

INDIVIDUAL MOTION PRACTICE AND RULES OF
JUDGE ERIC N. VITALIANO
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Chambers: 718-613-2130
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Case Manager: William Villanueva
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At every appearance before the Court, it is expected that counsel will be fully familiar with the case and, in civil matters, authorized to enter into settlement or disposition agreements.

Unless otherwise ordered in a specific case, matters before the Court shall be conducted in accordance with the following practices:

COMMUNICATIONS WITH CHAMBERS

Docketing, Scheduling, and Calendar Matters

All docketing, scheduling, and calendar matters are administered by and any inquiries regarding them should be addressed to Case Manager William Villanueva. Docket sheets are available in the Clerk's office and on-line at www.nyed.uscourts.gov.

Letters

Communications with chambers shall be in writing and filed on ECF, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel, except where formally annexed to pleadings or motion papers, shall not be sent to the Court.

Telephone Calls

Telephone calls to chambers for general information unrelated to docketing, scheduling or a calendar matter are not permitted.

Faxes

Faxes to chambers are permitted only for time-sensitive requests and where prior authorization from chambers is obtained. Any authorized faxes shall be simultaneously faxed or delivered to all counsel. Do not follow with a hard copy, unless otherwise directed by the Court.

Hard/Courtesy Copies

All hard copies provided to chambers shall be in a form that can be laid reasonably flat when open.

Request for Adjournment of Court Appearance

A request for an adjournment of a court appearance shall be made in writing at least 48 hours prior to the appearance and in the form applicable to a request for an extension of time. Emergency requests for adjournment made within 48 hours prior to the scheduled court appearance shall be initiated by a phone call to the case manager. The case manager will advise the applicant of any written submission necessary beyond that required by the ordinary rule.

Request for Extension of Time Unrelated to a Court Appearance

All requests for extensions of time to comply with any rule or order must be in writing and state (1) the original compliance date, (2) the number of previous requests for extension, (3) whether those 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 adversary has not consented, requests for extensions will not be considered unless submitted on 24 hours notice, absent good cause shown. If the requested extension affects any other scheduled dates, a proposed revised scheduling order must be provided, and it must indicate whether the proposed revised dates are on consent.

Request for Default Judgment

Motions for default judgment shall be made in accordance with Local Civil Rule 55.2, except that the movant must also append to the application proof of service of the motion for default judgment on the defaulting party. Motions for default judgment will not be considered absent prior issuance of a certificate of default by the Clerk of Court in accordance with Local Civil Rule 55.1.

Additionally, where service on the defaulting party is made solely on the Secretary of State, counsel must certify that it is unaware of any other address where the defaulting party may be found. If the Servicemembers Civil Relief Act applies to the defaulting party, a compliant non-military affidavit must have been filed.

Notwithstanding any other rule, all motions for default judgment shall be noticed after the Clerk of Court has docketed the certificate of default and shall be returnable 20 days after the date the notice of motion shall have been served.

Notification of Settlement

Any time a settlement is reached, the parties are required to notify chambers immediately via ECF. As soon as practicable, the parties shall submit a formally executed stipulation of settlement or discontinuance. A hard copy of the stipulation marked "courtesy copy" shall be provided to chambers.

ELECTRONIC CASE FILING

All documents must be filed electronically.

Orders will be posted electronically.

Hard copies of all motion papers and stipulations filed electronically, including any documents attached thereto must be provided to chambers. All such papers must be clearly marked "Courtesy Copy," "Original Filed by ECF," and must identify as "Docket Number _____" (the document number the ECF system assigns to the filing).

Parties filing voluminous or non-text exhibits may choose to file only hard copies of those exhibits when electronic filing of those exhibits is impracticable. If exhibits are not electronically filed, one copy must be clearly marked "Original" and the other marked "Courtesy Copy." Related papers that are electronically filed must clearly indicate that exhibits have been filed by hard copy.

Pro se parties are automatically exempt from mandatory electronic filing. However, parties represented by counsel in *pro se* cases must file documents electronically and mail a hard copy of the documents to the *pro se* litigant.

Requests by attorneys for an exemption to the mandatory policy will be considered for good cause hardship reasons only and will be reviewed on an individual basis by the assigned United States Magistrate Judge. However, no request will be granted until the attorney has registered for ECF and sought ECF training.

Sealed documents or documents containing sealed/sensitive information must generally be submitted by filing under seal in ECF and in compliance with any rule or directive set by the Clerk of the Court for the filing of such material. If the party filing such material believes filing in ECF is impractical or inappropriate in a specific situation, the filing party may seek permission of the Court to file the material in hard copy only and labeled "Sealed/Sensitive."

CIVIL MOTIONS

Pre-Motion Conferences

For discovery motions, follow Local Civil Rules 6.4 and 37.3.

In cases where all parties are represented by counsel, a pre-motion conference with the Court must be requested before making any motion:

- (i) pursuant to Federal Rule of Civil Procedure (“FRCP”) 12 or 56;
- (ii) for a change of venue; or
- (iii) to amend a pleading pursuant to FRCP 15 where leave of the Court is required.

To request a pre-motion conference, the moving party shall serve and electronically file a letter not to exceed three pages in length setting forth the basis for the anticipated motion. All parties so served may, but are not required to, serve and file a letter response, not to exceed three pages, within five business days from service of the notification letter.

For purposes of the timing requirements for motions permitted under FRCP 12, a pre-motion conference letter requesting permission to file a motion under that Rule shall be considered equivalent to the motion itself.

No motion for summary judgment pursuant to FRCP 56 may be made later than 30 days after discovery has been certified as complete except for good cause shown. Service of a pre-motion letter within that time period will constitute timely service of a motion for summary judgment under that Rule.

No pre-motion conference shall be required for post-trial motions, habeas corpus/prisoner petitions, Social Security appeals, bankruptcy appeals, objections to a report and recommendation of a Magistrate Judge, or where the Court determines that a pre-motion conference is unnecessary.

Scheduling of Motions

The parties are to set up their own briefing schedule and submit it to the Court for approval. Approval may be given at the pre-motion conference or, if approval is not given at that time or where no pre-motion conference is required, the briefing schedule shall be set in a scheduling order issued by the Court. No party is to serve any motion paper prior to obtaining court approval for the schedule. No changes to the approved schedule may be made without court order.

In a case where not all parties are represented by counsel, any party wishing to file a motion for which a pre-motion conference letter would otherwise be required shall submit to the Court a letter request for approval of a proposed briefing schedule, indicating whether the moving party has obtained the adversary's consent to the proposed briefing schedule and, if not, the reason(s) why such consent has not been obtained. If

the moving party has made unsuccessful efforts to reach the adversary, the letter shall describe those efforts.

Memoranda of Law

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 double-spaced pages, using Times New Roman 12 point font, and reply memoranda are limited to 10 pages. Page limits do not include tables, appendices, or attachments. Memoranda of 10 pages or more shall contain tables of contents and authorities. All memoranda must have the date of service plainly visible on the front cover. No letter briefs shall be permitted.

Service and Filing of Motions Other Than For Default Judgment

The notice of motion and all supporting papers – as well as any opposition or reply papers – are to be served on the other parties along with a cover letter setting forth whom the movant represents and the papers being served. A hard copy of the cover letter is to be sent to the assigned magistrate judge and a hard copy of the cover letter and a courtesy copy of the motion papers shall be sent directly to chambers at the time of service. The courtesy copy shall not be filed with the Clerk of Court.

No motion paper shall be filed until the motion has been fully briefed. Upon completion of briefing, the original moving party shall be responsible for immediately filing all motion papers on ECF. Such party is further obligated to furnish to chambers a cover letter specifying each document in the bundle filed by the original moving party. A copy of the cover letter shall be sent to the assigned magistrate judge and to all other opposing counsel of record. Where the moving party is *pro se*, the nonmoving party, if represented, is responsible for compliance with this rule. Any papers served in hard copy shall be converted to electronic format by the party responsible for filing the bundled motion papers. If neither party is represented, all papers will be filed in hard copy by the party serving them.

Oral Argument on Motions

When the parties are represented by counsel, oral argument on motions will be heard at the Court's discretion. The notice of motion shall state that oral argument will be on a date and at a time to be designated by the Court. If necessary, the Court will contact the parties to set the specific date and time for oral argument.

CRIMINAL MOTIONS

Pre-Motion Conferences in Criminal Cases

Counsel shall advise the Court of any contemplated motion at a status conference scheduled by the Court. If no status conference is scheduled, counsel shall request a pre-

motion conference in writing and briefly state the grounds for such motion before filing any motion.

Filing and Scheduling of Motions

Except for sentencing motions, follow the rules for civil motions unless otherwise directed by the Court.

Memoranda of Law

Unless otherwise directed by the Court, follow the rule for civil motions.

Oral Argument on Motions

Oral argument on all criminal motions will be heard on a date set by the Court.

Sentencing Motions

Applications regarding sentencing shall be made in writing by defense counsel at least 5 business days prior to the date of sentencing. The Government's response, if any, shall be made in writing at least 2 business days before the date of sentencing.

PRETRIAL PROCEDURES

Joint Pretrial Orders in Civil Cases

Unless otherwise ordered by the Court, or when permission to file a motion under Rule 56 has been granted, within 60 days from the date discovery in a civil case is certified as complete, the parties shall electronically file a joint pretrial order for the Court's approval, which shall include the following:

1. The full caption of the action.
2. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
3. 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.
4. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matters, but

including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

5. 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.
6. 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).
7. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
8. A list of the names and addresses of all witnesses, including expert witnesses and possible witnesses who will be called only for impeachment or rebuttal purposes and so designated, together with a brief statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.
9. 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.
10.
 - (a) A statement of stipulated facts, if any;
 - (b) A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Only exhibits listed will be received in evidence except for good cause shown; and

A courtesy copy of this filing shall be provided to chambers.

Filings Prior to Trial in Civil Cases

Unless otherwise ordered by the Court, 15 days before the date of commencement of the trial, if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed, the parties shall file:

1. Motions *in limine* addressing evidentiary or other trial management issues in dispute. Responses, if any, shall be due 5 days later. Oral argument, if necessary, shall be scheduled at the convenience of the Court.

2. In jury cases, proposed *voir dire* questions, jury instructions and a verdict sheet. Requests to charge should be limited to elements of the claims, the damages sought and defenses. General instructions will be prepared by the Court. Parties shall submit a hard-copy of such materials and a copy on CD in either Word or WordPerfect format. In lieu of submitting a CD, counsel may contact chambers to obtain an email address to send the electronic versions of the documents.
3. A detailed statement regarding damages and other relief sought for each claim.
4. In non-jury cases, a statement of the elements of each claim or defense involving each party, together with a summary of the facts relied upon to establish each element.
5. A pretrial memorandum in any case where a party believes such would be useful.

All exhibits must be pre-marked for the trial and exchanged with the other parties at least ten days before trial. Where exhibits are voluminous, they should be placed in binders with tabs.

Filings Prior to Trial in Criminal Cases

Unless otherwise directed by the Court, the following procedures shall be followed:

1. Motions *in limine* addressing evidentiary or other trial management issues in dispute must be filed no later than 10 days before the date fixed for commencement of jury selection. Responses, if any, shall be due 5 days later. Oral argument shall be scheduled at the convenience of the Court.
2. Proposed *voir dire* questions, as well as lists of all potential witnesses and any other individuals and entities that may be mentioned at trial, shall be submitted at least 7 days before jury selection.
3. Requests to charge shall be submitted at least 7 days before trial in hard copy and on a CD in Word or WordPerfect format. In lieu of submitting a CD, counsel may contact chambers to obtain an email address to send the electronic versions of the documents.
4. A pretrial memorandum in any case where a party believes such would be useful.

PROCEDURE FOLLOWING NON-JURY TRIAL

In non-jury trials, parties shall file proposed findings of fact and conclusions of law no later than 10 days after the conclusion of trial unless otherwise ordered by the Court. No responses to such submissions shall be permitted.

Last Revised: 10/27/2011