

## JUDGE ERIC KOMITEE

### INDIVIDUAL RULES AND PRACTICES IN CRIMINAL CASES

#### United States District Court Eastern District of New York

Case Manager: Andrew Jackson  
Telephone: (718) 613-2165

Unless otherwise ordered, criminal matters before the Court shall be conducted in accordance with the following rules and practices. Exceptions to these practices will be considered in cases of genuine hardship. For Judge Komitee's practices in habeas corpus and Section 2255 proceedings, please see his Individual Rules and Practices in Civil Cases.

#### I. COMMUNICATIONS

##### A. Written Correspondence

1. **All communications** with chambers shall be in writing **and filed on ECF**. Copies of letters should not be sent to chambers.
2. All correspondence must include the case name, docket number, and initials of the judge(s) assigned to the case.

##### B. Telephone and Email

1. For docketing and scheduling matters, call Andrew Jackson at the number above.
2. **Do not send emails**, except pursuant to a specific exception specified in these rules (*e.g.*, Part II, Section C), or in response to a **purely scheduling-related** email from Chambers.

##### C. Requests to Reschedule Court Dates or Extend Filing Deadlines

1. Requests for adjournments of court appearances or extensions of time must be made **at least three business days prior** to the scheduled deadline or appearance and must be filed through ECF, except for *pro se* litigants. **All requests must state:**
  - a. The existing date of the deadline as to which the adjournment is sought;
  - b. the reason for the request;

- c. the number of previous requests, and whether those requests were granted or denied;
  - d. whether the adversary consents and, if not, the reason for declining; and
  - e. whether the parties have agreed on a new date—both among themselves and with the Case Manager/Courtroom Deputy;
  - f. whether the parties have agreed to exclude time under the Speedy Trial Act, if applicable, and on what legal basis; and
  - g. whether the adjournment or extension of time may affect any other scheduled dates. If so, the requesting party must provide a proposed Revised Scheduling Order.
2. Please note that the consent of the adverse party is *not* a sufficient ground for an extension or adjournment, nor, in itself, for the exclusion of Speedy-Trial time.

**D. New Criminal Cases**

1. Assistant United States Attorneys are responsible for informing Mr. Jackson when a new case has been assigned to Judge Komitee. Upon such notification, an initial conference will be scheduled.
2. The government must file a Rule 12.4 disclosure statement before the first appearance, when applicable.

**II. ELECTRONIC CASE FILING (ECF)**

**A. Mandatory ECF Filing**

1. All documents must be filed on ECF, with the sole exception that *pro se* parties are exempt from mandatory ECF filing. Represented parties must file on ECF and serve copies on any *pro se* litigant(s).
2. Orders and other notices from the Court will be posted on ECF. The Court will mail orders only to *pro se* litigants, at the address they maintain on file with the Court.
3. All requests for relief from the Court, including for an adjournment or extension of time, shall be designated as a “motion” on ECF. In addition, the ECF entry line must clearly state the subject matter of the request — e.g., “Letter Motion Requesting Extension of Time to Respond to Interrogatories.”

4. Non-text exhibits that cannot be filed electronically should be submitted on a virus-scanned USB drive to the Clerk's Office (labeled "Original") and to chambers (labeled "Courtesy Copy"). Related papers filed on ECF must clearly indicate how the exhibits were filed, and what virus-scanning device was employed.
5. All written submissions and supporting materials must, to the maximum extent possible, be text-searchable.
6. If an emergency submission requires immediate attention, please call chambers.
7. Chambers staff are unable to assist with filing on ECF.

**B. Filing Under Seal or in Redacted Form**

1. Any party seeking leave to file a document under seal must comply with the technical instructions for filing sealed documents on the EDNY website.<sup>1</sup>
2. A request to file under seal should explain why sealing is necessary *and* be accompanied by proposed redactions that are narrowly tailored to address the confidentiality interests at issue.<sup>2</sup> A request to file under seal that does not either propose redactions, or explain with specificity why individual redactions are untenable, will typically be denied.
  - a. Proposed redactions should be highlighted or otherwise identified in such a way that the material to be redacted remains readable.
  - b. If a request to redact is granted, the party should file the unredacted version of the document under seal and the redacted version publicly.

**C. Word-Processing Files of Proposed Orders**

1. Proposed orders, jury instructions, and other submissions that a party would like the Court to adopt **should be emailed to chambers in Microsoft Word format and filed on ECF in PDF**. Parties need not submit Word files of stipulations unless specifically requested to do so. Counsel should contact chambers to obtain the email address to which the files may be sent.

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<sup>1</sup> <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCR.pdf> (criminal).

<sup>2</sup> See, e.g., *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006).

#### **D. Courtesy Copies**

1. Parties must submit one courtesy copy for all submissions of one hundred pages or greater (*inclusive* of any exhibits or attachments).
2. Parties should not submit courtesy copies of motions, letters, or filings directed to the magistrate judge assigned to a matter.
3. Parties must print double-sided. The courtesy copy should be a reproduction of the document as filed on ECF, with the ECF numbering appearing at the top of the page, and clearly marked “Courtesy Copy.”
4. Do not annex as exhibits copies of pleadings or other filings that already appear on the docket.
5. Parties should assemble courtesy copies in a three-ring binder with a table of contents and appropriately labeled tabs. Binder covers and spines must identify the case name, docket number, and the binder’s contents.

### **III. CRIMINAL MOTIONS**

#### **A. Memoranda of Law**

1. Unless prior permission is granted, memoranda in support of and in opposition to motions are limited to twenty-five pages (excluding tables of contents, tables of authorities, exhibits, appendices, or attachments). Reply memoranda are limited to ten pages (excluding tables of contents, tables of authorities, exhibits, appendices, or attachments). Parties must seek leave of the Court before submitting sur-replies.
2. Requests to file memoranda exceeding the page limits set forth herein must be made in writing at least five days prior to the due date, except with respect to reply briefs, in which case the written request must be made in writing at least two days prior to the due date. For complex cases or motion practice, parties are encouraged to request expansions of the Court’s page limits.
3. Memoranda must be double-spaced with one-inch margins. Use Times New Roman, twelve-point font, with footnotes that are at least ten-point font.
4. Memoranda ***must contain a table of contents and a table of authorities.*** Memoranda also must show the date of service on the front cover.

5. Unless otherwise permitted by the Court, all case citations to unpublished decisions should include the Westlaw citation.
6. In a multi-defendant case, all filings must designate the specific defendant or defendants as to whom the filing pertains.
7. Notices of supplemental authority regarding decisions issued after the completion of briefing may be filed without leave of the Court. The length and content of such letters shall comply with the requirements of Fed. R. App. P. 28(j).

**B. Appeals of Magistrate Judge Orders of Release or Detention**

1. Any party appealing a magistrate judge's order of release or order of detention shall include a copy of the transcript before the magistrate judge with their motion.

**C. Requests for Assistance With MDC Medical Care**

1. The delivery of health care services to defendants detained pending trial is of paramount importance. The Court will, on appropriate occasions, inquire into reported issues with the delivery of critical care at the MDC.
2. **Prior to contacting the Court** to seek such assistance, defense counsel should take the following preliminary steps:
  - a. *First*, the inmate should submit an electronic "sick-call request" in conformity with the MDC's protocol. (MDC Legal has advised that if the institution is on lockdown, the inmate may, alternatively, submit a written request to an officer on the unit.) If this first step does not yield results in a reasonable time period, or if the condition constitutes an emergency, then;
  - b. *Second*, defense counsel should email the institution directly at the email address that has been dedicated for this purpose and circulated to the CJA panel and others. This email should describe the inmate's symptoms and needs with as much precision as possible, and set forth all relevant information from the inmate's outside physicians, if applicable.
  - c. *Third*, counsel should attempt to contact the MDC legal department by phone.
3. If and when these steps prove unsuccessful, counsel should involve the Court. Attorneys may skip these steps in cases of emergency. a genuine

emergency, counsel should contact chambers by phone in addition to making a written filing.

#### IV. PRE-TRIAL PROCEDURES

##### A. Filings Prior to Trial in Criminal Cases

1. Motions *in limine* addressing evidentiary or other trial management issues in dispute must be filed no later than thirty days before the date fixed for commencement of *jury selection*. Responses, if any, are due ten days after the date the motion is filed, unless otherwise ordered. No reply briefs should be due on motions *in limine* unless the Court requests them.
2. Proposed *voir dire* questions, lists of all potential witnesses and any other individuals and entities that may be mentioned at trial, requests to charge, and proposed verdict sheets should be submitted no later than fourteen days before jury selection. The parties should follow Judge Komitee's rules for civil filings, as set forth in Part IV, Section C, where applicable.

##### B. Trial Exhibits and Witnesses

1. All exhibits to be used at trial shall be pre-marked and exchanged with the other parties at least ten days before jury selection. **Counsel should take care to ensure that exhibits are not compound – that is, that each document is identified and marked individually.**
2. No later than the first day of jury selection, all parties are to provide the Court with tabbed binders containing copies of all exhibits. The binder should also include an **exhibit list** and a **witness list**. The exhibit list should list every exhibit in the binder(s) and contain a brief description of each exhibit, no longer than one sentence. If multiple binders will be submitted, the parties should include spine labels that indicate the range of exhibits in each binder.

##### C. Use of Electronic Equipment

1. Any party wishing to present marked exhibits to the jury in digital form is directed to meet with the Court's Case Manager at least five days prior to the commencement of the trial to review the available equipment for the presentation of digital evidence. Counsel should be accompanied by the audio-visual personnel who will be operating any equipment that will be used at trial. Following such meeting, such party shall file a confirmation in writing on ECF that this meeting has occurred.

## V. TRIAL PROCEDURES

### A. Witness Examinations

1. Where counsel anticipates that a witness will refer to documentary evidence in the course of his or her direct testimony, counsel shall have copies of the document(s) available for opposing counsel, the court reporter, and two copies for the Court.
2. At or before 7:00 p.m. the evening prior to each trial day, the party presenting its case shall provide a written list of all witnesses that may testify on the following day. The list should state the witness's title or role in the case (for example, "Case Agent," "former Chief Operating Officer"). The document should also indicate whether any unresolved motions *in limine* will be relevant to any listed witness's testimony.
3. Counsel should be aware that the Court generally will not qualify a witness as an "expert" in front of the jury. *See* F.R.E. 702, advisory committee's note to 2000 amendment.<sup>3</sup> Counsel should ask instead that the witness be permitted to offer opinion testimony pursuant to Rule 702.

### B. Sidebars

1. Sidebar conferences should be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues in advance of trial, to the maximum extent foreseeable, to be respectful of the jurors' time.

## VI. SENTENCING

### A. Sentencing Submissions

1. A defendant's sentencing submissions are due twenty-one days prior to sentencing. Sentencing memoranda must be provided to the Probation Department as well as the Court. The government's sentencing submissions are due fourteen days prior to sentencing.
2. Sentencing submissions should indicate cases that the parties believe are **comparable** under 18 U.S.C. § 3553(a)(6) — that is, cases involving defendants with similar records who have been found guilty of similar conduct — and the sentences imposed therein.

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<sup>3</sup> The advisory committee counseled that "use of the term 'expert' in the Rule does not, however, mean that a jury should actually be informed that a qualified witness is testifying as an 'expert.' Indeed, there is much to be said for a practice that prohibits the use of the term 'expert' by both the parties and the court at trial."

3. Any objections to presentence reports — by either party — must comply with the requirements in Fed. R. Crim. P. Rule 32(f). Objections should be filed under seal on ECF and served upon opposing counsel and the Probation Department. An objecting party must identify the specific language and paragraph numbers of the presentence report to which it objects.
4. The government should advise the Court at least two days in advance if a victim will be making a statement at sentencing.
5. Sentencing submissions should affirmatively address the applicability of **restitution, fine, and forfeiture** in addition to incarceration, probation, and supervised release. If no restitution is being sought, the government should **say so explicitly** in its sentencing memorandum.
6. The preliminary order of forfeiture, if any is to be submitted, is due one week prior to sentencing in routine forfeiture cases that do not include specified property. If forfeiture is contested, or if forfeiture includes specified property, the government should submit a preliminary order at least two weeks prior to the sentencing date.

## **VII. VIOLATION OF SUPERVISED RELEASE**

- A. The Court requires at least two days' notice of a guilty plea on a violation of supervised release. The notice must specify the violations as to which the defendant intends to plead guilty. The government shall submit a penalty sheet encompassing the relevant statutes and guidelines at least two days prior to any guilty plea and sentencing.

## **VIII. WITHDRAWAL OF COUNSEL**

- A. Both the counsel seeking to withdraw and proposed replacement counsel must attend any proceedings in which the Court will consider a motion pursuant to Local Rule 1.4 for withdrawal or substitution.

## **IX. FINAL NOTE**

- A. Parties observing instances in which these rules may be imperfectly clear or incomplete are strongly urged to communicate those observations to the Judge or to chambers.