

For relevant historical context for this local rule, consult the Appendix of Committee Notes.

Local Civil Rule 83.10. Plan for Certain § 1983 Cases Against Police Department Employees (Southern District Only)

Unless ordered otherwise, in any civil case filed by a represented plaintiff alleging the use of excessive force, false arrest, or malicious prosecution by an employee of a police department in violation of 42 U.S.C. § 1983, the procedures set forth below will apply, except that the procedures and Protective Order identified in paragraphs (c) through (l) will not apply to class actions, actions brought by six or more plaintiffs, complaints requesting systemic equitable reform, or actions requesting immediate injunctive relief.

(a) Service of Releases with Complaint

- (1) At the time that plaintiff serves the complaint, plaintiff must serve on defendant:
 - (i) a release for sealed arrest records for the arrest that is the subject of the complaint and for a list of all prior arrests. A separate release is required for each municipality identified in the complaint. In the case of class actions, plaintiff must serve such releases for the named putative class representatives; and
 - (ii) if plaintiff seeks compensation for any physical or mental injury caused by the conduct alleged in the complaint other than “garden variety” emotional distress, a medical release for all medical and psychological treatment records for those injuries. Where plaintiff has a preexisting physical or mental condition that reasonably appears to be related to the injury for which compensation is sought, plaintiff must at that same time serve medical releases on defendant for all records of treatment for the preexisting condition(s). Plaintiff should expect that a failure to serve the applicable medical release(s) will constitute a waiver of plaintiff’s claims for compensation for that physical or mental injury.

(b) Failure to Serve Releases

If plaintiff fails to serve a release in accordance with paragraph (a)(1)(i) on defendant with the complaint, defendant must promptly send a letter to plaintiff's counsel requesting the release and attaching a copy of this Rule.

(c) Time to Answer

If the release required by paragraph (a)(1)(i) is served on defendant at the time the complaint is first served, defendant will have 80 days from the date of such service to answer the complaint. Any subsequently served defendant will have the greater of (i) 60 days, or (ii) the date by which the first-served defendant must answer, to answer the complaint. If such release is served on a defendant after the complaint is first served, each defendant will have the greater of (i) 60 days from the date the release is served on the City, or (ii) 60 days after that defendant is served, to answer the complaint. If any defendant moves to dismiss the entire complaint rather than filing an answer, the deadlines in this rule will be stayed unless the court orders otherwise.

(d) Rule 26(f) Conference, Initial Disclosures, and Applying for Exemption from the Rule

- (1) Within 14 days after the first defendant files an answer, the parties must confer in accordance with Fed. R. Civ. P. 26(f). The parties must also discuss whether to request that the court exempt the case from Local Civil Rule 83.10. Any such application by a party must be submitted to the presiding judge no later than 21 days after the first defendant files an answer.
- (2) Within 21 days after the first defendant files an answer, the parties must exchange their initial disclosures.

(e) Limited Discovery

Within 28 days after the first defendant files an answer, the parties must complete production of the following discovery.

- (1) Defendant must serve on plaintiff:

- (A) Subject to any applicable privileges, any of the following items, if available, that were not part of the defendant's initial disclosures:
 - (i) Complaint reports;
 - (ii) Use of Force reports;
 - (iii) Defendant officer's notes, memobook entries, or daily activity reports;
 - (iv) 911 reports, including any recordings;
 - (v) Radio run reports (audio and written);
 - (vi) Any video or photographs of the incident;
 - (vii) Injury reports;
 - (viii) Property vouchers;
 - (ix) Evidence vouchers;
 - (x) Arrest reports;
 - (xi) Mugshots;
 - (xii) Reports of medical treatment for plaintiff while in custody;
 - (xiii) Desk Appearance Tickets (for arrests after January 2009) or other tickets;
 - (xiv) Summonses; and
 - (xv) Handwritten Online Booking System forms.
- (B) Any documents received from a district attorney's office or a court regarding the incident that forms the basis of the complaint.
- (C) Any records or reports by an oversight agency or from an internal investigation regarding the incident that forms the basis of the complaint. If the incident or the conduct of defendants involved in the incident is the subject of an ongoing investigation by an oversight agency, internal police department investigation or disciplinary proceeding, criminal investigation, or outstanding indictment or

information, discovery under this paragraph shall be suspended, and defendant will produce the investigative records 30 days after the investigation or proceeding has been terminated (whether by completion of the investigation without charges being brought or by disposition of the charges). This suspension will not apply to documents related to any investigation or proceeding that has concluded.

- (D) For each defendant, any records of complaints or incidents that are similar to the incident alleged in the complaint or that raise questions about the defendant's credibility. If the complaint alleges that a defendant used excessive force, defendant will state whether that defendant has been or is subject to any corrective action related to use of force.
 - (E) For each officer named as a defendant, a list identifying all prior section 1983 lawsuits filed against and served on the defendant.
 - (F) Any records obtained by defendant as a result of the medical releases served in accordance with paragraph (a)(1)(ii). Medical records received after this date must be produced to plaintiff within seven days of receipt.
 - (G) Transcripts or other information generated pursuant to hearings under N.Y. General Municipal Law § 50-h.
- (2) Plaintiff must serve on defendant:
- (A) Any documents identified in paragraphs (e)(1)(A) and (B).
 - (B) Any medical records for which plaintiff has served on defendant a medical release in accordance with paragraph (a)(1)(ii).
 - (C) Any video and photographs of the incident.
- (f) Amended Pleadings

The complaint may be amended to name additional defendants without leave of the presiding judge within six weeks after the first defendant files an answer. The filing of the amended complaint will not affect any of the duties imposed by Local Civil Rule 83.10.

(g) Settlement Demand and Offer

Within six weeks after the first defendant files an answer, plaintiff must serve a written settlement demand. Defendant must respond in writing to plaintiff's demand within 14 days thereafter. The parties must thereafter engage in settlement negotiations.

(h) Letter to the Presiding Judge

Within 10 weeks after the first defendant files an answer, the parties must file a letter with an update on the status of the case, including the following information:

- (1) Unless the presiding judge has already scheduled or held an initial pretrial conference, at least three dates on which the parties would be available for an initial pretrial conference; and
- (2) Unless the presiding judge has referred the case to the Mediation Program or to a magistrate judge for settlement purposes, whether the parties believe that they would benefit from such a referral.

(i) Mediation or Settlement Conference

Plaintiff must attend any mediation or settlement conference. Defendant's representative at any mediation or settlement conference must have full authority to settle the case; if defendant requires additional approvals in order to settle, defendant must have arranged for telephone access to those persons during the mediation or settlement conference. If any defendant is insured, a fully authorized representative of that defendant's insurance company must attend any mediation or settlement conference if the decision to settle or the amount of settlement must be approved by the insurance company.

(j) Failure to Timely Comply with the Requirements of this Rule

If any party fails to comply with any requirement under this rule, the other party must promptly write to the presiding judge indicating the nature of the failure and requesting relief.

(k) Protective Order

The Protective Order found on the court's website will be deemed to have been issued in all cases governed by this rule.

(l) Preservation

Local Civil Rule 83.10 does not relieve any party of its obligation to preserve documents and to issue preservation instructions.

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Local Civil Rule 87.1. Civil Rules Emergency

If a Civil Rules Emergency is declared by the Judicial Conference under Fed. R. Civ. P. 87, then the chief judge of the district may issue any order directed toward that emergency that is not inconsistent with that rule. Any order issued by the chief judge under this local rule must terminate upon termination of the Civil Rules Emergency.

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