

INDIVIDUAL PRACTICES OF JUDGE ROBERT W. SWEET

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

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. In addition to Paragraph 1 (D) below, telephone calls to chambers are permitted. For matters other than docketing, scheduling, or calendar matters, call chambers at (212) 805-0254.

C. Faxes. Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than 10 pages may be faxed without prior authorization. Do not follow with hard copy. The fax number is: (212) 805-7925.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling, and calendar matters, call Courtroom Deputy Clerk Tsz (pronounced "Zee") Chan at (212) 805-0124.

E. Requests for Adjournments and Extensions of Time. All requests for adjournments or extensions of time must be in writing and 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 (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. All requests shall be filed on ECF or sent to chambers via email at SweetNYSChambers@nysd.uscourts.gov. Courtesy copies of requests for adjournments and extensions of time will not be accepted.

2. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences or letter requests are not required to file a motion. Movants should be aware that the Court may treat letters requesting permission to file a motion as the motion itself.

B. Courtesy Copies. One courtesy copy of all motion papers and attachments, including electronically-filed motion papers, shall be submitted to chambers. Each courtesy copy shall be prominently marked as such.

C. Documents Not Filed Via ECF. Whenever any document is submitted to chambers in connection with a motion or other request for relief, but not filed in its entirety on

ECF, a digital copy shall be sent to chambers via email at SweetNYSChambers@nysd.uscourts.gov. If a redacted version of a document is filed on ECF, an unredacted version shall be emailed to chambers.

D. 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, with the exception of Bankruptcy Appeals, which will be governed by the Federal Rules of Bankruptcy Procedure. Memoranda of 10 pages or more shall contain a table of contents.

E. Filing of Motion Papers. Motion papers shall be filed promptly after service.

F. Oral Argument on Motions. Oral argument will be held on all motions, with the exception of: (1) motions for reconsideration or reargument, pursuant to Local Civil Rule 6.3; and (2) motions by or against a party proceeding *pro se*. Oral argument are held on Wednesdays at noon. The movant shall note on the face of the motion the date for argument. This date must permit briefing in accordance with Local Civil Rule 6.1 unless pursuant to an order to show cause or otherwise authorized by the Court, or unless related to a Bankruptcy Appeal, which will be governed by the Federal Rules of Bankruptcy Procedure.

G. Orders to Show Cause. Applications for orders to show cause, provisional remedies, emergency relief, or to proceed *in forma pauperis*, and orders and notice of settlement of judgments, shall be presented to the Orders and Appeals Clerk. Judgments shall be presented to the Judgment Clerk. These documents will be examined as to form and thereafter transmitted to chambers.

H. Requests for Default Judgment. Default Judgment may be sought pursuant to the procedures in Local Civil Rules 55.1 and 55.2 by fully filed motion as set forth in SDNY Electronic Case Filing Rules & Instruction 16.2. Absent good cause shown, Default Judgments should not be sought by Order to Show Cause or by Order absent filing.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. 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.

- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
- vii. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.
- viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.
- ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. FLSA Actions. Parties in FLSA actions that are not collective actions should abide by the attached Initial Discovery Protocols.

C. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

- i. In jury cases, requests to charge and proposed *voir dire* questions. Two courtesy copies, marked as such, should be submitted to chambers. Proposed jury charges should also be submitted by e-mail;
- ii. In non-jury 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;
- iii. In all cases, motions addressing any evidentiary or other issue which should be resolved *in limine*; and
- iv. In any case where such party believes it would be useful, a pretrial memorandum.

4. Sentencing Proceedings

The Court assumes that every document in a sentencing submission, including letters, will be filed in the public record either in paper form or through the ECF system, using the procedures described below. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends, relatives, etc. The Government is responsible for filing all letters from victims.

In this regard, the parties are referred to E-Government Act of 2002 and the Southern District's ECF Privacy Policy ("Privacy Policy") and reminded not, unless necessary, to include the five categories of "sensitive information" in their submissions (i.e., social security numbers, names of minor children [use the initials only], dates of birth [use the year only], financial account numbers, and home addresses [use only the City and State]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying number, medical records, treatment and diagnosis, employment history, individual financial information, proprietary or trade secret information, and information regarding an individual's cooperation with the government) as described in the Privacy Policy, without application to the Court.

If any material is redacted from the publicly filed document, only those pages containing the redacted material will be filed under seal. Bring a copy of those pages to the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.

A. Rules for Service and Filing. A defendant's sentencing submission shall be served two weeks in advance of the date set for sentence. The Government's sentencing submission shall be served one week in advance of the date set for sentence. The parties should provide the Court with one courtesy copy of each submission when it is served. At the time it is served, a party shall file its sentencing submission following one of the two procedures described here. (If the criminal case is a non-ECF case, then only paper filing is allowed.)

i. Paper Filing. If letters are filed as hard copies, a party shall group all letters together in a single paper filing under a cover marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated and submit it to the Clerk's Office.

ii. ECF Filing. If letters are filed electronically, they must be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.

B. Redactions. If a party redacts information beyond the eleven categories of information identified in the Privacy Policy, an application to do so must be served and filed at the time the sentencing submission is served. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

5. Physical Exhibits

Attorneys must arrange with the Courtroom Deputy Clerk, Tsz Chan, to pick up all physical exhibits (any exhibit other than a PDF document available on ECF) used in the course of a case. Exhibits must be picked up within 30 days after the conclusion of a trial or within 30 days after the Court issues a decision on a hearing or motion. The Court reserves the right to discard any physical exhibits that are not picked up after the allotted 30 days.

If you have any questions about these practices, contact the Courtroom Deputy Clerk, Tsz Chan, at (212) 805-0124.

**INITIAL DISCOVERY PROTOCOLS
FOR FAIR LABOR STANDARDS ACT
CASES NOT PLEADED AS COLLECTIVE ACTIONS**

January 2018

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INITIAL DISCOVERY PROTOCOLS FOR FAIR LABOR STANDARDS ACT
CASES NOT PLEADED AS COLLECTIVE ACTIONS

PART 1: INTRODUCTION AND DEFINITIONS.

(1) Statement of purpose.

- a. These Initial Discovery Protocols apply to FLSA cases not pleaded as collective actions. The Protocols are designed to be implemented by trial judges throughout the United States District Courts. The Protocols encourage the parties and their counsel to exchange information and documents early in the case, help frame the issues to be resolved, and plan for more efficient and targeted discovery.
- b. Participating courts may implement the Initial Discovery Protocols by local rule or by standing, general, or individual case orders. The Protocols apply to cases alleging minimum wage and overtime violations under the FLSA (the “FLSA Claims”). If any party believes that there is good cause why a case should be exempted, in whole or in part, from the Protocols, that party may raise such reason with the Court.
- c. The Initial Discovery Protocols are not intended to preclude or modify the rights of any party for discovery as provided by the Federal Rules of Civil Procedure and other applicable local rules, but they are intended to supersede the parties’ obligations to make initial disclosures under FRCP 26(a)(1) for the FLSA Claims.
- d. The Initial Discovery Protocols were prepared by a balanced group of highly experienced attorneys from across the country who regularly represent plaintiffs or defendants in FLSA matters. The Protocols require the exchange of information and documents routinely requested in FLSA cases. They are unlike initial disclosures under FRCP 26(a)(1) because they focus on the type of information most likely to be useful in narrowing the issues for FLSA cases.

(2) Definitions. The following definitions apply to cases proceeding under the Initial Discovery Protocols.

- a. **Concerning.** The term “concerning” means referring to, describing, evidencing, or constituting.
- b. **Document.** The terms “document” and “documents” are defined to be synonymous in meaning and equal in scope to the terms “documents” and “electronically stored information” as used in F.R.C.P. 34(a).

- c. **Identify (Documents).** When referring to documents, to “identify” means to give, to the extent known: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; (iv) the author(s), according to the document; and (v) the person(s) to whom, according to the document, the document(or a copy) was to have been sent; or, alternatively, to produce the document.
- d. **Identify (Persons).** When referring to natural persons, to “identify” means to give the person’s: (i) full name; (ii) present or last known address and telephone number; (iii) present or last known place of employment; (iv) present or last known job title; and (v) relationship, if any, to the plaintiff or defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
- e. **Defendant.** Any person or entity alleged to be an employer or joint employer of the plaintiff(s) in the operative Complaint, unless otherwise specified.
- f. **Plaintiff.** Any named individual(s) alleging FLSA Claim(s) in the operative Complaint.

(3) Instructions.

- a. For this Initial Discovery, the relevant time period begins two years before the date the initial Complaint was filed, or, if willfulness is alleged, three years. If the Plaintiff alleges a shorter relevant time period, then that is the time period for Initial Discovery.
- b. For this Initial Discovery, the relevant time period continues through the last date for which the Plaintiff seeks recovery or relief.
- c. This Initial Discovery is not subject to objections except for the reasons under FRCP 26(b)(2)(B) or on the grounds of privilege or work product. Documents withheld based on a claim of privilege or work product are subject to the provisions of FRCP 26(b)(5).
- d. If a partial or incomplete answer or production is provided, the responding party must state the reason that the answer or production is partial or incomplete.
- e. This Initial Discovery is subject to FRCP 26(e) on supplementation and FRCP 26(g) on certification of responses.
- f. This Initial Discovery is subject to FRCP 34(b)(2)(E) on form of production.

- g. This Initial Discovery will be subject to the attached Interim Protective Order unless the parties agree or the court orders otherwise. The Interim Protective Order will remain in place only until the parties agree to or the court orders a different protective order. Absent agreement by the parties, the Interim Protective Order will not apply to subsequent discovery.
- h. Prior to the production of documents by either Party to the other pursuant to the Initial Discovery Protocols, the Parties will meet and confer regarding the format (e.g. TIFF/text, searchable .pdf, Excel) for such production. This will not delay the timeframes for Initial Discovery absent ruling by the court.

PART 2: PRODUCTION BY THE PLAINTIFF.

(1) Timing.

The Plaintiff's Initial Discovery must be provided within 30 days after the Defendant has submitted a responsive pleading or motion, unless the court rules otherwise.

(2) Documents that the Plaintiff must produce to the Defendant.

- a. Documents created or maintained by the Plaintiff recording time worked.
- b. Documents created or maintained by the Plaintiff recording wages or other compensation paid or unpaid by the Defendant.¹
- c. If the Plaintiff reported or complained internally to the Defendant (including but not limited to supervisors or administrative departments, such as human resources, payroll, timekeeping or benefits) about the FLSA Claim(s), the report(s) or complaint(s) and any response that the Defendant provided to the Plaintiff.
- d. Any offer letters, employment agreements, or compensation agreements for the Plaintiff.
- e. Any sworn statements from individuals with information relevant to the FLSA Claim(s).
- f. Documents that the Plaintiff relies on to support a claim of willful violation.
- g. All other documents that the Plaintiff relies on to support the Plaintiff's FLSA Claim(s).

¹ This Initial Disclosure does not include personal tax returns or tax informational documents.

(3) Information that the Plaintiff must produce to the Defendant.

- a. Identify persons the Plaintiff believes to have knowledge of the facts concerning the FLSA Claim(s) or defenses, and a brief description of that knowledge.
- b. Identify the start and end dates for the FLSA Claim(s);
- c. The Plaintiff's title or position and a brief description of the Plaintiff's job duties for the relevant time period.
- d. Describe the basis for the FLSA Claim(s).
- e. A computation of each category of damages claimed by the Plaintiff, including a) applicable dates, b) amounts of claimed unpaid wages, and c) the method used for computation (including applicable rates and hours).
- f. The names of the Plaintiff's supervisors during the relevant time period.
- g. If the Plaintiff reported or complained about the FLSA Claim(s) to any government agency, the identity of each such agency, the date(s) or such reports or complaints, and the outcome or status of each report or complaint.
- h. If the Plaintiff reported or complained to the Defendant (including but not limited to supervisors or administrative departments such as human resources, payroll, timekeeping or benefits) about the any FLSA Claim(s), state whether the report or complaint was written or oral, when the report or complaint(s) was made, to whom any report or complaint(s) were made, and any response provided by the Defendant.

PART 3: PRODUCTION BY THE DEFENDANT.

(1) Timing.

The Defendant's Initial Discovery must be provided within 30 days after the Defendant has submitted a responsive pleading or motion, unless the court rules otherwise.

(2) Documents that the Defendant must produce to the Plaintiff.

- a. Time and pay records created or maintained by the Defendant for the Plaintiff.
- b. If the Plaintiff reported or complained internally to the Defendant (including but not limited to supervisors or administrative departments, such as human resources, payroll, timekeeping or benefits) about the FLSA Claim(s), the report(s) or complaint(s) and any response that the Defendant provided to the Plaintiff.
- c. Any sworn statements from individuals with information relevant to the FLSA Claim(s).

- d. Documents that the Defendant relies on to support a claim that any alleged violation was in good faith.
- e. Any offer letters, employment agreements, or compensation agreements for the Plaintiff.
- f. Collective bargaining agreement(s) applicable to the Plaintiff.
- g. The job description for the position(s) the Plaintiff held during the relevant time period(s), if the job duties are at issue in the FLSA Claim(s).
- h. The Defendant's policies, procedures, or guidelines for compensation that are relevant to the FLSA Claim(s).
- i. The cover page, table of contents, and index of any employee handbook, code of conduct, or employment policies and procedures manual pertaining to compensation or time worked.
- j. Any other documents the Defendant relies on to support the defenses, affirmative defenses, and counterclaims to the FLSA Claim(s).
- k. Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(3) Information that the Defendant must produce to the Plaintiff.

- a. Provide the following information related to the Plaintiff :
 - 1. Start and end dates for work performed;
 - 2. Work location(s);
 - 3. Job title(s);
 - 4. Employee or contractor identification number;
 - 5. In cases alleging the misclassification of the Plaintiff, the classification status of the Plaintiff (i.e., exempt or non-exempt);
 - 6. Immediate supervisor(s) and/or manager(s).
- b. If the Defendant does not have a job description for the Plaintiff, a brief description of the Plaintiff's job duties for the relevant time period(s), if the job duties are at issue in the FLSA Claim(s).
- c. Identify persons the Defendant believes to have knowledge of the facts concerning the FLSA Claim(s) or defenses, and a brief description of that knowledge.
- d. If the Plaintiff reported or complained to the Defendant about the FLSA Claim(s), whether the report(s) or complaint(s) were written or oral, when the report(s) or complaint(s) were made, to whom any report(s) or complaint(s) were made, and any response(s) provided by the Defendant.