UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PUBLIC NOTICE

REGARDING PROPOSED AMENDMENTS TO:
LOCAL RULES 83.5.3; 112.1; 112.2; 112.4; 116.1; 116.2; 116.3; 116.4; 116.5; 116.6; 116.9;117.1;
NEW RULE 117.2 - SUBPOENAS IN INDIGENT CRIMINAL CASES; AND
NEW RULE 116.10 - TABLE OF CONTENTS FOR VOLUMINOUS DISCOVERY

The Judges of the United States District Court for the District of Massachusetts have been presented with several proposed amendments developed by the court's Attorney Advisory Committee on Local (Criminal) Rules, on which both private and government attorneys serve as members.

The Judges have found substantial merit in the proposed amendments and new local rules and accordingly have directed that a version, edited to conform to the Local Rule format and to include the Attorney Advisory Committee Explanatory Notes, be the subject of a public notice for comment.

Copies of the proposed amendments to the local rules are available for inspection in the offices of the Clerk in courthouses in Boston, Worcester and Springfield. This public notice and the proposed amendments and new local rules also have been posted to the "Announcements" and "Rules" pages of the court's web site at www.mad.uscourts.gov.

Members of the bar and the public are invited to comment as to the proposed amendments and new local rules. Comments should be received no later than November 30, 2011 and may be addressed to:

Sarah Allison Thornton
Clerk of Court
United States Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

October 17, 2011

PROPOSED AMENDMENTS TO LOCAL CRIMINAL RULES
United States District Court - District of Massachusetts
October 2011

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1. Amendment to Rule 83.5.3 – Practice by Persons Not Members of the Bar

a. Proposed Amendment

Rule 83.5.3. PRACTICE BY PERSONS NOT MEMBERS OF THE BAR

(a) **Attorneys for the United States and the Federal Defender's Office.** An attorney in good standing as a member of the bar in every jurisdiction where he **or she** has been admitted to practice and not subject to pending disciplinary proceedings as a member of the bar of any United States District Court may appear and practice in this court as the attorney for the United States or any agency of the United States or an officer of the United States in his official capacity, **or as an attorney employed in the Federal Defender's Office for this District.**

b. Explanation of Proposal

The rule is being amended to clarify that it includes lawyers employed by the Federal Public Defender's Office.

2. Amendment to Rule 112.1 - Motion Practice

a. Proposed Amendment

RULE 112.1 MOTION PRACTICE

Unless otherwise specified in these Local Rules or by order of the court, motion practice in criminal cases shall be subject to ~~**L.R**~~ .**Local Rule** 7.1.

3. Amendments to Rule 112.2 – Excludable Delay

a. Proposed Amendment

Rule 112.2. EXCLUDABLE DELAY PURSUANT TO THE SPEEDY TRIAL ACT

(a) ~~**(A)**~~ **Excludable Delay Generally.** The Court, having found that a fair and prompt resolution of criminal cases is best served by ~~**the**~~ minimizing ~~**of**~~ formal motion practices and ~~the establishment of~~ **establishing** the system of discovery set forth in these Local Rules, has determined that the following periods of time may be excluded, under 18 U.S.C. §§ ~~**3161 (h)(8)(A)**~~ **3161(h)(1)(D) & (H) and (h)(7)(A)**, to serve the ends of justice in order to accomplish such ~~**discovery**~~ **purposes:**

~~**(1) No more than fourteen (14) days from arraignment, the time period available to the defendant for consideration whether to participate in the automatic discovery process, if the defendant files the Waiver provided under L.R. 116.1(B).**~~

~~**(2) No more than twenty-eight (28) days from arraignment, during which time period the parties are developing their discovery plans and producing discovery under the automatic discovery process, if the defendant does not file the Waiver provided under L.R. 116.1(B).**~~

(1) **the period from arraignment to the Initial Status Conference conducted under Local Rule 116.5(a), during which period the parties shall produce the automatic discovery required under Local Rule 116.1(b) and (c) and develop their discovery plans, and defendants shall consider the need for pretrial motions under Fed. R. Crim. P. 12;**

~~**(3)**~~ **(2)** no more than ~~**fourteen days (14)**~~ **14** days from the filing of a copy of ~~**any**~~ **a** letter requesting discovery under ~~**L.R.**~~ **Local Rule** 116.3(**a** ~~**A**~~);

(3) no more than 14 days from the date on which a written response to a letter requesting discovery under Local Rule 116.3(a) is due to the filing of a motion seeking the discovery, provided that the party receiving the discovery request either refuses to furnish the requested discovery or fails to respond to the request, and the party requesting the discovery actually files a motion seeking discovery.

(b) ~~**(B)**~~ **Requirement of Order of Excludable Delay.** ~~**The parties shall inform the court upon agreement or in connection with any Status Conference convened under L.R. 116.5 and any Pretrial Conference convened under L.R. 117.1 of the periods for which orders of excludable time should be entered.**~~ The time periods indicated above will not be automatically excluded. All **such** periods of excludable delay must be included in ~~**a separate**~~ **an** order issued by the District Judge or Magistrate Judge ~~**detailing the time period to be covered**~~.

(c) Exclusion of Additional Periods. Nothing in this rule shall preclude the Court from excluding additional periods of time as appropriate under 18 U.S.C. §3161(h).

(d) Procedure under Waiver of Automatic Discovery. If a defendant files the Waiver provided under Local Rule 116.1(b), all periods of excludable delay shall be calculated pursuant to the Speedy Trial Act without regard to the provisions of this Local Rule.

b. Explanation of Proposal

Subsection (a)(1). In keeping with the proposal to amend Local Rule 116.3 to eliminate the 14-day "opt in/opt out" period, discussed below, the corresponding 14-day exclusion of time currently authorized by this subsection will be eliminated.

Subsection (a)(2). Currently, even though Local Rule 116.5 calls for an initial status conference to be scheduled within 42 days of arraignment, subsection (a)(2) of this rule calls for the exclusion of only 28 days of time following arraignment, leaving a 14-day "gap." The proposal remedies that situation by calling for the exclusion of all time between arraignment and the initial status conference.

Subsection (a)(3). Currently, although Local Rule 116.3 allows a party 14 days to respond to a written discovery request, and then allows the party that filed the request an additional 14 days to file a discovery motion (if the request is denied or ignored), Local Rule 112.2 does not exclude either of those 14-day periods from the Speedy Trial Act calculations. The proposed subsection (a)(3) remedies that omission.

Subsections (b) and (c). These changes are designed to accommodate the practice of those Magistrate Judges who prefer to calculate periods of excludable delay on their own and to issue corresponding orders *sua sponte*. They allow for greater flexibility in the time-exclusion process by ensuring that all periods of delay will be excluded by court order without fixing in advance who will do the necessary calculations.

Subsection (d). The periods of excludable delay authorized by this Local Rule correspond to the time periods allocated by Local Rules 116.1 and 116.3 to the successive phases of the automatic discovery process. It follows that if a defendant waives automatic discovery, periods of excludable delay allocable to the discovery process should be calculated under the Speedy Trial Act without regard for the provisions of this rule.

4. Amendment to Rule 112.4 - Corporate Disclosure Statement

a. Proposed Amendment

RULE 112.4 CORPORATE DISCLOSURE STATEMENT

(a) ~~**(A)**~~ A nongovernmental corporate party to a criminal proceeding in this court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states there is no such corporation.

(b) ~~**(B)**~~ If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Local Rule 112.4 **(a)** ~~**(A)**~~ charged in any indictment or information.

(c) ~~**(B)**~~ A party must file the Local Rule 112.4 **(a)** ~~**(A)**~~ statement upon its first appearance, pleading, petition, motion, response or other request addressed to the court and must promptly supplement the statement upon any change in the identification that the statement requires.

5. Amendment to Rule 116.1 – Automatic Discovery

a. Proposed Amendment

Rule 116.1. DISCOVERY IN CRIMINAL CASES

(a) ~~(A)~~ Discovery Alternatives.

(1) Automatic Discovery. In all felony cases **and Class A misdemeanor cases (except those within the Central Violations Bureau),** unless a defendant waives automatic discovery **in accordance with paragraph (b) below,** all discoverable material and information in the possession, custody, or control of the government and ~~**that**~~ **the** defendant, the existence of which is known, or by the exercise of due diligence may become known, to the attorneys for those parties, must be disclosed to the opposing party without formal motion practice at the times and under the automatic procedures specified in ~~**this**~~ **these** Local Rule**s**.

(2) Non-Automatic Discovery. ~~**In felony cases, if the defendant waives automatic discovery, and in non-felony cases,**~~ **In petty offense cases and Class A misdemeanor cases within the Central Violations Bureau, and in cases where the defendant waives automatic discovery in accordance with paragraph (b) below,** the defendant must obtain discovery directly through the provisions of the Federal Rules of Criminal Procedure in the manner provided under Local Rule 116.3.

(b) ~~(B)~~ Waiver. A defendant shall be deemed to have requested all the discovery authorized by Fed. R. Crim. P. 16(a)(1)(A)-~~**(D)**~~**(F)** unless that defendant files a Waiver of Request for Disclosure (the "Waiver") at~~**, or within fourteen (14) days after,**~~ arraignment **or within such additional time as the Court may allow upon motion made by the defendant at arraignment.** If the Waiver is not timely filed, the defendant shall be subject to the correlative reciprocal discovery obligations of Fed. R. Crim. P. 16(b) and ~~**of**~~ this ~~**Local Rule**~~ **rule** and shall be deemed to have consented to the exclusion of time for Speedy Trial Act purposes as provided in ~~**L.R.**~~ **Local Rule** 112.2(a)~~**(2)**~~. **If the Court allows the defendant additional time in which to file the Waiver, and no Waiver is timely filed, the 28-day period for providing automatic discovery established in Subdivision (c) of this rule shall begin to run on the last date allowed for filing the Waiver, and all dates for filing discovery letters and motions established in Local Rule 116.3 shall be adjusted accordingly.**

(c) ~~(C)~~ Automatic Discovery Provided by the Government.

(1) Following Arraignment. Unless a defendant has filed the Waiver **in accordance with paragraph (b) above,** within ~~**twenty-eight (28)**~~ **28** days of arraignment ~~**—or within fourteen (14) days of receipt by the government of a written statement by the defendant that no Waiver will be filed—**~~**(except a Rule 11 arraignment on an information), absent a contrary schedule established by the**

Court pursuant to paragraphs (e) and (f) below, the government must produce to the defendant:

(A) ~~**(a)**~~ Fed. R. Crim. P. 16 Materials. All of the information to which the defendant ~~**would be**~~ **is** entitled under Fed. R. Crim. P. 16(a)(1)(A)-~~**(D)**~~ **(F).**

(B) ~~**(b)**~~ Search Materials. A copy of any search warrant (with supporting application, affidavit, and return) and a written description of any consent search or warrantless search (including an inventory of items seized):

(i) **that** ~~**which**~~ resulted in the seizure of evidence or led to the discovery of evidence that the government intends to ~~**offer as part of**~~ **use in** its case-in-chief; or

(ii) **that** was obtained for or conducted of the defendant's property, residence, place of business, or person, in connection with investigation of the charges contained in the indictment.

(C) ~~**(c)**~~ Electronic Surveillance.

(i) A written description of any interception of wire, oral, or electronic communications as defined in 18 U.S.C. § 2510, relating to the charges in the indictment in which the defendant was intercepted and a statement whether the government intends to ~~**offer**~~ **use** any such communications as evidence in its case-in-chief; and

(ii) A copy of any application for authorization to intercept such communications relating to the charges contained in the indictment in which the defendant was named as an interceptee or pursuant to which the defendant was intercepted, together with all supporting affidavits, the Court orders authorizing such interceptions, and the Court orders directing the sealing of intercepted communications under 18 U.S.C. § 2518(a).

(D) ~~**(d)**~~ Consensual Interceptions.

(i) A written description of any interception of wire, oral, or electronic communications, relating to the charges contained in the indictment, made with the consent of one of the parties to the communication ("consensual interceptions"), in which the defendant was intercepted or which the government intends to ~~**offer as evidence**~~ **use** in its case-in-chief.

(ii) Nothing in this subsection is intended to determine the circumstances, if any, under which, or the time at which, the attorney for

the government must review and produce communications of a defendant in custody consensually recorded by the institution in which that defendant is held.

(E) ~~**(e)**~~ Unindicted Coconspirators. As to each conspiracy charged in the indictment, the name of any person asserted to be a known unindicted coconspirator. If subsequent litigation requires that the name of any such unindicted coconspirator be referenced in any filing directly with the Court, that information must be redacted from any public filing and be filed under ~~**L.R.**~~ **Local Rule** 7.2 pending further order of the Court.

(F) ~~**(f)**~~ Identifications.

(i) A written statement whether the defendant was a subject of an investigative identification procedure used with a witness the government anticipates calling in its case-in-chief involving a line-up, show-up, photospread or other display of an image of the defendant.

(ii) If the defendant was a subject of such a procedure, a copy of any ~~**videotape**~~, **recording**, photospread, image or other tangible evidence reflecting, used in or memorializing the identification procedure.

(2) Exculpatory Information. The timing and substance of the disclosure of exculpatory evidence is governed by ~~**L.R.**~~ **Local Rule** 116.2.

(d) ~~**(D)**~~ **Automatic Discovery Provided by the Defendant.** ~~**In felony cases if the defendant has not filed the Waiver,**~~ **Unless a defendant has filed the Waiver in accordance with paragraph (b) above,** within ~~**twenty-eight (28)**~~ **28** days after arraignment **(except a Rule 11 arraignment on an information), absent a contrary schedule established by the Court pursuant to paragraphs (e) and (f) below,** the defendant must produce to the government all material described in Fed. R. Crim. P. 16(b)(1)(A) and (B).

(e) Deadline for Automatic Discovery. At arraignment, the Magistrate Judge shall set a date for completion of automatic discovery in accordance with this rule. The date may be extended on motion or request of any party.

(f) Alternative Discovery Schedule. The parties shall inform the court at arraignment, or as soon as practicable thereafter, of any issues that might require an alternative discovery schedule. Requests for an alternative discovery schedule in complex cases shall be liberally granted. The Court shall not allow an alternative discovery schedule without providing a date for the completion of automatic discovery.

(g) Non-Automatic Discovery Provided by the Parties. If the defendant files the Waiver, all requests for discovery and reciprocal discovery, and all responses to such requests, shall be made in writing and filed with the court. Unless a greater or lesser amount of time is established by the court upon motion and for good cause shown, within 28 days of receiving a letter or motion requesting discovery, a party shall produce all discovery responsive to those requests to which it does not object and shall file a written response to those requests (if any) to which it does object, explaining the basis for its objections .

b. Explanation of Proposal

Experience has shown that very few defendants exercise the right either to "opt in" or "opt out" of automatic discovery, and even fewer take 14 days to decide whether to do so. Instead, virtually all defendants simply allow the 14-day "opt in/opt out" period to lapse, which, under the current version of Local Rule 116.1, requires the parties to produce automatic discovery to one another after a second 14-day period. The result in virtually all cases is that the parties have 28 days to provide each other with automatic discovery, and 14 days after that to review the discovery and prepare discovery letters, at which point the parties and the Court meet at the Initial Status Conference to discuss any discovery issues.

It appears that this nearly universal practice, which has emerged after years of experience with the Local Rules, has served the parties, the Court, and the public interest well. The proposed changes to Local Rule 116.1 are thus designed mainly to codify existing practice and simplify the rule where possible. The automatic discovery process will also be extended to most Class A misdemeanor cases. Finally, because experience has also shown that the 28-day period allotted for automatic discovery is seldom adequate in complex cases, the proposed rule expressly authorizes (and encourages) Magistrate Judges to fashion alternative discovery schedules in complex cases.

Subsection (a). This subsection will be amended to extend the automatic discovery process to Class A misdemeanor cases (except those within the Central Violations Bureau).

Subsection (b). The proposed amendment to this subsection would require any defendant wishing to "opt out" of automatic discovery to do so at arraignment. After years of collective experience with the Local Rules, virtually all defense attorneys who practice in the District Court are aware of the automatic discovery process and are prepared to "opt out" at arraignment if they so desire. To account for exceptional cases, the proposed rule permits the Magistrate Judge to extend the "opt out" period at a defendant's request; it also delays the beginning of the 28-day automatic discovery period until the "opt out" period ends, because it would be unfair to require the parties to begin the automatic discovery process while one of the parties is privately deciding whether the process will take place at all.

Subsections (c) and (d). The proposed changes to these subsections are self-explanatory.

Subsection (e). In cases where a defendant decides to "opt out" of automatic discovery, the parties will presumably request discovery from one another by letter or motion in accordance with Fed. R. Crim. P. 16. This subsection requires a party to provide the requested discovery within 28 days and/or explain its reasons for objecting to a particular discovery request.

6. Amendment to Rule 116.2 – Disclosure of Exculpatory Evidence

a. Proposed Amendment

Rule 116.2. DISCLOSURE OF EXCULPATORY EVIDENCE

(a) ~~(A)~~ Definition. Exculpatory information **~~includes, but may not be limited to, all~~ is** information that is material and favorable to the accused **and includes, but is not necessarily limited to, information that ~~because it~~** tends to:

(1) cast doubt on defendant's guilt as to any essential element in any count in the indictment or information;

(2) cast doubt on the admissibility of evidence that the government anticipates **~~offering~~ using** in its case-in-chief, that might be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731;

(3) cast doubt on the credibility or accuracy of any evidence that the government anticipates **~~offering~~ using** in its case-in-chief; or

(4) diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.

(b) ~~(B)~~ Timing of Disclosure by the Government. Unless the government invokes the declination procedure under **Local Rule ~~L.R.~~** 116.6, the government must produce to the defendant exculpatory information in accordance with the following schedule:

(1) Within the time period designated in **Local Rule ~~L.R.~~** 116.1(**c ~~C~~**)(1), **or by any alternative date established by the Court:**

(A) information that would tend directly to negate the defendant's guilt concerning any count in the indictment or information;

(B) information that would cast doubt on the admissibility of evidence that the government anticipates **~~offering~~ using** in its case-in-chief and that could be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731; and

(C) A statement whether any promise, reward, or inducement has been given to any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness and each promise, reward, or inducement, and a copy of any promise, reward, or inducement reduced to writing**~~;~~**

(D) A copy of any criminal record of any witness **~~identified by name whom the government anticipates calling in its case-in-chief~~ whom the**

government anticipates calling in its case-in-chief, identifying by name each such witness;

(E) A written description of any criminal cases pending against any witness **~~identified by name~~** whom the government anticipates calling in its case-in-chief, **identifying by name each such witness.**

(F) a written description of the failure of any percipient witness identified by name to make a positive identification of a defendant, if any identification procedure has been held with such a witness with respect to the crime at issue.

(2) Not later than **~~twenty-one (21)~~** **21** days before the trial date established by the judge who will preside at the trial:

(A) any information that tends to cast doubt on the credibility or accuracy of any witness **~~whom~~** or evidence that the government anticipates calling or offering in its case-in-chief,

(B) any inconsistent statement, or a description of such a statement, made orally or in writing by any witness whom the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant;

(C) any statement or a description of such a statement, made orally or in writing by any person, that is inconsistent with any statement made orally or in writing by any witness the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant;

(D) information reflecting bias or prejudice against the defendant by any witness whom the government anticipates calling in its case-in-chief;

(E) a written description of any prosecutable federal offense known by the government to have been committed by any witness whom the government anticipates calling in its case-in-chief;

(F) a written description of any conduct that may be admissible under Fed. R. Evid. 608(b) known by the government to have been committed by a witness whom the government anticipates calling in its case-in-chief; and

(G) information known to the government of any mental or physical impairment of any witness whom the government anticipates calling in its case-in-chief, that may cast doubt on the ability of that witness to testify accurately or truthfully at trial as to any relevant event.

(3) No later than the close of the defendant's case: exculpatory information regarding any witness or evidence that the government intends to **~~offer~~** **use** in rebuttal.

(4) Before any plea or to the submission by the defendant of any objections to the Pre-Sentence Report, whichever first occurs: a written summary of any information in the government's possession that tends to diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.

(5) If an item of exculpatory information can reasonably be deemed to fall into more than one of the foregoing categories, it shall be deemed for purposes of determining when it must be produced to fall into the category which requires the earliest production.

b. Explanation of Proposal

Subsections (b)(1)(D) and (b)(1)(E) are being amended to make the wording similar to that contained in Subsection (b)(1)(C) for purposes of clarity.

The remaining proposed amendments are relatively minor and are intended to clarify the government's disclosure obligations.

7. Amendment to Rule 116.3 – Discovery Motion Practice

a. Proposed Amendment

Rule 116.3. DISCOVERY MOTION PRACTICE

(a) ~~(A)~~ Letter Request for Discovery. ~~Within forty-two (42) days of arraignment,~~ Within 14 days of the completion of automatic discovery, any party by letter to the opposing party may request **additional** discovery. The opposing party shall reply in writing to the requests contained in such letter, no later than **~~fourteen (14)~~ 14** days after its receipt, stating whether that party agrees or does not agree to furnish the requested discovery and, if that party agrees, when the party will furnish the requested discovery. A copy of the discovery request letter and any response must also be filed with the Clerk's Office.

(b) ~~(B)~~ Agreement to Provide Discovery. If a party agrees in writing to provide the requested discovery, the agreement shall be enforceable to the same extent as a court order requiring the agreed-upon disclosure.

(c) ~~(C)~~ Explanation for Lack of Agreement. If a party does not agree to provide the requested information, that party must provide a written statement of the basis for its position.

(d) ~~(D)~~ No Need to Request Automatic Discovery. A defendant participating in automatic discovery **should ~~must~~** not request information expressly required to be produced under **~~L.R.~~ Local Rule** 116.1, **because all ~~All~~** such information is **required to be produced automatically in any event. ~~by these Local Rules deemed ordered by the court to be produced.~~**

(e) ~~(E)~~ No Motion before Response to Request. Except in an emergency, no discovery motion, or request for a bill of particulars, shall be filed until the opposing party has declined in writing to provide the requested discovery or has failed to respond in writing within **~~fourteen (14)~~ 14** days of receipt of a written discovery request.

(f) ~~(F)~~ No Motion before Conference with Opponent. Except in an emergency, **no discovery motion, or request for a bill of particulars, shall be filed** before **~~filing any discovery motion~~**, the moving party **~~shall confer~~ has conferred, or attempted in good faith to confer,** with opposing counsel to attempt to eliminate or narrow the areas of disagreement. In the motion **or request**, the moving party shall certify that a good faith attempt was made to eliminate or narrow the issues raised in the motion through a conference with opposing counsel or that a good faith attempt to comply with the requirement was precluded by the opposing party's unwillingness **or inability** to confer.

(g) ~~(G)~~ Timing of Motion. Any discovery motion shall be filed within **~~fourteen (14)~~ 14** days of receipt of the opposing party's written reply to the letter requesting discovery described in subdivision **(a) ~~(A)~~** of this **~~Local Rule~~ rule** or **within 14 days of** the passage of the period within which the opposing party has the obligation to reply pursuant to **subsection (a)**

~~**subdivision (A)**~~. The discovery motion shall state with particularity each request for discovery, followed by a concise statement of the moving party's position with respect to such request, including citations of authority.

(h) ~~**(H)**~~ **Multi-Defendant Cases.** In multi-defendant cases, except with leave of court, the defendant parties must confer and, to the maximum extent possible in view of any potentially differing positions of the defendants, consolidate their written requests to the government for any discovery. If a discovery motion is to be filed, the defendant parties must endeavor to the maximum extent possible to file a single consolidated motion. Each defendant need not join in every written request submitted to the government or filed in a consolidated motion, but all defense requests and motions, whether of not joined in by each defendant must to the maximum extent possible be contained within a single document or filing.

(i) ~~**(I)**~~ **Timing of Response to Motions.** The opposing party must file its response to all discovery motions within ~~**fourteen (14)**~~ **14** days of receipt. In its response, the opposing party, as to each request, shall make a concise statement of the opposing party's basis for opposing that request, including citations to authority.

(j) ~~**(J)**~~ **Subsequent Requests.** The procedure set forth in this ~~**section**~~ **rule** shall apply to **any** subsequent requests for discovery ~~**after the initial twenty-eight (28) day period**~~. When filing a discovery motion that is based on a subsequent discovery request, the moving party must additionally certify that the discovery request resulting in the motion was prompted by information not known, or issues not reasonably foreseeable, to the moving party before the deadline for discovery motions, or that the delay in making the request was for other good cause, which the moving party must describe with particularity.

b. Explanation of Proposal

This rule creates a process for parties to request additional discovery once automatic discovery has been provided. As currently written, the rule sets the process into motion 42 days after arraignment, even though automatic discovery might not yet have been completed by then (for example, because the court set a different schedule for automatic discovery). The proposed changes ensure that the rule serves its purpose by linking the process for requesting additional discovery to completion of the automatic discovery process.

The remaining changes to this rule are to promote clarity and to conform to current stylistic conventions.

8. Amendment to Rule 116.4 – Special Procedure for Recordings

a. Proposed Amendment

Rule 116.4. SPECIAL PROCEDURE FOR ~~TAPE~~ AUDIO AND VIDEO RECORDINGS

(a) ~~(A)~~ Availability of ~~Tape~~ Audio and Video Recordings

(1) The government must provide at least one copy of all **~~tape~~ audio and video** recordings in its possession that are discoverable for examination and review by the defendant parties.

(2) If a defendant requests additional copies, the government must make arrangements to provide or to enable that defendant to make such copies at that defendant's expense.

(3) If in a multidefendant case any defendant is in custody, the government must insure that an extra copy of all **~~tape~~ audio and video** recordings is available for review by the defendant(s) in custody.

(b) ~~(B)~~ Composite ~~Tapes~~ Recordings, Preliminary Transcripts and Final Transcripts. The parties must make arrangements promptly to provide or make available for inspection and copying by opposing counsel all:

(1) Composite electronic surveillance or consensual interception **~~tape~~ recordings** to be used in that party's case-in-chief at trial, once prepared.

(2) Preliminary transcripts, once prepared. A preliminary transcript may not be used at trial or in any hearing on a pretrial motion without the prior approval of the Court based on a finding that the preliminary transcript is accurate in material respects and it is in the interests of the administration of justice to use it.

(3) Final transcripts, once prepared.

(4) Nothing in this Local Rule shall be construed to require a party to prepare composite **~~tapes~~ recordings,** or preliminary or final transcripts, of any **~~tape~~** recording.

b. Explanation of Proposal

This rule specifies the time and manner in which the government must produce otherwise discoverable audio and video recordings. Because audio and video recordings now come in a variety of media, the outdated word "tape" is eliminated throughout the rule.

The remaining changes to this rule are to promote clarity and to conform to current stylistic conventions.

9. Amendment to Rule 116.5 – Status Conferences and Status Report Procedure

a. Proposed Amendment

Rule 116.5. STATUS CONFERENCES AND STATUS REPORT PROCEDURE

(a) ~~(A)~~ Initial Status Conference. ~~Unless all parties advise the Magistrate Judge that such a conference is not necessary, and the Magistrate Judge concurs, on or about the 42nd day following arraignment.~~ On or about the 14th day following the date scheduled for the completion of automatic discovery, the Magistrate Judge shall convene an Initial Status Conference with the attorneys for the parties who will conduct the trial. **~~in any felony or Class A misdemeanor case to be decided by a District Judge.~~ Unless otherwise ordered by the court, counsel shall confer and file a joint memorandum no later than 7 days before the Initial Status Conference. The joint memorandum ~~The discussion at the conference~~** must include the following issues and any other issues relevant to the progress of the case**, which counsel must be prepared to discuss at the conference:**

~~(1) Whether relief should be granted from the otherwise applicable timing requirements imposed by L.R. 116.3.~~

~~(2) Whether the defendant requests discovery concerning expert witnesses under Fed. R. Crim. P. 16(a)(1)(E). If the defendant requests the disclosure required by Fed. R. Crim. P. 16(a)(1)(E), what date should be established for response by the government and what date should be established for reciprocal discovery from the defendant concerning expert witnesses required under Fed. R. Crim. P. 16(b)(1)(C).~~

~~(3) Whether a party anticipates providing additional discovery as a result of its future receipt of information, documents, or reports of examinations or tests.~~

~~(4) Whether a motion date should be established under Fed. R. Crim. P. 12(c).~~

~~(5) What periods of excludable delay should be ordered under the Speedy Trial Act at the time of the conference.~~

~~(6) Whether a trial is anticipated and, if so, its anticipated length.~~

~~(7) What date should be established for the Final Status Conference and/or any Interim Status Conferences.~~

(1) the status of automatic discovery and any pending discovery requests;

(2) the timing of any additional discovery to be produced;

(3) the timing of any additional discovery requests;

(4) whether any protective orders addressing the disclosure or dissemination of sensitive information concerning victims, witnesses, defendants, or law enforcement sources or techniques may be appropriate;

(5) the timing of any pretrial motions under Fed. R. Crim. P. 12(b);

(6) the timing of expert witness disclosures;

(7) periods of excludable delay under the Speedy Trial Act;

(8) the timing of an Interim Status Conference or Final Status Conference, as the case may require.

If the defendant indicates an intention to change his/her plea to guilty, or if discovery is complete and the only issues that remain or are anticipated are ones appropriately resolved by the District Judge, the Magistrate Judge may, at the parties' request, treat the Initial Status Conference as a Final Status Conference under Subsection (c) of this Local Rule and transfer the case to the District Judge along with the Final Status Report required by Subsection (d) of this Local Rule. Otherwise, the Magistrate Judge shall issue a scheduling order and an order of excludable delay that reflect the deadlines and periods of excludable delay established at the Initial Status Conference.

~~**(B) Scheduling and Status Report. After any Status Conference, the Magistrate Judge shall file for the District Judge who will preside at trial an Interim Status and Scheduling Report which:**~~

~~**(1) Outlines the scheduling and completion of discovery and filing of motions;**~~

~~**(2) Identifies whether the case involves unusual or complex issues by reason of which an early joint conference of the District Judge and Magistrate Judge with all attorneys would be useful;**~~

~~**(3) Identifies any features of the case that may deserve special attention or modification of the standard schedule.**~~

~~**(4) Identifies and orders periods of excludable delay that are applicable at the time of the report.**~~

~~**(5) Identifies and returns the file to the District Judge upon an indication that the defendant intends to plead guilty.**~~

(b) Interim Status Conference. At the Initial Status Conference, unless the Magistrate Judge decides to transfer the case to the District Judge under subsection (a) of this rule, the Magistrate Judge shall schedule an Interim Status Conference or a Final Status Conference, as needed, giving due regard to the complexity of the case and the

period of time that the parties expect will be required to complete discovery and pretrial motions.

Unless otherwise ordered by the court, counsel shall confer and file a joint memorandum no later than 7 days before the Interim Status Conference. The joint memorandum must address the following issues, and any other issues relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

(1) the status of automatic discovery and any pending discovery requests;

(2) the timing of any additional discovery to be produced;

(3) the timing of any additional discovery requests;

(4) whether any protective orders addressing the disclosure or dissemination of sensitive information concerning victims, witnesses, defendants, or law enforcement sources or techniques may be appropriate;

(5) the status of any pretrial motions under Fed. R. Crim. P. 12(b);

(6) the timing of expert witness disclosures;

(7) defenses of insanity, public authority, or alibi;

(8) periods of excludable delay under the Speedy Trial Act;

(9) the status of any plea discussions and likelihood and estimated length of trial;

(10) the timing of the Final Status Conference or any further Interim Status Conference.

The Magistrate Judge may waive the Interim Status Conference if the parties request such a waiver and the Magistrate Judge determines that the information in the joint memorandum obviates the need for the conference.

If the defendant indicates an intention to change his/her plea to guilty, or if discovery is complete and the only issues that remain or are anticipated are ones appropriately resolved by the District Judge, the Magistrate Judge may, at the parties' request, treat an Interim Status Conference as a Final Status Conference under Subsection (c) of this Local Rule and transfer the case to the District Judge along with the Final Status Report required by Subsection (d) of this Local Rule. Otherwise, the Magistrate Judge shall issue a scheduling order and an order of excludable delay that reflect the deadlines and periods of excludable delay established at the Interim Status Conference or in the parties' joint memorandum, as the case may be.

(c) ~~(C)~~ Final Status Conference. In all felony cases and Class A misdemeanor cases to be heard by a District Judge, before the Magistrate Judge issues the Final Status Report required by subdivision **(d) ~~(D)~~** of this **rule ~~Local Rule~~**, the Magistrate Judge shall**, if necessary, convene a Final Status Conference with the attorneys who will conduct the trial. Counsel shall confer and file a joint memorandum no later than 7 days before the Final Status Conference. The joint memorandum must address ~~Prior to this conference, counsel shall confer and, at least three (3) business days before the conference, prepare and file a joint memorandum addressing~~** the following issues, and any other issues relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

~~(1) Whether there are outstanding discovery issues not yet presented or resolved by the Court;~~

~~(2) Whether a party anticipates providing additional discovery as a result of its future receipt of information, documents, or reports of examinations or tests;~~

~~(3) Whether the defendant intends to raise a defense of insanity or public authority;~~

~~(4) Whether the government has requested notice of alibi by the defendant and, if so, whether the defendant has timely responded;~~

~~(5) Whether the defendant has filed, or intends to file, any motion to sever, dismiss, or suppress, or any other motion requiring a ruling by the District Court before trial;~~

~~(6) Whether a schedule should be set concerning any matter in the case other than trial;~~

~~(7) Whether the parties have discussed the possibility of an early resolution of the case without trial and, if so, the results of that discussion;~~

~~(8) Whether there are periods of excludable delay under the Speedy Trial Act as to which the parties agree, and what they are, and whether there are any disagreements, and what they are, to enable the Magistrate Judge to rule on periods of excludable delay at the Final Status Conference; and~~

~~(9) The estimated length of trial.~~

(1) whether the defendant requests that the case be transferred to the District Judge for a Rule 11 hearing;

(2) whether, alternatively, the parties move for a pretrial conference before the District Judge in order to resolve pretrial motions (if any) and schedule a trial date and, if so:

(A) whether the parties have produced all discovery they intend to produce and, if not, the identity of any additional discovery and its expected production date;

(B) whether all discovery requests and motions have been made and resolved and, if not, the nature of the outstanding requests or motions and the date they are expected to be resolved;

(C) whether all motions under Fed. R. Crim. P. 12(b) have been filed and responded to and, if not, the motions that are expected to be filed and the date they will ready for resolution;

(D) whether the Court should order any additional periods of excludable delay, the number of non-excludable days remaining, and whether any matter is currently tolling the running of the time period under the Speedy Trial Act; and

(E) the estimated number of trial days; and

(3) any other matters specific to the particular case that would assist the District Judge upon transfer of the case from the Magistrate Judge.

If the joint memorandum permits the Magistrate Judge to prepare the Final Status Report without the necessity of an additional status conference, the Magistrate Judge may waive the Final Status Conference and issue an order transferring the case to the District Judge.

~~**(D) Final Status Report. After the Final Discovery Conference, and any continuation of it necessary to assure that the discovery to have been provided prior to the conference is complete, the Magistrate Judge shall file for the District Judge who will preside at trial a Final Status Report that addresses:**~~

(d) Final Status Report. After the Final Status Conference, or upon receipt of the Joint Final Status Memorandum if no conference is deemed necessary, the Magistrate Judge shall transfer the case to the District Judge along with a Final Status Report that incorporates the information provided by the parties at the Final Status Conference or in the Joint Final Status Memorandum, as the case may be.

b. Explanation of Proposal

Overall, the proposed changes to this Local Rule are designed to increase the flexibility and usefulness of status conferences and to eliminate unnecessary conferences and reports. Reflecting current practice, the proposed rule provides for three types of conference – an initial status conference, one or more interim status conferences, and a final status conference – which Magistrate Judges can schedule as needed. Each initial and interim status conference is expected to result in a scheduling order (designed to keep the case moving) and an order of excludable delay (designed to ensure that there will be sufficient time for trial). In a departure from the current rule's requirements, however, these conferences are not expected to yield interim status reports prepared by the Magistrate Judges, because the District Judges generally have not found such reports to be useful. The parties, however, shall submit a memorandum to the Magistrate Judge prior to the conference unless otherwise ordered by the Court. The final status conference, in contrast, is expected to result in a status report that conveys information the District Judge will need in order to schedule the next phase of the proceedings.

The proposed rule mandates an initial status conference attended in person by trial counsel, on the theory that such a conference will focus counsel's attention on the case and ensure that discovery is on schedule. It then mandates that counsel file a joint memorandum before any interim or final status conference and permits the Magistrate Judge to excuse counsel from appearing in person at any such conferences if their presence is not needed. This will save considerable time and money that is currently expended on status conferences where the parties essentially show up only to report that they need more time for various matters.

Finally, again reflecting current practice, the proposed rule expressly authorizes Magistrate Judges to eliminate additional conferences and return the case to the District Judge whenever the defendant indicates that he or she intends to plead guilty or whenever discovery is complete and the only matters left to be resolved are ones appropriately reserved for the District Judge.

The following is a subsection-by-subsection explanation of the proposed changes to this rule.

Subsection (a). Because experience has shown that the parties and Magistrate Judge seldom if ever agree that an initial status conference is unnecessary, the option to forego the initial status conference altogether will be eliminated. Instead, the proposed rule reflects current practice by requiring the Magistrate Judge to schedule an initial status conference at arraignment and to set it for the date on which discovery letters are due (i.e. two weeks after the due date for automatic discovery). That will ensure that any unresolved discovery issues are ripe for discussion. At the conclusion of the initial status conference, the Magistrate Judge may either return the case to the District Judge (if appropriate) or schedule an interim or final status conference, as needed.

Subsection (b). Magistrate Judges frequently schedule interim status conferences, especially in complex cases. As currently written, however, Local Rule 116.5 does not authorize interim status conferences or set any guidelines for them. The proposed change will remedy this omission by expressly authorizing the Magistrate Judge to schedule an interim status conference (if one is needed). The proposed rule also specifies the matters that must be discussed at such a conference. Because the purpose of most interim status conferences is simply to update the Court on the progress of matters discussed at the initial status conference and to adjust the schedule for resolving those matters, Subsection (b) directs the parties to file a joint memorandum before the conference that addresses those issues and permits the Magistrate Judge to waive the parties' appearance at the conference if new scheduling and excludable delay orders can be issued based on the joint memorandum alone. At the conclusion of an interim status conference, the Magistrate Judge may return the case to the District Judge (if appropriate), schedule another interim status conference, or schedule a final status conference, as needed.

Subsections (c) and (d). As currently written, Subsection (c) requires the parties to attend a final status conference and discuss certain matters, and Subsection (d) requires the Magistrate Judge to issue a Final Status Report detailing certain matters, but the lists of matters in the two Subsections are not entirely congruent. The proposed rule remedies that incongruity by requiring the parties to address in their joint memorandum (and, if needed, discuss at the final status conference) all matters that the Magistrate Judge is currently required to address in the Final Status Report. It then requires the Magistrate Judge to issue a report that simply memorializes the determinations made at the final status conference.

The remaining changes to this rule are to promote clarity and to conform to current stylistic conventions.

10. Amendment to Rule 116.6 – Declination of Disclosure and Protective Orders

a. Proposed Amendment

Rule 116.6. DECLINATION OF DISCLOSURE AND PROTECTIVE ORDERS

(a) ~~**(A)**~~ **Declination.** If in the judgment of a party it would be detrimental to the interests of justice to make any of the disclosures required by these Local Rules, such disclosures may be declined, before or at the time that disclosure is due, and the opposing party advised in writing, with a copy filed in the Clerk's Office, of the specific matters on which disclosure is declined and the reasons for declining. If the opposing party seeks to challenge the declination, that party shall file a motion to compel that states the reasons why disclosure is sought. Upon the filing of such motion, except to the extent otherwise provided by law, the burden shall be on the party declining disclosure to demonstrate, by affidavit and supporting memorandum citing legal authority, why such disclosure should not be made. The declining party may file its submissions in support of declination under seal pursuant to ~~**L.R**~~ .**Local Rule** 7.2 for the Court's in camera consideration. Unless otherwise ordered by the Court, a redacted version of each such submission shall be served on the moving party, which may reply.

(b) ~~**(B)**~~ **Ex Parte Motions for Protective Orders.** This Local Rule does not preclude any party from moving under ~~**L.R**~~ .**Local Rule** 7.2 and ex parte (i.e. without serving the opposing party) for leave to file an ex parte motion for a protective order with respect to any discovery matter. Nor does this Local Rule limit the Court's power to accept or reject an ex parte motion or to decide such a motion in any manner it deems appropriate.

11. Amendment to Rule 116.9 – Preservation of Notes

a. Proposed Amendment

Rule 116.9. PRESERVATION OF NOTES

(a) ~~**(A)**~~ **General Rule.** All contemporaneous notes, memoranda, statements, reports, surveillance logs, ~~tape~~ recordings, and other documents **(regardless of the medium in which they are stored)** memorializing matters relevant to the charges contained in the indictment made by or in the custody of any law enforcement officer whose agency at the time was formally participating in an investigation intended, in whole or in part, to result in a federal indictment ~~**(regardless of the medium in which they are stored)**~~ shall be preserved until the entry of judgment unless otherwise ordered by the Court.

(b) ~~**(B)**~~ **Rough Drafts.** These Local Rules do not require the preservation of rough drafts of reports after a subsequent draft of final report is prepared.

(c) ~~**(C)**~~ **Established Retention Procedures.** These Local Rules do not require modification of a government agency's established procedure for the retention and disposal of documents when the agency does not reasonably anticipate a criminal prosecution.

b. **Explanation of Proposal**

The purpose of this rule is to require the preservation of certain notes, regardless of the medium in which they are stored. As currently written, the rule requires the preservation of notes stored on magnetic tape but not on other non-paper media. The proposal amends the rule to remedy this omission. The rule is also amended to clarify that the parenthetical – "(regardless of the medium in which they are stored)" – modifies "other documents" and should be inserted after the phrase "other documents" rather than after the phrase "federal indictment."

The remaining changes to this rule are to promote clarity and to conform to current stylistic conventions.

12. Amendment to Rule 117.1 – Pretrial Conferences

a. Proposed Amendment

Rule 117.1. PRETRIAL CONFERENCES

(a) ~~**(A)**~~ **Initial Pretrial Conference**. ~~**After receiving the Magistrate Judge's Final Status Report, and at least thirty (30) days before trial, or at the earliest practicable shorter time before trial consistent with the Speedy Trial Act,**~~ **Within 14 days of receiving the Magistrate Judge's Final Status Report,** or at the earliest practicable ~~**shorter**~~ time before trial consistent with the Speedy Trial Act, the District Judge ~~**who will preside at trial**~~ **to whom the case is assigned** must conduct **a Rule 11 hearing, if the defendant has requested one, or else must convene** an Initial Pretrial Conference, which counsel who will conduct the trial must attend. At the Initial Pretrial Conference the District Judge must:

(1) ~~**Attempt to determine if the case will be resolved by a guilty plea, a plea of nolo contendere, or dismissal.**~~ **determine the number of days remaining before trial must begin under the Speedy Trial Act;**

(2) ~~**If necessary, schedule a hearing on any motion to dismiss, suppress, or sever or any other motion requiring pretrial resolution.**~~ **confirm that all discovery has been produced, all discovery disputes have been resolved, and all pretrial motions under Fed. R. Crim. P. 12(b) have been filed and briefed, and schedule any necessary hearings or additional briefing on any** ~~**motion to dismiss, suppress, or sever or any other motion requiring pretrial resolution**~~ **pretrial motions under Fed. R. Crim. P. 12(b);**

(3) establish a reliable trial date, **which should not, except upon motion of the defendant, be less than 30 days after any evidentiary hearing on a pretrial motion under Fed. R. Crim. P. 12(b);**

(4) unless the declination procedure provided by ~~**L.R.**~~ **Local Rule** 116.6 has previously been invoked, order the government to disclose to the defendant no later than ~~**twenty-one (21)**~~ **21** days before the trial date:

(A) the exculpatory information identified in ~~**L.R.**~~ **Local Rule** 116.2 **(b)(2)**; and

(B) a general description (including the approximate date, time and place) of any crime, wrong, or act the government proposes to ~~**offer**~~ **use** pursuant to Fed. R. Evid. 404(b);

(5) determine whether the parties have furnished statements, as defined by 18 U.S.C. § 3500(e) and Fed. R. Crim. P. 26.2(f), of witnesses they intend to call in their cases-in-chief and, if not, when they propose to do so;

(6) determine whether any party objects to complying with the presumptive timing directives of ~~**L.R 117.1.**~~ **subsections** (**a** ~~**A**~~)(8) and (**a** ~~**A**~~)(9) for the disclosure of witnesses and identification of exhibits and materials. If any party expresses an objection, the court may decide the issues(s) presented at the Initial Pretrial Conference or may order briefing and/or later argument on such issue(s);

(7) establish a schedule for the filing and briefing of possible motions in limine and for the filing of proposed voir dire questions, proposed jury instructions, and, if appropriate, trial briefs;

(8) unless an objection has been made pursuant to ~~**L.R 117.1.**~~ **subsection**(**a** ~~**A**~~)(6), order that at least ~~**seven (7)**~~ 7 days before the trial date the government must:

> **(A)** ~~**(a)**~~ provide the defendant with the names and addresses of witnesses the government intends to call at trial **(i)** in its case-in-chief, **and (ii) in its rebuttal to the defendant's alibi defense (if the defendant serves a Rule 12.1(a)(2) notice)**. If the government subsequently forms an intent to call any other witness, the government shall promptly notify the defendant of the names and address of that prospective witness. **The government shall not, however, provide the defendant the addresses of any victims whom it intends to call in its rebuttal to the defendant's alibi defense (if the defendant serves a Rule 12.1(a)(2) notice) except pursuant to subsection (a)(9).**
>
> **(B)** ~~**(b)**~~ provide the defendant with copies of the exhibits and a premarked list of the exhibits the government intends to ~~**offer**~~ **use** in its case-in-chief. If the government subsequently decides to offer any additional exhibit in its case-in-chief, the government shall promptly provide the opposing party with a copy of the exhibit and a supplemental exhibit list;

(9) if the defendant establishes a need for the address of a victim the government intends to call as a witness in its rebuttal to the defendant's alibi defense (if the defendant serves a Rule 12.1(a)(2) notice), the court may:

> **(A) order the government to provide the information in writing to the defendant or the defendant's attorney; or**
>
> **(B) fashion a reasonable procedure that allows preparation of the defense and also protects the victim's interests.**

(10)~~**(9)**~~ (unless an objection has been made pursuant to ~~**L.R 117.1**~~. **subsection** (**a** ~~**A**~~)(6), order that at least ~~**seven (7)**~~ 7 days before the trial the defendant must provide the government with witness and exhibit identification and materials to the same extent the government is obligated to do so under ~~**L.R.117.1**~~ **subsection (a** ~~**A**~~)(8);

(11)~~(10)~~ determine whether the parties will stipulate to any facts that ~~**may not be**~~ **are not** in dispute;

(12)~~(11)~~ establish a date for a ~~**Second**~~ **Final** Pretrial Conference, to be held not more than ~~**seven (7)**~~ **7** days before the trial date, to resolve any matters that must be decided before trial, **unless all parties advise the Court that such a conference is not necessary and the District Judge concurs.**

(b) ~~(B)~~ Special Orders. The **District** Judge who will preside at trial may, upon motion of a party or on the judge's own initiative, modify any of the requirements of subsection **(a) ~~(A)~~** of this **rule** ~~**Local Rule if the judge determines that there are factors in the particular case that make it**~~ in the interests of justice ~~**to do so.**~~

(c) ~~(C)~~ ~~Subsequent~~ **Interim Pretrial Conferences.** ~~**At least one subsequent Pretrial Conference shall be held unless all parties advise the court that such a conference is not necessary and the judge concurs**~~ **If, at the conclusion of the Initial Pretrial Conference, a reliable trial date cannot be established, or if a trial date is established but later continued by the Court, the Court shall schedule an Interim Status Conference at which the District Judge, in consultation with the parties, must determine the time remaining under the Speedy Trial Act before which trial must begin and must adjust, as needed, the scheduling dates called for by subsections (a)(4)-(12).**

b. Explanation of Proposal

The key change is the addition of language respecting the disclosure of victims' addresses. That change is needed to bring this Local Rule into conformity with the December 2008 amendments to Fed. R. Crim. P. 12.1, which was adopted in response to the Crime Victims' Rights Act, 18 U.S.C. § 3771.

The change to subsection (c) is intended to avoid unnecessary delays and to promote an early pretrial conference after the case has been transferred from the magistrate judge to the district judge.

The remaining changes to this rule are to promote clarity and to conform to current stylistic conventions.

13. New Rule – Subpoenas in Indigent Criminal Cases

a. Proposed Rule

Rule 117.2. SUBPOENAS IN CRIMINAL CASES INVOLVING COURT-APPOINTED COUNSEL

(a) Issuance of Subpoenas. In any criminal matter in which the defendant is represented by the Federal Public Defender or other court-appointed counsel, upon request of such counsel the Clerk of Court shall issue a subpoena for hearing or trial in blank, signed and sealed, to counsel without the necessity for an individual court order.

(b) Service of Subpoenas. Upon presentation of such a subpoena, the United States Marshal shall serve it in the same manner as in other criminal cases pursuant to Fed. R. Crim. P. 17(b).

(c) Process Costs and Witness Fees. Subpoenas issued under subdivision (a) of this Rule are issued upon approval of the court. The United States Marshal shall pay the process costs and fees of any witness subpoenaed pursuant to this Rule as provided in Fed. R. Crim. P. 17(b) and 28 U.S.C. § 1825.

(d) Subpoenas in Certain Hearings. A subpoena may not be issued under this rule to compel the attendance of a witness in

(1) a preliminary hearing pursuant to Rule 5.1 or Rule 32.1(b)(1), Fed. R. Crim. P.;

(2) a detention hearing held pursuant to 18 U.S.C. § 3142(f); or

(3) or a hearing concerning the revocation of release as provided in 18 U.S.C. § 3148,

without first seeking leave from the presiding judicial officer.

b. Explanation of Proposal

This proposed rule would essentially adopt General Order 94-1 (Feb. 1, 1994) as a local rule, and expand it to include all proceedings before magistrate judges. It would also modify the language of General Order 94-1 to conform to changes in Fed. R. Crim. P. 17 adopted after February 1, 1994.

General Order 94-1 currently governs the issuance and service of subpoenas in "all criminal matters before the Court in which the defendant is represented by the Federal Public Defender or by other court-appointed counsel . . . other than a hearing before a Magistrate Judge." Incorporating the substance of this general order as a local rule would serve the salutary purpose of gathering in one place all of the Court's orders and rules of general applicability.

An exception is made, however, for preliminary hearings, detention hearings, and hearings concerning the revocation of release. In such instances, the approval of the presiding judicial officer must be obtained. The principal reason for the exception is to avoid wasting the time and resources of parties, witnesses, and the Court when witness testimony is not likely to be permitted.

14. New Rule – Requirement of Table of Contents for Voluminous Discovery

a. Proposed Rule

Rule 116.10 REQUIREMENT OF TABLE OF CONTENTS FOR VOLUMINOUS DISCOVERY

Any party producing more than 1,000 pages of discovery in a criminal case shall provide a table of contents that describes, in general terms, the type and origin of the documents (for example, "bank records from Sovereign Bank for John Smith"; "grand jury testimony of Officer Jones") and the location of the documents so described within the larger set (for example, by Bates number).

c. Explanation of Proposal

This rule is intended to assist all counsel in the orderly production of discovery. It will particularly facilitate efficient review by defense counsel, especially solo practitioners and counsel for indigent defendants. It also may help avoid disputes concerning whether documents were produced in a timely fashion by creating a more detailed record of documents provided.

The proposed rule is not intended to reveal a level of detail that would in turn potentially reveal a party's case strategy. Rather, the proposed rule would require a relatively broad and generic list of the types of documents produced and the origin of the documents.

In large or complex white-collar cases, the government sometimes receives millions, tens of millions, or even hundreds of millions of documents during the investigation. It often makes available all (or nearly all) of those documents to the defense for inspection and copying to ensure complete satisfaction of its discovery obligations. In many cases the documents obtained by the government are received without any kind of index and are made available to the defense that way. This rule would not ordinarily require the government to provide a greater level of detail than that provided to it by the producing party; for example, "records produced by XYZ corporation to grand jury" would normally suffice to describe the documents.

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