



S.D.N.Y. PILOT § 1983 PLAN
OVERVIEW AND CALL FOR PUBLIC COMMENTS
WHITE PAPER (FINALIZED 4/24/13)

BACKGROUND AND INITIAL PROCESS

In 2010, the court asked a group of plaintiffs' attorneys who routinely handle 42 U.S.C § 1983 cases and the New York City Law Department to form a working group to address the increasing number of § 1983 cases being filed and the lengthening time from complaint to disposition. The goal of the working group was to develop a pilot program to test whether the administration of justice in § 1983 litigation could be improved and whether the Court could reduce the time to disposition in the typical § 1983 cases brought against the NYPD and its officers. The working group met with District and Magistrate Judges for more than one year to explore impediments to the efficient management of these § 1983 cases and to ascertain where improvements could be made.

The resulting Plan for Certain § 1983 Cases Against the City of New York ("the § 1983 Plan"), dated June 24, 2011, was part of a series of recent initiatives designed to promote the just, speedy and inexpensive resolution of civil cases in this District, as required by Rule 1 of the Federal Rules of Civil Procedure. For example, in January 2011, a Standing Administrative Order designated non-pro se employment discrimination cases (except those brought under the Fair Labor Standards Act of 1938) for automatic referral to the Court's mediation program. The Pilot Project Regarding Case Management Techniques for Complex Civil Cases began on October 31, 2011, and the Patent Pilot Program began on March 29, 2012.

DEVELOPMENT OF § 1983 PILOT

The § 1983 Plan was developed after extensive information-gathering from the District Judges and Magistrate Judges of the court, the New York City Law Department, and the plaintiffs' bar. Throughout the process the plaintiffs' counsel who participated in the working group regularly solicited comments from other plaintiffs' attorneys who practice in this area. In order to develop a plan that was consistent with current practice in the court, Judges were canvassed to assess the range of responses to such issues as requests for extensions of time to respond to complaints and for early delivery of releases. This canvassing revealed that most Judges regularly granted Corporation Counsel's requests for more time to respond and directed the execution of § 160.50 releases for records relating to the incident in suit, as well as releases for any physical or mental health records when damages were sought for those injuries. After considering this information, the working group focused on the cases that appeared best suited for early settlement under a structured dispute resolution process. This sub-group of cases includes cases brought by fewer than six plaintiffs against the NYPD and its employees, seeking only monetary damages, and alleging false arrest, excessive force, or malicious prosecution. Relying

heavily on the experience of Magistrate Judges who regularly supervise settlement discussions in these cases, the group also identified those documents that were considered most helpful for an early disposition.

The § 1983 Plan is intended to provide both a structure for Plan-appropriate cases, and flexibility for those cases which might require a different process. The § 1983 Plan seeks to provide the parties in these cases with the information they need to evaluate whether there should be an early settlement of the litigation and to provide them with a forum for those settlement discussions. Any cases that do not achieve an early settlement are placed in a position to complete any remaining discovery expeditiously.

The timetable for certain events is as follows. A defendant must file an answer within 80 days following service on the first defendant, assuming a § 160.50 release is served on the City with the complaint. The parties exchange written discovery during the following four weeks (28 days). The plaintiff then must make a settlement demand within two weeks, that is, six weeks following the filing of the first answer. The City responds to that demand two weeks later. The parties must engage in settlement negotiations thereafter, and if they have not filed a stipulation of dismissal within three months of the filing of the first answer, appear at a mediation session before a Southern District mediator. The § 1983 Plan also offers an option for parties to request referral to a Magistrate Judge for settlement, or to request an order of removal from the § 1983 Plan.

PERFORMANCE AND PROPOSED IMPROVEMENTS TO THE PLAN

Statistical reports run from the CM/ECF database for the 2012 calendar year revealed that § 1983 Plan cases settled before judicial intervention at a rate of approximately 70%. This historical rate may improve given the advancements the court is making to the administration of the § 1983 Plan. Over the last year the Mediation Unit has changed many of its internal practices. These changes have shortened timelines for mediator assignment, case scheduling, and reporting of mediation outcomes to the court. In addition, the Mediation Unit has modified its case assignment process to better match § 1983 Plan cases with appropriate mediators. Also under consideration are processes that will assist in the expeditious completion of any remaining discovery as soon as it appears that a case will not settle.

CALL FOR PUBLIC COMMENTS

This call for public comments seeks to solicit a thoughtful evaluation of the § 1983 Plan and suggestions for further improvement. On June 11 from 5-6:30 p.m. the U.S. District Court for the Southern District of New York will hold a forum on the Plan for Certain § 1983 Cases Against the City of New York. A short presentation about the current functioning of the Plan will be followed by opportunities to speak (for up to five minutes) for those who wish to make public comment. The court will also review written submissions. Because time for speakers is limited, priority for speaking will be given to those who also submit comments in writing. Written comments should be no more than five double-spaced pages and should reflect a familiarity with, and preferably litigation experience under, the § 1983 Plan. Written comments and requests for an opportunity to speak should be sent to Rebecca_Price@nysd.uscourts.gov by Monday June 3. Those who are invited to speak will be notified by June 5. **The public forum will be held in the courthouse at 500 Pearl Street, Room 850.**