

INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE JAMES L. COTT

Chambers

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Courtroom

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Introduction – Consent Jurisdiction

Cases come before magistrate judges in one of two ways: for one or more specific purposes pursuant to an order of reference by the assigned district judge, or, on consent of the parties, for all purposes 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. Any appeal is directly to the Court of Appeals and the right to a jury trial is preserved.

It is the uniform practice of the magistrate judges in this District to schedule trials in civil consent cases 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 counsel wish to consent to have Magistrate Judge Cott hear their case for all purposes, the necessary form is available at <http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge>

Unless otherwise ordered by Judge Cott, matters before him shall be conducted in accordance with the following practices. These practices are applicable to cases before Judge Cott if the matter is within the scope of the district judge's order of reference or if the case is before Judge Cott for all purposes pursuant to 28 U.S.C. § 636(c). Otherwise, the practices of the district judge to whom the case is assigned apply.

I. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with the Court should be by letter, filed electronically on ECF. Parties should not submit courtesy copies of letters filed on ECF.

Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be filed electronically on ECF in accordance with the S.D.N.Y. “Electronic Case Filing Rules and Instructions.”¹ Letters to be filed under seal or containing sensitive or confidential information that a party does not wish to appear on the docket should be sent to the Court by email to CottNYSDChambers@nysd.uscourts.gov as a .pdf attachment with a copy simultaneously e-mailed to all counsel. Any such email should state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the email; such communications shall be included only in the body of the letter.

Unless otherwise permitted by the Court, **letters may not exceed five pages in length.** When a letter is accompanied by attachments exceeding 10 pages in length, the submitting party shall both file the letter on ECF (or, if containing sensitive or confidential information, e-mail it to the Court) and deliver a hard copy to the Court by mail or by hand delivery. Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (or attached as exhibits to any letter-motion without permission of the Court).

B. Telephone Calls. While communications with chambers should normally be by letter, telephone calls are permitted for urgent matters. For all scheduling, docketing, or calendaring inquiries, please call Deputy Clerk David Tam at (212) 805-0250 between 10:00 a.m. and 4:00 p.m.

C. Faxes. Faxes are not permitted except with prior approval of Chambers.

D. Hand Deliveries. Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States District Courthouse at 500 Pearl Street, New York, New York 10007 and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered submission to the Court is urgent and requires the Court’s immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.

¹ Unless counsel is filing a letter-motion (such as for a request for adjournment or extension of time as discussed in paragraph I.E. and I.F., or for a pre-motion conference to resolve a discovery dispute as discussed in paragraph II.B., *infra*), counsel should not select the “letter motions” option on ECF; instead, after selecting “civil events” under the “civil” heading on the main menu bar, counsel should select the “other documents” event under “other filings.” A list with the option “letter” will then appear, which should be selected.

E. 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 (or by stipulation, if the parties have agreed). (If a request contains sensitive or confidential information, it may be submitted by e-mail to the Court as a .pdf attachment with a copy simultaneously e-mailed to all counsel in lieu of being filed electronically.). The letter-motion must state: (1) the original date or dates sought to be extended; (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reason for the extension; and (5) whether the adversary consents to the extension and, if not, the reason given by the adversary for refusing to consent. To the extent a request to extend a particular date requires a change in other scheduled dates, the request must list the proposed changes for all such other dates, giving the actual date for each affected deadline.

Absent an emergency, any request for extension or adjournment shall be made at least 48 hours prior to the deadline. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

F. Requests for Adjournments of Court Appearances (including Telephone Conferences). A request for an adjournment of a court appearance (including a telephone conference) shall be made in writing as soon as a party is aware of the need for the adjournment and, in any event, no later than five business days prior to the scheduled appearance (absent an emergency). Prior to making such a request in writing, the party seeking the adjournment should contact Deputy Clerk David Tam at (212) 805-0250 to determine an alternative date on which the Court is available for a rescheduled court appearance. The requesting party should then contact all other parties to determine their availability for that date. The requesting party must then make a written request to the Court for an adjournment by letter forthwith stating the date and time that is being requested. The letter should be filed on ECF as a letter-motion and include a statement as to the other parties' positions on the change in date. The appearance is not adjourned unless counsel are thereafter informed either by ECF notification or by the Deputy Clerk that the written application has been granted.

G. Urgent Communications. As a general matter, materials filed via ECF are reviewed by the Court the business day after they have been filed. If your submission requires immediate attention, please contact the Court by telephone after you file via ECF.

II. Motions

A. Letter-Motions. Letter-motions filed via ECF must 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 and extensions (as

discussed in Rule I.E. and I.F. *supra*), and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) (as discussed in Rule II.B, *infra*), should be filed as letter-motions. A courtesy copy should not be provided to the Court.

B. Pre-Motion Conferences in Civil Cases. As described below, unless waived by the Court, pre-motion conferences are required where the proposed motion is returnable before Judge Cott, except that no pre-motion conference is required for motions to dismiss in lieu of answer, motions for admission *pro hac vice*, motions for reconsideration or reargument, motions listed in Fed. R. App. 4(a)(4)(A), any post-judgment motions, and applications made by order to show cause. This Rule applies to non-parties (such as those served with a subpoena pursuant to Fed. R. Civ. P. 45) as well as to parties.

1. Discovery Motions. No motion relating to discovery (that is, any dispute arising under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) shall be heard unless the moving party has first conferred in good faith by telephone or in person with all other relevant parties in an effort to resolve the dispute. Counsel must respond promptly (normally, within one business day) to any request from another party to confer in accordance with this paragraph. If the conference with the relevant parties has not resolved the dispute, the moving party must inform the other parties during the conference that the moving party intends to seek relief from the Court regarding the dispute. The moving party must thereafter promptly request a conference with the Court pursuant to Local Civil Rule 37.2.

To request a conference with the Court, the moving party shall file on ECF a letter-motion setting forth the basis of the dispute and the need for the anticipated motion. The letter-motion must certify that the required in-person or telephonic conference took place between counsel for the relevant parties. The letter-motion must also state: (1) the date and time of such conference; (2) the approximate duration of the conference; (3) the names of the attorneys who participated in the conference; (4) the adversary's position as to each issue being raised (as stated by the adversary during the in-person or telephone conference); and (5) that the moving party informed the adversary during the conference that the moving party believed the parties to be at an impasse and that the moving party would be requesting a conference with the Court. None of these requirements may be satisfied by submitting copies of correspondence between counsel. The party opposing the requested relief should submit a letter to the Court in response as soon as practicable and in any event within two business days, unless the parties agree otherwise (and the Court is informed of the agreed response date by letter), or an extension of time is sought and granted in accordance with paragraph I.E. above. Non-moving parties are reminded that their letters in response should not be filed as "letter-motions" but rather as "letters."

2. Motions other than Discovery Motions. To arrange a pre-motion conference for non-discovery matters, the moving party shall submit a letter setting forth briefly (normally not more than one or two pages) the nature of the anticipated motion.

C. Briefing Schedule on Motions. In instances where the Court has ordered a briefing schedule on a motion, that schedule applies. In all other instances, the moving party shall, prior to filing the motion, contact all other parties in an attempt to agree on a reasonable schedule. Any agreed-upon schedule shall govern as long as it is disclosed to the Court in the letter that accompanies the courtesy copies of the initial motion papers.

In the rare instance where the parties cannot agree on a schedule, the moving party shall so state in its initial letter and the briefing schedule will instead be in accordance with Local Civil Rule 6.1. Any extension may be sought in accordance with Individual Rule I.E. above.

A return date should not be given in the Notice of Motion; instead, reference should be made in the Notice to the due date for opposition and reply papers (in accordance with the parties' agreement, Court order, or Local Civil Rule 6.1 as applicable). If a return date appears in the Notice of Motion, counsel should not appear for argument on that date.

Where no court order as to a briefing schedule is in effect, leave of the Court is not required to effectuate an agreement between the parties to set initially or to extend any deadlines for filing papers. Thus, in such a situation, Individual Rule I.E. does not apply. Any such agreement, however, must be disclosed to the Court in a letter.

D. Courtesy Copies. One courtesy hard copy of each motion paper, marked as such, must be submitted to Chambers (by mail or by hand delivery to the mail room at 500 Pearl Street) at the same time as service on opposing counsel. Courtesy copies may not be submitted through ECF or by fax.

E. Memoranda of Law. A memorandum of law must accompany all motions and oppositions thereto pursuant to Local Civil Rule 7.1. The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 11.1. **Unless prior permission has been granted, memoranda of law (in support of and in opposition to a motion) are limited to 25 pages, and reply memoranda are limited to 10 pages. All memoranda of law shall be in 12-point font or larger and be double-spaced.** Requests to file memoranda exceeding the page limits set forth herein must be by letter-motion at least five days prior to the due date, except with respect to reply memoranda, in which case the request must be made at least two days prior to the due date. Memoranda of more than 10 pages must include a table of contents and a table of authorities (neither of which count against the page limit). In addition to legal argument, a memorandum of law must contain a

fact section that sets forth all facts relevant to the motion and, for each factual statement, contain one or more citations to the evidence in the record. Factual statements contained within other sections of a memorandum must also be followed by a citation to record evidence. Sur-reply memoranda will not be accepted without prior permission of the Court.

F. Requests to File Materials Under Seal. The parties are reminded that the filing of any papers under seal is only permitted pursuant to an order of the Court. Any party wishing to file a document, or portion thereof, in redacted form must make a specific request to the Court by letter (submitted by e-mail) explaining the reasons for seeking to file that submission under seal, mindful of the First Amendment and common law rights of public access. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). Any sealing request should include a party's proposed redactions. If leave is granted, parties must file redacted copies with the Clerk of the Court on the docket and the unredacted copies under seal. Proposed protective orders should include a provision reflecting this requirement. The pendency of the application to seal does not affect any deadlines that may have been set by the Court.

G. Oral Argument. Parties may request oral argument by letter at the time their motion papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

H. Unpublished Cases. If a party cites to a case not available in an official reporter, it need not provide copies of the case to Chambers if the case is available on Westlaw.

I. Proposed Stipulations and Orders. Except as otherwise provided in these Rules and Practices, parties should e-mail all proposed stipulations and orders that they wish the Court to sign to the Orders and Judgments Clerk at judgments@nysd.uscourts.gov in accordance with the ECF Rules & Instructions. Courtesy copies need not be sent to Chambers.

III. Pretrial and Trial Procedures

The following additional procedures apply only to those cases where the parties have consented pursuant to 28 U.S.C. 636(c) to have all proceedings, including trial, before Judge Cott.

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

1. The full caption of the action.

2. The names, addresses (including firm names), and telephone (including cellular telephone if available) and fax numbers of trial counsel.

3. A brief statement by plaintiff (or, in a removed case, by defendant) 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. Such statements shall include citations to all statutes relied on and relevant jurisdictional facts, such as citizenship and jurisdictional amount.

4. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on.

5. With respect to each claim remaining to be tried, a statement listing each element or category of damages sought with respect to such claim and, if appropriate, 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 number of trial days needed.

7. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.

8. A statement by each party as to the witnesses whose testimony is to be offered in its case, indicating whether such witnesses will testify in person or by deposition. A party may not call as a witness an individual who is not listed in its portion of this statement.

9. A designation by each party of deposition testimony to be offered in its case, referencing page and line numbers, with any cross-designations and objections by any other party. If there is no objection or cross-designation, the Court will deem the opposing party to have waived any such objection or cross-designation. A party may not offer deposition testimony that is not listed in its portion of the designation.

10. A list by each party of exhibits to be offered in its case. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For any exhibit as to which there is an objection, the party objecting must briefly specify, next to the listing for that exhibit, the nature of the party's objection (e.g., "authenticity," "hearsay," "Rule 403"). Any objection not listed shall be deemed waived. A party may not offer an exhibit that is not listed in its portion of the list.

11. A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and

12. A statement as to whether the parties consent to less than a unanimous verdict.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file – at the same time as the filing of the joint pretrial order – the following:

1. In jury cases, all parties must jointly prepare three separate documents: (a) a list of voir dire questions to be asked of prospective jurors; (b) requests to charge; and (c) a proposed verdict sheet. To the extent a party objects to another party’s requested voir dire questions, requests to charge, or proposed verdict sheet, that party should (a) set forth the grounds for that objection (or refer to the trial memorandum of law for a full discussion of the objection) and (b) propose an alternative (all in the same document so that the Court can compare the parties’ respective proposals). All requests to charge, all objections, and all alternative proposals, must include citation to authority. In addition to filing on ECF the voir dire questions, requests to charge, and/or verdict sheets, electronic copies must also be submitted to the Court as Microsoft Word documents and sent via e-mail to CottNYSDChambers@nysd.uscourts.gov.

Each party must also file a trial memorandum of law addressing each issue of law that the party expects to arise at or before trial.

2. In non-jury cases, the parties are required to submit proposed findings of fact and conclusions of law. The parties must also submit trial memoranda of law that identify the issues, summarize facts and applicable law, and address any evidentiary issues. These materials should also be submitted to the Court as Microsoft Word documents and sent via e-mail to CottNYSDChambers@nysd.uscourts.gov.

C. Submissions to the Court Prior to Trial in Civil Cases. At or before the time the materials set forth in Individual Rule III.B are filed, the parties shall deliver to the Court in a binder (with a copy to opposing counsel): (1) a copy of each of the party’s pre-marked exhibits, and (2) a copy of any deposition testimony that has been designated (or cross-designated) and will be offered at trial.

D. Procedures at Trial.

1. Voir Dire. The Court will conduct all voir dire.

2. Witnesses.

a. No later than the end of each trial day, counsel must notify each other and the Court of witnesses to be called the following trial day.

b. Absent a contrary ruling made before the start of a witness's direct testimony, cross-examination in a civil case may go beyond the scope of direct to avoid making the witness return to testify in the opposing party's case. However, to the extent cross-examination exceeds the scope of the direct pursuant to this rule, counsel should not ask leading questions (unless the witness is hostile or otherwise associated with the opposing party).

c. When a party's case commences, the party is expected to have witnesses available to fill the trial day. The parties are warned that if a party does not have a witness available to testify, the Court may deem that party to have rested. Any requests to schedule a witness out of order and/or for a particular day must be made by a letter application that states the opposing party's position and must be sent as soon as counsel is aware of the limited availability of that witness. Untimely applications will be denied.

3. Sidebars. Sidebar conferences will be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to avoid wasting the jurors' time.

4. Closing Arguments. Closing arguments will start with the defendant and conclude with the plaintiff. There will be no rebuttal. Any application for a different order of argument must be made before jury selection.

Revised: September 6, 2013