

**INDIVIDUAL PRACTICES AND PROCEDURES
JUDGE COLLEEN McMAHON**

Chambers

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Southern District of New York
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Amendment to Judge McMahon's Individual Rules (effective November 26, 2013)

Judge McMahon is participating in the clerk's office "Text Only Orders." Accordingly, the following types of requests must be made by motion and filed electronically (the Court will no longer accept letters by FAX or U.S. Mail for these types of requests):

Motion to Appoint Process Server

Motion to request an Adjournment of a Scheduled Conference/Hearing

Motion to Enforce Judgment

Motion for a Hearing

Motion for Judgment Debtor Examination

Motion to Appeal *In Forma Pauperis*

Motion to Serve Process

Motion to Set Aside Default

Motion to Appear *Pro Hac Vice*

Motion for an Extension of Time to Amend

Motion for an Extension of time to Complete Discovery

Motion for an Extension of time to Answer

Motion for an Extension of time to File Document

Motion for an Extension of time to File Response/Reply

Motion for Mediation

Motion for Protective Order

Motion for Recusal

Motion to Redact Transcript

Motion to Stay

Motion to Take Deposition

Motion to Set/Reset Deadlines

TO THE EXTENT THE TEXT ONLY ORDERS PROCEDURE CONFLICTS WITH JUDGE McMAHON'S INDIVIDUAL RULES, THE NEW PROCEDURE SUPERSEDES THE INDIVIDUAL RULES WITH RESPECT TO THESE TEXT ONLY MOTIONS.

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

I. Communications with Chambers

A. Letters

All communications with Chambers must be in writing, with copies delivered simultaneously to all counsel. Do not send copies of correspondence between counsel to the Court.

B. Faxes

Courtesy copies of motions and supporting papers may not be faxed to chambers unless the court specifically directs that fax be used. Do not follow with a hard copy. Courtesy copies must be hand delivered to the courthouse for delivery to chambers.

No document longer than 50 pages may be faxed without prior authorization. The fax number is (212) 805-6326.

No faxes will be accepted from pro se litigants. Pro se litigants must file papers directed to Judge McMahon with the Pro Se Clerk's Office. **If pro se litigants send faxes to chambers they will be ignored.**

C. Telephone Calls

Telephone calls to chambers are not permitted, except in the case of a real emergency. In case of a real emergency, Chambers can be reached at (212) 805-6325 for civil matters, and (212) 805-6329 for criminal matters. Judge McMahon's law clerks have been instructed not to discuss cases with callers and will, if necessary, end the call rather than engage in discussion.

D. Docketing, Scheduling, and Calendar Matters

Chambers will contact counsel about docketing, scheduling and calendar matters regarding pre-trial conferences, motions and trials.

E. Requests for Adjournments or Extensions of Time

All requests for adjournments or extension of time must be by *text-only motion*, and must include:

- (#1) the original date;
- (#2) the number of previous requests for adjournment or extension;
- (#3) whether these previous requests were granted or denied;
- (#4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent; and
- (#5) **if the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.**

If the request is for an adjournment of a court appearance, absent an emergency it must be made at least 48 hours prior to the scheduled appearance.

PLEASE NOTE: *Judge McMahon will not routinely grant adjournments or extensions of time, even if stipulated by counsel.* All inquiries not required to be raised by motion must be made by faxed letter, with a copy sent simultaneously to opposing counsel.

II. Initial Pre-Trial Conferences (Civil)

A. Scheduling

When a civil case is assigned to Judge McMahon, Chambers will automatically schedule an initial pre-trial conference. Counsel will be notified of the time and place of the conference via ECF; counsel and pro se parties must assure that they are registered to receive notifications via that system.

Scheduling rules for specific kinds of cases are included in the scheduling order, and must be observed by the parties.

B. Effect of a Case Management Plan

The primary purpose of the initial conference is to enter a case management plan. Thus, **subject to the rules for specific types of cases, which are included in the scheduling order**, if the parties agree to a conforming case management plan and submit it to Chambers *at least two business days prior to the scheduled initial conference*, and if the Court approves it, the initial conference will be canceled. (A copy of a conforming case management plan is available online at <http://nysd.uscourts.gov/judge/Mcmahon>.)

If a motion is fully briefed before a case management plan is approved, the conference will NOT be cancelled.

C. Appearances

If the parties fail to agree upon a case management plan or fail to submit the plan to the Court, the parties must appear for a conference on the scheduled date.

Parties must appear at the conference prepared to discuss their case with the Court.

If the parties request an extension of their time to file a pleading, the Court's grant of such an extension does not adjourn or postpone a scheduled conference unless specifically stated by the Court.

Requests to appear by telephone, made via fax at least two business days before the scheduled conference date, will be considered on a case-by-case basis.

III. Rules for Specific Types of Cases

A. Section 1983 Cases Against the City of New York

Counsel for plaintiffs in suits against the City of New York, the NYPD, or its employees, alleging causes of action under 42 U.S.C. § 1983, filed on or after August 1, 2011, must observe the Southern District of New York's "§ 1983 Plan," which is available on the Southern District of New York's website.

B. RICO Cases (Civil)

Counsel in RICO cases must attend the Rule 16 conference. Counsel should NOT fill out Judge McMahon's standard case management order, but should come to the initial conference.

In all matters in which the complaint contains a RICO claim, the plaintiff(s) must file a RICO Case Statement within 30 days of filing the complaint. No discovery may proceed in any case in which a RICO claim is asserted until the defendant(s) on the RICO claim(s) have either filed an answer or a motion to dismiss. If the defendant(s) move to dismiss, all discovery is stayed until resolution of the motion. The RICO Case Statement must be filed in accordance with the Court's RICO Case Standing Order, which is available on the Court's website (<http://nysd.uscourts.gov/judge/Mcmahon>).

C. Patent Cases

Counsel must attend the Rule 16 conference in patent cases. Counsel should NOT fill out Judge McMahon's standard case management order, but should come to the initial conference having already conferred about scheduling.

Judge McMahon does claim construction first in patent cases, absent some compelling reason to do otherwise. She requires papers limited to intrinsic evidence before she allows any discovery. Keep that in mind when discussing a proposed schedule.

D. Fair Labor Standards Act Cases

Counsel in FLSA cases must attend the Rule 16 conference. Counsel in FLSA cases should not fill out Judge McMahon's standard case management form. They should come to the conference prepared to discuss both the merits and conditional certification. The filing of a FLSA complaint operates as a motion for conditional certification of the class denominated in the pleading.

IV. Pleadings and Motions

A. Courtesy Copies

One courtesy hard copy of pleadings and motion papers, marked as such, must be submitted to Chambers as soon as practicable after filing. Please do *not* submit digital courtesy copies. **Do not send documents on CD-ROM or diskette.**

B. Pre-Motion Conferences in Civil Cases

Judge McMahon does not require pre-motion conferences for substantive motions. Do not send letters asking for permission to make a motion. Just make the motion.

Discovery: Take all discovery disputes directly to the Magistrate Judge. When the first such dispute arises, contact Chambers and ask for an order of reference to the Magistrate Judge.

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. All memoranda shall be page numbered, and shall contain both a table of contents and a table of cases.

Requests to file memoranda exceeding the page limits set forth herein must be made in writing five days prior to the due date, except with respect to reply briefs, in which case the time is one day prior to the due date.

You can save pages by not including citations to unofficial reporters. Citations to New York and United States Supreme Court cases shall contain citations to the official reporter. Citations to unreported cases not available on WESTLAW should be accompanied by a copy of the case cited.

Memoranda must utilize a 12-point serif font (e.g., Times New Roman) and must be double-spaced with margins of at least one inch. Footnotes should be avoided and if any footnotes are included, they must be in 12-point font.

Parties shall not attempt to avoid the above page limits by attaching an affidavit or declaration in lieu of a fully developed statement of the facts. The fact section of the brief must include all the facts that you will discuss or rely upon for purposes of the motion under consideration.

If you are submitting an appendix to your brief of more than five pages, you must bind the appendix separately. Do not affix the appendix to your brief.

Failure to comply with any of these guidelines will result in the brief's being stricken.

D. Motion Papers

Motion papers shall be filed promptly after service. Do not hold motion papers until all submissions are complete.

All exhibits should be tabbed and indexed. Documents under 35 pages should be stapled, not bound. Exhibits to legal memoranda must not be bound to the brief. Please bind them separately and submit them to the Court along with the brief.

Do not docket anything except a Notice of Motion as a "Motion." In all ECF cases, supporting documents should be docketed as what they are (i.e., "Brief," "Memorandum," "Affidavit") — not as a "Motion."

E. Rules for Specific Motions

1. Default Judgment Motions

Any party wishing to obtain entry of a judgment by default must proceed as follows:

- (i) Wait at least 30 days after service is effected, to allow for the receipt of an
- (ii) Serve a copy of the Motion for Entry of a Default Judgment on the defaulting defendant in the same manner as prescribed for service of process. The Motion should be accompanied by a notice stating as follows:

THE ATTACHED LEGAL PAPERS ARE BEING SERVED ON YOU BECAUSE YOU HAVE FAILED TO APPEAR IN A LAWSUIT BROUGHT AGAINST YOU. IF YOU DO NOT ENTER AN APPEARANCE IN THE LAWSUIT ON OR BEFORE [INSERT DATE NO EARLIER THAN 20 DAYS FROM THE DATE OF SERVICE OF THE NOTICE AND MOTION], THE COURT WILL ENTER A DEFAULT JUDGMENT AGAINST YOU. IF YOU ARE A CORPORATION, YOU CAN ONLY APPEAR THROUGH AN ATTORNEY. IF YOU ARE AN INDIVIDUAL, YOU MAY APPEAR BY AN ATTORNEY OR PRO SE. IN EITHER EVENT, YOU MUST TAKE SOME ACTION OR A JUDGMENT WILL BE ENTERED AGAINST YOU. ENTRY OF A JUDGMENT MAY RESULT IN A LEVY AGAINST YOUR PROPERTY.

- (iii) File the Motion for Entry of a Default Judgment, together with proof of service of the Motion and the Notice, with the Office of the Clerk of the Court. The Clerk's Office will process the filing and transmit it to Chambers.
- (iv) Chambers will hold the motion until the date specified in the Notice has passed. If no appearance is entered for the defendant, the Court will decide the motion.

2. Summary Judgment Motions (Generally)

On motions for summary judgment, do not attach complete deposition transcripts as exhibits. Attach only pages containing relevant testimony (to which citation is made in the briefs or affidavits). Each entry must be separately tabbed and indexed.

3. Motions for Summary Judgment Premised on Qualified Immunity

In keeping with the United States Supreme Court's observation that the issue of qualified immunity should be decided before discovery is conducted, counsel representing any defendant who intends to claim qualified immunity must comply with the following procedure.

A motion for summary judgment on the ground of qualified immunity must be served and filed at the earliest possible opportunity. “Earliest possible opportunity” in a case subject to mandatory mediation is 10 days after the mandatory mediation period expires. If a pre-answer motion to dismiss is filed, the notice of motion must include as an alternative ground a motion for summary judgment pursuant to Fed. R. Civ. P. 56 on the ground of qualified immunity. Briefs and other pleadings in support of the motion shall be filed on all issues except the issue of qualified immunity; an opportunity will be given for the filing of supplemental papers in support of the motion after plaintiff’s deposition is taken.

If no pre-answer motion is filed, a “bare” notice of motion for summary judgment, limited to the issue of qualified immunity, must be filed at the same time as the answer. No briefs or papers in support of the motion are to be filed at this time.

As soon as a notice of motion raising the issue of qualified immunity is filed, all discovery is stayed, except for the plaintiff’s deposition. Within 30 days after the filing of a notice of motion raising the issue of qualified immunity, the plaintiff’s deposition shall be taken, and briefs and papers addressing the issue of qualified immunity shall be served and filed. These papers should be labeled “supplemental” if briefs and affidavits have already been served to address other issues. NO EXTENSIONS WILL BE GRANTED. Responsive and reply papers on the motion shall be served in accordance with the Court’s rules.

A plaintiff who brings an action in which qualified immunity is ordinarily asserted as a defense shall send or otherwise call defense counsel’s attention to this rule. However, defense counsel are responsible for complying with the rule whether or not they receive a copy from the plaintiff.

Failure to proceed in accordance with these rules constitutes a waiver of the right to move for judgment on the ground of qualified immunity prior to trial.

4. Motions for Reconsideration: Motions for reconsideration are to be served in the same manner as other motions. However, Judge McMahan reviews motions for reconsideration when they arrive, and determines whether a response is required or whether a motion can be denied *sua sponte*. The opposing party shall not serve any responsive papers (including letters) unless specifically directed to do so by Judge McMahan.

F. Time to Respond

Counsel are not to set a “return date.” Answering papers or motions are to be served 2 weeks after receipt of the moving papers. Reply papers, if any, are to be served 5 business days later.

G. Oral Argument on Motions

Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. However, Judge McMahan rarely hears oral argument on motions. The Court

will decide on a case-by-case basis whether argument will be heard, and if so, will advise counsel of the argument date.

H. Letter Motions & Notice of Rulings and Calls

The Court accepts letter motions for all "TEXT ONLY ORDER" motions. Judge McMahon does not accept letter motions for any other type of motions. Follow the SDNY rules for letter motions.

Judge McMahon participates in the Court Website. Notice of most orders (other than scheduling orders), decisions and stipulations may be accessed through the Court's website: <http://www.nysd.uscourts.gov>

I. Stipulation and Confidentiality Orders

The attached addendum **MUST** be incorporated in order for Judge McMahon to sign your Stipulation and Confidentiality Order:

THE FOLLOWING ADDENDUM IS DEEMED INCORPORATED INTO THE PARTIES' STIPULATION AND CONFIDENTIALITY ORDER

The parties understand that the Court's "so ordering" of this stipulation does not make the Court a party to the stipulation or imply that the Court agrees that documents designated as "Confidential" by the parties are in fact confidential.

It has been this Court's consistent experience that confidentiality stipulations are abused by parties and that much material that is not truly confidential is designated as such. The Court does not intend to be a party to such practices. The Court operates under a presumption that the entire record should be publicly available.

The Court does not ordinarily file decisions under seal or redact material from them. If the Court issues a decision in this case that refers to "confidential" material under this stipulation, the decision will not be published for ten days. The parties must, within that ten day period, identify to the court any portion of the decision that one or more of them believe should be redacted, provide the court with the purportedly confidential material, and explain why that material is truly confidential. The Court will then determine whether the material is in fact genuinely deserving of confidential treatment. The Court will only redact portions of a publicly available decision if it concludes that the material discussed is in fact deserving of such treatment. The Court's decision in this regard is final.

If this addendum is acceptable to the parties, the Court will sign their proposed confidentiality stipulation, subject to the addendum. If this addendum is not acceptable, the court will not sign the stipulation, and should allegedly confidential material be produced, the parties will be referred to the magistrate judge for a document by document review and decision on whether that document should be subject to confidential treatment.

V. Pre-trial and Trial Rules and Procedures

A. Discovery Schedule

Parties must exchange the discovery required under Federal Rule of Civil Procedure 26(a) within 30 days after service of the answer on the last plaintiff to be served or by the date specified in a Court-approved case management order.

Notices inviting the parties to stipulate to a discovery schedule will be sent to plaintiff's counsel (or, in the case of removed actions, defendant's counsel) shortly after the filing of the action. If the parties can agree upon a schedule providing for prompt completion of discovery, (i.e., within six months of the commencement of the action) the Court ordinarily will incorporate the agreement in a Scheduling Order. Otherwise, the Court will impose a schedule at the initial pre-trial conference, held approximately 45 days after the complaint is filed. *Do not wait until the end of the discovery period to serve discovery requests or schedule depositions.*

PLEASE NOTE: Judge McMahon does not routinely extend discovery deadlines. Do not wait until the end of the discovery period to serve discovery requests or schedule depositions, or you may be precluded from completing discovery. Delaying service of the complaint for 120 days after filing could result in your having only one or two months to complete all discovery.

B. Medical Records/Authorizations

In all matters involving personal injury and medical malpractice, plaintiff's counsel shall provide medical authorizations to defendant's counsel as soon as counsel's identity is learned. Plaintiff's counsel should obtain authorizations from their clients before they file the complaint. Do not wait for the initial pre-trial conference to be held.

C. Pre-trial Order; Other Civil Trial Filings

Counsel are to file a joint pre-trial order, with two courtesy copies for Chambers, on or before the date set by the Court in the formal scheduling order. The pre-trial order shall be prepared in accordance with the outline attached as Appendix A. Failure to submit the pre-trial order on time may result in dismissal or a default judgment, as appropriate. *The filing of a motion for summary judgment does not excuse or extend the time for filing the pre-trial order unless the Court otherwise directs. Such applications are disfavored and will almost never be granted.*

Unless otherwise ordered by the Court, on the date the joint pre-trial order is filed, each party shall also file:

- (i) In jury cases, requests to charge, proposed voir dire questions, and a draft verdict form. You must submit one courtesy hard copy of these documents; and

- (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. You must submit one courtesy hard copy of these documents.

D. In Limine Motions

In limine motions are not to be filed with the pre-trial order. They must be filed within five days after the parties are noticed for final pre-trial conference. Responses are due five days later. No replies are accepted on *in limine* motions. Rulings on *in limine* motions will be made at the final pre-trial conference, usually by oral order.

E. Final Pre-Trial Conference; Exhibits

After the pre-trial order is filed, the Court will notify the parties of the date of a final pre-trial conference ("FPTC"). COUNSEL TRYING THE CASE MUST APPEAR AT THE FPTC, and only lawyers who appear at the conference will be allowed to try the case. Counsel must be prepared to proceed to trial on 24 hours telephone notice after the final pre-trial conference. Any party with a scheduling problem should bring it to the Court's attention by letter.

At the FPTC, all evidentiary issues will be decided, including the admissibility of exhibits. Thus, counsel shall provide one marked set of exhibits for the adversary and two for the Court at least five business days before the final pre-trial conference. All exhibits must be pre-marked, using the form PX-1 through PX-n and DX-1 through DX-n. If possible, exhibits should be bound or collated in a binder.

Counsel should be prepared to proffer, and argue for (or against) the admissibility of all evidence, including exhibits and proposed witness testimony.

F. Jury Selection

Juries will be selected using the struck panel method.

G. Special Rules for Bench Trials

Unless otherwise instructed, counsel are required to submit five business days before the final pretrial conference: (1) proposed findings of fact and conclusions of law; and (2) trial memoranda of law that identify the issues, and summarize the facts and applicable law, not to exceed twenty-five (25) double-spaced pages.

In bench trials, counsel must prepare and exchange sworn statements containing the direct testimony of each witness they intend to call. These witness statements will be submitted one week before the trial and shall be used at trial in accordance with the following procedure:

1. Form of Statement

For each witness whose direct testimony will be presented in statement form, prepare a statement setting forth in declaratory form all of the facts to which that witness will testify. The facts should be stated in narrative, rather than question and answer, form. The statement must contain all of the relevant facts to which the witness would testify, including facts necessary to establish the foundation for the testimony. The statement need not be sworn or notarized.

Documents to be offered as exhibits shall not be attached to witness statements but shall be pre-marked and exchanged along with other proposed exhibits in the usual fashion.

2. Use of Statements

At the trial, each witness whose direct testimony previously has been submitted in statement form will take the stand and under oath shall adopt the statement as true and correct. The party offering that witness will then offer the statement as an exhibit, subject to appropriate objections by the opposing party on which the Court will then rule.

The witness then will be allowed to supplement his or her statement by any additional live direct testimony considered necessary by counsel, but may not repeat testimony covered by the written statement.

Thereafter cross-examination and any redirect will proceed in the ordinary course.

3. Exception to Use of Statement

Statements are required of the parties and other witnesses under their control. They are not to be used for adverse parties or for persons whose attendance must be compelled by subpoena.

H. Conduct of Trial

The Court conducts trials Monday through Thursday from 9:30 a.m. - 5:00 p.m. Parties should arrange to have enough witnesses available to fill the day, even if that means taking witnesses out of order. If a party is out of witnesses in the middle of the day, the party must rest. In personal injury cases, doctors and other experts will be permitted to testify out of order whenever they are available.

I. Post-Trial Motions

Post-trial motions are treated in the same manner as motions for reconsideration. *See supra* Part IV.E.4.

Appendix A -- Form of Pre-trial Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[caption]

XX Civ. XXXX (CM)

The parties having conferred among themselves and with the Court pursuant to Fed. R. Civ. P. 16, the following statements, directions and agreements are adopted as the Pre-trial Order herein.

I. NATURE OF THE CASE

[Set forth a brief statement of the general nature of the action and the relief sought by each party.]

II. JURY/NON-JURY

[State whether a jury is claimed, whether there is any dispute as to whether the action should be tried to a jury, and the estimated length of the trial.]

III. STIPULATED FACTS

[Set forth any stipulated facts.]

IV. PARTIES' CONTENTIONS

The pleadings are deemed amended to embrace the following, and only the following, contentions of the parties:

A. Plaintiff's Contentions (Jury Trial)/Proposed Findings of Fact (Non-Jury Trial)

[Set forth a brief but complete statement of the plaintiff's contentions as to all issues of fact and law, with citations to exhibits and anticipated testimony.]

B. Defendant's Contentions (Jury Trial)/Proposed Findings of Fact (Non-Jury Trial)

[Set forth a brief but complete statement of the defendant's contentions as to all issues of fact and law, with citations to exhibits and anticipated testimony.]

(For bench trials only) Proposed conclusions of law shall be submitted, with citation to supporting authority.

V. ISSUES TO BE TRIED

[Set forth an agreed statement of the issues to be tried.]

VI. PLAINTIFF'S EXHIBITS

VII. DEFENDANT'S EXHIBITS

No exhibit not listed below may be used at trial except (a) for cross-examination purposes or (b) if good cause for its exclusion from the pre-trial order is shown.

[Each side shall list all exhibits it intends to offer on its case in chief. The list shall include a description of each exhibit. All exhibits shall be premarked.]

[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 use of such a system, plaintiff's trial exhibits shall be identified as PX 1, and defendant's as DX 1, D-Jones A, D-Smith C.]

VIII. STIPULATIONS AND OBJECTIONS WITH RESPECT TO EXHIBITS

Any objections not set forth herein will be considered waived absent good cause shown.

[The parties shall set forth any stipulations with respect to the authenticity and admissibility of exhibits and indicate all objections to exhibits and the grounds therefore.]

IX. PLAINTIFF'S WITNESS LIST

X. DEFENDANT'S WITNESS LIST

The witnesses listed below may be called at trial. No witness not identified herein shall be permitted to testify on either party's case in chief absent good cause shown.

[Each party shall list the witnesses it intends to call on its case in chief and, if a witness's testimony will be offered by deposition, shall designate by page and line numbers the portions of the deposition transcript it intends to offer. Each party shall set forth any objections it has to deposition testimony designated by the other and the basis therefore.]

XI. RELIEF SOUGHT

[The plaintiff shall set forth the precise relief sought, including each element of damages. If the plaintiff seeks an injunction, the proposed form of injunction shall be set forth or attached.]

Dated:

U.S.D.J.

[Signatures of counsel]