

INDIVIDUAL RULES AND PRACTICES IN CIVIL CASES
Jesse M. Furman, United States District Judge

Chambers

United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007
Furman_NYSDChambers@nysd.uscourts.gov

Courtroom Deputy

Alexandra Barnes
(212) 805-4520

Unless otherwise ordered by Judge Furman, these Individual Practices apply to all civil matters except for civil *pro se* cases (see Individual Rules and Practices in Civil *Pro Se* Cases, available at <http://nysd.uscourts.gov/judge/Furman>).

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with Chambers shall be by letter, which shall be e-mailed as a .pdf attachment to the Court (Furman_NYSDChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel. E-mails shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the e-mail; such communications shall be included only in the body of the letter. (The sender of an e-mail will ordinarily receive an auto-reply e-mail appearing to come from the Courtroom Deputy stating that substantive communications in the body of the e-mail will be disregarded. Parties need not, and should not, respond to the auto-reply message.) Copies of correspondence between counsel shall not be sent to the Court.
- B. Telephone Calls.** Communications with Chambers, including requests for extensions or adjournments, shall be by letter in accordance with Paragraph 1.A. For questions that cannot be answered by reference to these Rules or for *urgent* matters requiring immediate attention, call Alexandra Barnes, Courtroom Deputy, at (212) 805-4520.
- C. Faxes.** Faxes are *not* permitted except with prior approval of Chambers, which will be granted only in rare circumstances, and must not exceed 10 pages in length. All faxes must clearly identify the person in Chambers who authorized the sending of the fax and copies must simultaneously be faxed or delivered to all parties. Faxes sent without prior permission will not be read.

D. Hand Deliveries. Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Courthouse and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered letter 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, consistent with Paragraph 1.A above and with the word "SCHEDULING" included in the e-mail subject line, and must state: (1) the original date(s); (2) the number of previous requests for adjournment or extension; (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 also be attached. The parties shall use the form Revised Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Furman>). Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be directed to that assigned Magistrate Judge.

Absent an emergency, any request for extension or adjournment shall be made *at least 48 hours* prior to the deadline or scheduled appearance. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

F. Docketing of Letters. Absent a request to file a letter under seal, the parties should assume that any substantive letter will be docketed by the Court.

G. Related Cases. After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing as well as the docket number of the case to which it is related (e.g., 12 Civ. 1234 [rel. 11 Civ. 4321]).

H. ECF. In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register promptly as ECF filers and to enter an appearance in the case. The pertinent instructions are available on the Court website, at http://www.nysd.uscourts.gov/ecf_filing.php. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

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. Any attorney appearing before the Court must enter a notice of appearance.
- B. Initial Case Management Conference.** The Court will generally schedule a Federal Rule of Civil Procedure 16(c) conference within three months of the filing of the complaint. The Notice of Initial Pretrial Conference will be docketed on ECF; plaintiff's counsel (or, in a matter removed from state court, defense counsel) is directed to notify all counsel of the Notice forthwith. The Notice will direct the parties, *inter alia*, to submit a joint letter and proposed Civil Case Management Plan and Scheduling Order to the Court by the Thursday of the week prior to the conference date. The parties shall use the form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Furman>). If an initial pretrial conference has not been scheduled within two months of the filing of the complaint or notice of removal, counsel shall send a letter to alert the Court.
- C. Special Procedures for Cases Designated as "Complex Cases."** An entry will appear on the docket if an action has been designated for inclusion in the Complex Case Pilot Project under the Standing Order of Chief Judge Preska, filed as *In re: Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York*, 11 Misc. 388 (November 1, 2011) (the "Standing Order"). If it has been so designated, counsel for the parties are expected to review the Report of the Judicial Improvements Committee (the "Report"), which is an attachment to the Standing Order, and consider the matters therein. The Court will generally schedule a Federal Rule of Civil Procedure 16(c) conference within two months of service of the summons and complaint. The Notice of Initial Pretrial Conference will be docketed on ECF; plaintiff's counsel (or, in a matter removed from state court, defense counsel) is directed to notify all counsel of the Notice forthwith. The Notice will direct the parties, *inter alia*, to submit a proposed Civil Case Management Plan and Scheduling Order to the Court by the Thursday of the week prior to the conference date. The parties should, as a starting point, use the "Civil Case Management Plan for Complex Cases," available at the Court's website (<http://nysd.uscourts.gov/judge/Furman>). For good cause shown, the parties may request that the Court exempt the case from the Pilot Project.
- D. Discovery Disputes.** Parties must 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 submit a letter to the Court, no longer than three 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 must submit a responsive letter, not to exceed three pages, within three business days. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, by order, by conference, or by telephone.

3. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are not required, except for disputes concerning discovery, which are governed by Paragraph 2.D above.

B. Special Rules for Motions to Dismiss.

- i. Prior to filing a motion to dismiss, including those contemplated in lieu of an answer, and before the time to do so as of right has expired, the defendant shall communicate with the plaintiff by letter not exceeding three single-spaced pages, either seeking a more definite statement or setting forth the specific pleading deficiencies in the complaint and other reasons or controlling authorities that defendant contends would warrant dismissal. The plaintiff shall respond by similar letter within seven calendar days indicating the extent, if any, to which plaintiff concurs with defendant's objections and the amendments, if any, to be made to the complaint to address them, or the reasons and controlling authority that support the pleadings as filed. (The parties should not submit copies of these letters to the Court, but a moving defendant must attest in its motion that it complied with this Rule.) The plaintiff may seek leave to amend the complaint to address deficiencies identified in the defendant's letter if the time to do so as of right has expired. Under these circumstances, the Court will liberally grant the plaintiff leave to amend and will grant the defendant an extension of time to answer the complaint as appropriate. This practice may be especially effective as to certain types of motions frequently made that may be avoidable by pre-motion communication between the parties, with or without the Court's involvement, including but not limited to the following: naming a wrong defendant; misnaming a defendant; failing to name a necessary or indispensable party; failing to exhaust available remedies; absolute immunity; expiration of the statute of limitations as to some or all of the claims asserted; failure to satisfy a prerequisite to litigation such as a Right to Sue Letter; and failure to plead the particulars of a fraud claim under Rule 9(b) of the Federal Rules of Civil Procedure.

- ii. If a motion to dismiss is filed, the plaintiff has a right to amend its pleading pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure within twenty-one days. If the plaintiff elects not to amend its pleading, no further opportunities to amend to address the deficiencies identified by the motion to dismiss will be granted and the motion will proceed in the normal course, pursuant to the briefing schedule set forth in Local Civil Rule 6.1(b) or a briefing schedule set by the Court. If the plaintiff does amend its pleading, the moving party must, within twenty-one days of such amendment: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court, copying the plaintiff, stating that it relies on the previously filed motion to dismiss. **If the moving party files an answer or a new motion to dismiss, the Court will dismiss the original motion to dismiss as moot without notice to the parties.**

C. Special Rules for Summary Judgment Motions.

- i. Absent good cause, the Court will not ordinarily have summary judgment practice in a non-jury case.
- ii. Any party moving for summary judgment shall provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it.
- iii. With respect to any deposition that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- iv. The parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.)

D. Memoranda of Law. The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 11.1. 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. All memoranda of law shall be in 12-point font or larger and be double-spaced. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be indexed.

- E. Unpublished Cases.** If a party cites to a case not available in an official reporter, it need not provide copies of the case to Chambers if the case is available on Westlaw.
- F. Filing of Motion Papers.** Motion papers shall be filed promptly after service.
- G. Courtesy Copies.** One courtesy hard copy of all motion papers, marked as such, should be submitted to Chambers *by the movant at the time the reply is due*. Courtesy copies should not be submitted to Chambers at the time of filing.
- H. 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.
- I. Failure of the Court to Schedule Argument or Decide a Motion.** If the Court has not decided a motion or scheduled oral argument on the motion within three months of the time that the motion has become fully briefed, counsel for the movant shall send a letter to alert the Court.
- J. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Paragraph 5.D below.
- K. Motions to Exclude Testimony of Experts.** Pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, motions to exclude testimony of experts must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- L. Default Judgments.** A plaintiff seeking a default judgment must proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.
- M. Proposed Stipulations and Orders.** Except as otherwise provided in these Rules and Practices, parties should e-mail all proposed stipulations and orders that they wish the Court to sign to the Orders and Judgments Clerk at judgments@nysd.uscourts.gov in accordance with the ECF Rules & Instructions. Courtesy copies need not be sent to Chambers.

4. 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, must make a specific request to the Court by letter explaining the reasons

for seeking to file that submission under seal. The party must 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, loose leaf 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 then notify the party of its decision and the party may then, to the extent permitted by the Court, file the redacted documents on ECF and the full, unredacted documents under seal in accordance with this district's procedures, set forth at: http://nysd.uscourts.gov/cases_records.php?records=sealed_records. On application of a party, and provided the unredacted papers are timely served on the party's adversary, the Court will deem papers filed on the date the party delivers them to Chambers for review of proposed redactions.

- B. Applications for a Temporary Restraining Order.** A party must confer with his or her adversary before making an application for a temporary restraining order unless the requirements of Fed. R. Civ. P. 65(b) are met. As soon as a party decides to seek a temporary restraining order, he or she must call Chambers at (212) 805-0282 and state clearly whether (1) he or she has notified the adversary, and whether the adversary consents to temporary injunctive relief; or (2) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary. If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must bring the application to the Court at a time mutually agreeable to it and the adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.
- C. 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.
- D. Bankruptcy Appeals.** Briefs must be submitted in accordance with Federal Rules 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. One courtesy hard copy of the briefs and the bankruptcy record on appeal, marked as such, should be submitted to Chambers *by the appellant at the time the reply is due.*

5. Trial Procedures

A. Joint Pretrial Order. Unless otherwise ordered by the Court, no later than 30 days after the date for the completion of all discovery or, in the event a dispositive motion is filed, no later than 30 days after the Court's ruling on such motion, the parties shall submit by e-mail to the Court (Furman_NYSDChambers@nysd.uscourts.gov) 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 that 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 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 a single asterisk indicating exhibits to which the opposing party objects

based on authenticity, and two asterisks indicating exhibits to which no party objects on any ground. When a party objects to an exhibit on any grounds other than authenticity, the objection should be noted by indicating the Federal Rule of Evidence that is the basis for the objection;

- 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; and
- xii.** a statement of whether the parties consent to less than a unanimous verdict.

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 that 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;
- iii.** in all jury cases, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions as specified by Paragraph 5.C below;
- iv.** in all 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. At the time of filing, parties should also submit copies of these documents to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov), both in .pdf format and as a Microsoft Word document; and
- v.** in all cases, one copy of each documentary exhibit sought to be admitted, pre-marked and assembled sequentially in a loose leaf binder or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference.

C. Requests to Charge and Proposed *Voir Dires*. In all jury trials, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be submitted as attachments to the proposed joint pretrial order. At the time of filing, parties should also submit copies of these documents to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov), as Microsoft Word documents. For any request to charge or proposed *voir dire* question on which the parties cannot agree, each party should clearly set forth its proposed charge or question,

and briefly state why the Court should use its proposed charge or question, with citations to supporting authority.

D. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party in a non-jury trial shall submit 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; and
- ii. all deposition excerpts that 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.

E. 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 three days before the scheduled trial date:

- i. Opposition to any motion *in limine*; and
- ii. Opposition to any legal argument in a pretrial memorandum.

F. Courtesy Copies. Two courtesy hard copies of all documents identified in Paragraphs 5.A, B.i-iv, C, D, and E above should be submitted to Chambers on the date on which they are to be served or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into *two independent sets*.

6. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the

Courthouse. *Mobile phones are permitted inside the Courtroom, but they 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.

B. Computers, Printers, or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a “personal electronic device,” specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should e-mail a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. 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.

If you have any questions about these practices, please contact Alexandra Barnes, Courtroom Deputy, at (212) 805-4520.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Furman. Leave blank the date and time of the conference and the courtroom. Judge Furman will set the date and time and identify the relevant courtroom when he signs the Order.
2. Provide the following supporting papers with the Order to Show Cause:
 - a. an attorney's affidavit 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, attorney's 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 of the 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 from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) for initial review and approval.
4. After the Orders and Judgments Clerk approves the Order to Show Cause, bring all of the papers to Chambers (Room 630, 500 Pearl Street) for the Judge's signature. Also bring a courtesy copy of the supporting papers to leave with Chambers.

5. After the Judge signs the Order, serve a conforming copy of the Order and supporting papers on the defendant. (Chambers will retain the original signed Order for docketing purposes, but will supply you with a copy. You may also print a copy of the signed Order from the CM/ECF system after the Order has been docketed.)
6. Prior to the return date, file through the CM/ECF system: (1) an affidavit of service reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (2) the supporting papers. (The signed Order itself will be scanned and docketed by Chambers.)
7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) 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.