

INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE DEBRA FREEMAN

IMPORTANT NOTICE DURING PERIOD OF COVID-19 OUTBREAK:

During the period of the COVID-19 outbreak in New York City, Judge Freeman and her Chambers staff may be working remotely. Accordingly, notwithstanding the practices set out below, parties should *not* send faxes to Chambers during this period, as they may not be received. With very limited exceptions, all submissions to Chambers should be filed on the Court's Docket. If counsel believes that there is a particular reason why a confidential submission to Chambers would be appropriate (such as a confidential settlement statement), counsel should call (212) 805-4650 and leave a voicemail message explaining the situation. Chambers staff will return the call and provide direction. In addition, during this period, courtesy copies of filings will *not* be required. Counsel may still submit courtesy copies if a submission is voluminous and if counsel believes that a paper copy would facilitate review. Counsel should be aware, however, that there may be a delay in Judge Freeman's receipt of any submitted courtesy copies.

Unless otherwise ordered by Judge Freeman, civil matters before her shall be conducted in accordance with the following practices:

Note: These practices are applicable only if the matter before Judge Freeman is within the scope of the District Judge's Order of Reference or if the case is before Judge Freeman pursuant to the parties' consent under 28 U.S.C. § 636(c). Otherwise, the practices of the District Judge to whom the case is assigned will apply. If the parties wish to consent to have Judge Freeman hear their case either for all purposes, including trial, or for resolution of a specific dispositive motion, then they should fill out and submit to the District Judge the requisite consent form (available on the S.D.N.Y. website).

I. Communications with Chambers

- A. Letters.** Letters to the Court are permitted, consistent with the procedures described below.
- B. Requests for Adjournments or Extensions of Time.** Absent an emergency, requests for adjournments or extensions of time should be made by letter, at least 48 hours prior to the scheduled conference or deadline. Such letters (and any responses to such letters) should be filed through the Court's Electronic Case Filing ("ECF") system, and not copied to Chambers. All letters seeking adjournment or extension should state:

1. the original date,
2. the number of previous requests for adjournment or extension,
3. whether these previous requests were granted or denied,
4. whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent, and
5. whether the requested adjournment or extension would affect any other scheduled dates, and, if so, how, in counsel's view, the other scheduled dates should be modified.

For emergency requests for adjournment or extension (*i.e.*, requests made within 48 hours of the scheduled conference or deadline), counsel should call Chambers, at (212) 805-4650. The parties should note, however, that the Court will not grant last-minute requests for adjournment or extension without good cause.

C. Requests for Other Types of Relief. Requests to the Court for other types of non-dispositive relief (*i.e.*, other than requests for adjournment or extension), may also be made by letter motion filed on ECF, where counsel believe that a formal motion and full briefing is not necessary. For these types of letters, however, courtesy copies should be provided to Chambers.

If such a letter motion contains sensitive or confidential information, then, if such information is reasonably capable of redaction, the letter should be filed on ECF in redacted form (with redactions clearly marked with the word "REDACTED"), and an unredacted copy of the letter should be delivered to the opposing party and to Chambers, with an explanation that this has been done. Where a party requests leave to file a letter under seal, in its entirety, the letter should be delivered only to the opposing party and to Chambers, together with the request for sealing.

Note that any letter delivered to Chambers must be delivered to the opposing party by no slower means than it is delivered to the Court. (In other words, sending a letter by fax to Chambers and by mail to an adversary would be unacceptable.)

NOTE REGARDING GOOD-FAITH CONFERENCE REQUIREMENT: Any letter application seeking the Court's resolution of a discovery dispute must be accompanied by a statement that the moving party has conferred (or made substantial efforts to confer) in good faith with its adversary, in an informal attempt to resolve, or at least narrow, the dispute. The Court enforces this requirement in both counseled and *pro se* cases (except where not feasible, as in where the *pro se* litigant is incarcerated), and will not consider any discovery dispute where the moving party has not satisfied the good-faith conference requirement. The moving party should note that "good-faith conference" does not mean

that it has merely sent its adversary a letter or email, to which the adversary has not yet responded. The Court expects that, at a minimum, the moving party will have called its adversary and made efforts to engage in a meaningful dialogue, in an attempt to resolve any discovery issues.

- D. Oppositions to Letter Motions.** Unless the Court orders otherwise, opposition to any letter motion shall be filed within three (3) days of the moving letter, and reply, if any, shall be filed within one (1) day of opposition.
- E. Informational Letter Sent to the Court, Not Seeking Specific Relief.** If counsel have been instructed to submit a status letter or wish to submit any other type of letter that is not seeking specific relief from the Court, counsel should file the letter on ECF, but not as a “letter motion.” Rather, after selecting the “Civil” heading on the main menu bar, counsel should select “Other Documents” (under “Other Filings”). A list with available events will appear, and “Letter” should be selected. These types of letters should only be filed on ECF and not copied to Chambers, unless they contain sensitive or confidential information, in which case the procedures set forth in Section I(C), above, should be followed.
- F. Pro Se Litigants’ Communications with the Court.** All letters and other communications to the Court from *pro se* litigants should be directed to the Court’s *Pro Se* Office, not to Chambers.
- G. Telephone Calls to Chambers.** Except as set forth above, telephone calls are permitted. For calendar inquiries, please call Ms. Aisha Bams, Courtroom Deputy, at (212) 805-4650, between the hours of 9:00 a.m. and 5:00 p.m. When the Court specifically schedules a telephonic case-management conference in a case, the parties should make arrangements to set up the conference call, and call the Court when all parties are on the line.
- H. Faxes.** Counsel should be aware that Chambers’ fax capability is limited, and lengthy faxes (more than 5 pages, including attachments) will not be accepted without advance permission. Any counsel who transmits voluminous faxes to Chambers, in egregious violation of this restriction, may be sanctioned. In addition, faxes to Chambers are permitted only if copies are first faxed or otherwise delivered to all parties. Do not follow with hard copy. The fax number is (212) 805-4658.

II. Motions

- A. Pre-Motion Conferences in Civil Cases.** For discovery motions, follow Local Civil Rule 37.2 and the above procedures for letter submissions. For motions other than discovery motions, pre-motion conferences are not required. *See* Section I(C), above, regarding the good-faith conference requirement for all discovery motions.

- B. Courtesy Copies.** Courtesy copies (clearly marked as such) of all discovery or substantive motions and oppositions, including filed letters, memoranda of law, affidavits or declarations, exhibits, and transcripts, must be supplied to Chambers.
- C. Memoranda of Law – Page Limits.** 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.
- D. Filing of Motion Papers.** In any case where service by means other than ECF is required, each party’s motion, opposition, and reply papers shall be filed promptly after service.
- E. Oral Argument on Motions.** Although a party may request oral argument in its motion or opposition papers, Judge Freeman normally does not hear oral argument on motions. If the Court determines that oral argument will be heard, it will so advise the parties.
- F. Motions in *Pro Se* Cases.** As required by Local Civil Rule 7.2, counsel must provide a *pro se* litigant with printed copies of any cited decisions that are either unpublished or reported exclusively on computerized databases. In addition, where a counseled party files a dispositive motion with respect to any claim asserted by a *pro se* litigant, counsel must comply with the notice requirements set out in the Local Civil Rules of this Court, including Rules 12.1 and 56.2, where applicable. Where, in a motion to dismiss a *pro se* complaint, a counseled party refers to matters outside the pleadings, that party is strongly encouraged to move, in the alternative, for summary judgment, so that, if the Court decides to resolve the motion under Rule 56 of the Federal Rules of Civil Procedure, the *pro se* litigant will understand, based on the moving party’s Local Civil Rule 56.1 statement, exactly what facts are relevant to the motion.

III. Electronic Filing Under Seal in Civil and Miscellaneous Cases

- A. Sealing/Redactions Not Requiring Court Approval.** Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court.
- B. Sealing/Redaction Requiring Court Approval.** Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, including the proposed sealed document(s), must be filed electronically through the court’s ECF system in conformity with the court’s standing order, 19-mc-00583, and ECF Rules & Instructions, section 6.

The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal and should not include confidential information sought to be filed under seal. Supporting papers must be separately filed electronically and may

be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal.

The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include confidential information sought to be filed under seal.

Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the proposed redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion.

Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

IV. Pretrial Procedures in Civil Cases

(for cases before Judge Freeman on consent, pursuant to 28 U.S.C. § 636(c))

Where a civil case is before Judge Freeman on consent, the parties should request a conference with the Court promptly after the close of discovery, for the purpose of setting a schedule for summary judgment motions (if no such schedule has yet been set) or a trial date. Note that, in consent cases, Judge Freeman calendars trials for specific starting dates, set after consultation with counsel, rather than using a “trial ready” calendar. If any party moves for summary judgment, the Court will not set a trial schedule until after that motion is resolved.

Once a case is ready to proceed to trial, the Court will hold a conference to set a schedule not only for trial, but also for all pretrial submissions, including the Joint Pretrial Order, proposed *voir dire* and jury instructions, and any *in limine* motions. In advance of that conference, counsel should confer with their clients, their witnesses, and each other regarding their availability for trial and the expected length of trial. Judge Freeman expects the following, with respect to pretrial submissions:

A. Joint Pretrial Orders. On the schedule set by the Court, the parties shall submit a Joint Pretrial Order, 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 which remain to be tried, without recital of evidentiary matter, 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 by each party confirming that each party has consented to trial of the case by a magistrate judge.
7. Any stipulations or agreed statement of fact or law which have been agreed to by the parties.
8. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.
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 list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground. In addition, each party is directed to provide the Court with a courtesy loose-leaf binder containing copies of that party's listed exhibits, pre-marked with identification numbers (for plaintiff) or letters (for defendant).

B. Additional Trial Submissions. On the schedule set by the Court, the parties may also need to submit certain additional materials, as follows:

1. If the case is to be tried before a jury, then the parties will be required to submit, both in hard copy and electronic form (Microsoft Word® is preferred):
 - a. proposed *voir dire* questions that relate to case-specific matters (the Court will use its own, general *voir dire* questions),
 - b. a single, jointly proposed set of jury instructions, and
 - c. jointly proposed special verdict sheet.

The parties are expected to confer in good faith with respect to both the substance and language of the proposed jury instructions, and to make best efforts to reach agreement as to both. If, despite such efforts, the parties cannot agree as to whether a certain charge should be given (or as to the language of a charge), then they should still make a joint submission of a single, uniform set of proposed instructions, in which they may indicate (in bold face) each party's preference regarding the disputed charge at issue, at the point in the instructions where the charge would normally be given, if it were to be included. When the parties do not agree as to whether a particular charge should be given, they should also provide the legal bases for their positions. All proposed jury instructions should be written out in their entirety; merely referring to the number of a pattern jury instruction is insufficient.

2. In non-jury cases, each party will be required to submit a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element.
3. In all cases, the parties will be expected to raise, before trial, all issues that are capable of resolution before the commencement of trial, so as to streamline the trial. To the extent any party seeks to raise issues *in limine*, that party shall make a single motion in limine, raising, in separate sub-parts of that single motion, each of the matters as to which it seeks a pretrial ruling from the Court.
4. Pretrial memoranda are not required, but are permitted, if any party believes that such a memorandum would be helpful to the Court.

V. Settlement Conferences

See Judge Freeman's separate procedures for cases referred to her for settlement. In addition, in any case referred to Judge Freeman for general pretrial supervision, settlement, or trial on consent, the parties will be expected to confer regarding potential settlement at the outset of the case and throughout its pretrial phase. At most case-management conferences held by Judge Freeman, the parties should expect to report to the Court regarding the status of their settlement discussions.