

INDIVIDUAL PRACTICES OF
JUDGE BRIAN M. COGAN
United States District Court
Eastern District of New York

225 Cadman Plaza East
Brooklyn, NY 11201

Chambers: 718-613-2230
Fax: 718-613-2236

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

I. Communications with Chambers

A. Docketing, Scheduling or Calendar Matters

Criminal and Civil Cases: Call Courtroom Deputy and Case Manager Melonie Clarke at (718) 613-2235 between 9:00 a.m. and 4:00 p.m.

As to sentencing scheduling issues, refer to Rule V below.

To request an adjournment or extension of time, refer to Rule I.E. below.

B. Letters

Except as provided below, communications with Chambers shall be by letter electronically filed with the Court, with copies simultaneously delivered to all counsel. **NO HARD COPIES OF LETTERS, INCLUDING LETTERS REQUESTING EXTENSIONS OR ADJOURNMENTS, SHALL BE DELIVERED TO CHAMBERS OR TO THE COURT.**

Counsel shall not copy the Court on correspondence between and among them. For letters concerning discovery disputes, refer to Rule III.A.1. below.

C. Telephone calls

Telephone calls to Chambers are permitted between 9:00 a.m. and 4:00 p.m. However, do not call Chambers with procedural questions that are covered by the Local Rules of this Court and the Federal Rules of Civil Procedure.

D. Faxes

Faxes to Chambers are permitted for urgent matters requiring an immediate response from Chambers, and only if copies are simultaneously faxed or delivered to all counsel. Do not follow with a hard copy.

No document longer than ten pages may be faxed without prior authorization.

E. Request for Adjournments or Extensions of Time in Civil Cases

1. All requests for adjournments or extension of time must be by ECF letter only (pro se litigants need not file by ECF) and must state:

- a. The original date;
- b. The number of previous requests for adjournment or extension;
- c. Whether these previous requests were granted or denied;
- d. Whether the adversary consents, and, if not, the reasons by the applicant, and by the adversary, for and against the relief requested; and
- e. All other dates previously scheduled, including dates for conferences with the Court, and a suggested modified schedule, agreed to by all other counsel.

Absent an emergency, a request for adjournment of a court appearance must be made in writing at least 48 hours prior to the scheduled appearance.

2. Discovery extensions in civil cases will not be granted based on an opponent's or non-party's non-compliance with discovery obligations unless the movant has exhausted, promptly upon the non-compliance, all legal remedies to obtain compliance.

II. Electronic Case Filing ("ECF")

- A. All documents in civil actions shall be filed electronically. Orders will be posted electronically, and parties not registered on ECF will not receive them.
- B. *Pro se* parties are exempt from mandatory ECF filing. However, parties represented by counsel must file documents electronically, even if that party's adversary is *pro se*. For questions about filing and serving documents in cases in which one or more parties are proceeding *pro se*, contact the *pro se* office at 718-613-2665.
- C. The filing of Affidavits of Service as to any papers other than the summons and complaint is prohibited, except in *pro se* cases. Filing on ECF constitutes service

of papers other than the summons and complaint, although attorneys may wish to agree on additional service by mail or delivery as a mutual accommodation.

- D.** For questions regarding ECF, call 718-613-2610. For technical assistance, call 718-613-2290. Attorneys should also refer to the Court’s website: http://www.nyed.uscourts.gov/CM_ECF?cm_ecf.html.

III. Pleadings and Motions

Motion Rules At A Glance

Motion Returnable:	Any Court Day (Counsel should not appear)
Oral Argument:	Note “Oral Argument Requested” in caption of Notice of Motion or opposing memorandum
Filing Rules:	In accordance with ECF Filing System
Courtesy Copies:	Yes

A. Pre-Motion Conferences

1. For discovery motions, follow Local Civil Rule 37.3. In addition, counsel must first describe their disputes in a single letter, jointly composed. Separate and successive letters will be returned, unread. Strict adherence to Fed.R.Civ.P. 37(a)(2)(A), 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.
2. For all other motions in civil cases other than habeas corpus, social security, and bankruptcy appeals, a pre-motion conference is required before a party may file any motion. Parties must request a pre-motion conference in writing by ECF (except *pro se*). The moving party shall submit a letter not to exceed three pages in length setting forth the basis for the anticipated motion, and simultaneously serve the request on all counsel. Parties so served may serve and file a letter response, not to exceed three pages, within five days from service of the notification letter. The Court will schedule pre-motion conferences shortly after receiving the request, and the moving party will be required to file their motion within a prompt but reasonable time after the conference. **PARTIES ATTENDING THE PRE-MOTION CONFERENCE MUST BE THOROUGHLY FAMILIAR WITH THE MERITS OF THEIR POSITION REGARDING THE PROPOSED MOTION.**

3. In criminal cases, counsel shall advise the Court of any contemplated motion at a status conference scheduled by the Court or, if no status conference is scheduled, counsel shall request a pre-motion conference in writing and briefly state the grounds for such a motion before filing any motion.

B. Motion Papers

Motion papers shall be filed promptly. Do not hold motion papers until all papers are complete.

1. Unless prior permission has been granted, memoranda of law in support of or in opposition to motions are limited to 25 pages, double spaced, and reply memoranda are limited to 10 pages, double spaced. Use Times New Roman 12-point font and one-inch margins. All memoranda 10 pages or longer shall contain a table of contents and table of authorities. Memoranda must cite not only to the Rule 56.1 statement, but to the evidence cited in the applicable portion of the Rule 56.1 statement.
2. Requests to file memoranda exceeding the page limits set forth herein must be made in writing five days prior to the due date, except with respect to reply briefs, in which case the written request must be made at least one day prior to the due date.
3. Affidavits or affirmations shall not be accepted on motions unless they are confined to factual averments. Attorney's affidavits or affirmations shall not be accepted unless: (a) the facts addressed are within the personal knowledge of the attorney, such as in a discovery dispute; or (b) the attorney is authenticating documents and it is believed that authentication is not in issue. Witness or party affidavits will not be accepted if they violate the rules of evidence, including those pertaining to hearsay, conclusions, and foundation. Argument or case citations, whether from a witness, party, or attorney, contained in affidavits or affirmations may result in rejection of the affidavit or affirmation or striking of the offensive portions.
4. On motions for summary judgment, do not attach complete deposition transcripts as exhibits. Attach only pages containing relevant testimony to which citation is made in the memorandum or affidavits.
5. Except in *pro se* cases, the Local Rule 56.1 statement by a party opposing summary judgment shall quote verbatim the moving party's Local Rule 56.1 statement, and shall respond to each allegation in the moving party's statement immediately beneath each allegation. The opposing statement also may, if necessary, include a separate section of additional

material facts alleged to be in dispute. The party opposing summary judgment may obtain from the movant in electronic format a word processing version of the Local Rule 56.1 statement to facilitate compliance with this paragraph. Each paragraph in the Local Rule 56.1 statement shall contain an assertion of a material undisputed fact, not a description of evidence. For example: “John Smith testified at deposition that he crossed the street” is not a statement of fact. The statement of fact is “John Smith crossed the street.”

6. All exhibits must be separately tabbed and indexed. The courtesy copy of affidavits with exhibits annexed must have labeled tabs or tab pages protruding from the side or bottom of the affidavit.
7. Hard courtesy copies of motion papers should be delivered to Chambers.

C. Motions in Criminal Cases

1. Applications regarding sentencing adjournments shall be made in writing by defense counsel at least five business days prior to the date of sentencing. The Government’s response, if any, shall be made in writing at least two business days before the date of sentencing.
2. Defendant’s sentencing memorandum, if any, is due two weeks prior to sentencing. The Government’s response, if any, is due one week prior to sentencing. If the defendant and the Government agree that the case presents no material factual or legal disputes, they may modify this schedule and shall advise the Court if they do so.
3. 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.

For all other motions, follow Rule III.B. above unless otherwise directed by the Court.

D. Return Dates and Oral Argument

In civil cases, parties may request oral argument by noting “Oral Argument Requested” in their Notice of Motion or opposing memorandum. Motions shall be returnable on weekdays at 9:30 a.m., but counsel should not appear in Court on the return date. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

Oral argument on all criminal motions will be heard on a date set by the Court.

IV. Pretrial Procedures

A. Pretrial Conferences in Criminal Cases

Assistant United States Attorneys are responsible for informing Chambers by calling Courtroom Deputy Melonie Clarke, 718-613-2235, when a new case has been assigned to Judge Cogan. Upon such notification, an initial pretrial conference will be scheduled.

B. Pretrial Procedures in Civil Cases

1. In all civil actions commenced after June 12, 2006, except *pro se* cases, all matters will be heard by Judge Cogan rather than the assigned Magistrate Judge unless an Order of Referral has been entered.
2. Pretrial orders are not required unless specifically directed by the Court in a particular case.
3. The following must be handed to the Courtroom Deputy at the beginning of trial:
 - (a) A complete set of documentary exhibits;
 - (b) A list of all exhibits, with an extra copy of the list for the Courtroom Deputy; and
 - (c) A copy of the list of witnesses.

V. Sentencing in Criminal Cases

1. At least two weeks prior to sentencing, defense counsel will deliver a sentencing memorandum and any supporting documentation. If the Government intends to respond to the defendant's sentencing memorandum, it shall deliver that response at least one week prior to sentencing.
2. After the Government's time for filing a response has passed, but no less than five days prior to the scheduled sentencing, either party shall file a letter by ECF confirming that the sentencing is to proceed as scheduled. **In the absence of such confirmation, the Court will adjourn the sentencing *sua sponte* for approximately 30 days.** The filing deadlines set forth in subparagraph (1) above and the requirement for a confirmation letter in this subparagraph shall apply to any adjourned date.