

INDIVIDUAL PRACTICES IN CRIMINAL CASES
ALISON J. NATHAN, United States Circuit Judge
Sitting by Designation

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007
ca02_AJNchambers@ca2.uscourts.gov

1. Electronic Case Filing (ECF)

Counsel are required to register for ECF promptly 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 Nathan, the Assistant United States Attorney (A.U.S.A.) shall immediately email Chambers to arrange for a prompt conference/arraignment. As soon as practicable, the A.U.S.A. shall e-mail a courtesy copy of the indictment and the criminal complaint, if one exists, to ca02_AJNchambers@ca2.uscourts.gov, and the subject line of the e-mail shall state the caption of the case (including the docket number) and the contents of the e-mail.

The Court's procedure is that a **firm trial date** will be selected at the initial criminal conference. Prior to that conference, counsel shall confer and be prepared to propose to the Court a trial date and a schedule for any pretrial motions. **Once a trial date is selected, it will not be moved absent exceptional circumstances.**

- B. **Letters.** Except for matters requiring immediate attention or as otherwise provided below, all communications with the Court must be submitted by letter and filed on ECF. Any letter that is longer than one page must be double spaced. Parties should not submit courtesy copies of letters filed on ECF.

Letters to be filed under seal or containing sensitive or confidential information may be emailed to the Court (ca02_AJNchambers@ca2.uscourts.gov) as .pdf attachments. Copies of any such letter should be simultaneously delivered to all counsel, unless otherwise necessary due to the sensitivity of the material contained therein. Any such email shall state clearly in the subject line (i) the full caption of the case, and (ii) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the email; such communications shall be included only in the body of the letter. **Any time a party submits a document to the Court**

without filing it on the public docket, the party **must** also submit a copy of the document to the Court's email address. Paper copies alone are insufficient.

Unless prior approval has been granted, no letter (however it is filed) may exceed three pages in length (exclusive of exhibits or attachments). Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document).

- C. **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, consistent with Paragraph 2.B above. (If a request contains sensitive or confidential information, it may be submitted by email in lieu of being filed electronically.) Such requests must state: (i) the original date(s); (ii) the number of previous requests for adjournment or extension; (iii) whether these previous requests were granted or denied; (iv) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent; and (v) 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** 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 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 proceeding. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

- D. **Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the 500 Pearl Street Courthouse and may not be brought directly to Chambers. Hand deliveries are regularly retrieved from Court Security. However, if the hand-delivery is urgent and requires the Court's immediate attention, proceed to the entrance of the 40 Foley Square Courthouse ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- E. **Urgent Communications.** As a general matter, the Court will review letters filed via ECF within one business day. If a submission requires **immediate** attention, please notify chambers by email after you file via ECF.

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 **initial conference**.

- B. **Substitution of Counsel.** When there is a substitution of Defense Counsel, counsel of record must submit a letter, filed on ECF, 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 A.U.S.A. must also attend the conference.

4. **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.

Letter-motions may be filed via ECF if they comply with the S.D.N.Y. Local Rules and the S.D.N.Y. "Electronic Case Filing Rules and Instructions."

5. **Bail Modification**

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

6. **Guilty Pleas**

- A. **Plea Agreements and *Pimentel* Letters.** When a defendant is pleading guilty pursuant to a plea agreement or a cooperation agreement, or where the Government is providing a *Pimentel letter*, a copy of the relevant document ordinarily must be emailed to the Court (ca02_AJNchambers@ca2.uscourts.gov) at least two business days before the scheduled plea.
- B. **Preparation for Allocution.** 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. Defendants shall 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 they are pleading guilty.

7. **Trials**

- A. **Proposed *Voir Dire*, Jury Instructions, and Verdict Forms.** Unless otherwise ordered, proposed *voir dire*, jury instructions, and verdict forms shall be ECF filed two weeks prior to the trial date. At the time of ECF filing, each party should also email copies of these documents, as Microsoft Word documents, to ca02_AJNchambers@ca2.uscourts.gov.
- B. **Exhibits and 3500 Materials.** At the start of the trial, the Government must provide the Court with three hard copies of the exhibit list, and one set of pre-marked documentary exhibits and Section 3500 material assembled sequentially in a loose leaf binder, or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference.

8. Sentencing

- A. **Sentencing Submissions.** Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served one week in advance of the sentencing date; the Government's sentencing submission shall be served three days in advance of the sentencing date. The parties should provide the Court with one courtesy copy of each submission at the time it is served. All sentencing submissions must be double spaced.
- B. **ECF Filing.** Except for submissions to be filed under seal or in redacted form, every document in a sentencing submission, including letters, must be filed on ECF. Letters should be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated. 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.
- C. **Privacy Policy.** 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]).
- D. **Redactions.** 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 application to the Court. If any material is redacted from the publicly filed document, only those pages containing the redacted material will be filed under seal. 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.

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