

INDIVIDUAL RULES OF PRACTICE IN CRIMINAL CASES
Katherine Polk Failla, United States District Judge

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007
(212) 805-0290

Courtroom

40 Foley Square, Courtroom 618
Talena Noriega, Courtroom Deputy
(212) 805-0290

1. Electronic Case Filing (ECF) and Notices of Appearance

Counsel are required to register promptly for Electronic Case Filing (ECF) after being retained or assigned, and file a Notice of Appearance in accordance with Local Criminal Rule 1.2. Counsel can obtain instructions on how to register at <https://nysd.uscourts.gov/electronic-case-filing>.

2. Communications with Chambers

A. Initial Pretrial Conference. Upon assignment of a criminal case to Judge Failla, the Assistant United States Attorney shall immediately email Chambers (Failla_NYSDChambers@nysd.uscourts.gov) to arrange for a conference/arraignment. In the email, the Assistant United States Attorney shall include (1) the name of the defendant(s); (2) defense counsel's name and contact information; (3) whether the defendant(s) is/are detained (and, if so, the relevant USM or other registration number(s)) or bailed; (4) whether any defendant requires an interpreter (and, if so, the relevant language); (5) times that the Government and defense counsel are available for the arraignment and initial conference; and (6) any other pertinent information. In addition, the Government shall also email all charging instruments to Chambers at least 48 hours prior to the conference.

At the initial pretrial conference and all conferences thereafter, the Government shall be prepared to address its ongoing duty to comply with its obligations to timely disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including as set forth in the standing order pursuant to Fed. R. Crim. P. 5(f).

B. Telephone Calls. For docketing, scheduling, and calendar matters, call Talena Noriega, Courtroom Deputy, at (212) 805-0290. Otherwise, telephone calls to Chambers are permitted only for urgent matters.

C. Letters. Except for docketing, scheduling, calendar matters, or matters requiring immediate attention, communications with Chambers shall be by letter filed on ECF. Letters seeking relief, including requests for extensions, adjournments, or bail modification, should be filed on ECF as letter motions as outlined in Rule 2(D) below, with a courtesy copy, clearly marked as such, delivered to the Court via e-mail (Failla_NYSDChambers@nysd.uscourts.gov). The courtesy copy of any letter filed on ECF must be an electronic copy of the filed version of the letter and must include the automatically generated ECF header (that is, the text — e.g., “Case 1:24-cr-00123-KPF Document 100 Filed 10/1/24 Page 1 of 1” — appearing at the top of each page of a document on the ECF system).

i. Sealed Letters. Any letter to be filed under seal or containing sensitive or confidential information may be e-mailed as a .pdf attachment to Chambers (Failla_NYSDChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel (unless the submission is being made *ex parte*). Any such e-mail shall 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 e-mail; such communications shall be included only in the letter itself. The procedure for filing sealed documents is discussed in Rule 8 below.

ii. Docketing of Letters. Absent a request to file a letter under seal, the parties should assume that any substantive letter emailed to Chambers, and not filed on ECF, will be docketed by the Court.

D. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be made by letter motion as described in Rule 2(C) above, and should state: (i) the original due date; (ii) the number of previous requests for adjournment or extension of time; (iii) whether these previous requests were granted or denied; (iv) the reason for the current request; and (v) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If a party seeks an exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, the party must email to the Court a proposed order (in Microsoft Word format) along with a courtesy copy of the request for adjournment or extension.

Absent an emergency, any request for extension or adjournment shall be made as early as possible, and no later than 48 hours prior to the

deadline or scheduled appearance, with the exception of any adjournment of sentencing shall be made no later than 72 hours prior to the scheduled proceeding.

E. Faxes. Faxes to Chambers are not permitted.

F. Hand Deliveries. Where requested by the Court, 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, NY 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 retrieved by Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, however, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.

3. Defense Counsel

A. Benefactor Payments. Whenever defense counsel has received, or is receiving, a benefactor payment that subjects counsel to a conflict of interest, said counsel must inform the Court and request a *Curcio* hearing at the first conference.

B. Substitution of Counsel. When there is a request for substitution of defense counsel, counsel of record must contact the Courtroom Deputy to schedule a conference as soon as possible. If defense counsel believes an *ex parte* conference is necessary, it should so indicate in its communications with the Deputy. At the conference, the Court will address the application by defense counsel to be relieved. The defendant, replacement counsel, and the Assistant United States Attorney must also attend the conference.

4. Bail Modification

Any written request for a bail modification by a defendant shall be filed on ECF as a letter motion and shall indicate whether or not the Government and the Pretrial Services Officer consent to the request. If the requested modification pertains to a specific event or date, the request shall be made at least two business days prior to the relevant event or date.

5. Guilty Pleas

A. Plea Agreements and *Pimentel* Letters. The Government shall email a courtesy copy of the signed plea agreement, cooperation

agreement, *Pimentel* letter, and/or superseding charging instrument to Chambers (Failla_NYSDChambers@nysd.uscourts.gov) as soon as practicable, and no later than three business days before the scheduled plea.

B. Preparation for Allocution. Prior to the date set for the plea, defense counsel is expected to have reviewed with the defendant — if necessary, with the assistance of an interpreter — any *Pimentel* letter or plea, cooperation, or other agreement. Defense counsel and the defendant shall execute any plea or cooperation agreement prior to the time set for the plea. The defendant should also be prepared in advance of a guilty plea to give a narrative allocution that incorporates all of the elements of the offense(s) to which the defendant is pleading guilty.

6. Trial

A. Pretrial Submissions. At the time of filing, each party shall also e-mail to Chambers copies of its proposed *voir dire*, proposed jury instructions, proposed verdict form, and *in limine* motions in .pdf and, with the exception of *in limine* motions, Microsoft Word formats.

B. Exhibits and Section 3500 Material. By the Wednesday before the start of the trial, the Government must provide the Court with two hard copies of the exhibit list, and one set of pre-marked documentary exhibits and Section 3500 material.

C. Trial Schedule. Trials will generally be conducted Monday through Friday from 9:00 a.m. to 3:00 p.m., with one short break from approximately 12:30 p.m. to 1:00 p.m. Counsel should arrive by no later than 8:45 a.m., unless otherwise directed, to ensure a 9:00 a.m. start time.

D. Jury Selection. The jury will be selected by the struck panel method.

7. Sentencing

A. Sentencing Adjournments. Any request for an adjournment of a sentencing should be made as early as possible, and no later than 72 hours before the sentencing proceeding, in accordance with Rule 2(D) above.

B. Sentencing Submissions. Except for submissions requested to be filed under seal, every document in a sentencing submission, including letters, must be filed on ECF. The procedure for filing sealed documents is discussed in Rule 8 below. Unless otherwise ordered by

the Court, a defendant's sentencing submission shall be filed no later than two weeks before the date set for sentencing. The Government's sentencing submission shall be filed no later than one week before the date set for sentencing.

- i. Letters.** Letters should be grouped and filed together as attachments to a single document marked "SENTENCING SUBMISSION," 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 and relatives. The Government is responsible for filing all letters from victims.

C. Privacy Policy. The parties are referred to the E-Government Act of 2002 and the Southern District's ECF Privacy Policy ("Privacy Policy") and reminded not to include, unless necessary, 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]).

8. Filing Redacted or Sealed Documents

A. Redacted Documents. If any material is redacted from a publicly filed document, only those pages containing the redacted material will be filed under seal.

B. Redactions Not Requiring Court Approval. Parties may redact the five categories of "sensitive information", as described in the Privacy Policy, and the six categories of information requiring caution (i.e., personal identifying number, medical records, treatment and diagnosis, employment history, individual financial information, proprietary or trade secret information, and information regarding an individual's cooperation with the Government), without Court approval.

C. Redactions Requiring Court Approval. If a party redacts information beyond the eleven categories of information identified in Rule 8(B) above, an application to do so must be filed simultaneously with the sentencing submission. The application should clearly identify the redaction and explain the reasons for the redaction. The application may be addressed at the sentencing proceeding.

- i.** Any party seeking to file a document with partial redactions should follow the following three steps:

1. **ECF Filing of the Redacted Document(s).** The party should file the redacted version of the document on ECF.
2. **Filing or E-mailing a Letter Motion Seeking Leave to File with Redactions.** If the party is seeking leave of the Court to redact the document (i.e., if the redactions require Court approval), the party should simultaneously file on ECF a letter motion seeking leave to file the document with those redactions.
3. **E-mailing of Documents to Chambers.** At the same time, the party should e-mail to Chambers (Failla_NYSDChambers@nysd.uscourts.gov) (1) a clean (i.e., unredacted) copy of the document; (2) a copy of the document highlighting the information that has been redacted in the ECF filing; and (3) an unredacted copy of the letter motion, should the party also be seeking leave to file that letter motion with redactions or under seal.

D. Sealed Documents.

- i. **Sealing Exhibits.** Any party seeking leave to file an unsealed or redacted document with a fully sealed exhibit attached thereto should file the main document (in accordance with Rule 8(c)(i)(1)-(3) above, if the party seeks to do so with redactions) on ECF, accompanied by a single page marked “SEALED” in place of any exhibit that the party seeks leave to file under seal, regardless of the actual length of such exhibit.
- ii. **Sealing Entire Documents.** Any party seeking leave to file under seal an entire submission (with or without exhibits) should not file anything on ECF in the first instance. Instead, the party should e-mail an unredacted copy of the submission to Chambers (Failla_NYSDChambers@nysd.uscourts.gov) and should include as an attachment to the e-mail a letter motion seeking leave to file the document under seal. The letter motion must explain why sealing is justified. If the party believes that the letter motion itself should be sealed or redacted, the letter motion should so state and should provide the justification therefor. The Court will include instructions for filing sealed or redacted versions of the document and accompanying letter motion, if necessary, in any order disposing of the motion to seal.

9. Policy on the Use of Electronic Devices

Attorneys' use of electronic devices (including mobile telephones, personal electronic devices, computers, and printers) within the Courthouse and its environs is governed by the Court's Standing Order M10-468, available at <https://nysd.uscourts.gov/sites/default/files/pdf/standing-order-electronic-devices.pdf>. If required by the Standing Order, counsel, including the Government, seeking to bring a device into the Courthouse shall submit a copy of the Electronic Devices General Purpose Form, available at <https://nysd.uscourts.gov/forms/fillable-form-electronic-devices-general-purpose>, to the Court by e-mail at least 72 hours prior to the relevant trial or hearing. Untimely requests may be denied on that basis alone. If permitted by the Standing Order, mobile telephones are permitted inside the Courtroom, but they must be kept turned off at all times. Non-compliance with this rule may result in forfeiture of the device for the remainder of the proceedings.

10. In-custody Prisoner Production Requests

The Government shall strive to submit production requests to the Marshals at least 72 hours before a scheduled conference. In cases where a conference is scheduled for a date and time that is less than 72 hours in advance, the Government must promptly submit the production request once the conference is set.