

JUDGE ERIC KOMITEE
INDIVIDUAL RULES AND PRACTICES
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Courtroom: 6G North
Chambers: (718) 613-2160

Case Manager: Andrew Jackson
Telephone: (718) 613-2165

Unless otherwise ordered by Judge Komitee, matters before the Court shall be conducted in accordance with the following practices and rules. Exceptions to these practices will be considered in cases of genuine hardship.

I. COMMUNICATIONS

A. Written Correspondence

1. All communications with chambers shall be in writing and filed on ECF. Copies of letters should not be sent to chambers.
2. All correspondence must include the case name, docket number, and initials of the judge(s) assigned to the case.

B. Telephone, Fax and Email

1. For docketing and scheduling matters, call Andrew Jackson at the number above.
2. Please do not call chambers unless otherwise directed by these rules.
3. Please do not send emails, except pursuant to a specific exception specified in these rules (*e.g.*, Part II, Section C).

C. Requests for Adjournment or Extension of Time

1. Requests for adjournments or extensions of time must be made at least two business days prior to the scheduled deadline or appearance and must be filed through ECF, except for *pro se* litigants. All requests must state:
 - a. the reason for the request;
 - b. the number of previous requests, and whether those requests were granted or denied;

- c. whether the adversary consents and, if not, the reason given by the adversary for refusing to consent; and
 - d. whether the adjournment or extension of time affects any other scheduled dates. If so, the party must provide a proposed Revised Scheduling Order.
2. Please note that the consent of the adverse party is not a sufficient ground for an extension or adjournment.
3. Requests for adjournments in pre-conviction criminal cases must also state:
 - a. whether the parties have agreed on a new date or period of availability; and
 - b. whether the parties move, either jointly or separately, to exclude time under the Speedy Trial Act. If moving separately, the requesting party must indicate whether the non-requesting party opposes the motion, and if so, the reason given for such opposition.

D. New Criminal Cases

1. Assistant United States Attorneys are responsible for informing Mr. Jackson when a new case has been assigned to Judge Komitee. Upon such notification, an initial conference will be scheduled.
2. The government should file a Rule 12.4 disclosure statement before the first appearance, when applicable.

II. ELECTRONIC CASE FILING (ECF)

A. Mandatory ECF Filing

1. All documents must be filed on ECF, with the sole exception that *pro se* parties are exempt from mandatory ECF filing. Represented parties must file on ECF and serve copies on any *pro se* litigant(s).
2. Orders and other notices from the Court will be posted on ECF. The Court will mail orders only to *pro se* litigants.
3. All requests for relief from the Court, including requests for an adjournment or extension of time, shall be designated as a “motion” on ECF. In addition, the ECF entry line must clearly state the subject matter of the letter or motion — *e.g.*, “Letter Motion Requesting Extension of Time to Respond to Interrogatories.”

4. Parties filing non-text exhibits that are impractical to file electronically should submit an electronic version on a virus-scanned USB drive to the Clerk's Office (labeled "Original") and to chambers (labeled "Courtesy Copy"). Related papers filed on ECF must clearly indicate how the exhibits were filed.
5. All written submissions and supporting materials must, to the maximum extent possible, be text-searchable.
6. If an emergency submission requires immediate attention, please call chambers.
7. Chambers staff are unable to assist with filing on ECF.

B. Filing Under Seal or in Redacted Form

1. Any party seeking leave to file a document under seal must comply with the technical instructions for filing sealed documents on the EDNY website: <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCV.pdf> (civil); <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCR.pdf> (criminal).
2. A request to file under seal should explain why sealing is necessary and be accompanied by proposed redactions that are narrowly tailored to address the confidentiality interests at issue. *E.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). A request to file under seal that does not either propose redactions, or explain with specificity why individual redactions are untenable, will typically be denied.
 - a. Proposed redactions should be highlighted or otherwise identified in such a way that the material to be redacted remains readable.
 - b. If a request to file under seal is granted, the party should file the unredacted version of the document under seal and the redacted version publicly.

C. Word-Processing Files of Proposed Orders

1. Proposed orders, jury instructions, and other submissions that a party would like the Court to adopt **should be emailed to chambers in Microsoft Word format and filed on ECF in PDF**. Parties need not submit Word files of stipulations unless specifically requested to do so. Counsel should contact chambers to obtain the email address to which the files may be sent.

D. Courtesy Copy

1. Parties must submit one courtesy copy for all submissions of twenty-five pages or greater (inclusive of any exhibits or attachments). A courtesy copy of all motion papers is required, regardless of length.
2. Parties should not submit courtesy copies of:
 - a. Pleadings, as defined by Fed. R. Civ. P. 7(a); and
 - b. motions, letters, or other filings directed to the magistrate judge assigned to a matter.
3. Parties are strongly encouraged to use double-sided printing. The courtesy copy should be a reproduction of the document *as filed on ECF*, with the ECF numbering appearing at the top of the page and clearly marked “Courtesy Copy.”
4. Do not annex as exhibits copies of pleadings, or other filings that already appear on the docket.
5. On motions for summary judgment, do not attach complete deposition transcripts as exhibits to affidavits or affirmations. Attach only pages containing relevant testimony to which citation is made in the memoranda or affidavits. However, any excerpted submissions must anticipate and comply with Federal Rule of Evidence 106.
6. Parties are encouraged to assemble courtesy copies in a three-ring binder with appropriately labeled tabs. Binder covers and spines must identify the case name, docket number, and the binder’s contents.

E. Habeas Corpus

1. The respondent shall electronically file the state court record. Each item should be filed individually on ECF, and labeled so that the document is readily identifiable – for example, “Exhibit A – Suppression Hearing Transcript,” and not “Exhibit A State Court Record.”
2. The state court record shall include copies of:
 - a. Transcripts of pretrial, trial, sentencing, or post-conviction proceedings, if available and relevant;
 - b. Briefs filed by either party in connection with the trial, and related orders, if relevant;

- c. All briefs and supporting papers filed by either party in all post-trial proceedings, including direct appeal and post-conviction collateral challenges; and
 - d. Any orders disposing of motions in all post-trial proceedings.
3. If the respondent is unable to submit any of these documents, the respondent shall identify the missing documents and provide a sworn, detailed statement as to why those documents were not submitted.
4. The respondent is not required to furnish the state court record **to the petitioner** except to the following extent:
 - a. If the petitioner requests any portion of the state court record, the respondent shall furnish the requested portion to the petitioner within fourteen days.
 - b. The respondent's answer shall attach excerpts of any transcripts that the respondent considers relevant, including any context needed for a full and fair understanding of those excerpts. *See* Rule 5(c) of the Rules Governing Section 2254 Cases in the United States District Courts.
 - c. If the petitioner challenges the sufficiency of the evidence adduced to support the state court's determination of a factual issue, the respondent shall furnish the pertinent parts of the record with the answer. *See* 28 U.S.C. § 2254(f).

III. CIVIL MOTIONS

A. Motion to Amend a Complaint

1. A motion to amend a complaint must attach as exhibits the proposed amended complaint in both a clean version and a blackline against the operative complaint. *Pro se* plaintiffs are exempt from this rule.

B. Pre-Motion Conferences

1. Except in the case of habeas corpus/prisoner petitions, Social Security appeals, bankruptcy appeals, and post-trial motions, parties that are represented by counsel must request a pre-motion conference with the Court before making: (i) any motion pursuant to Fed. R. Civ. P. 12 or 56 or (ii) any motion for a change of venue.

2. Parties are generally not required to request a pre-motion conference before making any other type of motion. For example, letters requesting pre-motion conferences are not required for motions pursuant to Rule 50, 59, or 60, or for motions to remand. If, however, the parties contemplate that one or more additional motions may be filed around the time of a dispositive motion under Rule 12 or 56, the party contemplating the additional motion(s) should state the basis in its Pre-Motion Conference letter (or response) so that the Court can decide the appropriate order in which the motions should be briefed.
3. To request a pre-motion conference, the moving party is to file and serve a letter, not to exceed three pages, setting out the bases for the anticipated motion.
4. All parties served are required to serve and file a response, not to exceed three pages, within five days of service of the moving party's letter, either opposing the motion or advising the Court that it does not intend to oppose the motion. When a party responds to a pre-motion conference letter in anticipation of a motion to dismiss, they should state whether they intend to: (1) file an amended complaint as of right, pursuant to Fed. R. Civ. P. Rule 15(a)(1)(B); (2) seek leave to amend in light of one or more alleged pleading defects; or (3) proceed to briefing on the contemplated motion.
5. Service of the letter motion within the time requirements of Fed. R. Civ. P. Rules 12 or 56 shall constitute timely service of a motion made pursuant to those provisions.
6. The purpose of the pre-motion letters is to aid the Court by providing a synopsis of the arguments to be set forth in any motion or opposition. Pre-motion letters and responses must contain sufficient legal authority to serve this purpose.
7. In many cases, it will be apparent from the letter motion that a conference will not be a useful expenditure of the parties' time, and a motion schedule will be set without a pre-motion conference. In other cases, the usefulness of a pre-motion conference will be clear based on the request. However, if a party advises the Court in its pre-motion conference request that an attorney with five years' or less experience as a licensed attorney will be

representing the party at the conference, the Court may schedule a pre-motion conference anyway.

8. Discovery motions shall be addressed to the assigned magistrate judge and made in accordance with that magistrate judge's individual practices. Parties should also review Local Civil Rules 6.4 and 37.3.

C. Motion Papers

1. The Court will order briefing schedules for motions requiring requests for pre-motion conferences. Parties should anticipate a schedule that will require the service of their motion within a short time after the pre-motion conference (usually two weeks). Parties may not serve motion papers before the Court enters a briefing schedule. No changes in a briefing schedule may be made without the Court's approval.
2. Parties are encouraged not to file their motion papers and submit courtesy copies until the motion has been fully briefed, unless doing so might cause a party to miss an applicable deadline. When the parties elect not to file their motion papers until the motion has been fully briefed, the movant is responsible for the filing of all motion papers on ECF. Parties may file their motion papers without full briefing, but the Court may be less likely in such instances to grant requests for adjournments or extensions of deadlines related to the motion.¹
3. Any exhibit should be filed individually on ECF, as an attachment to the primary document to which the exhibit relates. Exhibits should be labeled so that the document is readily identifiable – for example, “Exhibit A – Deposition of John Doe.”

D. Memoranda of Law

1. Unless prior permission is granted, memoranda in support of and in opposition to motions are limited to twenty-five pages (excluding tables of contents, tables of authorities, exhibits, appendices, or attachments). Reply memoranda are limited to ten pages (excluding tables of contents, tables of authorities, exhibits, appendices, or attachments). Parties must seek leave of the Court before submitting sur-replies.
2. Requests to file memoranda exceeding the page limits set forth herein must be made in writing at least five days prior to the due date, except

¹ If any party concludes in good faith that delaying the filing of a motion in order to comply with this or any other aspect of these individual practices will deprive the party of a substantive right, the party may file the motion within the time required by the Federal Rules of Civil, Criminal and/or Appellate Procedure.

with respect to reply briefs, in which case the written request must be made in writing at least two days prior to the due date. For complex cases or motion practice, parties are encouraged to request expansions of the Court's page limits.

3. Memoranda must be double-spaced with one-inch margins. Use Times New Roman, twelve-point font, with footnotes that are at least ten-point font.
4. Memoranda must contain a table of contents and a table of authorities. Memoranda also must have the date of service plainly visible on the front cover.
5. Unless otherwise permitted by the Court, all case citations shall be made to official case reporters and the Westlaw electronic case database.

E. Oral Argument

1. Parties may request oral argument by noting "Oral Argument Requested" in the top right corner of the cover page of either a notice of motion or opposing memorandum.
2. The likelihood of oral argument is increased if the Court is advised by letter with the filing of the motion or opposition that the attorney who will argue the motion or opposition has five years' or less experience as a licensed attorney.
3. Parties receiving ECF notifications of the Court's decision on oral argument are responsible for informing *pro se* parties of the Court's decision.

F. Stipulations of Fact for Social Security Motions

1. Parties seeking or opposing judgment on the pleadings in social security cases shall confer and prepare a stipulation of fact with a chronology of medical treatment. The stipulation shall be filed on ECF when the motion is fully briefed, and shall set forth all relevant facts in the administrative record, including information contained in the treatment and medical records, in chronological order and with citations to the record. If a dispute of fact exists, the parties should include the disputed fact in the chronology, along with a footnote briefly describing the dispute (without argument) and the relevant record citation(s).

IV. CRIMINAL MOTIONS

A. Scheduling and Filing of Motions

1. Counsel shall advise the Court of any motions they want to file at a status conference scheduled by the Court. If no status conference has been scheduled, counsel shall request a pre-motion conference in writing and briefly state the grounds for such motion.
2. The Court will order briefing schedules for motions. Parties may not serve motion papers before the Court enters a briefing schedule. No changes in a briefing schedule may be made without the Court's approval.
3. No pre-motion conference is required for a criminal motion.

B. Memoranda of Law

1. Parties in criminal cases shall follow the rules for memoranda of law in civil motions, as set forth in Part III, Section D of these Rules, unless otherwise directed by the Court. Parties should also label exhibits according to Part III, Section C.3.

C. Appeals of Magistrate Judge Order of Release or Order of Detention

1. Any party appealing a magistrate judge's Order of Release or Order of Detention shall include a copy of the transcript before the magistrate judge with their motion, if the transcript is available.

V. PRE-TRIAL PROCEDURES

A. Expert Discovery Motions

1. Any motions made pursuant to Federal Rule of Evidence 702 or *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) must be filed within thirty days of the date for the completion of discovery (or, if the parties engage in dispositive motion practice, within thirty days of the date the Court resolves all such motions).

B. Joint Pre-Trial Orders in Civil Cases

1. Unless otherwise ordered by the Court, the parties in a civil case shall jointly submit a proposed pre-trial order within thirty days from the date for the completion of discovery (or, if dispositive motions remain pending,

within thirty days from the date the Court resolves all such motions). The proposed pre-trial order shall include the following:

- a. Caption: The full caption of the action.
- b. Parties and Counsel: The names, addresses (including firm names), and telephone numbers of trial counsel.
- c. Jurisdiction: 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 and legal doctrines relied on and relevant facts as to citizenship and jurisdictional amount.
- d. Claims and Defenses: A brief summary by each party of the elements of the claims and defenses that party has asserted which remain to be tried, without reciting evidentiary matters but including citations to all statutes relied on.
- e. Damages: A detailed statement regarding damages and other relief sought for each claim.
- f. Jury or Bench Trial: 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.
- g. Consent to Magistrate Judge: A statement as to whether all parties have consented to trial of the case by a magistrate judge. The statement shall not identify which parties have or have not consented.
- h. Witnesses: A schedule by each party designating names and addresses of fact and expert witnesses whose testimony is to be offered in its case in chief, and potential witnesses whose testimony may be offered only for impeachment or rebuttal purposes, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.
- i. Deposition Testimony: A designation by each party of deposition testimony to be offered in its case in chief, together with any cross-designations and objections by any other party.

- j. Stipulations: Any stipulations or statements of fact or law that have been agreed to by all parties.
- k. Exhibits and Objections: A schedule by each party designating all exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule must also include potential exhibits that a party intends to use solely for impeachment and/or rebuttal purposes. Copies of statements proposed to be read to the jury as “learned treatises” under Fed. R. Evid. 803(18) shall be listed as exhibits. Plaintiff’s exhibits shall be identified by numbers, Defendant’s exhibits shall be identified by letters.

The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. The Court strongly encourages the parties to resolve all objections without the Court’s intervention. Parties are expected to resolve before trial all issues of authenticity, chain of custody, and related grounds. Meritless objections based on these grounds may result in the imposition of sanctions. Except for good cause shown, only exhibits listed in the Joint Pre-Trial Order will be received in evidence.

- 1. Motions in Limine: A list of motions *in limine* each party intends to file (pursuant to the deadline set forth in Part V, Section C.2 below), with a brief description of the nature of each such motion.
- 2. The Joint Pre-Trial Order will use the font type and size specified in Part III, Section D. The Pre-Trial Order shall be prepared under the supervision of the assigned magistrate judge in accordance with the schedule set by the magistrate judge. The parties are directed to cooperate with each other in the preparation of the Joint Pre-Trial Order.
- 3. The Court may schedule a pre-trial conference upon the filing of the Joint Pre-Trial Order. Counsel must attend the pre-trial conference and be prepared to stipulate for purposes of narrowing the issues and proof.

C. Filings Prior to Trial in Civil Cases

- 1. Unless otherwise ordered by the Court, each party shall file the following thirty days before the date fixed for commencement of jury selection:
 - a. Motions addressing any evidentiary or other trial-related issues that should be resolved *in limine*. Responses, if any, are due ten days

after the date the motion is filed, unless otherwise ordered. Oral arguments will be scheduled at convenience of the Court.

2. Unless otherwise ordered by the Court, each party shall file the following thirty days before the commencement of trial if such date has been fixed, or thirty days after filing of the final pre-trial order if no trial date has been fixed:
 - a. 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.
3. Unless otherwise ordered by the Court, each party shall file the following fourteen days before the commencement of jury selection:
 - a. Requests to charge, proposed verdict sheets and proposed *voir dire* questions in jury cases. Requests to charge should be limited to the elements of the claims, the damages sought, and defenses. General instructions will be prepared by the Court. The parties should endeavor to agree upon the requests to charge, to the extent possible, and must submit a single, joint document setting forth all agreed upon requests to charge and, where no agreement is reached, each party's proposed charge and/or one party's proposed charge with an explanation of the other party's objection to that charge. Word-processing files of proposed charges should be submitted to chambers pursuant to Part II, Section C of these Rules.

D. Filings Prior to Trial in Criminal Cases

1. In a multi-defendant case, all filings must designate the specific defendant or defendants as to whom the filing pertains.
2. Motions *in limine* addressing evidentiary or other trial management issues in dispute must be filed no later than thirty days before the date fixed for commencement of jury selection. Responses, if any, are due ten days after the date the motion is filed, unless otherwise ordered. Oral arguments will be scheduled at convenience of the Court.
3. Proposed *voir dire* questions, lists of all potential witnesses and any other individuals and entities that may be mentioned at trial, requests to charge, and proposed verdict sheets should be submitted no later than fourteen days before jury selection. The parties should follow the rules for civil filings, as set forth in Part V, Section B.3.a, where applicable.

E. Trial Exhibits

1. All exhibits to be used at trial shall be pre-marked and exchanged with the other parties at least ten days before jury selection. **Counsel should take care to ensure that exhibits are not compound – that is, that each document is identified and marked individually.**
2. No later than the first day of trial, all parties are to provide the Court with tabbed binders containing copies of all exhibits. The binder should also include an exhibit list and a witness list. The exhibit list should list every exhibit in the binder(s) and contain a brief description of each exhibit, no longer than one sentence.
3. Where counsel anticipates that a witness will refer to documentary evidence in the course of his or her direct testimony, counsel shall have copies of the document(s) available for opposing counsel, the court reporter, and two copies for the Court.

VI. SENTENCING

A. Sentencing Submissions

1. Defendant's sentencing submissions, if any, are due two weeks prior to sentencing. Sentencing memoranda must be provided to the Probation Department. The Government's sentencing submissions are due one week prior to sentencing, except that if the government is moving for a departure from the Sentencing Guidelines (upwards or downwards), that motion shall be made two weeks prior to sentencing.
2. Any objections to presentence reports — by either party — must comply with the requirements in Fed. R. Crim. P. Rule 32(f). Objections should be filed under seal on ECF and served upon opposing counsel and the Probation Department. An objecting party must identify the specific language and paragraph numbers of the presentence report to which it objects.
3. The Government should advise the Court at least two days in advance if a victim will be making a victim impact statement at sentencing.
4. Sentencing submissions should affirmatively address the applicability of restitution and forfeiture in addition to incarceration, probation, and supervised release. If no restitution is being sought, the government should say so explicitly in its sentencing memorandum.

5. The preliminary order of forfeiture, if any is to be submitted, is due one week prior to sentencing in routine forfeiture cases. If forfeiture is contested, the government should submit a preliminary order at least two weeks prior to the sentencing date.

B. Violation of Supervised Release

1. The Court requires at least two days' notice of a guilty plea on a violation of supervised release. The notice must specify the violations as to which the defendant intends to plead guilty.

VII. WITHDRAWAL OF COUNSEL

- A.** Both the withdrawing counsel and replacement counsel must attend any proceedings where the Court is considering a motion pursuant to Local Rule 1.4 for the withdrawal or substitution of counsel.

VIII. TRIAL PROCEDURES

A. *Voir dire*

1. Unless otherwise notified, the Court (or a magistrate judge) will conduct all *voir dire*.

B. Use of Electronic Equipment

1. Any party wishing to present marked exhibits to the jury in digital form who has not previously used the Court's electronic equipment is directed to meet with the Court's Case Manager at least ten days prior to the commencement of the trial to review the available equipment for the presentation of digital evidence. Counsel should be accompanied by the audio-visual personnel who will be operating any equipment that will be used at trial. Following such meeting, such party shall file a confirmation in writing on ECF that this meeting has occurred.

C. Sidebars

1. Sidebar conferences should be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to be respectful of the jurors' time.