

## **XI. CRIMINAL PROCEDURE**

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### **1.1 Scope of the Rules**

These are the Local Rules of Practice for Criminal Cases in the United States District Court for the Northern District of New York. They shall be cited as “**L. R. Cr. P. \_\_\_\_.**”

### **1.2 Electronic Case Filing**

All criminal cases filed in this Court may be assigned to the Electronic Case Files System

in accordance with the [General Order # 22](#), the provisions of which are incorporated herein by reference, and which the Court may amend from time to time.

### **1.3 Personal Privacy Protection**

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all filings with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court orders otherwise.

1. **Social security numbers.** If an individual's social security number must be included in a document, use only the last four digits of that number.
2. **Names of minor children.** If the involvement of a minor child must be mentioned, use only the initials of that child.
3. **Dates of birth.** If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers.** If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses.** If a home address must be used, use only the City and State.

In addition, caution shall be exercised when filing documents that contain the following:

1. personal identifying number, such as a driver's license number;
2. medical records, treatment and diagnosis;
3. employment history;
4. individual financial information; and
5. proprietary or trade secret information.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

- a. file an unredacted version of the document under seal, or
- b. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The Court will construe all references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The party must file the reference list under seal and may amend as of right.

The Court strongly urges counsel to discuss this issue with all their clients so that they can make an informed decision about the inclusion of certain information. The responsibility for redacting these personal identifiers **rests solely with counsel and the parties**. The Clerk will not review each filing for compliance with this Rule. The Court cautions counsel and the parties that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

**Exception:** Transcripts of the administrative record in social security proceedings and

state- court records relating to a habeas corpus petitions are exempt from this requirement.

## **2.1 THROUGH 4.1**

[Reserved]

### **5.1 Notice of Arrest**

**(a) Notice of Arrest of Parole, Special Parole, Mandatory Release or Military Parole Violators.** As soon as practicable after taking into custody any person charged with a violation of parole, special parole, mandatory release, or military parole, the United States Marshal shall give written notice to the Chief Probation Officer of the date of the arrest and the place of confinement of the alleged violator.

**(b) Notice of Arrest of Probation or Supervised Release Violators.** As soon as practicable after taking into custody any person charged with a violation of probation or supervised release, the United States Marshal shall give written notice to the Chief Probation Officer, the United States Attorney, and the Magistrate Judge assigned to the case.

**(c) Notice of Arrest by Federal Agencies and Others.** It shall be the duty of the United States Marshal to require all federal agencies and others who arrest or hold any person as a federal prisoner in this District, and all jailers who incarcerate any such person in any jail or place of confinement in this District, to give the United States Marshal notice of the arrest or incarceration promptly.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the District, the United States Marshal shall give written notice to the Magistrate Judge at the office closest to the place of confinement and to the United States Attorney and the pretrial services officer of the date of arrest and the prisoner's place of confinement.

### **5.1.1 THROUGH 10.1**

[Reserved]

### **11.1 Pleas**

**(a)** In all cases in which a presentence report is required, the Court will defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B) and its decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and 11(e)(1)(C) until there has been an opportunity to consider the presentence report, unless the Court states otherwise.

**(b)** An attorney for a defendant indicating a desire to change a previously entered “not guilty” plea shall give notice to the United States Attorney and the assigned judge as soon

as practicable and, if possible, at least twenty-four (24) hours prior to the commencement of the trial.

(c) For any plea agreement that is to be sealed, the United States Attorney shall provide the Court with a proposed sealing order.

### **12.1 Motions and Other Papers** (Amended January 1, 2017)

(a) The moving party must file all motion papers with the Court and serve them upon the other parties no less than **THIRTY-ONE CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date that the moving party selected. The moving party must specifically articulate the relief requested and must set forth a factual basis which, if proven true, would entitle the moving party to the requested relief. The opposing party must file opposing papers with the Court and serve them upon the other parties not less than **SEVENTEEN CALENDAR DAYS** prior to the return date of the motion. For non-dispositive motions, the moving party may file reply papers only with leave of Court, upon a showing of necessity. Permission to file a reply does not exist where CM/ECF automatically generates a deadline for a reply on a non-dispositive motion. However, such permission does exist where the Court sets a reply date through a text order. For dispositive motions, permission to file a reply is granted where CM/ECF automatically generates a deadline for a reply. Reply briefs, if allowed, must be filed and served not less than **ELEVEN CALENDAR DAYS** prior to the return date of the motion.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless the assigned judge specifically requests that they do so.

In addition, no party shall file or serve a memorandum of law which exceeds twenty-five (25) pages in length, unless the party obtains permission from the Court to do so prior to filing. All memoranda of law exceeding five (5) pages shall contain a table of contents and, wherever possible, parallel citations. A separate memorandum of law is unnecessary when the case law may be concisely cited (i.e., several paragraphs) in the body of the motion.

(b) The Court shall not hear a motion to compel discovery unless the attorney for the moving party files with the Court, simultaneously with the filing of the moving papers, a notice stating that the moving party has conferred and discussed in detail with the opposing party the issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution.

(c) All motions and other papers filed in a criminal action or proceeding shall show on the first page beneath the file number which, if any, of the speedy trial exclusions under 18 U.S.C. § 3161 are applicable to the action sought or opposed by the motion or other paper and the amount of resulting excludable time.

(d) Adjournment of motions shall be in the Court's discretion. Any party seeking an adjournment from the Court shall first contact the opposing attorney. A party shall make any application for an adjournment of a motion in writing and shall set forth the reason for requesting the adjournment.

(e) If the parties agree that a suppression hearing is necessary and the papers conform to the requirements of [L.R. Cr. P. 12.1\(a\)](#), the Court will set the matter for a hearing. If the government contests whether the Court should conduct a hearing, the defendant must accompany the motion with an affidavit, based upon personal knowledge, setting forth facts which, if proven true, would entitle the defendant to relief.

(f) An affidavit of counsel is not required when filing motions in criminal cases. A certificate of service is required at the conclusion of the motion.

(g) All papers filed in criminal cases shall comply with the guidelines established in [L.R. Cr. P. 1.3](#) regarding personal privacy protection.

### **13.1 Sealed Matters**

The Court may seal cases in their entirety, or only as to certain parties or documents, when the cases are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the Court should seal the document, party or entire case, together with a proposed order for the assigned judge's approval. The proposed order shall include language in the "ORDERED" paragraph stating which document(s) are to be sealed and should include the phrase "including this sealing order." Upon the assigned judge's approval of the proposed sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the proposed order. Once the Court orders a document or a case sealed, it shall remain under seal until the Court enters a subsequent order, upon its own motion or in response to the motion of a party, directing that the Clerk unseal the document or case.

### **14.1 Discovery**

(a) It is the Court's policy to rely on the discovery procedure as set forth in this Rule as the sole means for the exchange of discovery in criminal actions except in extraordinary circumstances. This Rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, while at the same time eliminating the practice of routinely filing perfunctory and duplicative discovery motions.

(b) Fourteen (14) days after arraignment, or on a date that the Court otherwise sets for good cause shown, the government shall make available for inspection and copying to the defendant the following:

1. **Fed. R. Crim. P. 16(a) & Fed. R. Crim. P. 12(d) information.** All discoverable information within the scope of Fed. R. Crim. P 16(a), together with a notice pursuant to Fed. R. Crim. P. 12(d) of the government's intent to use this evidence, in order to afford the defendant an opportunity to file motions to suppress evidence.
2. **Brady Material.** All information and material that the government knows may

be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963).

3. **Federal Rule of Evidence 404(b).** The government shall advise the defendant of its intention to introduce evidence in its case in chief at trial, pursuant to Rule 404(b) of the Federal Rules of Evidence. This requirement shall replace the defendant's duty to demand such notice.

(c) Unless a defendant, in writing, affirmatively refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), the defendant shall make available to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b) within twenty-one (21) days of arraignment.

(d) No less than fourteen (14) days prior to the start of jury selection, or on a date the Court sets otherwise for good cause shown, the government shall tender to the defendant the following:

1. **Giglio Material.** The existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972).
2. **Testifying Informant's Convictions.** A record of prior convictions of any alleged informant who will testify for the government at trial.

(e) The government shall anticipate the need for, and arrange for the transcription of, the grand jury testimony of all witnesses who will testify in the government's case in chief, if subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500. The Court requests that the government, and where applicable, the defendant, make materials and statements subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500 available to the other party at a time earlier than rule or law requires to avoid undue delay at trial or hearings.

(f) It shall be the duty of counsel for all parties immediately to reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of this Rule, and there is a continuing duty upon each attorney to disclose expeditiously. The government shall advise all government agents and officers involved in the action to preserve all rough notes.

(g) No attorney shall file a discovery motion without first conferring with opposing counsel, and the Court will not consider a motion unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. The parties shall not file any discovery motions for information or material within the scope of this Rule unless it is a motion to compel, a motion for protective order or a motion for an order modifying discovery. See Fed. R. Crim. P. 16(d). Discovery requests made pursuant to Fed. R. Crim. P. 16 and this Rule require no action on the part of the Court and should not be filed with the Court unless the party

making the request desires to preserve the discovery matter for appeal.

## **15.1 THROUGH 16.1**

[Reserved]

### **17.1 Subpoenas**

**(a) Production Before Trial.** Except on order of a judge, no subpoena for production of documents or objects shall be sought or issued if the subpoena requests production before trial. See Fed. R. Crim. P. 17(c).

**(b) Depositions.** Except on order of a judge, no subpoena for a deposition shall be sought or issued. See Fed. R. Crim. P. 15; 17(f).

#### **(c) Subpoenas Requested by Attorneys Appointed Under the Criminal Justice Act.**

1. The Clerk shall issue subpoenas, signed but otherwise in blank, to an attorney appointed under the Criminal Justice Act. No subpoena so issued shall be served outside the boundaries of this district. Attorneys shall file with the Clerk a list of those witnesses whom they have subpoenaed. This filing shall constitute certification that the subpoena(s) is necessary to obtain relevant and material testimony and that the witness' attendance is reasonably necessary to the defense of the charge.

2. If an attorney needs to subpoena a witness outside the boundaries of this District, the attorney shall make an *ex parte* application for issuance of a subpoena shall be made to the appropriate court.

3. The defense attorney shall request that the United States Marshal serve the subpoenas under this Rule. The defense attorney shall obtain an order from the Court directing the Marshal to serve subpoenas. The Marshal shall serve the subpoenas in the same manner as in other cases, except that the name and address of the person served shall not be disclosed without prior authorization of the defense attorney. No fee shall be allowed for private service of any subpoena issued under this Rule unless the attorney obtains express advance authorization by written order of the Court.

4. As authorized by Fed. R. Crim. P. 17(b), the Court orders that the costs for service of process and payment of witness fees for each witness subpoenaed under this Rule shall be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf of the government.

#### **17.1.1 Pretrial Conferences**

At the request of any party or upon the Court's own motion, the assigned judge may hold one or more pretrial conferences in any criminal action or proceeding. The agenda at the pretrial conference shall consist of any of the following items, so far as applicable, and such other

matters that the judge designates as may tend to promote the fair and expeditious trial of the action or proceeding:

- (a) Production of witness statements under the Jenks Act, 18 U.S.C. § 3500 or Fed. R. Crim. P. 26.2;
- (b) Production of grand jury testimony of witnesses that the parties intend to call at trial;
- (c) Production of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;
- (d) Stipulation of facts which may be deemed proved at the trial without further proof by either party and limitation of witnesses;
- (e) Court appointment of interpreters under Fed. R. Crim. P. 28;
- (f) Dismissal of certain counts and elimination from the case of certain issues; e.g., insanity, alibi, and statute of limitations;
- (g) Severance of trial as to any co-defendant or joinder of any related case;
- (h) Identification of informers, use of lineup or other identification evidence, use of evidence of prior convictions of defendant or any witness, etc.;
- (i) Pretrial exchange of lists of witnesses whom the parties intend to call in person or by deposition to testify at trial, except those whom they may call only for impeachment or rebuttal;
- (j) Pretrial exchange of documents, exhibits, summaries, schedules, models, or diagrams that the parties intend to offer or use at trial;
- (k) Pretrial resolution of objections to exhibits or testimony that the parties intend to offer at trial;
- (l) Preparation of trial briefs on controversial points of law likely to arise at trial;
- (m) Scheduling of the trial and of witnesses;
- (n) Settlement of jury instructions, voir dire questions, and challenges to the jury; and
- (o) Any other matter which may tend to promote a fair and expeditious trial

### **18.1 THROUGH 19.1**

[Reserved]

## **20.1 Transfer from a District for Plea and Sentence**

Upon the transfer under Fed. R. Crim. P. 20 of an information or indictment charging a minor offense, the Court shall refer the case immediately to a Magistrate Judge who shall take the plea and impose sentence in the manner prescribed in the Federal Rules if, pursuant to 18 U.S.C. § 3401 and/or Fed. R. Crim. P. 41, the defendant consents in writing to this procedure.

## **21.1 THROUGH 23.1**

[Reserved]

## **23.1 Free Press- Fair Trial Directives**

(a) It is the duty of the lawyer or law firm, and of non-lawyer personnel employed by a lawyer's office or subject to a lawyer's supervision, private investigators acting under the supervision of a criminal defense lawyer, and government agents and police officers, not to release or authorize the release of non-public information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which they are associated if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With regard to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation (including government lawyers and lawyers for targets, subjects, and witnesses in the investigation) shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, and to warn the public of any dangers or otherwise to aid in the investigation if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the administration of justice.

(c) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such dissemination will interfere with a fair trial; except that the lawyer or the law firm may quote from, or refer without comment to, public records of the Court in the case.

(d) Statements concerning the following subject matters presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this Rule:

1. The prior criminal record (including arrests, indictments or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence,

occupation and family status; and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;

2. The existence or contents of any confession, admission or statement that the accused has given, or the refusal or failure of the accused to make any statement;
3. The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
4. The identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
5. The possibility of a plea of guilty to the offense charged or a lesser offense;
6. Information the lawyer or law firm knows is likely to be inadmissible at trial and would, if disclosed, create a substantial likelihood of prejudicing an impartial trial: and
7. Any opinion about the accused's guilt or innocence or about the merits of the case or the evidence in the case.

(e) Statements concerning the following subject matters presumptively do not involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this Rule;

1. An announcement, at the time of arrest, of the facts and circumstances of arrest (including time and place of arrest, resistance, pursuit and use of weapons), the identity of the investigating and arresting officer or agency and the length of the investigation;
2. An announcement, at the time of seizure, stating whether any items of physical evidence were seized and, if so, a description of the items seized (but not including any confession, admission or statement);
3. The nature, substance or text of the charge, including a brief description of the offense charges;
4. Quoting, or referring without comment to, public records of the Court in the case;
5. An announcement of the scheduling or result of any state in the judicial process, or an announcement that a matter is no longer under investigation;
6. A request for assistance in obtaining evidence and the disclosure of information necessary to further such a request for assistance; and

7. An announcement, without further comment, that the accused denies the charges, and a brief description of the nature of the defense

(f) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against said lawyer.

(g) The Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matters which the Court may deem appropriate for inclusion in such order. In determining whether to impose such a special order, the Court shall consider whether such an order will be necessary to ensure an impartial jury and must find that other, less extreme available remedies, singly or collectively, are not feasible or would not effectively mitigate the pretrial publicity and bring about a fair trial. Among the alternative remedies the Court must consider are as follows: change of venue, postponing the trial, a searching voir dire, emphatic jury instructions, and sequestration of jurors.

(h) The Court may take disciplinary action against any attorney who violates the terms of this Rule.

## **24.1 THROUGH 30.1**

[Reserved]

## **30.1 Jury Instructions**

The parties shall submit proposed jury instructions, accompanied by citations to relevant authorities, to the Court in accordance with the time frames set forth in the Criminal Pretrial Scheduling Order issued at the time of arraignment.

## **31.1**

[Reserved]

## **32.1 Presentence Reports**

(a) **Order for Presentence Report.** The Court will impose sentences without unnecessary delay following the completion of the presentence investigation and report. This Court adopts the use of a uniform presentence order. The uniform presentence order shall contain (1) the date by which the presentence report is to be made available; (2) the deadlines for filing objections, if any, to the presentence report; (3) the deadlines for filing presentence memoranda, recommendations and motions; and (4) a date for sentencing.

**(b) Presence of Counsel.** On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview that a probation officer conducts of the defendant in the course of a presentence investigation. It shall be incumbent upon the defendant's counsel to advise the Probation Office within two (2) days of the date that the presentence report is ordered that counsel wishes to be present at any interview with the defendant.

**(c) Disclosure Procedures.**

1. The Presentence Report is confidential and should not be disclosed to anyone other than the defendant, the defendant's attorney, the United States Attorney and the Bureau of Prisons without the Court's consent except that, in cases that involve a sex offense as a count of conviction, the Probation Office shall disclose the Presentence Report to the New York State Board of Examiners for Sex Offenders for purposes of its completion of a sex-offender classification level. The disclosure shall adhere to the conditions set forth in the Memorandum of Understanding executed between the Probation Office and the New York State Board of Examiners for Sex Offenders.
2. The Court directs the probation officer not to disclose the probation officer's confidential recommendation to any of the parties, except that the Probation Officer may, at the discretion of the presiding judge, disclose the conditions of supervision to the United States Attorney, the defendant's attorney, and the defendant.
3. The Court admonishes all counsel that they shall adhere to the time limits set forth in the Uniform Presentence Order to allow sufficient time for the Court to read and analyze the material that the Court receives.
4. The Court, on motion of either party or of the probation office, may modify the time requirements set forth in the Uniform Presentence Order subject to the provisions of 18 U.S.C. § 3552(d).

**(d) Responsibilities of the Clerk and Probation Office.**

1. Within three (3) days after sentencing, the Clerk shall serve a copy of the judgment upon the parties and the United States Marshal.
2. Copies of the Presentence Report that the Clerk provides to the Court of Appeals for the Second Circuit shall include the Court's finding on unresolved objections.

**33.1 THROUGH 43.1**

[Reserved]

**44.1 Right to and Assignment of Counsel**

If a defendant, appearing without an attorney in a criminal proceeding, desires to obtain

an attorney, the Court shall grant a reasonable continuance for arraignment, not to exceed one week at any one time, for that purpose. If the defendant requests that the Court appoint an attorney or fails for an unreasonable time to appear with an attorney, the assigned District Judge or Magistrate Judge shall, subject to the applicable financial eligibility requirements, appoint an attorney unless the defendant, electing to proceed without an attorney, waives the right to an attorney in a manner that the District Judge or the Magistrate Judge approves. In that case, the District Judge or Magistrate Judge shall, nevertheless, designate an attorney to advise and assist the defendant to the extent the defendant might thereafter desire. The Court shall appoint an attorney in accordance with the Court's Plan adopted pursuant to the Criminal Justice Act of 1964 and on file with the Clerk.

#### **44.2 Appearance and Withdrawal of Counsel**

(a) An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file a written appearance with the Clerk. An attorney who has appeared shall thereafter withdraw only upon notice to the defendant and all parties to the case and an order of the Court finding that good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not be deemed good cause unless the Court determines otherwise.

(b) Unless leave is granted, the attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing a notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until the court having jurisdiction of the case grants leave to withdraw or until that court has appointed another attorney as provided in 18 U.S.C. § 3006A and other applicable provisions of law.

#### **44.3 Reimbursement for Translation or Interpretation Services**

Prior court authorization is required for any party seeking reimbursement from the Court for translation or interpretation services in amounts exceeding the limits set forth 18 U.S.C. § 3006A(e). The Court may deny any timely or untimely request for reimbursement at its discretion.

#### **45.1 Excludable Time under the Speedy Trial Act**

The Court shall not grant a continuance or extension under the Speedy Trial Act unless a party submits a motion or stipulation that recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the party shall accompany the motion or stipulation with an affidavit of facts upon which the Court can base a finding that the requested relief is warranted. The attorneys shall also submit a proposed order setting forth the time to be excluded and the basis for its exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order shall have a space for the Court to enter a new trial date in accordance with the excludable time period. The Court shall disallow all requests for a continuance or extension that do not comply with this Rule.

#### **46.1 Pretrial Services and Release on Bail**

Pursuant to the Pretrial Services Act of 1982, 18 U.S.C. §§ 3152-3155, the Court authorizes the United States Probation Office and/or Pretrial Services Office of the Northern District of New York to perform all services as the Act provides.

(a) Pretrial Service Officers shall conduct an interview and investigate each individual charged with an offense and shall submit a report to the Court as soon as practicable. In non-custody instances, when the United States Attorney schedules an individual for initial appearance before the United States Magistrate Judge by Criminal Summons or appearance letter, the United States Attorney shall immediately notify the United State Probation Office to arrange for preparing a Pretrial Services Report. In those instances when a defendant is taken into custody by arrest or pursuant to a warrant, the United States Probation Office in the respective division shall be notified forthwith in accordance with section 5.1 Notice of Arrest, of the Local Rules of Criminal Procedure for the Northern District of New York by the agency effecting the arrest or the United States Marshal and, unless extraordinary circumstances exist, initial appearances shall be scheduled so as to provide the probation officer a reasonable (or "mutually agreed") period of time to interview the defendant, conduct a brief investigation, and prepare an oral or written report for the judicial officer. The judicial officer setting conditions or release or reviewing conditions previously set shall receive and consider all reports that Pretrial Service Officers, the government and defense counsel submit.

(b) Pretrial service reports shall be made available to the attorney for the accused and the attorney for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein.

(c) Pretrial Service Officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

#### **47.1 Motions**

See [L.R. Cr. P. 12.1](#).

#### **48.1 THROUGH 56.1**

[Reserved]

#### **57.1 Criminal Cover Sheets**

The United States Attorney shall file a criminal cover sheet with each new indictment or information. On this sheet the United States Attorney shall indicate the name and address of the defendant and the magistrate judge case number, if any. The criminal cover sheet also shall contain any further information that the Court or the Clerk deems pertinent. The United States Attorney can obtain a copy of the cover sheet the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

## **57.2 Release of Bond**

When a defendant has obtained release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. The defendant's attorney shall prepare a motion and proposed order for the release of the bond and submit the motion to the Court for the assigned judge's signature.

Absent direction from a Judicial Officer of the Northern District indicating otherwise, Clerk's Office personnel shall not accept cash, personal checks or credit cards as collateral for bail. However, bail may be posted with other forms of legal tender, including, but not limited to, money orders and bank-certified checks.

Unless otherwise specified by court order, or upon such proof as the Court shall require, all bond refunds pursuant to this Rule shall be disbursed to the surety named on the bond, or if there is no surety named, the defendant.

## **58.1 Magistrate Judges**

### **(a) Powers and Duties.**

1. A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c), and any additional duties that are consistent with the Constitution and laws of the United States. A part-time Magistrate Judge is authorized to exercise all of those duties, except those permitted under 28 U.S.C. § 636(c), and any additional duties consistent with the Constitution and laws of the United States.

2. A Magistrate Judge is also authorized to

- (A) Conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;
- (B) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
- (C) Impanel and charge a Grand Jury and Special Grand Juries and receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);
- (D) Conduct *voir dire* and select petit juries for the Court;
- (E) Conduct necessary proceedings leading to the potential revocation of probation;
- (F) Order the exoneration or forfeiture of bonds;
- (G) Exercise general supervision of the Court's criminal calendar, conduct

calendar and status calls, and determine motions to expedite or postpone the trial of cases for the Court;

- (H) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Criminal Procedure;
- (I) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions;
- (J) Determine motions pursuant to 18 U.S.C. § 4241(a) for a hearing to determine the mental competency of the defendant and, if necessary, order that a psychiatric or psychological examination of the defendant be conducted pursuant to 18 U.S.C. § 4241(b); and
- (K) Conduct hearings to determine the mental competency of the defendant pursuant to 18 U.S.C. § 4247(d) and issue a report and recommendation to the assigned District Judge pursuant to 28 U.S.C. § 636(b).

3. A party seeking review of a Magistrate Judge's release or detention order pursuant to 18 U.S.C. § 3145 shall file the following documents in support of its motion:

- (A) Notice of motion;
- (B) Memorandum of law;
- (C) Attorney affidavit;
- (D) Written transcript of all proceedings relating to the defendant's release or detention.

Upon the filing of any such motion, the opposing party shall file its papers in opposition to said motion within fourteen (14) days of the filing date of said motion.

No reply is permitted.

The Court shall promptly determine the motion based upon the submitted papers without oral argument.

**(b) Felonies.** On the return of an indictment or the filing of an information, a District Judge shall assign felony matters to a Magistrate Judge for the purpose of arraignment, for the determination and fixing the conditions of pretrial release, and for the assignment of an attorney to the extent authorized by law.

**(c) Misdemeanors.**

1. A Magistrate Judge is authorized to conduct trials of persons accused of

misdemeanors committed within this District in accordance with 18 U.S.C. § 3401, order a presentence investigation report on any such persons who are convicted or plead guilty or *nolo contendere*, and sentence such persons.

2. Any person charged with a misdemeanor may, however, elect to be tried before a District Judge for the district in which the offense was committed. The Magistrate Judge shall carefully advise defendants of their right to trial, judgment, and sentencing by a District Judge and their right to a trial by jury before a District Judge or Magistrate Judge. The Magistrate Judge shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the Magistrate Judge. That consent specifically must waive trial, judgment, and sentencing by a District Judge.

3. Procedures on appeal to a District Judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Crim. P. 58(g). Unless otherwise ordered,

- (A) The appellant's brief shall be filed within fourteen (14) days following the filing of the notice of appeal;
- (B) The appellee's brief shall be filed within fourteen (14) days following submission of the appellant's brief;
- (C) No oral argument shall be permitted.

## **58.2 Forfeiture of Collateral in Lieu of Appearance**

In accordance with Fed. R. Crim. P. 58(d)(1), the U.S. District Court for the Northern District of New York has adopted the schedule for violations as set forth in [General Order #16](#). Parties may obtain copies of [General Order #16](#) from the Clerk's office or on the Court's webpage at "[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)."

## **59.1 THROUGH 60.1**

[Reserved]