

INDIVIDUAL RULES AND PRACTICES IN CRIMINAL CASES

JOHN P. CRONAN
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

Chambers

United States District Court
Southern District of New York
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(212) 805-0218

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Courtroom

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Unless otherwise ordered by the Court or specifically covered by Judge Cronan's Emergency Individual Practices In Light of COVID-19, these Individual Rules and Practices shall apply to all criminal matters before Judge Cronan.

1. Communications with Chambers

A. Arraignment and Initial Pretrial Conference. Upon assignment of a criminal case to Judge Cronan, the Assistant United States Attorney ("AUSA") shall immediately call Chambers to arrange for a court appearance, at which the defendant with counsel will be present, which will consist of the defendant's arraignment and an initial pretrial conference. At this court appearance, the Court will most likely set a discovery and motion schedule. The AUSA shall e-mail a courtesy copy of the Indictment and the criminal Complaint, if one exists, to the Court (CronanNYSDCChambers@nysd.uscourts.gov) as soon as practicable.

B. Telephone Calls. Most communications with Chambers, including requests for extensions or adjournments, shall be by letter or letter-motion filed on the Electronic Case Filing (ECF) system in accordance with 1.C and 3.A below. For questions that cannot be answered by reference to these Rules or the S.D.N.Y. Local Rules, or for docketing, scheduling, and calendar matters, counsel may contact the Courtroom Deputy, Meghan Henrich, at (212) 805-4860. For situations requiring immediate attention from the Court, counsel should call (212) 805-0218.

C. Letters. Any letter to the Court shall be filed on ECF and also e-mailed as a .pdf attachment to the Court (CronanNYSDCChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel. Letters should not exceed ten pages in length absent leave of the Court. 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. Copies of correspondence between counsel shall not be sent to the Court or docketed on ECF, except if the correspondence is a relevant attachment to a filing. Letters seeking relief, including requests for extensions, adjournments, or bail modification, shall be filed on ECF as letter-motions and not as ordinary letters. For letters to be filed under seal or containing sensitive or confidential information, please refer to 9.A through 9.C below.

D. Faxes. Faxes to Chambers are not permitted except with prior approval.

E. Requests for Adjournments or Extensions of Time. Requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions in accordance with 2.A below, not as ordinary letters. All requests for adjournments or extension of time must state (1) the original date(s) set for the appearance or deadline(s) and the new date(s) requested; (2) the reason(s) for the request; (3) the number of previous requests for an adjournment or extension; (4) whether these previous requests were granted or denied; and (5) whether opposing counsel consents and, if not, any reasons given by opposing counsel 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 by e-mail a proposed order (in Microsoft Word format) along with its request for adjournment or extension. In the request, the party should also include the grounds that would permit the Court to make an independent finding whether to exclude time in conformance with 18 U.S.C. § 3161. Additionally, the party seeking exclusion of time must confer with the opposing party and indicate in its letter-motion whether the opposing party consents. Any party opposing the request may file a short opposition within two business days.

Absent compelling circumstances, a request for an extension or adjournment must be made at least 48 hours (*i.e.*, two business days) prior to the deadline or scheduled appearance, although a request for an adjournment of a sentencing shall be made at least 72 hours (*i.e.*, three business days) prior to the scheduled proceeding. Requests for extensions will ordinarily be denied if made after the expiration of the original deadlines.

F. Docketing of Letters. Absent a request to file a letter under seal, the parties should assume that any substantive letter received by the Court that is not filed on ECF will be docketed by the Court.

G. 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, the party should ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.

2. Rules for All Filings

A. Electronic Case Filing (ECF). In accordance with the S.D.N.Y. ECF Rules and Instructions, all counsel are required to register promptly as ECF filers after being retained or assigned and to enter an appearance in the case. Counsel can obtain instructions on how to register at http://www.nysd.uscourts.gov/ecf_filing.php. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

If an ECF submission requires immediate attention from the Court, counsel should notify Chambers by telephone after filing the submission via ECF.

All electronic submissions should be in the form of text-searchable .pdf documents, where practicable.

B. Memoranda of Law. There is no limitation on the number of pages for memoranda of law in criminal cases. Memoranda of law of 10 pages or more shall contain a table of contents and a table of authorities. Motion papers shall be filed promptly after service.

C. Unpublished Cases. Westlaw citations shall be provided, if available, to cases not available in an official reporter. Parties must provide copies of cases that are not available on Westlaw.

D. Courtesy Copies. Regarding all motion papers, including exhibits submitted in connection with a motion, a party shall submit a paper courtesy copy and an electronic courtesy copy via e-mail to Chambers at the time the papers are served. Paper courtesy copies may be submitted by regular mail or hand delivery.

3. Motions

A. Letter-Motions. Letter-motions must be filed via ECF and must comply with the S.D.N.Y. Local Rules and the S.D.N.Y. ECF Rules and Instructions. As set forth in 1.E, all requests for adjournments and extensions should be filed as letter-motions. If practicable, all letter-motions should be text-searchable.

B. Discovery Motions. In making discovery motions, counsel must comply with Local Criminal Rule 16.1, including by providing an affidavit pursuant to Local Rule 16.1.

4. 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 hearing pursuant to *United States v. Curcio*, 680 F.2d 881 (2d Cir. 1982), *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 actual conflict, and to request a *Curcio* hearing if appropriate.

C. Substitution of Counsel. When there is a request for substitution of defense counsel, counsel of record must file a letter-motion on ECF in accordance with 3.A above to request that 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, replacement counsel, and the AUSA must attend the conference.

5. Bail Modifications and Appeals

A. Bail Modifications. Any written request for a bail modification by a defendant shall be filed on ECF as a letter-motion in accordance with 3.A above and shall indicate whether the Government and Pretrial Services Officer consent to the request.

B. Bail Appeals. A party who wishes to appeal an adverse bail determination by the Magistrate Judge should contact Chambers to arrange a conference for that purpose. Unless otherwise ordered, the party bringing the appeal must provide to the Court, no fewer than 24 hours before the conference, the transcript of argument on bail before the Magistrate Judge, and any written submissions before the Magistrate Judge as to bail.

6. Guilty Pleas

A. Plea/Cooperation 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 two business days before the scheduled plea. Where the Government is providing a *Pimentel* letter, a copy of the letter ordinarily must be received by Chambers no fewer than two business days before the scheduled plea. These documents should be e-mailed to the Court at CronanNYSDChambers@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, as well as the rights the defendant would be waiving by pleading guilty. The parties should execute any plea or cooperation agreement prior to the time set for 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.

The Court further expects that defense 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, and to prepare the defendant for the possibility of detention commencing at the end of the plea proceeding.

7. Trials

A. Pre-Trial Deadlines and Submissions. The Court's practice is to enter an order scheduling a final pretrial conference and setting deadlines for the submission of proposed *voir dire*, proposed verdict forms, proposed requests to charge, and any motions *in limine*.

B. 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. Parties should also e-mail those documents, in Microsoft Word format, to Chambers at CronanNYSDCChambers@nysd.uscourts.gov. In their proposed *voir dire*, parties should include a brief description of the case and a list of names and places likely to be mentioned at trial, both to be read to prospective jurors during jury selection. In their proposed jury instructions, the parties are not required to submit proposed language for standard instructions—for example, the role of the Court and the jury, the standard of proof, etc.—but may do so if they desire.

C. Exhibit Lists. Before trial, each party shall e-mail to the Court at CronanNYSDCChambers@nysd.uscourts.gov a Microsoft Word document listing all exhibits sought to be admitted. The list shall be separated into four columns labeled (1) Exhibit Number; (2) Description (of the exhibit); (3) Date Identified; and (4) Date Admitted. The submitting party shall complete the first two columns, but leave the third and fourth columns blank, to be filled in by the Court during trial.

D. Exhibits and 3500 Material. At the start of trial, each of the parties must provide the Court with two hard copies of the exhibit list with a brief description of each exhibit, and binders containing two sets of pre-marked documentary exhibits, as well as Section 3500 material from the Government, in sequential order separated by numbered parts. If practicable, the parties shall also submit a flash drive containing electronic .pdf copies of all exhibits.

8. Sentencing

A. 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. For the sentencing of a cooperating witness for whom the Government will be making a motion pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e), however, the Government's sentencing submission shall be filed no later than two weeks in advance of sentencing. If a party does not intend to file a substantive sentencing submission, the party shall file and serve a letter to that effect.

B. ECF Filing. Every document in a sentencing submission is to be filed through ECF, except if filed under seal or in unredacted form, in accordance with 9.A through 9.C below. Letters

should be grouped and filed together as attachments to a single document marked “SENTENCING SUBMISSION” with the caption and docket number clearly indicated.

9. Redactions and Sealed Filings

A. Redactions Not Requiring Court Approval. The parties are referred to the E-Government Act of 2002 and the [Southern District’s ECF Privacy Policy](#) (“Privacy Policy”). There are two categories of information that may be redacted from public court filings without prior permission from the Court: “sensitive information” and information requiring “caution.” Parties should not include in their public filings, unless necessary, the five categories of “sensitive information” (*i.e.*, social security numbers [use the last four digits only], names of minor children [use the initials only], dates of birth [use the year only], financial account numbers [use the last four digits only], and home addresses [use only the City and State]). Parties may also, without prior approval from the Court, redact from their public filings the six categories of information requiring “caution” described in the Privacy Policy (*i.e.*, any personal identifying number, medical records [including information regarding treatment and diagnosis], employment history, individual financial information, proprietary or trade secret information, and information regarding an individual’s cooperation with the government).

B. Procedures for Filing Redacted Documents. Except for redactions referenced in 9.A above, all redactions of public court filings require Court approval. Any party seeking to file a document in redacted form shall proceed in the following three steps:

- i. **ECF Filing of the Redacted Document(s).** The party should file the redacted version of the document publicly on ECF.
- ii. **Filing or E-mailing a Letter-Motion Seeking Leave to File with Redactions.** 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 demonstrate why the redactions are narrowly tailored to serve whatever purpose justifies the redacting or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., United States v. Amodeo*, 71 F.3d 1044, 1048-53 (2d Cir. 1995); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-26 (2d Cir. 2006). In general, the parties’ consent or the fact that information is subject to a confidentiality agreement or protective order between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543 (JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015).

The party should seek to draft the letter-motion in a form that can be filed publicly on ECF. If, however, the party believes that the letter-motion itself should be sealed or redacted, the party should include an unredacted copy of

the letter-motion as an attachment to the e-mail described in 9.B.iii below and—if possible—file a redacted version of the letter-motion publicly on ECF.

- iii. **E-mailing of Documents to Chambers.** Simultaneously, the party should e-mail to Chambers (CronanNYSDCChambers@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 9.B.ii above, should the party also be seeking leave to file that letter-motion with redactions under seal.

C. Procedure for Filing Sealed Documents. Any party seeking to file a document under seal shall proceed as follows:

- 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 in 9.B 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 according to the procedure described in 9.B.ii and 9.B.iii above.
- 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. The party should instead e-mail an unredacted copy of the submission to Chambers (CronanNYSDCChambers@nysd.uscourts.gov) and include as an attachment to the e-mail a letter-motion seeking leave to file in that manner addressing the standards set forth in 9.B.ii above. *See, e.g., Amodeo*, 71 F.3d at 1048-53; *Lugosch*, 435 F.3d at 119-26.

D. Filing Instructions. The Court will include any further instructions, including for the filing sealed or redacted versions of the document(s) and the accompanying letter-motion, in its order disposing of the application to redact or seal.

10. Policy on the Use of Electronic Devices

A. Standing Order M10-468. Attorneys’ use of mobile phones, personal electronic devices, and general purpose computing devices such as laptops and tablets within the Courthouse and its environs is governed by Standing Order M10-468.

B. Mobile Phones. Attorneys in compliance with the Standing Order may bring mobile phones into the courtroom, but the phones must be turned off at all times. Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

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If you have any questions about these practices, please contact Meghan Henrich, Courtroom Deputy, at (212) 805-4860.