

INDIVIDUAL PRACTICES OF JUDGE WILLIAM H. PAULEY III

Chambers:

Daniel Patrick Moynihan
United States Courthouse
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New York, NY 10007

Courtroom Deputy:

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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 the Court shall be by letter. Letters should be filed electronically on ECF, with a courtesy copy delivered to the Court by mail. Letters to be filed under seal or containing sensitive or confidential information should be delivered to the Court and not filed on ECF. Correspondence between counsel shall not be sent to the Court nor filed on ECF.
- B. **Telephone Calls.** 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. **Letter-Motions and Requests for Adjournments or Extensions of Time.** Letter-motions must be filed via ECF and otherwise comply with the S.D.N.Y. Local Rules and the S.D.N.Y. "Electronic Case Filing Rules and Instructions." All requests for adjournments, extensions, and pre-motion conferences must be in writing and filed on ECF as letter-motions. A courtesy copy must also be mailed to Chambers.

A letter-motion requesting an adjournment or extension must 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 requests for adjournments or extension must be received in Chambers at least two business days before the scheduled date.

- E. **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 Court's attention by letter.
- F. **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. At least one week prior to the conference, a Federal Rule of Civil Procedure 26(f) report must be filed on ECF. At the same time, a courtesy copy should be mailed to Chambers.
- C. **Scheduling of Conferences.** Generally, conference and oral arguments will be heard on Fridays.

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, three pages or less, setting forth the basis for the anticipated motion. Opposition letters, no longer than three pages, must be submitted to the Court within five 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 of six pages or less. 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, which do not count towards the 25-page limit. Counsel shall conform citations to The Bluebook citation system.
- D. **Format.** Motion papers shall be double-spaced and use 12-point font, including footnotes, with one-inch margins on all sides. Footnotes are discouraged.
- E. **Summary Judgment Motions and Rule 56.1 Statements.** 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 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.
- F. **Letter to Accompany the Reply Memorandum.** With its reply memorandum, the moving party must separately file on ECF a letter specifying each motion paper and memorandum filed by any party in connection with the motion.

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 submitted to Chambers at the time the originals are filed or as soon as practicable thereafter.

V. Sealed Documents and Protective Orders

- A. **Requests For Sealing.** Parties must obtain leave of this Court before filing any document under seal. The sealing request shall include (1) one full set of the documents with the words, phrases, or paragraphs to be redacted highlighted; (2) one partial set of solely those pages on which the party seeks to redact material. If leave is granted, parties must file redacted copies with the Clerk of Court.

B. Protective Orders. Proposed protective orders shall include a provision reflecting the requirement of Rule V(A)

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, and a statement indicating whether the 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;
- 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. Only listed exhibits may be used at trial except for cross-examination purposes or if good cause for its exclusion from the joint pretrial order is shown. Any objection to a listed exhibit not set forth in the joint pretrial order will be considered waived absent good cause.

B. Pre-Trial Filings in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the commencement of trial if a trial 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. A motion for default judgments requires a pre-motion conference and must include:

- i. A description of the nature of the claim;
- ii. An affidavit representing that this Court has subject matter jurisdiction over the action;

- iii. An affidavit representing that this Court has personal jurisdiction over the defendant;
- iv. An affidavit representing that the defendant is not an infant or an incompetent;
- v. A certificate of default stating that the defendant was properly served and failed to answer/appear, signed and stamped by the Clerk of 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);
- vi. If attorneys' fees are sought, an affidavit setting forth the basis for the amount sought; and
- vii. All appropriate substantiating documentation.

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. If interest is sought, any request for interest on the principal amount must not exceed 9%; and
- v. The calculations made in arriving at the proposed judgment amount.