

INDIVIDUAL RULES OF PRACTICE IN CRIMINAL CASES
Mary Kay Vyskocil, United States District Judge

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 2230
New York, NY 10007
(212) 805-0200
VyskocilNYSDCChambers@nysd.uscourts.gov

Courtroom

500 Pearl Street, Courtroom 18C
Roseanne Dempsey,
Courtroom Deputy
(212) 805-0174

1. Communications with the Court

- A. 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 <https://nysd.uscourts.gov/electronic-case-filing>. Counsel are responsible for updating their contact information on ECF as needed, and counsel remain responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.
- B. New Cases.** Upon assignment of a criminal case to Judge Vyskocil, the Assistant United States Attorney shall immediately call or email Chambers to arrange for a prompt arraignment and initial conference. As a general rule, Judge Vyskocil does her own arraignments. The Assistant United States Attorney shall e-mail a courtesy copy of the Indictment and the criminal Complaint, if any exists, to the Chambers email address listed above.
- C. Letters.** Communications with the Court should generally be by letter not to exceed three pages in length. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be filed electronically on ECF, with copies simultaneously delivered to all counsel. Letters requiring immediate attention should be emailed as a PDF to Chambers. Copies of correspondence between counsel should not be filed on ECF or otherwise sent to the Court.
- D. Telephone Calls.** For docketing, scheduling, and calendar matters, call the Courtroom Deputy Roseanne Dempsey at (212) 805-0174 between 9:00AM and 4:30PM. Otherwise, telephone calls to Chambers are permitted only for urgent matters.

- E. Faxes.** Faxes to Chambers are not permitted (unless specifically directed by the Court).
- 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 taken 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.
- G. Requests for Adjournments or Extensions of Time.** Letter motions for adjournments or extensions of time 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. **The party requesting an extension must address any impact on the status of the clock under the Speedy Trial Act, 18 U.S.C. § 3161.** All requests for adjournments or extensions of time, including requests on consent, must be made at least 72 hours prior to the scheduled appearance or deadline.

2. Defense Counsel

- A. Benefactor Payments.** Whenever defense counsel has received, or will receive, a benefactor payment that subjects counsel to a conflict of interest, he or she must immediately inform the Court and request a Curcio hearing.

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.

3. Bail Modification

Any written request for a bail modification by a defendant shall indicate whether the government and Pretrial Services Officer consent. The request must be filed on ECF.

4. Guilty Pleas

A. Contacting Chambers. If the defendant is pleading guilty pursuant to an agreement with the government, the government should not contact Chambers to schedule a change of plea hearing unless and until the parties are in agreement as to the potential penalty, including monetary penalties.

B. Plea Agreements and *Pimental* Letters. The government shall provide a courtesy copy of the signed plea agreement, cooperation agreement, or *Pimental* 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. Late submission may result in adjournment.

C. Proposed Forfeiture Order. If the defendant is pleading guilty pursuant to an agreement with the government, and that agreement contemplates forfeiture, the government shall provide the Court with a copy of the proposed forfeiture order at the same time as the plea agreement.

D. 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 *Pimental* 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.

E. Detention upon Plea. The Court further expects that counsel will have determined whether detention of the defendant is required

upon entry of a guilty plea, pursuant to 18 U.S.C. § 3143(a)(2) and other provisions of the Bail Reform Act. Defense counsel should discuss any application for bail or delay of detention with the Assistant United States Attorney well in advance of the change of plea hearing. **If the defendant is subject to mandatory detention absent extraordinary circumstances, the parties should notify the Court of that fact and their respective positions on whether extraordinary circumstances exist at least three business days before the change of plea hearing.** Defense counsel must prepare the defendant for the possibility of detention commencing at the end of the plea proceeding.

5. Trials

- A. **Pretrial Submissions.** Unless otherwise ordered, *joint* proposed *voir dire*, jury instructions, and verdict forms shall be filed on ECF three weeks prior to the trial date. These joint submissions shall consist of single documents, jointly composed, noting any areas of disagreement between the parties. The *voir dire* questions and jury instructions shall include both the text of any requested questions or instructions as well as a citation, if available, to the authority from which it derives. At the time of filing, the parties should also email copies of these documents as Microsoft Word documents to Chambers.
- 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.

6. Sentencing

- A. **Presentence Investigation.** When a judgment of guilt is entered, the AUSA must provide a statement of facts to Probation within 14 days and direct defense counsel to reach out to Probation to ensure that the presentence interview is scheduled within 14 days.
- B. **Sentencing Submissions.** Unless otherwise ordered, 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 letters submitted on behalf of the defendant, including those from friends and relatives. The government is responsible for filing any letters from victims.
- D. Monetary Penalties.** The government shall submit any proposed orders of forfeiture and restitution when the government submits its sentencing memorandum. The parties must notify the Court if the forfeiture is contested and the Court must conduct a hearing pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.
- E. Privacy Policy.** In general, every document in a sentencing submission, including letters, should be filed on ECF. As such, the parties should consult the E- Government Act of 2002 and the Southern District’s ECF Privacy Policy (“Privacy Policy”) and 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]).
- F. Redactions in Sentencing Submissions.** 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 any 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.