Current as of January 6, 2015

INDIVIDUAL PRACTICES OF RICHARD J. SULLIVAN

Chambers Contact Information:

United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
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New York, New York 10007
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Courtroom 905

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

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters on behalf of parties represented by counsel must be both docketed on ECF and e-mailed as a PDF attachment to the following address: sullivannysdchambers@nysd.uscourts.gov. Copies of correspondence between counsel shall not be sent to the Court or docketed on ECF. *Pro se* litigants may send letters by regular mail, but must send all letters to the *Pro Se* Office, not to chambers. Other than orders to show cause, documents should not be delivered directly to chambers without prior permission, including by Assistant United States Attorneys and Federal Defenders.

Counsel shall include the case caption and docket number in the subject line of every e-mail sent to chambers. Counsel shall not provide a hard copy of correspondence e-mailed to chambers.

B. Telephone Calls. Telephone calls to chambers are permitted only in situations requiring immediate attention. In such situations only, call (212) 805-0264.

C. Faxes. Faxes to chambers are not permitted without express prior permission, and only in cases of unforeseeable emergencies. Requests for extensions of time and pre-motion letters, for example, are very rarely considered unforeseeable or emergencies. In any fax to chambers, include the name of the person who granted permission for the fax to be sent.

D. Requests for Extensions. Requests for adjournments, extensions of time, extensions of page lengths in memoranda, etc., shall be made by letter, and not by stipulation sent through the Orders and Judgments Clerk. Absent an emergency, such requests must be received in chambers at least 48 hours prior to the scheduled appearance or deadline. All requests for

adjournments or extensions of time must state (1) the original date set for the appearance or deadline, (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 must be attached.

E. Proposed Stipulations and Orders. Proposed stipulations and orders are to be submitted through the Orders and Judgments Clerk at orders_and_judgments@nysd.uscourts.gov. Courtesy copies need not be sent to chambers.

F. Related Cases. After a case has been accepted as related to an earlier-filed case, all future court papers and correspondence must contain the docket number of the new case, as well as the docket number of the case to which it is related (for instance, 10 Civ. 1234 [rel. 09 Civ. 4321]).

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2; to raise a discovery dispute with the Court, follow Rule 2.G. below. For motions other than discovery motions, a pre-motion conference with the Court is required before making any motion, except motions previously authorized by the Court, motions brought by order to show cause, motions by incarcerated *pro se* litigants, motions for admission pro hac vice, motions for reargument or reconsideration, motions for appointment of lead plaintiffs and counsel in class actions, motions for remand, motions for a preliminary injunction, motions brought pursuant to Local Rule 6.3, and motions described in Rule 6(b) of the Federal Rules of Civil Procedure and Rule 4(a)(4)(A) of the Federal Rules of Appellate Procedure.

To arrange a pre-motion conference, the moving party shall submit a letter, in accordance with Rule 1.A, not to exceed three pages in length setting forth the basis for the anticipated motion. The letter shall include citations to relevant authority and should provide a brief overview of the anticipated motion. All parties so served **must** submit a letter response, not to exceed three pages, within three business days from submission of the notification letter. Response letters shall directly address the arguments and authorities set forth in the moving party's letter. No party shall submit a reply letter. As a general matter, affidavits or exhibits are **not** permitted in connection with pre-motion letters without prior written request and permission. However, when submitting a pre-motion letter regarding a request to amend a pleading, the moving party shall attach the proposed amended pleading.

A party's submission of a pre-motion letter seeking leave to file a pre-answer motion to dismiss will stay that party's obligation to answer or move against the complaint through the date of the pre-motion conference.

B. 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. Memoranda of 10 pages or more shall contain a table of contents. All memoranda of law shall (1) be produced in a font size of twelve point or higher, (2) be double-spaced, and (3) have one-inch margins on all sides. Footnotes shall (1) be produced in a font size of twelve point or higher, and (2) be single-spaced with a twelve point space between footnotes appearing on the same page. For motions to dismiss, a copy of the complaint should accompany the moving papers. Sur-reply memoranda will not be accepted without prior permission of the Court.

C. Unpublished Cases. Westlaw citations shall be provided, if available, to cases not available in an official reporter. Parties must provide copies of unpublished cases that are not available on Westlaw.

D. Courtesy Copies. One courtesy copy of all pleadings and motion papers, marked as such, shall be submitted to chambers at the time the papers are served, in accordance with the SDNY policies regarding mail deliveries. Courtesy copies shall be submitted to chambers for both ECF and non-ECF designated cases.

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

F. Oral Argument on Motions. Oral argument will be held where the parties are represented by counsel and where oral argument would assist the Court. The notice of motion shall state that oral argument will be "on a date and at a time designated by the Court." The Court will contact the parties to set the specific date and time for oral argument, if any.

G. Discovery Disputes. Unless otherwise directed, counsel should describe their discovery disputes in a <u>single letter, jointly composed, not to exceed five pages</u>. Separate and successive letters will not be read. Strict adherence to Fed. R. Civ. P. 37(a)(1), the "meet and confer" rule, is required, and should be described in the joint submission as to time, place and duration, naming the counsel involved in the discussion. The joint letter shall describe concisely the issues in dispute and the respective position of each party, citing the applicable authority that the respective parties claim for support. As a general matter, affidavits or exhibits are **not** permitted in connection with discovery dispute letters without prior written request and permission. However, when the dispute concerns the refusal to respond to a specific written request, the parties shall attach that request. If an opposing party refuses to participate in writing a joint letter or does not provide its portion of a joint letter within 72 hours of a party's request, a party may submit a letter without the opposing party's contribution and shall attach a copy of the correspondence seeking the opposing party's contribution.

H. Affidavits and Exhibits. Parties are limited to a total of five affidavits each in support of or in opposition to a motion. Affidavits may not exceed ten double-spaced pages. Parties are limited to a total of fifteen exhibits, including exhibits attached to an affidavit, in support of or in opposition to any motion. Each exhibit — other than the complaint — is limited to fifteen pages. If possible, the exhibits should be excerpted to include only the relevant material. As noted above, no affidavits or exhibits are permitted in connection with pre-motion letters or discovery dispute letters without prior written request and permission.

3. Sealing

No document may be filed with the Clerk under seal without an Order of this Court addressing the specific documents to be sealed. Any application to seal shall be accompanied by an affidavit or affidavits and a memorandum of law, demonstrating that the standards for sealing have been met and specifically addressing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006) in a civil case or *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995) in a criminal case and any other controlling authority. The application shall also include a proposed redacted version of the document(s) in question for public docketing. Nothing herein is intended to alter or modify the applicability of Federal Rule of Civil Procedure 5.2 to this case. The redactions expressly authorized by Rule 5.2 may be made without application to the Court.

4. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Prior to trial, the Court will direct the parties to submit to the Court for its approval a Joint Pretrial Order that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

i. The full caption of the action.

ii. The names, addresses (including firm names and e-mail addresses), and telephone and fax numbers of trial counsel.

iii. A brief statement by plaintiff as to the basis for 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 authority relied on and relevant facts as to citizenship and jurisdictional amount.

iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matters but including citations to all statutes relied on. Such summaries shall

identify all claims and defenses previously asserted which are not to be tried.

v. 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.

vi. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which party or parties have or have not so consented).

vii. Any stipulations of fact or law that have been agreed to by the parties.

viii. 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.

ix. 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.

x. A list by each party of exhibits to be offered in its case in chief, with an indication of whether any party objects to the exhibit and a *brief* statement of the nature of the objection (e.g., "relevance," "authenticity," "hearsay").

xi. A statement of whether the parties consent to less than a unanimous verdict.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, the parties shall file with the Joint Pretrial Order:

i. In jury cases, *joint* proposed voir dire questions, verdict form, and jury instructions. These joint submissions should consist of single documents, jointly composed, noting any areas of disagreement between the parties. The voir dire questions and jury instructions shall include both the text of any requested question or instruction as well as a citation, if relevant, to the authority from which it derives. A Word version of these documents shall also be submitted by e-mail.

ii. In non-jury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed and a Word version should be submitted by e-mail.

iii. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*.

iv. In any case where a party believes it would be useful, a pretrial memorandum, not to exceed 10 pages.

C. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party shall serve, but not file, the following:

i. Affidavits constituting the direct testimony of each trial witness, except for testimony of an adverse party, a person whose attendance must be compelled by subpoena, or a person for whom a party has requested and the Court has agreed to hear direct testimony during the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom it intends to cross-examine at the trial. Only those witnesses who will be cross-examined need appear at trial. The original affidavit shall be marked as an exhibit at trial.

ii. All deposition excerpts which will be offered as substantive evidence, as well as a one-page synopsis (with page references) of those excerpts for each deposition.

iii. All documentary evidence.

D. Filings in Opposition. Any party may file the following documents within one week of the filing of the pretrial order:

i. Oppositions to any motions *in limine*.

ii. Oppositions to any legal argument in a pretrial memorandum.

E. Courtesy Copies of Documentary Evidence. Three days prior to trial each party shall submit two sets of tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

One courtesy copy of the joint pretrial order and all documents filed or served with the pretrial order should be submitted to chambers on the date of filing or service.

5. Conferences

A. Principal Trial Counsel. The attorney who will serve as principal trial counsel **must** appear at all conferences with the Court. Any attorney appearing before the Court must file a notice of appearance with the Clerk of the Court.

B. Initial Case Management Conference. The Court will generally schedule a Fed. R. Civ. P. 16(c) conference within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be sent to plaintiff's counsel, who will be responsible for distributing copies to all parties.

C. Exhibits. If a party intends to introduce exhibits at a hearing, that party shall before the hearing begins submit two tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

6. Default Judgments. A party who wishes to obtain a default judgment must proceed by way of an order to show cause and use the procedure set forth in Attachment A.

7. Bankruptcy Appeals. Briefs must be submitted in accordance with Bankr. Rule 8018. Counsel may extend these dates by joint request submitted to the Court no later than two business days before the brief is due.

8. Criminal Cases. Upon assignment of a criminal case to Judge Sullivan, the parties shall immediately call chambers to arrange for a conference, at which the defendant will be present, in order to set a discovery and motion schedule. The Assistant United States Attorney shall e-mail a courtesy copy of the indictment and the criminal complaint, if one exists, to chambers as soon as practicable.