

INDIVIDUAL PRACTICES IN CIVIL CASES
Nelson S. Román, United States District Judge

Chambers

United States Courthouse
300 Quarropas Street
White Plains, NY 10601
Tel (914) 390-4177
Fax (914) 390-4179
Courtroom 218

Courtroom Deputy Clerk

Ms. Gina Sicora
(914) 390-4178
Gina_Sicora@nysd.uscourts.gov

Unless otherwise ordered by Judge Román, these Individual Practices apply to all civil matters except for civil *pro se* cases (see Rules for *Pro Se* Cases). In cases designated to be part of the Court's pilot programs or plans (e.g., the Section 1983 Plan, the Case Management Plan for Complex Civil Cases, or Initial Discovery Protocols for Employment Cases Alleging Adverse Action), those procedures shall govern to the extent that they are inconsistent with these Individual Practices.

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with Chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters sent to Chambers by fax are preferred. **Do not both fax and mail the same letter.** Copies of correspondence between counsel shall not be sent to the Court.
- B. Docketing, Scheduling, and Calendar Matters.** Please call Gina Sicora, Courtroom Deputy Clerk, at (914) 390-4178.
- C. Telephone Calls.** Except for docketing, scheduling, and calendar matters, telephone calls to Chambers are permitted only for **urgent** matters requiring **immediate** attention. In such **rare** situations, call Chambers (914) 390-4177.
- D. Faxes and Emails.** Faxes to Chambers in lieu of mail or hand deliveries are encouraged. The fax number is (914) 390-4179. Copies must be simultaneously faxed or delivered to all counsel. **No document longer than five pages may be faxed without prior permission.**

If a party wishes to email a .pdf letter or document to the Court, it must obtain prior approval of the Court. The body of the email must clearly identify the person in Chambers who authorized permission to send it. The email subject line must state clearly (i) the docket number of the case, (ii) the party names, and (iii) the subject of the communication.

- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time shall be sent to Chambers by fax and state: (1) the original date(s), (2) the number of previous requests for adjournment or extension, (3) whether

these previous requests were granted or denied, (4) the reason for the instant request, (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent, and (6) if the adversary consents, three mutually agreeable alternate conference dates, which should be on a Thursday or Friday.

Any request for adjournments of conferences shall be made at least 48 hours prior to the scheduled appearance. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

Absent extraordinary circumstances, requests for extensions of time will be denied if not made before the expiration of the original deadline.

F. Proposed Orders and Stipulations. All proposed orders, and stipulations requiring the Court's signature, must be submitted directly to the Clerk via email, wpclerk@nysd.uscourts.gov. **Do not file proposed orders and stipulations via ECF, and do not send courtesy copies to Chambers.**

G. Related Cases. After an action has been accepted as related to a prior filed action, all future court papers and correspondence must contain the docket number of the new action as well as the docket number of the related case (*e.g.*, 11 Civ. 1234 [rel. 10 Civ. 4321]).

H. ECF. All attorneys representing parties before Judge Román are required to register promptly as filing users on ECF and to file a notice of appearance. Pertinent instructions are available on the Court website, at <http://www.nysd.uscourts.gov/ecf.php>. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

2. Conferences

A. In General. Conferences conducted by Judge Román will generally take place Thursdays and Fridays. Conferences conducted by a Magistrate Judge will take place according to the Magistrate's instructions. As a matter of policy, the Court supports the professional development of the next generation of litigators and strongly encourages the participation of relatively inexperienced attorneys in all types of courtroom proceedings, including conferences and trials.

B. Attendance by Principal Trial Counsel. The attorney who will serve as principal trial counsel shall appear at all conferences with the Court. However, the Court encourages junior attorneys who have worked on the case to take an active role during conferences. Any attorney appearing before the Court shall enter a Notice of Appearance with the Clerk of Court.

C. Initial Case Management Conference, Personal Injury Case. In any case involving allegations of personal injury—whether physical, psychological, emotional or otherwise—the plaintiff is to provide to the defendant all necessary medical authorizations prior to the initial pretrial conference.

3. Pleadings and Motions

A. Pre-Motion Conferences.

- i.** For discovery motions, follow Local Civil Rule 37.2, which requires 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. The parties should be prepared to describe the time, place, and duration of the meeting, and to identify the counsel involved.
- ii.** A pre-motion conference with the Court is required before making any other motion, except motions for admission *pro hac vice*, motions *in limine*, motions for reargument or reconsideration, and motions for temporary restraining orders or preliminary injunctions. To arrange a pre-motion conference, the moving party shall submit a letter, not to exceed three pages, setting forth the basis for the anticipated motion. The opposing party shall submit a letter, also not to exceed three pages, setting forth its position within three 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, and a new deadline will be set at the conference.

B. Memoranda of Law. The Court encourages and appreciates brevity. 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. All memoranda of law shall be in 12-point font or larger and be double-spaced. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be tabbed and indexed.

C. Filing of Motion Papers. Motion papers shall be filed via ECF promptly after reply papers have been served. Discovery disputes are not to be raised by motion unless directed by the Court.

D. Courtesy Copies. *One* courtesy copy of all pleadings shall be submitted to Chambers as soon as practicable after filing. *Two* courtesy copies of all motion papers shall be submitted to Chambers when served on the other parties. All courtesy copies must be clearly marked as such, bound, and tabbed. Whenever possible,

courtesy copies should be accompanied by an electronic copy submitted on any portable media (CD/DVD preferred).

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date. In keeping with the Court's commitment to providing courtroom opportunities to less experienced attorneys, the Court will make a greater effort to grant argument where a junior attorney will argue the motion.

F. Motions to Dismiss. See Rule 3.A.ii., *supra*, concerning pre-motion conferences.

G. Summary Judgment Motions.

- i. See Rule 3.A.ii., *supra*, concerning pre-motion conferences, and Local Civil Rule 56.1 concerning statements of material facts.
- ii. Any Rule 56.1 statement in support of a motion for summary judgment is limited to no more than 25 pages, unless leave of the Court to file a longer document is obtained at least one week prior to the due date of such motion for summary judgment.
- iii. Any party moving for summary judgment shall provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Rule 56.1. Opposing parties shall reproduce each entry of the moving party's Rule 56.1 Statement and shall set out responses to each entry directly beneath it.
- iv. Parties submitting papers in support of or in opposition to a motion for summary judgment shall submit only those exhibits necessary to decide the motion and should not submit, for example, entire deposition transcripts or every exhibit used at a deposition. The Court may strike documents that do not comply with these rules.

H. Motions to Exclude Testimony of Experts. Pursuant to Rules 702–705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, motions to exclude testimony of experts should be treated as motions *in limine*. See *infra* Rule 5.B.

I. Applications for a Temporary Restraining Order. A party must confer with his or her adversary before making an application for a temporary restraining order, unless the requirements of Fed. R. Civ. P. 65(b) are met. As soon as a party decides to seek a temporary restraining order, the party must call Chambers at (914) 390-4177 and state clearly whether (1) the party has notified the adversary, and whether the adversary consents to temporary injunctive relief; OR (2) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary.

If the party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must bring the application to the Court at a time mutually agreeable to it and the adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.

J. Default Judgments. A plaintiff seeking a default judgment shall proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.

K. Proposed Orders. All proposed orders that parties wish the Court to sign should be submitted as attachments or exhibits to an appropriate formal application to the Court seeking the endorsement of such order.

4. Other Pretrial Guidance

A. Redacting Personal Information. Regarding document submissions, the parties must comply with the E-Government Act of 2002 and the Southern District's ECF Rules & Instructions, Section 21, Privacy and Public Access to ECF Cases ("ECF Privacy Policy"). *See also Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006).

- i.** Parties may not, unless necessary, 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]).
- ii.** Parties may redact the above five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying number; 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 ECF 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.
- iii.** If a party redacts information beyond the eleven categories of information identified in the ECF 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.

B. Cases Removed from State Court. Counsel for the party or parties which removed the case shall, in addition to providing a copy of all process, pleadings, and papers served upon the defendants pursuant to 28 U.S.C. § 1446(a), provide the Court with a courtesy copy of any pleading filed or served while the case remained in State court.

All courtesy copies shall be clearly marked as such, bound, and tabbed. Counsel for all parties must file a notice of appearance in this Court promptly upon removal.

C. Bankruptcy Appeals. Briefs must be submitted in accordance with Federal Rules of Bankruptcy Procedure 8009–8010. Counsel may extend the default deadlines by stipulation submitted to the Court no later than two business days before the brief is due. The page limits in Local Rule 7.1(b) must be observed.

5. Trial Procedures

A. Joint Pretrial Orders. Unless otherwise ordered by the Court, within 30 days after the date for completion of discovery, or, if a dispositive motion has been filed, within 30 days after a decision on the motion, the parties should electronically file via ECF a joint pretrial order and provide one courtesy copy to the Court. The joint pretrial order shall include the information required by Federal Rule of Civil Procedure 26(a)(3) and the following:

- i. The full caption of the action;
- ii. The names, law firms, 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 shall include citations to all statutes relied upon and relevant facts as to citizenship and jurisdictional amount;
- iv. A brief summary by each party of the claims and defenses that, according to the party, remain to be tried, without recitation of evidentiary matters but including citations to all statutes relied upon. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried;
- v. A statement as to the number of trial days needed and regarding whether the case is to be tried with or without a jury;
- vi. A statement as to whether or not all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- vii. Any stipulations or agreed statements of fact or law to which all parties consent;
- viii. A list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony. Deposition testimony will only be permitted if allowed

by the Federal Rules of Civil Procedure and the Federal Rules of Evidence and if the witness is not otherwise testifying in person;

- ix. A designation by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any other party;
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating an objection by the opposing party based on authenticity. When a party objects to an exhibit on any grounds other than authenticity, the objection should be noted by indicating the Federal Rule of Evidence that is the basis for the objection;
- xi. A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and
- xii. A statement of whether the parties consent to less than a unanimous verdict

B. Motions *in limine*. Any party wishing to file a motion addressing evidentiary issues or other matters which should be resolved *in limine* shall file such a motion via ECF at the time that the joint pretrial report is filed. Opposition papers shall be filed within seven days thereafter, and reply papers, if any, shall be filed within four days of any opposition. Each party shall submit to the Court two courtesy copies of all motion papers on the date those papers are filed. All courtesy copies shall be clearly marked as such, bound, and tabbed. Whenever possible, courtesy copies should be accompanied by an electronic copy submitted on any portable media (CD/DVD preferred).

C. Additional Submissions in Jury Cases. For jury trials, each party shall file via ECF proposed *voir dire* questions, requests to charge, and verdict forms, and submit one courtesy copy of each to Chambers. Oppositions, if any, must be filed within one week, with one courtesy copy submitted to Chambers.

Proposed *voir dire* questions must be filed on the day the joint pretrial order is filed. Plaintiff's proposed 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 to a paragraph after good faith efforts, their respective proposed paragraphs (designated as such) should be set forth in their respective submissions.

Proposed requests to charge and proposed verdict forms must be filed at least 15 days before the commencement of trial, or 30 days after the filing of the joint pretrial order if no date for trial has been fixed. In addition, proposed jury instructions should be emailed to Judge Román's law clerk. Call Chambers to make arrangements. Each proposed jury instruction must contain a citation to the source or authority for the proposed instruction, or the request will be disregarded.

D. Trial Exhibits. At the time that the joint pretrial order is filed, each party shall submit to the Court a tabbed and indexed binder containing one copy of each documentary exhibit sought to be admitted. Exhibits need not be electronically filed.

E. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party shall:

- i.** Electronically file via ECF proposed findings of fact and conclusions of law, and provide two courtesy copies to the Court. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions.
- ii.** Submit to the Court and serve on opposing counsel, but shall not electronically file, all deposition excerpts which will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages and lines of the deposition transcripts.
- iii.** Submit to the Court and serve on opposing counsel, but shall not electronically file, copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of (1) an adverse party, (2) a person whose attendance is compelled by subpoena, or (3) a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after the submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits shall be brought to trial to be marked as exhibits.

F. Trial Counsel. In accordance with its policy of promoting the professional development of relatively new litigators, the Court welcomes the active participation of junior attorneys who have assisted in the preparation of the case during trial.

G. Trial Schedule. Trials will generally be conducted Monday through Thursday from 9:30 a.m. to 5:00 p.m.

6. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. The use by attorneys of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468.

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 attorney seeking to bring such equipment into the Courthouse for its use therein shall submit to Chambers an Application to Bring an Electronic Device into the Courthouse at least 10 business days in advance of the relevant trial or hearing. This application is available on the main page of the Southern District of New York website. After an order allowing the attorney to bring the electronic device is issued, the order must be shown upon bringing the equipment into the Courthouse.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

- 1.** Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Román in Courtroom 218. Leave blank the date and time of the conference. Judge Román will set the date and time when he signs the Order.
- 2.** Provide the following supporting papers with the Order to Show Cause:
 - A.** An attorney's affidavit setting forth:
 - i.** The basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;
 - ii.** The procedural history beyond service of the summons and complaint, if any;
 - iii.** 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;
 - iv.** The proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 - v.** Legal authority for why an inquest into damages would be unnecessary;
 - B.** A proposed default judgment;
 - C.** Copies of all the pleadings;
 - D.** A copy of the affidavit of service of the summons and complaint;
 - E.** If failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
- 3.** Take the Order to Show Cause and supporting papers to the Clerk's Office (1st Floor, White Plains Courthouse) for approval.
- 4.** After the Clerk approves the Order to Show Cause, the Clerk will bring the papers to Chambers (Room 275) for the Judge's signature.
- 5.** After the Judge signs the Order, the Clerk's Office will docket the Order. Immediately thereafter, supporting documents shall be filed via ECF. Serve one copy of the Order and supporting papers on the defendant. Provide the Court with a courtesy copy of the Order, supporting documents, and affidavit of service.