PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET, ROOM 230
NEW YORK, NEW YORK 10007

Ruby J. Krajick
CLERK OF COURT

MAKING MOTIONS AND OPPOSING MOTIONS

A motion is a formal request asking the Judge to do something for you. There are different types of motions that may be made during your case. Some motions, such as a motion to dismiss (under Rule 12(b) of the Federal Rules of Civil Procedure) or a motion for summary judgment (under Rule 56 of the Federal Rules of Civil Procedure) are "dispositive," which means that should the Judge grant such a motion, certain claims or defendants, or even the entire case, could end. Generally, these types of motions are brought by defendants, but summary judgment motions may also be brought by the plaintiff. Other types of motions, such as a motion to amend the complaint (under Rule 15(a) of the Federal Rules of Civil Procedure) or a motion for an extension of time (under Rule 6(b) of the Federal Rules of Civil Procedure) are "non-dispositive", which means that the decision on the motion will not directly end a claim or a party's involvement in the case.

Under Rule 7(b) of the Federal Rules of Civil Procedure, motions must be made in writing, except for those made during a hearing or a trial. First, the party who makes the motion (called the "moving party" or "movant") files the motion explaining what s/he wants the Judge to do and why the Judge should do it. Second, the opposing party files papers opposing the motion, explaining why the Judge should not grant the motion. Third, the moving party may file reply papers responding to the arguments made in the opposition papers. At that point, neither side may file any more documents related to the motion without permission from the Judge. After all the motion papers are filed, the Judge may decide the motion based solely on the arguments in the papers, or the Judge may hold a hearing where each side may appear in the Judge's courtroom and state their arguments to the Judge in person (called "oral argument"). If the Judge does not hold a hearing, s/he will issue a written decision at a later date. If the Judge holds a hearing s/he may announce the decision in the courtroom or s/he will further consider the motion and issue a written decision at a later date.

Drafting the Motion

There are at least two parts to every motion: a Notice of Motion and one or more Affirmations or Affidavits. In addition you should submit with your motion a Memorandum of Law or Brief. The notice of motion is a brief statement which includes what type of motion you are filing and the date that the motion will be marked "ready" for a decision by the Judge (called the "return date"). It must also state the name of the motion to the right of the caption, for example: "Plaintiff's Motion to Amend the Complaint." The notice of motion should also contain the courtroom number of your Judge, which may be found on the Judge's Individual Practice Rules. You must also give a brief statement of what you want the Judge to do.

Your affirmation supporting the motion is a written statement signed under penalty of perjury that to your knowledge what you have written is true. As the moving party, your affirmation is your statement to the Judge explaining why you are seeking relief and why you are entitled to it. The affirmation should contain only facts and not legal arguments, which may be presented in a separate memorandum of law.

If you cannot complete the date and time for the return date of the Notice of Motion, you may leave it blank and the Judge may, but is not obliged to, accept the motion anyway. The first page of the affirmation must include the caption of the case, the docket number, and the name of the document, for example: "Affirmation of John Smith in support of Plaintiff's Motion to Amend the Complaint." The body of the affirmation is a series of numbered paragraphs, with each paragraph containing a different fact. At the end of your affirmation, you must state that you "declare under penalty of perjury that the foregoing is true and correct," date it, and sign it.

Drafting the Opposition and Reply to a Motion

The opposition and reply to a motion are in the form of an affirmation. If you are opposing a motion, you should explain in your affirmation why the Judge should not grant the motion. The first page of the affirmation must contain the caption of the case, the docket number, and the name of the document, for example: "Affirmation of John Jones in Opposition to Defendant's Motion to Dismiss the Complaint." The body of the affirmation is a series of numbered paragraphs, with each paragraph containing a different fact. At the end of your affirmation, you must state that you "declare under penalty of perjury that the foregoing is true and correct," date it, and sign it. You should also include a separate memorandum of law.

If you made a motion, after the opposition to the motion is filed by your adversary, you may file a "Reply" to address only the issues or facts raised in your adversary's opposition papers and restate why the Judge should grant your motion. The reply should not raise any new issues or facts. The first page of the affirmation must contain the caption of the case, the docket number, and the name of the document, for example: "Reply Affirmation of John Smith in Support of Plaintiff's Motion to Amend the Complaint." The body of the affirmation is a series of numbered paragraphs, with each paragraph containing a different fact. At the end of your affirmation, you must state that you "declare under penalty of perjury that the foregoing is true and correct," date it, and sign it. You should also include a separate memorandum of law.

Motion Timing

Before making any motion, you should check your Judge's Individual Practice Rules to determine whether you are required to request a pre-motion conference or take some other step before making your motion. Before filing motion papers with the *Pro Se* Office, all motion papers must be served on all parties in your case and must contain an affirmation of service stating that you have served the papers on the other parties.

Local Rule 6.1 sets one schedule for discovery motions and another for every other type of motion. For a discovery motion, the opposition must be served within seven (7) calendar days after service of the moving papers, and any reply must be served within two (2) calendar days after service of the opposition. For any other type of motion, the opposition must be served within fourteen (14) calendar days after receiving the moving papers, and any reply must be served within seven (7) calendar days after receiving the opposition. Under

Rule 6(d) of the Federal Rules of Civil Procedure, an extra three (3) calendar days may be added to each of the above deadlines if the papers being responded to were served by any method other than personal delivery.

Return Date of the Motion

If you are filing a motion, you must calculate what the "return date" (the date on which the motion will be marked "ready" for the Judge's decision) will be. You must choose a return date that is a date in the future and which takes into account the motion timing periods set forth in Local Rule 6.1, as well as any provisions in your Judge's Individual Practice Rules. For example, if you wish to file a motion to amend your complaint on February 1st and you intend to serve the motion by mailing a copy of it to your adversary, you must calculate a return date that allows the defendant fourteen (14) days to serve his/her opposition to your motion, adding three (3) days for mailing your motion, plus, another seven (7) days for your reply, and adding another three (3) days for mailing the reply. Therefore, the return date you choose, must be at least twenty-one (27) days after February 1st (14+3+7+3 = 27). If that date falls on a Tuesday, but your Judge's Individual Practice Rules state that s/he only hears motions on Thursdays, you must add an additional two (2) days so that the return date falls on a Thursday.

Extensions of Time

If you need additional time to meet a motion's deadline, you should first ask your adversary if s/he would consent to an extension of time. If s/he agrees, the agreement should written so that all parties may sign it and it can be submitted to the Judge for approval. If your adversary refuses to consent to an extension, you may ask the Judge for an extension of time directly. Such a request may be made in the form of a letter, but a copy of the letter must be sent to the other parties, and an affirmation of service must be attached to the original request that is sent to the *Pro Se* Office.

Special Information on Certain Motions in *Pro Se* Cases

Local Rules 12.1 and 56.2 require that a *pro se* litigant be advised of certain information if a motion to dismiss or motion for summary judgment is filed by a defendant in his/her case. In essence, Local Rule 12.1 advises *pro se* litigants that a motion to dismiss may be converted into a motion for summary judgment if the defendant refers to matters that are not contained in the complaint or the answer.

Generally, Local Rule 56.2 advises *pro se* litigants that the case may be dismissed if they fail to respond to a summary judgment motion and also explains that the opposing a summary judgment motion requires that litigants submit evidence, such as documents or affirmations or affidavits from the litigant or others with personal knowledge of the issues. In addition, Local Rule 56.1 requires that when a motion for summary judgment is made, in addition to the motion, opposition, and reply papers, all parties file a separate statement (called a "56.1 Statement") of the material facts. The party who files the motion must list the material facts which s/he contends are not in dispute. The party opposing the motion must include a 56.1 Statement which lists each material fact s/he contends is in dispute. These 56.1 Statements must be served on the other parties and filed with the Court with an affirmation of service.