Effective February 3, 2020

INDIVIDUAL RULES OF PRACTICE HON. JED S. RAKOFF

Chambers
Room 1340
United States Courthouse
500 Pearl Street
New York, NY 10007
(212) 805-0401

Courtroom
Room 14-B
United States Courthouse
500 Pearl Street
New York, NY 10007
(212) 805-0129

1. Written or E-mail Communications

(a) All communications with Chambers must be by means of joint telephone calls, as described in Rule 2, infra. Correspondence with the Court (whether by letter, email, or otherwise), filing correspondence on ECF or docketing correspondence with the Clerk of Court, and copying the Court on correspondence with others, is strictly forbidden, except as specifically authorized by these rules or expressly requested by the Court. Even if the Court emails an order, opinion, or other communication to the parties, the parties may not respond by email unless the Court directs them to do so.

(b) Where specifically authorized by these rules or expressly requested by the Court, e-mail communication shall be sent to RakoffNYSDChambers@nysd.uscourts.gov as .pdf attachments with copies simultaneously delivered to all counsel. Emails shall state clearly in the subject line (i) the full caption of the case, including the party names and docket number, and (ii) the

contents of the email. The beginning of the email communication must clearly state the contents and purpose of the email. Copies of correspondence between counsel shall not be sent to the Court.

2. Oral Communication; Motions and Applications

(a) No ex parte communication with Chambers is permitted, even on consent of opposing counsel, except for those limited applications in criminal cases expressly permitted by statute to be made ex parte or when counsel for a party has not yet entered a notice of appearance. Counsel for all affected parties must be on the line whenever a telephone call to Chambers is placed; however, all similarly situated parties may, if they wish, designate a "lead" counsel in advance to represent them on any such call. The Judge and/or his clerks are normally available to receive telephone calls between 9:00 a.m. - 1:00 p.m. and 2:00 p.m. - 6:00 p.m. If calling within these hours, counsel need not schedule a telephone call to Chambers in advance. Please first provide the docket number of the case when a Chambers staff member answers the telephone. If all lines are busy, the call will be transferred to voicemail. Any message left on the Chambers voicemail or with Chambers staff must include the docket number of the case and the names and telephone numbers of all participating counsel.

On calls to Chambers, parties should be prepared to state clearly and succinctly (1) the nature of their application (the relief requested of the Court); (2) the reasons for their application; and (3) whether a given application is opposed by another party.

(b) In order to bring on any contemplated motion or application of any kind whatever, excepting only a motion for admission pro hac vice (which may be filed without prior

authorization) or the ex parte criminal applications referred to above, counsel for all affected parties must jointly call Chambers in the manner prescribed above. No party will ever be denied the right to make a motion permitted by law; but if the Court determines that the matter can be resolved telephonically, it will hear the application or motion immediately and issue a ruling then or shortly thereafter (orally, or, if so requested by counsel, in writing). If, conversely, the matter requires motion papers and/or in-court argument, a schedule for same will be determined at the time of the call. In criminal cases, however, any party can demand that any non-scheduling matter brought up in a telephone conference be the subject of an in-court hearing before decision.

(c) If counsel for any party seeks to convene a call to Chambers, counsel for all other affected parties are expected to make themselves available for such a call within 24 hours of the request. If, after successive attempts, counsel for any affected party is unavailable for the call, the initiating party may then send Chambers and all affected counsel an email or a letter, not to exceed two double-spaced pages, describing the efforts made to convene a conference call and briefly describing the proposed motion or application. In such a case, per Rule l, supra, no reply or other correspondence is permitted, but a conference with the Court will be promptly arranged. Notwithstanding these rules applicable to parties represented by counsel, if one of the parties is an incarcerated person proceeding pro se, the initiating party may send all affected counsel, the pro se party, and Chambers a letter describing the application.

(d) Where motion papers are necessary, counsel for the moving party, following the scheduling of the motion, shall file a short Notice of Motion setting forth a one-sentence description of the motion, the schedule for service and filing

of the various parties' papers, and the date and time of oral argument as set by the Court. Motion papers shall consist of moving papers, answering papers, and the moving party's reply papers (when permitted). Any legal memoranda must include a table of authorities, arranged alphabetically, with case citations including accurate pin or jump citations. Each party must file its respective papers with the Clerk of the Court on the same date that such papers are served. Additionally, counsel filing those papers must arrange to deliver courtesy hard copies to the Courthouse for delivery to Chambers by the next business day following the filing.

(e) Unless otherwise specified by the Court, any memorandum of law submitted with the moving papers or the answering papers on any motion is limited to 25 double-spaced pages, and any reply memorandum is limited to 10 double-spaced pages. Both the text and footnotes in such memoranda of law must be in 12 point type on 8½ by 11 inch paper (or the electronic equivalent), with Times New Roman type preferred. If the Court permits letter briefing in lieu of formal memoranda, the rule on font size for text and footnotes still applies. With respect to motions for summary judgment, Local Civil Rule 56.1 will be strictly enforced. Citations to the record in any memorandum of law filed in connection with a motion for summary judgment must include a citation to the party's Local Civil Rule 56.1 Statement of Material Fact or opposition thereto.

(f) All documents filed on ECF must be word-searchable to the extent reasonably practicable.

3. Initial Conferences and Civil Discovery

(a) In civil cases, an initial conference will be held no later than six weeks after filing of the Complaint (and often

earlier) regardless of whether issue has been joined. Immediately upon receipt of the Notice of Court Conference, plaintiff's counsel must furnish the Court with a courtesy copy of the Complaint.

(b) No later than three business days prior to the initial conference, the parties to a civil case must email Chambers a written report of their agreements or disagreements regarding case management and discovery and a proposed Case Management Plan in a form corresponding to the Court's Case Management Order Form (Form D). In formulating their Case Management Plan, the parties should bear in mind that all discovery and post-discovery motion practice must be completed prior to the trial-ready date set by the Court, which will appear on the Form D furnished to the parties along with the notice of the initial conference. This may not be the actual trial date, but will be the date following which the parties will not be heard to complain that they are not ready for trial. Interrogatories are strictly limited to those authorized by Local Civil Rule 33.3(a), and no deposition may extend beyond one business day without prior leave of the Court. At the initial conference, the Court will issue a binding Case Management Order that, in most cases, will require the case to be ready for trial within five months of the date thereof.

(c) In criminal cases, an initial conference with the Court will be held promptly after presentment before a Magistrate Judge. At this conference, in addition to arraignment, the Court will set a schedule for the completion of discovery and the filing of any motions. Where motions are permitted, the length and format of any memoranda of law must be in accordance with Rule 2(e), supra. The Court does not participate in the S.D.N.Y. Plan for Certain § 1983 Cases Against the City of New York.

4. Trial-Pending Exchanges and Pretrial Orders in Civil Cases

(a) The trial-pending exchanges among the parties mandated by Fed. R. Civ. P. 26(a)(3) shall be strictly enforced, except that the disclosures prescribed therein may be made 21 (instead of 30) days before trial.

(b) In addition, in all civil cases, the parties shall jointly file with the Court, no later than one week prior to trial, a proposed Pretrial Consent Order (plus a courtesy hard copy of same for submission to Chambers) consisting of the following items:

(i) A joint overview of the case.

(ii) A particularized description of each party's remaining claims, counterclaims, cross-claims, or third-party claims (failure to specify which will be deemed a waiver).

(iii) A particularized statement of the specific facts, stipulations, admissions, and other matters on which the parties agree.

(iv) Each party's particularized contentions as to the specific facts that are disputed. (In addition, in non-jury cases, the parties, following trial, will be required to submit proposed findings of fact, with citations to the record, and proposed conclusions of law.)

(v) A particularized statement of the injunctive relief, declaratory relief, and/ or damages claimed (including amounts) for each claim, counterclaim, cross-claim, or third-party claim.

(vi) A list of the names of the witnesses (both fact witnesses and expert witnesses) that each party intends to call, in the likely order of appearance.

This should be a final and binding list, without qualifications or reservations. A witness whose name appears on the list of more than one party will testify only once but may be examined at that time by all parties on all relevant matters.

(vii) A list of all exhibits to be offered by each party, and particularized objections thereto noted in accordance with Fed. R. Civ. P. 26(a)(3).

(viii) A final estimate of the length of trial (assuming a typical trial day of 9:00 a.m. to 5:00 p.m., Monday through Friday).

5. Pretrial Exchanges in Criminal Cases

Each of the parties in a criminal case must deliver to the Courthouse mailroom for delivery directly to Chambers at least three business days before trial: (a) a final and binding list of the witnesses that the party expects to call (other than the defendant), in the likely order of appearance, and (b) a list of the exhibits that the party expects to offer on its direct case.

6. Deposition Transcripts and Trial Exhibits

(a) In all civil cases, the parties shall deliver to the Courthouse mailroom for delivery directly to Chambers at least three business days before trial marked-up copies of the portions of transcripts of depositions intended to be read into evidence, with particularized objections noted thereon in accordance with Fed. R. Civ. P. 26(a)(3).

(b) In all civil and criminal trials, the parties during trial shall tender to the bench two copies of any exhibit a party seeks to offer into evidence at the same time the party hands the

original exhibit to a witness during an examination. Plaintiff's and defendant's exhibits shall both be marked by numbers (e.g., "Plaintiff's Exhibit 1," "Defendant's Exhibit 1").

(c) Parties are not required to provide the Court with copies of exhibits in advance of trial, but are expected to have all exhibits available on the morning of the start of trial.

7. Proposed Jury Charges

In all jury cases, whether civil or criminal, proposed jury charges must be submitted to the Court at least one week before trial. Any proposed jury charge submitted thereafter will not be considered by the Court, except upon a showing that the proposed charge relates to an issue that could not reasonably have been expected to arise at trial.

8. Proposed Voir Dire Requests

In all jury cases, whether civil or criminal, proposed voir dire requests must be submitted to the Court at least three business days before the start of jury selection. In both civil and criminal cases, the jury will be selected by the traditional "jury box" method.

9. Motions in Limine

Motions in limine are not a matter of right and should be largely limited to critical matters on which pre-trial rulings are critical. After a trial date is set, any party, without further leave of Court, may serve such a motion directed at limiting the proof at trial, provided the motion is served upon all parties by no later than two weeks before trial. All such

motions in limine, and any opposition thereto, must be filed with the Clerk of the Court and courtesy copies submitted to Chambers at least one week before trial. Any party referencing a proposed trial exhibit in such motion papers must submit a courtesy copy of that exhibit to the Court along with the motion papers. Such motions will normally be resolved by the Court on the morning of the first day of trial.

10. Stipulations of Settlement and Discontinuance

No adjournments will be granted on the grounds of settlement unless the parties have submitted to Chambers a stipulation or letter on behalf of all parties affirming that the case has been finally settled and that the Court may dismiss the case with prejudice. Except for good cause shown, no such stipulation shall be accepted that provides for re-opening of the case more than 30 days after dismissal or that provides for the Court to retain jurisdiction for more than 30 days following dismissal except to enforce injunctive relief.

11. Summations in Civil Cases

In all civil trials, plaintiff's counsel will sum up first, followed by defendant's counsel. Where there is only one defense summation, plaintiff's counsel will normally not be permitted a rebuttal summation except in unusual circumstances. Where there are two or more defense summations, plaintiff's counsel will normally be permitted a brief rebuttal.

12. Sentencing

Sentencing will normally take place within 90 days of the

entry of a guilty plea or finding of guilt at trial, except in the case of defendants who have entered into "cooperation agreements" with the Government. With respect to cooperating defendants, counsel will be required at the time of plea to propose a sentencing date that will give the defendant adequate opportunity to demonstrate substantial assistance and provide the Court with adequate opportunity to assess such assistance. If adopted by the Court, such sentencing date will not be further extended except upon a showing of unusual circumstances, and in no event will sentencing be adjourned beyond three years from the date of plea. Any written submission relating to any sentence must be submitted to the Court at least one week before the date of sentencing, and any response thereto must be submitted to the Court at least two business days before the date of sentencing.

13. "Brady" Disclosures

Materials and information required to be disclosed pursuant to Brady v. Maryland and its progeny ("Brady Material") – whether in written or recorded format, or otherwise – must be disclosed to defense counsel according to the following schedule:

(1) Brady Material known to the Government at the time of indictment – other than purely impeachment materials and information required to be produced pursuant to Giglio v. United States and its progeny ("Giglio Material") – must be produced to defense counsel no later than two weeks following the date of the filing of the indictment, regardless of whether the parties are engaged in plea discussions. Such Brady Material includes (simply by way of example) not only information that tends to exculpate a defendant or support a potential defense to the charged offense(s), but also information that tends to mitigate

the degree of the defendant's culpability or to mitigate punishment. Also, this requirement applies regardless of whether the Government credits the Brady Material.

(2) Brady Material (other than Giglio Material) that becomes known to the Government following filing of the indictment must be disclosed, absent exceptional circumstances, within two weeks of when it becomes known and, in any event, no later than four weeks prior to any trial or guilty plea.

(3) Absent exceptional circumstances, Giglio Material must be disclosed four weeks prior to the date of the start of trial or guilty plea. Such material includes (simply by way of example) a witness's prior inconsistent statements, written or oral; benefits given and promises made to the witness; information that tends to show that the witness has a personal motive to inculpate the defendant; and information that tends to show that the witness has a physical or mental impairment that could affect the witness's ability to perceive, recall, or recount relevant events. Giglio Material developed less than four weeks before trial (e.g., as a result of further interviews of witnesses) must be disclosed immediately.

(4) To achieve adequate compliance with the foregoing rules, the Government has a continuing obligation to seek Brady Material and Giglio Material from law enforcement and regulatory agencies that are or have been involved in the prosecution of the defendant or in parallel proceedings or investigations involving the defendant.

(5) The above time-tables, being necessary to fulfill the constitutional obligations imposed by Brady v. Maryland, Giglio v. United States, and their progeny, apply regardless of whether the Brady Material and Giglio Material also happen to be producible pursuant to the Federal Rules of Criminal Procedure or the Jencks Act and the time-tables applicable thereto.

(6) For good cause shown, the Government may seek a protective order delaying disclosure of such materials and information, but applications for such orders should only be made in exceptional circumstances.

14. Protective Orders and Filing of Documents Under Seal

(a) All parties that wish to propose a protective order must, after receiving the Court's permission in accordance with Rule 2(b), supra, submit a proposed protective order that conforms as closely as possible with the Court's Model Protective Order, which is available on the Judge's website.

(b) Unless the Protective Order approved in a case provides otherwise, parties must request the Court's permission, in accordance with Rule 2(b), supra, to file documents under seal. The Court's Model Protective Order does not provide such permission. After receiving the Court's permission, parties must file a short proposed order that permits the filing of specific documents under seal and specifies that a redacted version of those sealed documents will be filed electronically. Parties are expected to provide the Court with notice at least three business days before the relevant filing deadline if they wish to file documents under seal.

(c) No document may be filed under seal without prior application to the Court as described above. Notwithstanding SDNY's new policies (effective February 2020) regarding electronic filing, parties must continue to file documents under seal through the traditional manner, i.e., on paper. When filing documents under seal, parties are expected to provide the Court with courtesy copies of the documents in accordance with Rule 2(d), supra. Additionally, the parties must submit electronic copies of the documents, without redactions, either via email

sent to RakoffNYSDChambers@nysd.uscourts.gov or by CD accompanying the non-electronic courtesy copies.