

October 10, 2013

**INDIVIDUAL RULES & PRACTICES IN CIVIL CASES
RONNIE ABRAMS, UNITED STATES DISTRICT JUDGE**

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2203
New York, NY 10007
(212) 805-0284

Courtroom

United States District Court
Southern District of New York
40 Foley Square, Courtroom 1506
Allison Cavale, Courtroom Deputy
(212) 805-0162

Unless otherwise ordered by Judge Abrams, these Individual Practices apply to all civil matters except for civil *pro se* cases.

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court shall be by letter, filed electronically on ECF. Parties should not submit courtesy copies of letters filed on ECF.

Letters to be filed under seal or containing sensitive or confidential information may be emailed to the Court at Abrams_NYSDChambers@nysd.uscourts.gov as a .pdf attachment with a copy simultaneously delivered to all counsel. Any such email 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 email; such communications shall be included only in the body of the attached letter.

Unless otherwise ordered by the Court, letters may not exceed five (5) pages in length. Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document).

- B. Telephone Calls.** For docketing, scheduling and calendar matters, call Courtroom Deputy Allison Cavale at (212) 805-0162. Otherwise, telephone calls to Chambers are permitted only in situations requiring immediate attention. In such situations, call Chambers at (212) 805-0284.
- C. Faxes.** Faxes to Chambers are permitted only with prior authorization. In such situations, faxed submissions must clearly identify the person in Chambers who authorized the sending of the fax, and copies must be simultaneously faxed, emailed or delivered to all counsel.
- D. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions. (If such request contains sensitive or confidential information, it may be submitted by email and served on opposing counsel.) The letter-motion must state: (1) the original due date, (2) the number of previous requests for adjournments or extensions of time, (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 be included. If the request is for an adjournment of a court appearance, absent an emergency, the request shall be made at least 48 hours prior to the scheduled appearance.

E. 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., 11 Civ. 1234 [rel. 10 Civ. 4321]).

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.

B. Initial Case Management Conference. The Court will generally schedule a Fed. R. Civ. P. 16(c) conference within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be made available on ECF and the plaintiff's counsel will be responsible for distributing copies to all parties. This Notice will direct the parties to submit on ECF a proposed Civil Case Management Plan and Scheduling Order and letter to the Court one week prior to the conference date. In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register as ECF filers and enter an appearance in the case before the initial pretrial conference. The pertinent instructions are available on the Court website at http://www.nysd.uscourts.gov/ecf_filing.php.

C. Pre-Motion Conferences. Pre-motion conferences are not required, except for motions concerning discovery, which are governed by Rule 3 below.

3. Discovery Disputes. The parties shall 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 file on ECF a letter-motion 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, it must call Chambers within one (1) business day to advise that a responsive letter will be forthcoming and do so by letter to the Court not exceeding three pages within three business days.

4. Motions

A. 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 authorities, and shall conform to Local Civil Rule 11.1.

- B. Courtesy Copies.** Two courtesy copies of all motion papers, marked as such, should be submitted to the Court by the movant at the time the reply is served, in accordance with the SDNY policies regarding mail deliveries.
- C. Motions to Dismiss.** When a motion to dismiss is filed, the non-moving party must, within fourteen (14) days of receipt of the motion, notify the Court and its adversary in writing whether (i) it intends to file an amended pleading and when it will do so, or (ii) it will rely on the pleading being attacked. If the non-moving party elects not to amend its pleading, no further opportunity to amend to cure the deficiency raised in the defendant's motion will be granted, and the motion to dismiss will proceed in the normal course. This Rule does not alter the time to file a response provided by the Federal and Local Rules. If the plaintiff amends its pleading, the defendant 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 and the plaintiff stating that it relies on the previously filed motion to dismiss.
- D. Motions for Summary Judgment**
- i.** Except in *pro se* cases, the moving party shall provide all other parties with an electronic copy of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. The opposing party must reproduce each entry in the moving party's Rule 56.1 Statement, and set out its response directly beneath it.
 - ii.** Except in *pro se* cases, the parties shall 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.
- E. Letter Motions.** Letter-motions filed via ECF must comply with the S.D.N.Y. Local Rules and the S.D.N.Y. "Electronic Case Filing Rules and Instructions." In particular, all requests for adjournments, extensions and pre-motion conferences with respect to discovery disputes should be filed as letter-motions.
- F. 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.
- G. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving, 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.

5. Other Pretrial Guidance

- A. Redactions and Filing Under Seal.** Any party wishing to file in redacted form any document, or any portion thereof, must make a specific request to the Court by letter explaining the reasons for seeking to file that document 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, looseleaf 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 file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

B. Settlement Agreements. The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce a settlement agreement, the parties must place the terms of their 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.

C. Bankruptcy Appeals. Briefs must be submitted in accordance with Fed. R. Bankr. P. 8009-10. Counsel may seek to extend these dates by joint request submitted to the Court no later than two business days before the brief is due.

6. Trial Submissions

A. Joint Pretrial Order. Unless otherwise specified by the Court, within thirty (30) days after the close of discovery or if any dispositive motion is filed, within thirty (30) days from the Court's decision on such motion, the parties shall submit a proposed joint pretrial order by email to Abrams_NYSDChambers@nysd.uscourts.gov. The proposed joint pretrial order shall include the information required by Fed. R. Civ. P. 26(a)(3) and 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 statement as to whether or not all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- iv. a statement as to the number of trial days needed and as to whether the case is to be tried with or without a jury;
- v. a brief statement by the 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;
- vi. 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 which are not to be tried. The summaries should not recite any evidentiary matter;
- 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 an indication by exhibit number as to whether any party objects to the exhibit and a brief statement of the nature of the objection (e.g., "relevance," "authenticity," "hearsay");
- 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. Additional Required Pretrial Filings in Jury Cases. At the time the joint pretrial order is filed in a jury case, the parties shall file and serve:

- i. motions addressing any evidentiary issues or other matters which should be resolved *in limine*;
- ii. where a party believes it would be useful to the Court, a pretrial memorandum of law; and
- iii. joint proposed voir dire questions, verdict form and jury instructions. These joint submissions shall consist of single documents, jointly composed, noting any areas of disagreement between the parties. The voir dire questions and jury instructions shall include both the text of any requested question or instruction as well as a citation, if relevant, to the authority from which it derives. These documents should also be submitted by email to Abrams_NYSDChambers@nysd.uscourts.gov in Word format.

C. Additional Required Pretrial Filings in Non-Jury Cases. At the time the joint pretrial order is filed in a non-jury case, the parties shall:

- i. file and serve motions addressing any evidentiary issues or other matters which should be resolved *in limine*;
- ii. file and serve a pretrial memorandum of law, where a party believes it would be useful to the Court;
- iii. file and serve proposed findings of fact and conclusions of law. The proposed findings of fact must be detailed and include citations to the proffered trial testimony and exhibits. These documents should also be submitted by email to Abrams_NYSDChambers@nysd.uscourts.gov in Word format;

- iv. submit to the Court and serve on opposing counsel, but not file on ECF, 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 shall be brought to trial to be marked as exhibits;
- v. submit to the Court and serve on opposing counsel, but not file on ECF, all deposition excerpts which 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; and
- vi. submit to the Court and serve on opposing counsel, but not file on ECF, all documentary exhibits.

D. 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. objections to another party's requests to charge or proposed voir dire questions;
- ii. opposition to any motion *in limine*; and
- iii. opposition to any legal argument in a pretrial memorandum.

E. Courtesy Copies. Two courtesy copies of all documents identified in Sections 6.A, B, C.i-v, and D above shall 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.

F. Exhibits. All exhibits must be pre-marked in advance of trial. If counsel intend to distribute copies of documentary exhibits to the jury, they are to make a separate copy for each juror. Counsel shall make certain that they have custody of all original exhibits. The Court does not retain them and the Clerk is not responsible for them.

2. 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 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 shall submit 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.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Abrams. Leave blank the date and time of the conference. Judge Abrams will set the date and time when she 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.
 - E. A Certificate of Default from the Clerk of Court.
3. Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 370, 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 2203, 40 Foley Square) 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 370, 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.