

HONORABLE HAROLD BAER, JR.
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INDIVIDUAL PRACTICES OF JUDGE HAROLD BAER, JR.

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

1. Communications With Chambers

A. Letters. Copies of letters to chambers shall simultaneously be delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. In addition to Paragraph 1(D) below, telephone calls to chambers are permitted. For matters other than docketing, scheduling or calendaring, call chambers at 212-805-0184.

C. Faxes. Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than 10 pages may be faxed without prior authorization. Do not follow with a hard copy. The fax number is 212-805-7901.

D. Docketing, Scheduling, and Calendar Matters. For civil scheduling and calendar matters, call chambers at 212-805-0184. For criminal matters, contact Mr. Dennis Swain at 212-805-0088. For matters relating to docketing or electronic filing, contact the office of the Clerk of the Court at 212-805-0136.

E. Requests for Adjournments or Extensions of Time. Any requests for adjournments or extensions of time (including requests for adjournments in criminal matters) **should be in writing**, must state whether the adversary consents and must include a current copy of the docket report for the case. If the request is for an adjournment

of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

2. Pleadings

Courtesy copies of pleadings (i.e., complaints, answers) and 7.1 Statements (if applicable), marked as such, shall be submitted to chambers, as soon as practicable after filing.

3. Pretrial Conferences

Parties should attempt to complete a copy of my Pretrial Scheduling Order prior to attending the Rule 16(b) conference. At the conference, parties should be prepared to discuss, if applicable, issues with respect to disclosure and discovery of electronically stored information, along with privilege concerns related to that information.

If a party joins another party to the case, the new party shall be bound by the deadlines included in the original Pretrial Scheduling Order. The party joining the new party shall forward to the new party a copy of the Pretrial Scheduling Order and provide the new party with access to all previously taken discovery. Should this pose a seemingly insurmountable problem, call Chambers.

4. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are not required.

i. Any party that files a motion to dismiss should simultaneously forward a courtesy copy of the moving papers to the Court. The non-moving party must, within 10 days of receipt of the motion, notify the Court and your adversary in writing whether: 1) you intend to file an amended pleading; or 2) you will rely on the pleading being attacked. If the non-moving party elects not to amend its complaint, no further opportunities to amend will be granted. This provision shall not stay or extend the time permitted by the Federal and/or Local Rules to respond to the pending motion to dismiss.

B. Courtesy Copies. Except as set forth in section 3(A)(i), courtesy copies, marked as such, should not be submitted until motions are fully-briefed (i.e., moving,

opposition, and reply papers have been filed and served). It is the movant's responsibility to submit one courtesy copy of the entire set of papers directly to chambers. The submission of courtesy copies is independent of each party's responsibility to file and serve papers in accordance with any applicable Local and/or Federal Rules.

C. Memoranda of Law. 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.

i. In cases involving multiple defendants, unless prior permission has been granted, defendants shall file one consolidated memorandum of law, of no more than 35 pages in length, in support of any dispositive motion. Plaintiff(s) shall file one consolidated memorandum in opposition, of no more than 35 pages, and any reply shall also be consolidated and shall not exceed 15 pages.

D. Filing/Serving of Motion Papers. Motion papers are to be filed and served in accordance with any applicable Local and/or Federal Rules.

E. Oral Argument on Motions. The movant may request oral argument or relay the request of his opposing counsel, in the cover letter, enclosing the courtesy set of fully-briefed motions to chambers. It is the non-movant's responsibility to convey his request for oral argument to the movant, so that all requests are properly submitted to chambers in the movant's transmittal letter. In rare instances, the Court will deny argument or, conversely, ask for argument without request. For the most part, the Court will fix a date and time when the motion will be heard and will advise counsel accordingly. It should be noted that the date that motions are "returnable" is the date that the motions are fully-briefed, not the date that argument will take place.

5. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Pretrial orders are to be provided in accordance with the Federal Rules unless otherwise directed by the Court. The pretrial order shall include the following:

i. The full caption of the action.

ii. The names, addresses (including firm names), 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 shall 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 which remain to be tried, including citations to all relied-upon statutes, but without recital of evidentiary matters. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

v. Any stipulations or statements of fact or law which have been agreed to by all parties.

vi. A list by each party of all witnesses whose testimony be offered in that party's case in chief and an indication as to whether such testimony will be in person or by deposition.

vii. A designation by each party of deposition testimony to be offered in that party's case in chief, with cross-designations, the opposing party's objections, and the basis for such objections. See 4.B.i., infra.

viii. A list by each party of exhibits to be offered in that party's case in chief, with the grounds for any objections.

With respect to points vi and vii above, it should be noted that the Court requires live testimony when witnesses are available. Deposition testimony may only be used when witnesses are unavailable and, in all cases, for cross-examination.¹ Witnesses will only be called once during the course of trial, although the Court will always entertain argument on this issue and even on the order the exam will take. If both parties intend to call the same witness, generally the examination of the witness will be conducted

¹ Obviously the FRCP is adhered to and, therefore, if pursuant to Rule 32, this creates a problem, I will hear argument.

as follows: (1) direct examination by plaintiff (or the Government); (2) cross-examination by defendant; (3) direct examination by defendant; (4) cross-examination by plaintiff (or the Government). Plaintiff (or the Government) will then continue with the presentation of evidence. In bench trials, all direct-examination is conducted via declarations (i.e., there is no live testimony on direct). All witnesses must, however, be available and present for live cross-examination.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, 10 days before the commencement of trial, each party shall file the Joint Pretrial Order together with:

i. Any fully-briefed motions in limine and a binder containing all exhibits to which there are objections, the grounds for the objections (in a word), and the reply to such objections (also in a word). If deposition testimony is to be offered as evidence at trial, the parties must submit a separate binder with copies of all such testimony, which identifies: (1) the excerpts submitted on behalf of each party; and (2) the excerpts to which each party objects; and (3) the grounds for such objection. It should be noted that in all cases, any evidentiary or other issues will be resolved via in limine motions, prior to trial.

ii. In jury cases, requests to charge and proposed voir dire questions. When feasible, requests to charge should also be submitted on a 3.5" diskette in Microsoft Word.

iii. In non-jury cases, a statement of the elements of each claim or defense, together with a summary of the facts relied upon to establish each element.

iv. In any case where such party believes it would be useful, a pretrial memorandum.

C. Exhibits. Plaintiffs should mark their exhibits as "Plaintiff's 1, 2, 3..." and defendants should mark their exhibits as "Defendant's A, B, C..."

Revised 2/7/07