

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: AMENDMENTS TO THE
JOINT LOCAL CRIMINAL RULES OF THE
EASTERN AND SOUTHERN DISTRICTS
OF NEW YORK
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ADMINISTRATIVE
ORDER
2012-03

WHEREAS the Board of Judges of the Eastern District of New York reviewed the reports of the Joint Local Rules Committee recommending various amendments to the Local Criminal Rules of the Eastern and Southern Districts of New York; and

WHEREAS the Board of Judges of the Eastern District of New York approved and adopted all the recommended amendments to the Joint Local Criminal Rules; and

WHEREAS public notice was given to the bar and public; and no written comments were received; and

WHEREAS the Board of Judges of the Southern District of New York also has reviewed and approved the amendments to the Joint Local Criminal Rules; and

WHEREAS the Circuit Judicial Council has reviewed and approved the amendments to the Joint Local Criminal Rules adopted by the Eastern and Southern Districts of New York, pursuant to 28 U.S.C. § 332;

NOW, therefore, IT IS HEREBY ORDERED, that the amendments to the Joint Local Criminal Rules of the Eastern and Southern Districts of New York, which are attached to this Administrative Order, are hereby adopted by the Eastern District of New York, and that the amendments are effective immediately.

SO ORDERED.

Dated: Brooklyn, New York
February 10, 2012


Carol Bagley Anton
Chief Judge

-ATTACHMENT

LOCAL CRIMINAL RULES AS RECOMMENDED BY THE JOINT COMMITTEE

Local Criminal Rule 1.1. Application of Rules

(a) These Local Criminal Rules apply in all criminal proceedings.

(b) In addition to Local Civil Rules referenced elsewhere in these Local Criminal Rules, the

following Local Civil Rules also apply in criminal proceedings:

1.2. *Clerk's Office*

1.3. *Admission to the Bar*

1.4. *Withdrawal or Displacement of Attorney of Record*

1.5. *Discipline of Attorneys*

1.6. *Duty of Attorney in Related Cases* (to the extent cases may be considered related under the Courts' Rules (SDNY) or Guidelines (EDNY) for the Division of Business)

1.7. *Fees of Court Reporters*

1.8. *Photographs, Radio, Recordings, Television*

1.9. *Acceptable Substitutes for Affidavits*

5.2. *Electronic Service and Filing of Documents*

5.3. *Service by Overnight Delivery*

6.2. *Orders on Motions*

39.1. *Custody of Trial and Hearing Exhibits*

58.1. *Remand by an Appellate Court*

67.1. *Order for Deposit in Interest-Bearing Account.*

COMMITTEE NOTE

The titles of cross-referenced rules have been added for clarity. The parenthetical to Local Civil Rule 1.6 harmonizes that rule's otherwise broad concept

of relatedness with the narrow concepts of relatedness specified in the Courts' Rules (SDNY) or Guidelines (EDNY) for the Division of Business. Finally, the Committee believed it useful to add cross-references to Local Civil Rules 5.2, 5.3, 6.2, 58.1 and 67.1, since they address procedures useful in criminal as well as in civil proceedings.

Local Criminal Rule 1.2. Notice of Appearance

Attorneys representing defendants in criminal cases shall file a notice of appearance. Once a notice of appearance has been filed, the attorney may not withdraw except upon prior order of the Court pursuant to Local Civil Rule 1.4.

COMMITTEE NOTE

This rule, derived from former Local Criminal Rule 44.1, has been renumbered to place it in closer proximity to the cross-references in Local Criminal Rule 1.1 to admission to the bar and withdrawal from a case. Former Local Criminal Rule 44.1(b) has been stricken. That rule required attorneys to submit a certificate of good standing from at least one of the states in which the attorney was admitted and was intended to ensure that criminal defendants are in fact represented by admitted attorneys. However, the rule only required an attorney to submit such a certificate once and thus does not appear to serve a substantially different function from the provisions of Local Civil Rule 1.3 on admission to the bar. In addition, former Local Criminal Rule 44.1(b) did not appear to be enforced in practice.

Local Criminal Rule 12.4. Disclosure Statement

For purposes of Fed. R. Crim. P. 12.4 (b)(2), "promptly" shall mean "within fourteen (14) days," that is, parties are required to file supplemental disclosure statement within fourteen (14) days of the time there is any change in the information required in a disclosure statement filed pursuant to those rules.

Local Criminal Rule 16.1. Conference of Counsel

No motion addressed to a bill of particulars or any discovery matter shall be heard unless counsel for the moving party files in or simultaneously with the moving papers an affidavit certifying that counsel has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Court and has been unable to reach agreement. If some of the issues raised by the motion have been resolved by agreement, the affidavit shall specify the issues remaining unresolved.

COMMITTEE NOTE

The rule was simplified to refer to “a bill of particulars or any discovery matter,” and to make clear that the requisite certification could be filed as part of the motion papers.

Local Criminal Rule 23.1. Free Press-Fair Trial Directives

(a) It is the duty of the lawyer or law firm, and of non-lawyer personnel employed by a lawyer’s office or subject to a lawyer’s supervision, private investigators acting under the supervision of a criminal defense lawyer, and government agents and police officers, not to release or authorize the release of non-public information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which they are associated, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation (including government lawyers and lawyers for targets, subjects, and witnesses in the investigation) shall refrain from making any

extrajudicial statement which a reasonable person would expect to be disseminated by 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, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the administration of justice.

(c) 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 extrajudicial 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 substantial likelihood that such dissemination will interfere with a fair trial; except that the lawyer or the law firm may quote from or refer without comment to public records of the Court in the case.

(d) Statements concerning the following subject matters presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this rule:

(1) The prior criminal record (including arrests, indictments or other charges of crime), 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 an examination or test;

(4) The identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may 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) Information the lawyer or law firm knows is likely to be inadmissible at trial and would if disclosed create a substantial likelihood of prejudicing an impartial trial; and

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

(e) Statements concerning the following subject matters presumptively do not involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this rule:

(1) An announcement, at the time of arrest, of 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 investigation;

(2) An announcement, at the time of seizure, stating whether any items of physical evidence were seized and, if so, a description of the items seized (but not including any confession, admission or statement);

(3) The nature, substance or text of the charge, including a brief description of the offense charged;

(4) Quoting or referring without comment to public records of the Court in the case;

(5) An announcement of the scheduling or result of any stage in the judicial process, or an announcement that a matter is no longer under investigation;

(6) A request for assistance in obtaining evidence; and

(7) An announcement, without further comment, that the accused denies the charges, and a brief description of the nature of the defense.

(f) Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile 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 said lawyer.

(g) All Court supporting personnel, including, among others, marshals, deputy marshals, Court Clerks, bailiffs and Court reporters and employees or sub-contractors retained by the Court-appointed official reporters, are 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. The divulgence by such Court supporting personnel of information concerning grand jury proceedings, in camera arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(h) The Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial 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 order. In determining whether to impose such a special order, the Court shall consider whether such an order will be necessary to ensure an impartial jury and must find that other, less extreme available remedies, singly or collectively, are not feasible or would not effectively mitigate the pretrial publicity and bring about a fair trial. Among the alternative remedies to be considered are: change of venue, postponing the trial, a searching voir dire, emphatic jury instructions, and sequestration of jurors.

(i) Any lawyer who violates the terms of this rule may be disciplined pursuant to Local Civil Rule 1.5.

COMMITTEE NOTE

This rule was the subject of substantial debate and compromise at the time of the 1997 revisions to the Local Rules. During the 2011 revision, the Committee, in the absence of intervening decisions substantially impacting the subject of the rule, decided not to recommend any changes to the rule.

Local Criminal Rule 34.1. Post-Trial Motions

Post-trial motions in criminal cases, including motions for correction or reduction of sentence under Federal Rule of Criminal Procedure 35, or to suspend execution of sentence, or in arrest of judgment under Federal Rule of Criminal Procedure 34, shall be referred to the trial Judge. If the trial Judge served by designation and assignment under 28 U.S.C. §§ 291-296, and is absent from the district, such motions may be referred to that Judge for consideration and disposition.

Local Criminal Rule 45.1. Computation of Time

In computing any period of time prescribed or allowed by the Local Criminal Rules, the provisions of Federal Rule of Criminal Procedure 45 shall apply unless otherwise stated. In these Local Rules, as in the Federal Rules as amended effective December 1, 2009, Saturdays, Sundays, and legal holidays are no longer excluded in computing periods of time. If the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

COMMITTEE NOTE

Specific references to subsections (a) and (e) of Fed. R. Crim. P. 45, which have been re-lettered in any event, were deleted.

Local Criminal Rule 47.1. Applications for Ex Parte Orders

Any application for an ex parte order shall state whether a previous application for similar relief has been made and, if so, shall state (a) the nature of the previous application, (b) the judicial officer to whom such application was presented, and (c) the disposition of such application.

COMMITTEE NOTE

This rule, former Local Criminal Rule 1.2, was renumbered to associate it with the relevant Federal Rule of Criminal Procedure, Rule 47, *Motions and Supporting Affidavits*.

Local Criminal Rule 49.1. Service and Filing of Motion Papers

Unless otherwise provided by statute or rule, or unless otherwise ordered by the Court in a Judge's Individual Practices or in a direction in a particular case, upon any motion, the papers shall be served and filed as follows:

(a) All papers in support of the motion shall be filed and served by the moving party on all other parties that have appeared in the action.

(b) Any opposing papers shall be filed and served within fourteen (14) days after service of the motion papers.

(c) Any reply papers shall be filed and served within seven (7) days after service of the opposing papers.

(d) A motion for reconsideration or reargument of a Court order determining a motion shall be filed and served within fourteen (14) days after the Court's determination of the original motion. A memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court has overlooked shall accompany the motion.

COMMITTEE NOTE

This rule, former Local Criminal Rule 12.1, was renumbered to associate it with the relevant Federal Rule of Criminal Procedure, Rule 49, *Serving and Filing Papers*. The phrase "filed and" was added to the text of subparts (a)-(c). Former subpart (d), relating to computation of time, was deleted as duplicative of Local Criminal Rule 45.1. A new subpart (d) was added to provide guidance regarding motions for reconsideration in criminal cases.

Local Criminal Rule 58.1. Petty Offenses--Collateral and Appearance

(a) A person who is charged with a petty offense as defined in 18 U.S.C. § 19, or with violating any regulation promulgated by any department or agency of the United States government, may, in lieu of appearance, post collateral in the amount indicated in the summons or other accusatory instrument, waive appearance before a United States Magistrate Judge, and consent to forfeiture of collateral.

(b) For all other petty offenses the person charged must appear before a Magistrate Judge.

COMMITTEE NOTE

This rule (formerly Local Criminal Rule 58.2) authorizes the forfeiture of collateral pursuant to Federal Rule of Criminal Procedure 58(d)(1).

Local Criminal Rule 59.1 Powers of Magistrate Judges

In addition to other powers of Magistrate Judges:

(a) Full-time Magistrate Judges are hereby specially designated to exercise the jurisdiction set forth in 18 U.S.C. § 3401, *Misdemeanors: application of probation laws*. Unless there is a pending related indictment before a District Judge, the Clerk shall automatically refer misdemeanor cases initiated by information or indictment or transferred to the district under Federal Rule of Criminal Procedure 20 to a Magistrate Judge for arraignment. A petition by the government that the trial of a misdemeanor proceed before a District Judge pursuant to 18 U.S.C. § 3401(f) shall be filed prior to arraignment of the defendant.

(b) Magistrate Judges are hereby authorized to exercise the jurisdiction set forth in 18 U.S.C. § 3184, *Fugitives from foreign country to United States*.

(c) Local Civil Rule 72.1, *Powers of Magistrate Judges*, also applies in criminal proceedings.

COMMITTEE NOTE

This rule, formerly Local Criminal Rule 58.1, has been redesignated Local Criminal Rule 59.1 to associate it with the relevant Federal Rule of Criminal Procedure, Rule 59, *Matters Before a Magistrate Judge*. The general statutory authority of Magistrate Judges is set forth in 28 U.S.C. § 636; however, certain provisions, including 18 U.S.C. §§ 3401 & 3184, and 28 U.S.C. § 636(c), require specific authorization by the District Court for the Magistrate Judge to exercise the designated authority. This rule, and Local Civil Rule 72.1, which new subpart (c) specifically makes applicable to criminal proceedings, confirm and continue the Courts' intent to give their Magistrate Judges the maximum powers authorized by law. For the sake of clarity, the titles of the statutes referenced in the rule have been added. Former subpart (c), relating to the power of Magistrate Judges to issue subpoenas and writs, has been stricken as duplicative—the same provision already

appears in Local Civil Rule 72.1(c) and will thus continue to apply in criminal proceedings.