

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF UTAH**



**LOCAL RULES OF
CRIMINAL PRACTICE**

DECEMBER 2018

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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.

(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.