United States District Court
Southern District of New York

Frequently Asked Questions: OPEN CASES

These questions are intended to address common questions that arise around open, or active, cases. The statements in this guide do not constitute legal advice and may not be cited as legal authority. This document does not take the place of the Federal Rules of Civil Procedure, this court's Local Civil Rules, or the individual rules of practice and orders of the judges of this court. Parties consulting this document remain responsible for complying with all applicable rules of procedure.

I filed my complaint and my IFP application was granted. When should I expect to hear something about my case?

Before ordering service on a case for which it has waived the filing fee, the court is required by statute and caselaw to determine if the case is frivolous or malicious, fails to state a claim for relief, or names defendants who are immune from suit. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Once that determination has been made, an order will appear on the docket that either dismisses the case, transfers it to another jurisdiction, provides the opportunity to amend the complaint, or orders service on the defendant(s).

Why has my case been reassigned to another judge?

There are many reasons why a case is reassigned to a new judge – most of which involve the internal administration of the court. When a judge passes away, retires, or leaves the bench, the cases assigned to that judge must be reassigned to a different judge within the Southern District of New York. In addition, when a new judge joins the bench, cases will be reassigned to the new judge. As part of the court's general administrative functions, cases are reassigned to different judges to equalize the caseload. For example, if you have IFP status, your case may be reassigned after the initial screening process has been completed.

What is a Magistrate Judge and why has my case been referred to one?

Magistrate judges are federal judges appointed by the sitting district court judges for eight-year terms. All civil cases in the Southern District of New York are assigned to one United States District Judge and one United States Magistrate Judge. A District Judge may refer the case to the Magistrate Judge to handle different parts of the litigation. For instance, a District Judge may refer a case to the Magistrate Judge to handle all pretrial issues relating to discovery. In addition, the parties may consent to have the entire case handled by the Magistrate Judge.

What happens after the defendants have been served and appear?

After the defendants have been served, they generally have 21 or 60 days to either answer the complaint or file a motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure. Depending on the practices of the presiding judge, the judge may schedule an initial conference or issue a pretrial scheduling order. Please refer to the presiding judge's individual rules.

What is discovery?

Discovery is the process of obtaining and sharing information prior to trial. Both sides engage in this process so that the parties can effectively prepare for trial or arrive at a resolution. The practices governing discovery are laid out in Rules 26-37 of the Federal Rules of Civil Procedure. Common forms of discovery are interrogatories, subpoenas, and depositions. A Discovery Guide is available on the Court's public website.

I am incarcerated. How am I going to do discovery?

Depending on the nature of the case, Local Civil Rule 33.2 may apply to your case. This rule established a set of standing discovery requests generally applicable to the following claims when a self-represented plaintiff is incarcerated: Use of Force, Inmate Against Inmate Assault Cases, and Disciplinary Due Process Cases.

What is a motion?

A motion is a written request to a court and can be made by either party. The most frequent motions are a Motion to Dismiss, which asks the court to dismiss the case based solely on the complaint and before discovery pursuant to Fed. R. Civ. P. 12(b)(6), and a Motion for Summary Judgment, which asks the court to grant judgment to the moving party after discovery but before trial, pursuant to Fed. R. Civ. P. 56. A Motions Guide is available on the court's public website.

How do I file motions, briefs, and other documents with the court?

You can file motions, briefs, and other documents in four ways: (1) by bringing the appropriate documents to the Pro Se Intake Unit in Manhattan or the Clerk's Office in White Plains, to file in person; (2) by mailing the documents to the Pro Se Intake Unit for filing; (3) by uploading the document to the court's Secure Document Portal; or (4) by filing the documents electronically on ECF, the court's electronic case filing system. The Pro Se Intake Unit does not accept faxes. All self-represented plaintiffs who submit documents in person or by mail must submit their papers to the Pro Se Intake Unit.

Does the court require a specific format for documents?

Yes, Local Rule 7.1 requires that all documents filed with the court be legible and that every document include the name of each person signing it, printed or typed, directly below the signature. All documents must be signed, as required under Federal Rules of Civil Procedure 5(d)(3) and 11, with an original signature. In addition, page numbers should be added to your documents.

How do I serve motions, briefs, or other documents that I file with the court?

After a defendant has been served with the summons and complaint, and that defendant has "appeared" in the case by filing a notice of appearance, all documents submitted to the Pro Se Intake Unit for filing will be scanned and

docketed on the ECF system by Clerk's Office staff. The ECF system will then notify by email all other parties who have lawyers that you have filed a document, and those parties will be able to get a copy of the document. This docketing on ECF is deemed to be service under Rule 5(b) of the Federal Rules of Civil Procedure. *See* ECF Rules 9.1 and 9.2. Therefore, if your court filings are docketed on ECF, you will not need to mail them to any other parties who have lawyers, and you will not need to attach an affirmation of service to those documents. If a party does not have a lawyer, you must serve that individual with a copy of your submission and attach a Certificate of Service to your submission before filing it with the court. You are permitted to serve these documents yourself by regular mail.

For documents not filed with the court, you must serve court filings on a defendant's lawyer (or on the defendant, if the defendant does not have a lawyer) by regular mail or any other method described in Rule 5 of the Federal Rules of Civil Procedure. Such documents include discovery materials or any other documents that are not addressed to the court, such as letters to the defendant's lawyer. You must continue to deliver those documents yourself.

What is a Report and Recommendation?

Sometimes, a district judge will refer the case to the Magistrate Judge for "dispositive motions," which means a motion that decides the case without going to trial, such as motions to dismiss and motions for summary judgment. The Magistrate Judge will review the motion and issue a Report and Recommendation to the District Judge that recommends either granting or denying the motion. The parties then have 14 days to oppose in writing the Magistrate Judge's Report and Recommendation. After the district judge considers the parties' objections to the Magistrate Judge's Report and Recommendation, the District Judge will issue a decision. This decision is the final decision on the matter at the district court. A party who disagrees with the District Judge's decision may appeal the decision to the United States Court of Appeals for the Second Circuit.

How long will it take to go to trial?

Very few civil cases in federal court actually go to trial. Most cases, whether the parties are proceeding with or without an attorney, are resolved either by a

settlement or a judge's order when one party files a motion. For those cases that are not resolved, a trial will be scheduled by the presiding judge with ample notice to the parties.

If I do not want to go to trial, can I request settlement or mediation?

Judges will generally ask the parties if they are open to settlement or mediation. Parties can also request opportunities to have a settlement conference or a referral for mediation. Settlement conferences are generally held with a magistrate judge and a mediation proceeds through the court's mediation office.