all parties consent.
 - viii.** A list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony.
 - ix.** A designation by each party of deposition testimony to be offered in its case in chief, and any counter-designations and objections by any other party.
 - x.** A list by each party of exhibits to be offered in its case in chief, with an indication by exhibit number as to whether any party objects to the exhibit. The party objecting must include a brief statement that makes clear the basis for its objection and must provide any necessary supporting authority.
 - xi.** A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages.
 - xii.** A statement as to whether the parties consent to less than a unanimous verdict.

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B. Required Pretrial Filings. Each party shall file on ECF and serve with the joint pretrial order:

- i.** In **all** cases—motions addressing any evidentiary issues or other matters which should be resolved *in limine*. Any document that is the subject of an *in limine* motion should be submitted to the Court by email to BroderickNYSDChambers@nysd.uscourts.gov and served on opposing counsel but **not** filed on ECF.
- ii.** In **all** cases—a pretrial memorandum of law where a party believes it would be helpful to the Court.
- iii.** In **jury** cases—joint proposed voir dire questions, a verdict form, and jury instructions. These joint submissions shall consist of single documents, jointly composed, noting any areas of disagreement between the parties. The voir dire questions and jury instructions shall include both the text of any requested question or instruction as well as a citation, if relevant, to the authority from which it derives. These documents should also be submitted by email to BroderickNYSDChambers@nysd.uscourts.gov in Word format.
- iv.** In **non-jury** cases—proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. These documents should also be submitted by email to BroderickNYSDChambers@nysd.uscourts.gov in Word format.

C. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed in a non-jury case, each party shall send to the Court by mail or hand delivery and serve on opposing counsel, but not file on ECF, the following:

- i.** All deposition excerpts which will be offered as substantive evidence.
- ii.** All documentary exhibits.

D. Filings in Opposition. Any party may file the following documents in opposition. These documents shall be filed no later than one week after the filing of the pretrial order or three days before the scheduled trial date, whichever comes first:

- i.** Objections to another party’s requests to charge or proposed voir dire questions.
- ii.** Opposition to any motion *in limine*.
- iii.** Opposition to any legal argument in a pretrial memorandum.

E. Courtesy Copies. Two courtesy copies of all documents identified in Rules 6.A, B, C.i, and D above shall be submitted to Chambers on the date on which they are to be served

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or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into two independent sets (except for documentary exhibits).

F. Exhibits. All exhibits must be pre-marked in advance of trial. If counsel intend to distribute copies of documentary exhibits to the jury, they are to make a separate copy for each juror. Counsel shall make certain that they have custody of all original exhibits. The Court does not retain them, and the Courtroom Deputy is not responsible for them.

G. Trial Schedule. Trials will generally be conducted Monday through Thursday from 9:30 a.m. to 5:00 p.m., with lunch from 12:45 p.m. to 2:00 p.m. However, any Trial scheduled to last for approximately one week will be conducted Monday through Friday. Upon request, the Court will be available to meet with counsel from 9:00 a.m. to 9:30 a.m. Such requests must be made by 9:30 p.m. the evening before the requested meeting.

7. Post-Trial Procedures. Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes of appeal. Counsel perceiving an error that is material shall stipulate to the appropriate correction or, if agreement cannot be reached, shall proceed by motion on notice. Non-material defects in syntax, grammar, spelling, or punctuation should be ignored.

8. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468 (Electronic Devices and General Purposes Computing Devices). Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. **Mobile phones are permitted inside the Courtroom, but must be kept turned off at all times.** Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

B. Computers, Printers or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a "personal electronic device," specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse shall submit a letter to Chambers at least ten business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

ATTACHMENT A**DEFAULT JUDGMENT PROCEDURE**

- 1.** Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Broderick. Leave blank the date and time of the conference. Judge Broderick will set the date and time when he signs the Order.
- 2.** Provide the following supporting papers with the Order to Show Cause:
 - A.** An attorney's affidavit setting forth:
 - i.** The basis for entering a default judgment, including a description of the method and date of service of the summons and complaint.
 - ii.** The procedural history beyond service of the summons and complaint, if any.
 - iii.** Whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action.
 - iv.** The proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs.
 - v.** Legal authority for why an inquest into damages would be unnecessary.
 - B.** A proposed default judgment.
 - C.** Copies of all of the pleadings.
 - D.** A copy of the affidavit of service of the summons and complaint.
 - E.** A Certificate of Default from the Clerk of Court.
- 3.** Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for initial review and approval.
- 4.** After the Orders and Judgments Clerk approves the Order to Show Cause, bring all of the papers, plus one courtesy copy of each, to Chambers (Room 415, 40 Foley Square).
- 5.** If Judge Broderick signs the Order, the party should be prepared to serve a conforming copy of the Order and supporting papers on the defendant.
- 6.** Prior to the return date, file through the CM/ECF system: (1) an affidavit of service, reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (2) the supporting papers. (The signed Order itself will be scanned and docketed)

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by Chambers.)

7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for the Clerk's approval. The proposed judgment, including all damages and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.