

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)

Counsel are required to register promptly for Electronic Case Filing (ECF) after being retained or assigned. 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 call Chambers to arrange for a conference/arraignment. The Assistant United States Attorney shall e-mail a courtesy copy of the Indictment and the criminal Complaint, if one exists, to the Court (Failla_NYSDChambers@nysd.uscourts.gov) as soon as practicable.
- B. Telephone Calls.** For docketing, scheduling, and calendar matters, call Ms. Talena Noriega, Courtroom Deputy, at (212) 805-4570. Otherwise, telephone calls to Chambers are permitted only for urgent matters. In such situations, call Chambers at (212) 805-0290.
- C. Letters.** Except for docketing, scheduling, and calendar matters, or matters requiring immediate attention, communications with Chambers shall be by letter, which shall be e-mailed as a PDF attachment to the Court (Failla_NYSDChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel. E-mails shall state clearly in the subject line: (i) the caption of the case, including the lead party names and docket number; and (ii) 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. Copies of correspondence between counsel shall not be sent to the Court.

- D. Faxes.** Faxes to Chambers are not permitted.
- E. 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 taken to 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.
- F. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made by letter, e-mailed to the Court as described in Section 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 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 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 that shall be made no later than 72 hours prior to the scheduled proceeding.
- 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.

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 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. Bail Modification

Any written request for a bail modification by a defendant shall indicate whether the Government and the Pretrial Services Officer consent to the request.

5. Guilty Pleas

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

6. Trials

A. Pretrial Submissions. At the time of filing, each party shall 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. 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 2:45 p.m., with one short break from approximately 12:30 p.m. to 1:00 p.m.
- 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 Paragraph 2(F) above.
- B. Sentencing Submissions.** Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served on the Government and e-mailed to Chambers no later than two weeks before the date set for sentencing. The Government's sentencing submission shall be served on the defendant and e-mailed to Chambers no later than one week before the date set for sentencing.
- C. 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.
- D. Privacy Policy.** The Court assumes that every document in a sentencing submission, including letters, will be filed through the ECF system. For this reason, 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]).
- E. Redactions.** If any material is redacted from a publicly filed document, only those pages containing the redacted material will be filed under seal. The party shall 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.