

LOCAL CRIMINAL RULES

OF THE UNITED STATES DISTRICT COURT DISTRICT OF NEW MEXICO



EFFECTIVE: JULY 28, 1992
(AS AMENDED)

ROBERT M. MARCH, CLERK OF COURT

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CRIMINAL SECTION

I. SCOPE, PURPOSE AND CONSTRUCTION.

RULE 1. Scope Of Rules.

1.1 Title and Citation. These Rules shall be known as the Local Rules of the United States District Court for the District of New Mexico. They shall be cited as "D.N.M.LR-Cr_____".

1.2 Effective Date. These Rules become effective on July 28, 1992.

1.3 Application of Rules. These Rules shall apply in all proceedings in criminal matters of the District Court including those matters handled by the Magistrates for the District Court.

1.4 Relationship to Prior Rules; Actions Pending on Effective Date. These Rules supersede all previous rules promulgated by this Court or any Judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect. They also shall apply to all proceedings pending at the same 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 an injustice in which event the former rules shall govern.

1.5 Purpose and Construction. These Rules are indexed to coincide with the numbering and content of the Federal Rules of Criminal Procedure.

II. PRELIMINARY PROCEEDINGS.

RULE 5. Initial Appearance Before Magistrate Judge

5.1 Initial Interview of Criminal Defendants by Pretrial Services Officers.

a. Judicial Conference Statement. Pursuant to the resolution of the Judicial Conference of the United States, all criminal defendants subject to proceedings under 18 U.S.C. §3142 et seq., should be afforded the opportunity to consult with counsel prior to the initial interview by Pretrial Services Officers.

b. After Initial Referral to Pretrial Services by Arresting Agency. After Pretrial Services and/or a Magistrate Judge has been notified of the arrest of a defendant/s by the arresting agency, the Pretrial Services office, as directed by the Court, shall contact retained counsel or the Federal Public Defender's Office on those defendants without counsel. The Federal Public Defender's Office, as directed by the court, shall provide counsel [advice of rights] to these defendants prior to the Pretrial Services interview. In those cases where retained counsel has not been able to consult with the defendant prior to the initial hearing, the Federal Public Defender's Office shall be so notified, and shall provide counsel [advise of rights] to the defendant, prior to the Pretrial Services interview. After advice of counsel to the defendant has been provided, the Pretrial Services office, as directed by the court, shall begin immediately to obtain the required information concerning the eligibility of the defendant for appointment of counsel and for the pretrial services report.

c. Determination of Eligibility. After determination of eligibility for appointment of counsel has been made by a District Judge or Magistrate Judge, counsel shall be appointed in compliance with the Criminal Justice Act (CJA) and the Pretrial Services Office shall be notified of the appointment by the office of the judicial official making such appointment. If the

defendant is not eligible for such appointment, the Pretrial Services office shall be notified as to the name of the retained attorney, if any. The Pretrial Services Office shall notify defense counsel of the place of custody of the defendant and of the time set for the initial appearance before the Magistrate judge

d. Summons Cases. If the defendant has been charged with a criminal offense by the United States and summoned into Court, a notice will be attached by the Pretrial Services Office to the summons advising the defendant of his rights and eligibility requirements for court-appointed counsel. The notice shall also advise the defendant to consult with defense counsel prior to the Pretrial Services interview and should, if possible, have defense counsel present during the interview.

e. Telephonic Interviews. In those areas where part-time Magistrate Judges serve the Court, the Pretrial Services Office may conduct telephonic interviews, however, such may be done only after advice of counsel to the defendant has been provided by retained or appointed counsel.

5.2 Handling and Dispositions of Undocumented Alien Material Witnesses.

a. Whenever an undocumented alien is in custody and it is determined that such individual is to be a material witness in a criminal case, the U.S. Attorney shall immediately file an affidavit reflecting reasonable grounds to detain such person as a material witness.

b. The court or designated Magistrate Judge shall cause the detained material witness to be brought immediately before a judicial officer and after determination of eligibility for appointment of counsel has been made, counsel shall be appointed pursuant to the Criminal

Justice Act. The Judicial Officer, with the assistance of Pretrial Services, shall consider the release of the witness pursuant to 18 U.S.C. §3154 on an unsecured cash bond to a suitable 3rd party custodian under the usual conditions of release or consider release under a special condition of release that he/she be placed in a community release program as designated by Pretrial Services. Material witnesses considered for release may be remanded to the custody of the U.S. Marshal pending the availability of bed space in a community release program or suitable placement and transportation arranged by Pretrial Services.

c. The United States Attorney shall immediately notify the Court by written motion and proposed order when material witnesses in custody or under supervision of the Pretrial Services Office can be returned to the custody of the Immigration and Naturalization Service for further processing.

III. INDICTMENT AND INFORMATION.

RULE 11. Plea Agreements.

11.1 Presentation to the Court; Time Limits. Counsel shall advise the court of all plea agreements not later than noon five working days prior to the date set for the commencement of jury selection. Plea agreements of which the Court receives less than the required five (5) working days notice shall not be accepted unless the plea agreement includes a plea of "guilty" or "no contest" to at least one (1) count of the Indictment.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL.

RULE 16. Discovery and Inspection.

16.1 Disclosure of Evidence by the Government. (Rule 16, Brady, Jencks Material).

Before filing a motion for discovery or inspection under Federal Rule of Criminal Procedure 16, defense counsel and the assigned prosecutor shall hold a good faith discussion of the immediate availability of Rule 16 and Brady material and when Jencks material will be available. The moving party shall file a certificate of compliance with this Rule with any motion made under the Rule. If a question exists of the exculpatory nature of material sought under Brady it will be made available for in camera inspection at the earliest possible time. Motions to enforce the continuing duty of the U . S . Attorney's Office to disclose any such material should not be necessary. The provisions of D.N.M.LR-Cv 7.1, 7.2, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10 and D.N.M.LR-Cv 10 shall apply to motions which are the subject of this paragraph.

16.2 Disclosure of Evidence by the Defendant. If the Government complies with Rule 16(a) of the Federal Rules of Criminal Procedure, the defendant shall have an obligation to comply with Rule 16(b) of the Federal Rules of Criminal Procedure.

16.3 Other Motions. The provisions of D.N.M.LR-Cv 7.1, 7.2, 7.3, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10 and D.N.M.LR-Cv 10 shall apply to all other motions filed in criminal cases, including motions for discovery that are not covered by D.N.M.LR-Cr 16.1.

V. VENUE.

VI. TRIAL.

VII. JUDGMENT.

RULE 32. Sentence and Judgment.

32.1 Presentence Investigation and Confidential Records of the Probation Office.

a . The Presentence Report is subject to the provisions of General Order 1988 entered by the Court on June 3, 1988, the statutory provisions of Rule 32(c)(3)(A), Federal Rules of Criminal Procedure, 28 USC §994(w) authorizing transmittal of presentence reports to the United States Sentencing Commission, and any other amendment and for administrative policy established by this Court or by statute.

b. Confidential records of the Court maintained by the Probation Office, including presentence and probation supervision records, shall be disclosed only upon written petition to the Court establishing with particularity the need for specific information.

c. Other confidential information such as diagnostic opinions and any other information which may cause harm to a defendant or third parties shall not be disclosed without the written approval of the Court.

d. Prior to sentencing and pursuant to D.N.M.LR-Cr 32.1a, a copy of the presentence report shall be provided to a defendant appearing for sentencing before a judicial officer in this District. A presentence report may be released to the attorney of record for the defendant for delivery to a defendant who is being held in custody providing that the Court and the U.S. Probation Office policies concerning the release of the presentence reports or other confidential matters are complied with. A defendant who has been provided with a copy of a presentence report may retain it insofar as its use is only to meet the requirements of the judicial

process. However, in exceptional cases where the retention of the report in a local detention facility might pose a danger to the defendant or other persons housed there, a defendant may not personally retain a copy of the report until the defendant has been transferred to the facility where the sentence will be served. Upon written request to the U.S. Probation Office by a defendant who has been incarcerated at the designated institution for service of sentence and who has not been able to obtain a copy of the presentence report pursuant to D.N.M.LR-Cr 32.4, the U.S. Probation Office may provide the defendant with a copy of the presentence report provided that it is in the interest of justice, meets other judicial requirements, and the provisions of the local rules of this Court.

a. A copy of the presentence report shall be provided to defense counsel and the attorney for the government pursuant to Rule 32(c) (3) (A) of the Federal Rules of Criminal Procedure and for the purpose of enabling them to carry out their official duties.

32.2 Petition for Instruction. A probation officer may file a petition for instruction from the Court with respect to responding to a subpoena when a demand for disclosure of presentence and probation records is made by way of subpoena or other judicial process.

32.3 Disclosure Upon Order. A probation officer shall petition the Court in writing for authority to release records or produce testimony with respect to confidential Court information when subpoenaed for such records.

32.4 Control of Presentence Reports. Any copy of a presentence report which the Court makes available, or has made available, to the United States Parole Commission or the Bureau of Prisons, the Pardon Attorney or the Sentencing Commission, constitutes a confidential court document except as provided in United States Department of Justice v. Julian, 108 S.C.P.

1606 (1988) in which the defendants may obtain the presentence reports from the United States Parole Commission or Bureau of Prisons under the provisions of the Freedom of Information Act. Matters specifically exempt from disclosure by statute or by order of the Court shall be presumed to remain under the continuing control of the Court during the time that the Court documents are in the temporary custody of the above referenced agencies. Such copy shall be loaned to those agencies only for the purpose of enabling them to carry out their official functions, including but not limited to designation of an institution for service of sentence, parole release and supervision, recommendations regarding Presidential pardons and compliance with the provisions of 28 USC §994 (w) .

X. GENERAL PROVISIONS.

RULE 44. Right to and Assignment of Counsel.

44.1 Entry of Appearance - Criminal Actions. Unless appointed by the Court, an attorney eligible to appear shall appear in a criminal action by filing a written entry of appearance showing name, address and telephone number. Counsel appointed by the Court need not file an entry of appearance. Except by leave of Court, the Clerk shall not accept for filing any pleading signed by an attorney unless the attorney is eligible to appear and has either been appointed by the Court or has entered an appearance as provided herein.

RULE 46. Release from Custody.

46.1 Approval of Bonds by the Clerk. Unless the statute expressly requires the approval of the Court, or unless the Court orders otherwise, the Clerk may approve bonds without an order of Court if the amount of bail has been fixed by or by the Court a judicial officer, and the bond is received by the deposit of cash or obligations of the United States or by a corporate surety meeting the qualifications specified in D.N.M. LR-Cv 67.1.

46.2 Reporting Requirements for Persons on Release. Any person who has been released on any condition of release shall report to the Office of the United States Marshal fifteen (15) minutes prior to any Court proceeding the person is required to attend.

RULE 49. Filing of Papers.

49.1 Case Number and Judge's Initials. The case file number including the initials of the assigned Judge shall be included on the first page of each document filed.

RULE 54. Application and Exception.

54.1 Proceedings before United States Magistrate Judges.

a. Part-time United States Magistrae Judges. The part-time Magistrate Judges shall perform the duties prescribed by 28 U.S.C. §636(a), as amended, provided however, they shall, after compliance with Rule 5(b) and 5(c) of the Federal Rules of Criminal Procedure, transfer any required preliminary examination under Rule 5.1, Federal Rules of Criminal Procedure, or a hearing pursuant to the Bail Reform Act of 1984, to a full-time Judge.

54.2 Forfeiture of Collateral in Lieu of Appearance. For those misdemeanors and infractions originating under applicable federal statute or regulation or applicable state statute by

virtue of the Assimilated Crimes Act (18 U.S.C. §13), occurring within the territorial jurisdiction of the United States District Court, District of New Mexico, including areas within the boundaries of United States military installations, bases, institutions, government reservations located on lands under the exclusive or concurrent jurisdiction of the United States, collateral may be posted in lieu of the offender's appearance as required. If the person charged fails to appear before a Magistrate Judge after posting collateral in the amount listed in the approved fine list for the pertinent location, the collateral shall be forfeited to the United States, and such forfeiture shall signify that the offender does not contest the charge nor request a hearing before the Magistrate Judge.

54.3 Appeal Procedures for Decisions of the- Magistrate Judge on Misdemeanors and Infractions.

- a. Notice of Appeal on decisions of a Magistrate Judge shall be filed with the Clerk of the District Court within ten days after judgment and/or decision.
- b. Appellant's brief is due within fifteen days after the filing of the Notice of Appeal. The original shall be filed with the Clerk of the District Court and a copy delivered to opposing parties.
- c. Appellee's brief is due within fifteen days of the original shall be filed with the Clerk of appellant's brief. the District Court and a copy delivered to opposing parties.
- d. Appellant may file a reply brief within five days after service of appellee's brief.
- e. The length of briefs shall be governed by D.N.M.LR-Cv 73.1c(1).

f. All appeals from Magistrate Judge decisions will be decided by the Court without a hearing, unless otherwise ordered by the Court on its own motion, or in its discretion, upon written request of a party.

RULE 55. Records.

55.1 Disposition of Exhibit8 in Criminal Cases. After a verdict, judgment or other disposition action is rendered against a criminal defendant, exhibits in custody of the Clerk shall be returned to the attorney or party introducing same in evidence. It shall be the responsibility of the appellant and/or appellee to make exhibits required for the record-on-appeal available for the record or to forward pertinent exhibits to the appellate court as requested. Contraband, firearms, weapons, drugs, monies, and other exhibits declared sensitive shall be destroyed or otherwise disposed of by order of the Court.

55.2 Release of Information in Criminal Cases.

a. Criminal Litigation in General. It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

b. Grand Jury and Criminal Investigations. With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extra-judicial statement which a reasonable person

would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

c. Criminal Litigation Prior to Trial. From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extra-judicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of criminal violations), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to any examination or test ;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges.

d. Criminal Litigation at Trial. During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by

means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

e. Formulation or Application of More Restrictive Rules. Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juveniles or other offenders to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against the lawyer.

f. Release of Information by Courthouse Personnel in criminal cases. All Court supporting personnel, including marshals, deputy marshals, probation officers and office personnel, judges' office personnel, court clerks, court reporters and employees or subcontractors retained by the Court appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the Court. In particular, all such personnel shall not divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

g. Special Orders in Widely Publicized Cases. In a widely publicized or sensational criminal case, the Court, on motion by either party or on its own motion, may at any time issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the

management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

h. Existing Techniques for Insuring an Impartial Jury. Nothing in this rule is intended to prevent or restrict the liberal use of traditional techniques for insuring an impartial jury in any case where the Court determines there is a necessity therefor, including among others, continuances, change of venue, sequestration of jurors and witnesses, individual voir dire of prospective jurors, including in camera voir dire, cautionary instructions to jurors, and other methods which the Court may deem appropriate for insuring an impartial jury.

i. Closure of Pretrial Proceedings. Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings of pretrial motions, shall be held in open court and shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part, on the grounds:

(1) that there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) that reasonable alternatives to closure will not adequately protect defendant's right to a fair trial. If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

RULE 57. Miscellaneous Rules by District Court.

57.1 Waiver of Rules. Any of these Rules shall be subject to waiver by any judge as may be necessary to meet unusual circumstances or to avoid injustice.

57.2 Adoption of Miscellaneous Local Civil Rules for Application in Criminal Cases.

a. The provisions of D.N.M.LR-Cv 83 .a. , 83 .b., 83.3 (all sections), 83.4, 83.5, 83.7, 83.8, 83.9, 83.10 and 83.11 are herein adopted and incorporated as if fully set forth.

57.3 Entry of Appearance -- Criminal Actions. The provisions of D.N.M.LR-Cv 83.6 are herein adopted and incorporated as if fully set forth, provided, however, that entry of appearance in criminal cases in which a defense attorney is appointed pursuant to the Criminal Justice Act, 18 U.S.C. §3006A, shall be-deemed satisfied by entry of the Court's Order Appointing Counsel.

57.12 Clinical Law Practice. The provisions of D.N.M.LR-Cv 83.11 authorizing clinical law student practice are adopted with respect to criminal cases brought in this Court.