

Dated: February 16, 2012

INDIVIDUAL PRACTICES IN CIVIL CASES

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

Chambers

Room 620
 500 Pearl Street
 New York, NY 10007
 (212) 805-0266

Courtroom

Courtroom 15D
 500 Pearl Street
 New York, NY 10007

Unless otherwise ordered, these Individual Practices shall apply to all civil matters before Judge Oetken. 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. Letters may be sent to Chambers by fax at (212) 805-7991, provided that they do not exceed 10 pages in length. If a fax is transmitted to Chambers, it should not be mailed or delivered to Chambers. Letters should not be filed on ECF.

B. Telephone Calls. Telephone calls to Chambers are permitted only in urgent situations requiring immediate attention. In those situations, call Chambers at (212) 805-0266.

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be in writing and should 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, 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 Scheduling Order must be attached. Absent extraordinary circumstances, the request must be made at least two business days prior to the original date.

2. Courtesy Copies

A. Pleadings. Two courtesy copies of pleadings, marked as such, should be submitted to Chambers as soon as possible after filing, in accordance with SDNY policies regarding mail deliveries.

B. Motions. Two courtesy copies of motions and supporting memoranda of law, marked as such, should be submitted to Chambers at the time the papers are served, in accordance with SDNY policies regarding mail deliveries. Only one copy of any exhibits should be submitted.

C. 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, in accordance with SDNY policies regarding mail deliveries.

3. Conferences

A. Initial Case Management Conference. The Court will ordinarily schedule a conference pursuant to Fed. R. Civ. P. 16(b) within three months after the filing of a complaint. The Notice of Initial Pretrial Conference will be docketed on ECF. Plaintiff's counsel is directed to distribute copies of the Notice to all parties. The parties shall submit a proposed Civil Case Management Plan and Scheduling Order to the Court at least three business days before the conference date. Prior to the conference date, two courtesy copies of the pleadings should be sent to Chambers. In diversity cases, the parties shall comply with paragraph 5(C) below.

B. Discovery Disputes. The parties shall comply with Local Rule 37.2. In addition, 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 to the Court, no longer than three pages in length, explaining the nature of the dispute and requesting an informal conference with the Court. 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 notify Chambers promptly to advise that a responsive letter is forthcoming.

4. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are not required, with the exception of (i) motions concerning discovery, which are governed by paragraph 3(B) above, and (ii) motions for summary judgment, which are governed by paragraph 4(F) below.

B. Memoranda of Law. 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. Memoranda of 10 pages or more shall contain a table of contents.

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

D. 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 oral argument will be heard and, if so, will advise counsel of the argument date and time.

E. Motions to Dismiss. When a motion to dismiss is filed, the non-moving party shall, within 10 days of receipt of the motion, notify its adversary and the Court in writing as to whether it intends (1) to file an amended pleading, and when it will do so, or (2) to rely on the pleading being challenged. If the non-moving party elects not to amend its complaint, the motion to dismiss will be decided in the regular course. This paragraph does not alter the time in which to file a response under the Federal Rules of Civil Procedure or the Local Rules. If the party amends its complaint, 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 its previously filed motion to dismiss.

F. Motions for Summary Judgment. A pre-motion conference must be requested before the filing of a motion for summary judgment. To request 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 may respond within three business days in a letter not to exceed three pages. When the Court is prepared to schedule a pre-motion conference, the parties will be contacted in order to schedule the pre-motion conference on a convenient date.

G. Default Judgments. A party seeking a default judgment shall proceed in accordance with the procedure set forth in Attachment A.

5. Other Pretrial Guidance

A. Redactions and Filing Under Seal. Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, shall make a specific request to the Court by letter explaining the reasons for seeking to file that submission under seal. The party shall 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.

B. 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.

C. Diversity Jurisdiction Cases. In any action in which subject matter jurisdiction is based on diversity of citizenship under 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 not exceeding two pages in length explaining the basis for that party's belief that diversity jurisdiction exists. Where a party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases in which a 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.

D. Bankruptcy Appeals. Briefs in bankruptcy appeals shall 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.

6. Trial Procedures

A. Joint Pretrial Order. Unless otherwise ordered by the Court, 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 to the Court a 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 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 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 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. Required Pretrial Filings. Unless otherwise ordered by the Court:

- 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 form. 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 those 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 a trial.

iii. In all cases:

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

b. Any brief in opposition to a motion *in limine* shall be filed and served within one week of service of such motion.

c. 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.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

Any party wishing to obtain entry of a judgment by default must comply with Local Civil Rule 55.1 and 55.2 and shall proceed as follows:

1. Apply for and obtain a certificate of default pursuant to Local Rule 55.1.
2. After at least 30 days have passed following effective service of the summons and complaint (to allow for receipt of an appearance by mail), serve a copy of the Motion for Entry of a Default Judgment, together with a copy of the Clerk's certificate of default, on the defaulting defendant. These papers should be accompanied by a Notice stating:

THE ATTACHED LEGAL PAPERS ARE BEING SERVED ON YOU BECAUSE YOU HAVE FAILED TO APPEAR IN A LAWSUIT BROUGHT AGAINST YOU. IF YOU DO NOT ENTER AN APPEARANCE IN THE LAWSUIT ON OR BEFORE **[INSERT A DATE NO EARLIER THAN 20 DAYS FROM THE DATE OF SERVICE OF THE NOTICE AND MOTION]**, THE COURT WILL ENTER A DEFAULT JUDGMENT AGAINST YOU. IF YOU ARE A CORPORATION, YOU CAN ONLY APPEAR THROUGH AN ATTORNEY. IF YOU ARE AN INDIVIDUAL, YOU MAY APPEAR BY AN ATTORNEY OR APPEAR YOURSELF PRO SE. IN EITHER EVENT, YOU MUST TAKE SOME ACTION OR A JUDGMENT WILL BE ENTERED AGAINST YOU. ENTRY OF A JUDGMENT MAY RESULT IN A LEVY AGAINST YOUR PROPERTY.

3. File with the Office of the Clerk of the Court:
 - a. The Motion for Entry of a Default Judgment
 - b. A proposed form of default judgment
 - c. An affidavit setting forth:
 - i. A description of the nature of the claim;
 - ii. The basis for subject matter jurisdiction; and
 - iii. The basis for personal jurisdiction over the defendant;
 - d. The Clerk's certificate of default;
 - e. A copy of the claim to which no response has been made; and
 - f. Proof of service on the defaulting defendant of the Motion, the Clerk's certificate of default, and the Notice.

4. If the plaintiff seeks an award of damages in the motion for default judgment, the plaintiff must also include in its filing with the Clerk's Office:
 - a. A request for an amount equal to or less than the principal amount demanded in the Complaint;
 - b. Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated (or, if this requirement cannot be satisfied, a default judgment may be granted as to liability, with damages to be determined by an inquest);
 - c. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
 - d. A request for interest on the principal amount not to exceed 9%, if interest is sought; and
 - e. The calculations made in arriving at the proposed judgment amount.
5. Submit to Chambers one courtesy copy of each of the above papers filed with the Clerk of Court.
6. Chambers will hold the motion until the date specified in the Notice has passed. If no appearance is entered for the defendant, the Court will decide the Motion.