

## INDIVIDUAL PRACTICES OF JUDGE DEBORAH A. BATTS

United States District Court  
United States Courthouse  
500 Pearl Street, Room 2510  
New York, NY 10007

General Chambers Number: (212) 805-0186

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

### I. PRE-TRIAL COMMUNICATIONS WITH CHAMBERS

- A. **Letters.** Letters should be filed on ECF with one courtesy copy delivered to Chambers. Copies of correspondence between counsel not needing Court action shall not be sent to the Court.
- B. **Telephone Calls.** Telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call Chambers at (212) 805-0186.
- C. **Faxes.** Faxes to Chambers are not permitted, except with prior Court approval for that instance only.
- D. **Docketing, Scheduling, and Calendar Matters.** For docketing, scheduling and calendar matters, email Mr. William Delaney, the Courtroom Deputy, at Bill\_Delaney@nysd.uscourts.gov.
- E. **Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) disposition of prior requests, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. **Parties cannot get extensions of time without prior Court permission sought in writing at least one week before the expiration of the current deadline.**

Last modified by the Court on October 31, 2016

## II. PLEADINGS AND MOTIONS

**A. Courtesy Copies of Motions.** Two courtesy copies of all pleadings and motion papers, marked as such, shall be submitted to Chambers at the time the papers are served and filed. For Motions for Summary Judgment, full depositions and deposition exhibits relied on in the Motion are to be submitted on CDs or DVDs.

**B. 1. Pre-Motion Conferences in Civil Cases.** A pre-motion conference with the Court is required before making any motion, except discovery motions and motions that are required by the Federal Rules of Civil or Appellate Procedure to be made by a certain time. For discovery motions, follow Local Civil Rule 37.2.

**Motions made in lieu of an Answer, for emergency relief, for preliminary injunctive relief, for remand, concerning arbitration, for pro hac vice admission, for default judgment, or for relief from judgment/new trial/reconsideration, do not require a pre-motion conference. For summary judgment motions, see II(B)(2).**

Motions for pro hac vice admission must include legible certificate(s) of good standing, and must be filed with the Court within thirty (30) days of the date of the certificate(s).

To arrange a pre-motion conference, the moving Party shall submit a letter not to exceed two pages in length setting forth the basis for the anticipated motion. A responsive letter not to exceed two pages in length shall be submitted within three days.

**2. Summary Judgment Motions.** Requests for summary judgment scheduling prior to completion of discovery are rarely granted. If discovery is completed, the Parties should follow the procedures set forth in the Court's Scheduling Order.

**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.

**D. Filing of Motion Papers.** Motion papers shall be filed promptly after service.

**E. Oral Argument on Motions.** The Court shall determine whether argument will be heard and, if so, will advise counsel of the argument date.

**F. Effect of a Motion on Notice of Appeal.** Paragraph B(1) above does not apply to any of the motions described in the Federal Rule of Appellate Procedure 4(a)(4)(A). A pre-motion conference is not required before making such motions.

**G. John Doe Parties.** No initial conference shall be scheduled until all Parties named as "John/Jane Doe" are identified, served and have answered.

**H. RICO Statements.** Claims asserting violations of 18 U.S.C. § 1962 must be accompanied by a RICO Statement.

### III. ELECTRONIC CASES

- A. **The Parties are responsible for being current in any and all matters filed electronically by this Court. No other means of notification will be used by the Court. Counsel are responsible for timely filing a Notice of Appearance in the case, and for keeping current all contact information on the docket sheet, including email address and cell phone number.**

### IV. JOINT PRE-TRIAL STATEMENT IN CIVIL CASES

- A. **A joint pre-trial statement shall be submitted according to the schedule set by the Court and include, in the following order:**

An introductory paragraph that reads, "The undersigned attorneys hereby affirm that this Joint Pre-Trial Statement is submitted in conformity with the Individual Rules of Judge Deborah A. Batts, dated \_\_\_\_\_":

1. Brief, non-adversarial statement of the basic nature of the case;
2. **Specific, factual** basis for jurisdiction and venue;
3. Designation of the case as jury or non-jury;
4. Relief sought;
5. Undisputed facts;
6. Plaintiff's assertions of disputed facts, with citations to the evidentiary record, as required in Local Rule 56.1;
7. Defendant's assertions of disputed facts with citations to the evidentiary record, as required in Local Rule 56.1;
8. Brief listing of issues of law to be decided by the Court, **tracking** issues of law fully developed in separate Memoranda of Law submitted in accordance with Scheduling Order;
9. **Alphabetical** list of witnesses to be called at trial for each Party and a brief summary of the testimony of each witness (one **paragraph** at most), if two or more witnesses will testify to the same facts, state why their testimony will not be cumulative;
10. List of each Party's exhibits to be offered at trial, including the other Party's objections, if any, and the specific factual as well as legal basis for objections as to admissibility, listed on the same page in an adjacent column. The proponent should address briefly and specifically the objection raised.

(For civil trials only): With the Joint Pre-Trial Statement, the Parties shall submit a set of all proposed exhibits on DVD **to which objections have been raised.**

If any of the exhibits to be used are depositions, they shall also be listed and the Parties must submit jointly one copy of the relevant portion of the deposition on which the proponent has marked in the margin with red marker those relevant portions designated, the opponent has marked in the margin with blue marker those relevant portions counter-designated, and objections are marked in black marker, identifying the Party objecting and the specific basis for the objection. The jointly marked deposition should have an index indicating the pages designated as evidence and by whom, as well as the pages where objection has been made.

The Parties must exchange and pre-mark all exhibits.

Whenever possible, the Parties should stipulate as to authenticity and admissibility of proposed exhibits.

Defendants are to mark their exhibits A through Z, then A1 through Z1, then A2 through Z2, until all exhibits have been marked. Plaintiffs are to mark their exhibits using only numbers, beginning with 1, through ∞. Multiple documents or subparts within one exhibit should be marked as 1a, 1b, etc. and A1(a), B1(b), etc.

Exhibits not exchanged and listed in the Joint Pre-Trial Statement may not be introduced at trial, **except for extraordinary cause shown.**

Any objections to exhibits not stated in the JPTS are deemed waived.

11. Experts to be called at trial and a brief summary of the testimony of each expert (one page at most);
12. Trial counsel; and,
13. Estimate of trial time.

**B. Failure to submit a conforming, meaningful Joint Pre-Trial Statement in sufficient detail may result in sanctions, including preclusion of testimony or other evidence not adequately listed and described.**

## **V. RICO STATEMENTS**

- A. Claims asserting violations of 18 U.S.C. § 1962 shall be accompanied by a RICO Statement. Plaintiff shall submit a RICO Statement to both the Court and Defendant(s), within twenty (20) days of filing. Upon receipt of the RICO Statement, Defendant(s) shall have **thirty (30) days** to move or answer.
- B. The RICO Statement shall include the facts the Party is relying upon to assert the RICO claim in light of, and with particular attention to, the "reasonable inquiry" required by Fed.

R. Civ. P. 11. The Statement shall be in a form that uses the numbers and letters set forth below, and shall:

1. State whether the unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).
2. List each defendant and describe the misconduct and basis of liability of each defendant.
3. List other wrongdoers, other than the named defendants, and describe the misconduct of each wrongdoer.
4. List the victims and state how each victim was injured.
5. Describe in detail the pattern of racketeering activity or collection of unlawful debts for each RICO claim. The description of the pattern of racketeering shall:
  - a. List the predicate acts and the specific statutes which were violated;
  - b. State the dates of the participants in the predicate acts, and the facts surrounding the predicate acts;
  - c. If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the nature, time, place and contents of misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made; it must be clear why the plaintiff claims the acts constitute fraud or misrepresentations;
  - d. State whether there has been a criminal conviction for violation of the predicate acts;
  - e. State whether civil litigation has resulted in a judgment with regard to the predicate acts;
  - f. Describe how the predicate acts form a "pattern of racketeering activity"; and
  - g. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.
6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall:
  - a. State the names of the individuals, partnerships, corporations, associations, or other legal entities that constitute the enterprise;
  - b. Describe the structure, purpose, function and course of conduct of the enterprise;
  - c. State whether any defendants are employees, officers or directors of the alleged enterprise;
  - d. State whether any defendants are associated with the enterprise;
  - e. State whether you claim that the defendants are individuals or entities separate from the enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

- f. if any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.
7. State and describe in detail whether you claim that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.
8. Describe the relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.
9. Describe what benefits, if any, the enterprise receives from the alleged patterns of racketeering.
10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.
11. If the complaint alleges a violation of 18 U.S.C. § 1962(a):
  - (1) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and
  - (2) Describe the use or investment of such income.
12. If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.
13. If the complaint alleges a violation of 18 U.S.C. § 1962(c):
  - (1) State who is employed by or associated with the enterprise; and
  - (2) Describe whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).
14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.
15. Describe the alleged injury to business or property.
16. Describe the direct causal relationship between the injury and the violation of the RICO statute.
17. List the damages sustained for which each defendant is liable.
18. List all other federal causes of action, if any, and provide the relevant statute numbers.
19. List all pendent state claims, if any.
20. Provide any additional information potentially helpful to the Court in adjudicating your RICO claim.

## VI. CIVIL & CRIMINAL TRIAL RULES AND PROCEDURES

### A. Jury Trials

1. Proposed Requests to Charge and proposed Voir Dire questions shall be submitted in accordance with these Rules. No boiler plate charges shall be submitted; only charges specifically appropriate to the case at hand may be submitted. Each charge shall be numbered, captioned, and set forth the factually unembellished proposed pattern charge or specify the authority for the proposed charge. **The Plaintiff(s)/Government shall submit its proposed charges to the Defendant(s) in sufficient time that the Defendant's charges will track, in number and subject matter order, those of the Plaintiff/Government. If the Defendant consents to a charge proposed by the Plaintiff/Government, it shall so state when addressing that charge number.**
2. Three days before trial, each Party shall provide two sets of legible, unstapled exhibits in 3 ring binder(s), tabbed sequentially, with an accurate, complete list of exhibits and brief description in the front of the first binder.  
  
Defendants are to mark their exhibits A through Z, then A1 through Z1, then A2 through Z2, until all exhibits have been marked. Plaintiffs in civil trials and the Government in criminal trials are to mark their exhibits using only numbers, beginning with 1, through ∞. Multiple documents or subparts within one exhibit should be marked as 1a, 1b, etc. and A1(a), B1(b), etc.
3. If jury exhibit binders are used, jury binders containing exhibits may not be passed out to the jury until every exhibit in the binder has been received into evidence. This may require updating of the jury binders at the end of the day.
4. The Parties shall submit their Requests to Charge on a CD or DVD in Microsoft Word format.
5. In selecting the jury in either a civil or criminal trial, the "struck panel" method will be used. For further information on this procedure, contact Mr. Delaney at (212) 805-0089.
6. For civil trials only: If the trial date is canceled by one of the Parties fewer than two (2) business days prior to its scheduled commencement, counsel shall be assessed the cost of the attendance of jurors for one day.

### B. Bench Trials

1. In a bench trial, Proposed findings of Fact and Conclusions of Law shall be submitted in accordance with the Court's directions. Proposed Findings of Fact and Conclusions of Law shall be submitted on a CD or DVD in Microsoft Word format.
2. At trial, all direct testimony shall be submitted by affidavits, which are to be filed with the Court **one week prior to trial**. Three days after submission of such

affidavits, counsel for each Party shall submit a list of all affiants, if any, that he or she intends to cross-examine at the trial. If any Party wishes to present direct testimony through live witnesses, counsel shall nevertheless submit affidavits as stated in this paragraph and make application to present such direct testimony prior to trial.

3. Three days before trial, each Party shall provide two sets of legible, unstapled exhibits in 3 ring binder(s), tabbed sequentially, with an accurate, complete list of exhibits and brief description in the front of the first binder.

### **C. Deposition Transcripts at Trial**

1. Proffering counsel shall have marked copies of any portions of deposition transcripts that are to be read in a jury case for the Court and court reporter. In a bench trial, counsel shall mark the portion of each deposition transcript to be offered in evidence and supply copies to the Court and to the court reporter. In either instance, only relevant, evidentiary portions of the transcript shall be marked and included.

### **D. Witnesses**

1. Counsel shall have all necessary witnesses on hand to commence and continue trial without interruption or delay.

### **E. Ready Trial Calendar**

For civil trials only: At any time after a case has been placed on the 48 hour Ready Trial Calendar, counsel shall notify their adversaries and the Court (via email to [bill\\_delaney@nysd.uscourts.gov](mailto:bill_delaney@nysd.uscourts.gov)) of any potential scheduling conflicts, including, but not limited to, trials, vacations, and witness availability that would prevent a trial at a particular time. Such notice must come **before** counsel are notified by the Court of an actual trial date, **not after**. Failure to comply may result in sanctions or assignment of costs.

## **VII. CRIMINAL PRACTICES**

### **A. General**

1. At scheduled court appearances, Parties seeking an exclusion of time under the Speedy Trial Act must be prepared to apprise the Court of facts that would permit the Court to make its independent finding whether or not to exclude, considering both the interest of the public and the interest of the Defendant in a speedy trial, in conformance with 18 U.S.C. § 3161(h)(8), Parisi v. United States, 529 F.3d 134 (2d Cir. 2008), and Zedner v. United States, 547 U.S. 489 (2006). It is not sufficient that the Parties agree to exclude time.

**B. Bail Modifications**

1. Any written request for a bail modification shall indicate whether the Government and the Pre-Trial Services Officer consent to the request.

**C. Guilty Pleas**

1. No plea will be scheduled until after a Defendant's first appearance before **this** Court.
2. Defendants shall be prepared in advance of their pleas by their attorneys to give narrative allocutions that incorporate all the elements of the offense(s) to which they are pleading.
3. Where a Defendant is pleading guilty pursuant to a plea agreement or a cooperation agreement, a copy of the agreement which is signed by Defendant and Defendant's attorney must be received by Chambers no fewer than three (3) business days before the scheduled plea. Where a Defendant is pleading guilty pursuant to a Pimentel letter, a copy of the Pimentel letter must be received by Chambers no fewer than three (3) business days before the scheduled plea.
4. Defense Counsel shall bring a copy of the Indictment or Information to the plea proceeding. The Government shall bring the original signed plea agreement to the plea proceeding.

**D. Sentencings**

1. Sentencing and submission dates are given at the plea.
2. If a Party has no response to an opposing Party's sentencing submission, the Court nevertheless requires a written statement to that effect submitted on the date that Party's sentencing submission is due.
3. Once a sentence has been adjourned sine die and the dates for Parties' sentencing submissions have passed, the Court will not consider any submissions made after the dates for submissions set by the Court.
4. In any case in which the Government seeks forfeiture from the Defendant, the Government must notify the Court ahead of the sentencing date that it will be seeking forfeiture, and bring the proposed forfeiture order to the sentencing proceeding.