

**INDIVIDUAL PRACTICES OF
UNITED STATES DISTRICT JUDGE VICTOR MARRERO
SOUTHERN DISTRICT OF NEW YORK**

Effective September 1, 2010

Chambers

Suite 660
United States Courthouse
500 Pearl Street
New York, New York 10007
T: (212) 805-6374
F: (212) 805-6382

Courtroom

Courtroom 20B
United States Courthouse
500 Pearl Street
New York, New York 10007
T: (212) 805-6374
F: (212) 805-6382

I. COMMUNICATIONS WITH CHAMBERS

A. Letters. Except as otherwise provided below, communications with Chambers shall be by letter, with copies simultaneously delivered to all counsel in the same manner that they are delivered to Chambers. Letters or letter-briefs are not to be filed on the District's electronic document filing system ("ECF") and are not to be delivered by electronic mail. If less than five pages, letters may be sent by fax as indicated below in Paragraph I.C., otherwise, they should be delivered by hand or by mail. Letters must identify the name and docket number of the case, contain the writer's business address and telephone number, be signed by the attorney responsible for the matter, and show the method of delivery (e.g., "By Hand" or "By Fax"). Unless the Court has otherwise requested, copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Except as provided in Paragraph I.D. below, telephone calls to Chambers regarding any pending matter will be accepted only in urgent situations requiring immediate attention. In such situations only, call Chambers at (212) 805-6374. Counsel should not call the Judge's law clerks with substantive or procedural questions, or with questions regarding docketing on ECF. For questions about docketing on ECF, parties should call the ECF help desk at (212) 805-1703.

C. Faxes. Faxes to Chambers are permitted only if the letter or document is no longer than five pages and if a copy is simultaneously faxed to all counsel or to litigants proceeding pro se. The direct fax number to Chambers is (212) 805-6382. Any faxed letter or document exceeding five pages will not be accepted unless prior authorization has been granted. Do not follow faxed letters with hard copy.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling, and calendar matters, call Chambers between 9:00 a.m. and 5:00 p.m. at (212) 805-6374 and ask for the law clerk responsible for the case.

E. Courtesy Copies. One courtesy copy of all motion papers, and one courtesy copy of all other filings (including pleadings, stipulations, and all submissions to the Orders and Judgments Clerk), marked as such, shall be submitted to Chambers at the time the papers are served or filed, in accordance with the SDNY policies regarding mail deliveries. **Courtesy copies shall be submitted to Chambers in ECF and non-ECF cases.** In any expedited proceeding, parties shall ensure that courtesy copies are delivered in a manner that enables their timely consideration by the Court (e.g., by hand delivery or fax to chambers).

F. Extensions/Adjournments. A request for an extension of time within which to make a submission to the Court or for an adjournment of a conference or to excuse an appearance with the Court must be made in writing and received in Chambers not less than two business days before the scheduled time. Each request must include the number and disposition of any prior request(s) for an extension or adjournment and state whether opposing counsel consents to the extension or adjournment. If opposing counsel does not consent, the reason(s) must be provided. If the requested extension or adjournment affects any other scheduled dates, a proposed Revised Case Management Plan must be attached for the Court's review and approval. The party requesting an extension or adjournment shall be responsible for notifying all other parties of the Court's disposition of the request.

II. MOTIONS

A. Pre-Motion Conferences in Civil Cases. A conference must be requested before the filing of any motion, except for: motions brought by order to show cause based on a legitimate emergency; motions required by the Federal Rules of Appellate Procedure to be made within a specified time; motions made by a pro se litigant in custody; motions for default judgment, pro hac vice admission, reargument, remand, or attorney's fees or sanctions; motions to dismiss in lieu of an answer; motions to affirm or vacate an arbitration award; and objections to a Magistrate Judge's ruling. The attorney who will serve as principal trial counsel must appear at all conferences with the Court with regard to scheduling and motions.

A party wishing to make a motion not excepted above should send a letter to the Court concisely describing the basis for the proposed motion and requesting a pre-motion conference. Any party opposing the motion must submit a reply letter within two business days of receiving the pre-motion letter indicating whether the proposed motion will be opposed, and if so, the basis for the opposition. Pre-motion letters and responses shall not exceed three pages single-spaced, with one-inch margins all around.

With respect to motions to dismiss, including those contemplated in lieu of an answer, prior to filing such a motion and before the time to do so as of right has expired, the defendant shall communicate with the plaintiff by letter not exceeding three single-spaced pages, either seeking a more definite statement, or setting forth the specific pleading deficiencies in the complaint and other reasons or controlling authorities that defendant contends would warrant dismissal. The plaintiff shall respond by similar letter within seven calendar days indicating the extent, if any, to which plaintiff concurs with defendant's objections and the amendments, if any, to be made to the

complaint to address them, or the reasons and controlling authority that support the pleadings as filed. Plaintiff may seek leave to amend the complaint to address identified deficiencies if the time to do so as of right has expired. Under these circumstances, the Court will liberally grant plaintiff leave to amend, and grant the defendant an extension of time to answer the complaint as appropriate. (This practice may be especially effective as to certain types of motions frequently made that may be avoidable by pre-motion communication between the parties, with or without the Court's involvement. For example, without limitation, these include: naming a wrong defendant; misnaming a defendant; failing to name a necessary or indispensable party; failing to exhaust available remedies; absolute immunity; expiration of the statute of limitations as to some or all of the claims asserted; failure to satisfy a prerequisite to litigation such as a Right to Sue Letter; and failure to plead the particulars of a fraud claim under Rule 9(b) of the Federal Rules of Civil Procedure.)

B. Memoranda of Law. All motions and cross-motions must be accompanied by a memorandum of law. Memoranda of law in support of and in opposition to motions shall be limited to 25 pages, and reply memoranda shall not exceed 10 pages. Memoranda should be double-spaced and in 12-point font with 1-inch margins. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities.

Any memorandum that does not comply with these requirements will not be accepted and will be returned, and counsel may not be provided with additional time to submit a complying memorandum if any such additional extension may cause substantial prejudice to other parties in the case. The Court will entertain written requests for exceptions to these page limitations only in rare cases where the facts and issues are particularly complex. The Court on its own motion will not consider new matters raised in replies for the first time. Sur-reply memoranda will not be accepted without prior permission of the Court and then only in the rare instances in which new controlling law is promulgated after the filing of the reply papers.

C. Documentation. Affidavits accompanying any motion should contain concise statements attested to by the affiant on the basis of personal involvement or knowledge of pertinent facts. Affidavits shall not be used as a vehicle for counsel to describe factual background or legal issues involved in the case, to alter the pleadings or introduce facts not set forth in the complaint, or to assert matters not within their personal knowledge or for supplemental argumentation of legal issues that would serve to evade the page limitation set forth in the Court's Individual Practices. Such submissions will not be considered and shall be returned.

If depositions are cited in memoranda of law and attached thereto, the exhibit should not be limited to clipped excerpts or selective pages, but should include either the entire relevant testimony of the person deposed or, if it is too extensive, all of the pertinent testimony setting forth contextually the matter addressed. In connection with motions for summary judgment, Local Rule 56.1 Statements shall be "short and concise," and shall not be used for argumentation of legal issues or recitation of case law, or extensive recitation of deposition testimony or repetition of conclusory pleadings.

D. Service. Notices of motions, affidavits, and memoranda of law shall be served in accordance with the dates set by the Court during the pre-motion conference or by memo-endorsed orders. If a pre-motion conference is not required (Paragraph II.A., supra), counsel should follow Local Civil Rule 6.1, unless otherwise ordered by the Court. Any party seeking dismissal of a complaint or summary judgment in whole or in part against a pro se litigant must plainly advise that litigant of the nature of the motion, of the possible consequence of failing to respond, and that the Court will deem true the statements contained in a Local Rule 56.1 statement unless controverted. Failure to comply with this requirement may result in a sua sponte denial of the motion. In connection with motions for summary judgment, where the Court may deem it appropriate, the parties may be directed to serve their Local Rule 56.1 statements for the Court's review prior to proceeding with service of the fully-prepared motion.

E. Filing. All motion papers shall be filed in the Clerk's Office or via ECF promptly after service.

F. Oral Argument. Motions will be decided on the papers after all moving papers have been submitted, unless the Court determines that oral argument will be necessary. If oral argument is scheduled, the Court will advise the parties of the date and time for argument and whether it will be limited to specific issues. Counsel should expect that the Court will have reviewed motion papers prior to oral argument and will be familiar with the issues presented therein, and therefore counsel should not use oral argument to repeat factual recitations or legal arguments adequately addressed in the motion papers.

III. DISCOVERY DISPUTES

In the event a discovery dispute arises that the parties are unable to resolve among themselves, they shall confer and submit to the Court a joint letter setting forth the matters that remain unresolved following such conference. The letter shall describe concisely the issue(s) in dispute and the respective position of each party and cite applicable authority which the respective parties claim for support. The Court will rule upon the written submission, or refer the dispute to the designated Magistrate Judge for resolution, particularly where the circumstances indicate that the parties' discovery disputes are continuous or chronic.

IV. PRETRIAL PROCEDURES: CIVIL CASES

A. Pretrial Conferences. The Court will endeavor to schedule an initial case management conference within 45 days after the filing of the complaint. Upon receipt of the Notice of Initial Conference, counsel shall confer and jointly prepare: a status letter containing (1) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s); (2) any contemplated motions; (3) the prospects for settlement; (4) whether the parties consent to proceed for all purposes before the Magistrate Judge designated for this action; and (5) a proposed Case Management Plan in the form available on Judge Marrero's page on the Southern District website. The status letter must be received by the Court at least five business days before the initial case management conference. The completed proposed Case Management Plan shall be brought to the initial case management conference for approval and endorsement by the Court. Unless otherwise

indicated by the Court, all conferences will take place in Courtroom 20B and principal trial counsel must appear at all conferences. In the event principal trial counsel is not available to appear at the initial conference or other proceedings set for the purposes of scheduling, upon letter-request of counsel endorsed by the Court, another attorney familiar with the litigation may be designated to appear. **Appearances by telephone will not be permitted without express prior permission of the Court.**

At the initial conference, counsel should be prepared to address adequately the basis for venue and subject matter jurisdiction and whether or not all of the jurisdictional prerequisites have been satisfied in the case. Where appropriate, such discussions shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount. Counsel should further be prepared and authorized to discuss the factual and legal bases for their claims, any contemplated motions and prospects for settlement through assistance of the Court, mediation services or other dispute resolution methods. Counsel should also address the option of proceeding to resolution of the case or dispositive motions by the designated Magistrate Judge of the Court pursuant to 28 U.S.C. § 636(c).

B. Filings Prior to Trial. Unless otherwise ordered by the Court, not less than 30 days prior to a firm date scheduled for the trial, the parties shall submit to the Court the pretrial submissions described in Attachment 1 to these Individual Practices.

V. PRETRIAL PROCEDURES: CRIMINAL CASES

A. Initial Pretrial Conference. The Assistant United States Attorney (“AUSA”) assigned to the case shall contact Chambers as soon as possible after the case is assigned to the Court for prompt scheduling of a conference at which the defendant will be present in order to set a discovery and motion schedule. The Court refers all arraignments and initial bail applications to the Magistrate Court in the first instance, unless there is good cause to proceed directly before the Court. The AUSA shall provide a courtesy copy of all charging documents to Chambers as soon as practicable, and should submit a letter confirming the date and time of any initial conference scheduled before Judge Marrero by the Magistrate Judge. Any conference scheduled by a Magistrate Judge will not be entered on the Chambers calendar until such a confirmation letter is received. The AUSA shall arrange for appropriate exclusion of time for Speedy Trial Act purposes to the date of the defendant’s initial appearance before Judge Marrero.

B. Pleas. The plea agreement or Pimentel letter must be provided to Chambers at least two business days before the time set for the conference at which the disposition is to be addressed. Defense counsel are expected to have reviewed with the defendant, with foreign language interpretation where appropriate, prior to the time set for the conference with the Court any plea or cooperation agreement, or any other arrangements relating to the defendant’s plea.

C. Sentencing. Any request for adjournment of a sentencing shall be made in writing as early as possible, but no later than two business days before the date at issue. Such requests should state whether opposing counsel consents. All submissions and applications with respect to a sentencing and all responses thereto shall be served and submitted to the Court in sufficient time to

ensure that the Court has received all such papers by no later than five business days prior to the sentencing.

In the event a sentencing control date is scheduled for a defendant, the AUSA shall notify the Court as soon as practicable if the parties later intend for that date to be the date of sentencing. Such notification allows for the Court to order a Pre-Sentence Investigation Report from the United States Probation Office in a timely manner.

D. Filings Prior to Trial. Unless otherwise ordered by the Court, not less than 30 days prior to a firm date scheduled for the trial, the parties shall submit to the Court the pretrial submissions described in Attachment 1 to these Individual Practices.

VI. TRIAL PROCEDURES

Counsel with either jury or bench trials scheduled before the Court are to comply with the Court's trial procedures set forth in Attachment 1.

VI. MISCELLANEOUS

A. Default Judgment Procedures. A party who wishes to obtain a default judgment must proceed by way of the procedure set forth in Attachment 2.

B. Bankruptcy Appeals. Briefs must be submitted in accordance with Fed. R. Bankr. P. 8009. Counsel may extend these dates by stipulation submitted to the Court no later than two business days before the brief is due.

C. Court Reporters. The Court will order a court reporter for all criminal proceedings and all civil conferences with pro se litigants. In addition, the Court will order a reporter for hearings in a civil proceeding scheduled pursuant to Paragraph II.F. Parties seeking transcription of any other proceeding shall notify Chambers of such a request by letter.

D. Orders to Show Cause or Motions for Injunctive Relief. Except in the most extraordinary circumstances, litigants filing an order to show cause or motion for injunctive relief must provide notice to opposing counsel before doing so. Following conferral with opposing counsel, the party filing the order or motion shall submit to the Court an agreed-upon proposed briefing schedule.

E. Part One / Miscellaneous Docket. Litigants must file all documents assigned a Miscellaneous Docket number with the Clerk's Office. Parties should be aware that neither electronic filing nor electronic notice are available for Miscellaneous Docket matters under current procedures of the Clerk of Court. Parties should check the Clerk's Office's procedures for any changes in this regard. Accordingly, litigants should send a hard copy of all filings to Chambers and opposing counsel.