

**Date: December 13, 2019**

## **INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE GABRIEL W. GORENSTEIN**

**Note on Consent Jurisdiction:** If the parties wish to consent to having Judge Gorenstein preside over their case for all purposes, the necessary form is available on Judge Gorenstein's page on the SDNY website (<https://nysd.uscourts.gov/hon-gabriel-w-gorenstein>). In consent cases, the Magistrate Judge assumes the role of the District Judge and thus the right to a jury trial is preserved. Any appeal is directly to the Court of Appeals. Judge Gorenstein schedules trials in civil cases for firm dates chosen in consultation with the parties, rather than using a trailing trial calendar or requiring counsel to be available for trial on short notice. If all parties sign a consent form, it may be filed on the Electronic Case Filing ("ECF") system as an attachment to a cover letter to Judge Gorenstein. A form is also available to consent to jurisdiction over a particular motion.

All matters referred to Judge Gorenstein shall be conducted in accordance with the instructions below, unless otherwise ordered.

### **1. Communications with Chambers**

**A. Letters.** Letters to the Court are permitted. However, the Court will not consider any letter that fails to comply with any applicable requirement contained in these Individual Practices. A courtesy copy of certain letters to the Court must be sent to Chambers as reflected in paragraph 1.B. Parties shall not copy the Court on correspondence sent between counsel or the parties.

**B. Method of Delivering Letters.** Parties are permitted, though not required, to file a letter on ECF. For any request for an extension or an adjournment (which must comply with paragraphs 1.E and 1.F below), counsel should select the "letter motions" option on ECF. All other letters should be docketed simply as a "letter." If counsel files a "letter" on ECF (that is, a letter other than a request for an extension or an adjournment), counsel must also send a courtesy copy to Chambers by either postal mail, by fax (if 10 pages or less), overnight mail, or hand delivery. If, however, there are particularly voluminous exhibits to a letter, counsel should exclude such exhibits from the courtesy copy (or send with the courtesy copy a disk containing the exhibits).

Letters sent by mail or overnight delivery should be addressed to Chambers at the U.S. Courthouse, 500 Pearl Street, New York, NY 10007. If delivered by hand, letters should be brought to the mail room at 500 Pearl Street.

Any letter sent to Chambers by facsimile telecopier may be no longer than 10 pages, unless prior authorization is obtained from Chambers. Do not send both a fax and a hard copy. The fax number is (212) 805-4268.

The Court does not accept letters by email.

**C. Telephone Calls.** Except as provided in Paragraph 1.D below, telephone calls to Chambers are permitted only in emergency situations. For any other situation, a party may submit a letter to the Court in accordance with paragraphs 1.A and 1.B above.

**D. Calendar Matters.** For information regarding adjournments of dates on the Court calendar, call Chambers at (212) 805-4260. See paragraph 1.F below.

**E. Requests for Extensions of Deadlines.** Requests for extensions of deadlines must state (1) the date or dates sought to be extended, (2) the number of previous requests for

extensions, (3) the reason for the extension, and (4) whether the adversary objects and, if so, the reasons given by the adversary for objecting. To the extent a request to extend a particular date requires a change in other scheduled dates, the request must list the proposed change for all such other dates, giving the new proposed date for each affected deadline. A request may be made either by letter or by a joint stipulation that reflects the required information. Note: to the extent a party's adversary objects to a request regarding a discovery deadline, the party must also comply with the conference requirements of paragraph 2.A below.

Note: This paragraph does not apply to deadlines for briefing of a formal motion where the deadline is not court-ordered and the parties agree to the new deadline, as described in paragraph 2.B below.

**F. Requests for Adjournments of Court Appearances (including telephone conferences).** A request for an adjournment of a court appearance shall be made as soon as a party is aware of the need for the adjournment and, in any event, no later than five business days prior to the scheduled appearance (absent an emergency). Prior to making such a request, the party intending to make the request should contact the Deputy Clerk ((212) 805-4260), to determine an alternative date for which the Court is available for a rescheduled court appearance. The requesting party should next contact all other parties to determine their availability for that date. The requesting party must then make a written request to the Court for an adjournment by letter forthwith filed on ECF stating the date and time that is being requested. The letter must include a statement as to the other parties' positions on the change in date. The appearance is not adjourned unless the parties are thereafter informed by the Court that the written application has been granted.

**G. Electronic Device Orders.** Orders permitting an attorney to bring an electronic device to the Courthouse may be requested by filing a letter on ECF that attaches a completed form. Any such letter shall be filed at least two business days before the proceeding at issue. The form for such orders is located on the forms page of the SDNY website and is entitled "Fillable Form For Electronic Devices General Purpose." (It can be found by using the "what are you seeking" box on the Forms page and searching for "electronic devices.") Note that only attorneys are eligible for such an order.

## **2. Motions**

**A. Pre-Motion Conferences in Civil Cases.** As described below, pre-motion conferences are required where the proposed motion is returnable before Judge Gorenstein, or where the proposed motion has been referred to Judge Gorenstein, except that no pre-motion conference is required for motions for admission pro hac vice, motions for reconsideration or reargument, motions listed in Fed. R. App. P. 4(a)(4)(A), motions for recusal, and applications made by order to show cause.

Discovery Motions. No application relating to discovery (that is, any dispute arising under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) shall be heard unless the moving party has first conferred in good faith by telephone or in person with all other relevant parties in an effort to resolve the dispute. A party must respond within one business day to any request from another party to confer unless an emergency prevents such a response. If the conference with the relevant parties has not resolved the dispute, the moving party must confirm this fact and must inform the opposing party during the conference that as a result of the impasse the moving party intends to seek relief from the Court regarding the dispute. The moving party must thereafter promptly request a conference with the Court. See Local Civil Rule 37.2. To request a conference with the Court, the moving party shall submit a letter (normally not more than five pages) setting forth the basis of the dispute and the need for the anticipated motion. (Do

not use the “Letter Motion” category on ECF for such a letter; use instead the “Letter” category.) The letter must certify that the required in-person or telephonic conference took place between the relevant parties. The letter must also state (1) the date and time of such conference, (2) the approximate duration of the conference, (3) the names of the attorneys who participated, (4) the adversary’s position as to each issue being raised (as stated by the adversary during the in-person or telephonic conference), and (5) that the moving party informed the adversary during the conference that the moving party believed the parties to be at an impasse and that the moving party would be requesting a conference with the Court. None of these requirements may be satisfied by attaching copies of communications between the parties and it is usually unnecessary to attach such communications. The party opposing the requested relief must submit a letter to the Court in response as soon as practicable and in any event within two business days, unless the parties agree otherwise (and the Court is informed of the agreed response date by letter) or an extension of time is sought and granted in accordance with paragraph 1.E above.

In most instances, the letters will fully describe the parties’ discovery dispute. Accordingly, if a party believes that the issue should be decided based on formal briefing, the party must so state in a separate letter application and shall give the reasons therefor. In the absence of such an application, the Court may decide the dispute based solely on the letters and without holding a conference.

Motions other than Discovery Motions. To arrange a pre-motion conference for non-discovery matters, the moving party shall submit a letter setting forth briefly (normally not more than three pages) the nature of the anticipated motion. An opposing party shall respond within two business days. Parties are reminded that, as described in section I.B above, if this letter is filed on the ECF system, the “letter motion” option should not be selected. Instead the “letter” option should be selected. Parties are encouraged to confer with their adversary in appropriate cases to determine whether a motion is in fact necessary.

**B. Briefing Schedule on Motions.** Where the Court has ordered deadlines for briefing a motion, the court-ordered deadlines apply. Any extension of a Court-ordered deadline may be sought in accordance with paragraph 1.E above.

Where the Court has not ordered a briefing schedule, the moving party shall, prior to filing the motion, contact all other parties in an attempt to agree on a reasonable schedule. Unless the Court orders otherwise, any agreed-upon schedule shall govern as long as it is disclosed to the Court in the letter that accompanies the courtesy copies of the initial motion papers and in the text of the notice of motion. The parties may agree to subsequent extensions of deadlines without Court order as long as the new schedule is disclosed in a letter to the Court filed on ECF. Thus, in a situation where the parties agree on an extension to deadlines in a briefing schedule and the deadlines at issue were not court-ordered, paragraph 1.E above is inapplicable, and no Court order is required to effectuate the new schedule.

In the rare instance where the parties cannot agree on a schedule for the briefing of a motion, the briefing schedule will instead be in accordance with the time periods specified in Local Civil Rule 6.1. Any extensions may be sought in accordance with Paragraph 1.E above.

A return date should not be given in the Notice of Motion; but reference should be made in the Notice to the due date for opposition and reply papers (in accordance with the parties’ agreement, Local Civil Rule 6.1 or any governing Court Order, whichever may be applicable).

When the motion is fully submitted, the party making the initial motion shall file a letter informing the Court of such.

**C. Courtesy Copies of Motion Papers.** A party must send to Chambers (by postal mail or other delivery to the mail room at 500 Pearl Street) one courtesy copy of each motion paper the party files, marked as such, at the same time as it is filed. Courtesy copies may not be submitted through the ECF system or by fax. If a filing is bulky or voluminous (such as multiple exhibits to an affidavit), the courtesy copy of the bulky or voluminous item should be submitted by means of CD-ROM or DVD.

**D. Memoranda of Law.** A memorandum of law must accompany all motions and oppositions thereto. See Local Civil Rule 7.1. The memorandum of law must set forth all pertinent facts, which may not be accomplished by incorporating by reference affidavits or declarations. Instead, the memorandum must contain a fact section that sets forth all facts relevant to the motion and, for each factual statement, provides one or more citations (with specific page or paragraph numbers) to pleadings, declarations, affidavits or other documents that have been separately filed. Factual statements contained within other sections of a memorandum also must be followed by a citation to documents in the record.

The Court does not impose page limitations on memoranda of law. The parties should exercise their sound judgment so as not to unnecessarily burden the Court. Memoranda of more than 10 pages shall contain a table of contents.

**E. Requests to File Materials Under Seal.** The parties are reminded that the filing of any papers under seal is only permitted pursuant to an order of the Court. To the extent motion papers contain material that one or both sides believe should be filed under seal, any party seeking such sealing shall, at the time of the filing, make a written application to the Court, citing case law and providing any factual explanation that justifies the proposed sealing. The Court reminds the parties that the mere fact that material has been designated as confidential under a protective order will not support sealing and the party making the designation must reconsider any prior designation in light of the case law applicable to filing documents under seal. In cases where the request to seal arises because of an opposing party's designations, the opposing party has the obligation to make the written application to the Court justifying the proposed sealing. The application to seal shall be accompanied by a copy of the document with the proposed redactions highlighted or otherwise clearly marked. The application to seal may be filed in redacted form on ECF, with a courtesy copy of the unredacted version of the motion to file under seal sent to Chambers.

The pendency of the application to seal does not affect any deadlines that may govern the proposed filing. The parties shall comply with such deadlines by filing a redacted version on ECF, serving the unredacted papers at issue on any opposing parties, and providing a courtesy copy of the unredacted version to Chambers.

**F. Oral Argument on Motions.** Judge Gorenstein normally does not hear oral argument on motions. A party may request oral argument by letter. If the Court determines that argument will be heard, it will so advise the parties.

**G. Applicability of Rule 56.1 to Summary Judgment Motions.** Any motion for summary judgment must comply with Local Civil Rule 56.1, except that a party who is not required to comply with Local Civil Rule 56.1(d) based on the applicability of Fed. R. Civ. P. 56(c)(1)(B) may seek to be relieved of Local Civil Rule 56.1(d)'s requirements by raising the issue in the pre-motion conference request.

**H. Motions in Pro Se Cases.** As required by Local Civil Rule 7.2, counsel must provide a pro se litigant with printed copies of decisions cited in any submission that are unreported or reported exclusively on computerized databases.

Where a party seeks summary judgment against a pro se litigant, the party must also comply with the notice requirements of Local Civil Rule 56.2. Where a party moves to dismiss or for judgment on the pleadings against a pro se litigant and refers to matters outside the pleadings, counsel must serve and file the notice set forth in Local Civil Rule 12.1. In such situations, counsel are strongly encouraged to move in the alternative for summary judgment so that the pro se litigant understands, based on the Local Civil Rule 56.1 submission, exactly what facts are relevant to the motion.

### 3. Pretrial Procedures

**Note: The following additional procedures apply only to those cases where the parties have consented under 28 U.S.C. § 636(c) to have all proceedings, including trial, before Judge Gorenstein.**

**A. Pretrial Disclosure.** The parties are reminded of their obligations to make certain disclosures regarding expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and to make disclosure regarding evidence that may be presented at trial pursuant to Fed. R. Civ. P. 26(a)(3). Failure to comply with these requirements may result in preclusion or other sanctions.

**B. 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 (including cellular phone if available) 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 jurisdictional facts, such as citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on.
- v. With respect to each claim remaining to be tried, a statement listing each element or category of damages sought with respect to such claim and, if appropriate, a calculation of the amount of damages sought with respect to such element or category.
- vi. 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.
- vii. Any stipulations or agreed statements of fact or law that 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, indicating whether such witnesses will testify in person or by deposition. A party may not call as a witness an individual who is not listed in its portion of this statement.
- ix. A designation by each party of deposition testimony to be offered in its case,

referencing page and line numbers, with any cross-designations and objections by any other party. If there is no objection or cross-designation, the Court will deem the opposing party to have waived any such objection or cross-designation. A party may not offer deposition testimony that is not listed in its portion of the designation.

x. A list by each party of exhibits to be offered in its case. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For any exhibit as to which there is an objection, the party objecting must briefly specify, next to the listing for that exhibit, the nature of the party's objection (e.g., "authenticity," "hearsay," "Rule 403"). Any objection not listed shall be deemed waived. A party may not offer an exhibit that is not listed in its portion of the list.

**C. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, each party shall file – at the same time as the filing of the joint pretrial order – the following:

i. In jury cases, all parties must prepare jointly three separate documents: (1) a list of voir dire questions to be asked of prospective jurors; (2) requests to charge; and (3) a proposed verdict sheet. To the extent a party objects to another party's requested voir dire questions, requests to charge or proposed verdict sheet, that party should (1) set forth the grounds for that objection (or refer to the trial memorandum of law for a full discussion of the objection) and (2) propose an alternative. All requests to charge, all objections and all alternative proposals must include citation to authority. If the voir dire questions, requests to charge and/or verdict sheets are prepared on a computer, electronic copies must also be submitted on CD-ROM or via e-mail. Counsel should contact the Deputy Clerk for instructions on how to submit such materials by e-mail.

Each party must also file a Trial Memorandum of Law addressing each issue of law that the party expects to arise at or before trial.

ii. In nonjury cases, the parties are required to submit proposed findings of fact and conclusions of law. The parties must also submit trial memoranda of law that identify the issues, summarize facts and applicable law, and address any evidentiary issues. If prepared on a computer, these materials should also be submitted on CD-ROM or via e-mail. Counsel should contact the Deputy Clerk for instructions on how to submit such materials by e-mail.

**D. Submissions to the Court Prior to Trial in Civil Cases.** At or before the time the materials set forth in paragraph 3.C above are filed, the parties shall deliver to the Court in a looseleaf notebook (with a copy to their adversary): (1) a copy of each of the party's pre-marked exhibits, see paragraph 3.B.x above, and (2) a copy of any deposition testimony designated in paragraph 3.B.ix above.

**E. Witnesses at Trial.** When a party's case commences, that party is expected to have witnesses available to fill the trial day, which runs from 9:00 a.m. to 5:00 p.m. with a one hour lunch break. The parties are warned that if a party does not have a witness available to testify, the Court may deem that party to have rested. Any requests to schedule a witness out of order and/or for a particular day must be made by a letter application that states the opposing party's position and that is sent (1) prior to trial and (2) as soon as counsel is aware of the limited availability of that witness. Untimely applications will be denied.