Best Practices in the Scheduling of Criminal Cases
September 2, 2014

The "best practices" adopted today by this Court arose from extensive discussion by the Court's Criminal Working Group ("CWG"), comprised of judges, representatives from the Criminal Justice Act panel, the U.S. Attorney's Office, the Federal Defender's Office and the U.S. Probation Office. The goal in suggesting these "best practices" is to reduce the time from initial appearance to disposition without sacrificing the standard of the high-quality of representation that is the hallmark of representation in this district.

All stakeholders, including the general public, have a vested interest in the efficient and just handling of criminal cases and we make these proposals with that goal in mind. The Court's recommendation of these best practices is the result of collaborative discussion and deliberation and the execution of same will only be successful with the efforts of both the Court and counsel. This list is by no means exhaustive. The Court anticipates and welcomes continued collaboration as such practices are put into action and intends to revisit these practices periodically to gauge progress and the need for further recommendations. These best practices are not intended to and shall not supplant the Court's Local Rules or the exercise of judicial discretion in any individual case.

Based on our years of combined experience of presiding over criminal cases in the district court, we believe that putting the following principles in action will contribute most to increasing the fair and expeditious pace of criminal proceedings:

1) setting a realistic, firm trial date earlier in the process and establishing deadlines for earlier proceedings with that date in mind;

2) setting firm deadlines for the production and review of discovery and the resolution of pretrial motions based on the complexity of the case; and

3) continuing hearing dates and enlarging filing dates only for good reason and on clearly articulated grounds.

We describe below the manner in which these practices can best be implemented at each stage of a criminal proceeding.

ARRAIGNMENT:

At arraignment, the magistrate judge should inquire about the scope of discovery. The magistrate judge should inquire of the government about whether automatic discovery has been produced at arraignment or can be produced in less than twenty-eight (28) days as set by Local Rules in recognition that this may be done in less complex cases. The magistrate judge's inquiry about the scope of discovery should include, but not be limited to, inquiry about any anticipated need for forensic analysis and/or drug analysis and the timing of same. The magistrate judge should ask defense counsel how much time they anticipate it will take to review discovery. The scheduling of the initial status conference should be scheduled with this input from counsel in

mind, but presumably would be less than 42 days of arraignment in cases when automatic discovery is being produced before the 28-day deadline in less complex cases.

STATUS CONFERENCE(S) BEFORE THE MAGISTRATE JUDGE:

All interested parties believe that it is important to both parties to schedule firm and reliable trial dates. The setting of trial dates may turn upon the complexity of case and the docket of the particular court session, but given the shared interest in establishing firm, reliable trial dates sooner rather than later to achieve fair and efficient adjudication of cases, the Court recommends that the magistrate judges and district judges consider the following in regard to the scheduling of status conferences before the magistrate judge and the referral of criminal cases back to the district judge:

1) In complex criminal cases, particularly those involving multiple defendants, the magistrate judge confer with the parties and the district judge to establish a firm and realistic trial date early in the case (even as the case proceeds before the magistrate judge);

2) In less complex cases which, if they proceeded to trial, would take less than one week to try, that there be a certain presumptive period (to be developed in each case) in which the case would be referred to the district court for initial pretrial conference;

3) In all cases, the magistrate judge shall refer the case back to the district court when discovery is *substantially* complete. The CWG's discussions suggest that there may be instances in which a case may remain before the magistrate judge because the parties are waiting for the production of evidence that is not yet available (e.g., testing results, etc.) Since the district court controls its trial calendar, the setting of a firm, reliable trial date will, in most cases, happen earlier if the matter is referred back to the district judge. Accordingly, if the parties are awaiting the production of additional discovery, the magistrate judge refer the matter to the district court, noting any open matters in the final status report so that the district court can schedule an initial pretrial conference or other hearing accordingly.

4) The Court does not recommend the abolition of interim status conferences in all cases and the discretion to hold an interim status conference shall remain committed to the discretion of the magistrate judge. In some cases, particularly more complex ones involving the production of extensive discovery and review by defense counsel, an interim status conference provides a meaningful opportunity for the magistrate judge to monitor the progress of discovery. The scheduling of such interim conferences, as may be needed, however, should not result in the postponement of a firm, reliable trial date previously set in the more complex cases or the presumptive referral date to district court.

5) Final Status Conferences. In all cases in which a plea agreement is reasonably likely, the government should provide defense counsel with a written final plea offer, after consultation with defense counsel, on or before the time the Final Status Report is filed before the magistrate judge and the matter is set for the first appearance in district court.

REFERRAL TO THE DISTRICT JUDGE:

Once the matter is referred by the magistrate judge, the district judge shall promptly schedule the parties' first appearance before the district judge (i.e., initial pretrial conference, Rule 11 hearing or suppression hearing). If the first appearance is going to be an initial pretrial conference or Rule 11 hearing, the presumptive time frame should be within two weeks of referral.

On or before the pretrial conference, defense counsel should review the plea agreement with his/her client and complete negotiations with the government. Plea negotiations should be exhausted by the time of the initial pretrial conference.

Although recognizing that it is sometimes more challenging to schedule evidentiary hearings, the district court should promptly schedule hearings on criminal motions once they are ripe (i.e., once all responsive papers have been filed), preferably within two weeks of the motion becoming ripe if it is clear that the hearing will be non-evidentiary. The Court should promptly resolve any motion after such hearing, presumably within 30 days of a motion hearing.

At the initial pretrial conference, the Court shall inquire about whether the government has already produced Jencks materials to defense counsel. If Jencks materials have not yet been produced at this juncture, the government should be prepared to propose a timeline for doing so before trial, estimate the expected volume of such production and, if early production is not proposed, then the Court should inquire about whether a protective order or other Court-ordered measure would address any concerns about earlier Jencks production.

CONTINUANCES:

Although unexpected developments in the case or scheduling conflicts can and do arise, continuances of court dates, particularly trial dates, should be the exception and not the rule. Counsel should not expect continuance of court dates and the court should not freely grant them except upon the clear articulation of good reasons to do so.

PLEA PRACTICES:

The District Court should schedule plea hearings no later than two weeks after the parties request such a hearing. Prior to such hearing, the parties should have discussed whether the case is appropriate for a streamlined and expedited PSR and should raise this matter with the district court at or before the Rule 11 hearing.

Defense counsel and Probation should coordinate to schedule a defendant's presentence interview on the day of his/her Rule 11 hearing.

In connection with status conference(s) before the magistrate judge and pretrial conference(s) before the district judge, it is recommended that the judge consult with defense counsel about the desirability of having any defendant in custody brought in for appearance, particularly where such action may assist with consultation with the defendant about the progress of the case.

SENTENCING:

Although the presumptive 12-week period for the presentence investigation ("PSI") and preparation of the PSR remains, the Court recognizes that there are some cases in which an expedited PSI period is appropriate. These cases may include, for example, cases in which PTS investigation revealed that the defendant had no criminal history or Probation was able to obtain the underlying criminal records in connection with the defendant's detention hearing; the likely advisory GSR would be shorter than the time that has/will elapse before sentencing; and/or the defendant has a PSR from having been previously sentencing before a federal district court. As discussed above, the parties should raise this matter with the district court at or before the Rule 11 hearing.

A number of the continuances routinely sought for sentencing hearing concern defendants who are cooperating and anticipate the government filing a 5K1.1 motion for his/her substantial assistance. A continuance, even if assented-to by both parties, may not always be warranted in these circumstances. If, however, the district court, in its discretion, grants such continuance, no such continuance should be open-ended. The government should be ordered to report periodically about the status of such ongoing cooperation and should be prepared to articulate what prevents the government from crediting the defendant for his cooperation to date and the anticipated cooperation if the sentencing is held promptly.

FAST-TRACK CASES:

In all unlawful re-entry cases, prosecutors should inform defense counsel at the arraignment whether the case is fast-track eligible and provide a preliminary calculation of the guideline sentencing range. At arraignment in illegal re-entry cases, the magistrate judge should inquire about whether the defendant is fast-track eligible. The government should provide the bulk of discovery in fast-track cases within two days of arraignment.