

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



Local Rules of Criminal Practice

DECEMBER 2021

LOCAL CRIMINAL RULES

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DUCrimR 1-1 SCOPE; AVAILABILITY; NOTICE OF RULE CHANGES; EFFECT ON PENDING CASES

(a) Scope.

These rules apply in all criminal proceedings conducted in the District of Utah.

(b) Availability.

DUCivR 1-1(a) governs access to copies of these rules.

(c) Notice and Public Comment.

DUCivR 1-1(b) governs the court's process for a public comment period on proposed substantive rule changes and providing notice of adopted changes.

(d) Effect on Pending Cases.

DUCivR 81-1(b) governs the effect of rule changes on pending proceedings.

DUCrimR 1-2 SANCTIONS FOR CRIMINAL RULE VIOLATIONS

On a party's motion or on its own, the court may impose sanctions against an attorney, a party, or both for violating these rules. Sanctions include costs, reasonable attorney's fees, a fine, a combination of these, or any other sanction the court deems appropriate.

DUCrimR 5-1 [RESERVED]

DUCrimR 5-2 PRETRIAL SERVICES REPORT

(a) Requesting a Report.

When the United States requests the detention of a defendant, the magistrate judge will request a pretrial services report on the defendant under 18 U.S.C. § 3154.

(b) Contents of Pretrial Services Report.

The court directs that a Pretrial Services Report must address rebuttable presumptions and potential penalties.

(c) Filing and Distribution of Pretrial Services Reports.

Before the defendant's first court appearance, the United States Probation Office (USPO) must, when possible, file under seal a written pretrial services report in the court's CM/ECF system. USPO must also email the report simultaneously to the prosecutor and defense counsel who will appear at the hearing in which the report will be considered. Before the hearing, defense counsel may discuss and review the report with the defendant.

(d) Confidentiality and Disposal of Pretrial Services Reports.

Pretrial services reports are confidential, subject to the limitations and exceptions of 18 U.S.C. § 3153(c). Within 7 days after the initial detention hearing, the prosecutor and defense counsel must destroy their copies of the report, except that they may retain the criminal history portion of the report and permit staff and the defendant to review that portion for purposes of guideline calculations. They must not, however, disclose the report to any other person without a court order.

DUCrimR 11-1 PLEA AGREEMENT

(a) Plea Agreement.

In addition to the requirements of Fed. R. Crim. P. 11, a plea agreement in a felony case must be in writing and signed by the government, defense counsel, and the defendant. The plea agreement must be accompanied by a written stipulation of facts relevant to a plea of guilty.

(b) Cooperation Agreement.

A cooperation agreement must be in writing and signed by the government, defense counsel, and the defendant. The government will retain the agreement.

DUCrimR 12-1 PRETRIAL MOTIONS

(a) Motion and Supporting Memorandum.

(1) Motion and Memorandum. The motion and supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:

- (A) an initial section succinctly stating 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) Page Limits. There are no page limits for motions and memoranda.

(b) Response.

A response memorandum must be filed within 14 days after service of the motion. There are no page limits for a response.

(c) Reply.

A reply memorandum may be filed at the discretion of the movant within 7 days after service of the memorandum opposing the motion. A reply memorandum

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 2 or more cases pending against the same defendant before 2 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 section 57-3(a). Thereafter, the United States may make a motion for association or reassignment as set forth in section 57-3(c).

(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 57-7 (a) or (c) 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 DETAINDER

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 through 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) Authority in Preliminary Matters.

In addition to the duties authorized by statute and the Federal Rules of Criminal Procedure, and unless otherwise ordered by the court, magistrate judges are authorized to:

- (1) administer oaths and affirmations;

- (2) take acknowledgments, affidavits, and depositions;
- (3) upon motion of the United States Attorney, dismiss complaints in criminal proceedings before indictment or the filing of an information;
- (4) conduct detention hearings;
- (5) 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;
- (6) order the forfeiture or exoneration of bonds;
- (7) issue warrants of removal;
- (8) conduct hearings under Fed. R. Crim. P. 5, 5.1, and 20;
- (9) set bail and appoint counsel, if appropriate, for material witnesses;
- (10) issue the following investigative orders:
 - (A) authorizing the installation of devices (for example, a trap and trace device or a pen register);
 - (B) 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 a trap and trace device or a pen register; and
 - (C) directing a communication common carrier not to disclose the existence of a summons or subpoena in a criminal or preliminary matter;
- (11) issue pre-indictment protective orders; and
- (12) receive grand jury returns and conduct naturalization ceremonies.

(b) Authority in Pretrial Matters.

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 and initial appearances;

- (2) accept pleas of not guilty;
- (3) order presentence reports;
- (4) hear and rule on motions to modify bail and motions to modify conditions of release;
- (5) hear pretrial release and supervision violation petitions, authorize the issuance of arrest warrants or summonses, and conduct pretrial release revocation hearings;
- (6) conduct scheduling hearings under Fed. R. Crim. P. 17.1; and
- (7) accept a plea of guilty after receiving:
 - (A) an order of reference from the assigned district judge; and
 - (B) written consent of the parties.

(c) Authority Under Orders of Reference.

- (1) After a district judge enters 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.
- (2) After a district judge enters an order of reference under 28 U.S.C. § 636(b)(1)(B), magistrate judges are authorized to:
 - (A) hear motions to dismiss or quash an indictment and motions to suppress evidence; and
 - (B) file a Report and Recommendation.

(d) Authority in Misdemeanor Criminal Trials.

Magistrate judges may preside over the trial of persons accused of committing misdemeanors within this district under 18 U.S.C. § 3401 and as otherwise provided by statute. Magistrate judges may sentence persons convicted of misdemeanors.

(e) Authority in Extradition Proceedings.

Unless a district judge orders otherwise, magistrate judges are authorized to issue warrants and conduct extradition proceedings in accordance with 18 U.S.C. § 3184.

(f) Authority in Specialized Courts.

After a district judge enters an order of reference, or consistent with a sentencing order, a magistrate judge may preside over specialized court proceedings. In specialized courts, magistrate judges may address issues confronting offenders as they return to their communities, including overseeing services that provide diagnostic and risk assessments, education and job training, substance abuse treatment, 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 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 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 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 7 days after service of appellee's brief.

(b) Page Limitations.

Briefs on appeal must not exceed 20 pages except with permission of the court. Appellant reply briefs must not exceed 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 OF RULES

These rules are effective December 1, 2021.