UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF UTAH

LOCAL RULES OF
CRIMINAL PRACTICE

DECEMBER 2018

TABLE OF CRIMINAL RULES

RULE # **PAGE**

DUCrimR 1-1 SCOPE AND AVAILABILITY; AMENDMENTS; PRIOR RULES

These rules apply in all criminal proceedings conducted in the District of Utah. These rules are made available as specified in DUCivR 1-1(a). Notice of amendments to these rules and opportunity to comment is governed by DUCivR 1-1(b). The relationship of these rules to rules previously promulgated by this court and the application of these rules to criminal proceedings pending at the time they take effect are governed by DUCivR 81-1(b).

DUCrimR 1-2 SANCTIONS FOR CRIMINAL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these criminal rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party.

DUCrimR 5-1 INITIAL APPEARANCE OF PERSONS UNDER ARREST

When the marshal receives custody of any person under arrest, whether charged in this district or elsewhere, the marshal must promptly inform the magistrate judge and the United States attorney's office. The magistrate judge will promptly schedule an appearance of the arrested person.

DUCrimR 5-2 PRETRIAL SERVICES REPORT

Whenever the United States requests the detention of a defendant, or where there is a likelihood that a defendant may be detained, the magistrate judge will request a pretrial services report on the defendant pursuant to 18 U.S.C. § 3154.

DUCrimR 6-1 RETURNS OF GRAND JURY INDICTMENTS

In accordance with Fed. R. Crim. P. 6(f), all grand jury indictments must be returned to a United States district or magistrate judge in open court. The indictments will be filed immediately with the clerk of court, and the defendants will be scheduled to appear before the magistrate judge for arraignment.

DUCrimR 9-1 ISSUANCE OF ARREST WARRANTS ON COMPLAINTS, INFORMATION, AND INDICTMENTS

(a) Summons or Warrant Request Upon Indictment, Information, or Complaint.

When a complaint is filed under Fed. R. Crim. P. 4(a), a summons request may be made either orally or in writing. A summons must be issued upon the filing of an indictment or information unless the government (i) submits to the court a written request for a warrant or (ii) specifically requests no service of process. A warrant request must include a brief statement of the facts justifying the arrest of the defendant. A warrant may be issued on an information only if it is accompanied by a written probable cause statement given under oath.

(b) Warrant Upon Failure to Appear.

If a defendant fails to appear in response to a summons, a warrant must be issued if, prior to issuing the warrant, the assigned district judge or magistrate judge is satisfied either (i) that the defendant received actual notice of the hearing; or (ii) that it is impractical under the circumstances to secure the defendant's appearance by way of summons.

DUCrimR 11-1 PLEA AGREEMENTS

All plea agreements must be in writing and signed by counsel and the defendant. The plea agreement must be accompanied by a written stipulation of facts relevant to a plea of guilty which, if appropriate, includes the amount of restitution and a list of victims. If the agreement involves the dismissal of other charges or stipulates that a specific sentence is appropriate, the court will review and consider the presentence report before accepting or rejecting the plea agreement. All plea agreements shall be accompanied by a sealed document entitled "Plea Supplement." The Plea Supplement will be electronically filed under seal.

See DUCrimR 57-3 for filing and consolidation of cases involving plea bargains.

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS; MOTIONS UNDER THE SPEEDY TRIAL ACT

(a) Timing.

Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than fourteen (14) days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.

(b) Form.

(1) No Separate Supporting Memorandum for Written Motions. The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:

(A) An initial separate section stating succinctly the precise relief sought and the specific grounds for the motions; and

(B) One or more additional sections including a recitation of relevant facts, supporting authority, and argument.

(2) Affidavits. Except for suppression motions, if the motion is based on supporting claims of facts, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits.

(3) Concise Motions and Memoranda. Motions and memoranda must be concise and state each basis for the motion and limited citations.

(4) Length of Motions and Memoranda; Filing Times. There are no page limits to motions and memoranda. The court, in consultation with the attorneys for the government and for the defense, will set appropriate briefing schedules for motions on a case-by-case basis. Unless otherwise ordered by the court, a memorandum opposing a motion must be filed within fourteen (14) days after service of the motion. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the

memorandum opposing the motion. Attorneys may stipulate to shorter briefing periods.

(5) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(6) Unpublished Decisions. The use of unpublished decisions in criminal motions and supporting memoranda is governed by DUCivR 7-2.

(7) Exceptions to Requirement that a Motion Contain Facts and Legal Authority. Although all motions must state grounds for the request and cite applicable rules, statutes, case law, or other authority justifying the relief sought, no recitation of facts and legal authorities beyond the initial state of the precise relief sought and grounds for the motion shall be required for the following types of motions:

(A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;

(B) to continue either a pretrial hearing or motion hearing; and

(C) for motions to suppress unless otherwise directed by the court.

(8) Failure to Comply. Failure to comply with the requirements of this section may result in sanctions that may include returning the motions to counsel for resubmission in accordance with the rule; denial of the motions; or other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of criminal procedure does not meet the requirements of this section.

(c) Failure to Respond.

Failure to respond timely to a motion may result in the court's granting the motion without any further notice.

(d) Oral Argument on Motions.

The court may set any motion for oral argument or hearing. Attorneys for the government or for the defense may request oral argument in their initial motion or at any other time, and for good cause shown, the court will grant such request. If oral argument is to be heard, the motion will be promptly set for hearing after briefing is complete. In all other cases, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

(e) Motion to Suppress Evidence.

A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion unless the court has directed pretrial briefing or otherwise concludes that further briefing is unnecessary.

(f) Certification by Government.

Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.

(g) Preparation and Entry of Order.

When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections have been filed with the clerk within seven (7) days after service.

(h) Motions Under the Speedy Trial Act (18 U.S.C. § 3161 et seq.).

All motions for extension of time or continuance under the Speedy Trial Act shall state:

(1) the event and date that activated the time limits of the Speedy Trial Act (e.g., "defendant arrested April 1, 2011, indictment or information due within 30 days"; "defendant appeared before United States Magistrate Judge May 1, 2011, jury trial to commence within 70 days");

(2) the date the act is due to occur without the requested extension or continuance;

(3) whether previous motions for extensions or continuances have been made, the disposition of the motions, and, for any motion that was granted, whether the court found the period of delay resulting from that extension or continuance to be excludable under the Speedy Trial Act;

(4) whether the delay resulting from the requested extension or continuance is excludable under the Speedy Trial Act;

(5) specific reasons for the requested extension or continuance, including why the act cannot be done within the originally allotted time;

(A) If the reason given for the extension is that other litigation presents a scheduling conflict, the motion must also:

(i) identify the litigation by caption, case number, and court;

(ii) describe the action taken in the other litigation, if any, to request a continuance or deferment;

(iii) state the reasons why the other litigation should receive priority; state reasons why other associated counsel cannot handle the case in which the extension is being sought or the other litigation; and

(iv) recite any other relevant circumstances.

(B) If an extension is requested due to the complexity of the case, including voluminous discovery, the motion must include specific facts demonstrating such complexity.

(C) If the motion is sought due to some type of personal hardship that counsel or the client will suffer if an extension is not granted, the motion must state the specific

nature of that hardship and when the hardship might be resolved;

(6) an explanation of how the reasons offered in support of the motion justify the length of the extension or continuance that has been requested;

(7) whether opposing counsel objects to the requested extension or continuance;

(8) when the motion is made by counsel for the defendant, the motion must indicate whether the defendant agrees with the requested extension or continuance;

(9) the impact, if any, on the scheduled trial or other deadlines; and

(10) the precise relief requested by the motion.

If the motion would require divulging trial strategy or information of a highly personal nature, including medical data, the movant may seek leave to file the motion under seal. If trial strategy would be revealed, the motion and request for leave may be presented ex parte.

All such motions shall be accompanied by a proposed order for the Court's consideration. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the deadline(s) being extended and the new date(s) for the deadline(s) and shall include the findings required under the Speedy Trial Act.

See DUCrimR 49-1, Filing of Papers; DUCrimR 56-1, Office of Record; Court Library; Hours and Days of Business; and DUCrimR 57-1, General Format of Papers.

FED. R. CRIM. P. 13
TRIAL TOGETHER OF INDICTMENTS OR INFORMATION

No corresponding local rule; however, see DUCrimR 57-3 for consolidation of criminal cases.

DUCrimR 16-1 DISCOVERY

(a) Rules Governing Discovery Motion Practice.

Motions for discovery must be made in compliance with the Federal Rules of Criminal Procedure governing motion practice in criminal cases and with these District Court Rules of Practice. Specific discovery conditions may be stipulated to by the parties. Prior to filing discovery requests or motions with the court, counsel for the government and for the defendant must attempt to agree to a mutually acceptable pretrial exchange of discovery. If such an agreement is reached, counsel for both parties must sign and file with the court a joint discovery statement describing the terms and conditions of the agreement.

(b) Alibi Witnesses and Mental Illness Experts.

Alibi witness discovery is governed by Fed. R. Crim. P. 12.1 rather than by this criminal rule. Expert testimony discovery regarding a defendant's mental condition is governed by Fed. R. Crim. P. 12.2(b) rather than by this rule.

(c) Motions Pursuant to Fed. R. Crim. P. 16.

A discovery request under Fed. R. Crim. P. 16 must be made not later than the date set by the district or magistrate judge. The request must be in writing and state with particularity the material sought. Unless otherwise ordered by the court, the party obligated to disclose under Fed. R. Crim. P. 16 must comply promptly but not fewer than fourteen (14) days prior to trial. All exhibits subject to copying under Fed. R. Crim. P. 16 must be returned to the party from whom they were obtained prior to trial. As set forth in section (h) below, the party obligated to disclose under Fed. R. Crim. P. 16 must file a notice of compliance specifying with particularity how the request for discovery was satisfied. The government may not require the defendant or the defendant's attorney to withdraw or refrain from making a discovery request as a condition to an open-file policy. Where the government agrees to an open-file policy in a particular case, the government nevertheless must comply with the notification of compliance requirement set forth in section (h) below. Where the government agrees to an open-file policy, the defendant must provide reciprocal discovery as required by Fed. R. Crim. P. 16.

(d) Motions Not Governed by Fed. R. Crim. P. 16.

Motions for discovery, other than those under Fed. R. Crim. P. 16, must be in writing and specify with particularity the legal and factual basis for such discovery. Motions for discovery based upon constitutional or statutory grounds must specify with certainty the requested information and may be supported by affidavits filed with the motion. If the court grants a motion for discovery, or if the parties agree to production of the requested material, a notification of compliance with the discovery request, as set forth in section (h) below, must be made as soon as discovery is completed.

(e) Jencks Act Discovery.

Where the government agrees, under an open-file policy or otherwise, to provide pretrial discovery of witness statements, or where the court orders production of grand jury materials or witness statements in accordance with 18 U.S.C. § 3500 et seq., and Fed. R. Crim. P. 26.2, the defendant must provide reciprocal pretrial discovery of witness statements to the government.

(f) Discovery Ordered by Pretrial Conference.

The court may order discovery as it deems proper under Fed. R. Crim. P. 17.1. A notification of compliance, as set forth in section (h) below, with any such discovery order, must be made by the party required to make disclosure.

(g) Motions for Protective or Modifying Orders.

Motions for protective or modifying orders may be made after a request, motion, or order of discovery has been made. Such motions must be in writing and upon notice, and must specify with particularity the basis upon which relief is sought.

(h) Notification of Compliance.

The notification of compliance must specify with particularity the matter produced for discovery. If the notification of compliance does not accurately describe the materials or information produced, the opposing attorney must file with the court an objection stating in detail how the notification is inaccurate or incomplete to preserve the party's rights to object to the adequacy of discovery provided.

DUCrimR 16-2 DISCOVERY - SEARCH WARRANTS

The defendant may demand, at any time after the filing of the complaint, information, or indictment and prior to the date set for the filing of motions, that the government provide information as to whether any evidence obtained or derived from the execution of a search warrant will be used at trial against that defendant. Upon such demand, the government must provide to that defendant copies of all search warrants, affidavits, or records of warrants relevant to or connected with the prosecution of that defendant and must file copies of the same with the clerk of court. The government also must give written notice to that defendant of what evidence obtained or derived from the execution of any search warrant the government intends to offer at trial against that defendant. If the search warrants, affidavits, or records of warrants are under seal, the government must so state in response to a demand for disclosure. On said response, the defendant, in order to obtain disclosure of said documents, must file a motion to unseal the documents. Where the government objects to the unsealing, it must file an appropriate and timely response, and a hearing, if necessary, will be set for the court to hear the motion and objections. Where no objections to unsealing the documents are filed, the defendant must prepare an order for entry by the court.

DUCrimR 17-1 SEALING OF EX PARTE MOTIONS AND ORDERS IN CRIMINAL JUSTICE ACT CASES RELATING TO TRIAL SUBPOENAS

Unless otherwise directed by the court, the clerk will seal at the time of filing all ex parte motions and orders in Criminal Justice Act (CJA) cases for issuance of trial subpoenas. Copies of such orders, when executed, will be served by the clerk on only the party that made the motion. Motions for appointment of experts, authorization of travel, and other extra-ordinary expenses shall be submitted using the court's e-Voucher system.

See DUCrimR 16-1 for discovery ordered by pretrial conference and DUCrimR 44-1 for payment of services.

DUCrimR 17-2 MOTIONS FOR SUBPOENAS OF DOCUMENTS AND OBJECTS

(a) All parties, regardless of whether they have retained or appointed counsel or represent themselves, must file Motions for Subpoenas pursuant to Fed.R.Crim.P.

Rule 17(c) with the Court prior to issuance of any subpoena. Parties may file such motions ex parte and under seal. The docket entry will identify all such filings as SEALED EX PARTE MOTION.

(b) The Motion should include:

(1) The specific material sought, including an attachment of the draft subpoena;

(2) A proffer as to the likelihood of admissibility/materiality of the material sought;

(3) An explanation as to why the movant could not otherwise procure the material;

(4) An explanation as to why the movant cannot prepare the matter without the material in advance; and

(5) Either a representation that the material sought does not request personal or confidential material concerning a victim, a representation that the movant does not know if the material sought concerns request personal or confidential material concerning a victim, or a representation that the movant expressly seeks personal or confidential material concerning a victim.

(c) If the requested subpoena seeks material about a victim or the requesting party does not know whether she/he seeks material about a victim, the court will order the Victim Coordinator from the Office of the United States Attorney to provide the contact information for the victims(s) in the case. If the subpoena seeks personal or confidential material concerning a victim, the Court will provide notice of the subpoena to the victim or his or her legal representative prior to issuance as required by Rule 17(c)(3).

(d) "Victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

DUCrimR 20-1 TRANSFERS UNDER FED. R. CRIM. P. 20

Where a criminal case against a named defendant who has not been sentenced is pending in this jurisdiction, and the United States attorney receives notification that a criminal case pending in another jurisdiction against the same defendant, is to be transferred to this jurisdiction under Fed. R. Crim. P. 20, the United States attorney must promptly notify the clerk of court. On receiving the case file from the transferring jurisdiction, the clerk will open a new case under the Rule 20 transfer and assign it to the judge to whom the pending case is assigned.

DUCrimR 20-2 TRANSFER TO THE DISTRICT FOR PLEAS OR SENTENCING

When the United States attorney's office receives a request under Fed. R. Crim. P. 20 (b) from any defendant for transfer of a case for prosecution to the District of Utah, the United States attorney's office must promptly notify the clerk and process the transfer documents to ensure prompt transmission of the case to this court. When the clerk of court receives the file from the district of origin, the clerk will open a new case, assign a judge pursuant to DUCrimR 57-2, and deliver the file to the magistrate judge for processing. Thereafter, the magistrate judge will promptly calendar the case for arraignment to minimize delay. No scheduling order will be entered prior to the transfer of jurisdiction to this court.

FED. R. CRIM. P. 26.2
PRODUCTION OF WITNESS STATEMENTS

No corresponding local rule; however, see DUCrimR 16-1(e) for Jencks Act discovery.

DUCrimR 30-1 INSTRUCTIONS TO THE JURY

(a) Written Proposed Jury Instructions.

Unless the court otherwise orders, two (2) originals and one (1) copy of proposed jury instructions must be prepared, served, and filed with the court a minimum of two (2) full business days prior to the day the case is set for trial. The court in its discretion may receive additional written requests during the course of the trial. One (1) original and one

(1) copy of each proposed instruction must (i) be numbered, (ii) indicate the identity of the party presenting the same, and (iii) contain citations of authority. A second original of each proposed instruction must be without number or citation. Individual instructions must embrace one (1) subject only, and the principle of law embraced in any instruction must not be repeated in subsequent instructions. Unless the court otherwise orders, service copies of proposed instructions must be received by the adverse party or parties at least two (2) full business days prior to the day the case is set for trial.

(b) Ruling on Requests.

Prior to the argument of counsel, the court, in accordance with Fed. R. Crim. P. 30, will inform counsel of the court's proposed rulings in regard to requests for instructions. Counsel who believe the court has provided insufficient information under Fed. R. Crim. P. 30 should so inform the court on the record prior to final argument.

(c) Objections or Exceptions to Final Instructions.

The jury may be instructed orally or in writing as the court determines. As provided in Fed. R. Crim. P. 30, objections to a charge or objections to a refusal to give instructions as requested in writing must be made by informing the court before the jury has retired, but out of the hearing of the jury. Such objections must (i) identify the objectionable parts of the charge or the refused instructions, and (ii) describe the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel may alert the court to any corrections to or explanations of the instructions that inadvertently may have been omitted.

DUCrimR 32-1 PRESENTENCE INVESTIGATION REPORTS: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES

(a) Restrictions on Disclosure of Sentencing Recommendations.

Copies of the presentence report furnished under Fed. R. Crim. P. 32(b)(6) will exclude the probation officer's recommendation.

(b) Position Statements.

After disclosure of the presentence report to the parties, but no later than seven (7) days before sentencing, counsel for the parties must file, in accordance with the United States

Sentencing Commission Guidelines Manual, §§ 6A1.2 and 6A1.3, a pleading entitled "Position of Party with Respect to Sentencing Factors." The pleading must be accompanied by a written statement that the party has conferred in good faith with opposing counsel and with the probation officer in an attempt to resolve any disputed matters.

(c) Disclosure of Presentence Report.

Except as otherwise provided by Fed. R. Crim. P. 32(b)(6), presentence reports and confidential records maintained by the United States probation office will not be released except by order of the court.

(1) Disclosure to Correctional and Treatment Agencies. Probation reports, including the presentence report, may be forwarded routinely to the United States Sentencing Commission, the Federal Bureau of Prisons, federal contract facilities, the United States Parole Commission, courts of appeals and respective parties, as well as other United States probation offices in accordance with federal probation system policies and procedures. The probation office may prepare a summary of background material in cases for other correctional or treatment agencies and may review the appropriate file with professional staff members from those agencies upon receipt of a Consent to Release Information form signed by the defendant.

(2) Disclosure in 28 U.S.C. § 2255 Matters. Such reports may be reviewed by the court and authorized court personnel in consideration of matters under 28 U.S.C. § 2255.

DUCrimR 40-1 REMOVAL PROCEEDINGS

(a) Notification of Removal.

When the United States attorney's office and the marshal receive information that a person charged in the District of Utah has been ordered removed from another district either by warrant or by a release with directions to appear in this district, they must promptly notify the magistrate judge who will calendar the matter to ensure a timely appearance of the defendant before the magistrate judge.

(b) Delivery of Pertinent Documents.

When the clerk of court receives any letter or documents pertaining to the removal of a person to this district from any other district, the clerk will promptly deliver the same to the magistrate judge for proper processing with notice to the U.S. attorney's office of the removal. The clerk will obtain from the removing jurisdiction all documents pertinent to the release or detention of the defendant for the magistrate judge's use in making an appropriate determination on the pretrial detention or release of the defendant.

(c) Warrant of Removal.

When the magistrate judge issues a warrant of removal for any person charged in another district, or when the magistrate judge releases such a person with directions to appear in the district of origin, the magistrate judge will promptly deliver the docket sheet and all related documents pertaining to the matter to the clerk of court. The clerk will promptly forward the same to the district of origin.

FED. R. CRIM. P. 41
SEARCH AND SEIZURE

No corresponding local rule; however, see DUCrimR 12-1 for pretrial motions, responses, memoranda, and proposed orders.

DUCrimR 44-1 RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Applicability.

This rule applies to any person:

(1) who is charged with a felony, misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1(3) unless the defendant faces the likelihood of loss of liberty), juvenile delinquency (see 18 U.S.C. § 5034), or a violation of probation;

(2) who is under arrest, when such representation is required by law;

(3) who is seeking collateral relief, as provided in subsection (b) of the CJA;

(4) who is in custody as a material witness (see subsection (g) of the CJA and 18 U.S.C. §§ 3144 and 3142(f));

(5) who is entitled to appointment of counsel in parole proceedings under 18 U.S.C. Chapter 311;

(6) whose mental condition is the subject of a hearing under 18 U.S.C. Chapter 313; or

(7) for whom the sixth amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which such person faces loss of liberty, any federal law requires the appointment of counsel.

(b) Services Essential to a Proper Defense.

The assigned district judge or magistrate judge may authorize an appointed attorney to incur reasonable expenses for the necessary services of an investigator, for a psychiatric examination of the defendant, or for other services essential to a proper defense. The cost of such additional services must not exceed the authorized statutory maximum. A request to incur such additional expense may be made ex parte to the assigned district judge or magistrate judge by motion or petition, together with an appropriate CJA form. In addition, an order must be issued and signed by the district or magistrate judge before any additional expenses are incurred. The assigned judge also may order that a subpoena be issued on behalf of an indigent defendant under DUCrimR 17-1.

(c) Post-Trial Duties of Appointed Attorneys.

The duties of an appointed attorney after the trial include the following:

(1) the attorney must inform the defendant of the right to appeal;

(2) if, after consultation with the attorney, the defendant desires to appeal, the attorney must file a notice of appeal, designate the appropriate portions of the record, make all arrangements necessary to order a transcript of needed testimony, and complete all other requirements necessary to perfect the appeal, including making and filing a docketing statement; and,

(3) if the attorney who represented the defendant at trial wishes to continue to represent the defendant in an appeal, the attorney must notify the clerk of the United States Court of Appeals for the Tenth Circuit and take proper steps to

obtain appointment from the court of appeals as counsel for the defendant on appeal.

(d) Payment of Services.

An attorney appointed to represent an indigent defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, is responsible for submitting, promptly after the attorney's duties have been terminated, properly completed vouchers and required support documentation on appropriate CJA forms for services rendered by the attorney or others. In cases involving extended services, the court, upon application, may recommend payment in excess of the statutory maximum. All vouchers seeking payments in excess of the statutory maximum must be accompanied by certified time sheets or other evidence setting forth in detail the time spent on the case. Appointments of attorneys for indigent defendants must be in accordance with the CJA plan for the District of Utah.

DUCrimR 44-2 CONSTRAINTS ON JOINT REPRESENTATION

(a) Statement of Policy.

An attorney, including attorneys who are associated in the practice of law, must avoid a conflict of interest in undertaking representation. In particular, an attorney must avoid a conflict of interest when representing joint defendants, targets of a grand jury investigation, or potential government witnesses in the same criminal matter, whether before or after any formal charges have been filed. Except as provided below, an attorney may not represent more than one defendant or target in the same criminal matter, nor may an attorney represent a defendant or target in a criminal matter if the attorney has represented or is representing individuals who are potential government witnesses in the same matter. An attorney may not represent joint defendants if the attorney, in making a calculation of any applicable sentencing guideline, may be required to contend for differing levels of culpability of the various persons represented.

(b) Motion, Hearing, and Order.

An attorney who intends to represent two or more persons in the same criminal matter with potential conflicts of interest must (i) conform to the provisions of Fed. R. Crim. P. 44(c), and (ii) file with the court a motion and proposed order permitting joint representation. The attorney must certify to the court that, after careful investigation of

potential conflicts of interest, it is clear that no actual conflict exists or is foreseeable. The attorney also must file with any motion for such an order a written certification by each person to be represented, giving informed consent to such joint representation and waiving the right to separate representation and, when applicable, waiving the attorney/client privilege. A response to the motion must be filed by the government within ten (10) days. At the subsequent hearing, each defendant, target, or potential government witness subject to or affected by joint representation must be in attendance. The court will deny joint representation where a conflict exists, even if consented to by a defendant, target, or potential government witness, if such representation would be contrary to the interest of justice in the case. The government, upon becoming aware of a potential conflict of interest in the representation of a criminal defendant, must promptly notify defendant's counsel of the potential conflict. If defendant's counsel does not respond and, if necessary, resolve the conflict after such notification, the government must file a motion to inform the court.

FED. R. CRIM. P. 45

TIME

No corresponding local rule; however, see DUCrimR 57-4 for time limitations and procedural interval processing of criminal cases.

DUCrimR 49-1 FILING OF PAPERS

The filing of pleadings and papers in criminal matters is governed by DUCivR 5-1(a) and (b).

DUCrimR 49-2 FILING CRIMINAL CASES AND DOCUMENTS UNDER COURT SEAL

(a) General Rule.

The records of the court are presumptively open to the public. The sealing of cases, pleadings, motions, memoranda, exhibits, and other documents or portions thereof

(hereinafter, "Documents") is generally discouraged. Unless restricted by statute, case law, court order, the Federal Rules of Criminal Procedure, or these local rules, the public shall have access to all Documents filed with the court and to all court proceedings. Counsel are encouraged to publicly file Documents and to redact personal identifiers, as set forth in Fed. R. Crim. P. 49.1, and confidential portions of a Document when they are not directly pertinent to the issues before the court.

(b) Filing of Cases Under Seal.

On request of the United States, made at the time a complaint or information is filed or a grand jury indictment is returned, the clerk will seal the case unless the court otherwise directs. Sealed criminal cases will be listed on the clerk's case index as ***U.S.A. vs. Sealed***. When the last criminal defendant appears in this district, the court will order that a sealed case be unsealed, unless a party establishes good cause for maintaining the seal and the court so orders.

(c) Filing of Documents Under Seal.

(1) Sealed Documents in *unsealed* cases must be electronically filed using the court's CM/ECF system. Documents filed in *sealed* cases must be filed conventionally with the clerk's office.[1]

(2) Documents filed under seal must state "Filed Under Seal" in the case caption.

(3) Documents containing sensitive, confidential, or personal information for or about a defendant or other individuals, grand jury matters, or Documents prepared for the court's use in plea or sentencing proceedings, may be sealed without a motion or prior approval from the court. Documents entered pursuant to this subsection shall remain sealed unless otherwise ordered by the court, pursuant to subsection (d) below.

(d) Unsealing of Cases or Documents.

On a motion of any party and a showing of good cause, or on the court's own initiative, the court may order that all or a portion of a Document, or a case, be unsealed after providing the parties with an opportunity to justify the continued sealing of the Document

[1] See the court's CM/ECF and E-Filing Administrative Procedures Manual for procedures regarding the electronic and conventional filing of sealed Documents.

or case. Written motions to unseal must be filed under seal and state the basis for the unsealing with specific factual support.

(e) Access to Sealed Case Dockets and Documents.

The clerk will not provide access to or information contained in case dockets or provide copies of sealed docket reports or Documents unless ordered by the court, or requested by the United States Marshal's Service, United States Probation, Bureau of Prisons, or the filing party.

DUCrimR 49.1 REDACTING PERSONAL IDENTIFIERS

(a) Redacting Personal Identifiers in Pleadings.

The filer shall redact personal information in filings with the court, as required by Fed. R. Crim. P. 49.1. The court may order redaction of additional personal identifiers by motion and order in a specific case or as to a specific document or documents.

(b) Redacting Personal Identifiers in Transcripts.

Attorneys are responsible to review transcripts for personal information which is required to be redacted under Fed. R. Crim. P 49.1 and provide notice to the court reporter of the redactions which must be made before the transcript becomes available through PACER. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

(1) opening and closing statements made on the party's behalf;

(2) statements of the party;

(3) the testimony of any witnesses called by the party; and

(4) any other portion of the transcript as ordered by the court.

Redaction responsibilities apply to the attorneys even if the requestor of the transcript is the court or a member of the public including the media.

(c) Procedure for Reviewing and Redacting Transcripts.

Upon notice of the filing of a transcript with the court, the attorneys shall within seven (7) business days review the transcript and, if necessary, file a Notice of Intent to Request Redaction of the Transcript. Within twenty-one (21) calendar days of the filing of the transcript the attorneys shall file a notice of redactions to be made. The redactions shall be made by the court reporter within thirty-one (31) calendar days of the filing of the

transcript and a redacted copy of the transcript promptly be filed with the clerk. Transcripts which do not require redactions and redacted transcripts shall be electronically available on PACER ninety (90) days after filing of the original transcript by the court reporter.

DUCrimR 53-1 COURTROOM PRACTICES AND PROTOCOL

The standards relating to attorney practices, protocol, and conduct when participating in civil proceedings are prescribed in DUCivR 43-1. The standards apply equally to all criminal proceedings in this district.

See DUCrimR 57-13 for cameras, recording devices, broadcasting, etc.

DUCrimR 55-1 ACCESS TO COURT RECORDS

Access to records related to criminal proceedings and maintained by the clerk is governed by DUCivR 79-1.

DUCrimR 56-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

For purposes of criminal matters, details regarding the office of record, U.S. Courts Library, days and hours of business are the same as those set forth in DUCivR 77-1.

DUCrimR 57-1 GENERAL FORMAT OF PAPERS

All papers in criminal matters submitted to the court must conform to the format requirements of DUCivR 10-1.

DUCrimR 57-2 ASSIGNMENT OF CRIMINAL CASES

Supervision of the random assignment of criminal cases to the judges of the court is the responsibility of the chief judge and will proceed as specified in DUCivR 83-2.

DUCrimR 57-3 ASSOCIATION AND FILING OF CRIMINAL CASES

(a) Pending Cases Involving Same Defendant.

Where there are two or more cases pending against the same defendant before two or more assigned judges, the United States, the defendant, or the court on its own motion, where appropriate, may move by written motion before either judge to assign the case to the judge with the low-number case.

(b) Filing of Information Related to New Charges Based on Plea Bargains.

When the United States, as part of a plea bargain, files an information against a defendant setting forth a charge unrelated in substance to a pending charge in a case before an assigned judge, the new information must be filed promptly with the clerk of court who will open a new criminal case and assign a judge pursuant to subsection (a) of this rule. Thereafter, the United States may make a motion for association or reassignment as set forth in section (c) of this rule.

(c) Filing Requirements.

A motion for association under Fed. R. Crim. P. 13, accompanied by a proposed order, may be filed in any one of the cases for which association is being proposed. A notice of filing the motion must be filed in each other case that the party seeks to have associated. Both the motion for association and the notice of filing must include the name and number of all cases for which association is being moved.

DUCrimR 57-4 CRIMINAL CASE PROCESSING

(a) General Authority.

Criminal cases will be processed in accordance with the requirements of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174, as amended, and the court's Revised Speedy Trial Plan.

(b) Arrest Date Information.

At the first court appearance of any person arrested for a federal offense not yet charged in an indictment or information, counsel for the United States will note for the record the date of the arrest. Such date will be recorded on the case docket and utilized by the clerk for initiating the Speedy Trial Act provisions with regard to time limitations and

procedural intervals under 18 U.S.C. § 3161 (b). The clerk also will initiate such tracking provisions in matters involving persons served with a criminal summons, utilizing the service date of the summons.

DUCrimR 57-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

The custody and disposal of criminal trial exhibits and the attendant responsibilities of counsel are governed by DUCivR 83-5(a)(1), (b), and (c).

DUCrimR 57-6 SPECIAL ORDERS IN WIDELY PUBLICIZED CRIMINAL MATTERS

In a criminal matter that is likely to be widely publicized, the court, during the investigation or at any other time, may issue an order governing extrajudicial statements by parties or witnesses which have a substantial likelihood of materially influencing a criminal proceeding or of preventing a fair trial or impeding the administration of justice. The court also may issue orders concerning the seating and conduct of spectators and news representatives, or the management and sequestration of jurors or witnesses, as the interests of justice may require.

DUCrimR 57-7 PUBLIC COMMUNICATIONS CONCERNING CRIMINAL MATTERS

(a) Statement of Policy.

A government or defense attorney or member of the same firm or office as the government or defense attorney may not disseminate by means of public communication, or means which could reasonably be anticipated to become public, any information, statement, or other matter which will have a substantial likelihood of preventing a fair trial or directly impeding the due administration of justice. Court supporting personnel, including marshals, deputy clerks, court reporters, probation officers, and their staffs or office personnel (whether employees or independent contractors) may not disclose to any person, without court authorization, any opinion or information relating to a pending investigation or prosecution that is not part of the public record, including information

concerning grand jury proceedings or hearings and argument held outside the presence of the public.

(b) Permissible Communications by Attorneys.

A government or defense attorney may:

(1) quote without comment from the public record;

(2) inform the public of the general scope of an investigation or prosecution (including the name of the victim if not prohibited by law);

(3) warn the public of danger;

(4) solicit the help of the public in apprehending a suspect or fugitive or in procuring evidence;

(5) identify an accused by name, age, residence, occupation, and family status;

(6) announce the circumstances of arrest (including time, place, resistance, pursuit, use of weapons, arresting officer, length of investigation) and the seizure of physical evidence (including description of objects seized); and

(7) note the accused's denial of the charges and the accused's intent to seek an acquittal.

(c) Impermissible Communications by Attorneys.

(1) A government attorney must make no reference to an accused's prior criminal record, except to the extent that it may be relevant to an explanation of the charges, confessions, or results of tests, or disclose any proposed evidence which the attorney knows or should know would not be admissible at trial, or render an opinion prior to or during trial as to the attorney's personal belief of the accused's guilt or innocence.

(2) A defense attorney must not (i) render any personal belief or opinion prior to or during trial as to accused's guilt or innocence, (ii) make any statement attributing the commission of the crime charged to a specific person other than the defendant, or (iii) disclose evidence that the attorney knows or should know would not be admissible at trial, which evidence could materially affect the fairness of the proceedings.

(d) Sanctions for Rule Violation.

Any attorney who violates the provisions of sections (a) or (c) of this rule will be subject to such sanctions as the court deems just and proper. Such discipline may be entered by the court sua sponte or upon motion of a party.

DUCrimR 57-8 COMMUNICATION WITH JURORS

Communications with jurors before, during, and after criminal trials are governed by DUCivR 47-2.

DUCrimR 57-9 MOTIONS FOR POST-CONVICTION RELIEF

(a) Form of Motion.

All motions for post-conviction relief under 28 U.S.C. § 2255 by a person in federal custody must be in writing and in substantially the standard form prescribed by the Rules Governing Section 2255 Proceedings for the United States District Courts, as set forth following 28 U.S.C. § 2255.

(b) Duties of the Clerk.

The clerk of court will make blank forms available upon request and without charge. Upon receiving any motion which does not substantially comply with the prescribed form, the clerk will file the motion but notify the applicant of the requirements of this rule and provide to the applicant the correct form with instructions to complete and return it to the court.

(c) Service Upon the Government.

All motions filed under this rule must state with particularity the reasons for the post-conviction relief. A copy of the motion must be served upon the United States attorney's office. The district judge or magistrate judge will review the petition under Rule 4, Rules Governing Section 2255 Proceedings. If the motion warrants a response, an order will be made requiring the United States attorney to respond to the motion and a time for reply will be set. The order may direct the United States attorney to present appropriate documentation or information on the motion.

(d) Assignment of Motion to Appropriate District Judge.

The clerk of court, upon receipt of any motion filed under this rule, will notify the district judge who originally sentenced the applicant or, if that judge is unavailable, the clerk will so notify the judge otherwise assigned to the case.

(e) Discretionary Assignment of Motion to Magistrate Judge.

The court may refer the motion to a magistrate judge for investigation, recommendation, or final determination.

(f) Discretionary Hearing.

Unless otherwise ordered by the court upon motion by the applicant, no oral submission or hearing will be held upon the motion.

(g) Authority for Proceedings.

The proceedings on a motion under 28 U.S.C. § 2255 will be processed in conformity with statute and the Rules Governing Section 2255. The motion must state all bases for relief. Successive petitions may be denied under Rule 9, Rules Governing Section 2255 Proceedings.

DUCrimR 57-10 RELIEF FROM STATE DETAINER

No petition lodged or filed by a prisoner under the provisions of the Interstate Agreement on Detainers (18 U.S.C., Appendix III) for relief of any sort from the effect of a state detainer will be entertained unless (i) the petitioner, at least 180 days prior to the date of lodging or filing a petition, transmits, through the warden or other official having petitioner's custody, to the prosecuting officer of the jurisdiction in which the case giving rise to the detainer is pending, and to the appropriate court, a written notice of the place of imprisonment and the petitioner's request for a final disposition of the indictment, information, or complaint upon which the detainer is based; and (ii) the petitioner has not been brought to trial on such indictment, information, or complaint.

DUCrimR 57-11 STIPULATIONS

No stipulation between the parties modifying a prior order of the court or affecting the course of conduct of any criminal proceeding will be effective until approved by the court.

DUCrimR 57-12 ATTORNEYS

All procedural matters relating to attorney admissions, registration, appearance and withdrawal, discipline and removal, and student practice in criminal matters are governed by the applicable civil rules, DUCivR 83-1.1 - 83-1.6.

DUCrimR 57-13 CAMERAS, RECORDING DEVICES, AND BROADCASTS

The use of cameras, recording devices, and broadcasts in criminal matters is governed by DUCivR 83-3.

DUCrimR 57-14 COURT SECURITY

Matters regarding court security during all criminal proceedings and otherwise are governed by DUCivR 83-4.

DUCrimR 57-15 MAGISTRATE JUDGE AUTHORITY IN CRIMINAL CASES

(a) General Authority.

Unless otherwise ordered by the court, magistrate judges are authorized to:

(1) accept criminal complaints, determine whether probable cause exists, and issue arrest warrants, summons, and search warrants, including those based on oral or telephonic testimony;

(2) administer oaths and affirmations; take acknowledgments, affidavits, and depositions;

(3) conduct initial appearance proceedings, inform defendants of their rights, set bail, enter orders of detention, and impose conditions of release;

(4) dismiss complaints in criminal proceedings prior to indictment or information upon motion of the United States attorney;

(5) appoint counsel for indigent defendants,

(6) conduct detention and pretrial release revocation hearings;

(7) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, and other orders necessary to secure the presence of parties, witnesses or evidence for court proceedings;

(8) order the forfeiture or exoneration of bonds;

(9) issue warrants of removal;

(10) conduct hearings under Fed. R. Crim. P. 20;

(11) conduct full preliminary examinations;

(12) set bail and appoint counsel if appropriate, for material witnesses;

(13) issue orders (i) authorizing the installation of devices such as traps/traces and pen registers, and (ii) directing a communication common carrier, as defined in 47 U.S.C. § 153(h) including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers;

(14) receive grand jury returns and pretrial release violation petitions and authorize the issuance of arrest warrants or summons thereupon; and

(15) take a plea of guilty on (i) appropriate reference from the district judge assigned to the case, and (ii) the consent of the parties.

(b) Criminal Pretrial Authority.

After an indictment or felony information has been filed and assigned to a district judge under DUCrimR 57-2, magistrate judges are authorized to:

(1) conduct arraignments;

(2) accept or enter not guilty pleas;

(3) order presentence reports;

(4) hear and rule on motions to modify bail and/or conditions of release; and,

(5) conduct scheduling hearings pursuant to Fed. R. Crim. P. 17.1.

(c) Authority to Conduct Hearings, Prepare Report and Recommendations, and Determine Preliminary Matters.

Upon entry by a district judge of an order of reference under 28 U.S.C. § 636(b)(1)(A), magistrate judges are authorized to determine nondispositive pretrial matters, manage the discovery process, and rule on motions by attorneys appointed under the Criminal Justice Act for services under that act including appointment of experts and investigators. Upon

entry by a district judge of an order of reference under 28 U.S.C. § 636(b)(1)(B), magistrate judges are authorized to (i) hear motions to dismiss or quash an indictment and motions to suppress evidence, and (ii) submit to the assigned district judge a report with proposed findings of fact and recommendations.

(d) Criminal Trial Authority.

Magistrate judges are authorized (i) to try persons accused of and (ii) to sentence persons convicted of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401 and as otherwise provided by statute.

(e) Extradition Proceedings.

Unless otherwise ordered by a judge of this court, when a foreign government requests the arrest of a fugitive pursuant to a treaty or convention for extradition between the United States and the requesting country and on the basis of a complaint under oath, a magistrate judge of this court is authorized to issue warrants and conduct extradition proceedings in accordance with the provisions set forth in 18 U.S.C. § 3184.

(f) Specialized Courts.

Upon entry by a district court of an order of reference or consistent with a sentencing order, a magistrate judge is authorized to preside over matters in a specialized court. Specialized courts may address issues confronting offenders as they return to their communities including overseeing services providing diagnostic and risk assessment, education and job training, substance abuse and mental health treatment and mentoring.

DUCrimR 57-16 REVIEW OF MAGISTRATE JUDGE ORDERS

(a) Preliminary Criminal Matters.

(1) Release and Detention Orders. Any party is entitled to seek review of a magistrate judge's order releasing or detaining a defendant under 18 U.S.C. § 3142 et seq. The motion will be a timely scheduled de novo review by the assigned district judge. Where no judge has been assigned, the clerk will assign the motion under DUCrimR 57-2.

(2) Other Orders and Rulings. Reviews of magistrate judge rulings on criminal motions will be conducted in the same manner as reviews of magistrate judge rulings on civil motions.

(b) Stays of Magistrate Judge Orders.

Pending review of objections, motions for stay of magistrate judge orders initially must be addressed to the magistrate judge.

(c) Final Judgments.

The appeal of final judgments issued by magistrate judges in misdemeanors and petty offenses is governed by DUCrimR 58-1.

DUCrimR 58-1 APPEALS FROM MAGISTRATE JUDGE DECISIONS IN MISDEMEANORS AND PETTY OFFENSE CASES

(a) Time Frames, Filing, and Service Requirements.

(1) Notices of appeal on decisions of the magistrate judge must be filed with the clerk of court within fourteen (14) days after judgment and/or decision. An interlocutory appeal may be taken under Fed. R. Crim. P. 58(g)(2)(A).

(2) The appellant's brief is due within fourteen (14) days after the filing of the notice of appeal. The original must be filed with the clerk of court and a copy served on opposing counsel.

(3) The appellee's brief is due within fourteen (14) days after service of appellant's brief. The original must be filed with the clerk of court and a copy served on opposing counsel.

(4) The appellant may file a reply brief within seven (7) days after service of appellee's brief.

(b) Page Limitations.

Briefs on appeal must not exceed twenty (20) pages except with permission of the court. Appellant reply briefs must not exceed ten (10) pages except with permission of the court.

(c) Action by the Court.

All appeals from magistrate judge decisions will be decided by the court without a hearing, unless otherwise ordered by the court on its own motion or, at its discretion, upon written request of appellant.

DUCrimR 59-1 EFFECTIVE DATE

These rules are effective December 1, 2018.