

INDIVIDUAL PRACTICES IN CIVIL CASES
KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE

Chambers

U.S. District Court
500 Pearl Street, Room 1950
New York, NY 10007
Parker_NYSDChambers@nysd.uscourts.gov

Courtroom

Daniel Patrick Moynihan Courthouse
500 Pearl St., Courtroom 17D
Courtroom Deputy
(212) 805-0234

I. Communications with Chambers.

a. Letters. In general, communications with the Court should be by letter.

Represented Parties. Letters to be filed under seal, *ex parte* settlement letters, proposed case management plans, reports on conferences pursuant to Federal Rule of Civil Procedure 26(f) or letters otherwise containing sensitive or confidential information should be emailed to Chambers as a .pdf (but not .pdf/A) attachment to Parker_NYSDChambers@nysd.uscourts.gov. E-mails shall state in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the content of the communication. Parties shall not include substantive communications in the body of the e-mail; such communications shall be included only in the attached letter. Confidential information should be clearly indicated as such in the letter. All other categories of letters must be filed electronically on ECF. In *pro se* cases, counsel must file the proposed case management plan via ECF. Counsel must serve the *pro se* party with a paper copy of any document that is filed electronically or emailed and must separately file a proof of service with the Court.

Pro Se Parties. By Standing Order, a *pro se* party must mail all communications with the Court to the Pro Se Intake Unit located at 500 Pearl Street, Room 200, New York, NY 10007. A *pro se* party must not send any document or filing directly to Chambers. Submissions requiring immediate attention should be hand-delivered to the Pro Se Intake Unit. Unless the Court orders otherwise and except for the Proposed Case Management Plan, all communications with the Court will be docketed upon receipt; such docketing shall constitute service on any user of the ECF system. If any other party is not a user of the ECF system (*e.g.*, if there is another *pro se* party in the case), a *pro se* party must send copies of any filing to the party and include proof of service affirming that he or she has done so. Copies of correspondence between a *pro se* party and opposing parties shall not be sent to the Court.

Any **nonincarcerated** *pro se* party who wishes to participate in electronic case filing (“ECF”) must file a Motion for Permission for Electronic Case Filing, available in the Pro Se Intake Unit or at

<http://nysd.uscourts.gov/file/forms/motion-for-permission-for-electronic-case-filing-for-pro-se-cases>.

Any **nonincarcerated** *pro se* party who wishes to receive documents in their case electronically (by e-mail) instead of by regular mail may consent to electronic service by filing a Pro Se (Nonprisoner) Consent & Registration Form to Receive Documents Electronically, available in the Pro Se Intake Unit or at <http://nysd.uscourts.gov/file/forms/consent-to-electronic-service-for-pro-se-cases>.

Page Limit. Whether filed electronically or not, letters may not exceed 3 single-space pages in length (exclusive of exhibits). 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).

Courtesy Copies. If exhibits to letters exceed 10 pages, please contact the Courtroom Deputy, Christopher Aiello, at 212-805-4220 to determine if a hard courtesy copy for the Court will be required.

- b. Letter-Motions.** Letter motions may be filed by ECF in accordance with the S.D.N.Y. Local Rules and the S.D.N.Y. Electronic Case Filing Rules and Instructions. In particular, parties shall file as letter-motions all requests for adjournments, extensions, pre-motion conferences (including pre-motion conferences with respect to discovery disputes) and requests for a settlement conference.

Letter motions are limited to 3 single-space pages (not including exhibits). If exhibits to any motion exceed 10 pages, please contact the Courtroom Deputy, Christopher Aiello, at 212-805-4220 to determine if a hard courtesy copy for the Court will be required.

- c. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of 500 Pearl Street and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- d. Docketing, Scheduling and Calendar Matters.** For docketing, scheduling and calendar matters, call Christopher Aiello, the Courtroom Deputy, at (212) 805-4220 between 9:00 a.m. and 5:00 p.m.

- e. **Faxes.** Prior approval of Chambers is required before sending any fax. Faxes must not exceed three pages and must be submitted to Chambers at (212) 805-7932. All faxes must simultaneously be faxed or delivered to all parties.
- f. **Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be filed on ECF as letter-motions. (If a request contains sensitive or confidential information, it may be submitted by .pdf via e-mail in lieu of being filed electronically.) The letter-motion must state: (1) the original date(s); (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 a conference must be rescheduled, counsel shall propose at least two alternative dates that fall in consecutive weeks. Absent good cause, any request for extension or adjournment shall be made **at least 48 hours** before the deadline or scheduled appearance.
- g. **ECF.** In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register promptly as ECF filers and to enter an appearance in the case. The pertinent instructions are available on the Court website, at http://www.nysd.uscourts.gov/ecf_filing.php. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity. For questions about ECF rules and procedures, please contact the ECF help desk at (212) 805-0800.

II. Pre-Trial Practice.

- a. **Complaints.** All complaints must be posted on ECF. Complaints cannot be uploaded directly to ECF and must instead be emailed to Case Openings, according to the instructions on the Court's website. For any question regarding this procedure, call Case Openings at (212) 805-0632.
- b. **Initial Case Management Conference.** Except for Complex Cases and *Pro Se* Cases, Parties must confer and then email a Report of Rule 26(f) Conference and Proposed Case Management Plan to the Court one week before the Initial Case Management Conference as a .pdf attachment consistent with Paragraph I(a) above. A template form for the Report of Rule 26(f) Conference and Proposed Case Management Plan is available at <http://nysd.uscourts.gov/judge/Parker>.

Complex Cases. Parties must confer and email the Court no later than one week before the Initial Case Management Conference, an Initial Report that includes the parties' positions on the applicable topics included on the "Initial Pretrial Conference Checklist for Complex Cases" at Appendix A. The parties also must submit by email a joint Proposed Civil Case Management Plan and Scheduling Order.

Pro Se Cases. The parties each must submit their Case Report and Proposed Case Management Plan for *Pro Se* Cases one week before the scheduled conference in conformance with the procedures in Section I above. The parties shall use the form Proposed Case Management Plan template for *Pro Se* Cases found at <http://nysd.uscourts.gov/judge/Parker>.

Attendance. Lead counsel for the parties are expected to attend the Initial Case Management Conference. Reasonable accommodations will be made for parties or their counsel who cannot attend in person on account of disability. Additionally, an **incarcerated party** who is unable to attend this or other conferences, may be able to participate by telephone or video conference. If appropriate, the Court's scheduling order will outline the procedures for participation by telephone or video conference.

- c. **Discovery Disputes.** Parties shall follow Local 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 submit an ECF letter-motion to the Court or, if applicable, to the Pro Se Intake Clerk, no longer than 3 single-space pages, explaining the nature of the dispute and requesting a conference. Such letter **must include a representation that the meet-and-confer process occurred**, including when and whether it was in person or over the telephone. Any responsive letter should be submitted within three business days.
- d. **Confidentiality Stipulations and Orders.** In cases where confidential information will be exchanged, the parties are encouraged to utilize the Court's model Stipulation and Proposed Protective Order found at <http://nysd.uscourts.gov/judge/Parker>.
- e. **Electronic Discovery.** The parties are encouraged to utilize the model Joint Electronic Discovery Submission and Proposed Order, as appropriate, found at <http://nysd.uscourts.gov/judge/Parker>. This model may be modified to the extent appropriate

III. Motions.

- a. **Conferences of Counsel Before Filing Motions Under Rule 12(b) or (c).** Except in cases involving *pro se* parties, if a motion pursuant to Fed. R. Civ. P. 12(b) or 12(c) is contemplated, the plaintiff or counterclaimant must indicate whether it wishes to amend the subject pleading before motion practice, and the parties must consider in good faith a stipulation permitting such amendment. If the parties are unable to reach a resolution, counsel for the moving party shall include the following statement in the notice of motion: "This motion is made

following the conference of counsel, which took place on [date]. Plaintiff [or Counter Claimant] declined an opportunity to amend.”

- b. Pre-Motion Conferences.** For motions concerning discovery disputes, see Section II(c) above. A pre-motion conference is required for all other motions except motions that are required by the Federal Rules of Appellate Procedure or the Federal Rules of Civil Procedure to be made by a certain time and further except for motions by incarcerated *pro se* litigants, motions for reconsideration, motions for a new trial and motions *in limine*.

Letters requesting a pre-motion conference should summarize the basis of the motion and follow the procedures for communicating with the Court set forth in Section 1. Letters may not exceed 3 pages. Within 3 business days of receipt of the letter, each opposing party may submit a written response of no more than 3 pages. The Court will, as soon as possible thereafter, hold the pre-motion conference. The filing of a request for a pre-motion conference to dismiss prior to the Answer stays the time for the filing of an Answer until after the conference is held or until further order of the Court.

- c. Memoranda of Law.** The typeface, margins and spacing of motion papers must conform to Local Civil Rule 11.1. 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, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court.

All moving papers, letter-motions, and letters filed on ECF or emailed to chambers must be in ***searchable PDF form***.

- d. Courtesy Copies.** One courtesy copy of all motion papers (other than letter motions) shall be submitted to Chambers ***by the movant***, except that in cases where the movant is proceeding *pro se*, the courtesy copy of the motion papers shall be submitted to the Pro Se Intake Clerk. When motion papers are voluminous, courtesy copies should be placed in ***well-organized three-ring binder(s)***. For all motions, oppositions, and replies containing multiple items of documentary evidence, the evidence must be divided into exhibits, separated by tab dividers, and preceded by an exhibit list. A courtesy copy of the motion papers must be provided no later than one week after the motion became fully briefed.
- e. Redactions and Filing Under Seal.** All Confidential Materials filed with the Court may be redacted or filed under seal only as the Court directs upon appropriate application by either party.

To avoid the unnecessary filing of documents under seal, counsel for the Parties will discuss, in good faith, the need to file Confidential Materials under seal. If the parties agree in writing that a particular document that has been designated Confidential Material shall not be filed under seal, that document can be filed without redaction and such filing will not be a breach of any Stipulation of Confidentiality.

Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, based on a party's designation of information as Confidential, must make a specific request to the Court by letter explaining the reasons for seeking to file that submission under seal and addressing the request in light of the Court of Appeals' opinions in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) and Bernstein v. Bernstein Litowitz Berger & Grossman LLP, 814 F.3d 132 (2d Cir. 2016). If a request for redactions is based on another party's designation of information as Confidential, the parties shall confer and jointly submit the request for redactions.

The letter requesting redactions must include as attachments: (1) one full set of the motion papers or other relevant filings with the Confidential Materials highlighted (i.e., highlighting those words, phrases, or paragraphs for which the party seeks redaction); and (2) only those pages, clean and unredacted, that contain Confidential Materials for which the parties seek to be filed under seal. On application of a party, and provided that the unredacted papers are timely served on the party's adversary, the Court will deem papers filed on the date the party delivers them to Chambers for review of proposed redactions.

If the Court approves the filing under seal, Chambers will file under seal the clean and unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

- f. Oral Argument on Motions.** Parties may request oral argument when the motion has been fully briefed and courtesy copies are submitted to Chambers. This request should be made by letter in accordance with the procedures set forth in Section I.
- g. Proposed Stipulations and Orders.** Except as otherwise provided above, parties should e-mail 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 ECF Rules and Instructions. Courtesy copies need not be sent to Chambers.

IV. Pretrial Procedures.

Joint Pretrial Orders. After the close of discovery, the Court will file a Scheduling Order scheduling a pre-trial conference and containing instructions for the parties' Proposed Joint Pretrial Order. In general, except in *pro se* cases, a Joint Pretrial Order shall include: (1) the full caption of the action; (2) the name, address, telephone number and email of each principal member of the trial team, and an identification of each party's lead trial counsel; (3) a brief statement identifying the basis for subject matter jurisdiction, and, if that jurisdiction is disputed, the reasons therefore; (4) a list of each claim and defense that will be tried and a list of any claims and defenses asserted in the pleadings that are not to be tried; (5) an identification of the governing law for each claim and defense that will be tried and a brief description of any dispute regarding choice of law; (6) the number of days estimated for trial and whether the case is to be tried with or without a jury; (7) a list by each party of its trial witnesses that it, in good faith, expects to present, with an indication of whether the witnesses will testify in person or by deposition and the general and the general subject area of the witness's testimony; (8) a statement as to how and when the parties will give notice to each other of the order of their trial witnesses; (9) a list by each party of exhibits that it, in good faith, presently expects to offer in its case in chief, together with any specific objections thereto; (10) all stipulations or statements of fact or law on which the parties have agreed; (11) a proposed schedule by which the parties will exchange demonstratives that the parties intend to use at trial, notify each other of any objections thereto, consult with each other regarding those objections and notify the Court of any remaining disputes; and (12) all other matters that the Court may have ordered or that the parties believe are important to the efficient conduct of the trial, such as bifurcation or sequencing of issues to be tried.

In *pro se cases*, no Joint Pretrial Order is needed. Instead, within 30 days after the completion of discovery each party shall file its own Pretrial Statement. The *pro se* party's Pretrial Statement need take no particular form, but must be concise and contain: (1) a statement of the facts the party hopes to prove at trial; (2) a list of all documents or other physical objects that the party plans to put into evidence at trial; and (3) a list of the names and addresses of all witnesses the party intends to have testify at trial. The Statement must be sworn by the party to be true and accurate based on the facts known by the party. The party must file an original Statement with the *Pro Se* Office (see I(a)) and serve a copy on all other parties or their counsel if represented. The original Statement must indicate the date a copy was mailed to the other party or that party's attorney.

For questions about these practices, please contact Christopher Aiello, the Courtroom Deputy, at (212) 805-4220.

V. Settlement Conferences

The Court believes the parties should fully explore settlement at the earliest practical opportunity. Early consideration of settlement allows the parties to avoid the substantial cost, expenditure of time, and uncertainty that are typically a part of the litigation process.

Even for those cases that cannot be resolved, early consideration of settlement can provide the parties with a better understanding of the factual and legal nature of their dispute and streamline the issues to be litigated.

The following are the procedures applicable to Settlement Conferences:

- a. **Confidential.** All settlement conferences are “off the record” and strictly confidential. All communications relating to settlement may not be used in discovery and will not be admissible at trial.
- b. **Magistrate Judge’s Role.** The magistrate judge functions as a mediator, attempting to help the parties reach a settlement.

Ex Parte Settlement Conference Summary Form and Letter. Unless otherwise directed by the Court, no later than 5 days before the Settlement Conference, each party must complete the Court’s Settlement Conference Summary Form found at <http://nysd.uscourts.gov/judge/Parker>. Each party also must provide the Court with a letter, not to exceed three pages, summarizing the issues in the case, the settlement value of the case and rationale for it, case law authority relevant to settlement discussions, and any other facts that would be helpful to the Court in preparation for the conference. Parties may attach exhibits to their letters to the extent they believe the exhibits would aid settlement discussions. The Settlement Conference Summary Form and letter should be emailed to Parker_NYSDChambers@nysd.uscourts.gov. Alternatively, these documents may be faxed to the Court with prior approval of Chambers. If exhibits to a letter exceed 10 pages, please contact the Courtroom Deputy, Christopher Aiello, at 212-805-4220 to determine if a hard courtesy copy for the Court will be required.

- c. **Pre-Conference Telephone Call.** The Court will schedule a telephone call with the parties prior to the conference to discuss issues pertinent to the conference, after which a settlement conference will be scheduled.
- d. **Exchange of Demand/Offer.** If the plaintiff has not already made a settlement demand, such a demand shall be communicated to the opposing party no later than 14 days prior to the conference. If it has not already done so, the opposing party shall respond to any demand no later than 7 days thereafter.
- e. **Attendance.** The parties – not just the attorneys – must attend the Settlement Conference in person. In the event personal attendance is a hardship, a party may make a written request no later than one week in advance of the conference to attend by phone. Each party must supply its own interpreter, if required. Corporate parties or labor unions must send the person with decision-making authority to settle the matter to the conference. Where liability insurance is involved, a decision-making representative of each carrier must

attend unless specifically excused by the Court. Where any government agency is a party, counsel of record must be accompanied by a knowledgeable representative from the agency. In addition, in cases where the Comptroller of the City of New York has authority over settlement, the Assistant Corporation Counsel must make arrangements in advance of the conference for a representative of the Comptroller either to attend the conference or to be available by telephone to approve any proposed settlement.

- f. *Consequences of Non-Compliance with Attendance Requirement.*** If a party fails to comply with the attendance requirements, that party may be required to reimburse all the other parties for their time and travel expenses and may face other sanctions.
- g. *Conference Location.*** Unless advised otherwise by the Court, the conference will take place in Courtroom 17D at 500 Pearl Street.

Appendix A

INITIAL PRETRIAL CONFERENCE CHECKLIST FOR COMPLEX CASES

1. Proportionality assessment of “the needs of the case, amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues” (see Rule 26(b)(2)(C) (iii)).
2. Possible limitations on document preservation (including electronically stored information).
3. Appropriateness of initial disclosures pursuant to Rule 26(a)(1). Is there some readily identifiable document or category of documents that should be produced immediately in lieu of initial disclosures?
4. Possibility of a stay or limitation of discovery pending a dispositive motion.
5. Preliminary issues that are likely to arise that will require court intervention.
6. Discovery issues that are envisioned.
7. Proposed discovery including:
 - a. limitations on types of discovery beyond those in the Rules (*i.e.*, waiver of interrogatories, requests for admission, expert depositions);
 - b. limitations on scope of discovery;
 - c. limitations on timing and sequence of discovery;
 - d. limitations on restoration of electronically-stored information;
 - e. agreement to allow depositions of trial witnesses named if not already deposed;
 - f. preservation depositions; and
 - g. foreign discovery and issues anticipated.
8. Schedule (as appropriate and possibly excluding public agency cases) including:
 - a. date(s) for completion of discovery, including a protocol and schedule for electronic discovery;
 - b. date(s) for dispositive motions;
 - c. date(s) for exchange for expert reports;

- d. date(s) for exchange of witness lists; and
 - e. date (s) for Joint Preliminary Trial Reports and Final Joint Trial Reports.
9. Issues to be tried, including ways in which issues can be narrowed to make trial more meaningful and efficient; as well as whether there are certain issues as to which a mini-trial would be helpful.
 10. Bifurcation.
 11. Class certification issues.
 12. Whether the parties recommend that expert discovery precede or follow any summary judgment practice.
 13. Settlement/mediation and the timing of discussions about settlement.
 14. Pleadings, including sufficiency and amendments, and the likelihood and timing of amendments.
 15. Joinder of additional parties and the likelihood and timing of joinder of additional parties.
 16. Expert witnesses (including necessity or waiver of expert depositions).
 17. Damages (computation issues and timing of damages discovery).
 18. Final pretrial order (including possibility of waiver of order).
 19. Possible trial-ready date.
 20. Court logistics and mechanics (*e.g.*, communication with the court, streamlined motion practice, pre-motion conferences, etc.).