

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**NOTICE OF PROPOSED PROTOCOL
FOR DISCLOSURE OF
SENTENCING MATERIALS**

PLEASE TAKE NOTICE that the United States District Court for the District of New Jersey is considering adopting, in criminal cases, a protocol for the submission and determination of public availability of Sentencing Materials (consisting of sentencing memoranda from the prosecution and defense counsel, and all supporting exhibits and correspondence). “Sentencing Materials” do not include the Probation Office’s Presentence Investigation and Report, which is not publicly available by law.

Public Comments Requested

The terms of this proposed protocol are set forth below. The Court invites public comment upon this proposal. Written comments may be submitted not later than **April 28, 2017** to:

William T. Walsh
Clerk of Court
50 Walnut Street
Newark, NJ 07101-0419

March 28, 2017

FOR THE COURT

JEROME B. SIMANDLE
CHIEF JUDGE

PROPOSED NOTICE

ON _____, the judges of the United States District Court, recognizing the benefit of promoting the public's understanding of, and access to, judicial proceedings, as well as privacy and security concerns relating to the electronic filing of court documents, as reflected in Sec. 205 of the E-Government Act of 2002 (Pub. L. No. 107-347);

RESOLVED to approve the following protocol for adoption:

1. Sentencing memoranda, along with all supporting exhibits and correspondence (collectively, the "Sentencing Materials"), shall be submitted directly to the Sentencing Judge, the United States Probation Department, and all counsel of record in the underlying prosecution ("Counsel of Record"), and not filed on the Court's Case Management/Electronic Case Files System ("ECF"). However, the submitting party shall file a notice on ECF (a "Submission Notice") on a form prescribed by the Clerk of the Court that Sentencing Materials have been submitted to the Court.
2. Anyone who wishes to obtain a copy of the Sentencing Materials (a "Requestor") must make a Request for Disclosure on a form prescribed by the Clerk of the Court within 48 hours of the filing of a Submission Notice under Paragraph 1. If the Requestor is represented by counsel, this Request for Disclosure will be available as an electronic filing option and shall be filed on ECF. If the Requestor is not represented by counsel, a Request-for-Disclosure form can be obtained from the Clerk of the Court and shall be sent to all Counsel of Record and the Court. The Court shall cause the Request-for-Disclosure form to be docketed on ECF. In all cases, the Request for Disclosure shall clearly identify the name of the Requestor, the name of counsel for the Requestor, if any, and the address – either electronic or mailing – to which the Sentencing Materials should be sent.
3. Unless otherwise instructed by the Court, upon receipt of a Request for Disclosure, Counsel of Record shall meet and confer in order to determine what non-public information should be redacted from the Sentencing Materials. Presumptively Non-Public Information includes the following: references to the Presentence Report ("PSR"); names of victims, witnesses, and other individuals whose identity and roles were not previously disclosed; information regarding cooperation by the defendant and others that was not previously disclosed; sensitive personal information concerning the defendant

and others, including but not limited to medical or psychological reports and data; personal identifying information such as addresses, social security numbers, account numbers, and dates of birth; and information obtained during the course of a Grand Jury or law enforcement investigation that was not previously disclosed. All redactions should be sufficient to ensure that the content of the redacted information is not apparent from the context of the surrounding text.

- 4. All proposed redactions to the Sentencing Materials shall be made prior to disclosure regardless of whether the parties to the underlying prosecution agree on the redactions. Following any redactions, Counsel of Record shall coordinate to send the Sentencing Materials to the electronic or mailing address specified in the Request for Disclosure or, if directed by the Court, to electronically file the Sentencing Materials on the docket.*
- 5. A Requestor who wishes to challenge the redactions may do so in accordance with the individual Sentencing Judge's practices. The procedure and timing for resolving a Request for Disclosure is left to the discretion of the individual Sentencing Judge.*

In accordance with the Resolution approved by the judges of this Court on _____, the above protocol applies to all criminal cases filed in this district on or after _____.