

INDIVIDUAL RULES AND PRACTICES IN CIVIL CASES

**Paul A. Engelmayer
United States District Judge**

Chambers

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Southern District of New York
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Unless otherwise ordered, these Individual Practices shall apply to all civil matters before Judge Engelmayer, except for civil *pro se* cases. If a case is designated by Order of the Court to be part of one of the Court's pilot projects or plans (*e.g.*, the Plan for Certain Section 1983 Cases Against the City of New York, the Pilot Project Regarding Case Management Techniques for Complex Civil Cases, or the Initial Discovery Protocols for Employment Cases Alleging Adverse Action), the procedures in such project or plan 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. Letters must be filed electronically on ECF. Letters may not exceed three pages in length without prior permission from Chambers. 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).

Letters to be filed under seal or containing sensitive or confidential information 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.

B. Telephone Calls. For scheduling and calendar matters, call Chambers at (212) 805-0268.

C. Faxes. Faxes to Chambers are not permitted.

D. Hand Deliveries. Hand-delivered mail should be taken to Worth Street entrance of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, and may not be brought directly to Chambers. Hand deliveries are continuously retrieved by Courthouse mail staff and then forwarded to Chambers. However, if the hand-delivered material 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.

E. 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. (If a request contains sensitive or confidential information, it may 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 letter-motion must state: (1) the original due date, the date or dates sought to be extended, and the new date the party now seeks through an adjournment or extension; (2) the number of previous requests for adjournment or extensions of time; (3) whether those previous requests were granted or denied; and (4) 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 Civil Case Management Plan and Scheduling Order must be attached. Absent extraordinary circumstances, requests for extensions will be denied if not made before the expiration of the original deadline. If the request is for an adjournment of a court appearance, absent an emergency, the request shall be made at least two business days prior to the scheduled appearance.

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

G. Urgent Communications. If a matter requires urgent attention, parties should so alert Chambers by telephone call or email, in addition to filing any related submission on ECF.

2. Conferences and Discovery

A. Attendance by Principal Trial Counsel. The attorney who will serve as principal trial counsel must appear at all conferences with the Court.

B. Initial Case Management Conference. The Court will generally schedule a Fed. R. Civ. P. 16(c) conference approximately two weeks after an answer or motion to dismiss is filed. 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 with the Courtroom Deputy that all counsel will attend the conference on the designated date and time. By one week before the conference date, the parties must provide, via mail or hand delivery, two courtesy copies of the pleadings. At least four business days before the conference date, the parties must file on ECF: (1) a proposed Civil Case Management Plan and Scheduling Order, available on the Court's website at <https://nysd.uscourts.gov/hon-paul-engelmayer>; and (2) a joint letter, not to exceed three single-spaced pages in length, describing the case, any contemplated motions, and the prospect for settlement. At the initial conference, the Court will schedule a next conference for approximately one month after the close of fact discovery. This next conference will either serve as a pre-motion conference (in the event

any party intends to move for summary judgment, *see* Section 3.H below) or will be used to set a trial date and dates for pretrial submissions.

C. Discovery Disputes. 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 must submit a letter to the Court via ECF, no longer than three single-spaced pages, explaining the nature of the dispute, the legal standards governing the issue, and case law, if any, supporting the party's position. 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 do so within three business days and should call Chambers promptly to advise that a responsive letter will be forthcoming. Reply letters are not invited. Either party may, in their letter, request an informal conference. If the Court schedules such a conference, counsel should be prepared to discuss 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 motions concerning discovery, which are governed by Section 2.C above, and for summary judgment motions, which are governed by Section 3.H below.

B. Motions to Dismiss. If a motion to dismiss is filed, the plaintiff has a right to amend its pleading, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), within 21 days. If the non-moving party elects not to amend its pleading, no further opportunity to amend will ordinarily be granted, and the motion to dismiss will proceed in the normal course. If the plaintiff amends its pleading, the defendant must, within 21 days of such amendment: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court, copying the plaintiff, stating that it relies on the previously filed motion to dismiss.

C. 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. All appendices to memoranda of law must be tabbed and indexed.

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

E. Courtesy Copies. Two courtesy copies of all motion papers should be submitted by the movant at the time the reply is served, not by each party at the time of filing. Courtesy copies should not be bound. Briefs or pleadings must be stapled or binder clipped; exhibits, affidavits, and declarations shall be provided in three-ring, tabbed binders. If the parties have redacted or filed under seal any portion of the motion papers or attendant exhibits, courtesy

copies are to be unredacted, but the portions redacted from public filings should be highlighted, so that the Court will know to refrain from quoting those passages in opinions and orders.

F. Oral Argument on Motions. 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 argument date.

G. Post-Discovery Settlement Conference. In cases to be tried by jury, within two weeks of the close of fact discovery, the parties must submit a joint letter to the Court stating whether all parties consent to a settlement conference to be held before this Court or the assigned Magistrate Judge. The letter should not identify, explicitly or implicitly, any party that has declined to so consent.

H. Motions for Summary Judgment. If a party wishes to move for summary judgment, it must, within 14 days of the close of fact discovery, request that the pre-motion / pretrial conference previously scheduled for after the close of fact discovery serve as a pre-motion conference. To so request, the moving party shall submit a letter via ECF, not to exceed three single-spaced pages in length, setting forth the basis for the anticipated motion, including the legal standards governing the claims at issue. Other parties shall respond similarly within one week. The Court will review and discuss with counsel any anticipated summary judgment motions at the pre-motion / pretrial conference.

i. **Rule 56.1 Statements.** 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. If the opposing party wishes to file their own, additional statements of material fact, it shall begin numbering each entry where the moving party left off. To streamline the summary judgment briefing process, the Court strongly encourages the parties to also negotiate and submit, prior to or along with the movant's Rule 56.1 Statement, a Joint Rule 56.1 Statement setting out all facts on which the parties agree.

I. Letter-Motions. Letter-motions must 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." In particular, all requests for adjournments, extensions, and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) must be filed as letter-motions. A courtesy copy should not be provided to Chambers.

J. 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.

K. Preliminary Injunction Motions. The Court generally follows the procedure for the conduct of non-jury trials described in Section 5.C below, to wit, parties should submit any documentary exhibits, declarations, and / or affidavits in support of or in opposition to such motion at the time they submit their legal memoranda in support of or in opposition to such motion.

L. 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, he or she must email Chambers at EngelmayerNYSDCChambers@nysd.uscourts.gov and state clearly whether (1) he or she has notified their 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. The moving party must also give notice of the time frame requested for Court action. If the motion is made on notice, all parties should be copied on the email.

The moving party should then file a Motion for a Temporary Restraining Order, supporting documents, and a proposed order on ECF in accordance with the procedures found in ECF Rule 18.2. Information on filing an application *ex parte* may be found in section 6, Sealed Filing, of the S.D.N.Y. ECF Rules & Instructions, available at <https://nysd.uscourts.gov/rules/ecf-related-instructions>. Where the motion is made on notice to the other parties, the moving party should simultaneously serve the documents on any party that will not receive electronic service via the ECF system.

If the matter is time-sensitive and Chambers does not respond within two hours, the moving party may contact the Clerk's Office before the end of the business day at (212) 805-0140.

If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must file the application 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.

M. Default Judgments. A plaintiff seeking a default judgment must proceed by filing a motion for default judgment on ECF pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Civil Rule 55.2(b). A plaintiff seeking a default judgment should *not* proceed by order to show cause. The motion must be supported by the following papers:

- i. an attorney's affidavit or declaration setting forth:
 - (a) the basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;
 - (b) the procedural history beyond service of the summons and complaint, if any;

- (c) 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;
 - (d) the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 - (e) legal authority for why an inquest into damages would be unnecessary;
- ii. a proposed default judgment;
 - iii. copies of all the operative pleadings;
 - iv. a copy of the affidavit of service of the summons and complaint; and
 - v. if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.

The Court will review the motion for default judgment and, if appropriate, issue an order setting a date and time for a default judgment hearing. If the Court issues such an order, the plaintiff must then serve on the party against whom default judgment is sought: (1) the motion for default judgment and supporting papers; and (2) the Court's order setting a date and time for the default judgment hearing. The plaintiff must file proof of such service on the docket in the manner and by the date specified in the Court's order setting the default judgment hearing.

4. Other Pretrial Guidance

A. Cases Removed from State Court. Counsel for the party or parties that 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.

B. Redactions and Filing Under Seal.

- 1. Sealing/Redactions Not Requiring Court Approval.** The parties are referred to Federal Rule of Civil Procedure 5.2, the E-Government Act of 2002, and the [Southern District's ECF Privacy Policy](#) ("Privacy Policy") and reminded not to include, unless necessary, the five categories of "sensitive information" in their submissions (*i.e.*, social security numbers [use the last four digits only], names of minor children [use the initials only], dates of birth [use the year only], financial account numbers [use the last four digits only], 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 number, medical records

(including information regarding 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 Court approval.

2. **Sealing/Redaction Requiring Court Approval.** Except for redactions permitted by Paragraph 4.B.1, **all redactions require Court approval.** To be approved, redactions must be narrowly tailored to serve whatever purpose justifies them and otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543 (JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015).

Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, 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 particular reasons for seeking to file that information under seal and should not include confidential 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 confidential 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 in the traditional manner, on paper.

C. 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.

Settling parties in cases brought under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*, should also refer to *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015) and *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332 (S.D.N.Y. 2012).

D. 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.

E. Bankruptcy Appeals. Briefs must be submitted in accordance with Fed. R. Bankr. P. 8009–10. 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 Order. If neither party has submitted a pre-motion letter seeking to move for summary judgment, the Court will set a date for trial at the pretrial conference held shortly after the close of discovery. The Court will also then set a deadline for the proposed joint pretrial order, which 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 whether the case is to be tried with or without a jury, without identifying which parties do or do not seek a jury trial;

- 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;
- 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 exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. In all cases, motions addressing any evidentiary issues or other matters which should be resolved *in limine*;
- ii. In all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;
- iii. In jury cases, requests to charge and proposed *voir dire* questions; and
- iv. In non-jury cases, 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.

C. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party shall submit to the Court and serve on opposing counsel, the following:

- i. 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. (The Court's practice is, at the pretrial conference held after the close of discovery, to determine, after consultation with counsel, which direct testimony to hear live and which to receive by means of affidavit.) 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;
- ii. 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; and
- iii. All documentary exhibits.

D. Filings in Opposition. Absent another order of the Court, any party may file the following documents within one week after the filing of the pretrial order, but in no event less than two days before the scheduled trial date:

- i. Objections to another party's requests to charge or proposed *voir dire* questions;
- ii. Opposition to any motion *in limine*; and
- iii. Opposition to any legal argument in a pretrial memorandum.

E. Courtesy Copies. Two courtesy copies of all documents identified in Sections 5.A–D above should be submitted to Chambers on the date on which they are to be served or filed. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into two independent sets.

F. Trial Schedule. Trials will generally be conducted Monday through Thursday from 9:30 a.m. to 5:00 p.m., with a one-hour break for lunch.

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 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, 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 before the relevant trial or hearing requesting permission to use such equipment. The 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, printers will not be permitted. 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.