

Commercial & Federal Litigation Section

Individual Practices of Judges and Magistrate Judges in the Southern District of New York

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**INDIVIDUAL PRACTICES OF
JUDGES AND MAGISTRATE JUDGES
IN THE SOUTHERN DISTRICT OF NEW YORK**

Rule 83(b) of the Federal Rules of Civil Procedure provides that with respect to “Judge’s Directives” or “Individual Practices”:

A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.¹

There currently are forty-four active and senior judges and fourteen full-time magistrate judges in the Southern District of New York and all of them have their own Individual Practices. For the most part, the Individual Practices in the Southern District of New York can be grouped into three categories: (a) communications with Chambers; (b) pleadings and motions; and (c) pretrial procedures. A chart outlining and annotating the Individual Practices of Judges and Magistrate Judges in the Southern District of New York by these categories as of November 2007 is attached hereto as Exhibit A.

Consistent with the prerogatives and latitudes of federal judges and magistrate judges, there is some diversity in their Individual Practices. For example, certain judges in the Southern District of New York allow telephone calls to Chambers, while others discourage or prohibit them. Some judges allow faxes to Chambers and others restrict the sending of faxes. In addition, some judges require two courtesy copies of motions, while other judges require one copy to be delivered to Chambers.

With respect to these Chambers’ communication-type requirements, the Bar should expect there to be differences. On procedural or substantive issues, however, because

¹ See FED. R. CIV. P. 83(b).

civil rules in federal court should promote “the just, speedy and inexpensive determination of every action,”² the Bar benefits from Individual Practices being consistent with the Federal Rules and the Local Rules of the Southern and Eastern Districts of New York;³ that is, reasonably uniform. And to a large extent, on matters relating to motion practice and pretrial procedures, there is uniformity among the Individual Practices of the judges and magistrate judges in the Southern District of New York.

With regard to the content of proposed pretrial orders and the length of memoranda of law, almost two-thirds of the judges in the Southern District have identical or nearly identical practices. While the Bar must be mindful of the nuances of each judge’s Individual Practices,⁴ compliance with them should make adherence to the requirements of the Federal Rules of Civil Procedure easier.

² See FED. R. CIV. P. 1.

³ See Fruit of the Loom, Inc. v. American Marketing Enterprise, Inc., 192 F.3d 73, 75 (2d Cir. 1999) (“District court judges are bound by the Federal Rules of Civil Procedure and may not apply their individual practice rules in a manner that is inconsistent with the Federal Rules.”); see also Camacho v. City of Yonkers, 236 F.3d 112, 117 (2d Cir. 2000) (dismissing defendant’s appeal, the Second Circuit stated, “We do so with the hope, however, that this result can be avoided in the future if litigants rely on the Federal Rules of Appellate Procedure and the Federal Rules of Civil Procedure when they calculate the time for taking an appeal and the district courts modify local and individual rules, so they do not lead the unwitting to believe that they have preserved a right to appeal when in fact they have not.”).

⁴ See Camacho, 236 F.3d at 113 (“[W]e respectfully request that the district courts examine court rules and individual judges’ rules and consider revising those that serve as a snare for the unwary litigant.”); Fruit of the Loom, 192 F.3d at 74 (“We write to remind the bar that individual practice rules of a district judge must be read in conjunction with the Federal Rules of Civil Procedure and the Federal Rules and their jurisdictional filing dates supersede any seemingly contrary district court practice rule.”).

Commentary associated with an amendment to Rule 83(b) in 1995 noted:

[T]he amendment to this rule disapproves imposing sanctions or other disadvantage on a person for noncompliance with such an internal directive, should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular court unless the party or attorney has actual notice of those requirements. Furnishing litigants with a copy outlining the judges practice- or attaching instructions to a notice setting a case for conference or trial- would suffice to give actual notice, as would an order in a case specifically adopting by reference a judge’s standing order and indicating how copies can be obtained.

FED. R. CIV. P. 83 advisory committee’s note. While litigation associated with a party being sanctioned for noncompliance with a judge’s Individual Practices has not been extensive, the Second Circuit has made it clear that sanctions cannot be imposed for noncompliance with an Individual Practice unless the alleged violator previously was furnished with actual notice of the requirement. See Amnesty America v.

Areas where there already is significant uniformity among Individual Practices

include the following:

Pretrial Orders

- Filed within 30 days of the trial date set by the Court:
- Include case caption, names, communication information (address, telephone, fax, email) of trial counsel as well as the following:
 - A statement regarding subject matter jurisdiction.
 - A statement from each party regarding the claims and defenses for a jury trial or a statement of the elements of each claim or defense together with a summary of the facts relating to each element in non-jury cases.
 - An estimate of trial days.
 - What evidentiary issues will be the subject of in limine motions.
 - The stipulations the parties have reached on facts or questions of law.
 - Statements by each party regarding each witness whose testimony is to be offered and whether the witness will testify in person or by deposition.
 - Designations and cross-designations with objections of depositions to be offered by each party.
 - Exhibit list with authenticity objections identified.
 - Proposed Requests to Charge and Voir Dire questions and a Pretrial Memoranda for jury cases.

Town of West Hartford, 288 F.3d 467, 471 (2d Cir. 2002) (“To the extent that district courts in this Circuit have held otherwise, see Murungi v. United States Dep’t of Veterans Affairs, 136 F. Supp. 2d 154, 157 n.2 (W.D.N.Y. 2001), we now clarify that under FED. R. CIV. P. 83(b), actual notice or the existence of a local rule providing notice is a precondition to the imposition of a sanction for failing to comply with a citation requirement.”). Moreover, the Second Circuit has made clear that an Individual Practice cannot impose requirements not found in federal law or the Federal Rules. See id. (“While district courts have considerable latitude in fashioning rules that will assist them in determining whether summary judgment is appropriate, they may not impose sanctions on litigants ‘for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.’”) (emphasis in original) (citing FED. R. CIV. P. 83(b)).

Memoranda of Law

- Memoranda in support or opposition to a motion must be up to 25 pages in length.
- Reply memoranda must be up to 10 pages in length.
- Any memoranda 10 pages or longer must contain a table of contents.

With respect to summary judgment motions, there is a Southern District Local Rule that addresses the format of the Rule 56.1 statement.⁵ Some judges have Individual Practices that also address the format of the Rule 56.1 statement. One of the Individual Practices that could be considered as an addition to the existing Local Rule or as a uniform Individual Practice is as follows:

The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement immediately preceding its response thereto.

Such a requirement would make it easier for the parties, as well as the Court, to determine whether triable issues of fact are in dispute.

In sum, while federal court practitioners may sometimes complain that it is difficult to adhere to each judge's differing Individual Practices, on the whole, the Practices are fairly uniform and the Committee hopes that the attached chart provides useful guidance. In addition, the Committee hopes that its suggestion regarding Rule 56.1 Statements is helpful to both the bench and the bar.

⁵ See S.D.N.Y. R. 56.1

EXHIBIT A

SOUTHERN DISTRICT JUDGES' INDIVIDUAL PRACTICES¹

1. Communications with Chambers

A. Letters

- i. Letters to chambers simultaneously delivered to all counsel. **(39)** (*Baer, Batts, Berman, Brieant, Buchwald, Castel, Cedarbaum, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Scheindlin, Stanton, Stein, Sullivan, Swain, Sweet, Wood*)
- ii. Letters not to be filed electronically. **(5)** (*Batts, Berman, Chin, Cote, Crotty*)
- iii. Letters between counsel not to be sent to Court. **(28)** (*Baer, Batts, Berman, Buchwald, Castel, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Kaplan, Karas, Keenan, Koeltl, Lynch, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Sprizzo, Sullivan, Swain, Sweet, Wood*)
 - a. ... unless doing so will advance the resolution of litigation. **(1)** (*Brieant*)
- iv. Letters to Court strictly forbidden. **(1)** (*Rakoff*)

B. Telephone calls

- i. To chambers, permitted. **(13)** (*Baer, Connor, Griesa, Hellerstein, Kram, McKenna, Patterson, Preska, Rakoff, Robinson, Sprizzo, Stanton, Sweet*)
- ii. To chambers, permitted only in emergency situation requiring immediate attention. **(28)** (*Batts, Berman, Buchwald, Castel, Cedarbaum, Chin, Cote, Crotty, Daniels, Duffy, Haight, Holwell, Jones, Kaplan, Karas, Keenan, Koeltl, Leisure, Lynch, Marrero, McMahon, Pauley, Sand, Scheindlin, Stein, Sullivan, Swain, Wood*)
- iii. To chambers, not permitted for any legitimate purpose. **(2)** (*Brieant, Carter*)

C. Faxes

- i. To chambers, not permitted. **(11)** (*Batts, Berman, Cedarbaum, Cote, Duffy, Griesa, Keenan, McKenna, Sand, Sprizzo, Stanton*)

¹This summary of the Southern District Judges' Individual Practices is current as of November 2007. The compilation set forth in this report is solely for analytical purposes and should not be relied upon as an authoritative source of the content of any Judge's Individual Practices. This summary addresses select Individual Practices and does not reference every Individual Practice of each of the Judges. It also does not compare the differences among the Judges on every subject contained in each Judge's Individual Practices. For example, this summary does not reflect every Individual Practice or differences among the Judge's Individual Practices on jury selection, conduct of bench trials, or how certain types of specific motions are handled.

- ii. To chambers, permitted only if copies sent to all counsel. **(18)** (*Baer, Brieant, Buchwald, Chin, Connor, Crotty, Holwell, Jones, Koeltl, Marrero, McMahon, Patterson, Preska, Scheindlin, Stein, Swain, Sweet, Wood*)
 - a. ... and are encouraged. **(1)** (*McMahon*)
- iii. To chambers, permitted only if authorized by Court. **(10)** (*Castel, Haight, Kaplan, Karas, Kram, Leisure, Lynch, Pauley, Robinson, Sullivan*)
- iv. To chambers, permitted only for urgent matters. **(2)** (*Hellerstein, Sullivan*)

Fax limit, without prior authorization

- i. Three pages. **(2)** (*Preska, Scheindlin*)
- ii. Four pages. **(1)** (*Holwell*)
- iii. Five pages. **(5)** (*Daniels, Chin, Marrero, Patterson, Stein, Swain*)
- iv. Ten pages. **(6)** (*Baer, Brieant, Connor, Crotty, Robinson, Sweet*)
- v. Twenty pages. **(2)** (*Koeltl, Wood*)
- vi. Fifty pages. **(1)** (*McMahon*)

D. Requests for Adjournments or Extensions of Time

- i. Must be made at least 48 hours prior to scheduled appearance. **(37)** (*Baer, Berman, Castel, Cedarbaum, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Kaplan, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Scheindlin, Stanton, Stein, Sullivan, Swain, Sweet, Wood*)
 - a. ... and are not favored. **(3)** (*Brieant, Carter, McMahon*)

Must state:

- i. The original date. **(34)** (*Batts, Berman, Buchwald, Castel, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Stanton, Stein, Sullivan, Swain, Sweet, Wood*)
- ii. The number of previous requests for adjournment or extension. **(37)** (*Batts, Berman, Buchwald, Castel, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Kaplan, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Scheindlin, Stanton, Stein, Sullivan, Swain, Sweet, Wood*)
- iii. Whether prior requests were granted or denied. **(37)** (*Batts, Berman, Buchwald,*

Castel, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Kaplan, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Scheindlin, Stanton, Stein, Sullivan, Swain, Sweet, Wood)

- iv. Whether the adversary consents, and if not, reason for refusal. **(38)** *(Baer, Batts, Berman, Buchwald, Castel, Cedarbaum, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Hellerstein, Holwell, Jones, Kaplan, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Scheindlin, Stanton, Stein, Sullivan, Swain, Wood)*
- v. If adversary consents, counsel must jointly offer three alternative conference dates. **(1)** *(Crotty)*
- vi. Proposed order reflecting requested adjournment/extension. **(2)** *(Scheindlin, Sullivan)*

2. Pleadings and Motions

A. Courtesy Copies

- i. Courtesy copies of pleadings and motions must be sent to chambers at the same time they are filed. **(26)** *(Baer, Castel, Cedarbaum, Chin, Connor, Duffy, Haight, Hellerstein, Keenan, Koeltl, Leisure, McKenna, McMahon, Patterson, Pauley, Preska, Robinson, Sand, Scheindlin, Sprizzo, Stanton, Stein, Sullivan, Swain, Sweet, Wood)*
 - a. ... two courtesy copies. **(8)** *(Batts, Cote, Crotty, Holwell, Kaplan, Karas, Lynch, Marrero)*
- ii. Two 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. **(1)** *(Sullivan)*

B. Pre-motion conferences

Required?

- i. For discovery motions, follow Local Civil Rule 37.2. **(31)** *(Baer, Batts, Brieant, Buchwald, Castel, Cedarbaum, Chin, Connor, Cote, Daniels, Duffy, Griesa, Haight, Holwell, Jones, Karas, Keenan, Koeltl, Leisure, Lynch, McKenna, McMahon, Pauley, Preska, Robinson, Sand, Stanton, Stein, Sullivan, Swain, Wood)*
- ii. Pre-motion conferences not required for non-discovery motions. **(16)** *(Baer, Brieant, Cote, Daniels, Duffy, Griesa, Haight, Hellerstein, Jones, Kaplan, Lynch, McKenna, McMahon, Sand, Stein, Swain)*
 - a. ... and are not required for discovery motions either. **(2)** *(Owen, Sweet)*
- iii. Telephonic conferences are encouraged to resolve matters *in lieu of actual motions*.

(1) (*Rakoff*)

- iv. Pre-motion conferences required before any motion. (19) (*Batts, Berman, Buchwald, Castel, Chin, Connor, Crotty, Karas, Keenan, Leisure, Marrero, Pauley, Preska, Robinson, Scheindlin, Sprizzo, Stanton, Sullivan, Wood*)
- v. Pre-motion conferences required for summary judgment motions. (1) (*Cedarbaum*)

except motions...

- i. required by FRCP or FRAP to be made by a certain time, or any motions described in FRAP 4(a)(4)(A). (14) (*Batts, Berman, Buchwald, Castel, Connor, Holwell, Karas, Keenan, Marrero, Pauley, Preska, Sprizzo, Sullivan, Wood*)
- ii. to dismiss in lieu of an Answer. (17) (*Batts, Keenan, Leisure, Marrero, Preska, Stanton, Wood*)
- iii. for emergency relief. (1) (*Batts*)
- iv. preliminary injunctive relief. (6) (*Batts, Chin, Preska, Scheindlin, Stanton, Wood*)
- v. for remand. (6) (*Batts, Marrero, Pauley, Preska, Scheindlin, Wood*)
- vi. for pro hac vice admissions. (13) (*Batts, Berman, Castel, Connor, Crotty, Karas, Marrero, Pauley, Preska, Scheindlin, Stanton, Sullivan, Wood*)
- vii. for default judgment. (4) (*Batts, Castel, Crotty, Marrero*)
- viii. for relief from judgment/new trial. (3) (*Batts, Crotty, Scheindlin*)
- ix. for reargument or reconsideration. (12) (*Buchwald, Castel, Chin, Karas, Keenan, Marrero, Pauley, Preska, Scheindlin, Stanton, Sullivan, Wood*)
- x. by incarcerated pro se litigants. (7) (*Buchwald, Castel, Karas, Marrero, Pauley, Preska, Sullivan*)
- xi. ... by any pro se litigant. (1) (*Crotty*)
- xii. for notice of appeal. (1) (*Berman*)
- xiii. for order to show cause. (7) (*Castel, Crotty, Karas, Marrero, Pauley, Preska, Sullivan*)
- xiv. in cases involving a person in custody. (4) (*Chin, Scheindlin, Stanton, Wood*)
- xv. for reduction of sentences. (4) (*Preska, Scheindlin, Stanton, Wood*)
- xvi. for criminal motions. (1) (*Crotty*)
- xvii. for cross-motions. (1) (*Keenan*)

- xviii. to affirm or vacate an arbitration award. **(5)** (*Batts, Marrero, Preska, Scheindlin, Stanton*)
- xix. to compel arbitration. **(2)** (*Scheindlin, Wood*)
- xx. objections to Magistrate Judge’s ruling **(4)** (*Marrero, Preska, Stanton, Wood*)
- xxi. for attorney’s fees or sanctions. **(5)** (*Marrero, Pauley, Preska, Scheindlin, Wood*)
- xxii. for temporary retraining orders. **(4)** (*Preska, Scheindlin, Stanton, Wood*)
- xxiii. pursuant to Section 21(D)(a)(3)(A)(i) of the Securities Exchange Act of 1934 to consolidate and for appointment of lead counsel. **(1)** (*Preska*)
- xxiv. for in forma pauperis motions. **(1)** (*Scheindlin*)
- xxv. to dismiss. **(1)** (*Scheindlin*)
- xxvi. for a more definite statement. **(1)** (*Scheindlin*)
- xxvii. for Rule 11 sanctions. **(1)** (*Scheindlin*)
- xxviii. for leave to amend a complaint. **(1)** (*Scheindlin*)

Conferences *only required for...*

- i. summary judgment. **(2)** (*Holwell, Koeltl*)
- ii. motion to dismiss. **(1)** (*Holwell*)

Length of letter to arrange conference?

- i. No more than two pages. **(1)** (*Batts*)
- ii. No more than three pages. **(13)** (*Berman, Castel, Chin, Connor, Holwell, Karas, Keenan, Leisure, Pauley, Preska, Scheindlin, Sullivan, Wood*)

C. Memoranda of Law

- i. Support of and in opposition to: 25 pages. **(35)** (*Baer, Batts, Berman, Brieant, Buchwald, Castel, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Holwell, Karas, Keenan, Koeltl, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Rakoff, Robinson, Sand, Scheindlin, Sprizzo, Stein, Sullivan, Swain, Sweet, Wood*)
 - a. ... 35 pages. **(2)** (*Kaplan, Kram*)
 - b. ... 20 pages. **(1)** (*Preska*)

- ii. Reply: 10 pages. **(37)** (*Baer, Batts, Berman, Brieant, Buchwald, Castel, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Holwell, Kaplan, Karas, Keenan, Koeltl, Leisure, Lynch, Marrero, McKenna, McMahan, Patterson, Pauley, Preska, Rakoff, Robinson, Sand, Scheindlin, Sprizzo, Sullivan, Stein, Swain, Sweet, Wood*)
 - a. ... 15 pages. **(1)** (*Kram*)
 - iii. Memoranda of 10 pages or more must contain a table of contents. **(33)** (*Baer, Batts, Berman, Brieant, Buchwald, Castel, Chin, Connor, Cote, Crotty, Daniels, Duffy, Griesa, Haight, Holwell, Kaplan, Karas, Keenan, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Sand, Stein, Sullivan, Swain, Sweet, Wood*)
 - a. ... all memoranda must contain a table of contents. **(1)** (*Robinson*)
- D. Oral Argument on Motions
- i. Is held on all motions **(6)** (*Brieant, Cedarbaum, Karas, Owens, Sand, Sweet*)

except...

- a. for motions on reargument. **(4)** (*Brieant, Cedarbaum, Owens, Sand*)
 - b. for pro se matters. **(3)** (*Cedarbaum, Owens, Sand*)
 - c. for appeals from Magistrate Judges' rulings. **(1)** (*Owen*)
 - ii. Must be requested by letter, and the Court will determine whether argument will be heard, and if so, advise counsel of the time. **(25)** (*Buchwald, Case, Chin, Connor, Cote, Daniels, Duffy, Griesa, Haight, Kolwell, Kaplan, Keenan, Koeltl, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Robinson, Scheindlin, Stanton, Stein, Swain, Wood*)
 - iii. Is held where the parties are represented by counsel and where oral argument would assist the Court. **(1)** (*Sullivan*)
 - iv. Is heard only in unusual circumstances, or rarely. **(2)** (*Carter, McMahan*)
- E. Affidavits and Exhibits in Support of or in Opposition to Motion
- i. Parties are limited to five affidavits in support of or in opposition to a motion. Each affidavit may not exceed ten double-spaced pages. **(1)** (*Scheindlin*)
 - ii. 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. **(1)** (*Scheindlin*)

F. RICO Statement

- i. Claims asserting violations of 18 U.S.C. § 1962 must be accompanied by a “RICO Statement.” **(2)** (*Batts, Scheindlin*)

3. Pretrial Procedures

A. Filings Prior to Trial in Civil Cases

Each party shall file...

- i. 10 days before trial **(2)** (*Baer, Kram*)
- ii. At least one week before trial **(2)** (*Connor, Robinson*)
- iii. 15 days before trial if date fixed, or 30 days after filing or any pretrial order if no trial date **(15)** (*Berman, Buchwald, Chin, Daniels, Duffy, Griesa, Jones, Koeltl, McKenna, Patterson, Pauley, Preska, Sand, Stein, Sweet*)
- iv. As soon as conveniently possible before the trial readiness date as set in the Case Management Plan **(1)** (*Brieant*)
- v. At same time the parties file the joint pretrial order **(11)** (*Castel, Cote, Holwell, Karas, Leisure, Lynch, Marrero, McMahon, Sprizzo, Sullivan, Wood*)

Containing...

- i. In jury cases, requests to charge and proposed voir dire questions. **(32)** (*Baer, Berman, Brieant, Buchwald, Chin, Connor, Cote, Daniels, Duffy, Griesa, Hellerstein, Holwell, Jones, Karas, Koeltl, Kram, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Rakoff, Robinson, Sand, Scheindlin, Sprizzo, Stein, Sullivan, Sweet, Wood*)
- ii. In jury cases, proposed instructions and verdict sheets. **(4)** (*Castel, Karas, Scheindlin, Sullivan*)
- iii. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of facts required to establish each element. **(19)** (*Baer, Berman, Buchwald, Chin, Daniels, Duffy, Griesa, Jones, Koeltl, Leisure, McKenna, McMahon, Patterson, Pauley, Preska, Sand, Stein, Sweet, Wood*)
- iv. In non-jury cases, proposed findings of fact and conclusions of law. **(12)** (*Castel, Connor, Cote, Hellerstein, Holwell, Karas, Lynch, Marrero, Robinson, Sand, Sprizzo, Sullivan*)
- v. In non-jury cases, brief summary of salient portions of each deposition to be offered into evidence. **(2)** (*Connor, Robinson*)
- vi. In all cases, motions addressing issues which should be resolved in limine. **(26)** (*Baer, Berman, Buchwald, Castel, Chin, Cote, Daniels, Duffy, Griesa, Holwell, Jones, Karas,*

Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Rakoff, Sand, Stein, Sullivan, Sweet, Wood)

- vii. In any case where a party believes it would be useful, a pretrial memorandum. **(25)**
(Baer, Berman, Brieant, Buchwald, Castel, Chin, Cote, Daniels, Duffy, Griesa, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, McKenna, Patterson, Pauley, Preska, Sand, Stein, Sullivan, Sweet, Wood)
- viii. ... pretrial memorandum required. **(2)** *(Hellerstein, Marrero)*
- ix. Witness list. **(2)** *(Brieant, Marrero)*
- x. Exhibit list. **(2)** *(Brieant)*
- xi. A statement of agreed upon facts. **(1)** *(Robinson)*

Each party shall serve, but not file...

- i. In non-jury cases, 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 the trial. **(1)** *(Sullivan)*
 - a. ...and three business days after submission of affidavits, a list of all affiants whom counsel intends to cross-examine at trial. **(1)** *(Sullivan)*
 - ii. In non-jury cases, deposition excerpts which will be offered as substantive evidence and one-page synopsis (with page references) of those excerpts for each deposition. **(1)** *(Sullivan)*
 - iii. In non-jury cases, all documentary evidence. **(1)** *(Sullivan)*
- B. Pretrial Order**
- i. Not required unless directed by Court. **(4)** *(Brieant, Connor, Owen, Robinson)*

Must be filed...

- ii. 30 days following completion of discovery in a civil case. **(22)** *(Berman, Buchwald, Castel, Cote, Daniels, Duffy, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Sand, Stein, Sullivan, Sweet, Wood)*
- iii. At least two weeks prior to trial. **(1)** *(Carter)*
- iv. At least one week prior to trial. **(1)** *(Rakoff)*

Contents

- i. Only the information required by FRCP 26(a)(3). **(1)** *(Buchwald)*

- ii. The full caption of action. **(26)** (*Baer, Batts, Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Sand, Scheindlin, Sprizzo, Stanton, Stein, Sullivan, Sweet, Wood*)
- iii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel. **(29)** (*Baer, Batts, Berman, Carter, Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Sand, Scheindlin, Sprizzo, Stanton, Stein, Sullivan, Sweet, Wood*)
- iv. Brief, non-adversarial statement of basic nature of the case. **(5)** (*Batts, Carter, Crotty, Kaplan, McMahan*)
- v. A brief statement by 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. **(27)** (*Baer, Batts, Berman, Carter, Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, McKenna, Patterson, Pauley, Preska, Sand, Scheindlin, Sprizzo, Stein, Sullivan, Sweet, Wood*)
- vi. A brief summary by each party of the claims and defenses the party has asserted which remain to be tried, identifying claims and defenses previously asserted which are not to be tried. **(27)** (*Baer, Berman, Carter, Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Rakoff, Sand, Scheindlin, Stein, Sullivan, Sweet, Wood*)
- vii. A statement by each party as to whether the case is to be tried with or without a jury. **(29)** (*Batts, Berman, Castel, Chin, Cote, Crotty, Daniels, Duffy, Holwell, Jones, Kaplan, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, McMahan, Patterson, Pauley, Preska, Sand, Scheindlin, Sprizzo, Stanton, Stein, Sullivan, Sweet, Wood*)
- viii. An estimate of the number of trial days needed. **(28)** (*Batts, Carter, Cedarbaum, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Rakoff, Sand, Scheindlin, Sprizzo, Stanton, Stein, Sullivan, Sweet, Wood*)
- ix. A statement as to whether parties have consented to trial by a magistrate judge, without identifying which parties have or have not so consented. **(25)** (*Berman, Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Jones, Kaplan, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Sand, Sprizzo, Stein, Sullivan, Sweet, Wood*)
- x. Any stipulations or agreed statements of fact or law which have been agreed to by all parties. **(34)** (*Baer, Batts, Berman, Carter, Castel, Cedarbaum, Chin, Cote, Crotty, Daniels, Duffy, Hellerstein, Holwell, Jones, Kaplan, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, McMahan, Patterson, Pauley, Preska, Rakoff, Sand, Scheindlin, Sprizzo, Stanton, Stein, Sullivan, Sweet, Wood*)

- xi. A statement by each party as to witnesses whose testimony is to be offered in its case-in-chief, indicating whether such witnesses will testify in person or by deposition. **(23)** (*Berman, Castel, Cote, Daniels, Duffy, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Sand, Scheindlin, Stein, Sullivan, Sweet, Wood*)
- xii. A designation by each party of deposition testimony to be offered with cross-designations and objections by any other party. **(24)** (*Baer, Carter, Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Jones, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, Patterson, Pauley, Preska, Sand, Stein, Sullivan, Sweet, Wood*)
- xiii. A list of exhibits to be offered **(30)** (*Baer, Batts, Carter, Castel, Cedarbaum, Chin, Cote, Crotty, Daniels, Duffy, Hellerstein, Jones, Kaplan, Karas, Koeltl, Leisure, Lynch, Marrero, McKenna, McMahon, Patterson, Pauley, Preska, Rakoff, Sand, Scheindlin, Sprizzo, Stanton, Sullivan, Sweet, Wood*)
 - a. ... with one star (or similar indication) for no authenticity objection, two stars for no objections at all. **(19)** (*Castel, Chin, Cote, Daniels, Duffy, Hellerstein, Holwell, Karas, Koeltl, Leisure, Lynch, McKenna, Patterson, Preska, Sand, Stein, Sullivan, Sweet, Wood*)
- xiv. Plaintiff's and Defendant's assertions of disputed facts. **(6)** (*Batts, Cedarbaum, Crotty, Kaplan, Sprizzo, Stanton*)
- xv. Plaintiff's and Defendant's assertions of disputed law, with citations to a case or statute. **(5)** (*Batts, Carter, Cedarbaum, Scheindlin, Sprizzo*)
- xvi. Brief listing of issues of fact to be decided by the Court. **(2)** (*Carter, Rakoff*)
- xvii. List of witnesses. **(11)** (*Baer, Batts, Carter, Cedarbaum, Chin, Cote, Crotty, Kaplan, Rakoff, Scheindlin, Sprizzo*)
- xviii. Experts to be called at trial. **(4)** (*Batts, Scheindlin, Sprizzo, Stanton*)
- xix. Statement of disagreement as to the application of the FRCP or FRE. **(1)** (*Carter*)
- xx. List of all motions and other matters that require attention from the Court. **(2)** (*Carter, Crotty*)
- xxi. Statement of damage claims/relief sought. **(7)** (*Batts, Crotty, Holwell, Kaplan, McMahon, Rakoff, Sprizzo*)
- xxii. Statement whether the parties consent to a less than unanimous verdict. **(3)** (*Karas, Sand, Sullivan*)
- xxiii. Whether a separate trial of issues is advisable or feasible. **(2)** (*Scheindlin, Sprizzo*)
- xxiv. Previous substantive motions. **(2)** (*Scheindlin, Sprizzo*)

- xxv. Requested evidentiary rulings. (1) (*Scheidlin*)
- xxvi. Jury verdict. (1) (*Scheidlin*)

C. Discovery Disputes

If unable to reach agreement, submit letter:

- i. No longer than three pages. (1) (*Crotty*)

The letter should...

- i. Be jointly composed, and describe the issues in dispute, position of each party, and cite authority. (2) (*Lynch, Sullivan*)
- ii. Contain reasons why relief should be granted, with supporting authority. (1) (*Crotty*)

D. Orders to Show Cause

- i. Must be accompanied by an affidavit and supporting memorandum of law. (2) (*Cedarbaum, Haight*)
- ii. All proposed orders to show cause must first be brought to the Orders Clerk for approval, and then to Chambers. (2) (*Crotty, Leisure*)
- iii. Unless special cause is shown, the Court will not issue an order to show cause unless the requesting party's adversaries have been notified and afforded an opportunity to appear before the Court to oppose the request. (2) (*Haight, Leisure*)
- iv. A party seeking an order to show cause must arrange with the Court a time to appear that is agreeable to the Court and any adversary counsel wishing to appear. (1) (*Leisure*)

E. Default Judgments

- i. Follows a set of specific procedures. (9) (*Connor, Cote, Karas, McMahon, Pauley, Scheindlin, Sprizzo, Stein, Sullivan*)

F. Final Pretrial Conference

- i. The Court will schedule a final pretrial conference approximately two weeks before trial. In civil cases, the Court will use the occasion as an opportunity to explore the prospects of settlement. Counsel must be prepared to engage in meaningful settlement discussions. (1) (*Marrero*)

G. Disclosure of Experts

- i. All trial witnesses including experts must be disclosed by no later than 15 days before the close of discovery. (1) (*Cedarbaum*)

4. Civil Trial Practices

A. Electronic Cases

- i. All civil and criminal cases (except pro se) are Electronic Case Filings. **(2)** (*Crotty, Hellerstein*)
- ii. For all cases designated ECF, parties are responsible for being current in any and all matters filed electronically by this Court. **(1)** (*Batts*)
- iii. Courtesy copies of motion papers in ECF cases should be submitted. **(2)** (*Brieant, Sullivan*)
- iv. Opinions in ECF cases are sent to the parties via e-mail. **(1)** (*Cote*)

B. Jury Trials

Jury Selection:

- i. “Struck Panel” method. **(4)** (*Batts, Cote, Marrero, McMahon*)
- ii. “Jury box” method. **(1)** (*Rakoff*)

Jurors:

- i. ... are permitted to take notes. **(1)** (*Castel*)

Proposed Requests to Charge and Voir Dire questions:

- i. Plaintiff to submit in sufficient time that Defendant’s charges will track, in number and subject matter order, those of Plaintiff. **(1)** (*Batts*)

C. Bench Trials

- i. All direct testimony shall be submitted by affidavits, which are to be filed with the Court one week prior to trial. **(3)** (*Batts, Marrero, McMahon*)
- ii. All direct testimony, except for testimony of an adverse party, a party 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, shall be submitted by affidavits, which are to be served, but not filed, at the time the joint pretrial order is filed. **(1)** (*Sullivan*)
- iii. Opening statements and closing arguments will be allowed with the Court’s permission. **(1)** (*Marrero*)
- iv. Counsel for each party shall submit a list of all affiants, if any, intended to be cross examined at trial. **(2)** (*Marrero, Sullivan*)

- a. ...at least five business days prior to trial. **(1)** (*Marrero*)
- b. ...three business days after submission of affidavits. **(1)** (*Sullivan*)

D. Witnesses

- i. Counsel shall have all necessary witnesses on hand to commence and continue trial without interruption or delay. **(1)** (*Batts*)
- ii. Counsel shall furnish to opposing party a complete list of the names and addresses of witnesses. Expert witnesses should be designated as such and their areas of expertise indicated. **(1)** (*Connor*)
- iii. Each side may utilize only one expert witness in any area of expertise. **(1)** (*Connor*)
- iv. A person expected to testify as a witness should not be present in the Courtroom during the examination of evidence, but this rule is not applicable to professional persons who are engaged to provide testimony based on their specialized knowledge. **(1)** (*Crotty*)
- v. Counsel shall submit a list of affiants whom he or she intends to cross-examine at trial. Only those witnesses who will be cross-examined need appear at trial. **(1)** (*Sullivan*)

E. Ready Trial Calendar

- i. Any time after a case has been placed on the 48 hour Ready Trial Calendar, counsel shall notify the Court and their adversaries of any potential scheduling conflicts that would prevent trial at a particular time. **(2)** (*Batts, Keenan*)

F. Post Trial Procedures

- i. Counsel is responsible to raise promptly any issue concerning accuracy of transcripts certified by the official Court Reporter to be used for purposes of appeal. **(1)** (*Brieant*)

G. Court Reporter

- i. At the start of trial, give the Court Reporter a list of spellings of unusual names of people, places, or things. **(2)** (*Castel, Crotty*)
- ii. When referring to an exhibit, mention it by number or letter so the record is clear. **(1)** (*Castel*)

H. Cell Phones/PDAs

- i. Counsel wishing to bring a cellular phone/PDA into the courtroom throughout a trial should make an application in writing at least two days before the trial. **(1)** (*Crotty*)

I. Confidentiality

- i. In the case of settlements, requests that the Court retain jurisdiction will be considered only if all the documents relating to the settlement are filed and publicly accessible. **(1)** (*Hellerstein*)

J. Readiness for Trial

- i. Counsel must be prepared to proceed to trial on 24 hours' telephone notice once the pretrial order has been filed. **(1)** (*Kaplan*)
- ii. ... 48 hours' notice **(2)** (*Scheindlin, Sprizzo*)

K. Exhibits

- i. Prior to trial, counsel for each party shall in advance of trial mark each exhibit proposed to be offered in evidence or otherwise tendered by any witness during trial. **(8)** (*Carter, Castel, Connor, Crotty, Marrero, McMahon, Rakoff, Stanton*)
- ii. Upon marking the exhibits, counsel shall also prepare a list of such exhibits, with a descriptive notation sufficient to identify each separately numbered exhibit, and shall furnish copies of the list to opposing counsel and to the Court. **(3)** (*Carter, Castel, Connor*)
- iii. Pre-marked exhibits should be assembled sequentially in a notebook and tabbed, or in a manila folder with a number or letter visible on the lip, placed in a suitable container. **(1)** (*Castel*)
- iv. In advance of each trial session, counsel for the party going forward at that session should show opposing counsel the exhibits he intends to introduce at the session. **(1)** (*Brieant*)
- v. Affidavits served when the joint pretrial order is filed shall be marked as exhibits. **(1)** (*Sullivan*)

SOUTHERN DISTRICT MAGISTRATE JUDGES' INDIVIDUAL PRACTICES¹

1. Communications with Chambers

A. Letters

- i. Letters to chambers simultaneously delivered to all counsel. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- ii. Letters not to be submitted electronically. **(2)** (*Gorenstein, Maas*)
- iii. Letters between counsel not to be sent to Court. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)

B. Telephone calls

- i. To chambers, permitted. **(10)** (*Dolinger, Eaton, Ellis, Fox, M., Francis, Freeman, Maas, Peck, Smith, Yanthis*)
- ii. To chambers, permitted only in emergency situation requiring immediate attention. **(4)** (*Fox, N., Gorenstein, Katz, Pitman*)

C. Faxes

- i. To chambers, not permitted. **(3)** (*Ellis, Fox, M., Smith*)
- ii. To chambers, permitted. **(1)** (*Yanthis*)
 - a. ...only if copies sent to all counsel. **(9)** (*Dolinger, Eaton, Fox, N., Francis, Freeman, Gorenstein, Maas, Peck, Pitman*)
- iii. To chambers, permitted only for urgent matters. **(1)** (*Katz*)

Fax limit, without prior authorization

- i. Five pages. **(3)** (*Freeman, Katz, Maas*)
- ii. Ten pages. **(6)** (*Dolinger, Eaton, Fox, N., Francis, Gorenstein, Pitman*)
 - a. ...except where time is of essence. **(1)** (*Francis*)

¹ This summary of the Southern District Magistrate Judges' Individual Practices is current as of November 2007. The compilation set forth in this report is solely for analytical purposes and should not be relied upon as an authoritative source of the content of any Judge's Individual Practices. This summary addresses select individual practices and does not reference every Individual Practice of each of the Magistrate Judges. It also does not compare the differences among the Magistrate Judges on every subject contained in each Magistrate Judge's Individual Practices. For example, this summary does not reflect every Individual Practice or differences among the Magistrate Judge's Individual Practices on jury selection, conduct of bench trials, or how certain types of specific motions are handled.

iii. Fifteen pages **(1)** (*Peck*)

D. Requests for Adjournments or Extensions of Time

i. Requests for adjournment

- a. ... must be made at least 48 hours prior to scheduled appearance. **(13)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- b. ... must be made no later than five business days prior to the scheduled appearance. **(1)** (*Gorenstein*)
 - i. Prior to making such a request, the party intending to so request should contact the Deputy Clerk to determine an alternative date for which the Court is available for rescheduled Court appearance. The requesting party should then contact all parties to determine their availability for that date. The requesting party must then make a written request to the Court for an adjournment by letter. The letter, which may be sent by fax, must be copied to all parties. **(1)** (*Gorenstein*)

ii. Request for extension of time

- a. ... if for extension of discovery deadline, must be made at least 10 days prior to the deadline. **(1)** (*Katz*)
- b. ... usually will not be granted unless they are made reasonably in advance of the date(s) sought to be extended. **(1)** (*Peck*)

Must state:

- i. The original date. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- ii. The number of previous requests for adjournment or extension. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- iii. The reason for the extension. **(2)** (*Gorenstein, Katz*)
- iv. Whether prior requests were granted or denied. **(13)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- v. Whether the adversary consents, and if not, reason for refusal. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- vi. If the requested adjournment or extension affects any other scheduled dates, a proposed order reflecting requested adjournment/extension. **(14)** (*Dolinger, Eaton,*

Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis)

2. Pleadings and Motions

A. Courtesy Copies

- i. Courtesy copies of pleadings and motions must be sent to chambers at the same time they are filed. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
 - a. ... and may not be submitted through the ECF system. **(2)** (*Gorenstein, Smith*)

B. Pre-motion conferences

Required?

- i. For discovery motions, follow Local Civil Rule 37.2. **(11)** (*Dolinger, Ellis, Fox, M., Fox, N., Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- ii. For discovery motions, follow Standing Order. **(1)** (*Eaton*)
- iii. Pre-motion conferences not required for non-discovery motions. **(9)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Katz, Peck, Pitman*)
 - a. ... and are not required for discovery motions either. **(1)** (*Francis*)
- iv. Parties must confer either by telephone or in person in an effort to resolve disputes before bringing a discovery motion. **(2)** (*Eaton, Gorenstein*)
- v. Pre-motion conferences required before any motion, **(4)** (*Fox, M., Gorenstein, Maas, Yanthis*)

except motions...

- i. required the FRAP to be made by a certain time. **(1)** (*Fox, M.*)
- ii. motions listed in FRAP 4(a)(4)(A). **(1)** (*Gorenstein*)
- iii. for pro hac vice admissions. **(1)** (*Gorenstein*)
- iv. for reargument or reconsideration. **(1)** (*Gorenstein*)
- v. for order to show cause. **(1)** (*Gorenstein*)
- vi. for attorney's fees or sanctions. **(1)** (*Gorenstein*)

Pretrial conferences *only required for...*

- i. summary judgment. **(1)** (*Smith*)

Length of letter to arrange conference?

- i. No more than two pages. **(1)** (*Gorenstein*)
- ii. No more than three pages. **(3)** (*Maas, Smith, Yanthis*)

C. Memoranda of Law

- i. Support of and in opposition to: 25 pages. **(12)** (*Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- ii. Reply: 10 pages. **(12)** (*Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- iii. Memoranda of 10 pages or more must contain a table of contents. **(13)** (*Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)

D. Oral Argument on Motions

- i. Must be requested by letter, and the Court will determine whether argument will be heard, and if so, advise counsel of the time. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- ii. Is heard only in unusual circumstances, or rarely. **(1)** (*Gorenstein*)

3. Pretrial Procedures

A. Filings Prior to Trial in Civil Cases

Each party shall file...

- i. 15 days before trial **(1)** (*Maas*)
- ii. 15 days before trial if date fixed, or 30 days after filing of the final pretrial order if no trial date **(11)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Pitman, Smith, Yanthis*)
- iii. 30 days after filing the proposed Joint Pretrial Order **(1)** (*Katz*)
- iv. At same time the party files the proposed pretrial order **(1)** (*Peck*)

Containing...

- i. In jury cases, requests to charge and proposed voir dire questions. **(14)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- ii. In jury cases, proposed instructions. **(12)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*).

- iii. In jury cases, where applicable, proposed verdict form. **(2)** (*Gorenstein, Peck*)
- iv. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of facts required to establish each element. **(13)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- v. In non-jury cases, proposed findings of fact and conclusions of law. **(1)** (*Gorenstein*)
- vi. In non-jury cases, a copy of any deposition testimony to be offered into evidence. **(1)** (*Gorenstein*)
- vii. In all cases, motions addressing issues which should be resolved in limine. **(13)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Francis, Freeman, Katz, Maas, Peck, Pitman, Smith, Yanthis*)
- viii. In all cases, copies of each party's pre-marked trial exhibits. **(3)** (*Fox, N., Gorenstein, Peck*)
- ix. In any case where a party believes it would be useful, a pretrial memorandum. **(11)** (*Dolinger, Eaton, Ellis, Fox, M., Fox, N., Freeman, Maas, Peck, Pitman, Smith, Yanthis*)
- x. ... pretrial memorandum required. **(1)** (*Gorenstein*)
 - a. ...in non-jury cases, must identify issues, summarize facts and applicable law, and address evidentiary issues. **(1)** (*Gorenstein*)

B. Pretrial Order

- i. Not required unless directed by Court. **(3)** (*Fox, M., Maas, Yanthis*)

Must be filed...

- ii. 30 days following completion of discovery in a civil case. **(10)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Pitman, Smith*)
 - a. ... or within 30 days of decision by the Court of a case-dispositive summary judgment motion. **(1)** (*Peck*)

Contents

- iii. The full caption of action. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)
- iv. The names, addresses (including firm names), and telephone and fax numbers of trial counsel. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)

- v. A brief statement by 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. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)
- vi. A brief summary by each party of the claims and defenses the party has asserted which remain to be tried, identifying claims and defenses previously asserted which are not to be tried. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)
- vii. A statement by each party as to whether the case is to be tried with or without a jury. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)
- viii. An estimate of the number of trial days needed. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)
- ix. A statement as to whether parties have consented to trial by a magistrate judge, without identifying which parties have or have not so consented. **(7)** (*Dolinger, Eaton, Fox, N., Freeman, Katz, Peck, Pitman*)
- x. Any stipulations or agreed statements of fact or law which have been agreed to by all parties. **(11)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Peck, Pitman*)
- xi. A statement by each party as to witnesses whose testimony is to be offered in its case-in-chief, indicating whether such witnesses will testify in person or by deposition. **(10)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Pitman*)
- xii. A designation by each party of deposition testimony to be offered with cross-designations and objections by any other party. **(10)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Pitman*)
- xiii. A list of exhibits to be offered **(10)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Pitman*)
 - a. ... with one star (or similar indication) for no authenticity objection, two stars for no objections at all. **(10)** (*Dolinger, Eaton, Ellis, Fox, N., Francis, Freeman, Gorenstein, Katz, Maas, Pitman*)
- xiv. Statement of damage claims/relief sought. **(2)** (*Gorenstein, Katz*)

C. Discovery Disputes

If unable to reach agreement, submit letter:

- i. No longer than five pages. **(1)** (*Gorenstein*)
- ii. No longer than twelve pages **(1)** (*Eaton*)

The letter should...

- i. Be jointly composed, and describe the issues in dispute, position of each party. **(1)** (*Eaton*)
 - a. ...if counsel sends her adversary a draft of her portion of a joint letter and counsel's adversary does not send a responsive portion within 5 business days, counsel may send her portion to the Judge. **(1)** (*Eaton*)
 - b. ...if interrogatories, document requests, or responses are in dispute, the joint letter must enclose the text of the specific items in dispute (and only those items). **(1)** (*Eaton*)
- ii. Citation of case law is desirable. **(1)** (*Eaton*)
- iii. Contain reasons why relief should be granted, with supporting authority. **(1)** (*Gorenstein*)

Submitting the letter...

- i. Letter should be faxed provided that a manually signed original is thereafter mailed. **(1)** (*Eaton*)
- ii. Mailing should include manually signed letter plus any exhibits. Mailing should enclose courtesy copy of the joint letter (but not the exhibits). **(1)** (*Eaton*)

4. Civil Trial Practices

A. Electronic Cases

- i. All civil and criminal cases (except pro se, habeas corpus petitions, and social security cases) are Electronic Case Filings. **(1)** (*Smith*)
- ii. For all cases designated ECF, parties are responsible for obtaining copies of Court decisions and orders from the Court's PACER system. **(1)** (*Peck*)
- iii. **Courtesy Copies.** Counsel shall submit courtesy copies in paper form of all electronically filed documents. **(2)** (*Peck, Smith*)

Opening and Responding to a Civil Case: Filing...

- iv. **Filing.** Upon the filing of papers initiating a civil action, and the payment of any applicable fees, the filing party, who must be a registered ECF Filing User with this Court, is directed to send a copy of those filed documents to the Clerk of the Court by email within 24 hours of filing the papers in the courthouse. The documents must be in .pdf format and must contain the case number and Judge's name. **(1)** (*Smith*)
- v. **Service.** The filing party is shall serve all parties a copy of the Judge's individual practices together with the documents initiating the action. **(1)** (*Smith*)

- vi. **Registration Requirement.** Upon receipt of papers initiating a civil action, counsel for the answering party is required to register immediately to be an ECF User with the Court. **(1)** *(Smith)*
- vii. **Answering Electronically.** Counsel for answering party is required to file electronically all documents, including the answer and subsequent pleadings. **(1)** *(Smith)*
- viii. **Requests for Exceptions to ECF.** Any request by counsel to file documents in hard copy, and not on the ECF system, shall be raised at the initial pre-trial conference or at a time set by the Court. **(1)** *(Smith)*

Proposed Orders and Stipulations...

- ix. **Form.** All proposed orders and stipulations shall be in the form prescribed by the Clerk in the Guidelines for Electronic Case Filing. **(1)** *(Smith)*
- x. **Order to Show Cause.** In all cases assigned to the ECF system, all Orders to Show Cause seeking a stay shall be submitted in the traditional manner, in person before the Court. All Orders to Show Cause that do not seek a stay shall be submitted in the form prescribed by the Clerk in the Guidelines for Electronic Case Filing. **(1)** *(Smith)*

Motions...

- xi. **Filing.** The manner in which motions are filed before this Court shall not change under the ECF system. In all cases assigned to the ECF system, all motions shall be electronically filed in accordance with the Judge's Individual Practices, and in the traditional manner for those cases not assigned to the ECF system. **(1)** *(Smith)*

Appeals...

- xii. **Filing.** Upon filing of an appeal and payment of any applicable fee, the filing party is directed to send a copy of the filed documents to the Clerk of Court by email within 24 hours of filing the papers at the courthouse. The documents must be in .pdf format, and must contain the District Court case number and Judge's name. **(1)** *(Smith)*

Documents Filed in Error...

- xiii. **Wrong Case.** If the document is filed in the wrong case, the Clerk of Court has authority to remove it from the docket without further order of the Court upon written or email notification to the Clerk. **(1)** *(Smith)*
- xiv. **Wrong Document.** If the wrong document is filed in the correct case, the filer shall immediately notify the Clerk of Court in writing, and the Clerk shall seek further guidance from the Court. **(1)** *(Smith)*
- xv. **Erroneous Filing of Sensitive Document.** If the document filed in error contains sensitive information, the Clerk of Court, upon written or oral notice, shall seal the

docket entry immediately so as to remove it from public view. The clerk shall then seek further guidance from the Court. (1) *(Smith)*

Electronic Document Size...

- xvi. **Exhibits.** In all cases assigned to the ECF system, any exhibit larger than 2.5 megabytes (approximately 50 pages) shall be submitted to the Court in paper form. (1) *(Smith)*
- xvii. **Large Documents.** In all cases assigned to the ECF system, no single document totaling more than 15 megabytes (even if separated into smaller individual computer files) shall be electronically filed without prior permission of the Court. (1) *(Smith)*

B. Witnesses

- i. Counsel shall have all necessary witnesses on hand to commence and continue trial without interruption or delay. (1) *(Gorenstein)*