

**INDIVIDUAL RULES OF
JUDGE NICHOLAS G. GARAUFIS
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201**

Telephone: (718) 613-2540

Fax: (718) 613-2546

Faxes are only for time-sensitive requests, and must be limited to 10 pages

Courtroom Deputy: Joseph D. Reccoppa

Telephone: (718) 613-2545

Motions Returnable: Set by the Court.

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

I. ELECTRONIC CASE FILING (ECF)

- A. All documents must be filed electronically.
- B. Orders will be posted electronically. Parties *not* registered on ECF will *not* receive them.
- C. Pro se parties are automatically exempt from mandatory electronic filing. However, parties represented by counsel in pro se cases must file documents electronically and mail a hard copy of the documents to the pro se litigant.
- D. Requests by attorneys for an exemption to the mandatory policy will be considered for good cause hardship reasons only and will be reviewed on an individual basis by the assigned United States Magistrate Judge. However, no request will be granted until the attorney has registered for ECF and sought ECF training. Questions regarding ECF filing or training should be directed to Evelyn Levine at (718) 613-2312.
- E. Sealed documents or documents containing sealed/sensitive information must be submitted in hard copy and labeled “File Under Seal,” unless the parties have already sought and received leave of court to file sealed papers on ECF.
- F. *Courtesy Copies:*
 - 1. Hard copies of all papers filed electronically, including motions, letters, and stipulations, must be provided to Chambers, except as provided below. All such papers must be *clearly marked* “Courtesy Copy,” “Original Filed by ECF,” and “Assigned Docket Number ____.”

Parties need *not* submit hard copies of the following filings:

- a. Pleadings as defined by Fed. R. Civ. P. 7(a);
 - b. Motions, letters, or other filings directed to the magistrate judge assigned to the matter; and
 - c. Any papers that are fewer than 15 pages in length (including exhibits).
2. Hard copies must be securely bound along the left-hand margin using a method that permits the papers to lie flat when opened.
 3. All exhibits should be properly tabbed. Exhibits totaling more than 50 pages that accompany legal memoranda should *not* be bound to the brief.
 4. Parties' non-text exhibits that are impractical to file electronically should, if possible, be submitted as an electronic version on a compact disc to the Clerk's Office (labeled "Original") and to Chambers (labeled "Courtesy Copy"). Related papers that are electronically filed must clearly indicate in what manner the exhibits have been filed.
 5. Parties proceeding pro se are exempt from the foregoing requirements.
- G. All electronically filed documents should be text-searchable.

II. COMMUNICATIONS WITH CHAMBERS

A. *Letters*

Except as provided below, communication with Chambers shall be by letter (filed electronically), with copies simultaneously delivered to all counsel. **Letters for extensions of time and other administrative requests that require immediate attention should be sent to Chambers via fax and filed on ECF.** Copies of correspondence between or among counsel shall not be sent to the court.

B. *Telephone Calls*

Except as provided in Rule II(D) below, telephone calls to Chambers are permitted only in situations requiring immediate attention. In such situations only, call Chambers at the number listed above.

C. *Faxes*

Faxes to Chambers are permitted only for time-sensitive requests. Copies must also be faxed or delivered to all counsel. Parties submitting a fax must still file the document electronically, subject to the exemptions set forth in Rule I. **No document longer than 10 pages may be faxed without prior authorization.** *Do not follow with hard copy.*

D. *Docketing, Scheduling, and Calendar Matters*

For docketing, scheduling, and calendar matters, call or email Courtroom Deputy Joseph Reccoppa at (718) 613-2545; joseph_reccoppa@nyed.uscourts.gov.

E. *Request for Adjournments or Extensions of Time*
All requests for adjournments or extensions of time must be filed on ECF, and 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;
4. Whether the adversary consents, and, if not, the reason given by the adversary for refusing to consent;
5. The proposed rescheduled date, if pertaining to a request for extension; and
6. Whether the adjournment or extension affects any other scheduled dates. If so, the party must provide a proposed Revised Scheduling Order.

Requests for adjournment of a court appearance must, absent an emergency, be made at least 48 hours prior to the scheduled appearance. Requests for extension of a deadline must, if possible, be made at least 48 hours prior to the scheduled deadline. All requests for adjournments or extensions made within 48 hours of the scheduled appearance or deadline must explain why the party was unable to make the request earlier.

III. COURT APPEARANCES

The court does not permit any attorneys other than counsel of record to appear on behalf of a party, and all attorneys who appear for any proceeding must be knowledgeable about, and prepared to discuss, any aspect of the case. **Per diem counsel are not permitted to appear for any purpose.** Counsel of record who anticipate being unable to attend a scheduled proceeding should request an adjournment in accordance with the procedure set forth in Rule II.E.

A. *Participation of Junior Lawyers*

The court believes it is important to provide substantive opportunities to junior lawyers, and that the benefits of doing so will accrue to all members of the profession and their clients. To that end, the court strongly encourages litigants to permit junior lawyers to be active participants in court proceedings, including but not limited to pre-motion conferences, pre-trial conferences, oral argument of motions, evidentiary hearings, and examination of witnesses at trial. To facilitate these experiences, the court will permit multiple attorneys to argue different issues for each party.

The court recognizes that the decision of who conducts each proceeding is with the lawyer in charge of each case, and ultimately the represented party. In any appearance, all attorneys must

have authority to bind the party they represent consistent with the proceeding and should be prepared to address any matters likely to arise. The counsel of record must still also appear alongside any participating junior lawyer, unless counsel has separately sought and received permission not to appear.

IV. CIVIL MOTIONS

A. *Pre-Motion Conferences in Civil Cases*

1. For discovery motions, follow Local Civil Rules 6.4 and 37.3.
2. **Except as provided in Rule IV(A)(5) below, for any dispositive motion (except a motion for default judgment), motion for a change of venue, or motion to amend a pleading pursuant to Fed. R. Civ. P. 15 (where leave of court is needed), a pre-motion conference is required.**
 - a. The movant shall write to the court requesting such conference, with a brief description of the grounds for such motion. Opposition to requests for a pre-motion conference will not be considered; however, the party that will oppose the contemplated motion may file a brief letter setting forth its position on the issues identified in the movant's submission. All parties must file their submissions at least two business days before the pre-motion conference.
 - b. All motions for a change of venue or to amend a pleading pursuant to Fed. R. Civ. P. 15 must specify whether the opposing party's consent to the motion was sought or obtained.
3. If a party wishes to make a motion of the type listed in Rule IV(A)(2) before filing its answer, that party shall request an extension of its time to answer simultaneous with its application for a pre-motion conference.
4. No pre-motion conference shall be required for post-trial motions, motions to remand, motions for reconsideration, pro se habeas corpus/prisoner petitions, social security appeals, bankruptcy appeals, or objections to Reports and Recommendations.
5. If any party concludes in good faith that delaying the filing of a motion, in order to comply with any 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 and/or Appellate Procedure, together with an explanation of the basis for the conclusion.

B. *Filing of Motion Papers (the "Bundling Rule")*

1. **Except as provided in Rule IV(B)(4) below, no motion papers shall be filed until the motion has been fully briefed.** The notice of motion and all supporting papers are to be served on the other parties in accordance

with the briefing schedule, and shall include a cover letter setting forth whom the movant represents and the papers being served.

2. **Once the motion is fully briefed, the original moving party shall be responsible for filing the full set of papers on ECF** and, as necessary, providing Chambers with a full set of courtesy copies of the motion papers together with a cover letter specifying each document in the package. The adversary is responsible for providing the movant with a courtesy copy of its opposition papers for inclusion in the submission to Chambers. A copy of the cover letter shall be sent to the assigned magistrate judge and to opposing counsel. Courtesy copies must conform to Rule I(F).
3. Subject to court approval, the parties are to suggest their own briefing schedule. Approval may be given at the pre-motion conference or by subsequent order. No party is to serve any motion papers prior to obtaining court approval for the schedule. No changes in the approved schedule may be made without court approval.
4. If any party concludes in good faith that delaying the filing of a motion, in order to comply with any 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 and/or Appellate Procedure, together with an explanation of the basis of the conclusion.

C. *Memoranda of Law*

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages and reply memoranda are limited to 10 pages—not including appendices or attachments. Memoranda of 10 pages or more shall contain both a table of contents and a table of authorities. **Memoranda must use Times New Roman 12-point font and must be double-spaced with one-inch margins.** Citations to unreported cases should, to the extent possible, include Westlaw citations, which typically can be used to locate cases on either Westlaw or LEXIS. All memoranda must have the date of service plainly visible on the front cover. No letter briefs shall be permitted.

D. *Oral Argument on Motions*

Parties may request oral argument by letter at the time their moving or opposing papers are filed. The court will determine whether to hear oral argument and, if so, will advise counsel of the argument date. Counsel so advised is responsible for informing all other parties.

E. *Motions for Reconsideration*

Motions for reconsideration are exempt from Rules IV(A) and (B). The moving party shall comply with the filing requirements as set forth in Fed. R. Civ. P. 60 and must include with the motion a mutually agreed-upon date on which the non-movant's response shall be filed. No brief shall exceed 5 pages.

F. *Settlement Agreements*
The court will not retain jurisdiction to enforce settlement agreements unless a copy of the settlement agreement is provided to the court together with the stipulation of dismissal. Confidential settlement agreements may be filed under seal.

G. *Diversity Jurisdiction Cases*
In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332 and in which at least one party is a partnership, limited liability company, trust, or any other type of unincorporated association, the party asserting the existence of such jurisdiction shall, prior to the first in-person appearance in the action, submit to the court a letter setting forth the citizenship of each of the entity's members, partners, shareholders, and/or trustees. **Failure to comply with this provision will result in dismissal of the action without prejudice.**

V. CRIMINAL MOTIONS

A. *Pre-Motion Conferences in Criminal Cases*
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.

If any party concludes in good faith that delaying the filing of a motion, in order to comply with any 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 Criminal and/or Appellate Procedure, together with an explanation of the basis for the conclusion.

B. *Filing of Motion Papers*
For all cases where electronic filing is required (see Rule I above), each party shall be responsible for the electronic filing of its own motion papers at its respective due date. A courtesy copy of the notice of motion, memorandum of law, and other supporting papers shall be served on the other parties along with a cover letter setting forth whom the movant represents and the papers being served in accordance with the briefing schedule. The adversary is responsible for providing the movant with a courtesy copy of its opposition papers for inclusion in the submission to Chambers. As provided in Rule IV(B)(2), the movant shall send a courtesy copy of the motion papers to the court once the motion has been fully briefed. Courtesy copies must conform to Rule I(F).

Unless otherwise stated in this subsection or directed by the court, follow Rule IV(B)(3) above.

C. *Memoranda of Law*

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages and reply memoranda are limited to 10 pages—not including appendices or attachments. Memoranda of 10 pages or more shall contain both a table of contents and a table of authorities. **Memoranda must use Times New Roman 12-point font and must be double-spaced with one-inch margins.** All memoranda must have the date of service plainly visible on the front cover. *No letter briefs shall be permitted.*

D. *Oral Argument on Motions*

Parties may request oral argument by letter at the time their moving or opposing papers are filed. The court will determine whether to hear oral argument and, if so, will advise counsel of the argument date.

VI. PRETRIAL PROCEDURES

A. *Joint Pretrial Orders in Civil Cases*

Unless a motion for summary judgment is pending or as otherwise ordered by the court, within 60 days from the date for the completion of discovery in a civil case, under the supervision of the magistrate judge, the parties shall submit to the court for its approval a joint pretrial order, which shall include the following information:

1. The full caption of the action.
2. The names (including firm names), addresses, and telephone and fax numbers of trial counsel.
3. 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 facts as to citizenship and jurisdictional amount.
4. 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, and including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
5. 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 for that party.
6. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).

7. Any stipulations or statements of fact or law which have been agreed to by all parties.
8. A list of the names and addresses of all witnesses, including possible witnesses who will be called only for impeachment or rebuttal purposes and so designated, together with a brief 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.
9. 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.
10. A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal.

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. 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.

Only exhibits listed will be received in evidence except for good cause shown.

B. *Filings Prior to Trial in Civil Cases*

Unless otherwise ordered by the court, the following procedures shall be followed:

1. *Motions in limine*: Motions addressing evidentiary or other trial-related issues which should be resolved *in limine* must be filed no later than 30 days before commencement of jury selection. Responses, if any, shall be due 5 days later. Oral argument, if necessary, shall be scheduled at the convenience of the court.
2. Proposed *voir dire* questions, jury instructions, and verdict sheet: Parties shall submit a hard copy of such materials and a compact disc or USB flash drive in Microsoft Word format no later than 20 days before commencement of jury selection. Requests to charge should be limited to elements of the claims, damages sought, and defenses. General instructions will be prepared by the court.
3. A detailed statement regarding damages and other relief sought for each claim, no later than 20 days before commencement of jury selection.

4. In non-jury cases, a statement of the elements of each claim or defense involving each party, together with a summary of the facts relied upon to establish each element, no later than 20 days before the commencement of trial.
5. A pretrial memorandum in any case where a party believes such would be useful, no later than 20 days before the commencement of trial.

C. *Filings Prior to Trial in Criminal Cases*

Unless otherwise directed by the court, the following procedures shall be followed:

1. Motions *in limine*: Motions addressing evidentiary or other trial-related issues which should be resolved *in limine* must be filed no later than 45 days before commencement of jury selection. Responses, if any, shall be due 10 days later. Oral argument shall be scheduled at the convenience of the court.
2. Proposed *voir dire* questions, as well as lists of all potential witnesses and any other individuals and entities that may be mentioned at trial, shall be submitted at least 10 days before jury selection.
3. Requests to charge shall be submitted at least 10 days before commencement of trial. See Rule VI(B)(2) above for submission requirements.

D. *Trial Exhibits*

All exhibits to be used at trial shall be pre-marked and exchanged with the other parties at least 10 days before trial. No later than the first day of trial all parties are to provide the court with tabbed binders containing copies of all exhibits.

VII. TRIAL AND POST-TRIAL PROCEDURES

All civil and criminal trial and post-trial motions shall adhere to the applicable Federal Rules of Civil and Criminal Procedure.

In jury trials where the City of New York (the “City”) is a defendant or where counsel paid for by the City (“City Counsel”) is representing one or more defendants, the City or the party represented by City Counsel shall order the daily trial transcripts.

In non-jury trials, parties shall file proposed findings of fact and conclusions of law no later than 10 days after the conclusion of trial. No responses to such submissions shall be permitted.

VIII. SENTENCING

Unless otherwise ordered by the court, Defendant’s sentencing memoranda must be filed and provided to the Government no later than 21 days before the sentencing hearing; the

Government's sentencing memoranda must be filed and served on the Defendant no later than 14 days before the sentencing hearing.

This rule applies to all sentencing-related motions, including requests for discovery or a *Fatico* hearing; objections to the Pre-Sentence Report, Guidelines calculation, or forfeiture and restitution; as well as letters in support and victim statements.

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