

INDIVIDUAL PRACTICES IN CIVIL CASES
ALISON J. NATHAN, United States District Judge

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Courtroom

Sayra Nuñez, Courtroom Deputy
Courtroom 906
40 Foley Square
(212) 805-4505

Unless otherwise ordered by Judge Nathan, 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 one 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 the Court shall be by letter. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, all letters shall be filed electronically on ECF. Letters may not exceed three pages in length (exclusive of exhibits or attachments). Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document). Unless otherwise noted, parties should not submit courtesy copies of letters filed on ECF.
- B. Letters Containing Sensitive or Confidential Information.** Letters to be filed under seal or containing sensitive or confidential information shall be emailed to the Court (NathanNYSDCambers@nysd.uscourts.gov) as .pdf attachments. Refer to Rule 4.A for further instruction regarding requests for redactions and filing under seal.
- C. Letter-Motions.** Letter-motions may be filed via ECF if they comply with the S.D.N.Y. Local Rules and the S.D.N.Y. “Electronic Case Filing Rules and Instructions” (the “ECF Rules”). All requests for adjournments, extensions, and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) shall be filed as letter-motions.
- D. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions, or submitted pursuant to Rule 1.B, if appropriate. Such requests must state: (i) the original date(s); (ii) the number of previous requests for adjournment or extension; (iii) whether these previous requests were granted or denied; and (iv) whether the adversary consents and, if not, the reasons given by the adversary for refusing to

consent. If the parties are requesting adjournment of a conference, they must also provide three mutually agreeable alternate conference dates. If the parties are requesting adjournment of an initial pretrial conference, the proposed dates should be Friday mornings.

All requests for adjournment or extension of time must be made at least 48 hours prior to the scheduled deadline or appearance. Absent extraordinary circumstances, requests outside this period will be denied. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order should be attached to the request.

- E. Telephone Calls.** Telephone calls to Chambers are permitted only for urgent matters requiring immediate attention. In such rare situations, call Chambers at (212) 805-0278.
- F. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the entrance of the Courthouse and may not be brought directly to Chambers. Hand deliveries are regularly retrieved from Court Security. However, if the hand-delivery is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- G. Faxes.** Faxes are permitted only with prior approval of the Court, which will be granted in rare circumstances. All faxes must clearly identify the person in Chambers who authorized the sending of the fax and copies must simultaneously be faxed or delivered to all parties. Faxes sent without prior permission will not be read.
- H. 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 case to which it is related (*e.g.*, 11 Civ. 1234 [rel. 10 Civ. 4321]).
- I. ECF.** In accordance with the ECF Rules, all attorneys representing parties before Judge Nathan are required to register promptly as ECF filers and to enter an appearance in the case. The pertinent instructions are available on the Court website (http://www.nysd.uscourts.gov/ecf_filing.php). Counsel are responsible for updating their contact information on ECF, should it change, and for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity. Pursuant to ECF Rule 4.3, counsel "have an obligation to review the Court's actual order, decree, or judgment, as available on ECF, and should not rely on the description of such order, decree or judgment in the Notice of Electronic Filing alone."

2. Conferences

- A. Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel must appear at all conferences with the Court. Any attorney appearing before the Court must enter a Notice of Appearance with the Clerk of Court.

- B. Initial Case Management Conference.** The Court will generally schedule a Fed. R. Civ. P. 16(c) conference for a Friday within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be docketed on ECF; plaintiff's counsel is directed to notify all counsel of this Order forthwith and to confirm to the Courtroom Deputy that all counsel will attend the conference on the designated date and time. This Notice will, *inter alia*, direct the parties to submit a Joint Letter (as described in the Notice) and a proposed Civil Case Management Plan and Scheduling Order to the Court at least seven days prior to the conference date. The parties shall use the form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Nathan>). In a diversity case, parties shall comply with Paragraph 4.C below.
- C. Discovery Disputes.** Parties must follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may file a letter-motion pursuant to Rule 1.B, explaining the nature of the dispute and requesting an informal conference. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter, it must submit a responsive letter, within two business days of the initial letter. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, including by telephone conference call.

3. Motions

- A. Pre-Motion Conferences in Civil Cases.** Pre-motion conferences are not required, except for disputes concerning discovery, which are governed by Rule 2.C, and summary judgment motions made before the close of discovery, which are governed by Rule 3.G.v.
- 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 promptly after service.
- D. Courtesy Copies.** One courtesy copy of all motion papers, marked as such, should be submitted to Chambers by the movant at the time the reply is served. All courtesy copies should be three-hole punched, tabbed, and placed in binders. Courtesy copies should be printed double-sided. Parties submitting courtesy copies of motion papers containing approved redactions must do so in accordance with Rule 4.A.

- E. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving, opposing, or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- F. Motions to Dismiss.** When a motion to dismiss is filed, the non-moving party must, within 10 days of receipt of the motion, notify the Court and its adversary in writing whether (i) it intends to file an amended pleading and when it will do so, or (ii) it 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 and the motion to dismiss will proceed in the regular course. This provision does not alter the time to file a response in the Fed. R. Civ. P. or Local Rules. If the party amends, the opposing party may then (i) file an answer; (ii) file a new motion to dismiss; or (ii) submit a letter stating that it relies on the initially-filed motion to dismiss. **If the moving party files an answer or a new motion to dismiss, the Court will deny the original motion to dismiss as moot without notice to the parties.**

G. Summary Judgment Motions:

- i. Summary judgment motions shall be submitted within 30 days of the close of all discovery.
- 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 must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it.
- iv. Parties submitting papers in support of or opposition to a motion for summary judgment should 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. Absent good cause, the Court will not ordinarily have summary judgment practice in a non-jury case.
- v. Summary judgment motions made before the close of discovery are strongly discouraged, although the Court will consider them in exceptional circumstances. A pre-motion conference with the Court is required before making any such motion. To arrange a pre-motion conference, the moving party shall submit a letter of not more than two pages setting forth the basis for the anticipated motion and explaining why exceptional circumstances justify submitting it before discovery closes. The opposing party may respond with a letter of not more than two pages within three days after the pre-motion letter is filed.

- H. Failure of the Court to Schedule Argument or Decide a Motion.** If a motion is not decided within 60 days of the time that it has become fully briefed, counsel for the movant shall send a letter to alert the Court.
- I. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Rule 5 below.
- J. 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 must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- K. Applications for a Temporary Restraining Order.** A party must confer its 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, that party must call Chambers at (212) 805-0278 and state clearly whether (i) it has notified its adversary, and whether the adversary consents to temporary injunctive relief; or (ii) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary. If a 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 its adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.
- L. Default Judgments.** A plaintiff seeking a default judgment must proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.
- M. 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. Redactions and Filing Under Seal.** Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, must submit a specific request to the Court by email, pursuant to Rule 1.B, explaining the reasons for seeking to file that submission under seal and addressing the request in light of the Second Circuit's opinion in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). If a request for redactions is based on another party's designation of information as confidential, the parties shall confer and jointly submit the request for redactions.

The letter requesting redactions must include as attachments: (i) one full set of the relevant document(s) in highlighted form (i.e., with the words, phrases, or paragraphs to be redacted highlighted); and (ii) one partial, loose leaf set of solely those pages on which the party seeks to redact material. On application of a party, and provided that the unredacted papers are timely served on the party's adversary, the Court will deem papers filed on the date the party delivers them to Chambers for review of proposed

redactions. One courtesy-copy of all papers associated with the request shall also be mailed or hand-delivered to the Court.

If the Court approves the party's requested redactions, Chambers will file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

Parties submitting courtesy copies of motion papers containing approved redactions should submit those documents in unredacted, highlighted form. However, parties should not submit courtesy copies of motion papers containing redacted documents until the Court has resolved any outstanding redaction request associated with that motion.

- B. Settlement Agreements.** The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

Parties submitting settlement agreements in FLSA actions should also refer to *Picerni v. Bilingual Seit & Preschool, Inc.*, No. 12 Civ. 4938, 2013 WL 64669 (E.D.N.Y. Feb. 22, 2013), *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332 (S.D.N.Y. 2012), and *Zamboni v. Pepe West 48th St. LLC.*, No. 12 Civ. 3157, Dkt. No. 46, Order (S.D.N.Y. May 1, 2013).

- C. Diversity Jurisdiction Cases.** In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction shall, prior to the Initial Pretrial Conference, submit to the Court a letter no longer than two pages explaining the basis for that party's belief that diversity of citizenship exists. Where any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases where any party is a partnership, limited partnership, limited liability company, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.
- D. Cases Removed from State Court.** Counsel for the party or parties which removed the case must, 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. Counsel for all parties must file a notice of appearance in this Court promptly upon removal.
- E. Bankruptcy Appeals.** Briefs must be submitted in accordance with Fed. R. Bankr. P. 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.

5. Trial Procedures

- A. Joint Pretrial Report.** Unless otherwise ordered by the Court, within 40 days from the date for the completion of all discovery, or, if a dispositive motion has been filed, within 14 days of a decision on such motion, the parties shall electronically file a proposed Joint Pretrial Report. This document, which should be ECF filed under the event heading “Joint Pretrial Report,” shall include 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 on and relevant facts as to citizenship and jurisdictional amount;
 - iv.** A brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried. The summaries should not recite any evidentiary matter;
 - 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 live;
 - 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; and
 - 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 electronically file such a motion at the time that the Joint Pretrial Report is filed. Opposition papers shall be filed within seven days thereafter, and reply papers shall be filed within four days of any opposition.
- C. Pretrial Memorandum of Law.** If a party believes that a pretrial memorandum of law would be useful to the Court, it shall electronically file the memorandum at the time that the Joint Pretrial Report is filed.
- D. Requests to Charge and Proposed *Voir Dires*.** In all jury trials, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be electronically filed at the time that the Joint Pretrial Report is filed. The joint proposed *voir dire* shall include a brief (one or two paragraph) statement about the case to be read to the prospective jurors at the beginning of *voir dire*.

For any requests to charge on which the parties cannot agree, each party should clearly set forth its proposed charge, as well as the grounds on which the Court should use that charge and should include citations to supporting case law sufficient to enable the Court to render a decision.

Parties should also submit copies of these documents to the Court by email (NathanNYSDCChambers@nysd.uscourts.gov), as Microsoft Word documents.

- E. Trial Exhibits.** At the time that the Joint Pretrial Report 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.
- F. Additional Submissions in Non-Jury Cases.**
- i.** At the time the Joint Pretrial Report is filed, each party shall electronically file proposed findings of fact and conclusions of law. 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.** At the time the Joint Pretrial Report is filed, each party shall email to the Court and serve on opposing counsel, but 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 of the deposition transcripts. Note also Rule 5.A.viii.
 - iii.** At the time the Joint Pretrial Report is filed, each party shall email to the Court and serve on opposing counsel, but not electronically file, copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after 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 should be brought to trial to be marked as exhibits.

G. Courtesy Copies of Pre-Trial Materials. Two courtesy hard copies of all documents identified in 5.A, C, D, and F should be submitted to Chambers on the date on which they are served or filed. Courtesy copies of motions *in limine* should be submitted by the movant at the time the reply is served. As noted, only one copy of documentary exhibits is required. All courtesy copies should be three-hole punched, tabbed, and placed in binders.

H. 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. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. **Mobile phones are permitted inside the Courtroom, but they MUST be kept turned off at all times.** Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

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 party seeking to bring such equipment into the Courthouse should send a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. 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 Nathan in Courtroom 906. Leave blank the date and time of the conference. Judge Nathan will set the date and time when she 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 of 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 Orders and Judgments Clerk (Room 240, 500 Pearl Street) for initial review and approval.
4. After the Orders and Judgments Clerk approves the Order to Show Cause, bring all of the papers to Chambers (Room 2102, 40 Foley Square) for the Judge's signature. Also bring a courtesy copy of the supporting papers to leave with Chambers.
5. After the Judge signs the Order, serve a conforming copy of the Order and supporting papers on the defendant. (Chambers will retain the original signed Order for docketing purposes. You may print a copy of the signed Order from the CM/ECF system after the Order has been docketed.)
6. Prior to the return date, file through the CM/ECF system: (a) an affidavit of service, reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (b) the supporting papers. (The signed Order itself will be scanned and docketed by Chambers.)

7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.