

EMERGENCY INDIVIDUAL RULES AND PRACTICES IN LIGHT OF COVID-19

**Paul A. Engelmayer
United States District Judge**

Chambers Email:

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Unless otherwise ordered by the Court, these Emergency Individual Rules and Practices apply to *all* matters before Judge Engelmayer (whether criminal or civil and whether involving a *pro se* party or all counseled parties), and they are a supplement to Judge Engelmayer’s standard Individual Rules and Practices. If there is a conflict between these Rules and Judge Engelmayer’s standard Individual Rules and Practices, these Rules control.

1. No Paper Submissions Absent Undue Hardship

- A.** No papers, including courtesy hard copies of any filing or document, may be submitted to Chambers. All documents must be filed on ECF or, if permitted or required under the Court’s Individual Rules and Practices, emailed to EngelmayerNYSChambers@nysd.uscourts.gov.
- B.** In the event that a party or counsel is unable to submit a document electronically — either by ECF or email — the document may be mailed to the Court. To the maximum extent possible, however, this means of delivery should be avoided, as delivery of mail to the Court is likely to be delayed.

2. Conferences and Proceedings

- A. In Civil Cases.** Unless otherwise ordered by the Court, all conferences and proceedings in civil cases will be held by telephone.
- B. In Criminal Cases.** To the maximum extent possible, all conferences and proceedings will be held by either telephone or video. No later than one week before a scheduled appearance, counsel must confer and submit a letter to the Court indicating their views on whether the Court can, consistent with the U.S. Constitution, Federal Rules of Criminal Procedure (*see, e.g.*, Rules 5(f), 10(b) & (c), and 43) and any other relevant law, conduct the matter by telephone or video and, if applicable, whether the Defendant either consents to appearing in that manner or to waiving his or her appearance altogether. Counsel should include the same information in any request for a conference or other proceeding.
- C. Teleconferences Generally.** At least 24 hours before a scheduled teleconference, parties are directed jointly to email Chambers a list of counsel—no more than 2

attorneys per party, unless otherwise ordered—who may be speaking during the teleconference. The email should also set forth the telephone numbers from which counsel expect to join the call. To facilitate orderly teleconferences and the creation of an accurate transcript, counsel are *required* to identify themselves *every* time they speak during the call.

3. Communications with Chambers

- A. **Telephone Calls.** Telephone calls will not be answered but will go to voicemail; and there may be significant delays in responding to any voicemail messages. Thus, parties are encouraged to make **any** requests or inquiries to the Court through ECF or, if permitted or required under the Court’s Individual Rules and Practices, by email. If leaving a voicemail, a party should (1) briefly state the nature of the issue (including, if applicable, the case name and docket number); and (2) provide a call-back telephone number.
 - i. **Discovery Disputes.** Parties seeking to inform the Court of their intention to oppose a discovery dispute, pursuant to the Court’s Individual Rule 2(C), should email, rather than call, Chambers promptly to advise that a responsive letter will be forthcoming.
- B. **Urgent Matters.** For *urgent* matters requiring immediate attention, parties should send an email to Chambers that (1) includes the word “URGENT” in the subject line; (2) specifies the case name and docket number; (3) briefly describes the nature of the issue; and (4) provides a telephone number at which the party (and any other relevant parties) can be reached.
- C. **Faxes.** Faxes are *not* permitted for any purposes.
- D. **Hand Deliveries.** Nothing may be delivered to Chambers absent advance permission from the Court.
- E. **By *Pro Se* Parties.** *Pro se* parties are encouraged to (1) consent to electronic service (via ECF or email); or (2) seek the Court’s permission to file documents through the ECF system or by email to the Court. Unless the Court grants permission to file documents electronically, all communications with the Court by a *pro se* party must be mailed to the Pro Se Intake Unit, Thurgood Marshall Courthouse, 40 Centre Street, Room 105, New York, New York 10007. Any questions should be directed to the Pro Se Intake Unit at (212) 805-0175.
- F. **In New Criminal Cases.** Upon assignment of a new criminal case to Judge Engelmayer, the Assistant United States Attorney must immediately email the Court to arrange for a prompt conference/arraignment.

4. Applications for Temporary Restraining Orders (“TROs”).

Parties intending to file applications for TROs or other emergency relief must send all of their papers (in text-searchable PDF format) to the Court by email. The email should (1) include the word “URGENT” in the subject line; (2) provide a telephone number at

which the party (and any other relevant parties) can be reached; and (3) provide the relevant parties' availability for a telephone conference in the next few days. As noted above, parties should not hand-deliver any documents without advance permission.

5. Motions for Default Judgment.

Any party seeking a default judgment after March 19, 2019, must proceed by filing a motion for 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 motion must be supported by the following papers:

- A. An attorney's affidavit or declaration setting forth:
 - i. the basis for entering a default judgment, including 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;
 - iv. the proposed damages and the basis for each element of damages, including interest, attorneys' fees, and costs; and
 - v. legal authority for why an inquest into damages would be unnecessary;
- B. a proposed default judgment;
- C. copies of all the operative pleadings;
- D. a copy of the affidavit of service of the summons and complaint; and
- E. if failure to answer is the basis for the default, a Certificate of Default from the Clerk of Court stating that no answer has been filed.

In order to obtain a Clerk's Certificate of Default, **and before moving for a default judgment**, the party **must**: (1) file via ECF a Request to Enter Default, a supporting affidavit, and a proposed Clerk's Certificate of Default, available at www.nysd.uscourts.gov/file/forms/clerks-certificate-of-default; and (2) otherwise comply with Section 16.1 of the SDNY's ECF Rules & Instructions, available at www.nysd.uscourts.gov/ecf_filing.php.

The plaintiff must serve the motion for default judgment and supporting paperwork 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.

6. Pro Se Clinic

The New York Legal Assistance Group's Pro Se Clinic has suspended all in-person client meetings until further notice. Limited-scope legal assistance will continue to be provided, **but only by appointment and only over the telephone**. To schedule an appointment, call (212) 659-6190 and leave a message **specifying a call-back number**.