

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 Section VI below.

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

B. Letters

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

Counsel must provide a brief description of the subject matter of the letter in the ECF entry field, *e.g.*, “Joint Letter in connection with Initial Status Conference,” not simply, “Letter,” so that the docket remains intelligible.

Counsel shall not copy the Court on correspondence between and among them.

For letters concerning discovery disputes, refer to Section III.A.1. below.

C. Telephone calls

Telephone calls to Chambers as to scheduling matters or emergency matters only are permitted between 9:00 a.m. and 4:00 p.m. Do not call Chambers with

procedural questions that are covered by the Local Rules of this Court and the Federal Rules of Civil or Criminal Procedure.

D. Faxes

Counsel should be aware that ECF filings are closely monitored 24/7, and are likely to be reviewed more promptly than faxes. There should therefore be no reason for faxes.

For attorneys who doubt this, faxes to Chambers are permitted only for urgent matters, and only if copies are simultaneously faxed or delivered to all counsel. Do not follow with a hard copy.

In no event are faxes longer than ten pages permitted without prior authorization.

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

1. All requests for adjournments or extensions of time must be by ECF letter only (except for *pro se* litigants) 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; and
 - f. The grounds for the extension or adjournment. The consent of the adverse party is not a sufficient ground for an extension or adjournment.

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. Failure to timely request relief for a party's non-compliance may result in a waiver of the requested discovery.

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. All requests for relief from the Court, whether by letter or formal motion papers, shall be designated as a “motion” on ECF. In addition, the ECF entry line must designate the subject matter of the letter or motion, e.g., “letter motion requesting extension of time to respond to interrogatories,” not simply “letter,” so that the docket sheet for the case remains intelligible.
- C. *Pro se* parties are exempt from mandatory ECF filing. However, (1) parties represented by counsel must file documents electronically, even if that party’s adversary is *pro se*; and (2) *pro se* parties who have filed consent to electronic notification in any other form shall not receive notification in any other form. 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.
- D. 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 or *pro se* litigants may wish to agree on additional service by mail or delivery as a mutual accommodation.
- E. State Court records in habeas corpus cases under 28 U.S.C. § 2254 must have each portion plainly labeled on ECF, not simply listed as an “Exhibit,” in a manner substantially similar to the following:

ANSWER to Complaint by John Lempke. (Attachments: # [1](#) Exhibit Hearing Minutes I, # [2](#) Exhibit Hearing Minutes II, # [3](#) Exhibit Plea Minutes, # [4](#) Exhibit Sentence Minutes, # [5](#) Exhibit Brief on Appeal, # [6](#) Exhibit Respondent Brief on Appeal, # [7](#) Exhibit Pro Se Supplemental Brief, # [8](#) Exhibit Respondent Pro Se Supplemental Brief, # [9](#) Exhibit Leave Letter, # [10](#) Exhibit Opposition to Leave Letter, # [11](#) Exhibit Appellate Division Decision, # [12](#) Exhibit Court of Appeals Decision)

or

STATE COURT RECORD (Attachments: # [1](#) Exhibit A Suppression Hearing, # [2](#) Exhibit B1 Trial Jury Selection, # [3](#) Exhibit B2 Trial 1-207, # [4](#) Exhibit B3 Trial 208-390, # [5](#) Exhibit B4 Trial 391-518, # [6](#) Exhibit C Sentencing, # [7](#) Exhibit D1 Direct Appeal Defendant's Brief, # [8](#) Exhibit D2 Direct Appeal People's Brief, # [9](#) Exhibit D3 Direct Appeal AD Decision, # [10](#) Exhibit D4 Direct Appeal Leave Appl, # [11](#) Exhibit D5 Direct Appeal Leave Opp, # [12](#) Exhibit D6 Direct Appeal

Leave Denial, # [13](#) Exhibit E1 NY CPL 440 Motion, # [14](#) Exhibit E2 NY CPL 440 Opp, # [15](#) Exhibit E3 NY CPL 440 Reply, # [16](#) Exhibit E4 NY CPL 440 Decision, # [17](#) Exhibit E5 NY CPL 440 AD Leave Appl, # [18](#) Exhibit E6 NY CPL 440 AD Leave Opp, # [19](#) Exhibit E7 NY CPL 440 AD Leave Denial, # [20](#) Exhibit E8 NY CPL 440 NY CoA Leave Appl, # [21](#) Exhibit E9 NY CPL 440 NY CoA Leave Opp, # [22](#) Exhibit E10 NY CPL 440 NY CoA Leave Dismissal).

The following format will be rejected and refiling required:

STATE COURT RECORD (Attachments: # [1](#) Exhibit State Court Record, # [2](#) Exhibit State Court Record, # [3](#) Exhibit State Court Record, # [4](#) Exhibit State Court Record, # [5](#) Exhibit State Court Record, # [6](#) Exhibit State Court Record, # [7](#) Exhibit State Court Record, # [8](#) Exhibit State Court Record, # [9](#) Exhibit State Court Record, # [10](#) Exhibit State Court Record, # [11](#) Exhibit State Court Record)

- F. For questions regarding ECF, call 718-613-2610. For technical assistance, call 718-613-2290. Attorneys should also refer to the Court’s website: <https://www.nyed.uscourts.gov>

III. Pleadings and Motions in Civil Cases

Motion Practices At A Glance

Motion Returnable:	Any day the Court is open (counsel should not appear)
Oral Argument:	Note “Oral Argument Requested” in the caption of Notice of Motion or the 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 not be reviewed. 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 except (1) for provisional remedies, reconsideration, and post-judgment relief, or (2) motions in 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. The moving party shall submit a detailed 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 shall serve and file a detailed letter response, not to exceed three pages, within five days from service of the notification letter, unless the Court directs otherwise.

3. Counsel attending the pre-motion conference must be thoroughly familiar with the merits of their position regarding the proposed motion. The pre-motion conference is often the only opportunity to orally argue the motion. Counsel should also anticipate a schedule that will require the filing of their motion within a short time after the conference (usually two weeks).

B. Motion Papers

Motion papers shall be filed promptly. Do not hold motion papers until all papers are complete. In other words, the Court does not follow a “bundling rule.”

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. 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.

2. 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 the attorney reasonably believes that authentication is not in issue. Witness or party affidavits will not be accepted if they violate the Federal 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.

3. All exhibits to affidavits or affirmations must be separately tabbed and indexed, whether on ECF or courtesy copies. Hard courtesy copies of motion

papers must be delivered by hand to Chambers or mailed contemporaneously with filing on ECF. The courtesy copies of affidavits with exhibits annexed must have labeled tabs or tab pages protruding from the side or bottom of the affidavit. Each submission must be bound, not loose-leaf, and not with an alligator clip, but either with staples of sufficient depth to withstand heavy use, placed in a three-holed punch notebook, velobound, spiral bound, or tape bound.

4. Do not annex as exhibits copies of pleadings or other filings that already appear on the docket.

5. On motions for summary judgment, do not attach complete deposition transcripts as exhibits to affidavits or affirmations. Attach only pages containing relevant testimony to which citation is made in the memoranda or affidavits. However, any excerpted submissions must anticipate and comply with Federal Rule of Evidence 106. In other words, do not distort the record by leaving out a portion of the excerpt necessary for completeness.

6. Motions for summary judgment may be denied if the Local Rule 56.1 Statements do not conform with the following requirements in addition to those set forth in the Local Rule:

(a) 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.

(b) 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." If the statement of fact can only be characterized as "undisputed" by including its source, then it is probably not undisputed.

(c) Do not point out the absence of evidence to support an opponent's position in a Local Rule 56.1 statement. Do it in the memorandum of law.

B. Do not state or summarize the claims, defenses, matters apparent on the docket sheet, timetable, or history of the litigation in the Local Rule 56.1 statement. Just tell the story of the events giving rise to the case through the undisputed facts. Memoranda of law on a motion for summary judgment must cite not only to the Local Rule 56.1

statement, but the evidence cited in the applicable portion of the Local Rule 56.1 statement.

C. 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.

D. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date. The likelihood of oral argument is increased if the Court is advised by letter with the filing of the motion or opposition that the attorney who will argue the motion or opposition has been admitted to the bar five years or less.

IV. Motions in Criminal Cases

- A. 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.
- B. 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. Oral argument on all criminal motions will be heard on a date set by the Court. The likelihood of oral argument is increased if the Court is advised by letter with the filing of the motion or opposition that the attorney who will argue the motion has been admitted to the bar five years or less.

V. Pretrial Procedures

A. Pretrial Conferences in Criminal Cases

1. 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.
2. In a multi-defendant case, all filings must designate the defendant or defendants, and only the defendant or defendants, as to whom the filing pertains.
3. Violations of Supervised Release: The Court will not accept a guilty plea on a violation of supervised release without 24 hours’ notice of the intent to plead, specifying the violations as to which the defendant intends to plead guilty. The practice of not deciding upon the disposition of a VOSR until immediately before a scheduled conference is strongly discouraged.

A. Pretrial Procedures in Civil Cases

1. All matters in civil actions, except *pro se* cases, including pretrial matters, will be heard by Judge Cogan rather than a Magistrate Judge unless an Order of Referral or a Stipulation Consenting to Magistrate Judge Jurisdiction has been entered.
2. The submission of a joint pretrial order will be scheduled by the Court; the parties are to use the form provided at <https://www.nyed.uscourts.gov/content/judge-brian-m-cogan>.
3. The following must be handed to the Courtroom Deputy at the beginning of trial **in duplicate** (so that the Court's Law Clerk has a copy as well as the Court):
 - (a) A complete set of documentary exhibits;
 - (b) A list of all exhibits; and
 - (c) A copy of the list of witnesses.

VI. Sentencing 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. Sentencing memoranda and any objections to the Presentence Report must be provided to the Probation Department.
3. 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 may 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.