INDIVIDUAL PRACTICES OF ANDREW L. CARTER, JR.
Current as of November 4, 2016

Chambers
United States District Court
Southern District of New York
40 Foley Square, Room 435
New York, NY 10007
ALCarterNYSDChambers@nysd.uscourts.gov

Courtroom
Courtroom 1306
Tara D. Hunter-Hicks
Courtroom Deputy
(212) 805-0141

Unless otherwise ordered by Judge Carter, matters before Judge Carter will be conducted in accordance with the following practices:

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with Chambers should be by letter, with copies simultaneously delivered to all counsel. All letters must provide the name of the case and its docket number, and must state the name of the party that counsel represents.

Generally, letters should be filed electronically on ECF and courtesy copies should be emailed to Chambers as a .pdf attachment to the following address: ALCarterNYSDChambers@nysd.uscourts.gov with all counsel copied on the email. Counsel should include the case caption, docket number, and a brief description in the subject line of every email sent to Chambers. Example: *Jane v. John*; 12 Civ. 0000; Defendant's request for a Pre-Motion Conference.

Courtesy copies of letters filed under seal or containing sensitive or confidential information should also be emailed to Chambers in the format listed above. *Pro se* litigants may send letters via email or regular mail. Copies of correspondence between counsel should **not** be sent to Chambers.

B. Telephone Calls. For routine docketing, scheduling, and calendar matters, please call Tara Hunter-Hicks, the Deputy Clerk, at 212-805-0141 between 9 a.m. and 4:30 p.m. Telephone calls to Chambers for other matters are permitted for urgent situations requiring immediate attention and should not be ex-parte. The telephone number for Chambers is 212-805-0280.

C. Faxes. Judge Carter prefers that counsel email letters to ALCarterNYSDChambers@nysd.uscourts.gov. Faxes to Chambers are not permitted without express prior permission, and only in cases of unforeseeable emergencies. Requests for extensions of time and pre-motion letters, for example, are very rarely considered unforeseeable or emergencies.

D. Requests for Adjournments or Extensions of Time. Applications for adjournments and extensions of time must be made by letter posted to ECF (not by telephone) and received in Chambers by email (or regular mail for *pro se* litigants) at least two business days before the scheduled appearance. See Rule 1A.

All such applications must state (1) the original date, (2) the number of previous requests, (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. **Failure to comply with these requirements will result in a denial of the request, absent good cause shown.** If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order **must be** attached. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge should be directed to that assigned Magistrate Judge.

E. Related Cases. After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing, as well as the docket number of the case to which it is related.

F. Proposed Orders and Stipulations. All stipulations and orders, including consent orders, orders to show cause, preliminary injunctions, and temporary restraining orders, should be brought to the Orders Clerk (500 Pearl Street, Clerk's Office) and Judgments should be presented to the Judgments Clerk (500 Pearl Street, Clerk's Office). Counsel may also email them to orders_and_judgments@nysd.uscourts.gov. Courtesy copies need not be sent to Chambers.

G. Courtesy Copies. Any courtesy copy submitted to Chambers that was originally filed on ECF must be clearly marked "Courtesy Copy," "Original Filed by ECF," and "Assigned Document Number [print or type assigned document number]."

2. Motions

A. Pre-Motion Conferences in Civil Cases. 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. To raise a discovery dispute with the Court, contact the assigned Magistrate Judge.

A pre-motion conference with the Court is required before making any motion, except:

- orders to show cause;
- motions for admission *pro hac vice*;
- motions to remand;
- motions for reargument or reconsideration (time to oppose (14 days); time to reply (7 days));
- motions for reduction of sentence;
- *in forma pauperis* motions;
- applications for attorney's fees;

- motions to be relieved as counsel;
- motions for a new trial or amendment of judgments;
- motions for default judgment;
- motions that are required by the Federal Rules of Appellate Procedure;
- objections to Magistrate Judges' rulings;
- motions for appointment of lead plaintiffs and counsel in class actions;
- petitions to confirm or compel arbitration;
- motions *in limine*;
- habeas corpus petitions;
- motions in Social Security cases; and
- motions for temporary restraining orders or preliminary injunctions.

To arrange a pre-motion conference, the moving party should submit a letter, not to exceed 3 pages (exclusive of letterhead and signature block(s)), setting forth the basis for the anticipated motion. The opposing party should submit a letter, also not to exceed 3 pages, setting forth its position within 3 business days from the service of the moving party's letter. If a pre-motion conference is requested in connection with a proposed motion to dismiss, the request will stay the deadline for the requesting party to move or answer.

B. Page Limits. A memorandum of law, in support of or in opposition to any motion, is limited to 25 pages and reply briefs should be no longer than 10 pages. All memoranda of law should be in 12-point font or larger, with 1" margins on all sides. Sur-reply memoranda will not be accepted without prior permission of the Court.

C. Filing of Motion Papers. Counsel should electronically file its own motion papers at the time of service. In cases involving *pro se* litigants, the party represented by counsel is responsible for filing the entire motion on ECF. **Counsel should deliver one courtesy copy of the respective motion papers to Chambers after service.**

D. Special Rules for a Motion to Dismiss.

i. During a pre-motion conference to discuss a motion to dismiss, the non-moving party must advise the Court and its adversary whether it intends to file an amended pleading based on the pre-motion conference letter, and if so, when it will do so. If the party amends, the opposing party may then: (a) file an answer or (b) submit a letter stating that it still intends to file a motion to dismiss. No further requests for a pre-motion conference are necessary.

ii. If the non-moving party elects not to amend its complaint and the motion to dismiss is granted, **it is unlikely that the Court will grant the non-moving party leave to amend**.

E. Special Rules for a Summary Judgment Motion.

i. Except in *pro se* cases, the moving party should provide all other parties with an electronic copy of the moving party's Statement of Material Facts Pursuant to

Local Civil Rule 56.1. The 56.1 Statement must contain only one factual assertion in each numbered paragraph. Each factual assertion must be followed by a citation to the portion(s) of the evidentiary record relied upon. 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. The response must state specifically what is admitted and what is disputed, and the basis for any dispute, citing specific portions of the evidentiary record relied upon. The response may go on to make additional factual allegations in paragraphs numbered consecutively to those of the moving party (*i.e.*, do not begin re-numbering at 1). If additional factual allegations are made by the opponent, the moving party must file a responsive 56.1 Statement addressing the additional assertions.

ii. If multiple parties are submitting 56.1 Statements, they must coordinate their statements to provide for consecutive, non-overlapping, numbered paragraphs in their respective statements.

iii. With respect to any deposition 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.

F. Oral Argument on Motions. The parties may request oral argument; the Court will advise counsel if argument will be heard and, if so, of the argument date.

G. Default Judgments. See Attachment A.

H. Unpublished Cases. Westlaw citations should be provided, if available, to cases not available in an official reporter.

3. Conferences

A. Principal Trial Counsel. The attorney who will serve as principal trial counsel must appear at all conferences with the Court.

B. Initial Civil Case Management Conference. At the start of a case, parties consenting to proceeding before a magistrate judge should file form AO85 with the Clerk of Court. Parties wishing to proceed before Judge Carter are required to register in accordance with the Procedures for Electronic Case Filing as soon as reasonably practicable and file a notice of appearance. Counsel can access the web site www.nysd.uscourts.gov and click on CM/ECF Home Page for complete instructions on how to register. **In any case involving allegations of personal injury – whether physical, psychological, emotional or otherwise – the plaintiff is to provide to the defendant prior to the initial pretrial conference all necessary medical authorizations.**

C. Criminal Cases. Upon assignment of a criminal case to Judge Carter, the parties should immediately call the Deputy Clerk at 212-805-0141 to arrange for a prompt conference, at which the defendant will be present, in order to set a discovery and motion schedule. The

Assistant United States Attorney should deliver a courtesy copy of the indictment and the criminal complaint, if one exists, to Chambers as soon as practicable.

D. Courtroom. All conferences will be held in Courtroom 1306 in 40 Foley Square, unless otherwise indicated.

4. 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 of its decision, the parties should file on ECF a joint pretrial order, which should 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 should 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 should 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 an indication of whether any party objects to the exhibit and a *brief* statement of the nature of the objection (e.g., "relevance," "authenticity," "hearsay").

xi. A statement of damages claimed, itemizing each component or element of the damages sought with respect to each claim, 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.

At least 14 days before the parties file their joint pretrial order, all counsel must meet for at least one hour to discuss settlement in good-faith. Counsel are encouraged to request a settlement conference before the assigned magistrate judge.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party should file on ECF (*pro se* litigants should file via regular mail) the following documents 21 days before the date of commencement of trial:

i. In jury cases, proposed *voir dire* questions, requests to charge and verdict form. The plaintiff's proposed *voir dire* questions should include an agreed-upon paragraph (designated as such) for the Court to use in *voir dire* to provide the jury panel with a brief explanation of the case. If the parties cannot agree on such a paragraph after good-faith efforts, their respective proposed paragraphs (designated as such) should be set forth in their respective *voir dire* submissions. In addition to being filed on ECF, the proposed *voir dire* questions, requests to charge and verdict form should be emailed as single MS Word documents to ALCarterNYSDChambers@nysd.uscourts.gov. Each proposed jury instruction must contain a citation to the source/authority for the proposed instruction.

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 where any party believes it would be useful, a pretrial memorandum.

C. Filings in Opposition. Unless otherwise ordered by the Court, any represented party should file on ECF the following documents within 1 week of the filing of any document described in section 5.B. above (*pro se* litigants may file via regular mail):

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. At the time the joint pretrial order is filed, each party should 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 should 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 should 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.

One courtesy copy of the joint pretrial order and all documents filed with the pretrial order should be submitted to chambers on the date of filing. One week before the start of the trial, each party should file, with an accompanying table of contents or index, all documents referenced in Section 5-D of these Rules. Two courtesy copies should be hand delivered to chambers on that date as well.

5. 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 should stipulate to the appropriate correction or, if agreement cannot be reached, should proceed by motion on notice. Non-material defects in syntax, grammar, spelling or punctuation should be ignored.

6. Other Pretrial Matters

A. 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 2 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.

B. Settlement Agreements. The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

C. Requests for Sealing. Parties must obtain leave of this Court before filing any document under seal. Any sealing request should include a party's proposed redactions. If leave is granted, parties must file redacted copies with the Clerk of the Court. Proposed protective orders should include a provision reflecting this requirement.

7. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. **Mobile phones are permitted inside the Courtroom, but must be kept turned off at all times**.

B. Computers, Printers, or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a "personal electronic device," specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should send a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter should identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

ATTACHMENT A

DEFAULT JUDGMENTS

1. **Certificate of Default.** To file for a certificate of default, parties must submit to the Clerk of the Court a "request for entry of default" and a proposed "clerk's certificate." Parties must submit this electronically through the ECF system but must also send a courtesy copy of the certificate only, by hand or mail (along with a self addressed stamped envelope) to the Orders and Judgments Clerk for signature and seal. This signed certificate is to be attached to the default judgment when the default judgment is electronically filed.

2. **Motion for Default Judgment**. Once the plaintiff obtains a Certificate of Default, it should deliver to the Orders and Judgments Clerk an Order to Show Cause, including a return date and time approved by chambers, and a proposed default judgment Order. It should also file on ECF its motion for a default judgment. The motion should include:

   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 damages prior to resolution of the entire action;

   iii) the proposed damages and the basis for each element of damages including interest, attorneys' fees, and costs;

   iv) legal authority for why an inquest would be unnecessary; and

   v) that the defendant is not an infant or an incompetent.

   B. A proposed default judgment.

   C. Copies of all 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 the Court stating that no answer has been filed.

   F. A certificate of service complying with Local Civil Rule 55.2(c). Service on the defaulting parties must be made by certified mail and the plaintiff should submit the tracking number to the Court.

   G. A memorandum providing the legal and factual authority proving that liability has been established.

3. **Damages.** If the plaintiff seeks an award of damages in the motion for a default judgment, the plaintiff must also include:

   A. A request for an amount equal to or less than the principal amount demanded in the complaint;

   B. Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated. (If this requirement cannot be satisfied, a default judgment may be granted as to liability, and damages will be determined by an inquest);

   C. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;

   D. A request for interest on the principal amount not to exceed 9%, if interest is sought;

   E. Reasonable attorney's fees incurred in the preparation of the default judgment application, usually not to exceed $2,000, if attorney's fees are sought; and

   F. The calculations made in arriving at the proposed judgment amount.

The plaintiff(s) must submit one courtesy copy to Chambers.

ATTACHMENT B

PROCEDURE FOR SENTENCINGS

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. Defense counsel 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 should be served two weeks in advance of the date set for sentence. The Government's sentencing submission should 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 should file its sentencing submission following one of the two procedures described here.

    a. ECF Filing. If the case is electronically filed, letters must be filed electronically on the ECF system. A party should group and file the letters together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.

    b. Paper Filing. If the case is not electronically filed, letters must be filed as hard copies. A party should 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.

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.

UNITED STATES DISTRICT COURT

for the

Southern District of New York

_____	)	
Plaintiff	)	
v.	)	Civil Action No.
_____	)	
Defendant	)	

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Parties' printed names	*Signatures of parties or attorneys*	*Dates*

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

_____
District Judge's signature

_____
Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.