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Effective: January 9, 2023

INDIVIDUAL RULES AND PRACTICES IN CRIMINAL CASES

JENNIFER H. REARDEN, United States District Judge

Chambers
United States District Court
Southern District of New York
500 Pearl Street, Room 1010
New York, NY 10007
(212) 805-0230
ReardenNYSDChambers@nysd.uscourts.gov

Courtroom
Courtroom 15A
500 Pearl Street

1. **Electronic Case Filing (ECF).** Counsel are required to register for Electronic Case Filing (ECF) promptly after being retained or assigned (*see* instructions for ECF registration).

2. **Text-Searchable Submissions.** Every electronic submission, except for submissions that shall be provided in Microsoft Word format as required under these Rules and Practices, or as otherwise provided in the S.D.N.Y. Electronic Case Filing Rules and Instructions, should be in text-searchable format created by converting the document electronically to PDF. Whenever possible, if a PDF is created by scanning a printed document (for instance, in the case of a pre-existing documentary exhibit), the party should use software to render the PDF text-searchable.

3. **Communications with Chambers**

   A. **Initial Pretrial Conference.** Upon assignment of a criminal case to Judge Rearden, the Assistant United States Attorney shall immediately email ReardenNYSDChambers@nysd.uscourts.gov or call 212-805-0230 to arrange for a conference or arraignment. As soon as practicable, the Assistant United States Attorney shall also email a courtesy copy of the indictment and the criminal complaint, if one exists, to Chambers. The email shall include: (1) the defendant(s)' name(s); (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(s).) or bailed; (4) whether any defendant requires an interpreter (and if so, the relevant language); and (5) any other pertinent information.

   B. **Telephone Calls.** Any other communications with Chambers, including requests for extensions or adjournments, shall be by letter or letter-motion filed on ECF as required by these Rules and Practices. For questions that cannot be answered by reference to these Rules and Practices, or for urgent matters requiring immediate attention, call Chambers at (212) 805-0230.

   C. **Letters.** Except for matters requiring immediate attention, or as otherwise provided in these Rules and Practices, communications with Chambers shall be by letter filed

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electronically on ECF in accordance with the S.D.N.Y. Electronic Case Filing Rules and Instructions. Letters seeking relief, including requests for extensions, adjournments, or bail modification, should be filed on ECF as letter-motions in accordance with Rule 3.D below, **not** as ordinary letters.

Any letter to be filed under seal or containing sensitive or confidential information may be emailed as a text-searchable PDF to ReardenNYSDChambers@nysd.uscourts.gov, with a copy simultaneously delivered to all counsel (unless the submission is being made *ex parte*). The cover email 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 attached letter. Parties shall not include substantive communications in the body of the email; such communications should be included only in the letter itself.

Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or sent to the Court (except as exhibits to a properly filed document).

D. Letter-Motions. When letters seeking relief are permitted by the S.D.N.Y. Local Rules and the S.D.N.Y. Electronic Case Filing Rules and Instructions, including requests for extensions, adjournments, or bail modification, such letters shall be filed on ECF as letter-motions, **not** as ordinary letters.

E. Faxes. Faxes to Chambers are not permitted.

F. Hand Deliveries. Hand deliveries should be left with the Court Security Officers at the Worth Street entrance of the Courthouse. If a hand delivery requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived.

G. Requests for Adjournments or Extensions of Time. All requests for extensions of time or adjournments of motions, proceedings, or other matters must be made in writing and filed on ECF as letter-motions. (If a request contains sensitive or confidential information, it may be submitted by email in lieu of electronic filing and must include the word "SCHEDULING" in the email subject line.)

All requests for adjournments or extensions of time should state: (1) the original date; (2) the number of previous requests for adjournment or extensions of time; (3) whether those previous requests were granted or denied; (4) the reason(s) for the requested extension; (5) whether the adversary consents, and, if not, the reason(s) given by the adversary for declining to consent; and (6) the date of the parties' next scheduled appearance before the Court, as well as any other existing deadlines, and whether the requested adjournment or extension would affect those other deadlines or any other scheduled dates.

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If a party seeks an exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, the party must email a proposed order (in Microsoft Word format) to ReardenNYSDChambers@nysd.uscourts.gov along with its request.

Absent an emergency, any request for an adjournment or extension must be made **at least 48 hours** before the scheduled deadline or date, and any request to adjourn sentencing must be made **at least 72 hours** before the scheduled proceeding. Requests for extensions made after the expiration of the original deadline or date will ordinarily be denied.

H. Docketing of Letters. Absent a request to file a letter under seal, the parties should assume that any substantive letter will be docketed by the Court.

I. Format of Paper Submissions to Chambers. All paper submissions shall be stapled, binder-clipped, spiral- or wire-bound, or three-hole punched and placed in binders.

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, 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 an application to substitute defense counsel is filed, counsel of record must request, as soon as possible, that a conference be scheduled. At the conference, the Court will address the application. The defendant, replacement counsel, and the Assistant United States Attorney must also attend the conference.

5. Discovery Motions. In making discovery motions, counsel must comply with Local Criminal Rule 16.1 of the S.D.N.Y. Local Rules. Any discovery motion must contain the Rule 16.1 affidavit.

6. Bail Modification

A. Any written request for a bail modification must be filed (as a letter-motion pursuant to Rule 3.D), **at least 48 hours** before the pertinent event or date. Any such request shall indicate whether the Government and the Pretrial Services Officer consent to the requested modification.

B. A party who wishes to appeal an adverse bail determination by the Magistrate Judge should request a conference be scheduled for that purpose. The party bringing the appeal is directed to provide the Court, **at least 24 hours** before the conference, with

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the transcript of argument on bail before the Magistrate Judge, any written submissions below as to bail, and the Pretrial Services' report as to the defendant.

7. Guilty Pleas

A. Plea 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 ReardenNYSDChambers@nysd.uscourts.gov as soon as practicable, and **at least three business days** before the scheduled plea.

B. Preparation for Allocution. Prior to the date set for the plea, defense counsel are expected to have reviewed with the defendant—with the assistance of an interpreter, if necessary—any *Pimentel* letter or plea, cooperation, or other agreement. Defense counsel and the defendant should execute any plea or cooperation agreement prior to the time set for the plea. In addition, the defendant should be prepared to give narrative allocutions that incorporate all of the elements of the offense(s) to which the defendant is pleading guilty.

8. Trials

A. Proposed *Voir Dire*, Jury Instructions, and Verdict Forms. Proposed *voir dire*, proposed jury instructions, and a proposed verdict form shall be submitted to the Court **five days** before trial. At the time of submission, the submitting party shall provide two courtesy hard copies of the proposed *voir dire*, proposed jury instructions, and proposed verdict form. In addition, the party shall email those documents, in Microsoft Word format, to ReardenNYSDChambers@nysd.uscourts.gov.

B. Exhibits and 3500 Material.

i. **At least three business days** before the start of trial, the parties shall submit all documentary exhibits to Chambers in digital form on a CD-ROM, DVD, flash drive, or external hard drive. At the start of trial, each party must provide the Court with two hard copies of the exhibit list and one set of pre-marked documentary exhibits (and Section 3500 material from the Government), 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.

ii. Where a hard copy exhibit is used, sufficient copies should be made, as appropriate, for witnesses, opposing counsel, jurors, the court reporter, any interpreters, and the Court. If counsel intends to publish hard copies of documentary exhibits to the jury rather than using the Court's audiovisual system, a separate copy should be provided for each juror to avoid unnecessary delay.

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iii. Before trial, each party shall email ReardenNYSDChambers@nysd.uscourts.gov 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 submitting party shall complete the first two columns but leave the third and fourth columns blank, for use by the Court.

C. Jury Selection. Jurors will be selected by the struck panel method as described in the attachment to these Rules and Practices.

D. Sidebars. Sidebars during jury trials are discouraged. Counsel are expected to anticipate and raise in advance of the time that the jury will hear the evidence any problems that might require argument.

9. Sentencing

A. Sentencing Adjournments. Any request to adjourn a sentencing should be made as early as possible, and **not later than 72 hours** before the sentencing proceeding, in accordance with Rule 3.G above.

B. Sentencing Submissions. Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served **two weeks prior** to the date set for sentencing. Absent prior permission, sentencing memoranda are limited to **25 double-spaced pages**. The Government's sentencing submission shall be served **one week in advance** of the date set for sentencing. In cases involving a cooperating witness, however, the Government's § 5K1.1 shall be filed **at least two weeks before** the sentencing, and the defendant's submission shall be filed **at least one week** before the sentencing. The parties shall provide the Court with one courtesy copy of each submission when it is filed.

C. Public Filing. The Court assumes that every document in a sentencing submission, including letters, will be filed in the public record either in paper form or on ECF, using one of the following two procedures:

i. **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 MEMORANDUM," with the caption and docket number clearly indicated, and submit it to the Clerk's Office.

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

D. 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

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for filing all letters from victims. The filing of any letters in connection with sentencing must be consistent with Rule 10 regarding redacted and sealed filings, to the extent that Rule applies.

10. Redactions and Sealed Filings

A. Redactions Not Requiring Court Approval. The parties are referred to the E-Government Act of 2002 and the S.D.N.Y. ECF Privacy Policy ("Privacy Policy"). Without prior permission from the Court, parties may redact two categories of information from public court filings: "sensitive information," and information requiring "caution." Unless necessary, parties should not include in public filings 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 the City and State only]). Without Court approval, parties may also 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. Redactions and Sealed Filings Requiring Court Approval. Except for redactions permitted by Rule 10.A, all redactions or sealing of public court filings require Court approval. To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must otherwise be consistent with the presumption in favor of public access to judicial documents. *See*, *e.g.*, *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent, or the fact that information is subject to a confidentiality agreement between litigants, is not sufficient 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).

C. Procedures for Filing Documents with Redactions. Any party seeking to file a document with partial redactions should follow the following **three** steps:

i. **ECF Filing of the Redacted Document(s).** The party should file the redacted version of the document on ECF.

ii. **Filing or Emailing a Letter-Motion Seeking Leave to File with Redactions.** If the party is seeking leave of the Court to redact the document (i.e., if the redactions are not among the categories of redactions that can be made without Court approval), 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 why the redactions are consistent with the standards set forth in Rule 10.B above.

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(The party should endeavor 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 email described in Rule 10.C.iii below, and—if possible—file a redacted version of the letter-motion on ECF.)

iii. **Emailing of Documents to Chambers.** At the same time, the party should email to ReardenNYSDChambers@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 Rule 10.C.ii, should the party also be seeking leave to file that letter-motion with redactions or under seal.

D. Procedure for Filing Sealed Documents.

i. **Sealing Exhibits.** Any party seeking leave to file an unsealed or redacted document with a fully sealed exhibit attached thereto should file on ECF the main document (in accordance with the procedures above, if the party seeks to do so with redactions), 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 Rule 10.C.ii-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. Instead, the party should email an unredacted copy of the submission to ReardenNYSDChambers@nysd.uscourts.gov and include as an attachment to the email a letter-motion seeking leave to file the document under seal. The letter-motion must explain why sealing is justified in light of the standards discussed in Rule 10.B. If the party believes that the letter-motion itself should be sealed or redacted, the letter-motion should so state and should provide the justification therefor. If necessary, the Court will include instructions for filing sealed or redacted versions of the document and accompanying letter-motion in any order disposing of the motion to seal.

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ATTACHMENT - STRUCK PANEL JURY SELECTION

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 alternate jurors, there will be a *voir dire* of 32 panelists. After the *voir dire*, there will be a determination as to whether there are any challenges for cause. Each panelist removed for cause will be replaced, so that a full panel is present before any peremptory challenges are exercised.

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 those lists will not result in parties receiving additional challenges. The 12 jurors will be selected starting with the unchallenged juror with the lowest number. For example, if there was overlap, the 15 challenged panelists would be excused, and the first 12 of the remaining 13 would be seated. The 13th juror—that is, the unchallenged juror with the highest number—would also be excused.

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