

Revised 2/3/2006

INDIVIDUAL PRACTICES OF JUDGE McMAHON

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

1. Communications With Chambers

A. Letters

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

B. Telephone Calls

Telephone calls to Chambers are NOT permitted. Counsel cannot leave case-related messages. You must communicate with Chambers in writing. In case of a real emergency, Chambers can be reached at (212) 805-6325. Calls to Chambers about matters other than emergencies will not be acknowledged or returned.

C. Faxes

Faxes to Chambers in lieu of mail or hand deliveries are encouraged. Copies must be simultaneously faxed or delivered to all counsel. No document longer than 50 pages may be faxed without prior authorization. *Do not follow with a hard copy.* The fax number is (212) 805-6326.

D. Docketing, Scheduling, and Calendar Matters

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

E. Requests for Adjournments or Extensions of Time

All requests for adjournments or extension of time must be in writing. Requests for adjournments, must state (1) the original date, (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 the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. If the request is for an adjournment of a court appearance, absent an emergency it must be made at least 48 hours prior to the scheduled appearance. *Do not call Chambers to request an adjournment except in case of a real emergency (serious illness or death).* PLEASE NOTE: *Judge McMahon will not routinely grant adjournments or extensions of time, even if stipulated by counsel.*

2. Pleadings and Motions

A. Courtesy Copies

One (1) courtesy hard copy of pleadings (complaint, answer, reply) and motion papers, marked as such, shall be submitted to Chambers as soon as practicable after filing.

B. Pre-Motion Conferences in Civil Cases

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

Discovery: At the Rule 16 conference, counsel will be given an order of reference to the Magistrate Judge. If counsel submit a consent scheduling order, Chambers will send out a similar order of reference. Take all discovery disputes directly to the Magistrate Judge, who will resolve them in accordance with the White Plains standing order on discovery disputes.

C. Memoranda of Law

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. More than minimal use of footnotes, or the printing of footnotes in a typeface smaller than that used in the text, will result in the brief's being stricken. All memoranda shall be page-numbered, and shall contain a table of contents and a table of cases.

D. Motion Papers

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

Reference to New York and United States Supreme Court cases shall contain citations to the official reporter and parallel cites to New York Supplement and Supreme Court Reporter, respectively. Citations to unreported cases not available on WESTLAW or LEXIS must be accompanied by a copy of the case cited. All exhibits must be tabbed and indexed.

Requests to file memoranda exceeding the page limits set forth herein must be made in writing five (5) days prior to the due date, except with respect to reply briefs, in which case the time is one (1) day prior to the due date.

Counsel are not to set a "return date." Answering papers or motions are to be served two (2) weeks after receipt of the moving papers. Reply papers, if any, are to be served five (5) business days later. The Court does not accept "letter motions" unless that procedure has been authorized in advance.

On motions for summary judgment, do not attach complete deposition transcripts as exhibits. Attach only pages containing relevant testimony (to which citation is made in the briefs

or affidavits). Each entry must be separately tabbed and indexed.

Do not docket anything except a Notice of Motion as a “Motion.” In ECF cases, supporting documents should be docketed as what they are (“Brief”, “Memorandum”, “Affidavit”) - not as “Motion.”

E. Oral Argument on Motions

Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The Court will decide whether argument is needed and will advise counsel of any argument date. The Court rarely hears oral argument on motions.

F. Notice of Rulings and Calls

Judge McMahon participates in the Court Web system. Notice of most orders (other than scheduling orders), decisions and stipulations is posted on the World Wide Web and may be accessed through the Court’s web site:

<http://www.nysd.uscourts.gov>

Although most orders will be posted to the Court Web site, counsel are responsible for knowledge of all orders entered on the docket.

G. Motions for Reconsideration

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

H. Motions for Default Judgment

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

(i) Wait at least 30 days after service is effected, to allow for the receipt of an appearance by mail.

(ii) Serve a copy of the Motion for Entry of a Default Judgment on the defaulting defendant in the same manner as prescribed for service of process. The Motion should be accompanied by a notice stating as follows:

THE ATTACHED LEGAL PAPERS ARE BEING SERVED ON YOU BECAUSE YOU HAVE FAILED TO APPEAR IN A LAWSUIT BROUGHT AGAINST YOU. IF YOU DO NOT ENTER AN APPEARANCE IN THE LAWSUIT ON OR BEFORE [INSERT DATE NO EARLIER THAN 20 DAYS FROM THE DATE OF SERVICE

OF THE NOTICE AND MOTION], THE COURT WILL ENTER A DEFAULT JUDGMENT AGAINST YOU. IF YOU ARE A CORPORATION, YOU CAN ONLY APPEAR THROUGH AN ATTORNEY. IF YOU ARE AN INDIVIDUAL, YOU MAY APPEAR BY AN ATTORNEY OR PRO SE. IN EITHER EVENT, YOU MUST TAKE SOME ACTION OR A JUDGMENT WILL BE ENTERED AGAINST YOU. ENTRY OF A JUDGMENT MAY RESULT IN A LEVY AGAINST YOUR PROPERTY.

(iii) File the Motion for Entry of a Default Judgment, together with proof of service of the Motion and the Notice, with the Office of the Clerk of the Court. The Clerk's Office will process the filing and transmit it to Chambers.

(iv) Chambers will hold the motion until the date specified in the Notice has passed. If no appearance is entered for the defendant, the Court will decide the motion.

3. Pretrial and Trial Rules and Procedures

A. Discovery Schedule

Parties must exchange the discovery required under Fed.R.Civ.P. 26(a) within thirty (30) days after service of the answer on the last plaintiff to be served.

Notices inviting the parties to stipulate to a discovery schedule for discovery other than Rule 26(a) discovery will be sent to plaintiff's counsel (or, in the case of removed actions, defendant's counsel) shortly after the action is filed. If the parties can agree upon a schedule providing for prompt completion of discovery (i.e., within six (6) months of the filing of the action), the Court ordinarily will incorporate the agreement in a Scheduling Order. Otherwise, the Court will impose a schedule at the initial pretrial conference, held approximately 60 days after the complaint is filed.

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

B. Medical Records/Authorizations

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

C. Qualified Immunity: Special Rules

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

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

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

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

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

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

D. Pretrial Order

Counsel are to file a joint pretrial order, with one (1) courtesy copy for Chambers, on or before the date set by the Court in the formal scheduling order. The pretrial order shall be prepared in accordance with the outline attached as Annex A. Failure to submit the pretrial order on time may result in dismissal or a default judgment, as appropriate. All exhibits and witnesses to be presented at trial must be contained in the order. *The filing of a motion for summary judgment does not excuse or extend the time for filing the pretrial order unless the Court otherwise directs. Such applications are disfavored and will almost never be granted.*

E. Other Civil Trial Filings

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

i. In jury cases: requests to charge, proposed voir dire instructions, and proposed verdict form. In addition to submitting one courtesy copy of each, an electronic copy must be emailed to Chambers at cm_documents@nysd.uscourts.gov, unless the court specifically exempts a party from this requirement. Documents must be in Microsoft Word or WordPerfect (version 5.1 or higher) format;

ii. In nonjury cases: a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

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

F. Ready for Trial

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

G. Exhibits

All exhibits must be pre-marked, using the form PX-1 through n and DX-1 through n. Counsel shall provide a marked set of exhibits for the adversary and for the Court prior to the final pre-trial conference. *In a jury trial, if a party wishes to publish its exhibits to the jury prior to deliberations, it must provide at least one marked copy of its exhibits for every two jurors, bound or contained within a binder, at the start of the trial. The court must approve publication of exhibits by any other method prior to the start of trial.*

H. Jury Selection

Juries will be selected by the struck panel method.

I. Special Rules for Bench Trials

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

i. Form of Statement

For each witness whose direct testimony will be presented in statement form, prepare a statement setting forth in declaratory form all of the facts to which that witness will

testify, including facts necessary to establish the foundation for the testimony. The facts should be stated in narrative, rather than question and answer, form. The statement need not be sworn or notarized.

ii. Use of Statements

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

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

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

iii. Exceptions to Use of Statement

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

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

J. Conduct of Trial

The Court conducts trials Monday through Thursday from 9:30 a.m. - 4:30 p.m. Parties should arrange to have enough witnesses available to fill the day, even if that means taking witnesses out of order. If a party is out of witnesses in the middle of the day, the party must rest. In personal injury cases, doctors and other experts will be permitted to testify out of order whenever they are available.

K. Post-Trial Motions

Post-trial motions are treated in the same manner as motions for reconsideration. (Sec. 2. G above)

Annex A -- Form of Pretrial Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[caption]

XX Civ. XXXX (CM)

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

I. NATURE OF THE CASE

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

II. JURY/NON-JURY

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

III. STIPULATED FACTS

[Set forth any stipulated facts.]

IV. PARTIES' CONTENTIONS

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

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

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

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

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

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

V. ISSUES TO BE TRIED

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

VI. PLAINTIFF'S EXHIBITS

VII. DEFENDANT'S EXHIBITS

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

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

[In cases likely to involve substantial numbers of deposition exhibits, the parties are encouraged to agree at the outset of discovery to assign a unique exhibit number or letter to each exhibit marked at any deposition so that exhibit designations used in deposition transcripts may be used without change at trial. Absent use of such a system, plaintiff's trial exhibits shall be identified as PX 1, and defendant's as DX 1, D-Jones A, D-Smith C.]

VIII. STIPULATIONS AND OBJECTIONS WITH RESPECT TO EXHIBITS

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

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

IX. PLAINTIFF'S WITNESS LIST

X. DEFENDANT'S WITNESS LIST

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

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

XI. RELIEF SOUGHT

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

Dated:

U.S.D.J.

[Signatures of counsel]

(Rev. 10/29/2003)