

INDIVIDUAL RULES AND PRACTICES OF JUDGE RICHARD J. SULLIVAN WHEN SITTING BY DESIGNATION IN THE UNITED STATES DISTRICT COURT*

Chambers Contact Information:

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Unless otherwise ordered, parties appearing before Judge Sullivan on matters pending in the United States District Court shall comply with the following rules and 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. Letters on behalf of parties represented by counsel must be both docketed on ECF and e-mailed as a PDF attachment to the following address: CA02_RJSChambers@ca2.uscourts.gov. Copies of correspondence between counsel shall not be sent to the Court or docketed on ECF. *Pro se* litigants may send letters by regular mail, but must send all letters to the *Pro Se* Intake Unit, not to chambers. Other than orders to show cause, documents should not be delivered directly to chambers without prior permission, including by Assistant United States Attorneys and Federal Defenders.

Counsel shall include the case caption and docket number in the subject line of every e-mail sent to chambers. Counsel shall not provide a hard copy of correspondence e-mailed to chambers.

B. Telephone Calls. Telephone calls to chambers are permitted only in situations requiring immediate attention. In such situations only, call (212) 857-2450.

C. Requests for Extensions. Requests for adjournments, extensions of time, extensions of page lengths in memoranda, etc., shall be made by letter, and not by stipulation sent through the Orders and Judgments Clerk. Absent an emergency, such requests must be received in chambers at least two business days prior to the scheduled appearance or deadline. All requests for adjournments or extensions of time must state (1) the original date set for the appearance or deadline, (2) the reason(s) for the request, (3) the number of previous requests for adjournment or extension, (4) whether these previous requests were granted or denied, and (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the

* Although Judge Sullivan sits on the United States Court of Appeals for the Second Circuit, he maintains a sizeable docket of cases on the United States District for the Southern District of New York. These Rules and Practices pertain solely to those district court cases. For appellate cases involving Judge Sullivan, parties are expected to comply with the Federal Rules of Appellate Procedure and the Local Rules of the United States Court of Appeals for the Second Circuit.

requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

D. Proposed Stipulations and Orders. In civil matters, proposed stipulations and orders are to be filed electronically on the court's ECF system using the Filing Events found under PROPOSED ORDERS. Alternatively, civil stipulations and orders may be submitted in both PDF and Word version through the Orders and Judgments Clerk at judgments@nysd.uscourts.gov. Courtesy hard copies need not be sent to chambers.

In criminal matters, proposed stipulations and orders are to be submitted directly to Chambers at CA02_RJSChambers@ca2.uscourts.gov.

E. Related Cases. After a case has been accepted as related to an earlier-filed case, all future court papers and correspondence must contain the docket number of the new case, as well as the docket number of the case to which it is related (*e.g.*, 10-cv-1234 [rel. 09-cv-4321]).

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions or disputes, follow Rule 2.G. below. For motions other than discovery motions, a pre-motion conference with the Court is required before making any motion, except motions previously authorized by the Court, motions brought by order to show cause, motions by incarcerated *pro se* litigants, motions for admission *pro hac vice*, motions for re-argument or reconsideration, motions for appointment of lead plaintiffs and counsel in class actions, motions for remand, motions for a preliminary injunction, motions brought pursuant to Local Rule 6.3, and motions described in Rule 6(b) of the Federal Rules of Civil Procedure and Rule 4(a)(4)(A) of the Federal Rules of Appellate Procedure.

To arrange a pre-motion conference, the moving party shall submit a letter in accordance with Rule 1.A, not to exceed three pages in length, setting forth the basis for the anticipated motion. The letter shall include citations to relevant authority and should provide a brief overview of the anticipated motion. All parties served with the letter must submit a letter response, not to exceed three pages, within three business days from submission of the notification letter. Response letters shall directly address the arguments and authorities set forth in the moving party's letter. No party shall submit a reply letter. As a general matter, affidavits and exhibits are not permitted in connection with pre-motion letters without prior written request and permission. However, when submitting a pre-motion letter regarding a request to amend a pleading, the moving party shall attach: (1) the proposed amended pleading, and (2) a blackline comparison of the operative pleading and proposed amended pleading.

A party's submission of a pre-motion letter seeking leave to file a pre-answer motion to dismiss will stay that party's obligation to answer or move against the complaint through the date of the pre-motion conference.

B. 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. Memoranda of 10 pages or more shall contain a table of contents. All memoranda of law shall (1) be produced in a font size of twelve point or higher, (2) be double-spaced, and (3) have one-inch margins on all sides. Footnotes shall (1) be produced in a font size of twelve point or higher, and (2) be single-spaced with a twelve point space between footnotes appearing on the same page. Sur-reply memoranda will not be accepted without prior permission of the Court.

C. Unpublished Cases. Westlaw citations shall be provided, if available, to cases not available in an official reporter. Parties must provide copies of cases that are not available on Westlaw.

D. Courtesy Copies. Regarding all motion papers, including exhibits submitted in connection with a motion, a party shall submit a hard courtesy copy and, via e-mail, an electronic courtesy copy thereof to chambers at the time the papers are served. As for pleadings and correspondence (*e.g.*, letter motions), a party need only e-mail a courtesy copy to chambers. Courtesy copies should be marked as such and shall be submitted to chambers for both ECF and non-ECF designated cases.

E. Filing of Motion Papers. Motion papers not filed and served via ECF shall be filed promptly after service.

F. Oral Argument on Motions. Oral argument will be held at the Court's discretion. The notice of motion shall state that oral argument will be "on a date and at a time designated by the Court." The Court will contact the parties to set the specific date and time for oral argument, if any. Where junior lawyers are familiar with the matter under consideration, but are not experienced in arguing before a court, they should be encouraged to actively participate. The Court is amenable to permitting more than one lawyer to argue for a party, especially where it creates an opportunity for a junior lawyer to argue.

G. Discovery Disputes. Unless otherwise directed, and before making any discovery motion, counsel should describe their discovery disputes in a single letter, jointly composed, not to exceed five pages. Separate and successive letters will not be read. Before filing the joint letter, the parties shall confer in an effort to resolve the dispute without court action, and the joint letter shall describe the time, place and duration of such discussions, naming the counsel involved. The joint letter shall also describe concisely the issues in dispute and the respective positions of each party, citing the applicable authority that the respective parties claim for support. As a general matter, affidavits and exhibits are **not** permitted in connection with discovery dispute letters without prior written request and permission. However, when the dispute concerns the refusal to respond to a specific written request, the parties shall attach that request. If an opposing party refuses to participate in writing a joint letter or does not provide its portion of a joint letter within 72 hours of a party's request, a party may submit a letter without the opposing party's contribution and shall attach a copy of the correspondence seeking the opposing party's contribution.

H. Affidavits and Exhibits. Parties are limited to a total of five affidavits each in support of or in opposition to a motion. Affidavits may not exceed ten double-spaced pages. Parties are limited to a total of fifteen exhibits, including exhibits attached to an affidavit, in support of or in opposition to any motion. Each exhibit – other than the complaint – is limited to fifteen pages. If possible, the exhibits should be excerpted to include only the relevant material. As noted above, no affidavits or exhibits are permitted in connection with pre-motion letters or discovery dispute letters without prior written request and permission.

3. Sealing

No document may be filed with the Clerk under seal without an order of this Court addressing the specific documents to be sealed. Any application to seal shall be accompanied by an affidavit or affidavits and a memorandum of law, demonstrating that the standards for sealing have been met and specifically addressing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006), in a civil case or *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995), in a criminal case, and any other controlling authority. The application shall also include a proposed redacted version of the document(s) in question for public docketing. Nothing herein is intended to alter or modify the applicability of Federal Rule of Civil Procedure 5.2. The redactions expressly authorized by Rule 5.2 may be made without application to the Court.

4. Pretrial Procedures in Civil Cases

A. Courtesy Copies. A courtesy copy of each submission described in this pretrial section should be provided to chambers on the date that the submission is filed or served.

B. Joint Proposed Pretrial Orders. Prior to trial, the Court will issue an order directing the parties to jointly submit to the Court for its approval a Proposed Pretrial Order that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and 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 Defendants as to the presence or absence of subject-matter jurisdiction, each of which shall include citations to all authority relied on and relevant facts as to citizenship and jurisdictional amount;
- iv. A brief summary by each party of the claims and defenses that the party has asserted that remain to be tried – without recital of evidentiary matters but with citations to all statutes on which the party has relied – and of the claims and defenses that the party has previously asserted that 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 all parties have consented to a trial of the case by a magistrate judge (without identifying which party or parties have or have not so consented);
- vii. Any stipulations of fact or law that have been agreed upon by the parties;
- viii. A statement by each party as to the witnesses whose testimony is to be offered in the party's 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 the party's 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 the party's case-in-chief, with an indication as to whether any party objects to any such exhibits and a brief statement of the nature of the objection (*e.g.*, "relevance," "authenticity," "hearsay"); and
- xi. A statement of whether the parties consent to less than a unanimous verdict.

C. Filings Prior to Trial.

Unless otherwise ordered by the Court, in jury cases, the parties shall jointly file the following submissions with the Proposed Pretrial Order:

- i. Proposed *voir dire* questions – a copy of which shall be e-mailed to chambers in a Word version – which shall include the text of any requested question and should consist of a single document and note any areas of disagreement between the parties;
- ii. A proposed verdict form – a copy of which shall be e-mailed to chambers in a Word version – which should consist of a single document and note any areas of disagreement between the parties;
- iii. Proposed jury instructions – a copy of which shall be e-mailed to chambers in a Word version – which shall include the text of any requested instruction and a citation, if relevant, to the authority from which such instruction derives, and should consist of a single document and note any areas of disagreement between the parties;
- iv. Motions addressing any evidentiary or other issues that should be resolved *in limine*; and

- v. If a party believes that it would be useful, a pretrial memorandum, not to exceed 10 pages.

Unless otherwise ordered by the Court, in non-jury cases, the parties shall jointly file the following submissions with the Proposed Pretrial Order:

- i. Proposed findings of fact and conclusions of law – a copy of which shall be e-mailed to chambers in a Word version – which should be detailed and note any areas of disagreement between the parties and, for each proposed factual finding, shall include citations to the record;
- ii. Motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- iii. If a party believes that it would be useful, a pretrial memorandum, not to exceed 10 pages.

D. Additional Submissions in Non-Jury Cases. In addition, in non-jury cases, at the time that the Proposed Pretrial Order is filed, each party shall serve the following submissions, two courtesy copies of which the party shall also submit to chambers:

- i. Affidavits – the originals of which shall be marked as exhibits at trial – 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 from whom the Court has agreed to hear direct testimony during the trial;
- ii. All deposition excerpts that will be offered as substantive evidence and, for each, a one-page synopsis of those excerpts (with citations); and
- iii. All documentary evidence, which shall be compiled in tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

E. Filings in Opposition. Parties shall file the following documents within one week of the filing of the pretrial order:

- i. Oppositions to any motions *in limine*.
- ii. Oppositions to any legal arguments in a pretrial memorandum.

F. Courtesy Copies of Documentary Evidence.

In jury cases, three days prior to trial, each party shall submit to chambers two sets of tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

In non-jury cases, three days prior to trial, the parties shall submit to chambers any additional documentary evidence not previously included in the binders submitted pursuant to Rule 4.C.1.iii. Any such additional documentary evidence shall be organized by exhibit number (continuing from the numbers in the previously submitted binders), and objections to an exhibit shall be clearly noted. In addition, with respect to the documentary evidence previously submitted pursuant to Rule 4.C.1.iii, the parties shall provide chambers with an index of the exhibit numbers that the Court has deemed admissible; to the extent that the Court has not ruled on an exhibit(s) to which a party objects, the index shall clearly note any such exhibit(s) as well. The index shall not list exhibits that the Court previously deemed inadmissible.

5. Conferences

A. Principal Trial Counsel. The attorney who will serve as principal trial counsel **must** appear at all conferences with the Court. Any attorney appearing before the Court must file a notice of appearance with the Clerk of the Court.

B. Initial Case Management Conference. The Court will generally schedule an initial conference pursuant to Fed. R. Civ. P. 16(c) within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be sent to plaintiff's counsel, who will be responsible for distributing copies to all parties.

C. Exhibits. If a party intends to introduce exhibits at a hearing, that party shall before the hearing begins submit two tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.