

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6304 / May 5, 2023

Admin. Proc. File No. 3-21303

In the Matter of

BRADLEY C. REIFLER

ORDER DENYING REQUEST FOR POSTPONEMENT OR ADJOURNMENT AND
DIRECTING PREHEARING CONFERENCE

On February 15, 2023, the Securities and Exchange Commission issued an Order Instituting Proceedings (“OIP”), pursuant to Section 203(f) of the Investment Advisers Act of 1940, against Bradley C. Reifler.¹ Reifler, who is currently incarcerated, filed an answer and supporting exhibits on March 7, 2023.

Reifler prefaced his filing with the address of the counsel of record for the Division of Enforcement, but did not include a formal certificate of service.² We construe Reifler’s inclusion of counsel’s address as a statement that Reifler caused a copy of his answer and exhibits to be sent to Division counsel at or around the time he filed them. But because filing documents through eFAP does not automatically serve them on other parties,³ Reifler is reminded that in the

¹ *Bradley C. Reifler*, Advisers Act Release No. 6242, 2023 WL 2069911 (Feb. 15, 2023).

² See Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”). The Rules of Practice are available at <https://www.sec.gov/about/rulesofpractice>.

³ *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, 5 (Nov. 17, 2020), <https://www.sec.gov/efapdocs/instructions.pdf> (“If I file documents with the Commission, will they be automatically served on other participants? No. Filing documents electronically using eFAP will not constitute service on Commission staff, such as the Division of Enforcement, or other participants in an administrative proceeding.”); *id.* (“It is your responsibility to serve any filings on Commission staff or other participants by email outside of eFAP.”).

future he must email the Division a copy of any document that he files through eFAP and include a certificate of service with his filing.⁴

In his answer, Reifler asked the Commission “to consider a stay” of this proceeding because, due to his incarceration, he has “no access to the internet, limited files, and extremely limited phone usage.”⁵ We construe Reifler’s request as a motion to postpone or adjourn this proceeding indefinitely based on his incarceration.⁶ But by preparing and filing his answer and supporting documents, Reifler has not shown that he is entirely unable to proceed with this case given his current situation. Rather, in his answer, Reifler states that he “look[s] forward to assisting in any way that [he] can in the prehearing conference.” We therefore deny Reifler’s motion to postpone or adjourn this proceeding.⁷ Instead, we direct the parties to conduct a prehearing conference, at which they can discuss any modifications of applicable deadlines or procedures that might be appropriate given Reifler’s present circumstances.⁸

The OIP directed the parties to conduct a prehearing conference within 14 days of service of Reifler’s answer to the OIP and, following the conference, to file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference.⁹ But given the circumstances, including Reifler’s pro se and incarcerated status, it is appropriate to provide additional time for the parties to confer.

⁴ Rules of Practice 150(a) and (c), 151(d), 17 C.F.R. §§ 201.150(a) and (c), .151(d).

⁵ We note that a party who certifies that he cannot serve or file documents electronically may do so by alternative means. Rules of Practice 150(c)(1) & (d), 152(a)(1) & (2), 17 C.F.R. §§ 201.150(c)(1) & (d), 201.152(a)(1) & (2). Reifler, who filed his answer electronically, has not made any such certifications.

⁶ See *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *6 n.42 (Mar. 1 2017) (treating respondent’s request for a stay or adjournment of proceeding pending appeal of related litigation as a motion for postponement or adjournment under Rule of Practice 161); Rule of Practice 161, 17 C.F.R. § 201.161 (allowing Commission to “postpone or adjourn any hearing” “for good cause shown” and articulating relevant considerations for granting such relief).

⁷ See *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *7 n.29 (Jan. 14, 2011) (denying motion to stay proceeding pending respondent’s release from prison); *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *2, *6 (Jan. 16, 2007) (administrative proceeding adjudicated and decided while respondent was incarcerated).

⁸ Cf. *Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001, at *1 (Mar. 18, 2020) (stating that “pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161” (citing 17 C.F.R. § 201.161(b)(1)); *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *8–9 (Feb. 15, 2017) (discussing attempts to make documents available to incarcerated respondent pursuant to Rule of Practice 230).

⁹ *Reifler*, 2023 WL 2069911, at *2.

Accordingly, it is ORDERED that the parties conduct a prehearing conference by June 2, 2023. As provided in the OIP, the parties may meet in person or participate by telephone or other remote means.

It is further ORDERED that, by June 6, 2023, the parties shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at the prehearing conference specified by the OIP. If a prehearing conference is not held, both parties shall file by June 6, 2023, a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer.

Pursuant to Rule of Practice 180(c), a party's failure to comply with this order may result in the Commission's determination of the matter at issue against that party, entry of a default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.¹⁰

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹¹

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹⁰ 17 C.F.R. § 201.180(c).

¹¹ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.