

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**



Local Rules of Criminal Procedure

EFFECTIVE DECEMBER 1, 2009

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

PART I	SCOPE OF RULES
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Effective December 1, 2009.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:
LOCAL RULES OF CRIMINAL PROCEDURE

Misc. No. 09-MC-00004-19

(Filed 12/1/2009)

ADMINISTRATIVE ORDER

With the concurrence of the active Article III judges in the District, this Administrative Order is entered for the Court,

Under the authority of 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal Procedure,

IT IS ORDERED that the following Local Criminal Rules governing practice in the United States District Court for the District of New Mexico are adopted, and will become effective on December 1, 2009.

Martha Vázquez
Chief United States District Judge

Bruce D. Black
United States District Judge

M. Christina Armijo
United States District Judge

William P. Johnson
United States District Judge

Robert C. Brack
United States District Judge

James O. Browning
United States District Judge

Judith C. Herrera
United States District Judge

John Edwards Conway
Senior United States District Judge

James A. Parker
Senior United States District Judge

C. LeRoy Hansen
Senior United States District Judge

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FOR THE DISTRICT OF NEW MEXICO

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**Please see www.nmcourt.fed.us for the
most current telephone contact information.**

COMMITTEE OF THE COURT
Local Criminal Rules Committee

Honorable Carmen E. Garza, Chair

Hon. Martha Vázquez, Chief District Judge, *ex officio*
Mr. Stephen P. McCue, Federal Public Defender
Ms. Anita Chavez, Chief of Probation and Pretrial Services
Ms. Cynthia Blumenthal, U. S. District Court Clerk's Office

Mr. Robert J. Gorence, Esq.
Ms. Kelly Burnham, Asst. U. S. Attorney
Mr. Fred Federici, Assistant U. S. Attorney

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

I. SCOPE OF RULES

RULE 1. Scope; Application.

- 1.1 Title and Citation.** These are the Local Rules for criminal proceedings in the United States District Court for the District of New Mexico. They are cited as “D.N.M.LR-Cr. _____.”
- 1.2 Effective Date.** These Rules take effect on December 1, 2009.
- 1.3 Application of Rules.** These Rules apply in all criminal proceedings in the District of New Mexico.
- 1.4 Electronic filing.** All petitions, motions and other pleadings or documents required to be filed with the Court must be electronically filed unless excepted as defined in the CM/ECF Administrative Procedures Manual.
- 1.5 Charging Documents.** The electronically filed or electronically submitted charging documents, including the complaint, information, indictment and superseding information or indictment, must include the image of any legally required signature.

II. INITIAL APPEARANCE AND PRELIMINARY HEARING

RULE 5. Initial Appearance Before Magistrate Judge.

- 5.A Initial Interview of Defendants by Pretrial Services Officers.**
 - a. Opportunity to Consult with Counsel.** A defendant will be given an opportunity to consult with counsel before his or her initial interview with the Pretrial Services Officers. The Federal Public Defender, as directed by the Court, will provide advice of rights to defendants before their interview by Pretrial Services.
 - b. Notification of Counsel.** It is the responsibility of Pretrial Services to notify the defendant’s retained counsel or the Federal Public Defender before the initial interview.
 - c. Determination of Eligibility.** If the Court determines the defendant is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act. The Clerk will notify defendant’s counsel of the custodial status of the defendant and the time of the Initial Appearance or the next scheduled hearing.
 - d. Summons Cases.** If a summons is issued to a defendant, the Clerk will attach a notice to the summons advising the defendant to contact Pretrial Services. Pretrial Services will:
 - advise the defendant of his or her rights;

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

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

- a. Affidavit.** If an undocumented alien is to be a material witness in a criminal case, the United States Attorney will immediately file an affidavit stating reasonable grounds to secure the presence of the undocumented alien under 18 U.S.C. §3144.
- b. Eligible for Appointed Counsel.** If the Court determines the detained material witness is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act, 18 U.S.C. §3006A(a)(1)(G).
- c. Release of Material Witness.** If the Court determines release to be appropriate, the material witness may be released to the supervision of Pretrial Services under 18 U.S.C. §3142.
- d. Return to Custody of the Bureau of Citizenship and Immigration.** When a material witness is no longer needed for a criminal proceeding, the United States Attorney will file a motion and submit a proposed order to the Court so a material witness may be returned to the custody of the Bureau of Citizenship and Immigration Services for further processing. The proposed order must be submitted as explained in the CM/ECF Administrative Procedures Manual.

5.C Initial Appearances before Part-Time United States Magistrate Judges. A part-time Magistrate Judge may conduct the Initial Appearance.

RULE 5.1 Preliminary Hearing.

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

III. PREPARATION FOR TRIAL

RULE 11 Plea Agreements.

- 11.1 Advising Court of a Plea Agreement.** The Court must be advised of a plea agreement sufficiently in advance of trial to avoid assembling a jury panel unnecessarily.
- 11.2 Deferring Acceptance or Rejection of Plea Agreements.** The Court will defer a decision on the acceptance or rejection of the plea agreement until the Court has reviewed the presentence report, even in instances where the Court has accepted the guilty plea.

RULE 16 Discovery and Evidence.

- 16.1 Disclosure of Evidence.** The Parties will comply with the Standard Discovery Order. A copy of the Order is attached to these Rules.
- 16.2 Complex or Capital Punishment Cases.** If a case is complex or is a capital punishment case, the Court will enter a Scheduling Order after meeting with counsel.

IV. POST-CONVICTION PROCEEDINGS

RULE 32 Sentencing and Judgment.

- 32.A Notice and Opportunity for Defendant's Attorney to Attend Presentence Interview.** Defendant's attorney is deemed to have requested notice and a reasonable opportunity to attend the presentence report interview. If a defendant's attorney receives a request to schedule a presentence report interview, the attorney must respond within seven (7) days. If the attorney does not respond, the presentence report disclosure time limits of Rule 32(e)(2) of the Federal Rules of Criminal Procedure are waived.
- 32.B Confidential Nature of Report.** The presentence report is a confidential record of the United States District Court. It must not be disclosed to anyone other than the Court, the defendant, the defendant's attorney, and the attorney for the government unless required by law or ordered by the Court. Copies of the report must not be made except when necessary to carry out this rule.
- 32.C Sentencing Pleadings.** An unresolved objection regarding sentencing or motion for departure must be filed with the Court before sentencing. These pleadings must be filed within twenty-one (21) days of the date of disclosure of the presentence report. A responsive pleading must be filed as soon as possible but not more than seven (7) days after service of the pleading regarding sentencing. All sentencing pleadings must be served on opposing counsel and the Probation Office. The Court may alter these time limits for good cause shown.
- 32.D Disclosure of Report to Counsel.** The presentence report is disclosed:
- (1) when a report is faxed or e-mailed to counsel;
 - (2) when an electronic copy of the report is released to counsel;
 - (3) when a copy of the report is physically delivered to counsel;
 - (4) three (3) days after counsel is told orally that the report is available for inspection; or
 - (5) three (3) days after either a copy of the report or notice of its availability for inspection is mailed to counsel.
- 32.E Disclosure of Recommendation.** Except as ordered by the Court, the Probation Office must not disclose a final recommendation concerning sentencing.

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

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

- a. Form of Motion.** If a presentence report is requested before a plea agreement has been entered, the motion must state the position of the government and must contain the following:
 - (1) a waiver of the defendant's right to a speedy trial;
 - (2) an explanation of the issues that would justify the preparation of a pre-plea presentence report; and
 - (3) a copy of the proposed plea agreement, if any.
- b. Review by the Probation Office.** The Court may ask the Probation Office to review the request and make recommendations to the Court regarding the merits of a pre-plea presentence report.

V. GENERAL PROVISIONS

RULE 44 Right to and Appointment of Counsel.

44.1 Entry of Appearance.

- a. Written Entry of Appearance.** An attorney who is not appointed by the Court must file an entry of appearance which includes the attorney's name, firm name, address, telephone number, facsimile number, and e-mail address.
- b. Appointed Counsel.** Counsel appointed by the Court need not file an entry of appearance.
- c. Eligibility of Counsel.** To be eligible to appear in criminal actions, the attorney must be a member in good standing of the Federal Bar of the District of New Mexico.
- d. Counsel Must be Registered Participants.** All attorneys appearing in the District of New Mexico must be Registered Participants in the CM/ECF system.
- e. Out of State Counsel.** Out of state counsel must associate with eligible counsel of the Federal Bar of the District of New Mexico. Local counsel need not appear at court hearings with associated out of state counsel unless directed by the Court. Out of state counsel must become Registered Participants in the District's CM/ECF system before entering their appearance.
- f. Withdrawal or Substitution of Counsel.** Withdrawal or substitution of counsel must be by motion and order.

- g. Representation of Corporation or Partnership.** A corporation or partnership charged with an offense must be represented by an attorney eligible to practice before this Court.
- h. Limited Entry of Appearance.** An attorney may not appear in a limited manner except by Court order.
- i. Change of Address.** All attorneys of record and defendants appearing *pro se* have a continuing duty to file a Notice of Change of Address in each case of any change in their mailing addresses, telephone numbers or e-mail addresses.
- j. Entry of Appearance Must be Filed Before Filing Pleadings.** When filing pleadings, the attorney must first file an entry of appearance or have been appointed by the Court. If documents are filed in error or prior to an attorney's appointment or the filing of an entry of appearance, the attorney will notify the Clerk who will enter a notice of correction.

RULE 46 Release from Custody.

- 46.1 Hearings for Release from Custody.** Any hearing held under the Bail Reform Act, 18 U.S.C. §3141, et seq., will be held in a location where a District Judge or a full-time Magistrate Judge normally presides.
- 46.2 Approval of Bonds by the Clerk of the District Court of New Mexico.** Unless the statute requires or the Court has issued an order requiring prior Court approval, the Clerk may approve bonds when:
 - the Court has fixed the amount of bail; and
 - the bond is secured by the deposit of cash or obligations of the United States or is an approved corporate surety bond.

RULE 47 Motions.

- 47.1 Opposed Motions.** Movant must determine whether a motion is opposed. Movant must recite in the motion whether concurrence was refused or explain why concurrence could not be obtained.
- 47.2 Unopposed Motions.** An unopposed motion must state that it is unopposed and be filed like any other motion. A motion that fails to recite concurrence of each party may be summarily denied. A proposed order must accompany the motion as explained in the CM/ECF Administrative Procedures Manual.
- 47.3 Motions Regarding Release or Detention.** A motion regarding the conditions of release or detention must state the position of Pretrial Services. Service by FAX or email must also be made on the U.S. Probation and Pretrial Services.
- 47.4 Motions Regarding the Transport of a Defendant.** A motion regarding the transport of a defendant in the custody of the United States Marshals Service must state the position of the United States Marshals Service. Service must also be made on the United States Marshals Service. All transport orders will be sealed.

47.5 Motions and Proposed Orders to Continue Trial. Motions and proposed Orders for a continuance of trial must address with particularity 18 U.S.C. §3161(h).

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

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

47.8 Timing and Restrictions on Responses and Replies.

- a. Timing.** A response must be served within fourteen (14) days after service of the motion. A reply must be served within fourteen (14) days after service of the response. These time periods are computed in accordance with Rule 45(a) and (b) of the Federal Rules of Criminal Procedure and may be extended by the Court. Whenever service is made in the manner provided for under Federal Rule of Civil Procedure 5(b)(2)(C), (D), (E), (F) and 5(b)(3), three (3) days are added after the period would otherwise expire under Federal Rule of Criminal Procedure 45(a).
- b. Surreply.** The filing of a surreply requires leave of the Court.
- c. Expedited Briefing.** When the Court orders an expedited briefing schedule, briefs and any supporting papers must be served on each party by the most expeditious reasonable method of service.

47.9 Length of Motion and Brief.

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

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

RULE 49 Service and Filing Papers.

49.1 Electronic Filing and Official Record.

- a. Filing of document.** Electronic transmission of a document to the Court's CM/ECF system constitutes filing of the document under the Federal Rules of Criminal Procedure and entry of the document on the docket kept by the Clerk of the Court.
- b. Official Record.** When a document is electronically submitted or filed, the official record is the electronic recording of the document as stored by the Court.
- c. Time of Filing.**
 - 1. Filed Electronically.** The official date and time of filing is indicated on the Notice of Electronic Filing (NEF).

2. **Filed in Paper Form.** If a document is filed in paper form and subsequently converted to an electronic document, the time of filing is the date and time of the original filing.
3. **Deadlines for Filing.** Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.
- d. **Technical Failure.** A Registered Participant whose filing is made untimely as a result of a technical failure may seek appropriate relief from the Court.

49.2 Court Orders.

- a. **Entry on the Docket.** All orders, decrees, judgments, notices and proceedings of the Court will be filed electronically, which will constitute entry on the docket kept by the Clerk of the Court under Federal Rules of Criminal Procedure 49 and 55.
- b. **Notice of a Court Order.** Immediately upon entry of an order or judgment, the Clerk of the Court will transmit a Notice of Electronic Filing (NEF) to the Registered Participants. The electronic transmission of the Notice constitutes Notice of a Court Order. The Clerk of the Court will issue notice in paper form to those parties or persons entitled to notice who are not Registered Participants.
- c. **Orders do not Require Original Signatures.** Any order electronically filed by the Court without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order and it had been entered on the docket in the conventional manner.
- d. **Text Only Orders.** Orders may also be issued as Text Only Entries on the docket.
- e. **Warrant or Summons.** The Court may issue a warrant or summons electronically. They must be executed or served in accordance with Federal Rule of Criminal Procedure 4(c).

49.3 Service.

- a. **Registered Participants Consent to Electronic Service.** Registration as a Registered Participant constitutes consent to electronic service of all documents under the Federal Rules of Criminal Procedure.
- b. **Notice of Electronic Filing (NEF) Sent by CM/ECF is Service.** When a pleading is electronically filed, a Notice of Electronic Filing (NEF) is sent by the CM/ECF system to all Registered Participants. The NEF sent by the CM/ECF system is valid service to Registered Participants. It is the filer's responsibility to determine if all parties entitled to service are Registered Participants.
- c. **Party not a Registered Participant.** If a party entitled to service is not a Registered Participant, the filer must serve the pleading in accordance with Federal Rule of Criminal Procedure 49.
- d. **Certificate of Service.** Every pleading must have a certificate of service stating how the party was served. Certificates of service and the Notices of Electronic Filing (NEF) are explained in the CM/ECF Administrative Procedures Manual.

49.4 Sealed Documents.

- a. **Sealed Documents to be Filed Electronically.** A motion to file documents under seal is filed electronically, unless prohibited by law. If the motion is granted, the

sealed documents are also filed electronically. Sealed filings are explained in the CM/ECF Administrative Procedures Manual.

- b. **Sealed filings do not Produce Notice of Electronic Filing (NEF).** When a pleading is electronically filed under seal, the CM/ECF system does not produce a Notice of Electronic Filing (NEF). The filer must serve the pleading by an alternate method.

49.5 Signatures.

- a. **Registered Participant Signature.** The user log-in and password required to submit documents to the CM/ECF system serve as the Registered Participant's signature on all electronic documents filed with the Court.
- b. **Signature of a Criminal Defendant.** A document containing the signature of a criminal defendant must be scanned in a format that contains an image of the signature.
- c. **Signatures of Non-Registered Participants.** A document containing the signature of a Non-Registered Participant is filed electronically. The signature is represented by a "s/" and the name typed in the space where a signature would otherwise appear or as a scanned image.
- d. **Documents Requiring Multiple Signatures.** Documents requiring signatures of more than one party are electronically filed by either:
 - 1. Submitting a scanned document containing all the necessary signatures; or
 - 2. Representing the consent of the other parties on the document.

49.6 Retention of Documents Requiring Original Signatures.

Documents that are electronically filed and require original signatures other than that of the Registered Participant must be maintained in paper form by the Registered Participant until one (1) year after all time periods for appeals and post conviction relief expire. On request of the Court, the Registered Participant must produce the original documents for review.

RULE 53 Courtroom Photographing and Broadcasting Prohibited.

53.1 Courtroom and Courthouse Decorum.

- a. **Prohibition Against Cameras, Cellular Telephones with Cameras, Transmitters, Receivers, and Recording Equipment.** No cameras, cellular telephones with cameras, transmitters, receivers or recording equipment may be brought into or used in any courtroom or court environs. Environs include:
 - the entire floor where a courtroom is located;
 - the entire floor where the grand jury meets; and
 - the entire floor where a chambers of any Magistrate Judge or District Judge is located.
- b. **Authority to Impound Equipment.** The U. S. Marshals Service may impound the above-described equipment brought into the courtroom or its environs.
- c. **Exemptions from Prohibition.** The prohibitions of this rule do not apply to:
 - 1. a stenographic or recording device used by an official court reporter or other authorized court personnel;

2. equipment brought into court during investiture, ceremonial or naturalization proceedings;
3. a telephone or pager turned off while Court is in session;
4. a lap-top computer as long as it does not make noise or interfere with court proceedings and is not used to record or transmit court proceedings;
5. a note-taking or other device required because of a person's disability;
6. a device to be used solely for the presentation of evidence;
7. attorneys and jurors with cellular telephones with cameras, but the use of the camera or recording features is prohibited while in the courtroom or court environs; or
8. court orders authorizing the use of such equipment.

RULE 55 Records.

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

RULE 57 Miscellaneous Rules.

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

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

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

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

- 57.5 Redaction of Personal Identifiers for Certain Persons.** In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers for juveniles and victims from all pleadings filed with the Court, including attached exhibits, whether filed electronically or in paper, unless otherwise ordered by the Court.
- a. Social Security Numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
 - b. Names of Minor Children.** If the involvement of a minor child must be mentioned and a pseudonym is not appropriate, only the initials of that child's name should be used.
 - c. Dates of Birth.** If an individual's date of birth must be included in a pleading, only the year should be used, except in the case of juveniles.
 - d. Addresses.** The home address of any victim or material witness will not be used.
 - e. Financial Account Numbers.** If financial account numbers must be included, only the last four digits of these numbers should be used.

- 57.6 Filing Documents Containing Personal Identifiers.** In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above and who believes that the personal data identifiers are necessary and relevant to the case may either:
- file an unredacted version of the document under seal, or
 - file a reference list under seal. The reference list will contain the complete personal data identifier(s) and the redacted identifier(s) used in their place in the filing.
- The unredacted version of the document or reference list under seal will be retained by the Court as part of the record. The Court will, however, still require the party to file a redacted copy for the official record.

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

RULE 58 Petty Offenses and Other Misdemeanors.

- 58.1 Forfeiture of Collateral in Lieu of Appearance.** If the Court so orders, the person charged with a petty offense may pay a fixed sum payment to the Clerk before his or her scheduled appearance. If the offender pays the fixed sum payment, the payment will be forfeited to the United States. The forfeiture will signify that the offender does not contest the charge and does not request a hearing before the Court.
- 58.2 Appeal Procedures for Decisions of the Magistrate Judge on Misdemeanors and Petty Offenses.**
- a. Appellant's Brief.** Appellant's brief must be filed and served within fourteen (14) days after the filing of the Notice of Appeal.

- b. Appellee's Brief.** Appellee's brief must be filed and served within fourteen (14) days of the filing and service of appellant's brief.
- c. Reply Brief.** Appellant may file and serve a reply brief within seven (7) days after the filing and service of appellee's brief.
- d. Length of Briefs and Exhibits.** The appellant's brief must not exceed twenty (20) double-spaced pages. The appellee's brief must not exceed fifteen (15) double-spaced pages. A reply brief must not exceed ten (10) double-spaced pages. Exhibits must not exceed twenty (20) pages.
- e. Notice of Electronic Filing (NEF) Sent by CM/ECF is Service.** When a pleading is electronically filed, a Notice of Electronic Filing (NEF) will be sent by the CM/ECF system to all Registered Participants. The NEF is valid service to Registered Participants. It is the responsibility of the filer to determine if all parties entitled to service are Registered Participants.
- f. Party not a Registered Participant.** If a party entitled to service is not a Registered Participant, the filer must serve the pleading by an alternate method.
- g. Certificate of Service.** Every pleading must have a certificate of service stating how the party was served. Certificates of service and the Notices of Electronic Filing are explained in the CM/ECF Administrative Procedures Manual.
- h. Appeals.** All appeals from Magistrate Judge decisions will be decided by the District Court without a hearing, unless otherwise ordered by the District Court.

LOCAL FORM 1
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL NO.

Defendant.

ORDER

THIS MATTER comes on for consideration **sua sponte**. The defendant has been arraigned in the above-styled criminal action and has been given a date by which pre-trial motions shall be filed. In an effort to streamline the discovery process and minimize unnecessary efforts of the Court personnel and counsel, the Court deems that the following discovery will be authorized by the Court through the United States Magistrate Judge.

Wherefore:

IT IS HEREBY ORDERED as follows:

1. DEFENDANT IS DEEMED TO REQUEST DISCOVERY UNLESS WAIVER IS FILED: The defendant is on notice that unless he or she files with the Court no later than seven (7) days from the entry of this Order a waiver of request for discovery from the Government signed by the defendant, the Court will deem the defendant to have requested discovery and be subject to the reciprocal discovery obligations of Rule 16 of the Federal Rules of Criminal Procedure. **See Fed. R. Crim. P. 16(b)(1).**

2. DISCLOSURE OF EVIDENCE BY THE GOVERNMENT: Unless the defendant has filed the aforesaid waiver, within seven (7) days of the entry of this Order, the Government shall provide to defendant's counsel without motion all of the information to which defendant is entitled pursuant to Rule 16 of the Federal Rules of Criminal Procedure, namely:

(A) Statements of the Defendant: The government shall disclose and make available for inspection, copying or photographing: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known or by the exercise of due diligence may become known, to the attorney for the government; that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. The government shall also disclose to the defendant the substance of any other relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known by the defendant to be a government agent if the government intends to use that statement at trial.

(B) Defendant's Prior Record. The government shall furnish to the defendant such copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(C) Documents and Tangible Objects. The government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for

use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Reports of Examinations and Tests. The government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(E) Expert Witnesses. The government shall disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703 or 705 of the Federal Rules of Evidence during its case in chief at trial. This summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications.

3. DISCLOSURE OF EVIDENCE BY THE DEFENDANT: If the defendant has not filed the waiver of request for discovery within seven (7) days of the entry of this order and the government has complied with its discovery obligations of Rule 16, the defendant shall produce within seven (7) days of the Government's compliance with disclosure order the following Rule 16 discovery obligations:

(A) Documents and Tangible Objects. On requests of the government, the defendant shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of Examinations and Tests. On request of the government, the defendant shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony.

(C) Expert Witnesses. If the government makes disclosures under Fed. R. Crim. P. 16(a)(1)(E) in response to the request of a defendant, the defendant shall, at the request of the government, disclose to the government a written summary of testimony the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case in chief at trial. This summary must describe the witnesses' opinions, the bases and reasons therefor, and the witnesses' qualifications.

4. CONTINUING DUTY TO DISCLOSE. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under Rule 16, such party shall promptly notify the other party or that other party's attorney and the court of the existence of the additional evidence or material.

5. INFORMATION NOT SUBJECT TO DISCLOSURE. Unless mandated by the remaining paragraphs of this Order, evidence not otherwise subject to disclosure under Rule 16 is not required to be produced pursuant to this standing discovery Order.

6. DISCLOSURE OF BRADY, GIGLIO AND JENCKS ACT MATERIALS. The Government shall make available to the Defendant by the time required by the applicable law all material for which disclosure is mandated by Brady v. Maryland, 373 U.S. 83 (1963), by Giglio v.

United States, 405 U.S. 150 (1972), and by the Jencks Act, 18 U.S.C. § 3500, and Rules 12(i) and 26.2.

7. DISCLOSURE OF FEDERAL RULE OF EVIDENCE 404(b) MATERIAL. All Rule 404(b) information shall be disclosed by the Government to the defendant at least seven (7) days prior to trial.

8. FURTHER DISCOVERY MOTIONS SHALL NOT BE FILED BY EITHER PARTY EXCEPT AS AUTHORIZED BELOW. The defendant may file with the Court a particularized "Notice of Brady Requests" made to the Government in order to satisfy any specificity requirements under United States v. Agurs, 427 U.S. 97 (1976).

If a party contends that the opposing party has not provided the material required to be produced by this Order, that party may petition this Court for its disclosure only after a specific request for production has been denied by the opposing party. However, the Court will deny any such petition unless the party seeking production complies with the following requirements:

A. Identifies with specificity the evidence required to be disclosed and the paragraph of this Order authorizing its production; and

B. Identifies the Assistant U. S. Attorney or the individual defense counsel to whom a specific request for disclosure was made, the date such disclosure was denied and the proffered reason for denial.

Such petitions shall be filed by the motions deadline as set by the Magistrate Judge at arraignment; however, a petition shall not be refused as untimely where the opposing party has previously declined production on the grounds of present unavailability of the evidence or where the applicable law does not require production until after the motions deadline.

9. PRESERVATION OF TAPES, NOTES AND OTHER MEMORANDA. The government shall not purposefully destroy any tapes, notes, surveillance logs, reports, memoranda or communications generated in connection with this case until it is resolved.

10. NON-DISCOVERY PRE-TRIAL MOTIONS. All non-discovery pre-trial motions, including a motion for a bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, shall be filed by the motions' deadline as set by the Magistrate Judge at arraignment.

DATED:

UNITED STATES MAGISTRATE JUDGE