

INDIVIDUAL PRACTICES IN CIVIL CASES
DENISE COTE, United States District Judge

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 1910
New York, NY 10007

Courtroom

Courtroom 18B
500 Pearl Street
Jared Whertvine, Courtroom Deputy
(212) 805-0097

Unless otherwise ordered by Judge Cote, these Individual Practices apply to all civil matters except for civil pro se cases.

1. Communications with Chambers

- A. Letters.** Except as provided below, communications with Chambers should be by letter, which **shall not exceed two pages in length**. Letters should be filed electronically on ECF in accordance with the S.D.N.Y. “Electronic Case Filing Rules and Instructions.” When a letter is accompanied by attachments exceeding ten pages in length, the submitting party shall both file the letter on ECF and deliver a courtesy copy to Chambers by mail or hand delivery. No electronically filed letter shall be sent to the Court by mail unless it has an attachment greater than ten pages. The courtesy copy must be a copy of the filed version of the letter and include the automatically generated ECF header (that is, the text — *e.g.*, “Case 1:16-cv-01234-ABC Document 100 Filed 09/3/16 Page 1 of 1” — appearing at the top of each page of a document on the ECF system). Copies of correspondence between counsel shall not be sent to the Court (except as exhibits to an otherwise properly filed document).
- B. Telephone Calls.** For docketing, scheduling, and calendar matters, call Mr. Jared Whertvine, Courtroom Deputy, at (212) 805-0097. Otherwise, for urgent matters call Chambers at (212) 805-0202.
- C. Faxes.** Faxes to Chambers are not permitted.
- D. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Courthouse; it may not be brought directly to Chambers. If the hand-delivered mail is urgent and requires the Court’s immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions, and should state: (1) the original due date, (2) the number of previous requests for adjournment or extensions of time, (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. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. If the request is for an adjournment of a court appearance, absent an emergency, the request shall be made at least 48 hours prior to the scheduled appearance.

2. Conferences

- A. **Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel must appear at all conferences with the Court.
- B. **Initial Case Management Conference.** The Court will generally schedule a Federal Rule of Civil Procedure 16 conference for a Friday within two months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be filed on ECF. Plaintiff's counsel is responsible for ensuring that all parties have received copies. In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register as ECF filers and enter an appearance in the case before the initial pretrial conference. The pertinent instructions are available on the Court website, <https://www.nysd.uscourts.gov>, under the "E-Filing" menu.
- C. **Discovery Disputes.** Follow Local Civil Rule 37.2 with the following modifications. 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 this meet-and-confer process does not resolve the dispute, the party may file a letter-motion on ECF pursuant to Rule 4.J below, no longer than two pages, explaining the nature of the dispute and requesting an informal conference. 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 should call Chambers to advise that a responsive letter will be forthcoming. Any such responsive letter must be filed on ECF within one business day unless an extension is sought and approved by the Court pursuant to Section 1.A above.

3. Applications for Temporary Restraining Orders

- A. If a party wishes to seek a temporary restraining order, it should file a Motion for a Temporary Restraining Order, supporting documents, and a proposed order, on ECF in accordance with the procedures found in ECF Rule 18.2. Information on filing an application *ex-parte* may be found in section 6, Sealed Filing, of the S.D.N.Y. ECF Rules & Instructions, available on-line at <https://nysd.uscourts.gov/rules/ecf-related-instructions>. Where the motion is made on notice to the other parties, the moving party should simultaneously serve the documents on any party that will not receive electronic service via the ECF system.
- B. The moving party should then email chambers at cotenydchambers@nysd.uscourts.gov, giving notice of the filing and the time

frame requested for Court action. Where the motion is made on notice, all parties should be copied on the email. If the matter is time sensitive and Chambers does not respond within two (2) hours, the moving party may contact the Clerk's Office before the end of the business day at (212) 805-0140.

4. Motions

- A. **Pre-Motion Conferences in Civil Cases.** Pre-motion conferences are not required, except for motions concerning discovery, which are governed by Section 2.C above.
- B. **Memoranda of Law.** Unless prior permission has been granted, the word and page limits set forth in the S.D.N.Y. Local Civil Rules apply to all memoranda of law. Memoranda of ten pages or more shall contain a table of contents.
- C. **Filing of Motion Papers.** Motion papers shall be filed promptly after service.
- D. **Notices of Motions when Filing Under Seal.** When leave is sought pursuant to Section 8.B of these Practices to file a motion under seal or with redactions, any required Notice of Motion regarding the motion to be sealed shall be publicly filed on ECF at the time unredacted copies of the motion papers are submitted to the Court for review.
- E. **Courtesy Copies.** At the time any reply is served on a motion, the moving party shall supply two courtesy copies of all motion papers, including those of their adversaries, to Chambers by mail or delivery to the United States Courthouse, 500 Pearl Street, New York, New York.
- F. **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 argument will be heard and, if so, will advise counsel of the argument date.
- G. **Failure of the Court to Schedule Argument or Decide a Motion.** If a motion is not decided within 60 days of the time that it has become fully briefed, counsel for the movant shall send a letter to alert the Court.
- H. **Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Section 6 below.
- I. **Default Judgments.** A plaintiff seeking a default judgment must proceed by way of a Motion for Default Judgment pursuant to the procedure set forth in Attachment A.
- J. **Letter-Motions.** Letter-motions may 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. A courtesy copy shall not be provided to Chambers, unless it has an attachment greater than ten pages, as described above.

- K. Filing of Documents in Unrenderable .pdf Format.** Since documents that are not in .pdf format may not be uploaded to ECF, parties seeking to file such documents shall seek leave of the Court via letter pursuant to Section 1.A above.

5. Other Pretrial Guidance

- A. Settlement Agreements.** The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the 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 their settlement agreement in their stipulation of settlement and dismissal.
- B. 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, file on ECF 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, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.
- C. Bankruptcy Appeals.** Briefs must be submitted in accordance with Federal Rule of Bankruptcy Procedure 8009 and 8010. 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 from the date for the completion of discovery, the parties shall file on ECF 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 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 on and relevant facts as to citizenship and jurisdictional amount.

- 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 recite 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, indicating whether such witnesses 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 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.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. In all cases, motions addressing any evidentiary issues or other matters which should be resolved *in limine*;
- ii. In all cases where a party believes it would be useful to the Court, a pretrial memorandum of law; and
- iii. In jury cases, requests to charge and proposed *voir dire* questions;
- iv. In non-jury cases, 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.

- C. Additional Submissions in Non-Jury Cases.** At the time the joint pretrial order is filed, each party shall **mail or hand deliver** to the Court and serve on opposing counsel, but not file on ECF, the following:
- i. Copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits.
 - ii. At the close of trial, the affidavits constituting the direct testimony of all witnesses who were called at trial shall be publicly filed on CM/ECF by the party who called the witness.
 - iii. All deposition excerpts which will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages of the deposition transcripts.
 - iv. All documentary exhibits when they are few in number. When documentary exhibits are voluminous, they shall be submitted to Chambers in digital form on a CD-rom, DVD-rom, flash drive, or external hard drive; the most critical of the exhibits should also be submitted in hard copy.
- D. Filings in Opposition.** Any party may file the following documents within one week after the filing of the pretrial order, but in no event less than two days before the scheduled trial date:
- i. Objections to another party's requests to charge or proposed *voir dire* questions.
 - ii. Opposition to any motion *in limine*.
 - iii. If the party has submitted a pretrial memorandum pursuant to Section 6.B.ii, a reply to any unanticipated legal argument in another party's pretrial memorandum. No reply is permitted if a party did not file a pretrial memorandum of law.
- E. Courtesy Copies.** Two courtesy copies of all documents identified in Sections 6.A, B, C.i, C.iii, and D above should be **mailed or hand delivered** to Chambers on the date on which they are to be served or filed. Only one hard-copy set of documentary exhibits is required.

- F. **Trial Schedule.** Trials will generally be conducted Monday through Thursday from 9:00 a.m. to 5:00 p.m., with lunch from 12:45 p.m. to 2 p.m.

7. **Policy on the Use of Electronic Devices.**

- A. **Standing Order M10-468.** Attorneys' use of mobile phones, personal electronic devices, and general purpose computing devices such as laptops and tablets within the Courthouse and its environs is governed by Standing Order M10-468.
- B. **Mobile Phones.** Attorneys in compliance with the Standing Order may bring mobile phones into the Courtroom, but the phones **MUST** be kept turned off at all times. Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.
- C. **General Purpose Computing Devices and Other Electronic Equipment.** In order for an attorney to bring into the Courthouse any general purpose computing device or other electronic equipment such as a printer not qualifying as a "personal electronic device" as defined in Standing Order M10-468, specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should email to Chambers a completed model Court Order, available at <https://nysd.uscourts.gov/forms/fillable-form-electronic-devices-general-purpose>, at least 5 business days in advance of the relevant proceeding. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

8. **Electronic Filing Under Seal in Civil and Miscellaneous Cases**

- A. **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.
- B. **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), must be filed electronically through the court's ECF system in conformity with the court's standing order (21-mc-13), and ECF Rules & Instructions, section 6, available at <https://nysd.uscourts.gov/rules/ecf-related-instructions>.

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.

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.

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.

DEFAULT JUDGMENT PROCEDURE

1. Obtain a Certificate of Default for each defaulting defendant from the Clerk's Office pursuant to Federal Rule of Civil Procedure Rule 55(a) and Local Civil Rule 55.1.
2. File a Motion for Default Judgment on ECF pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Civil Rule 55.2(c). A plaintiff seeking a default judgment should not proceed by order to show cause.
3. In connection with the Motion for Default Judgment, file the following on ECF (and mail or hand deliver a courtesy copy to chambers):
 - a. An attorney's declaration or affidavit setting forth the basis for entering a default judgment, including:
 - (i) a description of the method and date of service of the summons and complaint;
 - (ii) the procedural history beyond service of the summons and complaint, if any;
 - (iii) 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;
 - (v) evidence in support of the proposed damages, including contemporaneous records and other such documentation; and
 - (vi) legal authority for why an inquest into damages **is or is not necessary**.
 - c. Copies of all of the pleadings.
 - d. A copy of the affidavit of service of the summons and complaint.
 - e. A Certificate of Default from the Clerk of Court.
4. The Court will review the motion for default judgment and, if appropriate, issue an Order setting a date and time for a default judgment hearing. If the Court issues such an order, the plaintiff must then serve on the party against whom default judgment is sought: (1) the documents required by Local Civil Rules 55.2(a) and (c) and required by the Court's individual practices, and (2) the Court's order setting a date and time for the default judgment hearing. The plaintiff must file proof of such service on the docket in the manner and date specified in the Court's Order setting the default judgment hearing.
5. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (500 Pearl Street, Room 200) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.