

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN

The following Individual Practices Rules apply to all civil and criminal matters pending before Judge Swain on and after September 5, 2013.

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

A. General Provisions - Civil Cases

1. Communications with Chambers

- a. Letters - ECF Filing and Courtesy Copies.** Except as otherwise provided below, communications with Chambers must be by letter. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, all letters should be filed electronically on the ECF system, with a courtesy copy, clearly marked as such, delivered to the Court by fax (if 5 or fewer pages), by hand or by mail. Whether filed electronically or not, letters (together with any related exhibits) may not exceed 10 pages in length. All letters must be labeled with the name and

docket number of the case, the Judge's initials (LTS), and (for civil cases) the Magistrate Judge's initials. Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or sent to the Court (except as exhibits to an otherwise properly filed document). The courtesy copy of any letter filed on ECF must be a copy of the filed version of the letter and must include the automatically-generated ECF header (that is, the text – for example, “Case 1:13-cv-01234-ABC Document 100 Filed 09/03/13 Page 1 of 1” – appearing at the top of each page of a document on the ECF system).

- b. Prior Consultation with Opposing Parties Required.** Prior to requesting judicial action, the requesting counsel must consult with all other parties in an effort to obtain their consent to the request. The letter to the Court must confirm that such effort has been made and must indicate whether the request is being made on consent. See also Paragraph 2.b. below.
- c. Telephone calls.** Except as provided in Paragraph e. below, telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call Chambers at (212) 805-0417.
- d. Faxes.** Faxes to Chambers are permitted only if copies are also faxed or delivered simultaneously to all counsel. No document longer than five (5) pages may be faxed without prior authorization. Do not follow with hard copy. The fax number is (212) 805-0426.
- e. Docketing, scheduling, and calendar matters.** For docketing, scheduling and calendar matters, call Ms. Lisa Ng at (212) 805-0424.
- f. Requests for adjournments or extensions of time.** All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions, with a courtesy copy clearly marked as such, delivered to the Court by fax (if 5 or fewer pages in total), hand or mail. If a request contains sensitive or confidential information, it may be submitted by fax (if 5 or fewer pages in total), hand or mail in lieu of electronic filing. The letter-motion 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 must be submitted through the Orders and Judgments Clerk.* If the request is for an adjournment of a court appearance, absent an emergency it must be made at least 48 hours prior to the scheduled appearance.

2. Motions

- a. Pre-motion conferences in civil cases.** For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are

not required. *Compliance with the certification requirement of Paragraph b. below is, however, required for all motions, whether discovery-related or not.*

b. Informal efforts to resolve issues required.

(i) Pre-motion communications.

(A) In civil cases, prior to making a motion of any type, and prior to requesting a conference on any discovery issues, the parties must use their best efforts to resolve informally the matters in controversy. Such efforts must include, but need not be limited to, an exchange of letters outlining their respective legal and factual positions on the matters and at least one telephonic or in-person discussion of the matters.

(B) If a motion pursuant to Fed. R. Civ. P. 12(b)(6) or 12(c) is contemplated, the plaintiff or counterclaimant must indicate whether it wishes to amend the subject pleading prior to motion practice, and the parties must consider in good faith a stipulation permitting such amendment.

(ii) Certification in notice of motion. If a motion or a discovery conference request remains necessary, the notice of motion or written discovery conference request must include a separate paragraph certifying in clear terms that the movant or requesting party has used its best efforts to resolve informally the matters raised in its submission. If the motion is one pursuant to Fed. R. Civ. P. 12(b)(6) or 12(c), the certification must also state whether the challenged pleading has been amended in response to the arguments raised in the motion.

(iii) Statement by non-moving party. Within seven (7) days after a motion pursuant to Rule 12(b)(6) or 12(c) is filed, the non-moving party must, by letter delivered to Chambers and copied to all parties via fax or hand delivery, notify the moving party of its intent to amend the complaint as of right, make any request for leave to amend in response to the motion or state that it will file its opposition to the motion without further amendment. If no letter is submitted to the Court within seven (7) days, the motion will be briefed in accordance with Local Civil Rule 6.1. If the pleading will be amended as of right, briefing of the motion is stayed pending the timely filing of the amendment. If leave to amend is requested, briefing on the motion is stayed pending the Court's resolution of the request. No further opportunity to amend the challenged pleading in light of arguments raised in the motion will be granted.

c. Letter-Motions. Letter-Motions may be filed via ECF if they comply with the

S.D.N.Y. Local Rules and the S.D.N.Y. “Electronic Case Filing Rules and Instructions.” In particular, all requests for adjournments, extensions and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) should be filed as letter-motions. A courtesy copy must be provided to Chambers.

- d. Motions for default judgments.** A party wishing to obtain a default judgment must notify the Court by letter (copied to the party against which a default judgment is to be sought) of its desire to seek a default judgment. The Court will direct the party as to whether evidentiary submissions will be required in connection with the motion. Default judgments will be granted only upon written motion with notice to Defendant(s) and their counsel, if known. Copies of the Clerk’s Certificate, and of proof of service of the Summons and Complaint and the Motion for Default Judgment, must be attached to the Motion for Default Judgment.
- e. Motions for withdrawal or displacement of attorney of record in civil matters.** An attorney who has appeared as attorney of record for a party in a civil matter may be relieved or displaced in accordance with Local Civil Rule 1.4. A motion pursuant to Local Civil Rule 1.4 must be accompanied by (i) an affidavit of the applicant attorney’s client, confirming the client’s consent to the withdrawal, displacement, substitution or other change in representation or (ii), in the absence of such consent, proof of service of the motion on the client.
- f. Evidentiary support.** Evidentiary support, in admissible form, of all factual assertions relied upon in support of or in opposition to a motion must be filed and served with the moving or opposition papers, as the case may be. Recitals in notices of motion, attorneys’ affirmations, assertions of material factual matters “on information and belief” and the like are generally insufficient to establish factual matters.
- g. Briefing.** Unless otherwise directed by the Court in the particular case, motions must be briefed in accordance with the schedule set forth in Local Civil Rule 6.1.
- h. Courtesy copies.** One set of courtesy copies of all pleadings and motion papers, marked as such, must be submitted to the Court’s mail receiving facility, for Chambers, as soon as practicable after filing.
- i. 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 must contain a table of contents. The format of the documents must comply with Local Civil Rule 11.1.
- j. Filing of motion papers.** Motion papers must be filed at the time of service or promptly thereafter.

- k. **Oral argument and evidentiary proceedings on motions.** Parties may request oral argument and/or indicate the need for an evidentiary hearing at the time their moving, opposing or reply papers are filed, by including a conspicuous notation of the request on the cover page of the relevant paper. The Court will determine whether argument will be heard and/or whether an evidentiary proceeding is required to resolve disputed factual issues and, if it determines that such an argument or proceeding is necessary, will advise counsel of the relevant date.

3. Pre-trial Procedures

- a. **Joint pre-trial statement.** A joint pre-trial statement must be filed, and other materials submitted, in accordance with the Pre-Trial Scheduling Order entered in the particular case.

4. Proposed Orders and Judgments

- a. **Submission of proposed orders and judgments.** All proposed orders and judgments, including stipulations to be “so-ordered,” must be submitted first to the Orders and Judgments Clerk at 500 Pearl Street or in the manner required by the Court’s “Electronic Case Filing Rules and Instructions,” for approval as to form before being submitted for Chambers.
- b. **Applications for Orders to Show Cause with requests for temporary restraining orders.** Unless application for ex parte temporary injunctive relief is made in accordance with Fed. R. Civ. P. 65(b)(1), the applicant must provide a copy of the proposed Order to Show Cause and all supporting papers to the opposing party before presenting the application to Chambers.

B. Civil Cases Designated for Inclusion in Pilot Project Regarding Case Management Techniques for Complex Civil Cases (“the Pilot Project”)

1. **In General.** Pilot Project cases will be administered in accordance with the project description annexed to the Court’s October 31, 2011, Standing Order (11 Misc. 00388) and orders entered in particular Pilot Project cases.
2. **Individual Practices procedures remaining applicable in Pilot Project cases.** The following General provisions of these Individual Practices apply in Pilot Project Cases: A.1.a through A.1.f, A.2.c, A.2.d, A.2.e, A.2.f., A.2.g., A.2.h., A.2.j., A.2.k., A.4.
3. **Motions.** The “Motion Procedures” provisions of the Pilot Project description apply. With respect to motions pursuant to Fed. R. Civ. P. 12(b), the Court will hold a conference in accordance with option “(c)” of subdivision A.4. of the Motion Procedures following service

of the initial motion papers. The parties are nonetheless encouraged to engage in informal communications prior to the initiation of the motion practice in an effort to resolve the matter, by amendment of the allegedly deficient pleading or otherwise, without motion practice.

C. Criminal Matters

1. **Initial pre-trial conference.** The Assistant U.S. Attorney must contact Chambers as soon as possible after the case is assigned to Judge Swain. The Assistant must provide all pertinent information to Chambers, including a faxed copy of the information/indictment. The Courtroom Deputy will set up a conference/arraignment.
2. **Substitution of counsel.** When there is a substitution of defense counsel, counsel of record must contact Ms. Ng (the Courtroom Deputy) to schedule a conference. At the conference, the Court will address the application by defense counsel to be relieved. The defendant, counsel of record, the proposed replacement counsel, and the Assistant United States Attorney must all attend the conference.
3. **Motions.**
 - a. Counsel are expected to comply with Local Criminal Rule 16.1. Any motion described in that Rule must include a Rule 16.1 affidavit.
 - b. Unless otherwise directed by the Court in the particular case, motions must be briefed in accordance with the schedule set forth in Local Criminal Rule 12.1. Counsel must provide two (2) courtesy copies of all motion papers for Chambers.
 3. Except for good cause shown, all motions *in limine* must be interposed so as to permit full briefing by at least seven (7) days before the final pretrial conference date.
4. **Pleas.** The plea agreement or Pimentel letter must be provided to Chambers at least two (2) full business days before the time set for the conference at which the disposition is to be addressed. Defense counsel are expected to have reviewed any plea, cooperation, or other agreement, as well as any Advice of Rights form provided to counsel by the Court – with the assistance of an interpreter, if necessary – with the defendant prior to the time set for the conference with the Court. The relevant documents must be executed prior to the time set for the conference with the Court.
5. **Trial procedures.** Submission requirements in connection with final pre-trial conferences and other trial-related requirements are detailed in Judge Swain’s General Rules for Trial Counsel, and Additional Trial Procedures for Criminal Cases, which are available on the Court’s website.

6. Sentencing.

- a.** Any request for adjournment of a sentencing shall be made in writing as early as possible, but no later than three (3) business days before the date at issue. Such requests should state whether opposing counsel consents.
- b.** All submissions and applications with respect to a sentencing must be served and submitted to the Court in compliance with Judge Swain's Sentencing Submission Procedures. Except for submissions to be filed under seal or in redacted form, every document in a sentencing submission, including letters, must be filed on ECF. Letters should be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends and relatives. The Government is responsible for filing all letters from victims.