

LOCAL CRIMINAL RULES

UNITED STATES DISTRICT COURT DISTRICT OF NEW MEXICO



EFFECTIVE NOVEMBER 1, 2005

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**LOCAL CRIMINAL RULES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

I. SCOPE OF RULES

RULE 1. Scope; Application.

1.1 Title and Citation. These are the Local Rules for criminal proceedings in the United States District Court for the District of New Mexico. They are cited as “D.N.M.LR-Cr. _____.”

1.2 Effective Date. These Rules take effect on November 1, 2005.

1.3 Application of Rules. These Rules apply in all criminal proceedings in the District of New Mexico.

II. INITIAL APPEARANCE AND PRELIMINARY HEARING

RULE 5. Initial Appearance Before Magistrate Judge.

5.A Initial Interview of Defendants by Pretrial Services Officers.

a. Opportunity to Consult with Counsel. A defendant will be given an opportunity to consult with counsel before his or her initial interview with the Pretrial Services Officers. The Federal Public Defender, as directed by the Court, will provide advice of rights to defendants before their interview by Pretrial Services.

b. Notification of Counsel. It is the responsibility of Pretrial Services to notify the defendant’s retained counsel or the Federal Public Defender before the initial interview.

c. Determination of Eligibility. If the Court determines the defendant is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act. The Clerk will notify defendant’s counsel of the custodial status of the defendant and the time of the Initial Appearance or the next scheduled hearing.

d. Summons Cases. If a summons is issued to a defendant, the Clerk will attach a notice to the summons advising the defendant to contact Pretrial Services. Pretrial Services will:

- advise the defendant of his or her rights;
- advise the defendant to consult with counsel before the initial interview with the Pretrial Services Officers; and
- advise the defendant that his or her counsel may be present during the initial interview.

5.B Handling and Dispositions of Undocumented Alien Material Witnesses.

a. Affidavit. If an undocumented alien is to be a material witness in a criminal case, the United States Attorney will immediately file an affidavit stating reasonable grounds to secure the presence of the undocumented alien under 18 U.S.C. §3144.

b. Eligible for Appointed Counsel. If the Court determines the detained material witness is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act, 18 U.S.C. §3006A(a)(1)(G).

c. Release of Material Witness. If the Court determines release to be appropriate, the material witness may be released to the supervision of Pretrial Services under 18 U.S.C. §3142.

d. Return to Custody of the Bureau of Citizenship and Immigration. When a material witness is no longer needed for a criminal proceeding, the United States Attorney will submit a written motion and proposed order to the Court so a material witness may be returned to the custody of the Bureau of Citizenship and Immigration Services for further processing.

Rule 5.C Initial Appearances before Part-Time United States Magistrate Judges.

A part-time Magistrate Judge may conduct the Initial Appearance.

RULE 5.1 Preliminary Hearing.

Rule 5.1 Locations Where Preliminary Hearings may be Held. The preliminary hearing required under Rule 5.1 of the Federal Rules of Criminal Procedure will be held in a location where a District Judge or a full-time Magistrate Judge normally presides.

III. PREPARATION FOR TRIAL

RULE 11. Plea Agreements.

11.1 Advising Court of a Plea Agreement. The Court must be advised of a plea agreement sufficiently in advance of trial to avoid assembling a jury panel unnecessarily.

11.2 Deferring Acceptance or Rejection of Plea Agreements. The Court will defer a decision on the acceptance or rejection of the plea agreement until the Court has reviewed the presentence report.

RULE 16. Discovery and Evidence.

16.1 Disclosure of Evidence. The Parties will comply with the Standard Discovery Order. A copy of the Order is attached to these Rules.

16.2 Complex or Capital Punishment Cases. If a case is complex or is a capital punishment case, the Court will enter a Scheduling Order after meeting with counsel.

IV. POST-CONVICTION PROCEEDINGS

RULE 32. Sentencing and Judgment.

32.A Notice and Opportunity for Defendant's Attorney to Attend Presentence Interview. Defendant's attorney is deemed to have requested notice and a reasonable opportunity to attend the presentence report interview. If a defendant's attorney receives a request to schedule a presentence report interview, the attorney must respond within five (5) days. If the attorney does not respond, the presentence report disclosure time limits of Rule 32(e)(2) of the Federal Rules of Criminal Procedure are waived.

32.B Confidential Nature of Report. The presentence report is a confidential record of the United States District Court. It must not be disclosed to anyone other than the Court, the defendant, the defendant's attorney, and the attorney for the government unless required by law or ordered by the Court. Copies of the report must not be made except when necessary to carry out this rule.

32.C Sentencing Pleadings. An unresolved objection regarding sentencing or motion for departure must be filed with the Court before sentencing. These pleadings must be filed within twenty-one (21) calendar days of the date of disclosure of the presentence report. A responsive pleading must be filed as soon as possible but not more than seven (7) calendar days after service of the pleading regarding sentencing. Copies of all sentencing pleadings must be served on opposing counsel and the Probation Office. The Court may alter these time limits for good cause shown.

32.D Disclosure of Report. The presentence report is disclosed:

- (1) when a copy of the report is physically delivered to counsel;
- (2) one Court day after counsel is told orally that the report is available for inspection; or
- (3) three days after either a copy of the report or notice of its availability for inspection is mailed to counsel.

32.E Disclosure of Recommendation. Except as ordered by the Court, the Probation Office must not disclose a final recommendation concerning sentencing.

32.F Confidential Records. Confidential records of the Court maintained by the Probation Office, as custodian of the Court record, including presentence and probation supervision records, may be disclosed only upon a written petition to the Court which establishes a need for the specific information. The procedures approved by the Judicial Conference, available on the website of the United States District Court for the District of New Mexico, <http://www.nmcourt.fed.us>, must be followed when requesting disclosure of confidential records.

32.G Requesting Presentence Reports before Guilty Pleas. A motion for a Presentence Report before a plea agreement has been entered will be granted only for exceptional circumstances.

a. Form of Motion. If a presentence report is requested before a plea agreement has been entered, the motion must state the position of the government and must contain the following:

- (1) a waiver of the defendant's right to a speedy trial;
- (2) an explanation of the issues that would justify the preparation of a pre-plea presentence report; and
- (3) a copy of the proposed plea agreement, if any.

b. Review by the Probation Office. The Court may ask the Probation Office to review the request and make recommendations to the Court regarding the merits of a pre-plea presentence report.

V. GENERAL PROVISIONS

RULE 44. Right to and Appointment of Counsel.

44.1 Entry of Appearance.

a. Written Entry of Appearance. An attorney who is not appointed by the court must file a written entry of appearance which includes the attorney's name, address, telephone number, facsimile number, and electronic address.

b. Appointed Counsel. Counsel appointed by the Court need not file an entry of appearance.

c. Eligibility of Counsel. To be eligible to appear in criminal actions, the attorney must be a member in good standing of the Federal Bar of the District of New Mexico.

d. Out of State Counsel. Out of state counsel must associate with eligible counsel of the Federal Bar of the District of New Mexico. Local counsel need not appear at court hearings with associated out of state counsel unless directed by the Court.

e. Withdrawal or Substitution of Counsel. Withdrawal or substitution of counsel must be by motion and order.

f. Representation of Corporation or Partnership. A corporation or partnership charged with an offense must be represented by an attorney eligible to practice before this Court.

g. Limited Entry of Appearance. An attorney may not appear in a limited manner except by Court order.

h. Change of Address. All attorneys of record and defendants appearing *pro se* have a continuing duty to notify the Clerk, in writing, in each case, of any change in their mailing addresses, telephone numbers, and for those receiving pleadings through facsimile or electronically, any change in facsimile numbers or electronic addresses.

i. Acceptance of Filings from Attorneys. The Clerk will not accept any pleadings from an attorney for filing unless the attorney is eligible to appear and has either been appointed by the Court or filed an entry of appearance.

RULE 46. Release from Custody.

46.1 Hearings for Release from Custody. Any hearing held under the Bail Reform Act, 18 U.S.C. §3141, et seq., will be held in a location where a District Judge or a full-time Magistrate Judge normally presides.

46.2 Approval of Bonds by the Clerk of the District Court of New Mexico. Unless the statute requires or the Court has issued an order requiring prior Court approval, the Clerk may approve bonds when:

- the Court has fixed the amount of bail; and
- the bond is secured by the deposit of cash or obligations of the United States or is an approved corporate surety bond.

RULE 47. Motions.

47.1 Unopposed Motions. An unopposed motion must be accompanied by a proposed order approved by each party.

47.2 Opposed Motions. Movant must determine whether a motion is opposed. Movant must recite in the motion whether concurrence was refused or explain why concurrence could not be obtained.

a. Service of Papers.

1. Movant must file and serve on all parties a copy of the motion, any brief in support of the motion, affidavits, and other papers related to the motion.

2. A copy of a response or reply must be served on the appropriate parties.

b. Certificate of Service. A motion, response or reply must include a certificate of service on each party.

47.3 Motions Regarding Release or Detention. A motion regarding the conditions of release or detention must state the position of Pretrial Services. Service must also be made on Pretrial Services.

47.4 Motions Regarding the Transport of or Visitation with a Defendant. A motion regarding the transport of a defendant or a visitation with a defendant in the custody of the United States Marshals Service must state the position of the United States Marshals Service. Service must also be made on the United States Marshals Service. All transport orders will be sealed.

47.5 Motion to Continue Trial. A motion for a continuance of trial must address with particularity 18 U.S.C. §3161(h). A proposed order must accompany the motion.

47.6 Joinder of Co-Defendant's Motion. A co-defendant who seeks to join a specific motion previously filed by a co-defendant must file a motion. A proposed order must accompany the motion.

47.7 Citation of Authority. A motion, response or reply must cite authority in support of legal positions advanced.

47.8 Timing and Restrictions on Responses and Replies.

a. Timing. A response must be served within fourteen (14) calendar days after service of the motion. A reply must be served within fourteen (14) calendar days after service of the response. These time periods are computed in accordance with Rule 45 of the Federal Rules of Criminal Procedure and may be extended by the Court.

b. Surreply. The filing of a surreply requires leave of the Court.

c. Expedited Briefing. When the Court orders an expedited briefing schedule, briefs and any supporting papers must be served on each party by the most expeditious reasonable method of service.

47.9 Length of Motion and Brief.

- The length of a motion, or if a separate brief is filed in support of a motion, the combined length of a motion and supporting brief, must not exceed twenty-seven (27) double-spaced pages.
- A response brief must not exceed twenty-four (24) double-spaced pages.
- A reply brief must not exceed twelve (12) double-spaced pages.

47.10 Evidentiary Hearings. Parties will state in their pleadings whether and why an evidentiary hearing is needed.

RULE 53. Courtroom Photographing and Broadcasting Prohibited.

53.1 Courtroom and Courthouse Decorum.

a. Prohibition Against Cameras, Transmitters, Receivers, and Recording Equipment. No cameras, cell phones with cameras, transmitters, receivers or recording equipment may be brought into or used in any courtroom or court environs. Environs include:

- the entire floor where a courtroom is located;
- the entire floor where the grand jury meets; and
- the entire floor where a chambers of any Magistrate Judge or District Judge is located.

b. Authority to Impound Equipment. The United States Marshals Service may impound the above-described equipment brought into the courtroom or its environs.

c. Exemptions from Prohibition. The prohibitions of this rule do not apply to:

1. a stenographic or recording device used by an official court reporter or other authorized court personnel;
2. a telephone or pager that is turned off while Court is in session;

3. a lap-top computer as long as it does not make noise or interfere with court proceedings;
4. a note-taking or other device required because of a person's disability; or
5. a device used solely for the presentation of evidence.

RULE 55. Records.

55.1 Return of Exhibits in Criminal Cases. In criminal cases, the Clerk will return all exhibits in the custody of the Clerk to the party who introduced the exhibits in evidence to be retained until case disposition is final. The parties will be responsible for producing the exhibits if required for an appeal record.

RULE 57. Miscellaneous Rules.

57.1 Waiver of Rules. The Court may waive any of the Rules when necessary to meet unusual circumstances or to avoid injustice.

57.2 Compliance with the Rules of Professional Conduct and A Creed of Professionalism of the New Mexico Bench and Bar. In all criminal proceedings, attorneys will comply with the Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico, unless modified by local rule or Court order. Attorneys appearing in this District must comply with "A Creed of Professionalism of the New Mexico Bench and Bar".

57.3 Release of Information by Courthouse Personnel in Criminal Cases. All Court personnel, including employees or subcontractors retained by the Court appointed official reporters, must not release any information pertaining to a criminal case that is not part of the public records of the Court or divulge any information concerning proceedings held outside the presence of the public.

57.4 Clinical Law Student Practice. A law student participating in the clinical program at the University of New Mexico School of Law may, under the control and direction of the dean of the law school, or the dean's designee, represent a defendant. A member of the Federal Bar, designated by the dean, must actively supervise the student and sign any pleading or other paper prepared by the student. An order authorizing the student's participation must be filed before the student participates in a case.

57.5 Redaction of Personal Identifiers for Certain Persons. In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers for juveniles and victims from all pleadings filed with the Court, including attached exhibits, whether filed electronically or in paper, unless otherwise ordered by the Court.

a. Social Security Numbers. If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

b. Names of Minor Children. If the involvement of a minor child must be mentioned and a pseudonym is not appropriate, only the first name and first initial of that child's last name should be used.

c. Dates of Birth. If an individual's date of birth must be included in a pleading, only the year should be used, except in the case of juveniles.

d. Addresses. The home address of any victim or material witness will not be used.

e. Financial Account Numbers. If financial account numbers must be included, only the last four digits of these numbers should be used.

57.6 Filing Documents Containing Personal Identifiers. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may either

- file an unredacted version of the document under seal, or
- file a reference list under seal. The reference list will contain the complete personal data identifier(s) and the redacted identifier(s) used in their place in the filing.

The unredacted version of the document or reference list will be retained by the Court as part of the record. The Court may, however, still require the party to file a redacted copy for the public file.

57.7 Counsel and Parties Responsible for Redactions. The responsibility for redacting the personal identifiers rests solely with the party filing the document. The Clerk will not review each pleading for compliance with this rule.

RULE 58. Petty Offenses and Other Misdemeanors.

58.1 Forfeiture of Collateral in Lieu of Appearance. If the Court so orders, the person charged with a petty offense may pay a fixed sum payment to the Clerk before his or her scheduled appearance. If the offender pays the fixed sum payment, the payment will be forfeited to the United States. The forfeiture will signify that the offender does not contest the charge and does not request a hearing before the Court.

58.2 Appeal Procedures for Decisions of the Magistrate Judge on Misdemeanors and Petty Offenses.

a. Appellant's Brief. Appellant's brief must be filed and served within fifteen (15) days after the filing of the Notice of Appeal. The original will be filed with the Clerk and a copy served on opposing parties.

b. Appellee's Brief. Appellee's brief must be filed and served within fifteen (15) days of the filing and service of appellant's brief. The original will be filed with the Clerk and a copy served on opposing parties.

c. Reply Brief. Appellant may file and serve a reply brief within five (5) days after the filing and service of appellee's brief.

d. Length of Briefs and Exhibits. The appellant's brief must not exceed twenty (20) double-spaced pages. The appellee's brief must not exceed fifteen (15) double-spaced pages. A reply brief must not exceed ten (10) double-spaced pages. Exhibits must not exceed twenty (20) pages.

e. Appeals. All appeals from Magistrate Judge decisions will be decided by the District Court without a hearing, unless otherwise ordered by the District Court.