

INDIVIDUAL PRACTICES OF JUDGE PAUL G. GARDEPHE
CRIMINAL CASES

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007
Phone: (212) 805-0224
Fax: (212) 805-7986
<https://nysd.uscourts.gov/hon-paul-g-gardephe>

Courtroom

40 Foley Square, Courtroom 705
Michael Ruocco, Courtroom Deputy Clerk
Phone: (212) 805-0102

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with the Court shall be by letter. Unless accompanied by a request to file under seal, letters shall be filed electronically on ECF, with a courtesy copy, clearly marked as such, delivered to the Court by fax at (212) 805-7986, mail, or hand delivery. See Rule 9 below regarding courtesy copies. Letters to be filed under seal should be delivered to the Court by fax at (212) 805-7986, mail, or hand delivery. Include the case number on all letters. Copies of letters to the Court ordinarily shall be simultaneously delivered to all counsel.

B. Telephone Calls. Telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call Chambers at (212) 805-0224. Ex parte telephone calls will ordinarily not be accepted; wherever possible, counsel for all affected parties should be on the line when a call to Chambers is placed, except to the extent that similarly situated parties have designated a lead counsel to represent them on such a call. Please be ready to provide the case number when calling Chambers.

C. Faxes and Hand Deliveries. Faxes and hand deliveries made to Chambers must be simultaneously delivered to all counsel. The Chambers fax number is (212) 805-7986. Do not follow faxes with hard copies. Hand-delivered mail should be left with the Court Security Officer at the Worth Street entrance of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street; it may not be brought to Chambers.

D. Requests for Extension of Deadline or Adjournment of Court Appearance. All requests for extensions or adjournments shall be made as soon as a party is aware of the need for the extension or adjournment and, in any event, no later than two business days prior to the scheduled deadline or appearance, absent an emergency. Requests should be made in writing in accordance with Rule 1(A) above. See Rule 3 below regarding requests for exclusions of time.

2. Initial Conference / Arraignment

A. Upon assignment of a criminal case to Judge Gardephe, the parties immediately shall contact Chambers to schedule a prompt conference, at which the defendant will be present, in order to set a discovery and motion schedule. The Assistant United States Attorney shall provide a courtesy copy each of the indictment and criminal complaint, if one exists, to chambers as soon as possible.

B. Defense counsel are required to ask the Court, at the first conference, to hold a Curcio hearing whenever counsel has received, or is receiving, a benefactor payment that subjects counsel to a conflict of interest.

C. Counsel are required to register in accordance with the Procedures for Electronic Case filing within one week following the initial pretrial conference. Please consult the Southern District of New York Electronic Case Filing Rules & Instructions, available at <https://nysd.uscourts.gov>, for more information.

3. Exclusion of Time

Parties seeking an exclusion of time under the Speedy Trial Act must apprise the Court of facts that will permit the Court to make an independent determination as to whether or not to exclude time, considering both the interest of the public and the interest of the Defendant in a speedy trial, in conformance with 18 U.S.C. § 3161(h)(8), Parisi v. United States, 529 F.3d 134 (2d Cir. 2008), and United States v. Zedner, 547 U.S. 489 (2006). It is not sufficient that the parties agree to exclude time.

4. Bail Modifications

Any written request for a bail modification shall indicate whether the Government and the Pre-Trial Services Officer consent to the request.

5. Motions

In making discovery motions, counsel are expected to comply with Southern District Local Criminal Rule 16.1. Any discovery motion must contain the Rule 16.1 Affidavit. Any motion to suppress must include a supporting affidavit from a party with personal knowledge.

6. Substitution of Counsel

When there is a substitution of defense counsel, counsel of record must contact Chambers in accordance with Rule 1 above to schedule a conference. 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.

7. Guilty Pleas

A. A. Guilty pleas will ordinarily be taken by Judge Gardephe and are not assigned to Magistrate Judges by standing order. No plea will be scheduled until after a defendant's first appearance before the Court.

B. Defense counsel are expected to have reviewed any plea, cooperation or other agreement – if necessary, with the assistance of an interpreter – with the defendant prior to the time set for the conference with the Court.

C. Defendants shall be prepared in advance of their pleas by their attorneys to give narrative allocutions that incorporate all the elements of the offense(s) to which they are pleading guilty.

D. Where a defendant is pleading guilty pursuant to a plea agreement or a cooperation agreement, a copy of the agreement which is signed by the defendant and the defendant's attorney must be received by Chambers no fewer than three business days before the scheduled plea. Where a defendant is pleading guilty pursuant to a Pimentel letter, a copy of the Pimentel letter must be received by Chambers no fewer than three business days before the scheduled plea.

8. Sentencing

A. Adjournments. Any request for an adjournment of sentence should be made in writing as early as possible, but no later than three business days before the date at issue. Such requests should state whether opposing counsel consents.

B. Sentencing Submissions.

1. Redaction of Sensitive Information. As a general matter, all documents submitted by the parties in connection with sentencing, including letters, are to be filed in the public record either in paper form or through the ECF system, using the procedures described below. Defense counsel will file all letters submitted on behalf of the defendant, including those from friends, relatives, and others. The Government is responsible for filing all letters from victims.

In filing sentencing submissions, the parties are directed to consider the E-Government Act of 2002 and this District's ECF Privacy Policy ("Privacy Policy"). Unless necessary, sentencing submissions should not contain the five categories of "sensitive information" (*i.e.*, social security numbers; names of minor children [use initials only]; dates of birth [use year only]; financial account numbers; and home address [use only city and state]). Court permission is not required to redact information that falls within 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.

Redacted versions of sentencing submissions should be publicly filed; a non-redacted version, marked as such, should be sent to the Court. In the rare instance that it is necessary to file a complete sentencing submission under seal, a copy should be sent to the Court with a request that it be filed under seal, explaining the reasons why sealing is necessary.

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 filed and served. The application should clearly identify the redaction and explain the reasons for redaction. The application will be addressed at the sentencing proceeding.

2. Timing and Filing Procedures. A defendant's sentencing submission shall be served two weeks before the sentencing date. The Government's sentencing submission shall be served one week before the sentencing date. The parties will provide the Court with one courtesy copy of each submission when it is served. See Rule 9 below regarding courtesy copies. At the time of service, a party shall file its sentencing submission following one of the two procedures described here:

a. 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 MATERIALS with the caption and docket number clearly indicated and submit it to the Clerk's Office.

b. ECF Filing. If letters are filed electronically, they must be grouped together as attachments to a single document marked SENTENCING MATERIALS with the caption and docket number clearly indicated.

9. Courtesy Copies

A. All ECF-Filed Documents. One courtesy copy of any document filed on ECF, including letters, should be sent to Chambers. Courtesy copies of documents filed on ECF should be copies of the filed version of the documents printed from ECF with the automatically generated ECF header (e.g., "Case 1:13-cv-01234-PGG Document 100 Filed 09/3/13 Page 1 of 1").

B. Delivery Method. Courtesy copies of less than 10 pages may be sent by fax at (212) 805-7986. Courtesy copies exceeding 10 pages should be sent via mail or hand delivery. Do not send courtesy copies via multiple delivery methods, i.e., do not follow faxes with hard copies. For hard copies, spiral-bound or stapled copies are preferred over velo-bound copies.