

INDIVIDUAL RULES AND PRACTICES IN CRIMINAL CASES

Jessica G. L. Clarke, United States District Judge

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 1040
New York, NY 10007
ClarkeNYSDChambers@nysd.uscourts.gov

Courtroom

500 Pearl Street, Courtroom 11B

Courtroom Deputy

Sophia Tran
(212) 805-0246

1. Guidelines for All Submissions

- a. **Electronic Case Filing (“ECF”).** In accordance with the S.D.N.Y. [Electronic Case Filing Rules and Instructions](#), except for as otherwise expressly provided, all documents filed with the Court must be filed electronically.
- b. **Text Searchable Submissions.** All written submissions and supporting materials must be text-searchable to the extent practicable.
- c. **Submission of Large Electronic Files.** The Court has a file transfer protocol for the safe electronic transmission of large files. If a party needs to submit large files by email (as opposed to ECF), the party should email the Court (at ClarkeNYSDChambers@nysd.uscourts.gov) requesting a link to be used for such transfer. The email should include the name and docket number of the case as well as the nature and size of the materials to be submitted electronically. The Government may use USAfx.
- d. **No Courtesy Copies.** Unless the Court orders otherwise, parties should not submit courtesy copies of any submissions, including sentencing submissions.

2. Communications with Chambers

- a. **Initial Pretrial Conference.** Upon assignment of a criminal case to Judge Clarke, the Assistant United States Attorney (“AUSA”) shall immediately contact Chambers to arrange for a conference/arraignment. The AUSA shall provide a courtesy copy of the Indictment and the criminal Complaint, if one exists, to the Court as soon as practicable via email. The email shall include: (1) the defendant’s name; (2) defense counsel’s name and contact information; (3) whether the defendant(s) is/are detained (and if so, the relevant defendant’s Reg. No.) or bailed; (4) whether any defendant requires an interpreter (and if so, the relevant language); and (5) any other pertinent information.

- b. Letters and Letter-Motions.** Except as otherwise provided below, 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, not ordinary letters.

For any emails to Chambers permitted under these Rules, parties shall not include substantive communications in the body of the email, only in an attached letter. Copies of correspondence between counsel shall not be sent to the Court or filed on ECF except as exhibits to an otherwise properly filed document.

- c. Telephone Calls.** Telephone calls to Chambers should be reserved for urgent matters. In such situations, call Sophia Tran, Courtroom Deputy, at (212) 805-0246.
- d. Faxes.** Faxes to Chambers are not permitted without express prior permission, and only in cases of unforeseeable emergencies.
- e. 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, 200 Worth Street, New York, NY 10007. If the hand-delivered letter 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.
- f. 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 in accordance with Section 2(b) of these Rules, not as ordinary letters. (Requests filed under seal or containing sensitive or confidential information shall be filed in accordance with the requirements described in Section 8.) The letter-motion must state: (1) the original date and the new date requested; (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 or adjournment; (5) whether the adversary consents and, if not, the reasons given by the adversary for refusal to consent; and (6) the date of the parties' next scheduled appearance before the Court. If a party seeks an exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, the party must submit to the Court by email a proposed order (in Microsoft Word format) along with its request for adjournment or extension.

Absent an emergency, any request for extension or adjournment shall be made as early as possible, and *at least 48 hours* prior to the deadline or scheduled appearance and any request for adjournment of sentencing shall be made *at least 72 hours* prior to the scheduled proceedings. Requests for extensions will ordinarily be denied if made after the expiration of the original deadlines.

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. **Other Conflicts.** Counsel have an obligation to promptly inform the Court upon learning of any other conflict of interest, whether a potential or an actual conflict, and to request a *Curcio* hearing if appropriate.
- c. **Substitution of Counsel.** When there is a substitution of defense counsel, counsel of record must file a letter-motion on ECF to request a conference be scheduled as soon as possible. At the conference, the Court will address the application by defense counsel to be relieved. Counsel of record (*i.e.*, current counsel), the defendant, proposed replacement counsel and the AUSA must also attend the conference.

4. Bail Modification or Appeal

- a. Any written request for a bail modification by a defendant shall be filed on ECF as a letter-motion and shall indicate whether the Government and Pretrial Services Officer consent to the request.
- b. A party who wishes to appeal an adverse bail determination by the Magistrate Judge should contact Chambers to arrange a conference for that purpose. The party that brings the appeal is directed to provide the Court no fewer than *24 hours before* the conference with the transcript of argument on bail before the Magistrate Judge, any written submissions below as to bail and Pretrial Services' report as to the defendant.

5. Guilty Pleas

- a. **Plea Agreements and *Pimentel* Letters.** The Government shall provide a copy of the plea agreement, cooperation agreement or *Pimentel* letter to the Court. These documents should be emailed to Chambers 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 that offense(s) to which the defendant is pleading guilty.

The Court further expects that defense counsel will have determined whether detention of the defendant is required under 18 U.S.C. § 3143(a)(2) upon the entry of a guilty plea, subject to the limited exception provided in 18 U.S.C. § 3145(c) for cases in which it is clearly shown that there are exceptional reasons why detention would not be appropriate, and to prepare the defendant for the possibility of detention commencing at the end of the plea proceeding.

6. Trials

The parties should carefully review Judge Clarke's [Individual Trial Rules and Procedures](#).

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 Section 2(f) above.
- b. **Sentencing Submissions.** Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served three weeks in advance of the date set for sentencing. The Government's sentencing submission shall be served two weeks in advance of the date set for sentencing.
- c. **ECF Filing.** Except for submissions to be filed under seal or in redacted form, every document in a sentencing submission, including letters, must be filed on ECF. 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.

8. Redactions and Filing Under Seal.

- a. **Privacy Policy.** The parties are referred to the E-Government Act of 2002 and the [S.D.N.Y. ECF Privacy Policy](#) ("Privacy Policy"). The parties should not 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]).
- b. **Redactions Not Requiring Court Approval.** Without Court approval, parties may redact the five categories of "sensitive information" 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), as described in the Privacy Policy.

- c. Redactions and Sealed Filings Requiring Court Approval.** Except for redactions permitted by the eleven categories of information identified in the Privacy Policy, *all redactions or sealing of public court filings require Court approval.* 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.
- d. Procedures for Filing Documents with Redactions.** Any party seeking to file a document with partial redactions should follow the following three steps:
- i. ECF Filing of the Redacted Document(s).** The party should file the redacted version of the document on ECF.
 - ii. Filing 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 are not among the categories of redactions that can be made without Court approval), the party should simultaneously file on ECF a letter-motion seeking leave to file the document with those redactions. The letter-motion must explain the purpose of the redactions, and why the redactions are consistent with the standards set forth in Section 8(c) above.
 - iii. Emailing of Documents to Chambers.** At the same time, the party should email to ClarkeNYSDCchambers@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 described in Section 8(d)(ii), should the party also be seeking leave to file that letter-motion with redactions or under seal.
- e. Procedure for Filing 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 the procedures 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. The party should simultaneously file a letter-motion seeking leave to file in that manner.
 - 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 ClarkeNYSDCchambers@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 in light of the standards discussed in Section 8(c) above. 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. Motions

- a. **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, in accordance with Section 2(b) above, all requests for adjournments and extensions should be filed as letter-motions. All letter-motions should be text searchable.
- b. **Discovery Motions.** In making discovery motions, counsel must comply with Southern District Local Criminal Rule 16.1. Any discovery motion must contain the Rule 16.1 affidavit.

10. Policy on Use of Electronic Devices

Attorneys' use of personal electronic devices (including mobile phones) and general purpose computing devices (such as laptops and tablets) within the Courthouse and its environs is governed by [Standing Order M10-468](#). When Court permission is required under the Standing Order, attorneys seeking to bring electronic devices to the Court should email a completed [Model Court Order](#) to ClarkeNYSDChambers@nysd.uscourts.gov no later than five business days before the relevant trial or hearing. Upon the Court's approval, Chambers will coordinate with the District Executive's Office to issue the order and forward a copy to counsel. The order must be presented upon bringing the electronic device(s) into the Courthouse. *If permitted by the Standing Order, mobile telephones are permitted inside the Courtroom, but they MUST be kept turned off at all times.*