

**INDIVIDUAL RULES AND PROCEDURES
FOR CRIMINAL CASES**

**Lorna G. Schofield
United States District Judge**

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**United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007**

Courtroom:

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A. Procedural Rules

The Court's procedures are governed by the Federal Rules of Criminal Procedure, the Local Criminal Rules of the United States District Courts for the Southern and Eastern Districts of New York (the "Local Rules"), and the Individual Practices set forth below. Unless otherwise ordered, these Individual Practices apply to all criminal matters before Judge Schofield, except criminal *pro se* cases.

B. Communications with Chambers

1. Initial Pretrial Conference. When a criminal case is assigned to Judge Schofield, the Assistant United States Attorney ("AUSA") shall immediately contact Chambers to arrange for a prompt conference / arraignment. The AUSA shall email a courtesy copy of the indictment or information and the criminal complaint, if one exists, to the Court Schofield_NYSDChambers@nysd.uscourts.gov as soon as practicable.
2. General Communications with Chambers. All communications with Chambers shall be by letter, not to exceed two pages, including exhibits, and in 12-point font, except as provided below.

Letters to the Court shall be filed via ECF and should not be sent to Chambers, except letters containing information that should not be in the public file (for example concerning cooperation or medical information) shall be emailed to Chambers as a .PDF attachment at Schofield_NYSDChambers@nysd.uscourts.gov. Emails shall state clearly in the subject line: (1) the docket number of the case, (2) the case caption with the parties' names, and (3) a brief description of the contents of the letter (*e.g.*, "11-cr-999, *USA v. Smith*, Request for Extension of Time"). Substantive statements shall be made only in the letter attachment; the Court will not review statements made in the body of the email. Copies of communications emailed to Chambers shall be emailed simultaneously to all counsel and unrepresented parties. The parties shall not send the Court copies of correspondence between counsel.

If a party does not want a letter to be docketed because of a protective order or for other good cause, the sender shall explicitly state in the letter the grounds for a request of confidential treatment, and include the header "CONFIDENTIAL" on every page of the letter. If a party wishes to ensure preservation of an undocketed letter for the record on appeal, it shall clearly so indicate in the first paragraph of the letter.

3. Requests for Adjournments and Extensions of Time. All requests for adjournments or extensions of time shall be made as a letter-motion filed via ECF except as provided above. The body of the letter shall state: (1) the original due date, the date sought to be extended, and the new date the party now seeks; (2) the number of previous requests for adjournment or extension of time; (3) whether

these previous requests were granted or denied; and (4) whether the adversary consents, and if not, the reasons given by the adversary for refusing to consent.

Requests for adjournment of court conferences, briefing deadlines, or any other deadlines shall be made by noon at least two business days before the scheduled appearance or date -- except sentencings for which adjournments must be requested at least 72 hours in advance. Absent extraordinary circumstances, untimely requests for extension of time will be denied.

The Court's permission is required to extend or adjourn Court-imposed dates and deadlines. Extensions and adjournments of Court-imposed dates and deadlines will be granted only for compelling reasons. When adjournments are granted, it is upon the condition that the party requesting the adjournment notifies all other parties of the new date and/or time.

4. Other Docket, Schedule and Calendar Matters. For docket, schedule and calendar matters, other than requests for adjournments and extensions of time, counsel may email Chambers at Schofield_NYSDChambers@nysd.uscourts.gov. The subject line of any email shall contain the information specified in paragraph I.B.1. above. Parties shall consult the ECF to confirm conference dates and times.
5. Urgent Matters. For urgent matters requiring the Court's immediate attention, counsel may contact Chambers and shall include all counsel.
6. Authorized Hand Deliveries. Material specifically permitted or ordered by the Court to be delivered by hand shall be left with the Court Security Officers at the Worth Street entrance of Daniel P. Moynihan Courthouse and shall not be brought directly to Chambers. If the hand-delivered material is urgent and requires the Court's immediate attention, counsel shall ask the Court Security Officers to notify Chambers that an urgent package has arrived and needs to be retrieved by Chambers staff immediately.
7. Other Communications. Emails, telephone calls and hand deliveries to chambers are not permitted except as provided above. Faxes to Chambers are not permitted except with the prior authorization of Chambers, which will be given only in exceptional circumstances. In such situations, each faxed submission shall clearly identify the person in Chambers who authorized the sending of a fax, and copies shall be simultaneously faxed or delivered to all counsel.

C. Filing and Submission of Papers

1. Electronic Case Filing ("ECF"). All attorneys representing parties before Judge Schofield are required to register promptly as filing users on ECF. Instructions are available on the Court website <https://nysd.uscourts.gov/electronic-case-filing>. Counsel are responsible for updating their contact information on ECF and for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

2. Proposed Stipulations and Orders. Except as otherwise provided in these Rules, parties shall email all proposed stipulations and orders that they wish the Court to sign to the Orders and Judgments Clerk at judgments@nysd.uscourts.gov in accordance with the ECF Rules and Instructions. Courtesy copies shall not be sent to Chambers.
3. Redactions and Filing Under Seal. Except as provided in Section I.6 below regarding sentencing letters, any party wishing to file in redacted form any document under seal, or any portion thereof, shall email a letter to Chambers explaining the reasons for seeking to file under seal. The party shall attach to its letter one full set of the relevant page(s) or document(s) in highlighted form (i.e., with the proposed redactions highlighted). If the submission exceeds 25 pages, it shall be delivered in hard copy by hand as provided in Section C.6 above. The Court will review the proposed redactions and notify the party of its decision. The party may then, to the extent permitted by the Court, file the redacted documents on ECF and the full, unredacted documents under seal in accordance with this district's procedures set forth <https://nysd.uscourts.gov/programs/records/request>. On application of a party, and provided the unredacted papers are timely served on the party's adversary, the Court will deem papers filed on the date the party delivers them to Chambers for review of proposed redactions.

D. Defense Counsel

1. Benefactor Payments. Whenever defense counsel has received, or is receiving, a benefactor payment that subjects counsel to a conflict of interest, he or she shall promptly inform the Court and request that the Court schedule a *Curcio* hearing.
2. Substitution of Counsel. When there is a substitution of defense counsel, counsel of record shall contact Chambers 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 also shall attend the conference.

E. Motions

Discovery Motions. Counsel shall comply with Southern District Local Criminal Rule 16.1, and the discovery motion shall contain a Rule 16.1 affidavit.

Paper Courtesy Copies. One printed courtesy copy of *all parties' motion papers*, including exhibits, marked "Courtesy Copy," shall be submitted to Chambers *by the movant at the time the reply is served*. Courtesy copies shall not be submitted to Chambers at the time of filing. The non-moving party shall provide the movant with an unbound set of its opposition and any cross-motion papers, double sided and three-hole punched. All motion papers shall be doubled-sided, three-hole punched, tabbed and placed in binders in the order that they were filed. If the parties have redacted or filed under seal any portion of the motion papers in

compliance with Section C.3 above, courtesy copies are to be unredacted, but the portions redacted from public filings shall be highlighted and identified, so that the Court will know to refrain from quoting those passages in opinion and orders.

F. Bail Hearings, Modifications and Appeals

1. All requests for bail hearings, modifications, and appeals shall be made as a letter-motion filed via ECF. The body of the letter shall state: (1) the original conditions of bail (if applicable); (2) the new proposed conditions of bail; (3) whether the Defendant, the Government and the Pre-Trial Services Officer consent to the proposed conditions of bail, and if not, the respective positions of the Defendant, the Government and the Pre-Trial Services Officer; and (4) three proposed dates for a bail hearing. If the requested hearing affects any other scheduled dates, the requesting party shall propose new dates.

G. Guilty Pleas

1. Plea Agreements and Pimentel Letters. Upon notification that a Defendant has decided to plead guilty, the AUSA will: (1) promptly contact Chambers to schedule a plea hearing; (2) email a copy of the applicable plea agreement, cooperation agreement, or Pimentel letter to the Court as provided in Section B.2 above; and (3) attach any related documents (i.e superseding information, order of forfeiture, etc.) in the same email correspondence.
2. Preparation for Allocation. 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 Advice of Rights form available at <https://nysd.uscourts.gov/hon-lorna-g-schofield>. Defense counsel and the defendant shall execute any plea or cooperation agreement, as well as the Advice of Rights form, prior to the plea. Defense counsel shall prepare the defendant to give narrative allocutions that incorporate all of the elements of the offense(s) to which the defendant is pleading guilty.

H. “Brady” Disclosures

1. Materials and information required to be disclosed pursuant to *Brady v. Maryland* and its progeny (“Brady Material”) -- whether in written or recorded format, or otherwise -- must be disclosed to defense counsel according to the following schedule:
 - (a) Brady Material known to the Government at the time of indictment-- other than purely impeachment materials and information required to be produced pursuant to *Giglio v. United States* and its progeny (“Giglio Material”) -- must be produced to defense counsel no later than two weeks following the date of the filing of the indictment, regardless of whether the parties are engaged in plea discussions. Such Brady Material includes (simply by way of example) not only information that tends to exculpate a defendant or support a potential

defense to the charged offense(s), but also information that tends to mitigate the degree of the defendant's culpability or to mitigate punishment. Also, this requirement applies regardless of whether the Government credits the Brady Material.

- (b) Brady Material (other than Giglio Material) that becomes known to the Government following the filing of the indictment must be disclosed, absent exceptional circumstances, within two weeks of when it becomes known and, in any event, no later than four weeks prior to any trial or guilty plea.
 - (c) Absent exceptional circumstances, Giglio Material must be disclosed four weeks prior to the date of the start of trial or guilty plea. Such material includes (simply by way of example) a witness's prior inconsistent statements, written or oral; benefits given and promises made to the witness; information that tends to show that the witness has a personal motive to inculcate the defendant; and information that tends to show that the witness has a physical or mental impairment that could affect the witness's ability to perceive, recall, or recount relevant events. Giglio Material developed less than four weeks before trial (*e.g.*, as a result of further interviews of witness) must be disclosed immediately.
 - (d) To achieve adequate compliance with the foregoing rules, the Government has a continuing obligation to seek Brady Material and Giglio Material from law enforcement and regulatory agencies that are or have been involved in the prosecution of the defendant or in parallel proceedings or investigations involving defendant.
2. The above time-tables, being necessary to fulfill the constitutional obligations imposed by *Brady v. Maryland*, *Giglio v. United States*, and their progeny, apply regardless of whether the Brady Material and Giglio Material also happen to be producible pursuant to the Federal Rules of Criminal Procedure or the Jencks Act and the time-tables applicable thereto.
 3. For good cause shown, the Government may seek a protective order delaying disclosure of such materials and information, but applications for such orders should only be made in exceptional circumstances.

I. Trials

Please refer to Judge Schofield's Individual Trial Rules and Procedures.

J. Sentencing

1. Sentencing Adjournments. Any request for an adjournment of a sentencing shall be made as early as possible, and *no later than 72 hours* before the sentencing proceeding in accordance with Section B.3 above.

2. Sentencing Submissions. Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served seven (7) days in advance of the date set for sentencing. The Government's sentencing submission shall be served four (4) days in advance of the date set for sentencing.
3. Public Filing. The Court assumes that every document in a sentencing submission, including letters, will be filed in the public record, through the ECF system. If letters are filed electronically, they shall be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.
4. 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. The parties shall provide an English translation for any letter written in a language other than English.
5. 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, any of the five categories of "sensitive information" in their submissions (i.e., social security numbers, names of minor children (use initials only), dates of birth (use year only), financial account numbers, and home addresses (use only city and state)).
6. Redactions Related to Sentencing. If any material is redacted from a publicly filed document relating to sentencing, only those pages containing the redacted material will be filed under seal. Counsel shall bring to the sentencing proceeding a copy of the pages containing redactions, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.
 - (a) Redactions Not Requiring Court Approval. 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 Court approval.
 - (b) Redactions Requiring Court Approval. If a party redacts information beyond the eleven categories of information identified in the Privacy Policy, an application filed at the time the sentencing submission is served. The application shall clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding. The party shall email an unredacted copy of the filing to Schofield_NYSDChambers@nysd.uscourts.gov.