

INDIVIDUAL PRACTICE RULES OF JUDGE GARY R. BROWN

Effective September 21, 2020

100 Federal Plaza
Central Islip, NY 11722-9014
Courtroom 840

Chambers: (631) 712-5700

Courtroom Deputy Karen McMorrow: (631) 712-5704

Law Clerks: Linda Johnston / Stephen Meil / Martin Rowe

Rules at a Glance

	Issue	Requirement	Individual Rule No.
Court Appearances	Adjournments/Extensions of Time	At least 48 hours' notice; meet and confer	I
Motions	Bundling Rule	Yes	II(a)
	Memoranda of Law	Yes	II(b)
	Courtesy Copies	Yes	II(c)
	Evidentiary Citations	Yes	II(d)
	Motions Referred to Magistrate Judge	All non-dispositive motions	II(e)(1)
	Motions Made to Judge Brown	Dispositive motions only	II(e)(2)
	Pre-Motion Conference	Yes (with exceptions); scheduled via Letter Request	II(f)
	Summary Judgment	56.1 Statements filed with request for pre-motion conference	II(g)
	Default Judgment/ Arbitration Confirmations	Proposed Orders in forms annexed as Appendices A and B	II(h)
Civil Trials	Joint Pretrial Order	Yes	III(a)
	Submissions Due Two Weeks Before Trial	Voir Dire, Requests to Charge, Motions <i>in Limine</i> , Pre-Marked Exhibits	III(b)
Criminal Trials	Submissions Due One Week before Trial	Proposed <i>Voir Dire</i> , Requests to Charge, Motions <i>in limine</i> and Proposed Verdict Sheets	IV(a)
	PSR Objections	Filed under seal two weeks before Sentencing	IV(b)
	Other Sentencing Filings	Due one week before Sentencing	
Other Matters	FLSA/FDCPA cases	Referred to Mediation	V
	<i>Pro Se</i> Litigants	See Filing Rules	VI
	Social Security Appeals	Contention Statement Required	VII

Rules

Unless otherwise ordered in a case, litigation shall conform to the following individual rules:

I. Requests for Adjournments or Extensions of Time: All requests for adjournments or extensions of time must be made in writing on ECF 48 hours in advance, absent an emergency. The parties must meet and confer before submitting such requests, and such requests must include joint proposed dates.

II. Motions

- a. **Bundling Rule:** No motion papers may be filed until the motion has been fully briefed, unless doing so could result in a loss of a legal right. The initial movant shall file all motion papers.
- b. **Memoranda of Law:** Unless prior permission has been granted, memoranda of law in support of, and in opposition to, motions are limited to 20 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.
- c. **Courtesy Copies:** After electronic filing, the initial movant shall mail to the Court one hard copy of all motion papers marked as “Courtesy Copy.”
- d. **Evidentiary Citations:** Parties must provide evidentiary citations, including specific transcript pages, in any submission before the Court. Failure to cite to the record constitutes grounds for denial of the motion.
- e. **Matters Referred to the Assigned Magistrate Judge**
 1. **Non-Dispositive Motions:** All discovery and non-dispositive pretrial motions and applications are to be made to the Magistrate Judge in accordance with that Magistrate Judge’s individual rules. Prior to making any non-dispositive motion, counsel are required to meet and confer consistent with Local Civil Rule 37.3(a) in a good faith effort to resolve and/or reduce any matters to be raised on such motion. Upon failure to certify compliance with this requirement as described in Federal Rule of Civil Procedure (“FRCP”) 37(a)(1), the assigned Magistrate Judge is authorized, where appropriate, to deny such motion without prejudice to refiling after good faith satisfaction of the meet and confer rule. Non-dispositive motions and applications include:
 - a. Discovery motions and applications, including motions to stay discovery
 - b. Motions to amend pleadings
 - c. Motions for class and/or collective certifications
 - d. Extensions of time to serve, answer, or file amended pleadings

- e. Stipulations concerning amendment to pleadings
 - f. Stipulations to transfer venue
 - g. Motions to quash subpoenas
 - h. So ordering of subpoenas
 - i. Applications concerning confidentiality/protective orders
 - j. Sealing/un-sealing orders
 - k. Motions to withdraw as counsel
 - l. *Pro hac vice* motions
 - m. Refund of *pro hac vice* payments
 - n. Substitution of counsel
 - o. Motions to disqualify counsel
 - p. Requests for adjournments or extensions of time concerning arbitration or mediation proceedings
2. **Dispositive Motions:** All dispositive motions, including motions to dismiss, motions for summary judgment, motions to change venue, motions to remand, default judgment motions, and petitions to confirm an arbitration award are to be made to Judge Brown.

f. Pre-Motion Conference

1. Before filing any motion returnable before Judge Brown, parties are required to file a letter of no more than two pages briefly outlining the motion and requesting a pre-motion conference, except for the following:
- a. *In forma pauperis* motions
 - b. Habeas motions
 - c. Motions pursuant to FRCP 50, 52, 59, or 60
 - d. Motions for reconsideration
 - e. Orders to show cause
 - f. Motions for an extension of time to file a notice of appeal
 - g. Objections to Report and Recommendations
 - h. Social Security appeals
 - i. Bankruptcy appeals
 - j. Default judgment motions/unopposed petitions to confirm arbitration awards

Counsel should note that, in appropriate cases, the pre-motion letter along with counsel's argument at the pre-motion conference, may be construed, at the discretion of the Court, as the motion itself. Arguments not raised in the pre-motion letters or during the pre-motion conference shall be deemed waived. See *In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011)(upholding construction of pre-motion letter as motion).

2. **Timing Requirements:** For the purposes of time requirements for the filing of answers and motions under FRCP 12(a) and 56(b), as well as motions under 28 U.S.C. § 1447(c), a pre-motion conference letter will be

considered the equivalent of the motion itself.

g. **Summary Judgment:**

1. **56.1 Statement:** Along with the pre-motion letter described above, a party moving for summary judgment must also include a Local Civil Rule 56.1 Statement containing evidentiary citations. The moving party's failure to comply may constitute grounds for striking the Local Civil Rule 56.1 Statement and/or the denial of the summary judgment motion.
2. **56.1 Response:** Within fifteen (15) days of the filing of the Local Civil Rule 56.1 Statement and the pre-motion conference letter, the party opposing summary judgment shall file a Local Civil Rule 56.1 Response containing evidentiary citations. The non-moving party's failure to comply may constitute grounds in the striking the Local Civil Rule 56.1 Response, deeming matters admitted and/or granting the summary judgment motion.

Counsel should note that, in appropriate cases, the 56.1 statements and the pre-motion letters along with counsel's argument at the pre-motion conference, may be construed, at the discretion of the Court, as the motion itself. Arguments not raised in the pre-motion letters or during the pre-motion conference shall be deemed waived. See *In re Best Payphones, Inc.*, *supra*.

h. **Default Judgments/Unopposed Petitions to Confirm Arbitration Awards**

1. **Default Judgments:** A party moving for default judgment must complete and submit a proposed default judgment in the form attached as Appendix A, containing evidentiary citations, with affidavits and other documentary evidence. Failure to comply constitutes grounds for denying the default judgment motion.
2. **Petitions to Confirm Arbitration Awards:** A party moving to confirm an unopposed petition to confirm an arbitration award must complete and submit a proposed order in the form attached as Appendix B, containing evidentiary citations, with affidavits and other documentary evidence. Failure to comply constitutes grounds for denying the petition to confirm an arbitration award.

III. Civil Pretrial Procedure

- a. **Joint Pretrial Orders.** On the date specified in the scheduling order, the parties shall submit a proposed joint pretrial order that includes a concise statement of the following:
 1. The purported basis for the presence or absence of subject matter jurisdiction;

2. The claims and defenses that remain to be tried;
 3. Whether the case is to be tried with or without a jury, and the number of trial days needed;
 4. Any stipulations or statement of facts that have been agreed to by all parties;
 5. All fact and expert witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Only listed witnesses will be permitted to testify, except for good cause shown;
 6. The deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party; and,
 7. The exhibits to be offered in evidence including, where possible, anticipated impeachment and rebuttal exhibits, and objections thereto. Questions of authenticity, best evidence, chain of custody, and related grounds should be resolved between the parties before trial. Only the exhibits listed will be received in evidence except for good cause shown.
- b. **Submissions Due Two Weeks Before Trial.** Unless otherwise ordered by the Court, each party shall electronically file the following items two weeks before trial:
1. Proposed, Non-Standard Voir Dire Questions;
 2. Requests to Charge regarding the elements of the claims, the damages sought and defenses. General instructions will be prepared by the Court. The parties shall submit the same to chambers in hard copy and on electronic media in Word format.
 3. Motions *in Limine* must be fully briefed and filed no later than two weeks before trial. No extensions will be granted.
 4. All exhibits must be pre-marked, exchanged with the other parties, placed in binders with tabs identifying the exhibit, and delivered to the Court at least two weeks before trial.

IV. Criminal Pretrial Procedures

- a. **Submissions Due One Week Before Trial:** The parties must file proposed *voir dire*, requests to charge, motions *in limine* and proposed verdict sheets and provide a courtesy copy to chambers in hard copy and on electronic media in Word format at least one week before trial.
- b. **Objections to Presentence Reports:** Objections to presentence reports should be filed **under seal on ECF** and served upon opposing counsel and the probation

department at least **two weeks** before sentencing. Responses must be filed one week before sentencing.

- c. **Other Sentencing Filings:** Sentencing submissions, including memoranda and 5K1.1 letters must be filed on ECF at least seven (7) business days before sentencing.

V. FLSA/FDCPA Cases

- a. **Court Mediation:** All Fair Labor Standards Act (“FLSA”) and Fair Debt Collection Practices Act (“FDCPA”) cases will be referred to court mediation, including all class or collective actions.
- b. **Rule 68/*Cheeks*:** In FLSA cases, the parties are reminded that acceptance of a FRCP 68(a) offer of judgment disposes of FLSA claim without the need of review by the Court, *Yu v. Hasaki Rest., Inc.*, 944 F.3d 395 (2d Cir. 2019); otherwise, the parties shall file a motion for approval of the settlement agreement in accordance with *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015).

VI. Pro Se Litigants

In all cases involving one or more pro se litigants, the following shall apply:

- a. **Responsibilities of Pro Se Litigant** - A pro se litigant shall:
 - 1. Only communicate with the Court in writing.
 - 2. Ensure that contact information on file remains current. Litigants are cautioned that failure to comply with this Rule may unavoidably result in dismissal of claims and/or entry of default judgment
 - 3. Comply with all of the “Document Filing Guidelines for Litigants” (the “Guidelines”), a copy of which is attached;
 - 4. Mail all communications and filings to the Clerk’s Office as directed in the Guidelines

The Pro Se Department will review all such communications and filings for reasonable compliance with all applicable rules and the Guidelines. *Pro se* litigants are cautioned that filings that fail to comply with these rules, as well as the Federal Rules of Civil Procedure and the Local Rules, may be disregarded by the Court.

- b. **Responsibilities of Counsel in Matters involving *Pro Se* Litigants**

In all cases involving a pro se litigant, counsel for represented parties shall:

- 1. Ensure adherence to and compliance with all applicable rules, including

Local Civil Rules 7.2, 12.1, 33.2, and 56.2.

2. Provide pro se litigants with a copy of this Court's individual rules, and file a certificate of service as early as practicable in the litigation.
3. Be responsible for compliance with this Court's bundling rule, irrespective of which party initiates the motion.

VII. Social Security Appeals

Consistent with the dictates of Fed. R. Civ. P. 1, which requires the construction of all applicable rules "to secure the just, speedy, and inexpensive determination of every action and proceeding," as well as this district's Administrative Order 2015-05 ("In re: Scheduling in Social Security Cases") ("AO"), the following shall apply in all Social Security disability appeals assigned to Judge Brown:

1. In all cases in which the plaintiff is represented by counsel, along with its motion for judgment on the pleadings, as required by AO(ii)(A), the plaintiff shall provide a "Statement of Contentions." This statement, conceptually similar to that required for summary judgment motions by Local Rule 56.1, shall set forth a separate, short, and concise statement, in numbered paragraphs, the contentions of the plaintiff as to the alleged legal errors in the Secretary's determination and/or the specific findings of the decision of the Administrative Law Judge ("ALJ") that, plaintiff contends, is not supported by substantial evidence. Failure to submit such a statement may constitute grounds for denial of the motion, and failure to identify a legal error or finding unsupported by substantial evidence may be deemed a waiver of such argument. *See Selian v. Astrue*, 708 F.3d 409, 420 (2d Cir. 2013) (discussing forfeiture of arguments not presented to district court); *Estrella v. Berryhill*, 925 F.3d 90, 98 (2d Cir. 2019) ("claimants in Social Security cases must preserve legal arguments—not necessarily factual ones").
2. The responsive papers filed by the defendant, as required by AO(ii)(B), shall include an "Opposing Statement of Contentions," containing correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party. The failure to include such an opposing statement may result in the striking of the opposition to the motion.
3. Each contention by the movant and opponent made pursuant to this rule must be followed by *pinpoint* citations to the administrative record, identifying evidence supporting and/or rebutting each said contention.

By way of example, if plaintiff contends that the ALJ failed to properly assess plaintiff's residual functional capacity, plaintiff's Statement of Contentions should identify with particularity the aspects of plaintiff's purported disability which were disregarded by the ALJ along with specific page citations identifying evidence supporting this claim. The Government, in turn, in its Opposing Statements should provide citations identifying the evidence which it believes the ALJ properly relied upon in reaching a determination as to those specific findings.

Proposed Order for Default Judgment

Case Name and Docket Number:

Having reviewed all of the moving papers, I hereby find as follows:

Service of Process and Default

- The record reflects that proper service was made on defendant. Docket Entry ("DE") _____
- According to the record, no answer, motion or other appearance was filed on behalf of defendant.
- The Clerk has properly entered notation of default pursuant to Fed. R. Civ. P. 55(a)

Liability

Defendant's default constitutes "an admission of all well-pleaded allegations against the defaulting party." *Vermont Teddy Bear Co. v. 1-800 BEARGRAM Co.*, 373 F.3d 241, 244 (2d Cir.2004). Nevertheless, the Court is "required to determine whether the [plaintiffs'] allegations establish [defendant]'s liability as a matter of law." *Finkel v. Romanowicz*, 577 F.3d 79, 85 (2d Cir. 2009). Based upon examination of the complaint and motion papers, I find that plaintiffs have demonstrated that the uncontroverted allegations, without more, establish the defendant's liability on the following cause(s) of action:

DE _____

Damages

Based upon a review of affidavits and other documentary evidence, *see Transatl. Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997) (holding a court may rely upon affidavits and documents in calculating damages upon default), I find that the plaintiff has established damages in the following amounts:

- Principal Damages, DE _____ \$ _____
Basis:

Appendix A

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Pre-judgment interest of _____%
from date _____ to date of judgment, DE _____

Attorneys' Fees \$ _____¹

Provider Type	Presumptive Maximum Rate	Rate Sought	Hours Requested	Documented in	Fees
Paralegal	\$110 ²			DE _____	
Associate Attorney	\$100-295 ³			DE _____	
Partner	\$200-375 ⁴			DE _____	

Costs, DE _____ \$ _____⁵

1. Filing Fee:
2. Process Server Fee:
3. Other:

TOTAL \$ _____

Conclusion

For the foregoing reasons, the undersigned respectfully recommends that plaintiffs' motion be granted, and that plaintiffs be awarded damages in a manner consistent with this opinion.

SO ORDERED.

GARY R. BROWN, United States District Judge

Date

¹ *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (the lodestar creates the "presumptively reasonable fee").

² *Gesualdi v. Seacoast Petroleum Prods., Inc.*, 97 F. Supp. 3d 87, 105-06 (E.D.N.Y. 2015).

³ *Id.*

⁴ *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Co-op., Pension & Welfare Funds v. Flooring Experts, Inc.*, No. 12-CV-6317 ADS AKT, 2013 WL 4761151, at *9 (E.D.N.Y. Sept. 3, 2013).

⁵ *Alland v. Consumers Credit Corp.*, 476 F.2d 951 (2d Cir. 1973) ("costs" generally include such expenses as filing fees).

Proposed Order on Petition to Confirm Arbitration Award

Case Name and Docket Number:

Having reviewed all of the moving papers, I hereby find as follows:

Service of Process and Default

- The record reflects that proper service was made on respondent. Docket Entry ("DE") ___
 According to the record, no answer, motion or other appearance was filed on behalf of respondent. DE _

Confirmation of the Award

This is an action under Employee Retirement Income Security Act ("ERISA"), the Labor Management Relations Act ("LMRA"), the Federal Arbitration Act ("FAA"), to confirm and enforce an arbitration award. DE ___.

Confirmation of an arbitration award is a "summary proceeding that merely makes what is already a final arbitration award a judgment of the court . . . and the court must grant the award unless the award is vacated, modified or corrected." *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) (citing 9 U.S.C. § 9) (internal quotation marks omitted). As a result, "courts must grant an arbitrator's decision great deference." *Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. HVH Enter. Corp.*, No. 13-CV-2769 (JS)(ARL), 2014 WL 923350, at *3 (E.D.N.Y. Mar. 10, 2014) (citation omitted) (brackets omitted); see also *National Football League Players Ass'n v. Nat'l Football League Mgmt. Council*, 523 F. App'x 756, 760 (2d Cir. 2013) (same). A court's review of an arbitration award pursuant to a collective bargaining agreement "is very limited." *Major League Baseball Ass'n v. Garvey*, 532 U.S. 504, 509 (2001). The arbitrator's reasoning for an award does not require an explanation, "and the award should be confirmed if a ground for the arbitrator's decision can be inferred from the facts of the case. . . . Only a barely colorable justification for the outcome reached by the arbitrator is necessary to confirm the award." *D.H. Blair*, 462 F.3d at 110 (internal quotation marks and citations omitted); see also *A&G Coal Corp. v. Integrity Coal Sales, Inc.*, 565 F. App'x 41, 43 (2d Cir. 2014). Even though the Court may not have all of the material that the arbitrator based his decision on "the Court need only ensure that the arbitrator had some grounds on which to grant the damages spelled out in the [a]ward." *In re Certain -Default- Motions Brought o/b/o Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Coop., Pension & Welfare Funds*, Nos. 13-6364 and 14-325 (ADS) (GRB), 2015 WL 968125, at *5 (E.D.N.Y. Feb. 27, 2015), *adopted by*, 2015 WL 1247085 (E.D.N.Y. Mar. 18, 2015), and, No. 14-CV-2893 (JS) (GRB), *adopted by*, 2015 WL 1396475 (E.D.N.Y. Mar. 25, 2015) (citation omitted). Since a petition to confirm an arbitration award is generally accompanied by a record, the Second Circuit has instructed that the court treat an unanswered petition "as akin to a motion for summary judgment based on the movant's submissions." *D.H. Blair*, 462 F.3d at 109-10. Thus, the court may decide the merits of a petition to confirm an arbitration award based solely on the petition and accompanying submissions. *Id.*

Based upon examination of the unanswered Petition and motion papers, I find that petitioners have demonstrated that there are no genuine issue of material fact precluding summary judgment as to all portions of the arbitrator's award as the arbitrator's decision drew its essence from the collective bargaining agreement and provides more than "a barely colorable justification for the outcome reached." *D.H. Blair*, 462 F.3d at 110.

Appendix B

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Damages

Petitioners seek to (1) confirm the Arbitration Award, and be awarded (2) judgment against respondent for _____ pursuant to the Arbitration Award. DE _____. Based upon a review of the Petition, motion papers, declaration and other documentary evidence, *see Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgt Cooperation, Pension and Welfare Funds v. Gregory*, No. 14-cv-2900 (ADS) (SIL), 2015 WL 1611307, at *6 (E.D.N.Y. Apr. 10, 2015) (relying on petitioners’ submissions to support confirmation of unanswered arbitration award and calculate damages), I find that petitioners have established that the arbitrator’s award should be confirmed, and the following be awarded:

Principal Damages from Arbitration Award, DE _____ \$ _____¹

Principal deficiency: _____

Interest: _____

Liquidated Damages: _____

Attorneys’ Fees: _____

Arbitrator’s Fee: _____

Pre-judgment interest of _____%
from date of Arbitration Award to date of judgment, DE _____

Attorneys’ Fees \$ _____²

Provider Type	Presumptive Maximum Rate	Rate Sought	Hours Requested	Documented in	Fees
Paralegal	\$110 ³			DE _____	
Associate Attorney	\$100-295 ⁴			DE _____	
Partner	\$200-375 ⁵			DE _____	

1 *Trustees of Ne. Carpenters Health, Pension, Annuity, Apprenticeship, & Labor Mgmt. Cooperation Funds v. Excel Installations, LLC*, No. CV 17-4764(JS)(GRB), 2018 WL 3397551, at *1 (E.D.N.Y. Feb. 21, 2018), *report and recommendation adopted*, 2018 WL 1686107 (E.D.N.Y. Mar. 31, 2018) (confirming similar principal damages from arbitration award for causes of action under ERISA, LMRA, and FAA).

2 *In re Certain -Default- Motions*, 2015 WL 968125, at *9 (citing *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011)) (the lodestar creates the “presumptively reasonable fee,” and awarded attorneys’ fees up to \$2,125.50)

3 *Gesualdi v. Seacoast Petroleum Prods., Inc.*, 97 F. Supp. 3d 87, 105-06 (E.D.N.Y. 2015).

4 *Id.*

5 *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Co-op., Pension & Welfare Funds v. Flooring Experts, Inc.*, No. 12-CV-6317 ADS AKT, 2013 WL 4761151, at *9 (E.D.N.Y. Sept. 3, 2013).

Appendix B

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X Costs, DE _____

\$ _____⁶

1. Filing Fee:
2. Process Server Fee:
3. Other:

TOTAL SUM

\$ _____

Conclusion

Based on the foregoing, the Court hereby confirms the Arbitration Award, and orders that petitioners be awarded (2) a judgment against respondent for _____ pursuant to the Arbitration Award.

SO ORDERED.

GARY R. BROWN, United States District Judge

Date

⁶ *Local 335 United Serv. Workers Union, Int'l Union of Journeymen and Allied Trades v. Twin Cty. HVAC/Refrigeration LLC*, No. CV 14-5612 (ADS)(GRB), DE 10 (E.D.N.Y. Feb. 22, 2016), *report and recommendation adopted*, DE 13 (E.D.N.Y. Mar. 28, 2016) (awarding costs of \$515.00 in a petition to confirm arbitration award); see also *In re Certain -Default- Motions*, 2015 WL 968125, at *11 (awarding costs up to \$550.00).