

LOCAL RULES OF CRIMINAL PROCEDURE

District Court Rules Crim. Proc., Rule 1.1 SCOPE OF RULES

- (a) **Title and Citation.** These Rules shall be known as the Local Rules of Criminal Procedure of the District Court of the Virgin Islands. They shall be cited as “LRCr.”
- (b) **Scope of Rules.** These Rules apply in all proceedings in criminal actions.
- (c) **Effective Date.** These Rules become effective on April 23, 2021.
- (d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These Rules supersede all previous criminal rules promulgated by this Court or any Judge of this Court. They govern all applicable proceedings brought in this Court after they take effect. They also apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work injustice, in which event the former rules govern.
- (e) **Rule of Construction and Definitions.** United States Code, Title 1, Sections 1 through 5, shall, as far as applicable, govern the construction of these Rules.

District Court Rules Crim. Proc., Rule 1.2 RELATIONSHIP TO LOCAL RULES OF CIVIL PROCEDURE

In cases of general procedure not covered by these Rules, the Local Rules of Civil Procedure shall apply.

District Court Rules Crim. Proc., Rule 7.1 SUPERSEDING CHARGING DOCUMENTS

- (a) Upon the filing of a superseding charging document, the United States shall indicate the changes that have been made in the superseding document in comparison to the preceding charging document by redline or other comparable method. The United States shall also give written notice to the Court: (1) stating whether the new charging document commences a new time limit for commencement of trial; and (2) if so, (i) identifying the reasons the new charging document commences a new time limit for commencement of trial, and (ii) indicating whether the United States seeks a new trial date.
- (b) By no later than at the arraignment on the new charging document, counsel for the defendant shall: (1) state whether the defendant agrees or disagrees that the new charging document commences a new time limit for commencement of trial; (2) identify the defendant’s reasons for agreement or disagreement; and (3) state whether the defendant seeks a new trial date based on the new charging document.

District Court Rules Crim. Proc., Rule 12.5
PRETRIAL MOTIONS: DUTY TO ADDRESS SPEEDY TRIAL ACT
EXCLUDABLE TIME IMPLICATIONS

- (a) A motion for a continuance of trial or any other pretrial motion filed after arraignment that seeks to exclude time under the Speedy Trial Act (18 U.S.C. § 3161), whether by the United States or the defendant, shall include:
- (1) a statement of whether any delay occasioned by the making, hearing or granting of that motion will constitute, in whole or in part, excludable time as defined by 18 U.S.C. § 3161(h), and, if so, (i) a statement or estimation of the number of days to be excluded, or (ii) a statement describing how excludable time should be determined by reference to a specified future event; and
 - (2) a proposed form of order that, if adopted, states fully and with particularity (i) the reasons for granting the motion, and (ii) the proposed findings of the Court as to excludable time.
- (b) A party opposing a motion shall file, with the response to the substance of the motion, its agreement with or opposition to the statements or estimations of the moving party made pursuant to subsection (a).
- (c) Memoranda in support of and in opposition to a motion for a continuance of trial shall be filed as follows:
- (1) A party filing a motion for a continuance of trial shall file a supporting memorandum at the time the motion is filed. A memorandum shall not be required in support of a motion for a continuance of trial if the reasons for the request are fully stated in the motion.
 - (2) A party opposing a motion for a continuance of trial shall file a memorandum in opposition to the motion within seven days after service of the motion, unless a shorter period is set by the Court. No further memoranda may be filed without leave of Court.
 - (3) A party who does not file an opposition to a motion shall be deemed not to oppose the motion.
- (d) This rule shall not apply to any motion to be heard *ex parte*.

District Court Rules Crim. Proc., Rule 12.6
COMPLEX CASE DESIGNATION

If the United States intends to seek complex case designation for the purpose of excluding time in which trial must be commenced, pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and B(ii), an attorney for the United States shall file a written motion prior to arraignment. At arraignment, the Court may set a date for a hearing on the motion seeking a complex case designation. At a time set by the Court, each defendant shall file a written response to the motion for complex case designation, indicating that party's agreement or opposition, and the reasons therefor.

District Court Rules Crim. Proc., Rule 16.1
DISCOVERY PROCEDURES

- (a) **Discovery Conference.** Unless otherwise ordered, no later than 14 days after the arraignment, the attorney for the United States and defense counsel must confer and agree on a timetable and procedures for pretrial disclosure under Rule 16. Counsel may confer in person, telephonically, or via email or other appropriate medium. The parties shall file a proposed pretrial discovery timetable within five days of the completion of the conference.
- (b) **Default Deadline for Production of Federal Rule of Criminal Procedure 16 Discovery.** Unless the Court sets a different deadline for discovery or the United States files a motion seeking a complex case designation, the United States shall satisfy whatever obligation it may have pursuant to Federal Rule of Criminal Procedure 16 no later than 30 days after the conference described in LRCr 16.1(a)(c).
- (c) **Discovery Motions.**
- (1) **Duty to Confer.** Counsel seeking discovery under Federal Rule of Criminal Procedure 7(f) or 16(a) or (b) shall file a written motion identifying the discovery sought with specificity only after conferring with opposing counsel in a good faith effort to secure the discovery sought.
- (2) **Declaration.** A motion to compel discovery shall be accompanied by a declaration of counsel which shall set forth: (i) the date that counsel conferred on the motion; (ii) the names of the attorney for the United States and defense counsel who conferred; (iii) the matters that were agreed upon; and (iv) the matters that are in dispute and require judicial determination.
- (d) **Joint Discovery Statement.** The attorneys for the United States and the defendant(s) shall collaborate and prepare a written Joint Discovery Statement to be signed by counsel for each party and filed with the Court no later than seven days prior to the commencement of every trial, or at such time as the Court may direct. The Joint Discovery Statement shall generally describe all discovery material exchanged and shall set forth all stipulations.
- (e) **Stipulations.** No factual stipulation shall be used against a defendant unless the stipulation is in writing, signed by the defendant's attorney, and the defendant either (i) signs the stipulation or (ii) orally, on the record, agrees to the stipulation.

District Court Rules Crim. Proc., Rule 16.2
PERSONNEL RECORDS

- (a) Upon request of a defendant who articulates a reasonable basis for the belief that a particular law enforcement officer's personnel and/or internal affairs file may contain discoverable information, the United States shall proceed as follows:
- (1) **Local Personnel Records.** The United States Attorney for the District of the Virgin Islands must request that the Attorney General of the Virgin Islands search for and review all personnel and internal affairs files of such local, non-federal, law enforcement personnel, past or present, and report the results of such search and review to the United States Attorney. The report must contain

the substance of all disciplinary reports, citizen complaints, departmental and/or agency complaints, including any disposition; medical and/or psychological information which could reasonably bear on the officer's ability to observe, perceive or relate events, or which could affect such officer's credibility; positive drug and/or alcohol testing results; criminal charges whether prosecuted or not; the substance of all internal affairs investigative files including all allegations and dispositions; all misconduct complaints and reports; any other acts and information, whether substantiated or not, which could reasonably bear on the officer's credibility or character for truthfulness. If the United States Attorney believes that portions of the information contained in the report should not be disclosed, the attorney for the United States may request a protective order under Federal Rule of Criminal Procedure 16(d)(1).

(2) Federal Personnel Records. The United States Attorney must request that the in-house counsel of the federal agency search for and review all personnel and internal affairs files of such federal law enforcement personnel, past or present, and report the results of such search and review to the United States Attorney. The report must contain the substance of all disciplinary reports, citizen complaints, departmental and/or agency complaints, including any disposition; medical and/or psychological information which could reasonably bear on the employee's ability to observe, perceive or relate events, or which could affect such person's credibility; positive drug and/or alcohol testing results; criminal charges whether prosecuted or not; the substance of all internal affairs investigative files including all allegations and dispositions; all misconduct complaints and reports; any other acts and information, whether substantiated or not, which could reasonably bear on the person's credibility or character for truthfulness. If the United States Attorney believes that portions of the information contained in the report should not be disclosed, the attorney for the United States may request a protective order under Federal Rule of Criminal Procedure 16(d)(1).

- (b)** The attorney for the United States must disclose information from a report submitted under subsection (a) that is material to the preparation of the defendant's defense and discoverable pursuant to law, subject to any protective order issued by the Court.
- (c)** If a search and review of records conducted under subsection (a) reveals nothing to be disclosed, the attorney for the United States must file a statement including the following information: (i) that a search was conducted; and (ii) the extent of the United States Attorney's Office's efforts with respect to the search.

District Court Rules Crim. Proc., Rule 17.2
SUBPOENAS

- (a) Order Required for Advance Disclosure.** No subpoena issued pursuant to Federal Rule of Criminal Procedure 17 may require the production of books, papers, documents or other objects in advance of the trial, hearing or proceeding at which these items are to be offered in evidence, unless the Court has first entered an order pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure.
 - (1)** An order permitting issuance of a Rule 17(c) subpoena may be obtained by filing either a motion or, for good cause, an *ex parte* motion. An *ex parte* motion and order thereon may be filed under seal for good cause. A party requesting a subpoena must support its request by a declaration specifying the facts supporting the issuance of the subpoena along with a proposed order.

(2) The Court will determine whether the material sought should be produced. In issuing an order granting the motion, the Court may place limits on the scope of the requested production.

- (b) **Return of Subpoena.** Any Rule 17(c) subpoena must be returnable to the Court. The subpoena may advise that no appearance is necessary if the items are produced in advance of the date specified, either to the Court, in an envelope delivered to the Clerk's Office, or directly to the issuing attorney whose name and address appear at the bottom of the subpoena.
- (c) **Protection for the Recipient.** Any Rule 17(c) subpoena must advise the subpoenaed party that if compliance would be unreasonable or oppressive, it may file a motion to quash or modify the subpoena, for an *in camera* review of the documents, or for an order to permit production only pursuant to a protective order.
- (d) **Time for Production.** No Rule 17(c) subpoena may require the production of documents or objects in fewer than 14 days from the date the subpoena is served, absent good cause, which must be demonstrated in the motion seeking the order for issuance of the subpoena. If the items sought are voluminous, more than 14 days should be permitted to avoid unnecessary motions to quash or modify.
- (e) **Defendant Subpoenas to the United States Government or United States Government Employees.** In addition to the requirements specified in subsections (a)-(d), a defendant may not issue a subpoena pursuant to Federal Rule of Criminal Procedure 17 to obtain books, papers, documents or other objects from the United States government or to obtain testimony from a United States government employee witness regarding matters within the scope of the government employee witness's employment, unless the defendant complies with the applicable agency regulations issued pursuant to *U.S. ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

District Court Rules Crim. Proc., Rule 28.1
INTERPRETERS

The prosecuting attorney or defense counsel must determine if an interpreter is needed for a defendant's court appearance. Except in preliminary proceedings, all requests for interpreting services must be made to the Court at least seven days before the interpreter's services are required.

District Court Rules Crim. Proc., Rule 32.1
SENTENCING RECOMMENDATIONS

The Office of Probation shall not disclose to anyone other than the Court the probation officer's recommendation on the sentence.

District Court Rules Crim. Proc., Rule 43.1
PRESENCE OF THE DEFENDANT

Counsel representing a person accused of a criminal offense in the District Court has the responsibility of notifying the defendant to appear before the Court, unless the defendant is in custody. The United States Attorney shall arrange for a defendant's presence in Court when the defendant is in custody.

District Court Rules Crim. Proc., Rule 46.1
MOTION FOR MODIFICATION OF RELEASE CONDITIONS

If a defendant's attorney or the attorney for the United States moves for any modification of conditions such as reporting to probation, or permission to leave the Virgin Islands, the party making the motion must first confer with the opposing party or give reasons for not so conferring. The motion must indicate whether the opposing party has an objection.

District Court Rules Crim. Proc., Rule 53.1
CAMERAS AND PERSONAL ELECTRONIC DEVICES

The possession or use of cameras or Personal Electronic Devices in the United States Court House or anywhere that a judicial officer is holding a court proceeding is governed by General Order of the Court, which is available on the Court's website and in the office of the Clerk of Court.

District Court Rules Crim. Proc., Rule 55.1
CRIMINAL JUSTICE ACT PLAN AND FORMS

The Court's Criminal Justice Act Plan and forms for use in proceedings governed by these Rules are available on the Court's website and in the office of the Clerk of Court.

District Court Rules Crim. Proc., Rule 55.2
SPEEDY TRIAL ACT PLAN

The Court's Speedy Trial Act Plan for use in proceedings governed by these Rules is available on the Court's website and in the office of the Clerk of Court.

District Court Rules Crim. Proc., Rule 58.1
COLLATERAL FORFEITURE

(a) In General. With respect to certain offenses specified in a General Order of the Court and available on the Court's website, the person charged with the offense may post collateral in the amount indicated for the particular offense in lieu of appearance.

- (b) Forfeiture and Effect.** Upon the failure of the person charged with the offense to appear for trial, the collateral shall be forfeited to the United States. Such forfeiture is tantamount to a finding of guilt.
- (c) Forfeiture Not Permitted.** Forfeiture is not permitted for violations contributing to an accident causing property damage in excess of one hundred dollars (\$100.00) or personal injury or when, in the opinion of the arresting or citing officer or agency, the offense charged is an aggravated offense.
- (d) Arrest in Lieu of Forfeiture.** Nothing contained in this Rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before the Court.
- (e) Violation Notices.** The content of, and procedures governing, violation notices are set forth in the order of the Court referred to in (a) above.

District Court Rules Crim. Proc., Rule 59.1
MATTERS BEFORE MAGISTRATE JUDGES

The Magistrate Judges are hereby designated to hear and determine in all criminal cases any pretrial matter permitted by 28 U.S.C. § 636 and Federal Rule of Criminal Procedure 59(a).