

Revised October 1, 2019

**INDIVIDUAL PRACTICES OF  
MAGISTRATE JUDGE SARAH L. CAVE**

**Chambers**

Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 702  
New York, NY 10007  
Telephone: 212-805-0214  
Email: [Cave\\_NYSDChambers@nysd.uscourts.gov](mailto:Cave_NYSDChambers@nysd.uscourts.gov)

**Courtroom**

Daniel Patrick Moynihan Courthouse  
500 Pearl Street,  
Courtroom 18A  
New York, NY 10007

Unless otherwise ordered by Judge Cave, civil matters before her shall be conducted in accordance with the following practices.<sup>1</sup> These practices are applicable to cases before Judge Cave if the matter is within the scope of the District Judge's order of reference or if the parties consent to have the case before Judge Cave for all purposes pursuant to 28 U.S.C. § 636(c). Should the parties wish to have Judge Cave hear their case for all purposes, the necessary form is available at: [www.nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge](http://www.nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge).

**I. Communications With Chambers**

- A. Letters.** In general, communications with the Court should be by letter, via electronic case filing ("ECF"), without email or other copy to Chambers. Letters may not exceed 3 pages in length, exclusive of attachments, which should be kept to a minimum. Any letter 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 [Cave\\_NYSDChambers@nysd.uscourts.gov](mailto:Cave_NYSDChambers@nysd.uscourts.gov) as a .pdf attachment with a copy simultaneously emailed 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.
- B. Telephone Calls.** Telephone calls to Chambers are permitted only for urgent matters requiring immediate attention. If you are encountering difficulties using ECF, call the ECF Help Desk at 212-805-0800. Do not call Chambers.
- C. Pro Se Parties.** By Standing Order, a pro se party must mail all communications with the Court to the Pro Se Intake Unit located at 40 Foley Square, Room 105, New York, NY 10007. A pro se party may not call Chambers or send any document

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1. Requests for reasonable accommodations on account of disability with respect to these rules may be sent by email to [Cave\\_NYSDChambers@nysd.uscourts.gov](mailto:Cave_NYSDChambers@nysd.uscourts.gov).

or filing directly to Chambers. Submissions requiring immediate attention should be hand-delivered to the Pro Se Intake unit. Any non-incarcerated pro se party who wishes to participate in ECF must file a Motion for Permission for Electronic Case Filing, available in the Pro Se Intake Unit or at: [www.nysd.uscourts.gov/file/forms/motion-for-permission-for-electronic-case-filing-for-pro-se-cases](http://www.nysd.uscourts.gov/file/forms/motion-for-permission-for-electronic-case-filing-for-pro-se-cases). Any non-incarcerated pro se party who wishes to receive documents by email instead of by regular mail may consent to electronic service by filing a Pro Se (Non-Prisoner) Consent & Registration Form to Receive Documents Electronically, available in the Pro Se Intake Unit or at: [www.nysd.uscourts.gov/file/forms/consent-to-electronic-service-for-pro-se-cases](http://www.nysd.uscourts.gov/file/forms/consent-to-electronic-service-for-pro-se-cases).

- D. Requests for Adjournments or Extensions of Time.** Requests to adjourn a court conference or 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, proceeding or deadline; (2) the number of previous requests for adjournment or extension; (3) whether these previous 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 72 hours 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.

- E. Hand Deliveries.** Where permitted by these Rules, hand-deliveries should be left with the Court Security Officers at the Worth Street entrance of 500 Pearl Street and may not be brought directly to Chambers. If the hand-delivery 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 immediately by Chambers staff.

## **II. Discovery Disputes**

- A. Requirement To Meet And Confer.** No discovery dispute shall be heard unless the moving party (including a non-party seeking relief) has first conferred in good faith with the adverse party or parties by telephone or in person in an effort to resolve the dispute. An exchange of letters or emails alone does not satisfy this requirement. Counsel must respond promptly and in good faith to any request from another party to confer in accordance with this paragraph.

- B. Letter-Motion For Discovery Conference.** If the parties have met and conferred but cannot resolve their dispute, the moving party must request a discovery conference with the Court, by Letter-Motion, as required by Local Civil Rule 37.2. (Counsel should select the “Letter-Motion” option when filing on ECF.) Letter-Motions may not exceed 3 pages in length, exclusive of attachments, which should be kept to a minimum, and must clearly set forth the issues in dispute and the relief sought. As part of the Letter-Motion, the moving party must certify that the required in-person or telephonic conference took place between counsel for the relevant parties and, in particular, must 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. Simply attaching copies of correspondence between counsel does not satisfy these requirements.
- 1. Briefing Schedule.** Unless the Court has ordered or approved otherwise, any opposition to a Letter-Motion shall be filed within three business days of the moving letter, and any reply shall be filed within one business day of the opposition. Letters in opposition and replies may not exceed three pages in length exclusive of attachments, which should be kept to a minimum. The parties may agree to a different briefing schedule, but they must request the Court’s approval of their alternate schedule, either in the moving letter or as soon as agreement is reached. The Court must approve the alternate schedule, otherwise, the parties must adhere to the schedule as enumerated in these Individual Practices. If the Letter-Motion requests emergent or expedited relief, opposing counsel are advised to file any opposition as promptly as possible.
  - 2. Courtesy Copies.** Courtesy copies of Letter-Motions are not required unless the attached exhibits exceed ten pages, in which case one courtesy copy, marked as such on a cover page, should be submitted 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 two-sided, and neatly-bound or placed in 3-ring binders, with appropriate dividers.
  - 3. Redactions and Filing Under Seal.** A party wishing to file a Letter-Motion (or opposition or reply) that contains material claimed by either party to require confidential treatment may file a redacted copy of the document on ECF, removing or concealing such information. At the time of filing, the party also shall: (1) serve a complete and unredacted copy of the

document on all other parties; and (2) email a complete and unredacted copy of the document to the Court.

Within three business days of the date the redacted document is filed, the party filing the redacted document must file a Letter-Motion on ECF seeking permission to file the document, or a portion thereof, under seal. However, the parties are cautioned that the designation of documents as “confidential” for discovery purposes does not, without more, justify a sealing order. Thus, the letter must explain 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). 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, the parties must file the unredacted copies under seal with the Clerk of Court. 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.

- C. Discovery Conferences/Oral Argument On Letter-Motions.** The Court’s preference is to hold a conference with the parties to address any discovery disputes raised by a Letter-Motion. Based on the parties’ letters and matters discussed at the conference, during or after the conference, the Court will decide the discovery dispute or request a more formal briefing.

Junior members of legal teams representing clients are invited to argue Letter-Motions they have helped prepare. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. The Court is amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

### **III. Motions Other Than Discovery Motions**

For motions other than discovery motions, a pre-motion conference is not required. A pre-motion conference may be requested by Letter-Motion where counsel believes that an informal conference with the Court may obviate the need for the motion or reduce the issues in dispute. (Counsel should select the “Letter-Motion” option on ECF for filing such a request.)

- A. Briefing Schedule.** Unless the Court has ordered or approved otherwise, 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 request the Court's approval of their alternate schedule, either in the moving party's notice of motion or by Letter-Motion as soon as agreement is reached. Should the parties thereafter agree to modify their briefing schedule, they must promptly request the Court's approval of the new schedule by Letter-Motion. The Court must approve the alternate or new briefing schedule; otherwise, the parties must adhere to the schedule as enumerated in Local Civil Rule 6.1.

- B. Memoranda of Law.** 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 motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities.
- C. Courtesy Copies.** Courtesy copies are not required and should not be submitted unless otherwise requested by the Court. Should the Court so request, 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 two-sided, and neatly bound or placed in 3-ring binders, with appropriate dividers.
- D. Oral Argument on Motions.** Parties may request oral argument by Letter-Motion. (Counsel should select the "Letter-Motion" option on ECF for filing such a request.) The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date and time.

Junior members of legal teams representing clients are invited to argue motions they have helped prepare. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. The Court is amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

- E. Redactions and Filing 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 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) send a complete and unredacted copy of the document to the Court by email; (3) file a redacted copy of the document via ECF, from which the material claimed to require confidential treatment has been removed or concealed; and (4) file a Letter-Motion on ECF seeking permission to file the document under seal and 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). 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. However, the parties are cautioned that the designation of documents as "confidential" for discovery purposes does not, without more, justify a sealing order.

If the Court approves the request for filing under seal, the parties must file the unredacted copies under seal with the Clerk of Court. 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.

- F. Motions in Pro Se Cases.** As required by Local Civil Rule 7.2, counsel must provide a pro se litigant with printed copies of decisions cited in any submission that are unreported or reported exclusively on computerized databases.

Where a party seeks summary judgment against a pro se litigant, the party must also comply with the notice requirements of Local Civil Rule 56.2. Where a party moves to dismiss or for judgment on the pleadings against a pro se litigant and refers to matters outside the pleadings, counsel must serve and file the notice set forth in Local Civil Rule 12.1. In such situations, counsel are strongly encouraged to move in the alternative for summary judgment so that the pro se litigant understands, based on the Local Civil Rule 56.1 submission, which facts are relevant to the motion.

#### **IV. 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 Cave, including trial.
- B. Pretrial Disclosure.** The parties are reminded of their obligations to make certain disclosures regarding expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and to make disclosure regarding evidence that may be presented at trial pursuant to Fed. R. Civ. P. 26(a)(3). Failure to comply with these requirements may result in preclusion or other sanctions.
- C. Joint Pretrial Order.** Unless otherwise ordered by the Court, 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 be signed by all parties and include the following:
- 1.** The full caption of the action.

2. The names, addresses, telephone numbers (both office and cellular) and email addresses of each principal member of the trial team.
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, including citations to all statutes relied on and relevant 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, 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 such 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 anticipated number of trial days needed.
7. Any stipulations or agreed to statements of fact or law.
8. A statement by each party as to the witnesses whose testimony is to be offered in its 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, 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. Absent extraordinary circumstances, a party may not offer in its case in chief deposition testimony that is 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, 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. Absent extraordinary circumstances, a party may not offer in its case in chief any exhibit not listed in the Joint Pretrial Order.

11. A proposed schedule by which the parties will exchange demonstrative exhibits that the parties intend to use at trial, notify each other of any objections thereto, consult with each other regarding those objections and notify the Court of any remaining disputes.
12. All other matters that the Court may have ordered or that the parties believe are important to the efficient conduct of the trial.

**C. Filings Prior to Trial.** Unless otherwise ordered by the Court, the following must be filed at the same time as the filing of the joint pretrial order:

1. In jury cases, the parties must jointly file (a) requests to charge, (b) proposed voir dire questions, and (c) where applicable, a proposed special verdict form. To the extent a party objects to another party's requested charge, voir dire questions, or special verdict form, the joint submission should include the objecting party's (1) grounds for objection (or refer to the joint pretrial memorandum for a full discussion of the objection), and (2) proposed alternative. All requests to charge, objections, and alternatives must include citation to controlling authority. Electronic copies of this joint submission should be submitted to the Court; counsel should contact Chambers for instructions on how to submit these materials.
2. In non-jury cases, proposed findings of fact and statements of law. If the parties believe it would be useful, they also may file pretrial memoranda in nonjury cases. Pretrial memoranda are 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.

**E. Witnesses at Trial.** When a party's case commences, that party is expected to have witnesses available to fill the trial day, which runs from 9:00 am to 5:00 pm, with a one-hour lunch break. The parties are on notice that if a party does not have a witness available to testify, the Court may deem that party to have rested. Any request to have a witness testify out of order and/or on a particular day must be included in the joint pretrial order. Untimely applications will be denied.