

INDIVIDUAL PRACTICES OF JUDGE VINCENT L. BRICCETTI

Chambers

United States Courthouse
300 Quarropas Street, Room 630
White Plains, NY 10601
(914) 390-4166

Courtroom

Courtroom 620
Donna Hilbert, Courtroom Deputy Clerk
Donna_Hilbert@nysd.uscourts.gov
(914) 390-4167

Unless otherwise ordered, matters before Judge Briccetti shall be conducted in accordance with the following procedures:

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. Letters shall *not* be filed via ECF unless the Court directs otherwise. Copies of correspondence between or among counsel shall *not* be sent to the Court.
- B. Telephone Calls.** Except as provided below, telephone calls to chambers are permitted only in situations requiring immediate attention. In such situations, call chambers at (914) 390-4166.
- C. Faxes and Emails.** Faxes to chambers in lieu of mail or hand deliveries are encouraged. Copies must be simultaneously faxed or delivered to all counsel. No document longer than five pages may be faxed without prior permission. The fax number is (914) 390-4170. *If a document is faxed to chambers, do NOT also send a hard copy.* If a party wishes to email a pdf document to the Court, it must obtain prior permission to do so. The email should indicate who in chambers provided such permission, and must be copied to all counsel.
- D. Docketing, Scheduling, and Calendar Matters.** Please call Donna Hilbert, Courtroom Deputy Clerk, at (914) 390-4167, during regular business hours.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time shall be in writing and must include:
 - i. the original date;

- ii. the number of previous requests for adjournment or extension, and the reason(s) therefor;
- iii. whether the previous requests were granted or denied;
- iv. the reason for the instant request; and
- v. 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 attached. Absent extraordinary circumstances, requests for extensions will be denied if not made before the expiration of the original deadline. 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. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be directed to that assigned Magistrate Judge.

PLEASE NOTE: Judge Briccetti will not routinely grant adjournments or extensions of time, even if agreed to by counsel.

- F. Proposed Orders and Stipulations.** All proposed orders, and stipulations requiring the Court's signature, must be submitted directly to the Clerk. In ECF cases these documents must be sent by email to wpclerk@nysd.uscourts.gov. Please do not send courtesy copies to chambers.

2. Pleadings and Motions

- A. Courtesy Copies.** One courtesy hard copy of all pleadings (complaint, answer, reply) and motion papers (with the exception of motions for admission *pro hac vice*), shall be submitted to chambers as soon as practicable after filing. Courtesy copies should be clearly marked as such. If hand-delivered, courtesy copies should be brought to the Clerk's office on the first floor of the courthouse, not to chambers.

PLEASE NOTE: If a courtesy copy of a document filed on ECF is not delivered to chambers, it may not come to the Court's attention in a timely manner.

Whenever possible, the courtesy hard copy should be accompanied by an electronic copy submitted on any portable media (CD/DVD preferred).

B. Pre-Motion Conferences in Civil Cases.

Discovery motions: For discovery motions, follow Local Civil Rule 37.2, requiring the moving party to request an informal conference with the Court before the filing of any such motion. Strict adherence to Fed. R. Civ. P. 37(a)(1), the “meet and confer” rule, is required. The parties should be prepared to describe the time, place, and duration of the meeting, and to identify the counsel involved.

Summary Judgment motions: A pre-motion conference is required before making a motion for summary judgment.

To arrange a pre-motion conference, the moving party shall submit a letter to the Court, not to exceed three pages, setting forth the basis for the anticipated motion. Within three business days, the opposing party shall submit a letter, also not to exceed three pages, setting forth its position.

Other substantive motions: A pre-motion conference is not required for other substantive motions.

C. Motion Papers.

- i. 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. All memoranda of law shall be in 12-point font or larger and be double-spaced, and shall have one inch margins on all sides. Unless prior permission has been granted, sur-reply memoranda will not be accepted.
- ii. All documents submitted in connection with motions must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open. Parties should submit multiple volumes rather than large documents that do not lie reasonably flat when open.

D. Special Rules for Motions to Dismiss. Upon the filing of a motion to dismiss, the Court will ordinarily issue an order requiring the non-moving party, within ten days, to notify the Court and its adversary whether it intends to file an amended pleading, or will rely on the pleading being attacked. If the non-moving party elects not to amend its pleading, the motion to dismiss will proceed in the regular course and, absent special circumstances, no further opportunities to amend will be granted.

If the non-moving party amends its pleading, the moving party may then

file an answer, file a new motion to dismiss, or notify the Court that it will rely on the initially-filed motion to dismiss.

E. Special Rules for Summary Judgment Motions.

- i. 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. Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it.
- ii. With respect to any deposition transcript that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- iii. Except in *pro se* cases, the parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.)

F. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the date and time.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days after the date for completion of discovery in a civil case, or, if a dispositive motion has been filed, within 30 days after a decision on the motion, the parties shall submit to the Court for its approval a Joint Pretrial Order, with one courtesy hard copy for chambers.

The Joint Pretrial Order 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, addresses (including firm names), email addresses, and telephone and fax numbers of trial counsel.
- iii. A brief statement by 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 party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. The parties shall also identify all claims and defenses previously asserted that are not to be tried.
- v. 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.
- vi. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
- vii. Any stipulations or agreed statements of fact or law.
- viii. A list of the witnesses each party expects to call on its case in chief, including a very brief description of the witness's role and/or the subject matter of his or her anticipated testimony, and a statement as to whether any other party objects to the witness.
- ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.
- xi. A statement of the relief sought, including damages claimed, itemizing each component or element of the damages sought with respect to each claim, and including the manner and method used to calculate the claimed damages.
- xii. A statement as to whether the parties consent to a less than unanimous verdict.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file the following documents, and submit one courtesy hard copy to chambers, 15 days before the date of

commencement of trial if such a date has been fixed, or 30 days after the filing of the Joint Pretrial Order if no date has been fixed:

- i. In jury cases, proposed *voir dire* questions, requests to charge, and verdict form. In addition to being filed in the normal manner, proposed jury instructions should be emailed to Judge Briccetti's law clerk. Counsel should call chambers at (914) 390-4166 to make arrangements for same. Each proposed jury instruction must contain a citation to the source/authority for the proposed instruction, or the request will be disregarded.
- ii. In nonjury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed, and proposed conclusions of law should include a statement of the elements of each claim or defense.
- iii. In all cases, motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- iv. In any case in which any party believes it would be useful, a pretrial memorandum.

C. Filings in Opposition. Unless otherwise ordered by the Court, any party may file, and submit one courtesy hard copy to chambers, the following documents within one week of the filing of any document described in section 3(B) above:

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

D. Additional Submissions in Non-Jury Cases. Unless otherwise ordered by the Court, at the time the Joint Pretrial Order is filed, each party shall serve, *but not file*, the following:

- i. Affidavits constituting the direct testimony of each trial witness, except for the testimony of an adverse witness for whom a party has requested and the Court has agreed to hear direct testimony during the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at trial. Only those witnesses who will be cross-examined need appear at trial. The

original affidavit shall be marked as an exhibit at trial.

- ii. All deposition excerpts which will be offered as substantive evidence, as well as a 1-page synopsis (with page references) of those excerpts for each deposition.
- iii. All documentary exhibits.

4. 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.

5. Default Judgments

A party that wishes to obtain a default judgment must proceed by way of order to show cause. Follow the Default Judgment Procedure, attached hereto as Attachment A.

6. Bankruptcy Appeals

Briefs must be submitted in accordance with Federal Rule of Bankruptcy Procedure 8009. Counsel may extend these dates by stipulation submitted to the Court no later than two business days before the brief is due. The page limits in Rule 7.1(b) of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York must be observed.

7. Criminal Cases

- A. Initial Matters.** Upon assignment of a criminal case to Judge Briccetti, the parties shall immediately arrange with the Courtroom Deputy for a prompt initial conference, at which the defendant will be present. The Assistant United States Attorney (“AUSA”) shall provide to chambers, as soon as practicable, a courtesy copy of the Indictment or Information, and a courtesy copy of the Complaint, if one exists.
- B. Guilty Pleas.** Guilty pleas will ordinarily be taken by Judge Briccetti and will not be assigned to Magistrate Judges by standing order. Permission for a guilty plea to be taken before a Magistrate Judge may be given under special circumstances. The AUSA shall provide a courtesy copy of any plea agreement or related documents to chambers as soon as

practicable.

- C. Sentencing.** Follow the Sentencing Procedures attached hereto as Attachment B.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Briccetti in Courtroom 620 of the United States Courthouse, 300 Quarropas Street, White Plains, NY. Leave blank the date and time of the conference. Judge Briccetti will set the date and time when he signs the Order.
2. Attach the following papers to the Order to Show Cause:
 - a. an attorney's affidavit setting forth:
 - i) why a default judgment is appropriate, including a description of the method and date of service of the original summons and complaint;
 - ii) 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 liability and/or damages prior to resolution of the entire action (see Fed. R. Civ. P. Rule 54(b));
 - iii) the proposed Statement of Damages and the basis for each element of damages including interest, attorney's fees, and costs; and
 - iv) legal authority for why an inquest 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 original summons and complaint;
 - e. if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause with the attachments to the Clerk's Office (1st Floor, White Plains Courthouse) for approval.
4. After the Clerk approves the Order to Show Cause, the Clerk will bring the papers to chambers (room 630) for the Judge's signature.
5. After the Judge signs the Order, make two conforming copies of the Order and the attachments. Leave one copy with the Judge, and serve one copy on the

defendant.

6. Prior to the return date, file the affidavit of service on the defendant of a conformed copy of the Order. For ECF cases, the affidavit of service must be filed electronically on the ECF system.

ATTACHMENT B

SENTENCING PROCEDURES

Unless permission to the contrary has been obtained, every document in a sentencing submission, including letters, should be filed in the public record, either in paper form or through the ECF system, using the procedures described below. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends, relatives, etc. The Government is responsible for filing all letters from victims.

In this regard, the parties are referred to E-Government Act of 2002 and the Southern District's ECF Rules & Instructions, Section 21, Privacy and Public Access to ECF cases, ("Privacy Policy") and reminded not, unless necessary, to include the five categories of "sensitive information" in their submissions (*i.e.*, social security numbers; names of minor children [use the initials only]; dates of birth [use the year only]; financial account numbers; and home addresses [use only the city and state]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (*i.e.*, personal identifying numbers; medical records, treatment and diagnosis; employment history; individual financial information; proprietary or trade secret information; and information regarding an individual's cooperation with the government) as described in the Privacy Policy, without application to the Court. If any material is redacted from the publicly filed document, only those pages containing the redacted material will be filed under seal. Bring a copy of those pages to the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.

1. A defendant's sentencing submission shall be served two weeks in advance of the date set for sentence. The Government's sentencing submission shall be served one week in advance of the date set for sentence. The parties should provide the Court with one courtesy copy of each submission when it is served. At the time it is served, a party shall file its sentencing submission following one of the two procedures described here.
 - a. Paper Filing. If the case is not electronically filed, letters must be filed as hard copies. A party shall group all letters together in a single paper filing under a cover marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated and submit it to the Clerk's Office.
 - b. ECF Filing. If the case is electronically filed, letters must be filed electronically on the ECF system. A party shall group and file the letters together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.
2. If a party redacts information beyond the eleven categories of information

identified in the Privacy Policy, an application to do so must be served and filed at the time the sentencing submission is served. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

3. If you have any questions about these procedures, contact Judge Briccetti's Courtroom Deputy Clerk, Donna Hilbert, at (914) 390-4167.