

INDIVIDUAL RULES AND PRACTICES IN CIVIL CASES

**J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK**

<u>Chambers</u>	<u>Courtroom</u>
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Unless otherwise ordered by the Court, these Individual Practices shall apply to all civil matters except for *pro se* cases. If a case has been referred to a magistrate judge for general pretrial purposes, the magistrate judge's practices will control with respect to all matters within the scope of the reference.

PLEASE NOTE: Courtesy copies in paper form are no longer required unless specifically requested (see paragraph 2(C) below).

1. Communications with Chambers

- A. Letters and Letter Motions.** Except as otherwise provided below, all communications with Chambers shall be by *letter motion* (filed on ECF in accordance with the [SDNY Local Rules](#) and the [SDNY Electronic Case Filing Rules and Instructions](#)) or, if no relief is being sought by the Court, by *letter* (also filed on ECF). All requests for adjournments and extensions of time shall be filed by letter motion in accordance with paragraph 3(C) below. All requests for pre-motion conferences regarding discovery disputes shall be filed by letter motion in accordance with paragraph 4(B) below. Any response to a letter or letter motion shall be filed within *two business days* of the filing of the letter or letter motion. Parties should not provide courtesy copies of letters and letter motions filed on ECF. Letters and letter motions shall not exceed five single-spaced pages.
- B. Letters Containing Confidential Information.** Requests for redactions and filing under seal are governed by paragraph 2(E) below. Any letter containing confidential information that cannot be filed on ECF under paragraph 2(E) may be sent by email to the Court (OetkenNYSDChambers@nysd.uscourts.gov), as a

PDF attachment, with a copy simultaneously send by email to all counsel. Such a letter may be accompanied by PDF copies of any documents associated with the request, including relevant documents in unredacted form and in highlighted form (*i.e.*, with the words, phrases, or paragraphs to be redacted highlighted). Emails shall state in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the request. Parties shall not include substantive communications in the body of the email; such substantive content will be disregarded.

- C. **Telephone Calls.** Communication with Chambers shall occur by letter motion or letter. Calls to Chambers are permitted only in *urgent* situations requiring immediate attention. Parties should review these Individual Rules and Practices before calling with questions about the Court’s rules and practices.
- D. **Faxes.** Faxes are not permitted except with prior approval of Chambers.

2. Rules for All Filings

- A. **Electronic Filings.** All electronic submissions should be in the form of text-searchable PDF documents.
- B. **Memoranda of Law.** Memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. Surreply memoranda are not allowed (unless specifically permitted in extraordinary situations for good cause).
- C. **Courtesy Copies.** Courtesy copies in *paper* form are *not required* unless specifically requested by Judge Oetken’s Chambers staff.

Electronic (email) courtesy copies are required in the following circumstances:

- i. For *redacted or sealed filings*, parties shall submit electronic courtesy copies of the unredacted filings, in PDF format, to Judge Oetken’s Chambers email address (OetkenNYSDCChambers@nysd.uscourts.gov) at the time of filing.
- ii. Where a party requests immediate relief (*e.g.*, an order to show cause seeking a TRO) or files a proposed order for Judge Oetken’s signature,

electronic courtesy copies should be sent by email as set forth in paragraph 3(G) below.

In situations where Judge Oetken's staff has requested paper courtesy copies, the following practices should be followed: Courtesy copies should be printed double-sided. Courtesy copies may be submitted by regular mail or hand delivery. Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan Courthouse at 500 Pearl Street. Hand deliveries are periodically retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to chambers.

If hand-delivered material requires the Court's immediate attention (*e.g.*, for an imminent hearing), parties should call the Courtroom Deputy (212-805-4701) or Chambers (212-805-0266) to coordinate delivery to Courtroom 706 at 40 Foley Square.

D. Unpublished Cases. Westlaw citations should be provided, if available, to cases not available in an official reporter. Where a party cites a decision that is not available on Westlaw, it shall submit a copy of the decision with its filing.

E. Redactions and Filing Under Seal.

- i. Pursuant to Rule 5.2 of the Federal Rules of Civil Procedure and the Southern District's [ECF Privacy Policy](#), parties are reminded not to include, unless necessary, the five categories of "sensitive information" in their submissions (social security numbers, names of minor children, dates of birth, financial account numbers, and home addresses). Parties may redact the five categories of sensitive information and the six additional categories of information requiring caution (personal identifying number, medical records, 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 prior approval from the Court.
- ii. Except for redactions permitted by the prior paragraph, all redactions or sealing of public court filings require Court approval. To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve the purpose justifying the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110,

119-20 (2d Cir. 2006). Any party seeking to file a document under seal or in redacted form shall proceed as follows:

- a. **Sealed Documents.** Where a party seeks leave to file a document *under seal*, the party shall file a letter motion seeking leave to file the document under seal on ECF in accordance with Standing Order 19-MC-583 and Section 6 of the [SDNY Electronic Case Filing Rules and Instructions](#). The letter motion itself should be filed in public view, should explain the reasons for seeking to file the document under seal, and should not include confidential information. The proposed sealed document shall be contemporaneously filed under seal on ECF, with the appropriate level of restriction, and electronically related to the letter motion (or to the relevant Court order if the Court has previously granted leave to file the document under seal). Note that the summary docket text, but not the document itself, will be open to public inspection and therefore should not include confidential information sought to be filed under seal.
- b. **Redacted Documents.** Where a party seeks leave to file a document in *redacted* form, the party shall file a letter motion seeking leave to file the document in redacted form on ECF in accordance with Standing Order 19-MC-583 and Section 6 of the [SDNY Electronic Case Filing Rules and Instructions](#). The letter motion itself should be filed in public view, should explain the reasons for seeking to file the document in redacted form, and should not include confidential information. At the same time, the party shall (1) publicly file on ECF a copy of the document with the proposed redactions, and (2) file under seal on ECF, with the appropriate level of restriction, an unredacted copy of the document with the proposed redactions highlighted. (Both filings should be electronically related to the letter motion.)
- c. **Submission by Email.** Any party seeking to file a document under seal or in redacted form shall also submit an electronic courtesy copy of the unredacted filing to the Court's chambers email address, as set forth in paragraph 2(C) above.

3. Rules for Specific Types of Filings

- A. Complaints.** New civil cases are commenced by filing electronically on the ECF system, as explained in the [SDNY Electronic Case Filing Rules and Instructions](#). There is no need to submit courtesy copies of pleadings, unless immediate relief is sought — *e.g.*, an order to show cause seeking a TRO, which should be emailed to the Chambers email address (OetkenNYSDChambers@nysd.uscourts.gov) and simultaneously filed on the ECF system.
- B. Bankruptcy Appeals.** The parties must comply with the briefing schedule and the format and length specifications set forth in Federal Rules of Bankruptcy Procedure 8014-8018 unless otherwise ordered by the Court.
- C. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions shall be made by letter motion, filed on ECF, and must state: (1) the original date and the new date requested; (2) the number of previous requests for adjournment or extension; (3) whether the previous requests were granted or denied; (4) whether the adversary consents, and if not, the reasons given by the adversary for refusing to consent; and (5) if a party requests to extend discovery beyond a previously scheduled conference, whether the conference should be adjourned (and, where relevant, proposing alternative dates). *All requests for adjournments and extensions of time shall be made at least 48 hours before the scheduled deadline or appearance.*
- D. Motions to Dismiss.**
- i. Pre-motion letters and pre-motion conferences are not required for motions to dismiss.
 - ii. If a motion to dismiss is filed, the non-moving party shall, within 10 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. Non-moving parties are on notice that declining to amend their pleadings to respond to a fully briefed argument in the motion to dismiss may well constitute a waiver of their right to use the amendment process to cure any defects that have been made apparent by the briefing. *See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC.*, 797 F.3d 160, 190 (2d Cir. 2015) (leaving “unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility.”).

This provision does not alter the time to file a response in the Federal Rules or the Local Rules.

If the non-moving party amends, the opposing party may then (1) file an answer; (2) file a new motion to dismiss; or (3) file a letter stating that it relies on the initially filed motion to dismiss. If the moving party files an answer or a new motion to dismiss, the Court will deny the original motion to dismiss as moot.

E. Motions for Summary Judgment.

- i. Pre-motion letters and pre-motion conferences are not required for motions for summary judgment.
- ii. Unless otherwise ordered by the Court, any summary judgment motion shall be filed within fourteen (14) days after the close of all discovery.
- iii. Any party moving for summary judgment will provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Civil 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 generate its own statements of material facts, it shall begin numbering each entry where the moving party left off.
- iv. **Cross-Motions for Summary Judgment.** If there are cross-motions for summary judgment addressing *the same or overlapping issues*, briefing shall be seriatim rather than simultaneous, as follows:
 - a. Party A shall file its opening brief in support of its motion for summary judgment;
 - b. Party B shall file a single brief in opposition to Party A's motion for summary judgment and in support of its own cross-motion for summary judgment;
 - c. Party A shall file a single reply brief both in support of its motion for summary judgment and in opposition to Party B's cross-motion for summary judgment;

- d. Party B shall file its reply brief in support of its motion for summary judgment.
- v. Deposition transcripts should be text-searchable and include an index.
- F. Filings Regarding Discovery Disputes.** Any filings regarding discovery disputes shall be made in accordance with paragraph 4(B) below.
- G. Proposed Orders and Stipulations.** Proposed orders to show cause, temporary restraining orders, stipulations, consent orders, and proposed judgments are to be filed electronically on ECF as explained in the [SDNY Electronic Case Filing Rules and Instructions](#). Counsel should also email an electronic courtesy copy of any proposed order to Chambers, in both Microsoft Word and PDF formats.
- H. Settlement Agreements.** The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish the Court to retain jurisdiction to enforce a settlement 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 the settlement agreement in their stipulation of settlement and dismissal.

Settling parties in cases brought under the Fair Labor Standards Act 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).
- I. 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, union, trust, business trust, or other unincorporated organization, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.
- J. Motions for Default Judgment.** Any party 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 party seeking a

default judgment should *not* proceed by order to show cause. The party should proceed by taking the following steps:

First, obtain a “Certificate of Default” from the Clerk of Court certifying that no answer has been filed. In order to obtain a Certificate of Default from the Clerk, *and before moving for default judgment*, the party must follow the steps set forth in Section 16.1 of the [SDNY Electronic Case Filing Rules and Instructions](#).

Second, file a motion for default judgment, which must be supported by the following papers:

1. 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;
2. a proposed default judgment;
3. copies of all the operative pleadings;
4. a copy of the affidavit of service of the summons and complaint; and
5. a Certificate of Default from the Clerk of Court certifying that no answer has been filed.

Third, serve the motion for default judgment and supporting papers on the party against whom default judgment is sought and file an affidavit of service on ECF within fourteen days of filing the motion for default judgment. The Court will not consider the motion for default judgment until such affidavit of service is filed. If more than fourteen days are required to complete service of the motion for default judgment and supporting papers, the plaintiff should file a letter on ECF

explaining why additional time is necessary and when the plaintiff anticipates service will be completed.

4. Procedures for Conferences

- A. Initial Case Management Conference.** The parties shall submit a proposed Civil Case Management Plan and Scheduling Order to the Court at least three business days before the initial case management conference.
- B. Discovery Disputes.** 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 the meet-and-confer process does not resolve the dispute, the party may submit a letter motion to the Court, no longer than five single-spaced pages in length, explaining the nature of the dispute and requesting an informal conference with the Court. Such letter motion 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 two business days*. Pursuant to Local Rule 37.2, parties may not file a motion under Rules 26 through 37 of the Federal Rules of Civil Procedure unless they have requested an informal conference.

5. Procedures Immediately Preceding Trial

- A. Joint Pretrial Order.** Within 30 days after the close of discovery, or, if a dispositive motion has been filed, within 30 days after a decision on such motion, the parties shall submit a proposed joint pretrial order. One set of courtesy copies of the joint pretrial order, and of all documents filed or served with the joint pretrial order, should be submitted to Chambers on the date of filing or service. The order shall include the following:
- i. The full caption of the action, as the parties wish it to appear on all trial documents.
 - ii. The names, law firms, addresses, telephone numbers, and email addresses of trial counsel.
 - iii. A brief statement by the 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 upon and any relevant facts as to citizenship and amount in controversy.

- 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 cite 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.
- vi. A statement as to whether 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, with an indication of whether each such witness 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.
- x. A list by each party of exhibits to be offered in its case in chief, with one asterisk indicating exhibits to which no party objects on grounds of authenticity, and two asterisks indicating exhibits to which no party objects on any ground.
- xi. A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages.

B. Motions in Limine

- i. Any motions *in limine* shall be filed and served on or before the date on which the joint pretrial order is due.

- ii. Any brief in opposition to a motion *in limine* shall be filed and served within one week of service of such motion
- iii. Any opposition to a legal argument in a pretrial memorandum of law shall be filed and served within one week of service of such memorandum.

C. Required Pretrial Filings.

- i. **In jury cases**, the following shall be filed with the joint pretrial order:
 - a. Proposed (i) voir dire questions to be asked of prospective jurors, (ii) requests to charge, and (iii) verdict forms. The parties must meet and confer in an effort to reach agreement with respect to these submissions. The parties shall make a joint submission with respect to those items that are agreed upon, and separate submissions with respect to those on which the parties cannot reach agreement.
 - b. In cases in which a party believes it would be useful to the court, a pretrial memorandum of law addressing any issues of law that are expected to arise at or before trial.
- ii. **In non-jury cases:**
 - a. With the filing of the joint pretrial order, the parties shall file proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. The parties must meet and confer in an effort to reach agreement with respect to those findings and conclusions as to which there is no dispute; as to any agreed-upon findings and conclusions, the parties should make a joint submission.
 - b. With the filing of the joint pretrial order, each party shall file a pretrial memorandum of law summarizing the applicable law and relevant facts, identifying the issues for trial, and addressing any evidentiary issues.

- c. With the filing of the joint pretrial order, each party shall submit to the Court and serve on opposing counsel (but shall not file on ECF): (i) deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition (including page citations to the deposition transcripts); and (ii) one set of documentary exhibits to be used at trial.

D. Exhibits. At least two business days before trial, each party shall submit a flash drive containing electronic copies of all exhibits. On the first day of trial, each party shall submit two copies of an updated exhibit list and all trial exhibits. The exhibits must be pre-marked and assembled sequentially in loose leaf binders or manila folders for ease of reference.

6. Encouraged Participation of Junior Members of Legal Teams

Junior members of legal teams representing clients are invited to argue motions they have helped prepare and to question witnesses with whom they have worked. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. This Court is amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.