

**INDIVIDUAL RULES OF THE
HONORABLE ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Effective December 20, 2023

Chambers

Room 1050
United States Courthouse
500 Pearl Street
New York, New York 10007
Tel: (212) 805-0152
Fax: (212) 805-7942

Courtroom

Room 14D
United States Courthouse
500 Pearl Street
New York, New York 10007
(212) 805-0152

Unless otherwise ordered by Judge Hellerstein, matters before him shall be conducted in accordance with the following practices:

- 1. Communications with Chambers.** In general, there should be no need to communicate with Chambers. All information related to a case can be obtained by visiting the Court’s Electronic Case Filing (“ECF”) system.
 - A. Letters.** Parties shall send to Chambers a hard copy of all letters. Copies of letters to Chambers shall simultaneously be delivered to all counsel in no less speedy a manner than the method of delivery to the Court. Counsel shall not copy the Court on correspondence between and among them. Refer to Rule 2.E below for letters concerning disputes. Parties are not permitted to file letter motions and briefs in lieu of formal motions, unless special permission to do so is granted.
 - B. Method of Delivery.** Copies of all documents shall either be mailed to Chambers or left with the Court Security Officer at the Worth Street entrance of the Courthouse. Papers shall not be delivered directly to Chambers unless special permission to do so is granted.
 - i. Faxes.** Faxes may be sent only: for urgent matters requiring an immediate response from Chambers; to request an adjournment or extension of time as provided by Rule 1.D; or to make a technology request as provided by Rule 1.F. Faxes should be brief and may not exceed 5 pages without special permission from Chambers. Do not follow faxes with a hard copy.
 - ii. ECF.** Letters filed on ECF must also be sent to Chambers, either by mail or, if five pages or under, by fax.

- C. Telephone Calls.** Phone calls are not permitted (i) to seek adjournments, (ii) for inquiries as to the status of a pending motion, (iii) for oral interpretation or clarification of written orders, or (iv) to seek guidance on procedures that are governed by these Individual Rules, the Local Rules of this Court, or the Federal Rules.
- D. Requests for Adjournments or Extensions of Time.** All requests for adjournments (including adjournments of court conferences) or extensions of time must be made in writing at least 48 hours before the scheduled deadline or date of appearance. All requests must state: (i) the original date; (ii) the number of previous requests for adjournment or extension; (iii) whether these previous requests were granted or denied; (iv) whether the adversary consents, and, if not, the reasons by the applicant, and by the adversary, for and against the relief requested; and (v) all other dates previously scheduled after the original date, including dates for conferences with the Court, and a suggested modified schedule, agreed to by all other counsel. Requests for adjournments should be faxed to (212-805-7942).
- i. DO NOT** call Chambers or the Courtroom (i) to announce your intention to request an adjournment, (ii) to inquire about the status of your request, (iii) to confirm that your request has been received, unless more than 5 business days have lapsed since you sent your request, or (iv) to ask permission to fax a letter requesting an adjournment or extension. Requests for adjournments or extensions of time may be made by fax without advance permission.
- ii. DO NOT** file requests for adjournments or extensions of time on ECF without also sending a hard copy or fax of the request to Chambers. (See 1(B)(ii).)
- E. ECF Cases.** All civil and criminal cases (except pro se and special cases) filed on or after March 1, 2004 assigned to Judge Hellerstein are ECF cases. All counsel must register for ECF in each case pending before this Court. Counsel are responsible for checking their registered email and court docket sheet for memo-endorsements and orders. If counsel are not receiving such emails, please contact the ECF Help Desk at (212) 805-0800.
- F. Technology Requests.** Under appropriate circumstances, counsel may bring laptops and other technology, such as projectors, into the courtroom. Counsel who wish to bring such technology into the courtroom must fill out the technology request form provided on the Court’s website (under *Local Rules/Standing Orders* – Electronic Device Order). Counsel shall submit a hard copy of the request, along with a letter explaining the need for the technology requested. The letter and technology form may be faxed to Chambers.

2. Conferences, Pleadings & Motions.

- A. **Conferences in Civil Cases.** Conferences in all civil cases will generally be called after Answers are filed and on Fridays at 10:00 a.m. Lawyers in charge of the case shall be present. Counsel shall bring with them a proposed case management plan, using the form attached to these individual Rules.
- B. **Motions.** Counsel shall not request a pre-motion or permission to file a motion. Motions may be filed in the discretion of the attorneys, and shall conform to the Federal Rules of Civil Procedure. Letter motions or oppositions will not be accepted.
- C. **Filing of Motion Papers.** Motion papers shall be filed promptly after service. All motions, and courtesy copies of all motions, shall include a table of contents listing all affidavits and exhibits. The Court does not impose a page limit for briefs.
 - i. **Affidavit and Exhibit Requirements.** All affidavits and exhibits shall conform to the following requirements.
 - I. Affidavits and exhibits shall be clearly identified by tabs on both original and courtesy copies.
 - II. All affidavits, exhibits, and motions shall be bound.
 - III. Exhibits shall be marked sequentially such that no exhibit number or letter repeats, regardless of the affidavit to which it is attached. Exhibits for plaintiffs should be marked by numbers; exhibits for defendants should be marked by letters. Parties shall refer to exhibits already filed and not duplicate them.
- D. **Oral Argument on Motions.** Motions shall be returnable on any day of the week. Counsel shall not appear in Court on the return date. The Court will schedule the date and time for argument if it desires argument.
- E. **Disputes.** Unless directed otherwise, counsel shall describe their disputes in a single letter, jointly composed. Separate and successive letters will be returned, unread. Strict adherence to the meet and confer rule is required and should be described in the joint submission as to time, place and duration, naming the counsel involved in the discussion. The Court will not resolve disputes not brought to its attention in conformity with this rule.
- F. **Courtesy Copies.** Parties shall send to Chambers one courtesy copy of all pleadings, motions, and supporting papers, except motions for admission *pro hac vice*. In the event of an especially voluminous submission, and only with written

approval from Chambers, parties may submit their exhibits by CD. In any event, courtesy copies are to be submitted without plastic covers.

G. Special Rules for Patent Cases. In a case of patent infringement, the first step after issue is drawn and prior to the Initial Case Management Conference provided by Fed. R. Civ. P. 26(f), will be a *Markman* hearing. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). This shall be the procedure.

- i. Plaintiff shall convene a meeting with Defendant, as soon as practicable after issue is drawn, to review the patent claims and to identify which parts of the claim require judicial definition, as requested by either party. A four-column table shall be created, the first column of which shall identify, line by line, the portions of the claim requiring judicial interpretation.
- ii. Within two weeks thereafter, Plaintiff shall populate the second column of the table with its proposed interpretations of all phrases set out in the first column, and produce the table to Defendants.
- iii. Within two weeks thereafter, Defendant shall populate the third column of the table with its proposed interpretations, agreeing and disagreeing with Plaintiff's proposed interpretations.
- iv. Promptly thereafter, the parties shall meet to seek agreement as to their differing proposed interpretations, and revise columns two and three to reflect their agreements. The revised table shall be filed. The parties then shall call Chambers to schedule a *Markman* hearing.
- v. At or following the hearing, the Court shall (i) populate the fourth column of the table with its rulings, and file same as its Order regulating all further proceedings, and (ii) set times for motions, Initial Disclosures, and the Initial Case Management Conference.

H. Special Rules for Bankruptcy Appeals. In an appeal from an order of a bankruptcy court, the appellant shall file, promptly after respondent appears and after consultation with respondent, a proposed schedule for the filing of appellant's and respondent's briefs, and appellant's reply brief. The briefing period shall not extend beyond 90 days after respondent appears in the action.

I. Default Judgments. Plaintiffs moving for a default judgment shall attach proofs of service and of either the agency relationship between the Defendant and the individual who received process, or a description of compliance with the rule or statute pursuant to which service was made. If a default judgment is sought against an entity, plaintiff shall include in their supporting papers a copy of the charter of said entity, along with a

discussion of how service was made and what kind of legal entity the Defendant is, including any corporate designations.

3. Pretrial Procedures

- A. Joint Pretrial Orders in Civil Cases.** Following the close of discovery, unless otherwise ordered by the Court, a final pretrial conference will be scheduled as close as possible to the date that the trial is scheduled to begin. The parties shall submit, three days prior to that conference, for the Court's approval, a joint pretrial order, which shall include the following:
- i.** The full caption of the action, omitting all dismissed parties.
 - ii.** The names, addresses (including firm names), e-mail addresses, and telephone and fax numbers 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 statutes and cases relied on and relevant facts as to citizenship and jurisdictional amount.
 - iv.** A brief summary of the claims and defenses to be tried, without recital of evidentiary matter but including citations to all statutes and cases relied on.
 - v.** A copy of the pleadings marked to show, for each claim and defense, in the margin next to each allegation thereof, the admissions and denials; and if any claims or defenses have been withdrawn or previously determined.
 - vi.** A statement as to whether the case is to be tried with or without a jury, and the estimated number of trial days (including direct and cross-examination for all witnesses).
 - vii.** A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
 - viii.** Any stipulations or agreed statements of fact or law.
 - ix.** A list of each party's witnesses actually intended to be called, and, if the witness cannot be present and will testify through deposition, the precise portions of deposition transcripts actually intended to be introduced together with any cross-designations and objections by any other party.
 - x.** A list of exhibits actually intended to be offered at trial, indicating exhibits to which no party objects on grounds of authenticity and exhibits to which no party objects on any ground. Exhibits for plaintiffs should be marked by

numbers; exhibits for defendants should be marked by letters; and plaintiffs and defendants shall bring to the conference loose-leaf exhibit binders of all exhibits they actually intend to offer at the trial. Defendants shall not duplicate exhibits identified by Plaintiffs.

- B. Filings Prior to Trial in Civil Cases.** On or before a date set by the Court, and no later than three days before the final pretrial conference, each party shall submit, in duplicate:
- i. For jury and non-jury trials, a pretrial memorandum, describing the party's position on the factual and legal issues to be tried.
 - ii. For jury trials, proposed requests to charge and proposed voir dire questions.
 - iii. For non-jury trials, proposed findings of fact and conclusions of law for each claim and defense.
 - iv. The submissions described in ii and iii above shall be in both hard copy and electronically in MS Word format (by email or CD-Rom).
 - v. Motions in limine will be heard at the final pre-trial conference. Counsel shall schedule the motions to suit their convenience, providing sufficient time for the court to understand, and rule on, the disputed issues.
- C. Filings Prior to Trial in Criminal Cases.** The procedures for trials in criminal cases shall be the same (to the extent practicable) as the procedures for trials in civil cases.

4. Confidentiality Provisions.

- A. Protective Orders.** Court records and docket sheets are to be accessible to the public, and enjoy a presumption of openness to public inspection. The presumption is rebuttable upon demonstration that "closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir.1987)). No protective order shall be submitted that provides for sealing of documents or other information in connection with a submission to the Court, except following a motion supported by competent evidence showing that sealing is essential to preserve higher values and is narrowly tailored to serve that interest. All protective orders shall comply with this entire Rule 4, and are subject to ongoing review and reexamination by the Court.
- B. Filing Materials under Seal.** Notwithstanding any protective order, any party

seeking to file materials under seal (whether as part of a motion, a pretrial filing, or other submission) is required to move for permission to file the materials under seal contemporaneously. The party shall do so according to the following procedures.

- i. ECF cases.** For ECF cases, the party shall file the notice of motion and redacted versions of the briefing and any supporting materials on ECF, and shall submit unredacted copies to Chambers, specifying those portions sought to be sealed and setting forth the reasons why sealing is appropriate under the circumstances. For exhibits over 100 cumulative pages, the party shall submit the unredacted documents by CD only. If the Court grants the motion to file under seal, the party shall file unredacted papers under seal in conformity with the procedures set forth by the Clerk of Court. If the motion is denied, the party may withdraw the motion without prejudice to refile, or maintain the motion by filing unredacted copies of the briefing and supporting materials on ECF.
- ii. Non-ECF cases.** For non-ECF cases, the party shall file the notice of motion and redacted copies of the briefing and supporting materials with the Clerk, and shall submit unredacted copies to Chambers, specifying those portions sought to be sealed and setting forth the reasons why sealing is appropriate under the circumstances. Upon the Court's ruling, the party shall either withdraw the motion without prejudice to renewal, or file unredacted versions of the briefing and supporting materials with the Clerk.

5. Settlements. In the case of settlements, requests that the Court retain jurisdiction will be considered only if all documents relating to the settlement are exhibited to the Court for review and further instructions, which may include requiring the parties to file all such documents and make them publicly accessible.

6. Notice for Collective Action Lawsuits. Parties moving the Court to approve a collective action notice shall use the template attached.