

01/28/2020

**INDIVIDUAL PRACTICES OF JUDGE LORETTA A. PRESKA
SOUTHERN DISTRICT OF NEW YORK**

**United States Courthouse
500 Pearl Street, Room 2220
New York, NY 10007
www.nysd.uscourts.gov**

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

1. Communications with Chambers

- A. Letters** Except as otherwise noted below, communications with chambers shall be by letter. All letters shall be filed electronically on ECF subject to the exceptions in the next sentence. Exceptions: 1) letters filed under seal or requesting sealing; 2) letters containing sensitive or confidential information; 3) letters submitted by pro se parties. All letters falling into the aforementioned exceptions shall be sent to chambers by mail or fax (in accordance with Rule 1.C, infra) with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall **not** be sent to the Court. **IF FILING A LETTER VIA ECF, DO NOT SEND A PAPER COPY BY HAND OR MAIL.** Letters shall be in at least 12-point type, both text and footnotes.
- B. Telephone Calls** In addition to paragraph 1D below, telephone calls to chambers are permitted. For matters other than docketing or scheduling, call chambers's main line at 212-805-0240.
- C. Faxes** Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than **three pages**, including exhibits, may be faxed without prior authorization. **IF FAXING, DO NOT SEND A PAPER COPY BY HAND OR MAIL** – the fax copy is sufficient. The **fax number is 212-805-7941.**
- D. Scheduling and Calendar Matters** For docketing, scheduling and calendar matters, call the Courtroom Deputy at **212-805-0116 (8:30 a.m.-5:00 p.m.).**
- E. Requests for Adjournments or Extensions of Time** Absent an emergency, requests for adjournments or extensions of time shall be

made at least 48 hours prior to the scheduled deadline. All requests for adjournments or extensions of time must 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.

2. Motions & Pleadings

A. Pre-Motion Conference in Civil Cases For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, a pre-motion conference with the court is required before making any motion, except:

- motions by incarcerated pro se litigants;
- applications for temporary restraining orders;
- applications for injunctions;
- motions to dismiss in lieu of answer;
- motions to remand;
- motions for reargument;
- motions described in Federal Rule of Appellate Procedure 4(a)(4)(A);
- applications for attorneys' fees;
- motions for reduction of sentences;
- objections to a Magistrate Judge's ruling;
- petitions to compel arbitration or to confirm or modify awards;
- motions brought on by order to show cause;
- motions for admission pro hac vice; and
- motions pursuant to Section 21D(a)(3)(A)(i) of the Securities Exchange Act of 1934 to consolidate and for appointment of lead counsel.

To arrange a pre-motion conference, the moving party shall submit **a letter not to exceed three pages in length** setting forth the basis for the anticipated motion. Whereupon, the non-moving party shall, within 3 business days, submit **a letter not to exceed three pages in length** setting forth its position with respect to the anticipated motion. The moving party is permitted to submit **a reply letter not to exceed two pages in length** within 1 business day. Upon submitting a pre-motion conference request letter, the moving party shall remind the non-moving party of its obligation to submit a response letter to the Court.

B. Courtesy Copies Two courtesy copies of all filings (including the Complaint, memoranda of law, etc.) shall be clearly marked as courtesy copies and submitted to chambers as soon as practicable after filing. Although not required, chambers prefers voluminous courtesy copies to be spiral bound. **Courtesy copies shall be submitted to chambers for both ECF and non-ECF designated cases.**

C. Memoranda of Law Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 20 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents and table of authorities. Memoranda shall be in at least 12-point type, both text and footnotes.

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

E. Oral Arguments on Motions Parties may request oral argument by letter at the time their moving, opposing, or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. Court Appearances The Court encourages senior lawyers to allow junior lawyers the opportunity to argue in court, whether at a conference, hearing, trial, or otherwise. Indeed, the Court prefers that the lawyer most familiar with an issue argue it in court, regardless of seniority. The Court may permit more than one lawyer to argue for a party where doing so would create the opportunity for a junior lawyer to argue. Counsel may inform the Court in advance in the letter requesting oral argument that a junior lawyer is scheduled to argue all or part of a matter.

G. Procedures for filing Motions for Default Judgment After obtaining a Certificate of Default, the moving party shall deliver to the Orders and Judgments Clerk an Order to Show Cause, including a return date and time approved by chambers, and a proposed default judgment order.

H. Traditional Filing Under Seal in Civil and Miscellaneous Cases

- 1. Sealing/Redactions Not Requiring Court Approval.** Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court.
- 2. Sealing/Redactions Requiring Court Approval.** Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases must be filed electronically through the court's ECF system. The subject documents, including the proposed sealed document(s), must be filed in the traditional manner, on paper, as described below.

The motion to seal must be filed in public view, must explain the particular reasons for seeking to file that information under seal and should not include confidential information sought to be filed under seal. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal.

Where the motion to seal seeks permission to redact information from a document, the filing

party shall contemporaneously file the redacted document in public view in the ECF system.

The proposed sealed/redacted document, a copy of the motion to seal and any supporting papers must be contemporaneously submitted to the Court in paper form, by hand delivery or mail. Digital copies of these documents must also be emailed to chambers (outside the ECF system) at PreskaNYSDCChambers@nysd.uscourts.gov.

If the application is granted, the unredacted document must be filed under seal in the traditional manner, on paper, in conformity with the sealed records filing procedures available at <https://nysd.uscourts.gov/programs/records/sealed>.

Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

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:

- the full caption of the action;
- the names, addresses (including firm names), and telephone and fax numbers of trial counsel;
- a brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each 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;
- 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 upon. Such summaries shall identify all claims and defenses previously asserted which are not to be tried;
- 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;
- a statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented);
- any stipulations or statements of fact or law which have been agreed to by all parties;
- 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;
- 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; and

- 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. 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:

- in jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted electronically to the law clerk;
- 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;
- in all cases, motions addressing any evidentiary or other issues should be resolved in limine; and
- in any case where such party believes it would be useful, a pretrial memorandum.

C. All General Purpose Computing Device Orders (for cellphones, laptops, and BlackBerrys) should be submitted to chambers at least five days prior to trial.

4. Sentencing Proceedings

A. Filing

Every sentencing submission, including letters, should 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 to include (unless necessary) 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. A copy of the redacted material should be sent to Chambers and also an additional copy should be handed up at the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials.

1. 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 bearing the caption and docket number and submit it to the Clerk's Office.

ii. **ECF Filing**

If letters are filed electronically, they shall be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM bearing the caption and docket number.

2. If a party redacts information beyond the eleven categories of information identified in the Privacy Policy, an application to do so shall 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.

3. If you have any questions about these practices, please contact the Courtroom Deputy Clerk at (212) 805-0116.

Nothing in these Individual Practices supersedes a specific time period for filing a motion specified by statute or Federal Rule – including but not limited to Fed. R. Civ. P 50, 52, 54, 59, and 60, and Fed R. App. P. 4 – where failure to comply with the specified time period could result in forfeiture of a substantive right.