UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF UTAH

Local Rules of Criminal Practice

DECEMBER 2022

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

must be limited to rebuttal of matters raised in the memorandum opposing the motion. There are no page limitations for a reply memorandum.

(d) Supplemental Authority.

When pertinent and significant authority comes to the attention of a party before the court has entered a decision on the motion, the party may promptly file a Notice of Supplemental Authority, which may not exceed 2 pages.

(1) The notice must contain, without argument, the following:

(A) a reference either to the page of the memorandum or to a point argued orally to which the supplemental authority pertains; and

(B) the reasons why the supplemental authority is relevant.

(2) The court may decide a motion without waiting for a response to the notice. If the court has not ruled on the motion, a party may file a response, which may not exceed 2 pages, within 7 days after service of the notice.

(e) Unpublished Decisions.

The citation of unpublished decisions is governed by DUCivR 7-2.

(f) Limited Statement of Facts and Legal Authority.

No statement of facts and legal authority beyond the concise statement of the relief requested and the grounds for the relief is required for the following motions:

(1) 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;

(2) to continue a hearing; and

(3) to suppress evidence, unless otherwise directed by the court.

(g) Failure to Comply.

Failure to comply with the requirements of this rule may result in sanctions that may include terminating the motion and directing counsel to refile it in accordance with the rule, denial of the motion, or other sanctions the court deems appropriate.

(h) Failure to Respond.

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

(i) Hearings.

The court may, on its own or on a party's request, schedule a hearing on the motion. Otherwise, the court will decide the motion based on the written memoranda.

(j) Motion to Suppress Evidence Requiring an Evidentiary Hearing.

(1) Unless the court orders otherwise, a motion to suppress evidence must concisely state, without an accompanying legal brief, the following:

(A) the basis for standing;

(B) the evidence for which suppression is sought; and

(C) the legal grounds for the motion.

(2) Unless the court orders otherwise, a response by the government is not required before the evidentiary hearing.

(3) At the conclusion of the evidentiary hearing, the court will provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(k) Proposed Order.

The court may request that a party prepare a proposed order. Unless the court orders otherwise, the proposed order should be emailed in editable format (e.g.,

WordPerfect or MS Word) to the chambers email address of the judge deciding the motion.

(l) Motions to Continue Under the Speedy Trial Act.

(1) A motion to continue under the Speedy Trial Act must state:

(A) the event and date that activated the time limits of the Speedy Trial Act;

(B) the current trial date;

(C) whether previous motions for continuance have been made and when, and the disposition of those motions;

(D) whether the delay resulting from the requested continuance is excludable under the Speedy Trial Act, including citation to the specific statutory provision(s);

(E) the specific reasons, supported by facts, for the continuance and the why the act or event cannot be completed or occur within the time originally allotted. Specifically, if the motions seeks:

(i) an ends-of-justice continuance under 18 U.S.C. § 3161(h)(7)(A), the motion must address all relevant factors under 18 U.S.C. § 3161(h)(7)(B) and include an explanation of how those factors justify a continuance.

(ii) a continuance under 18 U.S.C. § 3161(h)(7)(B)(ii) because of the complexity of the case, including voluminous discovery, the motion must include specific facts explaining the complexity.

(iii) a continuance under 18 U.S.C. § 3161(h)(7)(B)(iv) to effectively prepare for trial, counsel must provide sufficient facts to allow the court to determine whether counsel has exercised due diligence, including a summary of what steps

counsel has taken to prepare for trial and what preparations remain, consistent with counsel's obligation to protect privileges and trial strategy.

(iv) a continuance because other litigation presents a scheduling conflict, the motion must:

(a) identify the case name, number and court;

(b) list the date(s) of the scheduling conflict and identify the conflicting event(s);

(c) explain why those conflicts preclude counsel from adequately preparing for the trial;

(d) explain why another attorney cannot handle the trial or the conflicting event(s); and

(e) include any other relevant circumstances.

(v) a continuance because of a personal hardship for counsel or the client, the motion must include specific facts regarding the nature of that hardship and when the hardship might be resolved. The movant may file the motion under seal under DUCrimR 49-2.

(F) the period of continuance, the facts that justify the length of the continuance, and other relief requested;

(G) whether the defendant has been notified of the requested continuance;

(H) whether opposing counsel agrees with or objects to the requested continuance; and

(I) the impact, if any, of the continuance on other scheduled deadlines.

(2) The motion must be accompanied by a proposed order. A form motion and a proposed order can be found on the court's website. The proposed

order, which must not differ in any respect from the relief requested in the motion, must state the following:

(A) the deadline(s) being extended;

(B) the proposed new deadline(s); and

(C) the findings required under the Speedy Trial Act.

DUCrimR 16-1 DISCOVERY

(a) Discovery Motion Practice.

The parties must make reasonable efforts to agree to a pretrial exchange of discovery before seeking court assistance.

(b) Electronically Stored Information (ESI).

General Order No. 22-003 establishes guidelines for the production of discoverable ESI in criminal proceedings.

(c) Expert Disclosure Deadline.

Unless the court orders otherwise, the parties must disclose experts related to their case in chief 30 days before the final pretrial conference by filing a notice of intent to use an expert.

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

A defendant's ex parte motion for a subpoena under Fed. R. Crim. P. 17(b) must be filed under seal. The Clerk's Office must also file the related order under seal and send a copy to the moving party.

DUCrimR 17-2 MOTION FOR SUBPOENA FOR DOCUMENTS AND OBJECTS

(a) A party who seeks documents or objects from a witness, regardless of whether the party has retained or appointed counsel or is self-represented, must file a motion for a subpoena under Fed. R. Crim. P. 17(c). A party may file the motion ex parte and under seal, in which case, the docket entry will identify the motion as SEALED EX PARTE MOTION.

(b) The motion must include:

(1) a description of the specific material requested;

(2) an explanation of the following—

(A) the likelihood of admissibility of the material requested;

(B) why the material is unavailable through other means; and

(C) why the matter cannot be adequately prepared without the material;

(3) one of the following representations—

(A) the subpoena does not seek a victim's personal or confidential information;

(B) the movant does not know whether the subpoena seeks a victim's personal or confidential information; or

(C) the subpoena expressly seeks a victim's personal or confidential information; and

(4) a copy of the proposed subpoena attached as an exhibit.

(c) If the court concludes that a subpoena should issue that expressly seeks a victim's personal or confidential information, the following steps will be taken, absent exceptional circumstances:

(1) the court will enter an order directing the Clerk's Office to provide the contact information of the victim or the victim's legal representative to the movant;

(2) the movant must serve the victim or the victim's legal representative, under Fed. R. Crim. P. 49, with a written notice that includes the following—

(A) a copy of the proposed subpoena;

(B) a statement that the victim has the right to file a sealed motion to quash or modify or otherwise object to the subpoena within 14 days after service of the notice;

(C) a copy of DUCrimR 17-2; and

(D) a copy of Fed. R. Crim. P. 17;

(3) if a motion or objection is filed within 14 days after service, the subpoena will not issue until further order of the court;

(4) if a motion or objection is not filed within 14 days after service, the movant must file a sealed ex parte certificate of compliance with DUCrimR 17-2(c)(2) and request that the court grant the motion and direct the Clerk's Office to issue the subpoena; and

(5) the Clerk's Office will issue the subpoena to the movant for service.

DUCrimR 20-1 TRANSFER FOR PLEA AND SENTENCE

(a) Case Assignment.

If a case is transferred to the District of Utah under Fed. R. Crim. P. 20(a) and the defendant has a case pending in this district, then the transferred case will be assigned to the judge presiding over the pending case. Otherwise, the Clerk's Office will randomly assign the case.

(b) Scheduling.

The government must contact the court to schedule further proceedings in the transferred case.

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 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 41-1 SEALING OF FED. R. CRIM. P. 41 CASES AND DOCUMENTS

(a) Motions to Seal.

Fed. R. Crim. P. 41 documents must be presented to a magistrate judge. These documents and the associated magistrate judge case will be public at the time of filing unless an order to seal has been entered. Any motion to seal must specify the:

(1) documents to be sealed, including the return;

(2) grounds in support of the seal; and

(3) the term of seal, which will be no more than 1 year unless the court orders otherwise.

(b) Motion to Extend the Seal.

A motion to extend the seal and proposed order must be presented to a magistrate judge at least 10 days before the expiration of the seal.

(c) Redacted Copy.

At least 10 days before the seal expires, the government must provide to the Clerk's Office a redacted copy of the Fed. R. Crim. P. 41 document as required by Fed. R. Crim. P. 49.1. The redacted copy will be added to the docket and the case and redacted documents will become available to the public at the time the seal expires. The unredacted copy of the Fed. R. Crim. P. 41 document will remain under seal.

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 the Criminal Justice Act (CJA);

(4) who is in custody as a material witness as defined in 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 CJA, 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 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.

DUCrimR 49-1 FILING OF PAPERS

DUCivR 5-1 governs the filing of pleadings and papers in criminal matters.

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 (Documents) is generally discouraged. Unless restricted by statute, case law, court order, the Federal Rules of Criminal Procedure, or these local rules, the public will 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 must remain sealed unless otherwise ordered by the court, pursuant to section 49-2(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

[1] See the court's ECF Procedures Manual for procedures regarding the electronic and conventional filing of sealed Documents.

sealing of the Document 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 49.1-1 REDACTION OF PERSONAL IDENTIFIERS

(a) Redacting Personal Identifiers in Court Filings.

(1) A party must redact the personal identifiers listed in Fed. R. Crim. P. 49.1 in every court filing made by that party.

(2) When a motion to unseal is filed and granted or a seal is set to expire, at least 10 days before the seal expires, the filing party must provide to the Clerk's Office a copy of the document that redacts the personal identifiers listed in Fed. R. Crim. P. 49.1. The redacted copy will be added to the docket and become available to the public at the time the seal expires.

(b) Reviewing Transcripts to Redact Personal Identifiers.

(1) Within 14 days after receiving notice that a court reporter has filed an original transcript, each party must review the entire transcript for personal identifiers, including the following sections:

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

(B) statements of the party;

(C) the testimony of any witnesses called by the party;

(D) sentencing proceedings; and

(E) any other portion of the transcript if ordered by the court.

(2) If no redactions are necessary, no action is needed, and the transcript will be electronically available on PACER 90 days after a court reporter files the original transcript.

(c) Procedure for Redacting Transcripts.

If redaction is required:

(1) within 21 days after receiving notice that a transcript has been filed, a party must file a Notice of Intent to Request Redaction;

(2) within 42 days after receiving notice that a transcript has been filed, a party must file a Redaction Request, specifically identifying the page and line number and the specific redaction requested; and

(3) within 63 days after filing the transcript, a court reporter must make the requested redactions and file the redacted transcript.

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 Electronic Devices and Broadcasts

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 57-1 FORMAT OF DOCUMENTS

DUCivR 10-1 governs the formatting of documents filed in criminal cases.

DUCrimR 57-2 ASSIGNMENT OF CRIMINAL CASES

The Chief Judge oversees the assignment of criminal cases under 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 [RESERVED]

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 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 COURT APPROVAL OF STIPULATIONS

The court must approve any stipulation that modifies a court order.

DUCrimR 57-12 REGULATION OF ATTORNEYS

DUCivR 83-1.1 through 83-1.6 govern attorney admission, registration, appearance, substitution and withdrawal, discipline and removal, and student practice in criminal cases.

DUCrimR 57-13 ELECTRONIC DEVICES AND BROADCASTS

DUCivR 83-3 governs the use of electronic devices in and broadcasts of criminal cases.

DUCrimR 57-14 [RESERVED]

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, 2022.