

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN

The following Individual Practices Rules apply to all civil and criminal matters pending before Judge Swain on and after January 19, 2021. Material formerly included in Additional Trial Procedures for Criminal Cases and Sentencing Submission Procedures has been incorporated into these Individual Practices Rules.

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

A. General Provisions

1. Communications with Chambers

a Letters - ECF Filing and Electronic Courtesy Copies.

- i) **In general.** Except as otherwise provided below, communications with Chambers must be by letter. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information that the sender believes should not be filed electronically (see subdivision A.5 below), all letters to the Court should be filed electronically on the ECF system.

- ii) **Confidential Information – Sealing and/or Redaction Requests.** See subdivision A.5. below.

- iii) **Length, Format, etc.** Whether filed electronically or not, letters (together with any related exhibits) may not exceed 10 pages in length. All letters must be labeled with the name and docket number of the case, the Judge’s initials (LTS), and (for civil cases) the Magistrate Judge’s initials. Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or sent to the Court (except as exhibits to an otherwise properly filed document).

- b. **Prior Consultation with Opposing Parties Required.** Prior to requesting judicial action, the requesting counsel must consult with all other parties in an effort to obtain their consent to the request. The letter to the Court must confirm that such effort has been made and must indicate whether the request is being made on consent. See also subdivision 2.b. below.

- c. **Communications with Chambers should be made by email,** directed to SwainNYSDCorresp@nysd.uscourts.gov. All counsel must be copied, unless the email concerns an ex parte matter. In an emergency, or in the absence of email capability, a voice mail message may be left at (212) 805-0417.

- d. **Docketing, scheduling, and calendar matters.** For docketing, scheduling and calendar matters, email Chambers, copying all counsel, at SwainNYSDCorresp@nysd.uscourts.gov.

- 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. If such a request in a criminal case contains sensitive or confidential information, it may be submitted by email, to SwainNYSDCorresp@nysd.uscourts.gov, in lieu of electronic filing. A sensitive or confidential letter-motion in a civil case must be filed on ECF in accordance with the pertinent ECF sealed filing procedures (see subdivision A.5. below). The letter-motion must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. *If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be submitted in accordance with the ECF procedures.* If the request is for an adjournment of a court appearance, absent an emergency it must be made at least 48 hours prior to the scheduled appearance.

- f. **Courtesy Copies Required.** A courtesy copy of all letters, motions, pleadings, and other filings must be promptly emailed to Chambers at

SwainNYSDCorresp@nysd.uscourts.gov. The courtesy copy of any submission filed on ECF must be a copy of the filed version of the submission and must include the automatically-generated ECF header (that is, the text – for example, “Case 1:20-cv-01234-ABC Document 100 Filed 09/03/20 Page 1 of 1” – appearing at the top of each page of a document on the ECF system). No paper courtesy copies need to be submitted, unless requested by Chambers.

2. Motions

a. Pre-motion conferences in civil matters. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are not required. *Compliance with the certification requirement of subdivision b. below is, however, required for all civil case motions, whether discovery-related or not.*

b. Informal efforts to resolve issues required.

i. Pre-motion communications.

(1) In civil matters, prior to making a motion of any type, and prior to requesting a conference on any discovery issues, the parties must use their best efforts to resolve informally the matters in controversy. Such efforts must include, but need not be limited to, an exchange of letters outlining their respective legal and factual positions on the matters and at least one telephonic or in-person discussion of the matters.

(2) If a motion pursuant to Fed. R. Civ. P. 12(b)(6) or 12(c) is contemplated, the plaintiff or counterclaimant must indicate whether it wishes to amend the subject pleading prior to motion practice, and the parties must consider in good faith a stipulation permitting such amendment.

ii. Certification in notice of motion. If a motion or a discovery conference request remains necessary in a civil matter, the notice of motion or written discovery conference request must include a separate paragraph certifying in clear terms that the movant or requesting party has used its best efforts to resolve informally the matters raised in its submission. If the motion is one pursuant to Fed. R. Civ. P. 12(b)(6) or 12(c), the certification must also state whether the challenged pleading has been amended in response to the arguments raised in the motion.

Statement by non-moving party. Within seven (7) days after a motion pursuant to Rule 12(b)(6) or 12(c) is filed, the non-moving party must, by

letter, filed on the ECF system, notify the moving party of its intent to amend the complaint as of right, make any request for leave to amend in response to the motion, or state that it will file its opposition to the motion without further amendment. If no letter is filed within seven (7) days, the motion will be briefed in accordance with Local Civil Rule 6.1. If the pleading will be amended as of right, briefing of the motion is stayed pending the timely filing of the amendment. If leave to amend is requested, briefing on the motion is stayed pending the Court's resolution of the request.

- c Letter-Motions.** Letter-Motions may be filed via ECF if they 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, extensions and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) should be filed as letter-motions.
- d Motions for default judgment.** A party wishing to obtain a default judgment must notify the Court by letter (copied to the party against which a default judgment is to be sought and filed on the ECF System) of its desire to seek a default judgment. The Court will enter an order directing the party as to whether evidentiary submissions will be required in connection with the motion. Default judgments will be granted only upon written motion with notice to Defendant(s) and their counsel, if known. Copies of the Clerk's Certificate, and of proof of service of the Summons and Complaint and the Motion for Default Judgment, must be attached to the Motion for Default Judgment, along with any other material the Court directs be included in the Motion papers.
- e Motions for withdrawal or displacement of attorney of record in civil matters.** An attorney who has appeared as attorney of record for a party in a civil matter may be relieved or displaced in accordance with Local Civil Rule 1.4. A motion pursuant to Local Civil Rule 1.4 must be accompanied by (1) an affidavit of the applicant attorney's client, confirming the client's consent to the withdrawal, displacement, substitution or other change in representation or (2), in the absence of such an affidavit, proof of service of the motion on the client.
- f Evidentiary support.** Evidentiary support, in admissible form, of all factual assertions relied upon in support of or in opposition to a motion must be filed and served with the moving or opposition papers, as the case may be. Recitals in notices of motion, attorneys' affirmations, assertions of material factual matters "on information and belief" and the like are generally insufficient to establish factual matters.
- g Briefing.** Unless otherwise directed by the Court in the particular case, motions in civil matters must be briefed in accordance with the schedule set forth in Local Civil Rule 6.1.

- h. Memoranda of law.** 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 must contain a table of contents. The format of the documents must comply with Local Civil Rule 11.1.
- i. Filing of motion papers.** Motion papers must be filed at the time of service or promptly thereafter.
- j. Oral argument and evidentiary proceedings on motions.** Parties may request oral argument and/or indicate the need for an evidentiary hearing at the time their moving, opposing or reply papers are filed, by including a conspicuous notation of the request on the cover page of the relevant paper. The Court will determine whether argument will be heard and/or whether an evidentiary proceeding is required to resolve disputed factual issues and, if it determines that such an argument or proceeding is necessary, will advise counsel of the relevant date.

3. Pretrial Procedures

- a. Joint pretrial statement.** A joint pretrial statement must be filed, and other materials submitted, in accordance with the Pretrial Scheduling Order entered in the particular case.

4. Proposed Orders and Judgments

- a. Submission of proposed orders and judgments.** All proposed orders and judgments, including stipulations to be “so-ordered,” must be submitted in the manner required by the Court’s “Electronic Case Filing Rules and Instructions,” with a courtesy copy emailed to Chambers at SwainNYSDCorresp@nysd.uscourts.gov.
- b. Applications for temporary restraining orders.** If a party wishes to seek a temporary restraining order, it should file a Motion for a Temporary Restraining Order, supporting documents, and a proposed order, on ECF in accordance with the procedures found in ECF Rule 18.2. Information on filing an application ex-parte may be found in section 6, Sealed Filing, of the S.D.N.Y. ECF Rules & Instructions, available on-line at <https://nysd.uscourts.gov/rules/ecf-related-instructions>. Where the motion is made on notice to the other parties, the moving party should simultaneously serve the documents on any party that will not receive electronic service via the ECF system. The moving party should then email chambers at SwainNYSDCorresp@nysd.uscourts.gov, giving notice of the filing and the time frame requested for Court action. (Where the motion is made on notice, all parties should be copied on the email.) If the matter is time sensitive and Chambers does

not respond within two (2) hours, the moving party may contact the Clerk's Office before the end of the business day at (212) 805-0140.

5. Redactions and Filing Under Seal.

a In general. Except as provided in subdivision 5(b)(ii) below, and notwithstanding any provision to the contrary in a confidentiality order or stipulation, any party wishing to file under seal and/or in redacted form any document, or any portion thereof, must make a specific request to the Court by letter-motion or motion explaining the particular reasons for seeking to file that information under seal.

b Electronic Filing Under Seal in Civil and Miscellaneous Matters.

i. Sealing/Redactions Not Requiring Court Approval. Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court. Such sensitive information includes: Social Security numbers; names of minor children; dates of birth; and financial account numbers.

Other information that should be treated with caution and may warrant a motion for approval of sealed or redacted filing includes: personal identifying numbers (PIN numbers); medical records, treatment and diagnosis; employment history; individual financial information; proprietary or trade secret information; home addresses; and information regarding an individual's cooperation with the government.

Sensitive information and information requiring caution must not be included in any document filed with the Court unless such inclusion is necessary and relevant to the case. If such information must be included, personal identifiers must be partially redacted in accordance with the above-cited rules and policies in order to protect any privacy interest.

ii. Sealing/Redaction Requiring Court Approval. Motions or letter-motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, including the proposed sealed document(s), must be filed electronically through the court's ECF system in conformity with the court's standing order, 19-mc-00583, and ECF Rules & Instructions, section 6.

The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal and should not include confidential information sought to be filed under seal. Supporting papers must be separately filed electronically and may be filed under seal or redacted

only to the extent necessary to safeguard information sought to be filed under seal.

The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include confidential information sought to be filed under seal.

Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion.

To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. See, e.g., *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. See, e.g., *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543(JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015).

The party seeking leave to file sealed or redacted materials should meet and confer with any opposing parties (or third parties seeking confidential treatment of the information, if any) in advance to narrow the scope of the request. The motion must justify the request in light of the standards set forth in Lugosch and state whether the request is on consent. When a party seeks leave to file sealed or redacted materials on the ground that an opposing party or third party has requested it, the filing party shall notify the opposing party or third party that it must file, within three days, a letter explaining the need to seal or redact the materials.

Additionally, the party seeking leave must email to Chambers, at SwainNYSDCorresp@nysd.uscourts.gov, unredacted courtesy copies of the letter motion and relevant document(s) with all proposed redactions in highlighted form.

Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

- c. Highly Sensitive Documents or Information.** To the extent any party seeks leave to file a document or information under seal in paper copy, rather than on the Court's ECF system, by virtue of that document or information containing classified information or information that could harm national security, or if its disclosure could reasonably be expected to cause exceptionally grave damage or injury to any person, entity or institution, it must seek leave to do so following the procedures set forth in the Court's Standing Order M10 468, 21-MC-0006 (S.D.N.Y. January 8, 2021).

B. Criminal Matters

- 1. Initial pretrial conference.** The Assistant U.S. Attorney must contact Chambers by email (at SwainNYSDCorresp@nysd.uscourts.gov) as soon as possible after the case is assigned to Judge Swain. The Assistant must provide all pertinent information to Chambers, including a copy of the information/indictment. The Courtroom Deputy will set up a conference/arraignment.
- 2. Substitution of counsel.** When there is a substitution of defense counsel, counsel of record must contact Chambers by email (at SwainNYSDCorresp@nysd.uscourts.gov) to schedule a conference. At the conference, the Court will address the application by defense counsel to be relieved. The defendant, counsel of record, the proposed replacement counsel, and the Assistant United States Attorney must all attend the conference.
- 3. Motions.**

 - a.** Counsel are expected to comply with Local Criminal Rule 16.1. Any motion described in that Rule must include a Rule 16.1 affidavit.
 - b.** Unless otherwise directed by the Court in the particular case, motions must be briefed in accordance with the schedule set forth in Local Criminal Rule 12.1. Counsel must email courtesy copies of all motion papers to Chambers at SwainNYSDCorresp@nysd.uscourts.gov.
 - c.** Except for good cause shown, all motions *in limine* must be interposed so as to permit full briefing by at least seven (7) days before the final pretrial conference date.

- 4 Applications to file under seal.** Any party wishing to request permission to file document(s) or information under seal in a criminal matter must email its application to Chambers at SwainNYSDCorresp@nysd.uscourts.gov, copying all counsel unless the application concerns an ex parte matter. Complete, unredacted copies of the material proposed to be sealed or redacted must be provided to the Court, together with copies that include highlighting of all proposed redactions. The application should clearly identify the redaction(s) and explain the reasons for the redaction(s).
- 5 Pleas.** The plea agreement or Pimentel letter must be emailed to Chambers at SwainNYSDCorresp@nysd.uscourts.gov at least two (2) full business days before the time set for the conference at which the disposition is to be addressed. Defense counsel are expected to have reviewed any plea, cooperation, or other agreement, as well as any Advice of Rights form provided to counsel by the Court – with the assistance of an interpreter, if necessary – with the defendant prior to the time set for the conference with the Court. The relevant documents must be executed prior to the time set for the conference with the Court.
- 6 Trial procedures.** See Judge Swain’s General Rules for Trial Counsel, and Instructions to Counsel Concerning Jury Selection, which are available on the Court’s website. The parties must also comply with these additional trial procedures for criminal cases:

 - a.** All motions in limine must be briefed so as to be fully submitted no later than one week before the Final Pretrial Conference. A courtesy copy of each submission should be emailed to Chambers at SwainNYSDCorresp@nysd.uscourts.gov on the date the paper is served and filed.
 - b.** No later than one week before the Final Pre-Trial Conference:

 - Each party must serve on each other party and file with the Court its proposed voir dire and verdict form. Prior to service and filing of the proposed voir dire and verdict form, counsel must provide copies to opposing counsel for inspection and noting of objection; and
 - The parties must file a single document captioned JOINT REQUEST TO CHARGE, which must include the full text of all of their proposed jury instructions, with source citations. If the parties are not in agreement on a particular charge, the disputed language must be highlighted and any counterproposal(s) presented together with the disputed section. Disputed language must be accompanied by a brief explanation of the objection(s), with citations to the relevant legal authority.
 - A courtesy copy of each submission must be emailed to Chambers at SwainNYSDCorresp@nysd.uscourts.gov, in pdf and Microsoft Word

format.

- c. Any Trial Memorandum must be served and filed no later than one week before the Final Pretrial Conference. A courtesy copy must be emailed to Chambers at SwainNYSDCorresp@nysd.uscourts.gov, that same day.
- d. Exhibits must be pre-marked and sufficient copies provided by counsel for witnesses, opposing counsel, jurors, the court reporter, any interpreters and the Courtroom Deputy.
- e. If counsel intend to publish documentary exhibits by distributing copies to the jury, make a separate copy for each juror, so as to avoid unnecessary delay. If counsel intend to use electronic equipment to publish exhibits, counsel must notify the Courtroom Deputy so that any necessary arrangements can be made in a timely fashion.
- f. At the start of the trial the Government must provide the Court with three copies of the exhibit list, and one set of pre-marked documentary exhibits and Section 3500 material assembled sequentially in a looseleaf binder, or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference. A full set must also be emailed to Chambers, as a consolidated and bookmarked PDF, at SwainNYSDCorresp@nysd.uscourts.gov.
- g. Sidebars during presentation of the evidence are discouraged. Counsel are expected to anticipate any problems that might require argument and to raise those issues with opposing counsel and the Court in advance of the time that the jury will be hearing the evidence. See also Judge Swain's General Rules for Trial Counsel.
- h. Counsel should make certain that they have custody of all original exhibits. The Court does not retain them and the Clerk is not responsible for them.

7. Sentencing.

- a. **Adjournments.** Any request for adjournment of a sentencing shall be made in writing as early as possible, but no later than three (3) business days before the date at issue. Such requests should state whether opposing counsel consents.
- b. **Sentencing Submission Procedures.**
 - The Court assumes that every document in a sentencing submission, including letters, will be filed in the public record either in paper form or through the ECF system, using the procedures described below. In this regard, the parties are not, unless necessary, to include the five categories of "sensitive information" in their submissions (i.e., social security numbers, names of minor children [use the initials only], dates of birth

[use the year only], financial account numbers, and home addresses [use only the City and State]). Parties may redact the five categories of “sensitive information” without application to the Court.

- A defendant’s sentencing submission must be filed and served two weeks in advance of the date set for sentence. The Government’s sentencing submission must be filed and served one week in advance of the date set for sentence. Any reply submission must be made at least three days before the date set for sentence. (If the presentence report is not available in time for counsel to make submissions consistent with this timetable, counsel may request an adjournment.) The parties must provide the Court with a courtesy copy of each submission, by email to SwainNYSDCorresp@nysd.uscourts.gov, when it is served.
- Letters and other documents submitted in support of sentencing submissions should be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends, relatives, etc. The Government is responsible for filing all letters from victims.
- Applications to file a sentencing memorandum, or material submitted in connection with a sentencing memorandum, under seal, should be emailed to Chambers at SwainNYSDCorresp@nysd.uscourts.gov, in compliance with subdivision B.4 above.
- If counsel have any questions about these practices, email Chambers at SwainNYSDCorresp@nysd.uscourts.gov, copying all counsel unless the question concerns an ex parte matter.