

February 3, 2020

INDIVIDUAL PRACTICES OF JUDGE CATHY SEIBEL

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

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. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information or the party does not have access to the ECF system, letters must be filed electronically on the ECF system (with a courtesy copy emailed to the chambers email address as described below). If one of the exceptions described in the previous sentence applies, letters may be sent to chambers by fax (914-390-4278) or in hard copy. If a letter is filed electronically on ECF, a PDF of the filed version of that letter must also be e-mailed to chambersnysdseibel@nysd.uscourts.gov. *Failure to email a PDF courtesy copy may mean that the letter does not come to the Court's attention in a timely manner.* 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. Letter-motions may be made 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. *Parties may not communicate with chambers directly by email, nor may letters be simply emailed to chambers. Email is to be used only to submit courtesy copies of letters filed on ECF. If a party believes an exception to this rule is warranted, it must obtain permission from chambers before using email other than as outlined above.*
- B. Telephone Calls/Urgent Communications.** Except as otherwise provided below, telephone calls to chambers are permitted only in situations requiring immediate attention. In such situations only, call chambers at 914-390-4271. Materials filed via ECF may not be reviewed on the day they are filed; if an ECF submission requires immediate attention, the filing party should so notify chambers by telephone.
- C. Faxes and Emails.** Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. *No document longer than five (5) pages may be faxed without prior permission.* If a party faxes a document longer than five (5) pages, the fax should indicate who in chambers provided such permission. The fax number is 914-390-4278. *If a document is faxed to Chambers, do NOT also send a hard or electronic copy.* Except as set forth in item 1.A. above and item 1.F below, parties and counsel may not send emails to the chambers mailbox without prior permission. *If a document is sent electronically, do NOT also send a hard copy.*

- D. Docketing, Scheduling, and Calendar Matters.** Please call Courtroom Deputy Clerk Walter Clark at 914-390-4077 between 9 a.m. and 5 p.m., or email him at walter_clark@nysd.uscourts.gov.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time shall be by letter and must (unless to be sealed or containing sensitive/confidential information or the party lacks access to the ECF system) be filed on ECF as letter-motions, with a PDF courtesy copy to chambers as described in item 1.A above. All requests for adjournment or extensions must state (1) the original date, (2) the number of previous requests for adjournment or extension, and the reason for those requests, (3) whether these previous requests were granted or denied, (4) the reason for the instant request, and (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (with deadlines falling only on business days) must be attached. Absent extraordinary circumstances, request for extensions will be denied if not made promptly and before the expiration of the original deadline. If the request is for an adjournment of a court appearance, absent an emergency the request must be made at least three (3) business days prior to the scheduled appearance. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge must be directed to that Magistrate Judge.
- F. Courtesy Copies.** As noted in item 1.A above, if a letter is filed electronically on ECF, a PDF file of that letter must also be e-mailed to chambersnysdseibel@nysd.uscourts.gov. The courtesy copy of any letter filed on ECF must be a copy of the filed version of the letter and must include the automatically generated ECF header (that is, the text – *e.g.*, “Case 7:19-cv-1234-ABC Document 100 Filed 9/1/19 Page 1 of 1” – appearing at the top of each page of the document on the ECF system). If a document is filed only on ECF, without a courtesy copy to chambers, it may not come to the Court’s attention in a timely manner. One (1) courtesy hard copy of all pleadings, motion papers (with the exception of motions for admission *pro hac vice*) and other documents (aside from letters) filed via ECF shall be submitted at the time the papers are served. Courtesy copies submitted in hard copy should be prominently marked as such. See section 2.B below regarding motion papers. If hand-delivered, courtesy copies should be brought to the Clerk’s Office on the first floor of the Courthouse, not to chambers.

2. Motions

A. Pre-Motion Conference in Civil Cases.

For discovery motions, follow Local Civil Rule 37.2, requiring 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.

A pre-motion conference with the Court is required before making any other motion, except motions for admission *pro hac vice*, motions for reargument or reconsideration, motions for temporary restraining orders or preliminary injunctions, motions pursuant to Fed. R. Civ. P. 11(c)(2), or motions for which the Court has already set a briefing schedule. To arrange a pre-motion conference, the moving party must submit a letter, not to exceed three (3) pages, setting forth the basis for the anticipated motion. The Court will then set the date for the pre-motion conference. At least one week before that conference (unless otherwise ordered), the opposing party must submit a letter, also not to exceed three (3) pages, setting forth its position. 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 or after the motion is decided. A party need not comply with the pre-motion conference requirement where it reasonably believes that delay in filing might result in the loss of a right. In that event, the party should file, along with the motion, a letter explaining why the party believes it might be prejudiced if it complied with the pre-motion conference requirement.

B. Motion Papers.

- i. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to twenty-five (25) pages, and reply memoranda are limited to ten (10) pages. Memoranda of ten (10) pages or more shall contain a table of contents and table of authorities. All memoranda of law must be double-spaced and shall be in 12-point font or larger, with one-inch (1") margins on all sides. Footnotes may be single-spaced but must also be in 12-point font or larger. Sur-reply memoranda will not be accepted unless the Court’s prior permission has been obtained. Memoranda must be text-searchable when filed electronically on ECF.
- ii. All courtesy copies submitted in connection with motions must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open. Parties should submit multiple

volumes rather than large documents that do not lie reasonably flat when open. Preferred forms of binding are three-ring binders and spiral binding. Paper-and-plastic binding is acceptable as long as the pages will lay flat. Metal prong fasteners are not acceptable.

- iii. All courtesy copies must include the automatically generated ECF header (that is, the text – *e.g.*, “Case 7:19-cv-1234-ABC Document 100 Filed 9/1/19 Page 1 of 1” – appearing at the top of each page of the document on the ECF system).

C. Special Rules for Summary Judgment Motions

- i. Except in *pro se* cases where the non-moving party does not have access to word processing, the moving party shall provide all other parties with an electronic copy of the moving party’s Statement of Material Facts Pursuant to Local Civil Rule 56.1. The opposing party must reproduce each entry in the moving party’s Rule 56.1 Statement, and set out the opposing party’s response directly beneath it.
- ii. The moving party’s Statement of Material Facts Pursuant to Local Civil Rule 56.1 may not exceed 25 double-spaced pages without prior permission of the Court.
- iii. Any deposition that is supplied, whether in whole or in part, must be text-searchable.
- iv. Exhibits should always be separated by protruding tabs. Sheets of paper inserted between exhibits (of any color) are not sufficient to divide the exhibits. To the extent possible, exhibits should be double-sided.
- v. Except in *pro se* cases, the parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on CD, not on a DVD or memory stick and not by email.)

- D. Oral Argument on Motions.** The Court does not usually hear oral argument, but parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the date.

3. Pretrial Procedures

- A. Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered by the Court, within 30 days after the date for completion of discovery in a civil case, or, if a dispositive motion has been filed, within 30 days of its decision, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the information required by Fed. R. Civ. P. 26(a)(3) and following:
- i. The full caption of the action.
 - ii. The names, addresses (including firm names), email 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 party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. The parties shall also identify all claims and defenses previously asserted that are not to be tried.
 - v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
 - vi. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
 - vii. Any stipulations or agreed statements of fact or law.
 - viii. A list of the witnesses each party expects to call on its case in chief, including a very brief description of the witness's role and/or the subject matter of his or her anticipated testimony, and a statement as to whether any other party objects to the witness. A party should include any witness it may want for its case in chief even if the other side has listed that witness.
 - ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party. The party designating deposition testimony will be responsible for providing a transcript with its designations clearly marked (if possible by

highlighting in one color); the other side's counter-designations clearly marked (if possible by highlighting in another color); and any objections succinctly set forth (e.g., "hearsay," "relevance," "403") in the margin next to the objected-to portion, which shall be identified by a vertical line.

- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground. These indications are only for the Court's and the parties' guidance and are not stipulations. They do not relieve the proponent of the exhibit of its obligation to establish authenticity and any other necessary foundation for admission of the exhibit. The parties are encouraged, however, to enter into stipulations as to authenticity and admissibility where possible.
- xi. A statement of damages claimed, itemizing each component or element of the damages sought with respect to each claim, including the manner and method used to calculate the claimed damages.
- xii. A statement as to whether the parties consent to a less than unanimous verdict.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file the following documents four (4) weeks before the date of commencement of trial if such a date has been fixed, or four (4) weeks after the filing of the joint pretrial order if no date has been fixed:

- i. In jury cases, proposed *voir dire* questions, requests to charge and proposed verdict form. The plaintiff's proposed *voir dire* questions should include an agreed-upon paragraph (designated as such) for the Court to use in *voir dire* to provide the potential jurors with a brief explanation of the case. If the parties cannot agree on such a paragraph after good-faith efforts, their respective proposed paragraphs (designated as such) should be set forth in their respective *voir dire* submissions. In addition to being filed in the normal manner, proposed jury instructions should be emailed (in Word or WordPerfect) to chambersnysdseibel@nysd.uscourts.gov. Each proposed jury instruction must contain a citation to the source/authority for the proposed instruction, or the request will be disregarded.
- ii. In non-jury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed, and proposed conclusions of law should include a statement of the elements of each claim or defense.

- iii. In all cases, motions addressing any evidentiary or other issues that should be resolved *in limine*.
- iv. In any case where any party believes it would be useful, a pretrial memorandum; and
- v. In non-jury cases:
 - a. Affidavits constituting the direct testimony of each trial witness who is within the control of the party or willing to provide such an affidavit. One week 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 trial. Only those witnesses who will be cross-examined need appear at trial. The original affidavit shall be marked as an exhibit at trial.
 - b. All documentary exhibits, unless they are so voluminous as to make this requirement impracticable.

C. Filings in Opposition. Unless otherwise ordered by the Court, any party may file the following documents within one (1) week of the filing of any document described in section 3.B. above:

- i. Objections to the other party's proposed *voir dire* questions, requests to charge, or proposed verdict form.
- ii. Opposition to any motion *in limine*.
- iii. Opposition to any legal argument made in a pretrial memorandum.

4. Argument

The Court encourages senior lawyers to allow junior lawyers the opportunity to argue in court, whether at a conference, hearing, trial or otherwise. Indeed, the Court prefers that the lawyer most familiar with an issue argue it in court, regardless of seniority. The Court may permit more than one lawyer to argue for one party where doing so would create the opportunity for a junior lawyer to argue.

5. Post-Trial Procedures

Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes of appeal. Counsel perceiving an error that is material shall stipulate to the appropriate correction or, if

agreement cannot be reached, shall proceed by motion on notice. Non-material defects in syntax, grammar, spelling or punctuation should be ignored.

6. Default Judgments

A party that wishes to obtain a default judgment must proceed by way of order to show cause. Follow the Default Judgment Procedure, attached hereto as Attachment A.

7. Applications to be Relieved as Counsel

If an attorney wishes to be relieved as counsel, the client consents, and substitute counsel is prepared to appear (or an individual party wishes to appear *pro se*), the substitution may be accomplished by stipulation signed by attorney(s) and client. If the client consents and substitute counsel is desired but has not been obtained, the attorney may submit a stipulation signed by counsel and client, and the Court will set a date by which substitute counsel must appear for a corporate client and/or by which an individual client must proceed *pro se* if substitute counsel has not appeared. If the client's signature on a stipulation cannot be obtained, counsel must seek to be relieved by submitting a proposed Order to Show Cause ("OSC"), along with a supporting affidavit and legal authority justifying his or her withdrawal. Redacted copies may be filed on ECF, with unredacted hard copies supplied to chambers, if the application includes privileged or sensitive material. The Court will fill in the date by which counsel must serve the OSC on the client, the date by which opposition papers must be filed, and the date and time the application will be heard. Before the return date, counsel must file proof of service of the OSC on the client.

8. Bankruptcy Appeals

The briefing schedule and format and length specifications set forth in the applicable provisions of Federal Rules of Bankruptcy Procedure 8015-8018 shall govern unless otherwise ordered by the Court. The appeal may be dismissed if the opening brief is not timely filed. Counsel may apply for an extension of the dates specified in Rule 8018 but must do so at least three (3) business days before the brief is due.

9. Criminal Cases

A. Initial Matters. Upon assignment of a criminal case to Judge Seibel, the parties shall immediately arrange with the Courtroom Deputy Clerk for a prompt initial conference, at which the defendant will be present. The Assistant United States Attorney ("AUSA") shall provide to chambers, as soon as practicable, a courtesy copy of the Indictment or Information, and a courtesy copy of the Complaint, if one exists.

- B. Guilty Pleas.** Guilty pleas will ordinarily be taken by Judge Seibel and are not assigned to Magistrate Judges by standing order. Permission for guilty pleas to be taken before a Magistrate Judge may be given in special circumstances. The AUSA shall provide a courtesy copy of the plea agreement to chambers as soon as practicable.
- C. Sentencing.** Follow the Procedures for Sentencings, attached hereto as Attachment B.

10. Personal Electronic Devices

S.D.N.Y. Standing Order M10-468, dated February 18, 2010 (available on the Court's website) defines "Personal Electronic Devices" and sets forth the requirements for an attorney to bring such a device into the Courthouse. An attorney who meets those requirements may bring a Personal Electronic Device into the courtroom, but the device must be turned off (not merely placed in vibrate mode or otherwise silenced). If an attorney needs access to such a device during a proceeding (such as when a subsequent appearance is being scheduled), permission to activate the device should be requested of the Court. Attorneys may use their devices in the hallway outside the courtroom (although not in the vestibule to the courtroom), but are asked to be discreet and to keep their voices down.

11. Electronic Filing Under Seal in Civil and Miscellaneous Cases

- A. Sealing/Redactions Not Requiring Court Approval.** Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court.
- B. Sealing/Redactions Requiring Court Approval.** Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject document(s), including the proposed sealed document(s), must be filed electronically through the court's ECF system in conformity with the court's standing order, 19-MC-00583, and [ECF Rules & Instructions, section 6](#).

The motion must be filed in public view, must explain the specific reasons for seeking to file the information under seal and should not include the information sought to be filed under seal. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal.

The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include the information sought to be filed under seal.

Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the proposed redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion.

Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file on paper.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare a proposed Order to Show Cause for default judgment and make the Order returnable before Judge Seibel in Courtroom 621 of the United States Courthouse, 300 Quarropas Street, White Plains, New York. Leave blanks for the Court to fill in: 1) the date and time at which the Order to Show Cause will be heard; 2) the date by which the moving party must serve the Order to Show Cause and supporting documents on the non-moving party; and 3) the date by which the non-moving party must file opposition papers.

2. The following documents must accompany the Order to Show Cause:
 - A. an attorney's affidavit or declaration:
 1. attaching:
 - a) copies of the pleadings;
 - b) a copy of the affidavit of service of the original summons and complaint; and
 - c) if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed;

 - and
 2. setting forth:
 - a) why a default judgment is appropriate, including a description of the method and date of service of the original summons and complaint;
 - b) 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 liability and/or damages prior to resolution of the entire action (see F.R.C.P. Rule 54(b));
 - c) the proposed Statement of Damages and the basis for each element of damages including interest, attorney's fees, and costs; and

d) legal authority for why an inquest would be unnecessary (if applicable);

B. a proposed default judgment, including damage and interest calculations;

3. Electronically file the proposed Order to Show Cause using the filing event PROPOSED ORDERS and the document PROPOSED ORDER TO SHOW CAUSE WITHOUT EMERGENCY RELIEF. Electronically file the following documents as separate ECF Filing Events: 1) the attorney's AFFIDAVIT or DECLARATION in Support; and 2) the PROPOSED DEFAULT JUDGMENT using the Filing Event found under PROPOSED ORDERS.
4. After the Judge signs the Order to Show Cause, it will be docketed. The moving party must then serve a copy of the Order to Show Cause, and the supporting documents, on the defendant as directed in the Order to Show Cause
5. Proof of service on the defendant of a copy of the Order to Show Cause and supporting documents must be electronically filed three (3) business days in advance of the return date.

ATTACHMENT B

PROCEDURES FOR SENTENCINGS

Except for submissions to be filed under seal, every document in a sentencing submission, including letters, should be filed in the public record through the ECF system, using the procedures described below, unless permission to the contrary has been obtained.

In this regard, the parties are referred to E-Government Act of 2002 and the Southern District's ECF Rules & Instructions, Section 21, Privacy and Public Access to ECF cases, ("Privacy Policy") and reminded to 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]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying numbers; 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 Privacy Policy, without application to the Court.

If a party redacts from a sentencing submission information beyond the eleven categories of information identified in the Privacy Policy, an application to do so must be served at the time the sentencing submission is served. A redacted version of the sentencing submission must be filed on the ECF system at that time. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

If any material is redacted from the publicly filed document, only those pages containing the redacted material will be filed under seal. Bring a copy of those pages to the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.

If a party believes its entire sentencing submission must be filed under seal, an application to do so must be served at the time the sentencing submission is served. The application will be addressed at the sentencing proceeding.

A defendant's sentencing submission must be served two weeks in advance of the date set for sentence. The Government's sentencing submission must be served one week in advance of the date set for sentence. The parties should provide the Court with one courtesy hard copy. If the arguments of counsel are contained in a letter, the submission should nevertheless bear a cover, with the caption and docket number, indicating that it is a "Sentencing Memorandum." Letters from those other than counsel should be grouped and filed together as attachments to that single document marked "Sentencing Memorandum." The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends, relatives, etc. The Government is responsible for filing all letters from victims.