

September 15, 2011

## INDIVIDUAL PRACTICES OF JUDGE WILLIAM H. PAULEY III

Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
Room 2210  
Courtroom 11D  
New York, NY 10007  
Website: <http://www.nysd.uscourts.gov/>

Unless otherwise ordered, matters before Judge Pauley shall be conducted in accord with the following practices:

### **I. Communications With Chambers**

- A. Letters.** Except as otherwise provided below, communications with Chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.
- B. Telephone Calls.** Except as provided in Paragraph I (D) below, telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. In such situations, call Chambers at (212) 805-6387. Counsel should not call Chambers with respect to procedural questions.
- C. Faxes.** Faxes to Chambers are not permitted without prior express permission.
- D. Docketing, Scheduling and Calendar Matters.** For docketing, scheduling and calendaring, call Deputy Clerk Wayne E. Gosnell, Jr., Esq. at (212) 805-6387 between 9:00 a.m. and 5:00 p.m.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be in writing and state (1) the original date, (2) the reason(s) for the request, (3) the number of previous requests and whether they were granted, and (4) whether the adversary consents and, if not, the reasons why the adversary refuses to consent. For requests to extend discovery, additionally state what discovery has been conducted and what discovery is incomplete. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. Any request for an adjournment must be received in Chambers not less than two business days before the scheduled time.

**F. Inquiries Concerning *Sub Judice* Motions.** If a motion is not decided within 90 days of the date that it is fully submitted or argued, whichever is later, any party may bring this fact to the Courts attention by letter.

**G. General Information.** For general information, please consult the website for the United States District Court for the Southern District of New York: <http://www.nysd.uscourts.gov/>. Pro Se litigants should contact the Pro Se Office at (212) 805-0175.

## **II. Conferences**

**A. 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 schedule an Initial Pretrial Conference within three months of the filing of the Complaint. A courtesy copy of the pleadings and a Fed. R. Civ. P. 26(f) report should be delivered to Chambers at least one week prior to the conference.

**C. Additional Conferences.** Additional conferences may be scheduled from time to time as needed.

## **III. Motions**

### **A. Pre-Motion Conferences in Civil Cases.**

- i. A pre-motion conference is required prior to the filing of any motion, except discovery motions; motions with a jurisdictional time limit as provided by the Federal Rules of Appellate Procedure; motions brought on by order to show cause; motions for reargument or reconsideration; motions by incarcerated pro se litigants; motions for admission pro hac vice; motions for attorneys' fees; motions for remand; and motions to appoint lead plaintiff and lead defense counsel in securities class actions.
- ii. To request a pre-motion conference, the moving party must submit a letter, not exceeding three pages in length, setting forth the basis for the anticipated motion. Opposition letters, no longer than three pages, must be submitted to the Court within five (5) business days of receipt of the movant's letter. Thereafter, the Court will notify the parties of the conference date.
- iii. Service of a pre-motion conference letter within the time period provided by Federal Rule of Civil Procedure 12(a) extends the time to answer or move to dismiss until further order of the Court.

iv. For discovery motions, follow Local Civil Rule 37.2. To raise a discovery dispute with the Court, counsel should describe the dispute in a single joint letter not exceeding six (6) pages. Strict adherence to the “meet and confer” rule (Fed. R. Civ. P. 37(a)(2)(A)) is required and should be described in the joint submission, identifying the time, place and duration and naming the counsel involved in the discussion. The joint letter shall describe concisely the issues in dispute and the respective positions of the parties, citing the applicable authority that the respective parties claim for support.

**B. Exhibits.** All exhibits should be tabbed and indexed, with plaintiffs identifying exhibits with numbers and defendants with letters.

**C. 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 and a table of cases. Counsel shall conform citations to The Bluebook citation system.

**D. Format.** Motion papers shall be double-spaced, and shall use 12-point font, including footnotes, and shall have one-inch margins on all sides. Footnotes are discouraged.

**E. Filing of Motion Papers.** Motion papers shall be filed promptly after service. The moving party is responsible for furnishing Chambers with a letter specifying each motion paper and memorandum filed by any party in connection with the motion. The moving party shall furnish this letter with its reply memorandum.

**F. Oral Argument on Motions.** The Court will notify counsel if oral argument is required. Oral argument ordinarily will be held on Friday.

#### **IV. Courtesy Copies**

**A. Requirement For All Submissions.** One courtesy copy of all pleadings, motions and all other filings, including stipulations and proposed orders, shall be clearly marked as a courtesy copy and submitted to Chambers at the time the originals are filed or as soon as practicable thereafter.

#### **V. Sealed Documents.**

**A. Requests For Sealing.** Parties must obtain leave of this Court before filing any document under seal. Any sealing request shall include a party’s proposed redactions. If leave is granted, parties must file redacted copies with the Clerk of the Court. Proposed protective orders shall include a provision reflecting this

requirement.

## **VI. Pretrial Procedures**

- A. **Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered by the Court, within 30 days of the completion of discovery in a civil case, the parties shall submit to the court for its approval a joint pretrial order, which shall include the following:
- i. The full caption of the action.
  - ii. The names, addresses (including firm names), 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 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 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).
  - vii. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
  - viii. A list by each party as to the witnesses whose testimony is to be offered in its case in chief, including expert witnesses, if any, and a statement indicating whether such witnesses will testify in person or by deposition. No witness not listed may be called at trial on either party's case-in-chief absent good cause shown.
  - 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 and any objections by the adverse party. In cases likely to involve substantial numbers of deposition exhibits, the parties are encouraged to agree at the outset of discovery to assign a unique exhibit number or letter to each exhibit marked at any deposition so that exhibit designations used in deposition transcripts may be used without change at trial. Absent such a system, plaintiff's trial exhibits shall be identified by numbers and defendant's by letters. No exhibit not listed may be used at trial except for cross-examination purposes or if good cause for its exclusion for the joint pretrial order is shown. Any objection not set forth in the joint pretrial order will be considered waived absent good cause shown.

**B. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

- i. In jury cases, any proposed voir dire questions, a joint request to charge and a verdict form. The parties must submit a single, unified set of proposed jury instructions on the law applicable to the specific case; where an instruction is not agreed upon, the parties should indicate who is proposing the instruction and the legal basis for the instruction and for the other party's opposition to the instruction;
- ii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;
- iii. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and
- iv. In any case where such party believes it would be useful, a pretrial memorandum limited to 25 pages.

## **VII. Default Judgments**

**A. Motions.** Motions for default judgments will not be accepted absent the following:

- i. A pre-motion conference as required by 3.A.(i);
- ii. A description of the nature of the claim;
- iii. An affidavit representing that this Court has subject matter jurisdiction

over the action;

- iv. An affidavit representing that this Court has personal jurisdiction over the defendant;
- v. An affidavit representing that the defendant is not an infant or an incompetent;
- vi. A certificate of default stating that the defendant was properly served and failed to answer/appear, signed and stamped by the Clerk of the Court. (If the defendant did appear in the action, the plaintiff must submit an affidavit representing that the defendant has notice of the application for default);
- vii. An affidavit requesting reasonable attorneys' fees, if attorneys' fees are sought, along with the legal basis for any such award; and
- viii. All appropriate substantiating documentation.

*(Generally, a copy of the complaint satisfies (ii), (iii), and (iv))*

**B. Damages.** If the plaintiff seeks an award of damages in the motion for default judgment, the plaintiff must also include:

- i. A request for an amount equal to or less than the principal amount demanded in the Complaint;
- ii. Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated. (If this requirement cannot be satisfied, a default judgment may be granted as to liability, and damages will be determined by an inquest);
- iii. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
- iv. A request for interest on the principal amount not to exceed 9%, if interest is sought; and
- v. The calculations made in arriving at the proposed judgment amount.