

INDIVIDUAL PRACTICES IN CIVIL CASES
SARAH NETBURN, UNITED STATES MAGISTRATE JUDGE

Chambers

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New York, NY 10007
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Courtroom

Thurgood Marshall Courthouse
40 Foley Square, Courtroom 219
Joseph Mendieta, Courtroom Deputy
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Unless otherwise ordered, these Individual Practices apply in all civil matters in which a party is represented by counsel.

I. Communications with Chambers.

- a. Letters.** Except as otherwise provided below, communications with the Court should be by letter. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be filed electronically on ECF, without email copy to chambers.

Letters to be filed under seal, *ex parte* settlement letters, proposed case management plans, or letters otherwise containing sensitive or confidential information should be emailed to Chambers as a .pdf (but not .pdf/A) attachment to Netburn_NYSDChambers@nysd.uscourts.gov. E-mails shall state 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 attached letter. Confidential information should be clearly indicated as such in the letter.

Whether filed electronically or not, letters may not exceed 5 pages in length (exclusive of exhibits). 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).

In *pro se* cases, letters filed on ECF or sent to Chambers by counsel shall also be sent to the *pro se* litigant's e-mail address, if permission is granted by the *pro se* litigant. If permission is withheld, or e-mail is otherwise unavailable, counsel shall mail a copy to the *pro se* litigant and indicate this in its letter to the Court.

- b. Letter-Motions.** Letter-motions may be filed via ECF if they comply with the S.D.N.Y. Local Rules and the S.D.N.Y. Electronic Case Filing Rules and Instructions. In particular, parties shall file as letter-motions all requests for adjournments, extensions, pre-motion conferences (including pre-motion conferences with respect to discovery disputes) and requests for a settlement conference.
- c. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of 500 Pearl Street 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.
- d. Docketing, Scheduling and Calendar Matters.** For docketing, scheduling and calendar matters, call the Courtroom Deputy at (212) 805-0286 between 9:00 a.m. and 5:00 p.m. Other than for docketing, scheduling and calendar matters, telephone calls to Chambers are permitted only for *urgent* matters requiring immediate attention.
- e. Faxes.** Faxes are *not* permitted except with prior approval of Chambers, which will be granted only for good cause. If granted, the fax must not exceed five pages and must be submitted to Chambers at (212) 805-7998. All faxes must identify the person in Chambers who authorized the fax and copies must simultaneously be faxed or delivered to all parties. Faxes sent without prior permission will not be read. Do not follow with a hardcopy.
- f. Service in Pro Se Cases.** In *pro se* cases, counsel must serve the *pro se* party with a paper copy of any document that is filed electronically and must separately file a proof of service with the Court.
- g. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be filed on ECF as letter-motions. (If a request contains sensitive or confidential information, it may be submitted by .pdf e-mail in lieu of being filed electronically.) The letter-motion 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 a conference must be rescheduled, counsel shall propose at least two alternative dates that fall in consecutive weeks. Absent good cause, any

request for extension or adjournment shall be made *at least 48 hours* before the deadline or scheduled appearance.

- 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. For questions about ECF rules and procedures, please contact the ECF help desk at (212) 805-0800.

II. Pre-Trial Practice.

- a. Complaints.** All complaints must be posted on ECF. Complaints cannot be uploaded directly to ECF and must instead be emailed to Case Openings, according to the instructions on the Court's website. For any question regarding this procedure, call Case Openings at (212) 805-0632.
- b. Initial Case Management Conference.** Parties must confer and then email a joint Proposed Civil Case Management Plan and Scheduling Order to the Court one week before the conference as a .pdf attachment consistent with Paragraph I(a) above. This document is available at <http://nysd.uscourts.gov/judge/Netburn>.

An **incarcerated party** may not be able to attend this or other conferences, but may be able to participate by telephone or video conference. If appropriate, the Court's scheduling order will outline the procedures for the telephone or video conference.

- c. Discovery Disputes.** Parties shall follow Local 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 an ECF letter-motion to the Court, no longer than five pages, explaining the nature of the dispute and requesting an informal conference. Such letter *must include a representation that the meet-and-confer process occurred*, including when and whether it was in person or over the telephone. Any responsive letter should be submitted within three business days. Confidential information should be clearly indicated as such in letters.

III. Motions.

a. Conferences of Counsel Before Filing Motions. Except in cases involving *pro se* parties or in connection with motions for summary judgment, actions for judicial review of a decision by the Commissioner of Social Security, or petitions for a writ of *habeas corpus*, counsel contemplating the filing of a motion shall first contact opposing counsel to discuss thoroughly, in person or by telephone, the substance of the contemplated motion and any potential resolution. If a motion pursuant to Fed. R. Civ. P. 12(b) or 12(c) is contemplated, the plaintiff or counterclaimant must indicate whether it wishes to amend the subject pleading before motion practice, and the parties must consider in good faith a stipulation permitting such amendment. If the parties are unable to reach a resolution, counsel for *the moving party shall include the following statement in the notice of motion*: “This motion is made following the conference of counsel, which took place on [date]. Plaintiff [or Counter Claimant] declined an opportunity to amend.”

b. 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. 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. The Court has a strong preference that unreported cases be cited using the Westlaw format (*i.e.* 2004 WL 2163741).

All moving papers, letter-motions, and letters filed on ECF or emailed to chambers must be in *searchable PDF form*. Typically this means that a document created using word-processing software must be printed to or converted to PDF from the original word-processing file. PDF images may not be created by scanning paper documents.

c. Courtesy Copies. One courtesy copy of all motion papers, marked as such, shall be submitted to Chambers *by the movant after the motion has been fully briefed*. Courtesy copies should not be submitted to Chambers on a rolling basis. All courtesy copies should be placed in *well-organized three-ring binder(s)*. For all motions, oppositions, and replies containing multiple items of documentary evidence, the evidence must be divided into exhibits, separated by tab dividers, and preceded by an exhibit list. The moving party should submit the courtesy copies to Chambers no later than one week after the motion became fully briefed.

- d. Redactions and Filing Under Seal.** All Confidential Materials filed with the Court may be redacted or filed under seal only as the Court directs upon appropriate application by either party.

To avoid the unnecessary filing of documents under seal, counsel for the Parties will discuss, in good faith, the need to file Confidential Materials under seal. If the parties agree in writing that a particular document that has been designated Confidential Material shall not be filed under seal, that document can be filed without redaction and such filing will not be a breach of any Stipulation of Confidentiality.

Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, based on a party's designation of information as Confidential, must make a specific request to the Court by letter explaining the reasons for seeking to file that submission under seal and addressing the request in light of the Court of Appeals' opinion in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). If a request for redactions is based on another party's designation of information as confidential, the parties shall confer and jointly submit the request for redactions.

The letter requesting redactions must include as attachments: (1) one full set of the motion papers or other relevant filings with the Confidential Materials highlighted (i.e., highlighting those words, phrases, or paragraphs for which the party seeks redaction); and (2) only those pages, clean and unredacted, that contain Confidential Materials for which the parties seek to be filed under seal. On application of a party, and provided that 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.

If the Court approves the filing under seal, Chambers will file under seal the clean and unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

- e. Oral Argument on Motions.** Parties may file a motion for oral argument when the motion has been fully briefed and courtesy copies are submitted to Chambers.
- f. Failure of the Court to Decide a Motion or Schedule Argument.** If the Court has not decided a motion or scheduled oral argument on the motion within 60 days of the time that the motion has become fully briefed, counsel for the movant shall send a letter to alert the Court.

- g. **Proposed Stipulations and Orders.** Except as otherwise provided in these Rules and Practices, parties should e-mail 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 and Instructions. Courtesy copies need not be sent to Chambers.

IV. **Pretrial Procedures.**

Joint Pretrial Orders. After the close of discovery, the Court will file a Scheduling Order containing instructions for the parties' Proposed Joint Pretrial Order.

In *pro se* cases, no Joint Pretrial Order is needed. Instead, within 30 days after the completion of discovery each party shall file its own Pretrial Statement. The *pro se* party's Pretrial Statement need take no particular form, but must be concise and contain: (1) a statement of the facts the party hopes to prove at trial; (2) a list of all documents or other physical objects that the party plans to put into evidence at trial; and (3) a list of the names and addresses of all witnesses the party intends to have testify at trial. The Statement must be sworn by the party to be true and accurate based on the facts known by the party. The party must file an original Statement with the *Pro Se* Office (see I(a)) and serve a copy on all other parties or their counsel if represented. The original Statement must indicate the date a copy was mailed to the other party or that party's attorney.

For questions about these practices, please contact the Courtroom Deputy at (212) 805-0286.