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INDIVIDUAL RULES AND PRACTICES IN CIVIL CASES

Paul A. Engelmayer
United States District Judge

Chambers

United States District Court

~~Pearl Street, Room 670 New York, NY 10007~~ Courtroom 18C

Southern District of New York

Courtroom

~~Courtroom 18C~~ 500 Pearl Street, Room 660
New York, NY 10007

Courtroom

~~Southern District of New York~~ 500

500 Pearl Street

June Hummel, Courtroom Deputy
(212) 805-4893805-0132

Unless otherwise ordered ~~by Judge Engelmayer~~, 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 Chambers shall be by letter, ~~with copies simultaneously delivered to all counsel which shall be e-mailed to the Court as a .pdf attachment (EngelmayerNYSDChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel. Letters should not be filed electronically; instead, they should simply be mailed to Chambers or hand-delivered in the manner specified below. E-mails shall state clearly in the subject line: (1) the docket number of the case, followed by the caption of the case, including the lead party names; and (2) a brief description of the contents of the letter (e.g., 011-cv-9999 ó Jones v. Smith ó Request for Extension of Time). Parties shall not include substantive communications in the body of the e-mail; such communications shall be set out only in the attached letter. Copies of correspondence among between counsel shall not be sent to the Court. Letters should identify the name and docket number of the case.~~

B. Telephone Calls. For ~~docketing, docketing, scheduling, scheduling, and calendar matters, call call~~ Ms. June Hummel, Courtroom Deputy, at (212) 805-4893805-0132. Otherwise, telephone calls to Chambers are permitted only for urgent matters requiring the Court's immediate attention. In such situations, call Chambers at (212) 805-0268.

C. Faxes. Faxes to Chambers are not permitted except with the prior authorization of Chambers, which will be given only in rare, urgent circumstances. In such situations, faxed

| submissions must clearly identify the person in Chambers who authorized the sending of a fax,
| and copies must be simultaneously
| si multaneously faxed or delivered to all counsel.

D. Hand Deliveries. ~~Hand-delivered mail~~ Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Courthouse and may not be brought ~~directly~~ directly to Chambers. Hand ~~deliveries are continuously~~ deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. However, if the hand-delivered ~~letter material~~ letter 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 in ~~immediately~~ immediately.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be made in writing and should 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 these 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.

~~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 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. Docketing and Preservation of Letters. Letters to the Court are not ordinarily docketed. The Court may, however, docket *sua sponte* letters that it receives. If a letter contains information subject to a protective order, or there is good cause for a particular letter not to be publicly docketed, that must be explicitly stated in the letter. If a party wishes to preserve ~~such any~~ letters for the record on appeal, it must submit a written request to the Court within ten days of closure of the case.

G. 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 Civ. 1234 [rel. 10 Civ. 4321]).

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 ~~expects to hold will generally schedule~~ a Fed. R. Civ. P. 16(c) conference no more than ~~three~~~~two~~ months after the ~~filling~~~~ling~~ of a ~~complaint~~~~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~~~~will~~ attend the conference on the designated date and time. ~~This Notice will, inter alia, direct the parties to submit a proposed Civil Case Management Plan and Scheduling Order to the Court at At least three business days prior to the conference date. Prior to before~~ the conference date, ~~the parties must submit to Chambers: (1) a proposed Civil Case Management Plan and Scheduling Order, available on the Courts website at http://nysd.uscourts.gov/judge/Engelmayer; and (2) one courtesy copy of the pleadings should be sent to Chambers:pleadings.~~

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 may write a letter to the Court, no longer than three pages, 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 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. 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 motions concerning discovery, which are governed by Section 2.C above, and for summary judgment motions, which are governed by Section 3.G-3.H below.

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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 twenty-one days. If the non-moving party elects not to amend its pleading, no further opportunity to amend will be granted and the motion to dismiss will proceed in the normal course. If the plaintiff amends its pleading, the defendant must, within twenty-one 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 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, marked as such, should be submitted by the movant at the time the reply is served. Courtesy copies

should not be submitted to Chambers by each party at the time of filing. 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.

E. 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. **F. Motions to Dismiss.** When a motion to dismiss is filed, the non-moving party must, within ten days of receipt of the motion, notify the Court and its adversary in writing whether (1) it intends to file an amended pleading and when it will do so, or (2) 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 (a) file an answer; (b) file a new motion to dismiss; or (c) submit a letter stating that it relies on the initial filed motion to dismiss.

G. Motions for Summary Judgment. A pre-motion conference must be requested before the filing of a motion for summary judgment. To arrange a pre-motion conference, the moving party shall submit a letter, not to exceed three pages in length, setting forth the basis for the anticipated motion. Other parties shall respond similarly within three business days. Once the Court is ready to schedule a pre-motion conference, the parties will be contacted in order to schedule the pre-motion conference on a mutually convenient date.

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 the 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 a pre-motion conference. To request such a conference, the moving party shall submit a letter, not to exceed three 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 three business days. Once both letters have been received, the Court will set a date for a pre-motion conference.

L. 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.

J. I. Preliminary Injunction Motions. The Court generally follows generally follows the procedure for the conduct of non-jury trials described in Section 5.C below.

K. 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 call Chambers at (212) 805-0268 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. 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 the adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.

L. J. 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.

4. Other Pretrial Guidance

A. 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.

B. **A.**~~Redactions and Filing Under Seal.~~ Any party ~~wishing to file in~~ wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, must make a ~~specific~~ request to the Court by letter ~~explaining~~ explaining the reasons for seeking to file that ~~submission under seal. The party must attach to its letter one full set of the relevant document(s) in highlighted form (i.e., with the words, phrases, or paragraphs to be redacted highlighted).~~ Upon receiving these documents, the Court will review the proposed redactions. Chambers will then notify the party of its decision and the party may then, to the extent permitted by the Court, file the redacted documents on ECF and the full, unredacted documents under seal in accordance with this district's procedures, set forth at:

http://nysd.uscourts.gov/cases_records.php?records=sealed_records

~~On application of a party, and provided 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.~~

~~under seal. The party must attach to its letter: (1) one full set of the relevant document(s) in highlighted form (i.e., with the words, phrases, or paragraphs to be redacted highlighted); and (2) one partial, looseleaf set of solely those pages on which the party seeks to redact material. Upon receiving these documents, the Court will individually review the proposed 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.~~

C. **B.**~~Settlement Agreements.~~ The Court will not ~~retain jurisdiction~~ retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must ~~place~~ place the terms of ~~their~~ their settlement agreement on the ~~public~~ 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 in their stipulation~~ of settlement and dismissal.

D. **C.**~~Diversity Jurisdiction Cases.~~ In any action in which ~~subject~~ subject matter ~~jurisdiction~~ jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction ~~shall~~ shall, prior to the Initial Pretrial Conference, submit to the Court a letter no longer than two pages ~~explaining~~ explaining the basis for that party's belief that diversity of citizenship exists. Where any party is a corporation, the letter ~~shall~~ shall state both the ~~place of incorporation~~ place of incorporation and the principal ~~place of business~~ place of business. In cases where any party is a partnership, limited partnership, limited liability, limited liability company, or trust, the letter ~~shall~~ shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.

E. **D.**~~Bankruptcy Appeals.~~ Briefs must be submitted in accordance with Fed. R. Bankr. P. ~~8009-108009610~~. Counsel may extend the default ~~deadlines~~ deadlines by stipulation submitted to the Court no later than two business days before the brief is due.

5. Trial Procedures

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A. Joint Pretrial Order. Unless ~~otherwise ordered by a party moves for summary judgment, or~~ the Court sets a different schedule, within 30 days from the date for the completion of discovery, the parties ~~shall~~shall submit to the Court a proposed ~~joint pretrial joint pretrial~~ order, which ~~shall include the following 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~~plaintiff as to the basis of ~~subject~~subject matter ~~jurisdiction~~jurisdiction, and a brief statement by each other party as to the presence or absence of ~~subject~~subject matter ~~jurisdiction~~jurisdiction.~~–~~ Such statements shall include citations to all statutes relied on and relevant facts as to ~~citizenship~~citizenship and jurisdictional amount;
- iv. A brief summary by each party of the ~~claims~~claims and defenses that the party asserts ~~remain~~remain to be tried, including ~~citations~~citations to any statutes on which the party ~~relies~~relies.~~–~~ Such summaries shall also identify ~~all claims~~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~~trial days needed and ~~regarding~~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 ~~vi.~~ magistrate judge, without identifying which parties do or do not consent;
- vi i. ~~A ny stipulations or agreed statements of fact or law to which al l parties~~A ny 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~~testimony to be offered in its case ~~in~~in chief and any counter-designations and objections by any other party; and
- x. A ~~list~~list by each party of ~~exhibits~~exhibits to be offered in its case ~~in~~in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars ~~indicating~~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 ~~Injury~~Injury 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 posttrial 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, but not file on ECF, 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 compel led~~ by subpoena, or a person for whom the Court has agreed to hear direct ~~testimony testi mony~~ live at the ~~trial tri al~~. Three ~~business busi ness~~ 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 ~~wil wil~~ will be~~crossexamined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits;~~

- cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits;
- ii. A ~~H1~~ 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 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. ~~iv.~~ All documentary exhibits.

D. Filings in Opposition. ~~A~~ny ~~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, B, C, i, and D-5.A6D~~ 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. Only one set of documentary exhibits is required. 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 9:00 a.m. to 5:00 p.m., with ~~lunch~~ from 12:45 p.m. to 2 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 M 10-468. ~~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, Printers, or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualified

~~fyi-fyi~~ng as a ~~personal~~ electronic device, specific authorization is required by prior Court Order. ~~Any party seeking to bring such equipment into~~ Any party seeking to bring such equipment into the Courthouse ~~should-should~~ send a ~~letter-letter~~ to Chambers at ~~least least~~ 10 business days in advance of the ~~relevant relevant~~ trial or hearing requesting ~~permission permission~~ to use such equipment. The request letter ~~shall-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 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

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Engel in Courtroom 18C. Leave blank the date and time of the conference. Judge Engel 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 enter 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 670660, 500 Pearl Street) 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, but will supply you with a copy. You may also print a copy of the signed Order from the CM/ECF system after the Order has been docketed.)

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6. Prior to the return date, file through the CM/ECF system: (1) an affidavit of service, ~~reflecting~~reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (2) 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~~calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.