

**INDIVIDUAL RULES AND PRACTICES FOR CIVIL CASES
HENRY J. RICARDO, UNITED STATES MAGISTRATE JUDGE**

Chambers

Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

RicardoNYSDChambers@nysd.uscourts.gov

Courtroom

500 Pearl Street, Room 21D
Roberto Diaz, Courtroom Deputy

Cases come before Magistrate Judges in one of two ways: for one or more specific purposes pursuant to an order of reference by the assigned District Judge, or, on consent of the parties, for all purposes pursuant to 28 U.S.C. § 636(c). When a District Judge approves an all-purposes consent form signed by counsel, the Magistrate Judge assumes the role of the District Judge. Any appeal is directly to the Court of Appeals and the right to a jury trial is preserved.

It is the uniform practice of the Magistrate Judges in this District to schedule trials in civil consent cases for firm dates, which are unlikely to be changed absent unusual circumstances. Should counsel wish to consent to have Judge Ricardo hear their case for all purposes, they should complete and file the necessary form, which is available on the Court's website at

<https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf>.

Unless otherwise ordered by Judge Ricardo, matters before him shall be conducted in accordance with the following practices.¹ These practices are applicable to cases before Judge Ricardo if the matter is within the scope of the District Judge's order of reference or if the case is before Judge Ricardo for all purposes pursuant to 28 U.S.C. § 636(c). Otherwise, the practices of the District Judge to whom the case is assigned apply.

¹ Requests for reasonable accommodations on account of disability or religion with respect to these rules may be sent by email to RicardoNYSDChambers@nysd.uscourts.gov. Counsel and parties are also invited to inform the Court of their preferred pronouns.

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I. Communications with Chambers.

A. Letters.

Except as otherwise provided below, communications with the Court should be by letter, filed electronically on ECF. Parties should not submit courtesy copies of letters filed on ECF.

Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be filed electronically on ECF in accordance with the S.D.N.Y. “ECF Rules and Instructions.”² Letters to be filed under seal or containing sensitive or confidential information that a party does not wish to appear on the docket should be sent by email to RicardoNYSDChambers@nysd.uscourts.gov as a .pdf attachment with all counsel copied, or the pro se litigant if they are unrepresented. Any such email should state clearly 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 contents of the letter. Parties shall not include substantive communications in the body of the email; such communications shall be included only in the body of the letter.

Unless otherwise permitted by the Court, letters may not exceed four pages in length (excluding any attachments). 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.

B. Telephone Calls.

While communications with Chambers should normally be by letter, telephone calls are permitted for urgent matters.

C. Emails.

While communications with Chambers should normally be by letter, emails to Chambers are permitted for scheduling inquiries. Dates for conferences provided by email will not be deemed scheduled until the Court receives and approves a letter-motion to adjourn or enters a scheduling order.

² Unless counsel is filing a letter-motion (such as for a request for adjournment or extension of time as discussed in paragraph I(F) and I(G), or for a pre-motion conference to resolve a discovery dispute as discussed in paragraph II(B), *infra*), counsel should not select the “letter motions” option on ECF; instead, after selecting “civil events” under the “civil” heading on the main menu bar, counsel should select the “other documents” event under “other filings.” A list with the option “letter” will then appear, which should be selected.

D. Faxes.

Faxes are not permitted except with prior approval of Chambers.

E. Hand Deliveries.

Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States Courthouse at 500 Pearl Street, New York, New York 10007 and may not be brought directly to Chambers. Hand deliveries are continually retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered submission to the Court 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.

F. 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 (or by stipulation, if the parties have agreed). (If a request contains sensitive or confidential information, it may be submitted by email to the Court, copying all counsel, in lieu of being filed electronically.). The letter-motion must state: (1) the original date or dates sought to be extended; (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reason for the extension; and (5) whether the adversary consents to the extension and, if not, the reason given by the adversary for refusing to consent. To the extent a request to extend a particular date requires a change in other scheduled dates, the request must list the proposed changes for all such other dates, giving the actual date for each affected deadline.

Absent an emergency, any request for extension or adjournment shall be made at least 3 days prior to the deadline. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

G. Requests for Adjournments of Court Appearances (including Telephone Conferences).

A request for an adjournment of a court appearance (including a telephone conference) shall be made in writing as soon as a party is aware of the need for the adjournment and, in any event, no later than 7 days prior to the scheduled appearance (absent an emergency). Prior to making such a request in writing, the party seeking the adjournment should contact Chambers by email to determine an alternative date on which the Court is available for a rescheduled court appearance. The requesting party should then contact all other parties to determine their availability for that date. The requesting party must then make a written request to the Court for an adjournment by letter forthwith stating the date and time that is

being requested. The letter should be filed on ECF as a letter-motion and include a statement as to the other parties' positions on the change in date. The appearance is not adjourned unless counsel are thereafter informed either by ECF notification that the written application has been granted.

H. Urgent Communications.

As a general matter, materials filed via ECF are reviewed by the Court the business day after they have been filed. If your submission requires immediate attention, please contact Chambers by email after you file via ECF.

I. Registering as ECF Filers.

In accordance with the S.D.N.Y. "ECF 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 <https://nysd.uscourts.gov/electronic-case-filing>. 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.

J. Electronic Device Orders.

Orders permitting an attorney to bring an electronic device to Court may be found on the forms page of the S.D.N.Y. website (<https://nysd.uscourts.gov/forms>) and is entitled Fillable Form for Electronic Devices General Purpose. Please note that only attorneys are eligible for such an order. These orders should not be filed on ECF. Once completed, they may be emailed to RicardoNYSdChambers@nysd.uscourts.gov for Court approval (and the Court will then email back to counsel a copy of the signed order).

II. Motions.

A. Letter-Motions.

Letter-motions filed via ECF must comply with the S.D.N.Y. Local Rules and the S.D.N.Y. "ECF Rules and Instructions." In particular, all requests for adjournments and extensions (as discussed in Rule I(F) and I(G), *supra*), and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) (as discussed in Rule II(B), *infra*), should be filed as letter-motions.

B. Pre-Motion Conferences.

As described below, unless waived by the Court, pre-motion conferences are required where the proposed motion is returnable before Judge Ricardo, except that no pre-motion conference is required for motions to dismiss in lieu of answer,

motions for admission pro hac vice, motions for reconsideration or reargument, motions listed in Fed. R. App. 4(a)(4)(A), any post-judgment motions, and applications made by order to show cause. This Rule applies to non-parties (such as those served with a subpoena pursuant to Fed. R. Civ. P. 45) as well as to parties.

1. Discovery Motions. No motion relating to discovery (that is, any dispute arising under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) shall be heard unless the moving party has first conferred in good faith by telephone, videoconference, or in person with all other relevant parties in an effort to resolve the dispute. Counsel must respond promptly (normally, within one business day) to any request from another party to confer in accordance with this paragraph unless an emergency prevents such a response. If the conference with the relevant parties has not resolved the dispute, the moving party must inform the other parties during the conference that the moving party intends to seek relief from the Court regarding the dispute. The moving party must thereafter promptly request a conference with the Court pursuant to Local Civil Rule 37.2.

To request a conference with the Court, the moving party shall file on ECF a letter-motion setting forth the basis of the dispute and the need for the anticipated motion. The letter-motion must certify that the required in-person or telephone conference took place between counsel for the relevant parties. The letter-motion must also state: (1) the date, time, and approximate duration of such conference; (2) the names of the attorneys who participated in the conference; (3) the adversary's position as to each issue being raised (as stated by the adversary during the in-person or telephone conference); and (4) that the moving party informed the adversary during the conference that the moving party believed the parties to be at an impasse and that the moving party would be requesting a conference with the Court. None of these requirements may be satisfied by submitting copies of correspondence between counsel. The party opposing the requested relief should submit a letter to the Court in response as soon as practicable and in any event within three business days, unless the parties agree otherwise (and the Court is informed of the agreed response date by letter), or an extension of time is sought and granted in accordance with paragraph I(F), *supra*. Non-moving parties are reminded that their letters in response should not be filed as "letter-motions" but rather as "letters."

The letters may not exceed four pages in length (excluding any attachments). No replies are permitted.

In most instances, the letters will fully describe the parties' discovery dispute. Accordingly, if a party believes that the issue should be decided based on more formal briefing, the party must so state in a separate letter application and shall give the reasons therefore. In the absence of such an application, the Court

may decide the dispute based solely on the letters. Counsel should seek relief in accordance with these procedures in a timely fashion; if a party waits until near the close of discovery to raise an issue that could have been raised earlier, the party is unlikely to be granted the relief that it seeks, let alone more time for discovery.

2. Motions other than Discovery Motions. To arrange a pre-motion conference for non-discovery matters, the moving party shall submit a letter setting forth briefly (normally not more than three pages) the nature of the anticipated motion. Parties are encouraged to confer with their adversary in appropriate cases to determine whether a motion is in fact necessary.

C. Briefing Schedule on Motions.

In instances where the Court has ordered a briefing schedule on a motion, that schedule applies. The parties may agree to a reasonable briefing schedule, which will apply so long as it is disclosed in a letter to the Court filed on ECF at the same time as the initial motion papers. In all other instances, the briefing schedule will instead be in accordance with Local Civil Rule 6.1. Any extension may be sought in accordance with Individual Rule I(F), *supra*.

A return date should not be given in the Notice of Motion; instead, reference should be made in the Notice to the due date for opposition and reply papers (in accordance with the Court order, parties' agreement, or Local Civil Rule 6.1 as applicable). If a return date appears in the Notice of Motion, counsel should not appear for argument on that date.

Where no court order as to a briefing schedule is in effect, leave of the Court is not required to effectuate an agreement between the parties to set initially or to extend any deadlines for filing papers. Thus, in such a situation, Individual Rule I(F) does not apply. Any such agreement, however, must be disclosed to the Court in a letter filed on ECF.

D. Courtesy Copies.

Please do not send courtesy copies to Chambers unless requested by the Court.

E. Memoranda of Law.

A memorandum of law must accompany all motions and oppositions thereto pursuant to Local Civil Rule 7.1. The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 7.1(b). Unless prior permission has been granted, memoranda of law (in support of and in opposition to a motion) are limited to 8,750 words, and reply memoranda are limited to 3,500 words. All memoranda of law shall be in 12-point font or larger and be double-spaced. Requests to file memoranda exceeding the word limits set forth herein must be by letter-motion at

least 5 days prior to the due date, except with respect to reply memoranda, in which case the request must be made at least 2 days prior to the due date. Memoranda of more than 3,500 words must include a table of contents and a table of authorities (neither of which count against the page limit). If a brief is filed by an attorney or prepared with a computer, it must include a certificate by the attorney, or party who is not represented by an attorney, that the document complies with the word-count limitations. The person preparing the certificate may rely on the word count of the word-processing program used to prepare the document.

In addition to legal argument, a memorandum of law must contain a fact section that sets forth all facts relevant to the motion and, for each factual statement, contains one or more citations to the evidence in the record. Factual statements contained within other sections of a memorandum must also be followed by a citation to record evidence.

Sur-reply memoranda will not be accepted without prior permission of the Court.

F. Searchable Format.

All motion papers, letter-motions, and letters filed on ECF or emailed to Chambers must be in searchable PDF form. Typically, this means that a document created using word-processing software must be printed to or converted to PDF from the original word-processing file. PDF images may not be created by scanning paper documents.

G. Redactions and Filing Under Seal.

1. Redactions Not Requiring Court Approval. The parties are referred to the E-Government Act of 2002 and the Southern District's ECF Privacy Policy ("Privacy Policy") (<https://nysd.uscourts.gov/privacy-policy>). There are two categories of information that may be redacted from public court filings without prior permission from the Court: "sensitive information" and information requiring "caution." Parties should not include in their public filings, unless necessary, the five categories of "sensitive information" (i.e., social security numbers [use the last four digits only], names of minor children [use initials only], dates of birth [use the year only], financial account numbers [use the last four digits only], and home addresses [use only the City and State]). Parties may also, without prior Court approval, redact from their public filings the six categories of information requiring "caution" described in the Privacy Policy (i.e., any personal identifying number, medical records [including information regarding treatment and diagnosis], employment history, individual financial information, proprietary or trade secret information, and information regarding an individual's cooperation with the government).

2. Redactions and Sealed Filings Requiring Court Approval.

Except for redactions permitted by the previous paragraph, all redactions or sealing of public court filings require Court approval. To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition 9 Switch Litig.*, No. 14-MD-2543 (JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015).

3. Procedures for Filing Documents with Redactions. Any party seeking to file a document with partial redactions should comply with the following three steps:

a. ECF Filing of the Redacted Document(s). The party should file the redacted version of the document on ECF.

b. Filing or Emailing of a Letter Motion Seeking Leave to File with Redactions. If the party is seeking leave of the Court to redact the document (i.e., if the redactions are not among the categories of redactions that can be made without Court approval), the party should simultaneously file on ECF a letter-motion seeking leave to file the document with those redactions. The letter-motion must explain the purpose of the redactions, and why the redactions are consistent with the standards discussed in Paragraph G(2), *supra*. (The party should endeavor to draft the letter-motion in a form that can be filed publicly on ECF. If, however, the party believes that the letter-motion itself should be sealed or redacted, the party should include an unredacted copy of the letter-motion as an attachment to the email described in Paragraph G(3)(c) below, and, if possible, file a redacted version of the letter-motion on ECF).

c. Emailing of Documents to Chambers. At the same time, the party should email to RicardoNYSdChambers@nysd.uscourts.gov, copying all counsel or the pro se litigant if they are unrepresented: (1) a clean (i.e., unredacted) copy of the document; (2) a copy of the document highlighting the information that has been redacted in the ECF filing; and (3) an unredacted copy of the letter-motion described in Paragraph G(3)(b), should the party also be seeking leave to file that letter-motion with redactions or under seal.

4. Procedure for Filing Sealed Documents.

a. Sealing Exhibits. Any party seeking leave to file an unsealed or redacted document with a fully sealed exhibit attached thereto should file the main document (in accordance with the procedures described above, if the party seeks to do so with redactions) on ECF, accompanied by a single page marked “SEALED” in place of any exhibit that the party seeks leave to file under seal, regardless of the actual length of such exhibit. The party should simultaneously file a letter-motion seeking leave to file in that manner according to the procedure described in Paragraphs G(3)(a–c) *supra*.

b. Sealing Entire Documents. Any party seeking leave to file under seal an entire submission (with or without exhibits) should not file anything on ECF in the first instance. Instead, the party should email an unredacted copy of the submission to RicardoNYSDCchambers@nysd.uscourts.gov, copying all counsel or the pro se litigant if they are unrepresented, and should include as an attachment to the email a letter-motion with a proposed order (in Word document format) seeking leave to file the document under seal. The letter-motion must explain why sealing is justified in light of the standards discussed in Paragraph G(2) above. If the party believes that the letter-motion itself should be sealed or redacted, the letter-motion should so state and should provide the justification therefor. The Court will include instructions for filing sealed or redacted versions of the document and accompanying letter-motion, if necessary, in any order disposing of the motion to seal.

H. Requests for and Participation in Oral Argument.

Parties may request oral argument by separate letter (not letter motion) at the time their motion papers are filed. This is true for both discovery motions and motions on the merits. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

I. Participation by Junior Attorneys.

Junior members of legal teams representing clients are invited to argue motions that they have helped to prepare. Firms are encouraged to provide this opportunity to junior lawyers. While the Court generally prefers having only one attorney for each side participate at argument, the Court is amenable to permitting more than one lawyer argue different issues if this division of responsibility creates an opportunity for a junior lawyer to participate. Of course, the ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case and the client, not for the Court. That said, the Court believes it is crucial to provide substantive speaking opportunities to less experienced lawyers, and that the benefits of doing so will accrue to all members of the profession and their clients.

Thus, the Court encourages all lawyers practicing before it to keep this goal in mind. It is the way one generation will teach the next to litigate cases and to maintain our District's reputation for excellence.

J. Proposed Stipulations and Orders.

All proposed stipulations and orders must be filed on ECF in accordance with the ECF Rules & Instructions. At the same time, a copy of all proposed stipulations and orders should be emailed in Word format to RicardoNYSDChambers@nysd.uscourts.gov, copying all counsel or the pro se litigant if they are unrepresented.

K. Motions Requiring Submission of an Excel File.

When a party submits any of the following motions to Judge Ricardo, or within fourteen days of the referral of such a motion to Judge Ricardo, the moving Party shall submit an Excel file including the relevant calculations. An Excel file is required even if the motion was already submitted to a District Judge. Excel files are required for the following motions: (1) Inquests on Damages; (2) Motions for Attorney's Fees; (3) FLSA Damages; and (4) IDEA Reimbursements. The Excel file should be emailed to RicardoNYSDChambers@nysd.uscourts.gov, copying all counsel or the pro se litigant if they are unrepresented. A letter should also be filed on ECF providing the date and time the Excel file was emailed.

L. Specific Time Periods Provided by Federal Rules.

Nothing in the Court's Individual Practices supersedes a specific time period for filing a motion specified by statute or Federal Rule—including but not limited to Rules 50, 52, 54, 59, and 60 of the Federal Rules of Civil Procedure and Rule 4 of the Federal Rules of Appellate Procedure—where failure to comply with the specified time period could result in forfeiture of a substantive right.

III. Pretrial and Trial Procedures.

For those cases where the parties have consented pursuant to 28 U.S.C. § 636(c) to have all proceedings, including trial, before Judge Ricardo, the Court will file a Scheduling Order containing instructions for the parties' Proposed Joint Pretrial Order.