UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PUBLIC NOTICE

AMENDMENTS TO THE LOCAL RULES OF THE UNITED STATES DISTRICT COURT

By public notice dated October17, 2011, this Court provided notice and solicited comment regarding proposed amendments to Local Rules 83.5.3; 112.2; 116.1; 116.2; 116.3;116.4; 116.5; 116.9;117.1; and 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 were presented with these 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 of the United States District Court have found substantial merit in the proposals and after review have determined to adopt such rules as proposed. Accordingly, the Local Rules have been amended and adopted as indicated in the form attached hereto, effective on February 1, 2012.

January 4, 2012

Sarah Allison Thornton
Clerk of Court

AMENDMENTS TO LOCAL CRIMINAL RULES
United States District Court - District of Massachusetts
January 3, 2012

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1. 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.

Effective September 1, 1990; amended effective February 1, 2012.

2. 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 Local Rule 7.1.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

3. RULE 112.2 EXCLUDABLE DELAY PURSUANT TO THE SPEEDY TRIAL ACT

(a) Excludable Delay Generally. The Court, having found that a fair and prompt resolution of criminal cases is best served by minimizing formal motion practices and 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)(1)(D) & (H) and (h)(7)(A), to serve the ends of justice in order to accomplish such purposes:

(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;

(2) no more than 14 days from the filing of a copy of a letter requesting discovery under Local Rule 116.3(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) Requirement of Order of Excludable Delay. The time periods indicated above will not be automatically excluded. All such periods of excludable delay must be included in an order issued by the District Judge or Magistrate Judge .

(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.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

4. RULE 112.4 CORPORATE DISCLOSURE STATEMENT

(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) 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) charged in any indictment or information.

(c) A party must file the Local Rule 112.4 (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.

Adopted December 4, 2000; effective January 1, 2001; amended effective February 1, 2012.

5. RULE 116.1 DISCOVERY IN CRIMINAL CASES

(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 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 these Local Rules.

(2) Non-Automatic Discovery. 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) Waiver. A defendant shall be deemed to have requested all the discovery authorized by Fed. R. Crim. P. 16(a)(1)(A)-(F) unless that defendant files a Waiver of Request for Disclosure (the "Waiver") at 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 this rule and shall be deemed to have consented to the exclusion of time for Speedy Trial Act purposes as provided in Local Rule 112.2(a). 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) Automatic Discovery Provided by the Government.

(1) Following Arraignment. Unless a defendant has filed the Waiver in accordance with paragraph (b) above, within 28 days of 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 government must produce to the defendant:

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

(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 resulted in the seizure of evidence or led to the discovery of evidence that the government intends to 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) 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 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) 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 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) 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 Local Rule 7.2 pending further order of the Court.

(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, 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 Local Rule 116.2.

(d) Automatic Discovery Provided by the Defendant. Unless a defendant has filed the Waiver in accordance with paragraph (b) above, within 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.

Adopted September 1, 1990; amended effective December 1, 1998; amended effective February 1, 2012.

6. RULE 116.2 DISCLOSURE OF EXCULPATORY EVIDENCE

(a) Definition. Exculpatory information is information that is material and favorable to the accused and includes, but is not necessarily limited to, information that 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 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 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) Timing of Disclosure by the Government. Unless the government invokes the declination procedure under Local Rule 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 116.1(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 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
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> (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
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> (D) a copy of any criminal record of any witness 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 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 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 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 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.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

7. RULE 116.3 DISCOVERY MOTION PRACTICE

(a) Letter Request for Discovery. 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 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) 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) 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) No Need to Request Automatic Discovery. A defendant participating in automatic discovery should not request information expressly required to be produced under Local Rule 116.1, because all such information is required to be produced automatically in any event.

(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 14 days of receipt of a written discovery request.

(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 , the moving party 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) Timing of Motion. Any discovery motion shall be filed within 14 days of receipt of the opposing party's written reply to the letter requesting discovery described in subdivision (a) of this 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). 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) 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) Timing of Response to Motions. The opposing party must file its response to all discovery motions within 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) Subsequent Requests. The procedure set forth in this rule shall apply to any subsequent requests for discovery. 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.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

8. RULE 116.4 SPECIAL PROCEDURE FOR AUDIO AND VIDEO RECORDINGS

(a) Availability of Audio and Video Recordings

(1) The government must provide at least one copy of all 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 audio and video recordings is available for review by the defendant(s) in custody.

(b) Composite 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 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 recordings, or preliminary or final transcripts, of any recording.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

9. RULE 116.5 STATUS CONFERENCES AND STATUS REPORT PROCEDURE

(a) Initial Status Conference. 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. 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 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) 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) 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) 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) of this 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 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 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;
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> (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;
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> (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;
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> (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 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.

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009; amended effective February 1, 2012.

10. RULE 116.6 DECLINATION OF DISCLOSURE AND PROTECTIVE ORDERS

(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 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) Ex Parte Motions for Protective Orders. This Local Rule does not preclude any party from moving under 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.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

11. RULE 116.9 PRESERVATION OF NOTES

(a) General Rule. All contemporaneous notes, memoranda, statements, reports, surveillance logs, 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 shall be preserved until the entry of judgment unless otherwise ordered by the Court.

(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) 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.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

12. RULE 116.10 REQUIREMENTS 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).

Adopted January 3, 2012; effective February 1, 2012.

13. RULE 117.1 PRETRIAL CONFERENCES

(a) Initial Pretrial Conference. Within 14 days of receiving the Magistrate Judge's Final Status Report, or at the earliest practicable time before trial consistent with the Speedy Trial Act, the District Judge 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) determine the number of days remaining before trial must begin under the Speedy Trial Act;

(2) 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 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 Local Rule 116.6 has previously been invoked, order the government to disclose to the defendant no later than 21 days before the trial date:

> (A) the exculpatory information identified in 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 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 subsections (a)(8) and (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 subsection(a)(6), order that at least 7 days before the trial date the government must:

> (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) provide the defendant with copies of the exhibits and a premarked list of the exhibits the government intends to 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) unless an objection has been made pursuant to subsection (a)(6), order that at least 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 subsection (a)(8);

(11) determine whether the parties will stipulate to any facts that are not in dispute;

(12) establish a date for a Final Pretrial Conference, to be held not more than 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) 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) of this rule in the interests of justice

(c) Interim Pretrial Conferences. 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).

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009; amended effective February 1, 2012.

14. 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.

Adopted January 3, 2012; effective February 1, 2012.