

**INDIVIDUAL RULES AND PROCEDURES**

**JUDGE SHIRA A. SCHEINDLIN**

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**INDEX**

<b>I.</b>	<b>GENERAL MATTERS</b> .....	1
	A. Procedural Rules .....	1
	B. Communications .....	1
	C. Filing of Papers .....	1
	D. Extensions or Adjournments .....	1
	E. Other Matters .....	2
<b>II.</b>	<b>MOTION RULES AT A GLANCE</b> .....	2
<b>III.</b>	<b>MOTION RULES &amp; PROCEDURES</b> .....	2
	A. Pre-motion Conference .....	2
	B. Motions Not Requiring a Pre-Motion Conference .....	2
	C. Pro Hac Vice Admission .....	3
	D. Filing and Service .....	3
	E. Return Dates .....	4
	F. Oral Argument .....	4
	G. Memoranda of Law .....	4
	H. Affidavits & Exhibits .....	4
	I. Summary Judgment Motions .....	4
	J. Orders to Show Cause .....	4
	K. Failure of the Court to Decide a Motion .....	5
<b>IV.</b>	<b>PRETRIAL &amp; TRIAL RULES &amp; PROCEDURES</b> .....	5
	A. Pretrial Conferences (Initial Case Management Conference) .....	5
	B. Discovery .....	5
	C. RICO Statements .....	6
	D. Pretrial Orders and Submissions .....	6
	E. Trial .....	7
	F. Related Cases .....	8
	G. Default Judgments .....	8
	H. Certificate of Default .....	8

## **I. GENERAL MATTERS**

### **A. Procedural Rules**

The Court's procedures are governed by the Federal Rules of Civil Procedure, the Local Rules of the Southern District, and the rules set forth below.

### **B. Communications**

Counsel should not call Chambers with procedural questions. Telephone calls to Chambers should be made only for urgent matters requiring the Court's immediate attention. Calls to Chambers should not be made to confirm the receipt of faxes or to inquire whether any action has been taken on them.

Telephone calls from attorneys will be accepted in Chambers between the hours of 9:30 a.m. and 10:30 a.m. and 4:30 p.m. and 5:30 p.m. In all other matters, communications to the Court should be by letter, which must identify the name and docket number of the case, be marked with the initials of the judge (SAS), contain the writer's business address, telephone number, and fax number, and be signed by the attorney responsible for the matter. They must state the manner in which the letter was served on all other counsel. Fax transmissions exceeding three pages will not be accepted without prior approval by Chambers. *Scheduling of all calendar matters, except for requests for adjournments which must be made in writing, should be directed to Deputy Law Clerk Jim Reily at (212) 805-0120.*

Copies of all communications to the Court must be sent to adversaries and must reflect the manner of delivery to adversaries (e.g., "By Hand," "By Express Mail"), and should include the adversaries' contact information. Any communication that is delivered to an adversary by means other than the one used to deliver it to the Court must contain a statement of why such other method was used.

### **C. Filing of Papers**

No original documents will be accepted in Chambers for filing unless the document requires the Judge's signature before docketing. All stipulations and orders, including consent orders, orders to show cause, preliminary injunctions, and temporary restraining orders, shall be brought to the Orders Clerk (500 Pearl Street, Clerk's Office). Judgments shall be presented to the Judgment Clerk (500 Pearl Street, Clerk's Office). A courtesy copy of all papers (excluding pleadings, discovery requests and responses) filed with the Clerk should be submitted to Chambers (Room 1620). Only documents with original signatures will be accepted for filing.

### **D. Extensions or Adjournments**

Extensions and adjournments of Court-imposed dates and deadlines will be granted only for compelling reasons. The Court's permission is required to extend or adjourn Court-imposed dates and deadlines. Requests for adjournments or extensions must be *in writing (not by telephone)* with copies sent to all counsel. Such requests must set forth the relief sought, the number and disposition of prior requests, and whether consent of all affected parties has been obtained. Requests must be received in Chambers by noon, at least two days before the scheduled conference. *All adjournment requests must be accompanied by a proposed order reflecting the requested adjournment/extension.* For example, if your request will affect the dates set forth in the Scheduling Order entered at the Rule 16 conference, you must advise the Court of those dates

and submit a proposed Order setting forth the requested new schedule. Such requests may be faxed to Chambers, without prior permission from the Court, if limited to one single-spaced page and one proposed order. When adjournments are granted, it is upon the condition that the party requesting the adjournment notify all other parties of the new schedule/date.

#### **E. Other Matters**

Citations to New York cases must include citations to New York Supplement, and citations to Supreme Court cases must include citations to the United States Reports. WESTLAW citations should be given, if available, for cases not reported in an official reporter. Citations to cases not available in WESTLAW or LEXIS/NEXIS should be accompanied by copies of the cases cited.

### **II. MOTION RULES AT A GLANCE**

Motion Returnable: Any Court day (the fully submit day)  
Oral Argument: Upon request of Court  
Filing Rules: In accordance with the ECF system  
Courtesy Copies to Chambers: Yes

### **III. MOTION RULES & PROCEDURES**

#### **A. Pre-motion Conference**

A party must write to Chambers, with a copy to opposing counsel, to request a pre-motion conference before bringing any motion. (Certain specific motions are not governed by this rule and are listed below.) This letter shall be submitted at least seven business days prior to the proposed conference. It must explain the grounds for the motion and shall be no more than three pages in length. Within three business days after receipt of the letter, an adversary wishing to oppose the motion must submit a written response with a courtesy copy to Chambers. This response shall also be limited to three pages.

Motions will be resolved at the pre-motion conference to the extent possible. If papers are found to be necessary, the issues to be considered will be defined and a briefing schedule set. This letter exchange does not apply to either side in *pro se* cases.

A pending summary judgment motion cancels any previously scheduled status conference unless the parties are notified otherwise by Chambers. A new conference date will be set by the Court after the pending motion is decided. Conferences are not cancelled by other motions such as motions to dismiss.

*Habeas corpus* petitions and motions in social security cases may be filed with the Clerk's Office without a pre-motion conference.

#### **B. Motions Not Requiring a Pre-Motion Conference**

A pre-motion conference is not required for the following motions:

- \* applications for temporary restraining orders or preliminary injunctions;
- \* motions involving persons in custody;

- \* motions for reargument or reconsideration (additionally, parties should not submit opposition to a motion for reconsideration unless otherwise directed by the Court);
- \* motions for reduction of sentence;
- \* *pro hac vice* admissions;
- \* *in forma pauperis* motions;
- \* applications for attorney's fees; and
- \* motions for a new trial or amendment of judgments.

While a pre-motion conference is also not required for the following motions, the parties must *exchange* letters prior to bringing the motion, *but should not submit them to the Court*. The parties should attempt to eliminate the need for these motions based on this exchange of letters. However, where any such motion is eventually made, the moving party must certify that pre-motion letters were exchanged:

- \* motions to dismiss;
- \* motions for a more definite statement;
- \* motions for sanctions under Rule 11;
- \* motions to remand;
- \* motions to confirm or compel arbitration; and
- \* motion for leave to amend a complaint. If a motion to amend a complaint is unopposed or is made within the period prescribed by Fed. R. Civ. P. 15(a), then the moving party need not comply with these rules, but should submit a letter and a proposed order to the Court. If a motion to amend a complaint is made beyond the period prescribed by Rule 15(a) and the motion is opposed, then the parties must comply with these rules. Leave to amend a complaint will be freely granted.

### **C. Pro Hac Vice Admission**

A party seeking a pro hac vice admission must first consult with its adversaries to determine if there is any opposition. If there is no opposition, the party should request admission by means of a short letter, sent to Chambers, enclosing a proposed order. No declaration or certificate of good standing is required and the letter should not be filed with the Clerk's Office. Parties are reminded that a \$25 fee must be paid to the Cashier's Office with each pro hac vice admission.

### **D. Filing and Service**

Copies of all motions, opposition papers, cross-motions, reply papers, and supporting papers must be served on the party's adversaries, *and courtesy copies must be sent to Chambers*. Original motion papers must be filed with the Clerk's Office and may be filed when served.

Unless the Court has already set a schedule, the parties are responsible for proposing a briefing schedule by letter to the Court and submitting a proposed order. The parties are responsible for rescheduling the dates on which they will serve each other with papers so long as it does not affect the "fully submit" date previously established by the Court. The Court does not need to know of or approve alterations to the dates on which the parties intend to serve each other. The Court should be notified only if (1) the parties cannot agree on dates to serve one another, or (2) if the parties wish to change the final submission date set by the Court for the motion.

Pro se litigants must file all motions and opposition/reply papers with the Pro Se Office, 500 Pearl Street, Room 230, New York, New York 10007.

#### **E. Return Dates**

Motions are returnable on any court day. Scheduling will be determined by the Federal Rules of Civil Procedure and the Local Rules, unless otherwise directed by the Court at the pre-motion conference.

#### **F. Oral Argument**

The Court will request oral argument if so desired. The Court will also consider a request by either party for oral argument. Counsel will ordinarily be limited to 15 minutes of argument, and counsel should assume that the Court has read and is familiar with the papers. Unless otherwise ordered by the Court, argument will not be heard in pro se matters. Pro se prisoner plaintiffs are not permitted to appear at conferences by telephone.

#### **G. Memoranda of Law**

All motions and cross-motions must be accompanied by a memorandum of law. All memoranda, including footnotes, should be in the same font and shall be no less than 12 point. Margins shall be set at 1 inch: top, bottom, left and right. If footnotes, which may be single-spaced, are in a different font or are less than 12 point, the entire memorandum will be rejected. The memorandum of law shall not exceed 25 double-spaced pages, and any memorandum in excess of 10 double-spaced pages shall include a table of contents and a table of authorities. The table of contents, table of authorities, and signature block do not count toward the page limit. Exhibits must be tabbed and indexed. Reply memoranda may not exceed 10 double-spaced pages. Sur-replies will not be accepted unless permitted by the Court in advance. These page limits do not apply to memoranda submitted in reference to a motion for reargument. Such memoranda shall not exceed 10 double-spaced pages.

#### **H. Affidavits & Exhibits**

Parties are limited to a total of five affidavits each in support of or in opposition to a motion. Affidavits may not exceed ten double-spaced pages. Parties are limited to a total of fifteen exhibits, including exhibits attached to an affidavit, in support of any motion. Each exhibit is limited to fifteen pages. If possible, the exhibits should be excerpted to include only the relevant material.

#### **I. Summary Judgment Motions**

On summary judgment motions, movant's Local Rule 56.1 statement must present each asserted fact in an individually numbered paragraph that details and cites the documentary support for that assertion (e.g., deposition, affidavit, letter, etc.). The opponent's response must mirror the movant's statement by admitting and/or denying all of movant's assertions in similarly numbered paragraphs, specifically indicating the relevant documentary support. No exhibits shall be annexed to Rule 56.1 statements.

#### **J. Orders to Show Cause**

As with any order, all applications for orders to show cause and temporary restraining orders must be brought to the Orders Clerk for approval as to form and then to Chambers. Unless special cause is shown, an order

to show cause will not be issued unless the party requesting such an order has provided reasonable notice to all adversaries and all adversaries have had an opportunity to appear and oppose the application.

**K. Failure of the Court to Decide a Motion**

If a motion is not decided within 60 days of the time it is fully submitted, counsel for the movant shall send a letter to the Court to call this fact to the Court's attention.

**IV. PRETRIAL & TRIAL RULES & PROCEDURES**

**A. Pretrial Conferences (Initial Case Management Conference)**

**1. Criminal Cases**

Assistant United States Attorneys are responsible for informing Chambers, by calling Deputy Law Clerk Jim Reily, when a new criminal case has been assigned to Judge Scheindlin. Upon such notification, an initial pretrial conference will be scheduled.

**2. Civil Cases**

Approximately two months after the complaint in a civil case is filed, a pretrial conference will be scheduled, usually by written notice. Pretrial status conferences may be suggested in writing by the parties, or called by the Court, at any time. Counsel must bring to the first pretrial conference a proposed Scheduling Order (a written discovery plan) that lists, among other things, depositions to be taken. Counsel must also be prepared to discuss any contemplated motions and settlement. A form for the Scheduling Order can be obtained in the courtroom.

**3. Appearances**

An attorney with knowledge of the case and authority to engage in settlement discussions must appear at all conferences with the Court.

**B. Discovery**

**1. Discovery Rules**

The Court has prepared Suggested Rules of Discovery Practice concerning depositions and document production. The parties are urged to take these Suggested Rules into consideration when conducting depositions and requesting documents and prior to submitting discovery disputes to the Court. A copy of the Suggested Rules can be obtained in the courtroom.

**2. Discovery Motions**

No motions regarding discovery disputes are permitted. Rather, if such a dispute cannot be resolved by the parties, a party should submit a letter not exceeding three pages. Any letter submitted by opposing counsel is limited to three pages and shall be submitted no more than three business days after the original letter. The Court will hear argument from counsel promptly after receipt of these submissions, if deemed necessary.

### **C. RICO Statements**

Within 20 days of filing a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, the party asserting the RICO claim must file with the Court, and serve upon the opposing party, a RICO Statement. In preparing the RICO statement, counsel should refer to and follow the Instructions for Filing a Rico Statement, which can be obtained in the courtroom.

### **D. Pretrial Orders and Submissions**

#### **1. Joint Pretrial Orders**

Counsel are required to prepare and submit a Joint Pretrial Order by the date set at the initial pretrial conference. In preparing the order, counsel should refer to and follow the Court's Joint Pretrial Order form, which can be obtained in the courtroom. Witnesses should be listed in alphabetical order. This order is to be a joint submission, prepared by all parties and/or counsel. The parties should promptly draft and exchange proposed Joint Pretrial Orders and should then meet by telephone or in person to finalize the order and submit it to the Court (the original and one courtesy copy to Chambers). If the parties cannot agree on a particular point, they may submit separate proposals, solely with respect to that point. The remainder of the order should be a joint submission. An electronic copy must also be submitted to Chambers on a 3-1/2" diskette or CD-ROM in Corel WordPerfect 9 format. The parties should include their fax numbers and e-mail addresses on the form.

Where a pro se plaintiff is incarcerated, the defendant is responsible for preparing the first draft of the Joint Pretrial Order.

#### **2. Motions in Limine**

Motions in limine and opposition thereto must be fully submitted at least two weeks before the scheduled trial date.

#### **3. Jury Trials**

In jury trials, all parties should prepare jointly a list of (1) voir dire questions to be asked of prospective jurors on which they agree; (2) requests to charge on which they agree; and (3) a proposed verdict sheet on which they agree.

If any 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 and (2) propose an alternative. Objections to proposed voir dire questions or requests to charge must include citation to authority.

The joint list of voir dire questions, requests to charge and proposed verdict sheet should be presented in one document, and the parties' objections and alternative proposals should be presented in another.

All three documents must be submitted to the Court along with the Joint Pretrial Order. Electronic copies must also be submitted on a 3-1/2" diskette or CD-ROM in Corel WordPerfect 9 format.

#### **4. Bench Trials and Hearings**

Unless otherwise instructed, counsel are required to submit proposed findings of fact and conclusions of law in conjunction with the Joint Pretrial Order. The parties should also submit trial memoranda of law that identify the issues, summarize facts and applicable law, and address any evidentiary issues, not to exceed twenty-five double-spaced pages. These documents should be submitted at least one week before the scheduled trial date. Electronic copies must also be submitted on a 3-1/2" diskette or CD-ROM in Corel WordPerfect 9 format.

#### **5. Duty of Disclosure**

All counsel are reminded that Rules 26(a)(2) and 26(a)(3) of the Federal Rules of Civil Procedure are in effect in this District and will be strictly enforced by this Court.

Specifically, Fed. R. Civ. P. 26(a)(2) requires that 90 days prior to the trial date or the date the case is to be ready for trial, a party must identify any expert it expects to call at trial and must produce a "written report prepared and signed" by the expert witness. "The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions," as well as the qualifications, compensation and prior testimony of the witness. Any expert offered as a trial witness solely to rebut another party's expert must be identified, with the required accompanying disclosure, within 30 days after the adversary's expert disclosure.

Fed. R. Civ. P. 26(a)(3) requires that 30 days prior to trial, each party must provide the following information:

- a. the name, address and telephone number of each witness a party intends to call at trial "separately identifying those whom the party may call if the need arises;"
- b. deposition testimony expected to be used at trial;
- c. "an appropriate identification of each document or other exhibit, including summaries of other evidence."

Within 14 days after this identification, an adversary must serve and file any objections as to the admissibility of the documents, depositions or witnesses identified pursuant to the Rule. "Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown" (emphasis added).

**A FAILURE TO COMPLY WITH THESE RULES WILL RESULT IN PRECLUSION.** See Fed. R. Civ. P. 37(c)(1).

### **E. Trial**

#### **1. Timing**

Counsel must be prepared to proceed to trial on forty-eight (48) hours telephone notice once the Joint Pretrial Order has been filed. Any party with a scheduling problem or conflict must bring it to the Court's attention by letter at the time the Joint Pretrial Order is filed. If such scheduling problem or conflict arises after the



Joint Pretrial Order is filed, the Court must be notified by letter immediately.

## **2. Procedure During Trial**

Counsel proceeding to trial should obtain a copy of Judge Schindlin's rules on the Conduct of Counsel at Trial, which can be obtained in the courtroom. Counsel should also exchange any demonstrative evidence before trial.

### **F. 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., 00 Civ. 1234 [rel. 99 Civ. 4321]).

### **G. Default Judgments**

Applications for default judgments will not be accepted unless they include the following:

- (1) A description of the nature of the claim;
- (2) An affidavit representing that this Court has subject matter jurisdiction over the action;
- (3) An affidavit representing that this Court has personal jurisdiction over the defendant;
- (4) An affidavit representing that the defendant is not an infant or an incompetent;
- (5) An original certificate of default (*see below for instructions*) stating that the defendant was properly served and failed to answer/appear, signed and stamped by the Clerk of the 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);
- (6) Reasonable attorney's fees incurred in the preparation of the default judgment application, usually not to exceed \$2,000, if attorney's fees are sought; and
- (7) All required substantiating documentation. (Generally, a copy of the complaint satisfies (1), (2), and (3).)

If the plaintiff seeks an award of damages in the motion for default judgment, the plaintiff must also include:

- (8) A request for an amount equal to or less than the principal amount demanded in the complaint;
- (9) 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);
- (10) An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
- (11) A request for interest on the principal amount not to exceed 9%, if interest is sought;
- (12) The calculations made in arriving at the proposed judgment amount.

### **H. Certificate of Default**

To file for a certificate of default, parties must submit to the Clerk of the Court a "request for entry of default" and a proposed "clerk's certificate." Parties must submit this electronically through the ECF system

but must also send a courtesy copy of the certificate only, by hand or mail (along with a self addressed stamped envelope) to the Orders and Judgments Clerk for signature and seal. This signed certificate is to be attached to the default judgment when the default judgment is submitted to this Court.

A sample default judgment and clerk's certificate of default is available under *Forms* on the Southern District of New York's website: <http://www.nysd.uscourts.gov/forms.htm#Judgments>