

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
300 QUARROPAS STREET, CHAMBERS 533
WHITE PLAINS, NY 10601-4150

CHAMBERS OF
HON. KENNETH M. KARAS

MEMORANDUM TO ALL LITIGANTS

Re: Individual Rules of Practice of the Honorable Kenneth M. Karas

Date: February 5, 2020

Unless otherwise ordered, Parties and counsel with matters before Judge Karas shall conduct themselves in accordance with the following practices:

I. COMMUNICATIONS WITH CHAMBERS

A. Letters. Except as otherwise provided below, communications with the Court should be by letter and not by phone. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be filed electronically via ECF. Letters to be filed under seal or containing sensitive or confidential information should be delivered to the Court by mail. 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).

B. Letter-Motions. Letter-motions should 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) should be filed as letter-motions.

C. Requests for Adjournments or Extensions of Time. Absent an emergency, requests for adjournments or extensions of time shall be made at least five business days prior to the scheduled appearance. 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 submitted by fax/mail in lieu of being filed electronically.) The letter-motion must state: (1) the original date(s); (2) the number of previous requests for adjournment or extension; (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.

Requests for extension of deadlines regarding discovery or any other aspect of a case that has been referred to a magistrate judge that would result in extension of discovery past the date discovery is scheduled to be completed in the Case Management Order should be addressed to the Court. All other requests for extension of *interim* deadlines regarding discovery or any other aspect of a case that has been referred to a magistrate judge shall be addressed to such magistrate judge, with a copy being filed on ECF.

D. Telephone Calls. As most issues may be resolved by filing letters with the Court, parties may not contact chambers by phone except in emergency situations requiring immediate attention. In such situations only, call chambers at (914) 390-4145. Except as noted in Part 1F, below, all calls regarding ECF filings or questions should go to the Clerk's Office, (914) 390-4000, or to the ECF Hotline, (212) 805-0800. The Court does not handle the mechanics of filing or have the ability to change things that are already uploaded to the docket. Do not contact chambers to confirm that a particular filing was uploaded; the document should be visible on ECF if it was uploaded correctly.

E. Digital Sending and Faxes. Parties may communicate with chambers by fax only in emergency situations. In such situations, the fax number is (914) 390-4152. All faxes should be sent with appropriate cover page. Do not call chambers to confirm that your fax was received.

F. Scheduling and Calendar Matters. For docketing, scheduling, and calendar matters, call Ms. Dawn Bordes, Courtroom Deputy Clerk, at (914) 390-4146.

II. MOTIONS

A. Pre-motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2.

For motions other than discovery motions, a pre-motion conference with the court is required for making any motion, except motions brought on by Order To Show Cause, motions by incarcerated *pro se* litigants, motions for admission *pro hac vice*, motions for reargument, motions for class certification, and motions described in Rule 6(b) of the Federal Rules of Civil Procedure and Rule 4(a)(4)(A) of the Federal Rules of Appellate Procedure.

For motions to dismiss in lieu of an answer in *fully counseled* cases, the movant must send a pre-motion letter to the nonmovant, copy the Court, and file it on the docket. The letter shall include each specific argument and relevant case law supporting the movant's position as to why the complaint may fail or partially fail as a matter of law. The filing of such a letter stays the time to answer or move until further order of the Court. Within 7 days, the nonmovant shall respond by similar letter, indicating either that they will amend their pleading (with a proposed deadline for filing the amended pleading) or that they do not see a need to amend, citing the relevant case law that supports their position. Should the nonmovant choose not to amend in response to movant's letter, the Court will then schedule a pre-motion conference to discuss the issues and potentially set a briefing schedule. If a complaint is ultimately dismissed on the grounds set forth in the movant's initial letter, it may be dismissed *with prejudice* as the nonmovant already had a chance to research the movant's arguments and amend as needed.

To arrange a pre-motion conference for all other forms of motions that require them, the moving Party shall submit a letter (consistent with the procedures described above) not to exceed three pages in length (using normal margins and font) setting forth the basis for the anticipated motion. All Parties so served must submit a letter response, not to exceed three pages, within 3 business days from service of the notification letter.

To arrange a pre-motion conference for motions governed by a Scheduling Order, the moving Party must submit its initial letter 2 weeks prior to the motion deadline established by the Order. Where a pre-motion conference is not required, motions should be filed when served.

It is essential that all Parties filing or responding to a pre-motion letter contemporaneously file a notice of appearance with the Clerk's Office (although a Party contesting jurisdiction need only file a limited notice of appearance). This ensures that litigants are notified of any instructions or scheduling orders issued by the Court. Further, the Court expects each litigant to fulfill the duties of S.D.N.Y. ECF Procedure 9 by regularly reviewing the docket sheets of any open case in which she or he has appeared.

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. All memoranda of law shall be produced in a 12-point font, be double-spaced, and have one-inch margins on all sides. A copy of the complaint shall accompany the moving papers. Sur-reply memoranda will not be accepted without prior permission of the Court. The Parties are to use Westlaw citations, where possible.

C. Courtesy Copies. Parties filing summary judgement motions *only* shall send the Court one courtesy copy of the motion, supporting memorandum, memorandum in opposition, reply, statements of material facts, and any other supporting papers and exhibits at the time the reply is served. Courtesy copies may be submitted by regular mail or hand delivery to the Clerk's Office on the first floor of the Courthouse, not to Chambers. All filings shall include the ECF docket number.

D. Rule 56.1 Statements. Except in pro se cases, 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. 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.

E. Oral Argument on Motions. Oral argument will be held where it would assist the Court. A notice of motion shall state that oral argument will be "on a date and at a time designated by the Court." The Court will contact the Parties to set the specific date and time for oral argument.

F. Show Cause Hearings. Parties should not insert their own date and time on proposed orders to show cause for motions that require them. Parties should either leave blanks for the Court to fill in or use filler language such as "on a date and at a time designated by the Court." As with oral argument, the Court will set the specific date and time for such hearings.

G. Filings Generally. Where possible, parties should ensure that PDFs uploaded to ECF, such as memoranda, declarations, or exhibits, are text searchable.

III. CONFERENCES

A. Principal Trial Counsel. The attorney who will serve as principal trial counsel shall 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 within four months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be sent to Plaintiff's counsel, who will be responsible for distributing copies to all Parties.

C. Appearing in Person. Attorneys are expected to appear in person for all conferences. Attorneys may, if absolutely necessary, ask for leave to appear via telephone. Attorneys should file a letter asking to appear via telephone at least 5 days in advance of the conference and explain why they believe that telephonic appearance is necessary. If you have not received confirmation from the Court permitting telephonic appearance on the docket, you are expected to appear in person.

The Court has only one phone line available for conferences. Therefore, only one attorney may appear via telephone for any given conference. If extraordinary circumstances require multiple attorneys to appear by telephone, they must make independent arrangements to call in together on one line and notify the Court of how to reach them. When appearing for a conference via telephone, please call chambers' main line at (914) 390-4145.

D. Pro Se Conferences. For conferences involving incarcerated pro se plaintiffs, defense counsel is responsible for making arrangements with the relevant correctional facility to ensure that the plaintiff will be reachable via telephone at the time of the conference and providing the Court with the appropriate phone number to use.

IV. DEFAULT JUDGMENTS

A Party who wishes to obtain a default judgment must proceed by way of an Order To Show Cause. Consult the separate Individual Rules of Practice for Default Judgment Proceedings before Judge Karas, available on the Court's website.

V. PRETRIAL PROCEDURES

A. Joint Pretrial Orders (Civil Cases Only). At a time to be set by the Court, the Parties shall submit to the Court for its approval a Joint Pretrial Order that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

- i. The full caption of the action;
- ii. The names, addresses (including firm names), and telephone, fax numbers, and email addresses 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 authority 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 which remain to be tried, without recital of evidentiary matters but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which 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 Party or Parties have or have not so consented);
- vii. Any stipulations of fact or law that have been agreed to by the Parties;
- viii. A statement by each Party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition;
- 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;
- 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; and
- xi. A statement whether the Parties consent to less than a unanimous verdict.

B. Pretrial Filings in Civil Cases. Along with the Joint Pretrial Order, each Party shall file:

- i. In jury cases, proposed voir dire questions, verdict form, and requests to charge;
- ii. In non-jury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed;

- iii. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*; and
- iv. Where such Party believes it would be useful, a pretrial memorandum.

C. Filings in Opposition. Any Party may file the following documents within one week of the filing of the pretrial order, but in no event fewer than two days before the scheduled trial:

- 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.

D. Generally. A courtesy copy of the joint pretrial order and all documents filed or served with the pretrial order should be provided to chambers on the date of filing or service.

VI. BANKRUPTCY APPEALS

Briefs must be submitted in accordance with Federal Rule of Bankruptcy Procedure 8018. Counsel may extend these dates by stipulation submitted to the Court no later than two business days before the brief is due.

VII. CRIMINAL CASES

A. Criminal Cases—Initial Matters. Upon assignment of a criminal case to Judge Karas, the Parties immediately shall arrange with the Deputy Clerk for a prompt conference at which the defendant will be present in order to set a discovery and motion schedule. The Assistant United States Attorney shall provide a courtesy copy each of the indictment and the criminal complaint, if one exists, to chambers as soon as practicable.

B. Criminal Cases—Guilty Pleas. Guilty pleas will ordinarily be taken by Judge Karas and are not assigned to Magistrate Judges by standing order. Permission for guilty pleas to be taken on recommendation of a Magistrate Judge will be given only in special circumstances. The Assistant United States Attorney shall provide a courtesy copy of the plea agreement to chambers as soon as practicable.

C. Criminal Cases—Sentencing. Consult the separate Individual Rules of Practice for Sentencing Proceedings before Judge Karas, available on the Court's website.

VIII. FAIR LABOR STANDARDS ACT SETTLEMENTS

Where there is a settlement in any case containing a claim under the Fair Labor Standards Act ("FLSA"), the Parties must obtain the Court's approval. *See Cheeks v. Freeport Pancake*

House, Inc., 796 F.3d 199 (2d Cir. 2015). This includes settlements where the FLSA claim is dismissed on consent.

Accordingly, parties seeking to settle a case involving an FLSA claim must submit their proposed settlement, along with any memoranda or declarations, to the Court for approval. All proposed settlement agreements and accompanying documents to the Court must be filed via ECF unless prior permission is given to file documents under seal.

Parties are encouraged to familiarize themselves with the relevant case law regarding the type of factors courts typically consider when evaluating FLSA settlements. *See, e.g., Lopez v. Nights of Cabiria, LLC*, 96 F. Supp. 3d 170 (S.D.N.Y. 2015); *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332 (S.D.N.Y. 2012). Parties should pay particular attention to the breadth of the release, the inclusion of confidentiality and non-disparagement provisions, and the reasonableness of the requested attorney's fees.

IX. SEALED FILINGS

Any Party wishing to file any document under seal must generally comply with the sealed filing instructions in the ECF Rules and Instructions. The Court will not file any documents not submitted in compliance with these rules. Parties may choose to use either the electronic filing method or traditional filing method, both of which are described below.

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.

A. Electronic Filing Under Seal in Civil and Miscellaneous Cases

- i. 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.
- ii. Sealing/Redaction Requiring Court Approval. 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), 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 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.

When using the electronic method, 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.

B. Traditional Filing Under Seal in Civil and Miscellaneous Cases

- i. 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.
- ii. Sealing/Redactions Requiring Court Approval. Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases must be filed electronically through the court's ECF system.

The motion to seal 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.

Where the motion to seal seeks permission to redact information from a document, the filing party shall contemporaneously file the redacted document in public view in the ECF system.

When using the traditional method, the proposed sealed/redacted document, a copy of the motion to seal, and any supporting papers must be contemporaneously submitted to the Court in paper form, by hand delivery or mail. Digital copies of these documents must also be emailed to chambers (outside the ECF system) at karasnysdchambers@nysd.uscourts.gov. Any proposed redactions must be highlighted.

If the application is granted, the unredacted document must be filed under seal in the traditional manner, on paper, in conformity with the sealed records filing procedures available at <https://nysd.uscourts.gov/programs/records/sealed>.

X. ELECTRONIC DEVICES OF THE PARTIES

Any Party wishing to bring certain electronic devices (laptops, etc.) must obtain prior permission by submitting a letter to the Court at least two days before any scheduled appearance.

XI. PRO SE PARTIES

Pro se parties may not contact the Court to obtain legal advice, inquire about when a decision on a case will be rendered, or to speak to the Judge. Questions about how to proceed with a case should be directed to the Court's pro se clerk at (212) 805-0175. The Court does not accept collect calls.