

INDIVIDUAL RULES OF PRACTICE OF JUDGE PAUL G. GARDEPHE
CIVIL CASES

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007
Phone: (212) 805-0224
Fax: (212) 805-7986
<http://www.nysd.uscourts.gov/judge/Gardephe>

Courtroom

40 Foley Square, Courtroom 705
Michael Ruocco, Courtroom Deputy Clerk
Phone: (212) 805-0102

Unless otherwise ordered, these Individual Practices apply to all civil matters assigned to the Honorable Paul G. Gardephe, except for *pro se* cases.

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with the Court shall be by letter. Unless accompanied by a request to file under seal, letters shall be filed electronically on ECF, with a courtesy copy, clearly marked as such, delivered to the Court by fax at (212) 805-7986, mail, or hand delivery. See Rule 6 below regarding courtesy copies. Letters to be filed under seal should be delivered to the Court by fax at (212) 805-7986, mail, or hand delivery. See Rule 2 below regarding sealing requests. Regardless of delivery method, letters may not exceed 5 pages in length. Include the case number on all letters. Copies of letters to the Court shall be simultaneously delivered to all counsel, whether via ECF notification or other means. Copies of correspondence between counsel shall not be sent to the Court. Refer to Rule 4(E) below for letters concerning discovery disputes.

B. Telephone Calls. Telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call Chambers at (212) 805-0224. Ex parte telephone calls will ordinarily not be accepted; wherever possible, counsel for all affected parties should be on the line when a call to Chambers is placed, except to the extent that similarly situated parties have designated a lead counsel to represent them on such a call. Please be ready to provide your case number when calling Chambers.

C. Faxes and Hand Deliveries. Faxes and hand deliveries made to Chambers must be simultaneously delivered to all counsel. The Chambers fax number is (212) 805-7986. Do not follow faxes with hard copies. Hand-delivered mail should be left with the Court Security Officer at the Worth Street entrance of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street; it may not be brought to Chambers.

D. Requests for Extension of Deadlines. All requests for extensions of deadlines shall be made as soon as a party is aware of the need for the extension and, in any event, no later than two business days prior to the scheduled deadline, absent an emergency. Requests should be made in writing in accordance with Rule 1(A) above, or by joint stipulation. The request must state: (1) the deadline(s) sought to be extended, (2) the length of time requested for the

extension, (3) the number of previous requests for extensions and the Court's rulings, (4) the reason for the current request, and (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested extension affects any other scheduled dates, the request must list the proposed change for all such other dates. If all parties consent to the extension, a stipulation that reflects the required information may be filed. Note: to the extent a party's adversary does not consent to a request regarding a discovery deadline, the party must also comply with the requirements of Rule 4(E) below.

E. Requests for Adjournment of Court Appearances (Including Telephone Conferences). A request for an adjournment of a court appearance shall be made as soon as a party is aware of the need for the adjournment and, in any event, no later than two business days prior to the scheduled appearance, absent an emergency. Requests should be made in writing in accordance with Rule 1(A) above. The request must state: (1) the date of the scheduled appearance, (2) the length of time requested for the adjournment and suggested dates on which all parties are available (civil conferences are typically held on Thursday mornings), (3) the reason for the requested adjournment, (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. The appearance is not adjourned unless counsel are thereafter informed – typically by the posting of a signed order on ECF – that the written application has been granted.

2. Sealing Requests

Requests for sealing should be made by letter brief and must be supported by applicable case law, see *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), and an attorney declaration setting forth particularized allegations justifying such relief. The requesting party should indicate whether all parties have consented to the request. Any party opposing the request should do so by letter brief submitted within three business days after the request is made. Sealing requests may be faxed or hand delivered to Chambers and need not be filed on ECF.

3. Medical Authorizations

In any case involving allegations of personal injury – whether physical, psychological, emotional or otherwise – the plaintiff is to provide to the defendant all necessary medical authorizations within 10 days after an answer or other responsive pleading is filed.

4. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are required for the following motions: discovery motions, motions to amend pleadings, motions to file a third party complaint, motions for sanctions, transfer motions, summary judgment motions, Fed. R. Civ. P. 12 motions, Fed. R. Civ. P. 21 motions, and Fed. R. Civ. P. 42 motions. Pre-motion conferences are not otherwise required. To request a pre-motion conference, send the Court a letter of no more than 5 pages, describing the grounds for the proposed motion and whether the motion is on consent of all parties. If the motion is not on consent, any opposing party should submit a letter setting forth its position, of no more than 5 pages, within 3 business days after the

request is made. All pre-motion letters should be filed in accordance with Rule 1(A) above. The submission of a pre-motion letter does not stay any future deadlines, except that submission of a pre-motion letter concerning a motion to dismiss will stay the defendant's time to answer or otherwise move with respect to the complaint. **A pre-motion conference is not required in pro se cases.**

B. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 double-spaced pages, and reply memoranda are limited to 10 double-spaced pages. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities. Both the text and footnotes must be in 12-point font.

C. Filing of Motion Papers (“Bundling Rule”). In all cases (except pro se cases), the moving party shall electronically file motion and reply papers on ECF only when the entire motion has been briefed. The responding party shall electronically file opposition papers only when noticed by the moving party that the motion and reply papers are being filed. Parties shall send one courtesy copy of any submission to Chambers at the time they are electronically filed. See Rule 6 below regarding courtesy copies. Motions for reconsideration and motions in limine are not subject to the “bundling rule.”

a. Exception to the “Bundling Rule.” Upon notice to the court, a party may file a motion before briefing is completed if waiting to file until the motion is fully briefed could result in the loss of a right (such as by making it impossible to file a timely appeal).

D. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposition, or reply papers are filed. Requests shall be filed in accordance with Rule 1(A) above. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

E. Discovery Disputes. Unless otherwise directed, counsel should describe their discovery disputes in a single letter, jointly composed. Separate and successive letters will be returned, unread. Strict adherence to Fed. R. Civ. P. 37(a)(1), the “meet and confer” rule, is required, and should be described in the joint submission as to time, place, and duration, naming the counsel involved in the discussion. The joint letter shall describe concisely the issues in dispute and the respective position of each party, with citations for supporting authority. Letters regarding discovery disputes should be filed in accordance with Rule 1(A) above. Where a formal discovery motion is necessary, follow Local Civil Rule 37.2.

F. Protective Orders. Parties who wish to obtain a protective order shall consult the Court's Model Protective Order, which is available on the Court's website (<http://www.nysd.uscourts.gov/judge/Gardephe>). The proposed protective order should be filed on ECF as an attachment to a cover letter in accordance with Rule 1(A) above, and with Rule 18 of the Southern District of New York Electronic Case Filing Rules & Instructions, which is available at <http://www.nysd.uscourts.gov/>. If the protective order proposed by the parties deviates from the Court's Model Protective Order, a blackline showing all deviations shall be

provided as a separate exhibit. A courtesy copy of the cover letter, proposed protective order, and blackline (if applicable) should be sent to Chambers. See Rule 6 below regarding courtesy copies.

G. Approval of FLSA Settlements. Parties seeking judicial approval of a Fair Labor Standards Act (“FLSA”) settlement shall submit a letter to the Court (1) explaining why the proposed settlement reflects a reasonable compromise of disputed issues, rather than a mere waiver of statutory rights, and (2) presenting the Court with sufficient evidence to determine whether the settlement represents a fair and reasonable resolution of the disputes. See Mosquera v. Masada Auto Sales, Ltd., No. 09-CV-4925 (NGG), 2011 WL 282327, at *1 (E.D.N.Y. Jan. 25, 2011). The Court will not approve an FLSA settlement without an explanation from counsel as to why the proposed settlement is fair and reasonable.

H. Failure of the Court to Schedule Argument or Decide a Motion. If a motion is not decided within 90 days of the time it is fully submitted or of argument, counsel for the movant shall submit a letter to call this fact to the Court’s attention.

5. Summary Judgment Motions

A. Any party filing a motion for summary judgment (or partial summary judgment) shall submit with that motion a Local Civil Rule 56.1 Statement. Each numbered paragraph in the Rule 56.1 Statement must contain only one factual assertion. Each factual assertion must be followed by a supporting citation to the record, for example, “Ms. Jones visited Dallas, Texas on July 10, 1989. Smith Aff. ¶ 3; Hays Dep. Tr. 25:7-8.”

B. The party opposing the motion must submit a response to the moving party’s 56.1 Statement. The response must contain numbered paragraphs tracking those in the movant’s 56.1 Statement, and must state in each paragraph specifically what is admitted and what is disputed, and the basis for any dispute, citing specific portions of the evidentiary record relied upon. Lack of relevance is not a valid reason for refusing to agree that a fact is not in dispute. Each assertion must be a factual assertion, not a legal assertion. Responsive 56.1 Statements must respond to all the allegations of the opponent’s 56.1 Statement, and may go on to make additional factual allegations in paragraphs numbered consecutively to those of the moving party (*i.e.*, do not begin re-numbering at 1). If additional factual allegations are made, the opponent must file a responsive 56.1 Statement of its own.

C. All record authority cited in a 56.1 Statement, such as affidavits, relevant deposition testimony, responses to discovery requests, or other documents containing such evidence, shall be separately filed and served as an appendix to the 56.1 Statement. Each appendix shall include a table of contents, and the relevant record authority shall be submitted in the form of sequentially numbered exhibits.

D. If multiple parties are submitting 56.1 Statements, they must coordinate their statements to provide for consecutive, non-overlapping, numbered paragraphs in their respective statements.

6. Courtesy Copies

A. All ECF-Filed Documents. One courtesy copy of any document filed on ECF, including letters, should be sent to Chambers. Courtesy copies of documents filed on ECF, including letters, should be copies of the filed version of the documents printed from ECF with the automatically generated ECF header (e.g., “Case 1:13-cv-01234-PGG Document 100 Filed 09/3/13 Page 1 of 1”).

B. Delivery Method. Courtesy copies of less than 10 pages may be sent by fax at (212) 805-7986. Courtesy copies exceeding 10 pages should be sent via mail or hand delivery. Do not send courtesy copies via multiple delivery methods, i.e., do not follow faxes with hard copies. For hard copies, spiral-bound or stapled copies are preferred over velo-bound copies.

C. Pleadings: Courtesy copies of pleadings, marked as such, shall be submitted to chambers as soon as practical after filing. (Please refer to Rules 14 and 18 of the Southern District of New York Electronic Case Filing Rules & Instructions, available at <http://www.nysd.uscourts.gov/>, for more information about filing pleadings.) Copies of initial pleadings should be sent to Chambers no later than seven business days before the parties’ initial conference. (See Rule 7(B) below.) Courtesy copies of amended pleadings should be accompanied by a blackline showing all changes from the previously filed pleading.

D. Motion Papers: One set of courtesy copies of all motion papers, marked as such, shall be submitted to chambers at the time the papers are electronically filed.

E. Joint Pretrial Order: One set of courtesy copies of the joint pretrial order and all documents filed or served with the pretrial order should be submitted to Chambers on the date of filing or service. Refer to Rule 10 below.

7. 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 generally schedule a Fed. R. Civ. P. 16(c) conference approximately 60 days following the filing of a Complaint. An ECF notification will be sent to plaintiff’s counsel (or defendant’s counsel in a case removed from state court), who will be responsible for distributing copies to all parties. As further instructed in the Notice, the parties shall submit a joint letter and proposed case management plan seven days before the initial conference. Please refer to the Model Case Management Plan available on the Court’s website (<http://www.nysd.uscourts.gov/judge/Gardephe>). The parties’ joint letter should be filed on ECF in accordance with Rule 1(A) above, with the proposed case management plan filed as an attachment. Courtesy copies of the joint letter, proposed case management plan, and pleadings should be delivered to Chambers in accordance with Rule 6 above. Counsel are required to register for electronic filing and file a notice of appearance before the initial pretrial conference. Please consult the Southern District of New York Electronic Case Filing Rules & Instructions, available at <http://www.nysd.uscourts.gov/>, for more information.

8. Applications for Entry of Default Judgment

A party who wishes to obtain a default judgment must proceed by way of an order to show cause and use the procedure set forth in Attachment A.

9. Bankruptcy Appeals

The attention of all counsel is directed to Rules 8016 through 8018 of the Federal Bankruptcy Rules, which provide the dates within which briefs are to be served and filed. Counsel may extend these dates by stipulation submitted to the Court no later than two business days before the brief is due.

10. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case or, if a dispositive motion has been filed, within 30 days of a decision resolving the motion, the parties shall submit to the Court for its approval a joint pretrial order setting forth the information required by Fed. R. Civ. P. 26(a)(3) and 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 for 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 matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted that are not to be tried.
- v. With respect to each claim remaining to be tried, a statement listing each element or category of damages sought with respect to such claim and a calculation of the amount of damages sought with respect to such element or category.
- vi. 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.
- vii. 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).

viii. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.

ix. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. A party may not call as a witness an individual who is not listed in its portion of the witness list.

x. A designation by each party of deposition testimony to be offered in its case in chief, referencing page and line numbers, with any cross-designations and objections by any other party. If there is no objection or cross-designation, the Court will deem the opposing party to have waived any such objection or cross-designation. A party may not offer deposition testimony that is not listed in its portion of the designation.

xi. A list by each party of exhibits to be offered in its case in chief. The opposing party must indicate what exhibits it objects to and the nature of the objection (*e.g.*, “authenticity,” “hearsay,” “Rule 403”). Any objection not listed shall be deemed waived. A party may not offer an exhibit that is not listed in its portion of the exhibit list. A copy of each hard copy exhibit should be appended to the motion.

B. Filings Prior to Trial in Civil Jury Cases. Unless otherwise ordered by the Court, in jury cases, the following shall be filed with the proposed joint pretrial order:

i. All parties must prepare jointly three documents: (1) a list of voir dire questions to be asked of prospective jurors; (2) requests to charge; and (3) a proposed verdict sheet. To the extent a party objects to another party’s requested voir dire questions, requests to charge or proposed verdict sheet, that party should (1) set forth the grounds for that objection (or refer to the trial memorandum of law for a full discussion of the objection) and (2) propose an alternative. All requests to charge, all objections and all alternative proposals must include citation to supporting authority.

ii. Each party must also file a trial memorandum of law addressing each issue of law that the party expects to arise at or before trial.

iii. Each party must also file one set of the party’s documentary exhibits organized sequentially.

iv. If the documents described in (a) through (c) above are prepared on a computer, electronic copies must also be submitted on CD-ROM or via e-mail.

C. Filings Prior to Trial in Civil Non-Jury Cases. Unless otherwise ordered by the Court, in non-jury cases, each party shall file the following with the proposed joint pretrial order:

i. Proposed findings of fact and conclusions of law.

ii. A trial memorandum of law that identifies the issues, summarizes the relevant facts and applicable law, and addresses any evidentiary issues.

iii. Affidavits constituting the direct testimony of each trial witness, except for testimony of an adverse party, a person whose attendance must be compelled by subpoena, or a person for whom a party has requested and the Court has agreed to hear direct testimony during 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 appear at trial. The original affidavits will be marked as exhibits at trial.

iv. Copies of any designated deposition testimony that will be offered as substantive evidence, along with a one-page synopsis (with page references) of those excerpts for each deposition.

v. One set of the party's documentary exhibits organized sequentially.

vi. If the documents described in subsections (i) through (v) above are prepared on a computer, electronic copies must also be submitted on CD-ROM or via e-mail.

D. Filings Prior to Trial in All Civil Cases:

i. Each party must file and serve all motions in limine with the proposed joint pretrial order.

ii. Within two weeks of filing the proposed joint pretrial order, each party must file and serve its opposition to any motion in limine.

E. Final Pretrial Conference: The Court will schedule a pretrial conference approximately one week before trial. The Court will use the occasion to explore the prospects for settlement. Counsel must be prepared to engage in meaningful settlement discussions.

ATTACHMENT A: DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Gardephe in Courtroom 705 of the United States Courthouse, 40 Foley Square. Leave blank the date and time of the hearing and the deadline for service, which Judge Gardephe will set when he signs the Order.
2. Attach the following papers to the Order to Show Cause:
 - a. An attorney's affidavit setting forth:
 - i. why a default judgment is appropriate, including a description of the method and date of service of the original summons and complaint;
 - ii. 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;
 - iii. the proposed damages and the basis for each element of damages including interest, attorneys' fees, and costs; and
 - iv. legal authority for why an inquest would be unnecessary.
 - b. A proposed default judgment.
 - c. Copies of all the pleadings.
 - d. A copy of the affidavit of service of the original summons and complaint.
 - e. If failure to answer is the basis for the default, a Certificate from the Clerk of the Court stating that no answer has been filed.
 - f. Be sure to include the attorney's name and contact information, including fax number.
3. Take the Order to Show Cause with the attachments to the Orders and Judgments Clerk on the third floor of the 500 Pearl Street courthouse, Room 370, for approval.
4. After the Orders and Judgments Clerk approves the Order, bring the papers to 40 Foley Square and tell the Court Security Officers you have been directed to hand deliver an Order to Show Cause to Judge Gardephe's Chambers. The Court Security Officers will call Chambers, and someone will come to the lobby to meet you. Bring a courtesy copy of the supporting documentation for Chambers.
5. After the Judge signs the Order, Chambers staff will provide you with a copy of the Order, typically by fax.

6. Serve one copy of the Order and supporting documents on the adverse party. Prior to the return date, file via ECF an affidavit of service of a conformed copy of the Order. Bring a courtesy copy of this affidavit to the hearing. Once you receive an email notice that the original Order has been filed with the Clerk's office, file the supporting documentation via ECF.

7. Prior to the return date, take the proposed judgment, separately backed, to the Clerk in Room 120, 500 Pearl Street, and get the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the hearing and then brought to the hearing.