

October 10, 2016

**INDIVIDUAL PRACTICES OF
MAGISTRATE JUDGE BARBARA MOSES**

Chambers

Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 920
New York, NY 10007
Telephone: (212) 805-0228

Courtroom

Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 9A
Courtroom Deputy: Kevin Snell

Civil cases come before magistrate judges in two ways: (i) for one or more specific purposes, pursuant to an order of reference by the assigned district judge, or (ii) for all purposes, on consent of the parties, pursuant to 28 U.S.C. § 636(c). When a district judge approves an all-purposes consent form signed by counsel, the magistrate judge assumes the role of the district judge. The right to a jury trial is preserved and any appeal is directly to the Court of Appeals.

It is the uniform practice of the magistrate judges in this district to schedule civil trials for firm dates, rather than using a trailing trial calendar or requiring counsel to be available for trial on short notice. Additionally, because magistrate judges rarely try criminal cases, such firm trial dates are unlikely to be changed to accommodate criminal trials. Should the parties wish to have Judge Moses hear their case for all purposes, the necessary form is available at: <http://nysd.uscourts.gov/judge/Moses>.

Unless otherwise ordered by Judge Moses, the following practices are applicable to all civil matters conducted before her:

I. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court should be by letter. Letters that are informational in nature and do not request relief (for example, status updates requested by the Court) should be filed via ECF using the “letter” option, listed under “other documents.”
- B. Letter-Motions.** Letter-motions, as permitted by Local Civil Rule 7.1(d) and section 13.1 of the Electronic Case Filing Rules & Instructions, should be filed via ECF using the “letter-motion” option, listed under “motion.” In particular, parties should file as letter-motions all requests for pre-motion conferences, adjournments, extensions, excess pages, oral argument, and settlement conferences. Requests for other types of non-dispositive relief listed in section 13.1 may also be made by letter-motion.
- C. Page Limits; Courtesy Copies; Service.** Absent advance permission from the Court, letters and letter-motions may not exceed four pages in length, exclusive of attachments, which should be kept to a minimum. Please do not try to cheat

the page limit by splitting a request for relief into two separate four-page letters. If a letter or letter-motion includes attachments (regardless of number or length), a courtesy copy marked as such must be delivered to chambers by mail, overnight courier, or hand delivery. The courtesy copy should bear the ECF header generated at the time of electronic filing and include protruding tabs for the attachments. In *pro se* cases, letters and letter-motions filed via ECF must also be served on the *pro se* party. Counsel shall indicate the mode of service in the letter to the Court and shall also file a proof of service via ECF.

- D. Confidential Letters.** *Ex parte* settlement letters, letters or letter-motions to be filed under seal, and letters or letter-motions otherwise containing confidential or sensitive information should be delivered to chambers by mail, overnight courier, or hand delivery in lieu of being filed electronically. Delivery by fax or email, if necessary, requires advance permission from the Court. If service on other parties is required, service shall be accomplished by means no slower than the delivery to chambers. Counsel shall indicate the mode of service in the letter to the Court and shall also file a proof of service via ECF.
- E. Hand Delivery.** Hand deliveries should be left with a Court Security Officer at the Worth Street entrance of the Daniel Patrick Moynihan Courthouse. If the matter requires the Court's immediate attention, ask the Court Security Officer to notify chambers that an urgent delivery has arrived.
- F. Letters or Emails between Parties.** Copies of correspondence between the parties or their counsel shall not be sent to chambers or filed on ECF except as exhibits to otherwise properly-filed documents.
- G. Telephone Calls.** For docketing, scheduling, and calendar matters, or to request permission to submit letters by fax or email, counsel may call chambers at 212-805-0228. Otherwise, telephone calls are permitted only for urgent matters requiring immediate attention.
- H. Pro Se Parties.** All letters and other communications to the Court from *pro se* parties must be submitted to the *Pro Se* Intake Unit, not directly to chambers.

II. Motions

- A. Requests for Adjournments or Extensions.** Requests to adjourn a court conference or other court proceeding (including a telephonic court conference) or to extend a deadline must be made by letter-motion, after consultation with all affected parties, and must state: (1) the original date of the conference or proceeding; (2) the number of previous requests for adjournment or extension; (3) whether those requests were granted or denied; (4) the reason for the present request; (5) whether all affected parties consent; and (6) if not, the reasons given for refusing. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

All requests for extension of a deadline must be made in advance of the deadline to be extended. Absent unforeseeable emergencies, all requests for adjournment of a court conference or other court proceeding (including a telephonic court conference), must be made at least four days in advance of the proceeding to be adjourned, and must include at least two proposed dates, on which all counsel are available, for the adjourned proceeding.

- B. Discovery Motions.** No discovery dispute will be heard unless the moving party (including a non-party seeking relief from a subpoena) has first conferred in good faith with the adverse party or parties, in person or by telephone, in an attempt to resolve the dispute. An exchange of letters or email alone does not satisfy this requirement. Counsel must respond promptly and in good faith to a request from another party to meet and confer in accordance with this paragraph.

If the parties have met and conferred but cannot resolve their dispute, the moving party must request a pre-motion discovery conference with the Court, by letter-motion, as required by Local Civil Rule 37.2. The letter-motion must succinctly set forth the basis of the dispute and the relief sought, certify that the required in-person or telephonic conference took place in accordance with this paragraph, and state: (1) the date, time, and duration of the parties' conference; (2) the names of the counsel who participated; and (3) the position of any relevant adverse party as to each contested issue. None of these requirements may be satisfied by attaching copies of correspondence between counsel.

- C. Pre-Motion Conferences.** For motions other than discovery motions, pre-motion conferences are not required, but may be requested by letter-motion where counsel believe that an informal conference with the Court may obviate the need for the motion or reduce the issues in dispute.

- D. Briefing Schedule on Letter-Motions.** Unless the Court has ordered otherwise or the parties have agreed to a different briefing schedule, any opposition to a letter-motion shall be filed within four days of the moving letter, and any reply shall be filed within two days of the opposition. If the parties have agreed to a different briefing schedule, they must so inform the Court, either in the moving letter or as soon as agreement is reached. If the letter-motion requests emergent or expedited relief, opposing counsel are advised to file any opposition as promptly as possible.

- E. Briefing Schedule on Formal Motions.** Unless the Court has ordered otherwise or the parties have agreed to a different briefing schedule, opposition and reply papers with respect to formal motions will be due in accordance with Local Civil Rule 6.1. The parties are strongly encouraged to agree on a reasonable briefing schedule before the moving papers are filed. If the parties have agreed to such a schedule, they must so inform the Court, either in the moving party's notice of motion or by letter as soon as agreement is reached. Should the parties thereafter agree to modify their briefing schedule, they must promptly inform the Court of the new schedule by letter.

- F. Courtesy Copies.** Courtesy copies of all formal motion papers, marked as such, must be delivered to chambers promptly after filing. Courtesy copies should bear the ECF header generated at the time of electronic filing and include protruding tabs for any exhibits. Bulky materials should be neatly bound, or placed in 3-ring binders, with appropriate dividers.
- G. Memoranda of Law.** Unless advance permission has been granted, principal memoranda of law are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda exceeding 10 pages must include a table of contents and a table of authorities, neither of which shall count against the page limit. The Court expects parties to adhere strictly to the typeface, margin and spacing requirements of Local Civil Rule 11.1(b).
- H. Requests to File Materials Under Seal.** Filing under seal requires permission of the Court. Unless otherwise ordered, any party wishing to file a document or portion thereof under seal must do the following things on or before the date on which the relevant brief, declaration or other document is due: (1) serve a complete and unredacted copy of the document on all other parties; (2) file a redacted copy of the document via ECF, from which the material claimed to require confidential treatment has been removed or concealed; (3) make a specific request to the Court by letter, delivered directly to chambers, explaining the need to withhold the material at issue from the public record notwithstanding the strong presumption of public access to “judicial documents” under the First Amendment and the common law. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-21 (2d Cir. 2006). The letter should include as attachments (a) one complete and unredacted copy of the document, as served on the other parties, and (b) one copy of each page sought to be withheld or redacted, marked to show the material claimed to require confidential treatment (e.g., highlighted to show the words, phrases, or paragraphs sought to be redacted). The parties are cautioned that the designation of documents as “confidential” for discovery purposes does not, without more, justify a sealing order. If a sealing request is based on another party’s designation of documents or information as “confidential,” the parties shall confer and jointly submit the request for sealing.
- If the Court approves the request for filing under seal, chambers will file the complete and unredacted document under seal. If the Court does not approve the request, chambers will file the complete and unredacted document on ECF or provide further instructions to the filing party.
- I. Oral Argument on Motions.** Parties may request oral argument at the time their motion papers are filed. The Court will determine whether to hear argument and will advise the parties of the argument date and time.

III. Pretrial Procedures

- A. Applicability.** The procedures set out below apply only to cases in which the parties have consented pursuant to 28 U.S.C. § 636(c) to have all proceedings before Judge Moses, including trial.
- B. Joint Pretrial Order.** Unless the Court has ordered otherwise, the parties shall submit to the Court for its approval a Joint Pretrial Order within 30 days after the date for the completion of discovery, or, if a summary judgment motion has been filed, within 30 days after the decision on the motion. The proposed Joint Pretrial Order shall include the following:
1. The full caption of the action.
 2. The names and addresses of trial counsel, together with their office and cellular telephone numbers, fax numbers, and email addresses.
 3. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction, including citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
 4. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, including citations to all statutes relied on but without recital of evidentiary matter.
 5. With respect to each claim remaining to be tried, a brief statement listing each element or category of damages sought with respect to that claim and a calculation of the amount of damages sought with respect to such element or category.
 6. A statement by each party as to whether the case is to be tried with or without a jury, and the estimated number of trial days needed.
 7. Any stipulations or agreed statements of fact or law.
 8. A list by each party of the witnesses whose testimony is to be offered in that party's case in chief, indicating whether such witnesses will testify in person or by deposition. Absent extraordinary circumstances a party may not call as a witness in its case in chief any person not listed in the Joint Pretrial Order.
 9. A designation by each party of deposition testimony to be offered in that party's case in chief, together with any cross-designations or objections by any other party. For each designation as to which there is an objection, the party objecting must briefly specify the nature of the objection (*e.g.*, "hearsay," "Rule 403"). Any cross-designation or objection not made will be deemed waived. Absent extraordinary circumstances a party may not

offer in its case in chief any deposition testimony not listed in the Joint Pretrial Order.

10. A list by each party of exhibits to be offered in its case in chief. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For each exhibit as to which there is an objection, the party objecting must briefly specify the nature of the objection (*e.g.*, “hearsay,” “Rule 403”). Any objection not listed shall be deemed waived. Absent extraordinary circumstances, a party may not offer in its case in chief any exhibit not listed in the Joint Pretrial Order.

C. Filings Prior to Trial. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial (or 30 days after the filing of the final pretrial order if no trial date has been fixed):

1. In jury cases: proposed *voir dire* questions, requests to charge, and a proposed verdict sheet.
2. In nonjury cases: a statement of the elements of each claim or defense involving such party, together with a summary of the facts that will be relied upon to establish each element. If the parties believe it would be useful they may also file pretrial memoranda, limited to 25 pages.
3. In all cases: motions addressing any evidentiary or other issues which should be resolved in *limine*.

D. Marking Exhibits for Trial. At the commencement of trial, each party must provide each other party, and the Court, with a tabbed binder or binders containing courtesy copies of its trial exhibits and deposition designations.