

INDIVIDUAL PRACTICES IN CRIMINAL CASES

**J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK**

<u>Chambers</u>	<u>Courtroom</u>	<u>Courtroom Deputy</u>
Room 2101 40 Foley Square New York, NY 10007 (212) 805-0266	Courtroom 706 40 Foley Square New York, NY 10007	Bruce Hampton (212) 805-4701

E-mail: OetkenNYSDChambers@nysd.uscourts.gov

1. Electronic Case Filing (ECF)

Counsel are required to register for Electronic Case Filing (ECF) promptly after being retained or assigned. Counsel can obtain instructions on how to register at http://www.nysd.uscourts.gov/ecf_filing.php.

2. Communications with Chambers

- A. Initial Pretrial Conference.** Upon assignment of a criminal case to Judge Oetken, the Assistant United States Attorney shall immediately call Bruce Hampton, the Courtroom Deputy, to arrange for a conference or arraignment. The Assistant United States Attorney shall also e-mail a courtesy copy of the indictment and the criminal complaint, if one exists, to the Court (OetkenNYSDChambers@nysd.uscourts.gov) as soon as practicable.
- B. Telephone Calls.** Any other communications with Chambers, including requests for extensions or adjournments, shall be by letter filed on ECF in accordance with Paragraph 2.C. For questions that cannot be answered by reference to these Rules or for *urgent* matters requiring immediate attention, call Bruce Hampton, Courtroom Deputy, at (212) 805-4701.
- C. Letters.** Except for matters requiring immediate attention or as otherwise provided below, communications with the Court shall be by letter, filed electronically on ECF in accordance with the SDNY Local Rules and Electronic Case Filing Rules. Letters containing confidential or sensitive information that cannot be filed on ECF may be sent by e-mail as a .pdf attachment to the Court (OetkenNYSDChambers@nysd.uscourts.gov), with a copy simultaneously delivered to all counsel. E-mails 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 body of the letter. Any communications in the body of an e-mail will be disregarded. Copies of correspondence between counsel shall not be sent to the Court.

- D. Faxes.** Faxes are *not* permitted except with prior approval of Chambers, which will be granted only in rare circumstances, and must not exceed 5 pages in length. All faxes must clearly identify the person in Chambers who authorized the sending of the fax and copies must simultaneously be faxed or delivered to all parties. Faxes sent without prior permission will be disregarded.
- 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 at 500 Pearl Street, New York, NY 10007 and may not be brought directly to Chambers, except by representatives of the United States Attorney’s Office or the Federal Defenders of New York. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. 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, consistent with Paragraph 2.C above and with the word “SCHEDULING” included in the e-mail subject line, and must state: (1) the original date(s); (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 a party seeks an exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, the party must submit to the Court 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 *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 proceeding. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

- G. Docketing of Letters.** Absent a request to file a letter under seal, the parties should assume that any substantive letter will be docketed by the Court.

H. Format of Paper Submissions to Chambers. All paper submissions shall be stapled, binder-clipped, spiral- or comb-bound, or three-hole punched and placed in binders (not velo-bound).

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, counsel must inform the Court and request a *Curcio* hearing *at the first conference*.

B. Substitution of Counsel. When there is a substitution of defense counsel, counsel of record must contact the Courtroom Deputy to schedule a conference as soon as possible. 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. 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.

5. Bail Modification

Any written request for a bail modification shall be filed *at least 48 hours* before the pertinent event or date. Any such request shall indicate whether the Government and the Pre-Trial Services Officer consent to the request.

6. Guilty Pleas

A. Plea Agreements and *Pimentel* Letters. When a defendant is pleading guilty pursuant to a plea agreement or a cooperation agreement, a copy of the agreement ordinarily must be received by Chambers at least one business day before the scheduled plea. Where the Government is providing a *Pimentel* letter, a copy of the *Pimentel* letter must be received by Chambers at least one business day before the scheduled plea. These documents should be e-mailed to the Court at OetkenNYSDCambers@nysd.uscourts.gov.

B. Preparation for Allocution. Prior to the date set for the plea, defense counsel are 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 should 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 narrative allocutions that incorporate all of the elements of the offense(s) to which the defendant is pleading guilty.

7. Trials

- A. Proposed *Voir Dire*, Jury Instructions, and Verdict Forms.** At the time of filing, each party should submit two courtesy hard copies of its proposed *voir dire*, proposed jury instructions, and a proposed verdict form to the Court. In addition, each party should e-mail those documents, as Microsoft Word documents, to OetkenNYSDCChambers@nysd.uscourts.gov.
- B. Exhibits and 3500 Material.** At least two business days before the start of trial, the parties shall submit a flash drive containing electronic copies of all exhibits. At the start of the trial, each of the parties must provide the Court with two hard copies of the exhibit list, and one set of pre-marked documentary exhibits (and Section 3500 material from the government), assembled sequentially in a loose leaf binder, or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference.

8. 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 Paragraph 2.F above.
- B. Sentencing Submissions.** Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served two weeks in advance of the date set for sentencing. The Government's sentencing submission shall be served one week in advance of the date set for sentencing. The parties should provide the Court with two courtesy hard copies of each submission when it is served.
- C. Public Filing.** 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 one of the following two procedures:
- i. Paper Filing.** If letters are filed as hard copies, a party shall group all letters together in a single paper filing under a cover marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated and submit it to the Clerk's Office.
 - ii. ECF Filing.** If letters are filed electronically, they must be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.
- D. Letters.** 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.

- E. 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]).
- F. Redactions.** If any material is redacted from a publicly filed document, only those pages containing the redacted material will be filed under seal. Bring a copy of those pages to the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.
- i. Redactions Not Requiring 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, without Court approval.
 - ii. Redactions Requiring Court Approval.** If a party redacts information beyond the eleven categories of information identified in the Privacy Policy, an application to do so must be served and filed at the time the sentencing submission is served. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

If you have any questions about these practices, please contact Bruce Hampton, Courtroom Deputy, at (212) 805-4701.