

INDIVIDUAL RULES OF PRACTICE IN CRIMINAL CASES

Paul A. Engelmayer, United States District Judge

Chambers

United States District Court
Southern District of New York
40 Centre Street, Room 2201
New York, NY 10007
EngelmayerNYSDChambers@nysd.uscourts.gov

Courtroom

40 Centre Street, Courtroom 1305

Courtroom Deputy

A.J. Smallman
(212) 805-0268

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 http://www.nysd.uscourts.gov/ecf_filing.php

2. Communications with Chambers

- A. Initial Pretrial Conference.** Upon assignment of a criminal case to Judge Engelmayer, the Assistant United States Attorney (“AUSA”) shall immediately e-mail Chambers to arrange for a conference/arraignment. The AUSA shall include in this e-mail a courtesy copy of the Indictment and the criminal Complaint, if one exists, to the Court (EngelmayerNYSDChambers@nysd.uscourts.gov) as soon as practicable.
- B. Telephone Calls.** Telephone calls to Chambers should be reserved only for urgent matters. In such situations, call A.J. Smallman, Courtroom Deputy, at (212) 805-0268.
- C. Letters.** Except matters requiring immediate attention, communications with Chambers shall be by letter, filed on ECF, which shall also be e-mailed as a .pdf attachment to the Court (EngelmayerNYSDChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel. 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.
- 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 Paragraphs 2.C and 4.C, *not* as ordinary letters. (If a request contains sensitive or confidential information, it may be submitted by e-mail 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 e-mail** (EngelmayerNYSDCChambers@nysd.uscourts.gov) 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 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, 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 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 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 e-mailed to Chambers as soon as practicable, and no later than *two 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 e-mail 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 formats (EngelmayerNYSChambers@nysd.uscourts.gov). 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, the Government must also provide the Court with two hard copies of the exhibit list, and binders containing two sets of pre-marked documentary exhibits and Section 3500 material, in sequential order separated by numbered tabs.
- C. Trial Schedule.** Trials will generally be conducted Monday through Thursday from 9:00 a.m. to 5:00 p.m., with brief mid-morning and mid-afternoon breaks and a one-hour break for lunch. The jury sits between 9:30 a.m. and 5:00 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(E) 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. If a party does not intend to file a substantive sentencing submission, the part 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 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 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 twelve 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. 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 <http://nysd.uscourts.gov/file/forms/standing-order-electronic-devices>. If required by the Standing Order, counsel seeking to bring a device into the Courthouse shall submit a copy of the Electronic Devices General Purpose Form, available at <http://www.nysd.uscourts.gov/file/forms/standing-order-electronic-devices-form>, to the Court by e-mail (EngelmayerNYSDCChambers@nysd.uscourts.gov) at least 24 hours prior to the relevant trial or hearing. *If permitted by the Standing Order, mobile telephones are permitted inside the Courtroom, but they MUST be kept turned off at all times.* Non-compliance with this rule may result in forfeiture of the device for the remainder of the proceedings.

9. Courtesy Copies. The filing party shall mail one (1) courtesy hard copy to chambers of any filing or submission greater than ten (10) pages in length at the time of its submission, unless otherwise mentioned above.

If you have any questions about these practices, please contact A.J. Smallman, Courtroom Deputy, at (212) 805-0268.