

INDIVIDUAL RULES OF PRACTICE IN CRIMINAL CASES

**JENNIFER L. ROCHON
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK**

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

Courtroom

Courtroom 20B
500 Pearl Street

212-805-0204

1. Electronic Case Filing (ECF)

Counsel are required to register promptly for the Electronic Case Filing system (“ECF”) 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 Rochon, the Assistant United States Attorney (“AUSA”) shall immediately contact Chambers to arrange for a conference / arraignment. The AUSA shall provide a courtesy copy of the Indictment and the criminal Complaint, if one exists, to the Court as soon as practicable via email to the Chambers email address. The email shall include: (1) the defendant’s name; (2) defense counsel’s name and contact information; (3) whether the defendant(s) is/are detained (and if so, the relevant defendant’s Reg. No.) or bailed; (4) whether any defendant requires an interpreter (and if so, the relevant language); and (5) any other pertinent information.
- B. Letters.** Communications with Chambers shall be by letter, filed on ECF, unless there is a request to file a letter under seal or a letter containing sensitive or confidential information. Copies of correspondence between counsel shall not be sent to the Court.
- C. Telephone Calls.** Telephone calls to Chambers should be reserved only for urgent matters. In such situations, call Chambers at (212) 805-0204.
- D. Faxes.** Faxes to Chambers are not permitted.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions in accordance with Sections 2.B and 4.A, not as ordinary letters. (If a request contains sensitive or confidential information, it may be submitted by email to the Chambers email address in lieu of being filed electronically.) The letter-motion 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; (4) the reason for the extension or adjournment; (5) whether the adversary consents and, if not, the reasons given by the adversary for refusal to consent; and (6) the date of the parties' next scheduled appearance before the Court. 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 email to the Chambers email address 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 *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 proceedings. Requests for extensions will ordinarily be denied if made after the expiration of the original deadlines.

F. 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, 200 Worth 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. 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. Docketing of Letters. Absent any request to file a letter under seal, the parties should assume that any substantive letter that the parties have not docketed 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. Other Conflicts. Counsel have an obligation to promptly inform the Court upon learning of any other conflict of interest, whether a potential or an actual conflict, and to request a *Curcio* hearing if appropriate.

C. Substitution of Counsel. When there is a substitution of defense counsel, counsel of record must file a letter motion on ECF and 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. Counsel of record (*i.e.*, current counsel), the defendant, proposed replacement counsel, and the AUSA *must* also attend the conference.

4. Bail Modification / Bail Appeal

- A. Any written request for a bail modification by a defendant shall be filed on ECF as a letter-motion and shall indicate whether the Government and Pretrial Services Officer consent to the request.
- B. A party who wishes to appeal an adverse bail determination by the Magistrate Judge should contact Chambers to arrange a conference for that purpose. The party that brings the appeal is directed to provide the Court no fewer than *24 hours before* the conference with the transcript of argument on bail before the Magistrate Judge, any written submissions below as to bail, and Pretrial Services' report as to the defendant.

5. Guilty Pleas

- A. **Plea / Cooperation Agreements and *Pimentel* Letters.** The Government shall provide a courtesy copy of the plea agreement, cooperation agreement, or *Pimentel* letter to the Court. These documents should be emailed 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 that 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 under 18 U.S.C. § 3143(a)(2) upon the entry of a guilty plea, subject to the limited exception provided in 18 U.S.C. § 3145(c) for cases in which it is clearly shown that there are exceptional reasons why detention would not be appropriate, and to prepare the defendant for the possibility of detention commencing at the end of the plea proceeding.

6. Trials

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

time of filing, each party shall email to Chambers and supply Chambers with two courtesy hard copies of these materials in .pdf and, with the exception of *in limine* motions, Microsoft Word format. Absent good reason, the parties should not include proposed language for standard instructions (about, for example, the role of the Court and the jury, the standard of proof, etc.), as the Court is likely to use its own standard instructions; instead, the parties should include a *list* of standard instructions that they believe are appropriate and focus their attention on case-specific requests to charge.

B. Exhibits and Section 3500 Material. At the same time as when the Government produces 3500 material to the defense, 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.

C. Exhibit Lists. Before trial, each party shall email to the Court a Microsoft Word document listing all exhibits sought to be admitted. The list shall contain four columns labeled as follows: (1) “Exhibit No.”; (2) “Description” (of the exhibit); (3) “Date Identified”; and (4) “Date Admitted.” The parties shall complete the first two columns, but leave the third and fourth columns blank, for use by the Court. Counsel shall make certain that they have custody of all original exhibits.

D. Expert Disclosures. Unless otherwise ordered by the Court, the Government shall make its expert disclosures 60 days before trial and the defendant shall make its expert disclosures 30 days before trial.

E. Sidebars. Sidebars during jury trials are discouraged. Counsel are expected to anticipate any problems that may require argument and to raise those issues with the Court in advance of the time that the jury will be hearing the evidence.

F. Jury Selection. The jury will be selected by the **struck panel method**.

i. The Court will conduct a *voir dire* of the number of panelists computed by combining the number of jurors to be selected and the number of peremptory challenges. In the ordinary case with two alternative jurors, there will be a *voir dire* of 32 panelists. After the *voir dire*, we will determine whether there are any challenges for cause. Each panelist removed for cause will be replaced, so that there is a full panel before any peremptory challenges are exercised.

ii. Next, peremptory challenges are exercised against the panelists who compose the potential members of the regular jury, that is, against the first 28 panelists. Peremptory challenges will be exercised simultaneously,

with the Government and the defendant(s) each submitting a written list of the six and 10 panelists respectively, that they wish to excuse. Any overlap among the lists of challenges will not result of parties receiving additional challenges. The 12 jurors will be selected starting with the unchallenged juror with the lowest number. For example, if there was an overlap, the 15 challenged panelists would be excused and the first 12 of the remaining 13 would be seated. The thirteenth juror, that is the unchallenged juror with the highest number, would also be excused.

- iii. Finally, peremptory challenges are exercised against the panelists who compose the potential alternate jurors, that is against panelists 29-32. Again, peremptory challenges will be exercised simultaneously. In the event of an overlap in challenges, the jurors will be selected from those with the lowest numbers.

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 Section 2(E) above.
- B. **Sentencing Submissions.** Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served on the Government and emailed to Chambers no later than two weeks before the date set for sentencing. Unless prior permission has been granted, sentencing memoranda are limited to 25 pages. The Government's sentencing submission shall be served on the defendant and emailed to Chambers no later than one week before the date set for sentencing. If a party does not intend to file a substantive sentencing submission, the party shall file and serve a letter to that effect.
- 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 SDNY'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 material, 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 seven 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 12 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.

8. Policy on the Use of Electronic Devices.

- A. **Electronic Devices in the Courthouse.** Attorneys’ use of electronic devices (including mobile telephones, personal electronic devices, computers, and printers) within the Courthouse and its environs is governed by the Court’s Standing Order M10-468, available at <https://nysd.uscourts.gov/forms/standing-order-electronic-devices-general-purpose>. Counsel seeking to bring a device into the Courthouse for an appearance shall, at least three business days before the appearance, file a letter (not letter motion) and completed Electronic Devices General Purposes Form, available at <https://nysd.uscourts.gov/forms/fillable-form-electronic-devices-general-purpose>. If WiFi is requested, counsel shall check the appropriate box on the form. *If electronic devices are permitted inside the Courtroom, they MUST be kept on silent at all times.* Non-compliance with this rule may result in forfeiture of the device for the remainder of the proceedings.
- B. **Technology Walk-Through.** At least two weeks prior to an evidentiary hearing or trial, counsel should contact Chambers by phone to coordinate a time for a technology walk-through of the Courtroom and then contact the Audio and Visual Department at 212-805-0134 to schedule the walk-through. If counsel seek to bring an electronic device to the walk-through or appearance, they must first complete the steps required by the Court’s Individual Rule 8.A.

9. **Courtesy Copies.** The filing party shall mail one courtesy hard copy to Chambers of any filing or submission greater than 10 pages in length at the time of its submission, unless otherwise mentioned above.