

LOCAL RULES OF CRIMINAL PROCEDURE¹

¹ The Local Rules of Criminal Procedure may be cited as "LRCrim".

TITLE I. Applicability
F.R.Crim.P. 1. Scope; Definitions
LRCrim 1.1

REMOVAL TO FEDERAL COURT

With regard to removal of a criminal prosecution from a state court, see Rule 3.7, Local Rules of Civil Procedure.

F.R.Crim.P. 2. Interpretation
(NO LOCAL RULE)

Title II. Preliminary Proceedings
F.R.Crim.P. 3. The Complaint
(NO LOCAL RULE)

F.R.Crim.P. 4. Arrest Warrant or Summons on a Complaint
(NO LOCAL RULE)

F.R.Crim.P. 5 Initial Appearance

LRCrim 5.1

ASSIGNMENT OF CASES; CRIMINAL; JUVENILE

(a) **Assignment of Criminal Cases.** Within each division, the criminal cases, when filed, shall be assigned among the District Judges of the division by the Clerk (or by a deputy designated by the Clerk) by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice of a particular Judge for a particular case. At the conclusion of the preliminary hearing and detention hearing in Tucson, or at the conclusion of the grand jury return in Phoenix, the Clerk shall randomly refer the criminal case to a Magistrate Judge. The cases so assigned or referred shall remain with the Judges to whom assigned or referred unless otherwise ordered by the Court. With the exception of defense counsel, any officer of the Court who determines that a new charge has been filed against a defendant who is under federal Court supervision shall immediately notify the presiding judge before whom the new case is pending.

Where a defendant is charged with a new crime and is currently on supervised release, the new case which is pending or subsequently filed shall be assigned to the District Judge presiding over the revocation proceeding. However, if the Judge assigned the revocation proceeding is a Senior District Judge, unless otherwise ordered by that Judge, both matters shall be assigned to a District Judge drawn by automated random selection.

(b) **Assignment of Juvenile Matters.** Within each division, the juvenile matters, when filed, shall be assigned among the District Judges of the division by the Clerk (or by a deputy designated by the Clerk) by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice of a particular Judge for a particular case. The cases so assigned shall remain with the Judge to whom assigned unless otherwise ordered by the Court. When an information is filed against a juvenile in the District Court, a District Court Judge shall be assigned to hear the matter. If the government moves to transfer the juvenile to adult status and the motion to transfer is granted, the case shall be assigned by automated random selection to a District Judge upon return of an indictment by the grand jury.

(c) **Temporary Reassignment of Cases.** With regard to temporary reassignment of cases above, see Rule 3.8(b), Local Rules of Civil Procedure.

LR crim 5.2

REFILING

With regard to cases refiled after dismissal, see Rule 41.2, Local Rules of Civil Procedure.

LRCrim 5.3

RELATED CASES; CONSOLIDATION; SERVICE; ASSIGNMENT

With regard to transfer of related cases assigned to different Judges to a single judge, consolidation, service, and assignment, see Rule 42.1, Local Rules of Civil Procedure.

F.R.Crim.P. 5.1. Preliminary Hearing
(NO LOCAL RULE)

Title III. The Grand Jury, the Indictment, and the
Information

F.R.Crim.P. 6. The Grand Jury
(NO LOCAL RULE)

F.R.Crim.P. 7. The Indictment and the Information
(NO LOCAL RULE)

F.R.Crim.P. 8. Joinder of Offenses or Defendants
(NO LOCAL RULE)

**F.R.Crim.P. 9. Arrest Warrant or Summons on an Indictment or
Information**

LR crim 9.1

ARREST ON INDICTMENT, ORDER OF COURSE

On the filing of an indictment found by the Grand Jury against a person not in custody or on bail, an order shall be entered for an arrest warrant, a bench warrant, or summons to be issued under the seal of the Court.

Title IV. Arraignment and Preparation for Trial
F.R.Crim.P. 10. Arraignment
LR crim 10.1

COPIES OF INDICTMENTS AND INFORMATIONS

At the time of the preparation of each indictment or information, the United States Attorney shall prepare sufficient copies and deliver them to the Clerk with the original so that a copy may be delivered to each defendant as required by Rule 10 of the Federal Rules of Criminal Procedure.

LRCrim 10.2

TRUE NAME TO BE GIVEN

When the defendant is arraigned, the defendant shall be informed that if the name by which he or she is charged is not his or her true name, the defendant must then declare his or her true name or be proceeded against by the name in the charge. If the defendant alleges that another name is his or her true name, the Court shall direct its entry in the minutes of the arraignment and the subsequent proceedings on the charge may be had against the defendant by that name, referring also to the name by which the defendant was charged.

**F.R.Crim.P. 11. Pleas
(NO LOCAL RULE)**

F.R.Crim.P. 12. Pleadings and Pretrial Motions

LR crim 12.1

FORMS OF PAPERS AND MOTIONS

With regard to Forms of Papers and Motions, see Rules 7.1 and 7.2 of the Local Rules of Civil Procedure.

LRCrim 12.2

EXCLUDABLE TIME AND MOTIONS - SPEEDY TRIAL ACT

(a) **Content of Motions.** Any motion submitted for filing in a criminal case must contain a statement as follows:

"Excludable delay under 18 U.S.C. s 3161(h)____ will occur as a result of this motion or of an order based thereon." (In the blank space provided, the counsel will insert the specific subparagraph involved, e.g., (1)(A), competency examination of defendant; (3)(A), absence or unavailability of defendant or essential witness.)

(b) **Content of Orders.** Any written order prepared for signature by a United States District Judge or United States Magistrate Judge must contain a final paragraph or statement as follows:

"Excludable delay under 18 U.S.C. s 3161(h)____ is found to commence on ___ for a total of __ days."

(c) **Content of Minute Entries.** All minute orders relating to disposition of criminal motions ruled upon in open court shall contain a statement comparable to that outlined in (b) above.

(d) **Waiver of Statement.** In any case, or in the case of a defendant proceeding pro per, the Court may, in the interest of justice, waive the necessity of a statement of excludable time.

(e) **Motions for Joinder of Motions.** Any motion for joinder must specifically identify the motions to be joined, and motions for joinder of motions to be filed in the future will not be considered.

F.R.Crim.P. 12.1. Notice of an Alibi Defense
(NO LOCAL RULE)

F.R.Crim.P. 12.2. Notice of an Insanity Defense; Mental
Examination
(NO LOCAL RULE)

F.R.Crim.P. 12.3. Notice of a Public-Authority Defense
(NO LOCAL RULE)

**F.R.Crim.P. 12.4. Disclosure Statement
LRCrim 12.4.1**

CORPORATE DISCLOSURE STATEMENT

With regard to the disclosure statement required by Rule 12.4(a)(1) and (2) of the Federal Rules of Criminal Procedure, see Rule 7.1.1., Local Rules of Civil Procedure.

F.R.Crim.P. 13. Joint Trial of Separate Cases
(NO LOCAL RULE)

F.R.Crim.P. 14. Relief from Prejudicial Joinder
(NO LOCAL RULE)

F.R.Crim.P. 15. Depositions
(NO LOCAL RULE)

F.R.Crim.P. 16. Discovery and Inspection

LRCrim 16.1

CONFESSIONS AND ADMISSIONS

(a) **Written Notice of Statements to be Used.** Consistent with Rule 16(a)(1) of the Federal Rules of Criminal Procedure, unless otherwise ordered, the United States Attorney shall give written notice to the Defendant through his or her attorney of any and all written or oral confessions, admissions, or statements of the Defendant which the government intends to use during the course of the trial.

(b) **Objections to Above.** The Defendant's attorney shall, unless otherwise ordered, file with the Clerk and notify the United States Attorney of the objections, if any, which Defendant may have to such confessions, admissions, or statements. Upon request of the Defendant's attorney, the Court shall fix a time and place for hearing such objections and determining the admissibility of the alleged confessions, admissions, or statements. However, no evidentiary hearing or oral argument need be set or held unless the Defendant's moving papers allege facts sufficient to enable the Court to conclude that contested issues of fact or law exist.

(NO LRCrim 16.2 or 16.3)

LRCrim 16.4

COMPLEX CASES

(a) **Declaration of Complex Case.** On motion of any party or at the Court's own initiative, the Court may treat the case as unusual or complex within the meaning of 18 U.S.C. § 3161(h)(8)(B)(ii). If the Court determines the case to be complex, a status conference will be held within twenty-one days to determine a schedule for discovery, motions and any other pretrial case management issues.

(b) **Duty to Confer.** Before any status conference in a complex case to discuss discovery and disclosure issues, counsel shall confer in good faith to determine what discovery issues can be resolved by agreement. If the parties cannot agree on the scope, manner, or time of discovery, counsel for the parties shall file a joint report setting forth the issues agreed upon and those in dispute.

**F.R.Crim.P. 17. Subpoena
(NO LOCAL RULE)**

**F.R.Crim.P. 17.1. Pretrial Conference
(NO LOCAL RULE)**

Title V. Venue

F.R.Crim.P. 18. Place of Prosecution and Trial

LR crim 18.1

LOCATIONS

With regard to locations of court, schedule of hearings, and place of trial, see Rule 77.1, Local Rules of Civil Procedure.

F.R.Crim.P. 19. (Reserved)
(NO LOCAL RULE)

F.R.Crim.P. 20. Transfer for Plea and Sentence

LR crim 20.1

CONSENT OF DEFENDANT

With regard to referral of misdemeanor charges to a Magistrate Judge, see Rule 57.6(c), Local Rules of Criminal Procedure.

F.R.Crim.P. 21. Transfer for Trial
(NO LOCAL RULE)

F.R.Crim.P. 22. (Transferred)
(NO LOCAL RULE)

Title VI. Trial
F.R.Crim.P. 23. Jury or Nonjury Trial
LRCrim 23.1

PROCEDURE AT TRIALS

With regard to procedure at trials, see Rule 39.1, Local Rules of Civil Procedure.

F.R.Crim.P. 24. Trial Jurors

LR crim 24.1

CRIMINAL JURIES

In criminal cases, peremptory challenges by the government and the defense shall be exercised simultaneously unless otherwise directed by the Court. In all other respects the procedures for the selection of trial jurors shall be as set forth in Rule 24, Federal Rules of Criminal Procedure.

LRCrim 24.2

COMMUNICATIONS WITH TRIAL JURORS

With regard to communications with trial jurors, see Rule 39.2, Local Rules of Civil Procedure.

F.R.Crim.P. 25. Judge's Disability
(NO LOCAL RULE)

F.R.Crim.P. 26. Taking Testimony
(NO LOCAL RULE)

F.R.Crim.P. 26.1. Foreign Law Determination
(NO LOCAL RULE)

F.R.Crim.P. 26.2. Producing a Witness's Statement
(NO LOCAL RULE)

F.R.Crim.P. 26.3. Mistrial
(NO LOCAL RULE)

F.R.Crim.P. 27. Proving an Official Record
(NO LOCAL RULE)

F.R.Crim.P. 28. Interpreters
(NO LOCAL RULE)

F.R.Crim.P. 29. Motion for a Judgment of Acquittal
(NO LOCAL RULE)

F.R.Crim.P. 29.1. Closing Argument
(NO LOCAL RULE)

F.R.Crim.P. 30. Jury Instructions

LRCrim 30.1

JURY INSTRUCTIONS

The provisions and requirements of Rule 51.1, Local Rules of Civil Procedure, are applicable to and will be followed in all criminal jury trials except that Local Rules of Civil Procedure, Rule 51.1(e) objections must follow Rule 30, Federal Rules of Criminal Procedure.

F.R.Crim.P. 31. Jury Verdict
(NO LOCAL RULE)

Title VII. Post-Conviction Procedures
F.R.Crim.P. 32. Sentencing and Judgment
(NO LOCAL RULE)

F.R.Crim.P. 32.1. Revoking or Modifying Probation or Supervised Release

RULE 32.1.1

PROBATION - PRESENTENCE INVESTIGATIONS

(a) **Probation.** In criminal cases where the defendants are placed on probation, such defendants shall be subject to the supervision of the Probation Office of the Court, unless otherwise ordered, and shall comply with such reasonable rules and regulations as the Probation Officer shall prescribe, subject to modifications by the Court for cause shown.

(b) **Presentence Investigation.** Upon conviction by trial or plea, a defendant shall not leave the District of Arizona until he or she has been interviewed by a Probation Officer, unless otherwise ordered by the Court.

(c) **Appeals.** In all cases where a defendant has been sentenced to a period of probation, and files a notice of appeal, the period of probation and supervision shall begin on the date of judgment, notwithstanding the pendency of the appeal.

(d) **Petition for Disclosure of Presentence or Probation Records.**

(1) No confidential records of this Court maintained by the Probation Office, including presentence and probation supervision records, shall be sought by any applicant except by written petition to this Court establishing with particularity the need for specific information in the records.

(2) When a demand for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a Probation Officer of the Court, the Probation Officer may file a petition seeking instruction from the Court with respect to responding to the subpoena.

(3) Whenever a Probation Officer is subpoenaed for such records, he or she shall petition this Court in writing for authority to release documentary records or produce testimony with respect to such confidential Court information. In either event, no disclosures shall be made except upon an order issued by this Court.

(e) **Preparation and Use of Presentence Reports.**

(1) Plea agreements, whether a public record or sealed by order of the Court, shall be made available to the Probation Office for the District of Arizona, for the limited use of the Probation Officer preparing the presentence report and exercising probation supervision.

(2) The initial disclosure of the presentence report to counsel and pro se defendant under Rule 32(e) of the

Federal Rules of Criminal Procedure must not include the Probation Officer's recommendation on the sentence. The subsequent submission of the presentence report to the Court and the parties under Rule 32(g) of the Federal Rules of Criminal Procedure must include the Probation Officer's recommendation on the sentence, unless the Court directs the Probation Officer not to disclose the recommendation.

(3) When a copy of a presentence report is released, the probation Office will advise the defendant's counsel and the U.S. Attorney by cover letter or form letter that (A) the report is not to be copied, (B) the report is not a public record, and (C) that the content may not be disclosed to unauthorized individuals. A receipt or charge-out system will be utilized by the Probation Office to monitor distribution and location of the reports.

(4) If the presentence report contains any information or material that contains diagnostic opinions which might seriously disrupt a program of rehabilitation; source of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other person; that information will be included in an addendum or attachment and not distributed to the defendant's counsel or the U.S. Attorney, and handled as provided in Rule 32(c)(3)(A) and 32(b)(5) of the Federal Rules of Criminal Procedure.

(5) The Probation Office, after sentencing, will retain the original copy of the presentence report on behalf of the Clerk of the Court. When a request is made to the Clerk's Office to view a copy of the presentence report, the request shall be referred to the Probation Office, which shall take care of the matter. If appropriate, the Probation Office shall prepare for the requestor of a copy of the presentence report exclusive of Rule 32(b)(5), Fed.R.Crim.P., information and/or other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other person, if latter information is not specifically relied upon by the Court in sentencing.

(6) The Probation Office will send to the U.S. Sentencing Commission a complete final draft presentence report, sentencing guideline worksheets, plea agreement (if written), judgment and commitment order, and the Court's written reasons for imposing sentence.

(7) Nothing in this Local Rule shall prohibit the Probation Office from disclosing the presentence report to an Arizona Superior Court Probation Office if that office agrees in writing, on a form approved by the Chief Judge of this

Court, to maintain confidentiality of matters so specified by this Court.

(f) **Release of Presentence Report to Parole Commission.** Any copy of defendant's presentence report which the Court releases to the United States parole Commission, pursuant to 18 U.S.C. § 4205 (e), shall state thereon that:

(1) the presentence report is a confidential Court document;

(2) that the Court intends the report to remain confidential even though released to the Commission; and

(3) that the presentence report is merely loaned to the Commission in order for the Commission to serve its statutory functions and must be returned to the Court thereafter.

F.R.Crim.P. 32.2. Criminal Forfeiture

LR crim 32.2.1

NOTICE OF ARREST

(a) Notice of Arrest of Probation and Parolee Violators.

As soon as practicable after taking into custody any person charged with a violation of probation or parole, the Marshal shall give written notice to the Clerk of the Court and the Probation Officer of the date and fact of such arrest, and the place of confinement of such alleged violator, and shall mail two (2) copies of such notice to the United States Attorney, who shall in turn mail a copy to any attorney who may appear of record for such alleged violator.

(b) Notice of Arrest by Federal Agencies and Others.

It shall be the duty of the Marshal to require all federal agencies and others who arrest any person as a federal prisoner in this district and all jailers who incarcerate any such person in any jail or place of confinement in this district, to give the Marshal notice of such arrest or incarceration forthwith.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the district, the Marshal shall notify Pretrial Services and shall give written notice to the Clerk of the Court and to the United States Attorney of the date and fact of such arrest and the place of confinement of such federal prisoner.

F.R.Crim.P. 33. New Trial
(NO LOCAL RULE)

F.R.Crim.P. 34. Arresting Judge
(NO LOCAL RULE)

F.R.Crim.P. 35. Correcting or Reducing a Sentence
(NO LOCAL RULE)

F.R.Crim.P. 36. Clerical Error
(NO LOCAL RULE)

F.R.Crim.P. 37. (Reserved)
(NO LOCAL RULE)

F.R.Crim.P. 38. Staying a Sentence or a Disability
(NO LOCAL RULE)

F.R.Crim.P. 39. (Reserved)
(NO LOCAL RULE)

Title VIII. Supplementary and Special Proceedings
F.R.Crim.P. 40. Arrest for Failing to Appear in Another
District
(NO LOCAL RULE)

F.R.Crim.P. 41. Search and Seizure
(NO LOCAL RULE)

F.R.Crim.P. 42. Criminal Contempt
(NO LOCAL RULE)

Title IX. General Provisions
F.R.Crim.P. 43. Defendant's Presence
(NO LOCAL RULE)

F.R.Crim.P. 44. Right to and Appointment of Counsel
(NO LOCAL RULE)

F.R.Crim.P. 45. Computing and Extending Time
LR crim 45.1

MOTIONS/STIPULATIONS FOR EXTENSIONS OF TIME

With regard to motions and stipulations for extension of time, see Rule 7.3, Local Rules of Civil Procedure.

**F.R.Crim.P. 46. Release from Custody; Supervising Detention
LRCrim 46.1**

BAIL

(a) **Bonds Taken by Magistrate Judges.** Unless otherwise ordered by the Court, all bonds in criminal cases for appearance before this Court shall be taken by Magistrate Judges and must be immediately forwarded to the Clerk's office by the Magistrate Judge taking such bond and must have endorsed thereon his or her approval. Bond monies will be deposited into the registry of the Court as provided by LRCiv 67.1.

(b) **Continuing Bonds.** All bonds must be continuing bonds, obligating the defendant to appear before the Court for judgment and sentence upon conviction.

(c) **Release on Bond.** Each defendant applying for release upon his or her own recognizance or for such other release as provided for by the terms of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.) shall support his or her request as provided in 18 U.S.C. § 3142 (f). When a release is obtained under the terms of the Bail Reform Act of 1984, such release shall be effective only upon the execution of an order and in accordance with its terms and upon forms supplied by the Clerk and signed by the defendant and the Magistrate Judge or the Judge granting the release.

(d) **Release on Bond Pending Appeal or Self-Surrender.** When a defendant is released on bond pending appeal or self-surrender, the defendant will be ordered to report to the Pretrial Services Office, and, unless otherwise directed, shall comply with such reasonable rules and regulations as the Pretrial Officer shall prescribe during pendency of the appeal or while awaiting the self-surrender date, subject to modification by the Court for cause shown.

(e) **Justification of Sureties.** In all cases in which individuals are sureties they must justify before the officer taking the bond, and their justification must be endorsed thereon.

LRCrim 46.2

CASH BOND AND FORFEITURE OF BOND

(a) **Exoneration of Bail.** If the defendant has given bail, he or she may at any time before the forfeiture of the recognizance, in like manner, deposit the sum mentioned in such recognizance, in compliance with Rule 46(d), Federal Rules of Criminal Procedure, and, upon the deposit of that sum, the bail shall be exonerated.

(b) **Application to Fine and Costs.** When money, government notes, or bonds have been deposited by the defendant, then, if it remains on deposit at the time of a judgment for the payment of a fine or fine and costs, the Clerk shall, under the direction of the Court, apply the money, notes, or bonds in satisfaction thereof, and, after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

(c) **Forfeiture of Bonds.** Forfeitures of bonds shall be declared by this Court in conformity with Rule 46(f), Federal Rules of Criminal Procedure. If, at any time after such forfeiture is declared by this Court, the defendant appears and satisfactorily excuses his or her neglect, the Court may direct the forfeiture to be discharged where justice so requires.

LRCrim 46.3

BOND REQUIRED

All Magistrate Judges, when holding persons or corporations charged with a crime and ordered to appear before this Court, shall require such persons or corporations to give bond or recognizance for their appearance in the division of the Court in which the case arose, in accordance with the orders and directions of the Court, or commit them to the custody of the United States Marshal. The Marshal shall confine the prisoners in such jail available for detention of federal prisoners as is situated most conveniently to the division in which the case arose.

F.R.Crim.P. 47. Motions and Supporting Affidavits
LR crim 47.1

FORMS OF PAPERS AND MOTIONS

With regard to Forms of Papers and Motions, see Rules 7.1 and 7.2 of the Local Rules of Civil Procedure.

F.R.Crim.P. 48. Dismissal

LR crim 48.1

DISMISSAL FOR WANT OF PROSECUTION

Cases which have had no proceedings for six (6) or more months may be dismissed by the Court for want of prosecution. Notice shall be given to the parties that such action is contemplated, and a status hearing shall be scheduled where the parties may show good cause why such action should not be taken.

F.R.Crim.P. 49. Serving and Filing Papers

LR crim 49.1

PLACES FOR FILING

With regard to places of filing, including petitions for writs of habeas corpus by a person in State custody under 22 U.S.C. § 2254, see Rule 5.1, Local Rules of Civil Procedure.

LRCrim 49.2

FILING; COPY FOR JUDGE

With regard to presenting copies of pleadings and documents filed with the Clerk, see Rule 5.4, Local Rules of Civil Procedure.

LRCrim 49.3

ELECTRONIC FILING AND SERVICE

With regard to electronic filing and service, see Rule 5.5 of the Local Rules of Civil Procedure.

F.R.Crim.P. 50. Prompt Disposition
(NO LOCAL RULE)

F.R.Crim.P. 51. Preserving Claimed Error
(NO LOCAL RULE)

F.R.Crim.P. 52. Harmless and Plain Error
(NO LOCAL RULE)

**F.R.Crim.P. 53. Courtroom Photographing and Broadcasting
Prohibited**

LR crim 53.1

CONDUCT IN COURTROOM AND ENVIRONS

With regard to conduct in the courtroom and environs, see Rule 43.1, Local Rules of Civil Procedure.

F.R.Crim.P. 54. (Transferred)
(NO LOCAL RULE)

F.R.Crim.P. 55. Records
(NO LOCAL RULE)

F.R.Crim.P. 56. When Court Is Open

LR crim 56.1

HOURS OF CLERK'S OFFICES

With regard to hours of Clerk's offices, see Rule 77.1(d) of the Local Rules of Civil Procedure.

F.R.Crim.P. 57. District Court Rules

LRCrim 57.1

PRETRIAL SERVICES

Pursuant to the Pretrial Services Act of 1982 (18 U.S.C. § 3152-3155), the Court establishes an independent Pretrial Services Office for the District of Arizona.

Upon notification that a defendant has been arrested, pretrial service officers will conduct a prerelease interview as soon as practicable. The judicial officer setting bail or reviewing a bail determination shall receive and consider all reports submitted by pretrial service officers.

A copy of the pretrial service report shall be provided to the attorneys for the accused and the Government, and shall be used only for the purpose of fixing conditions of release, including bail determinations. When a copy is provided, the pretrial service office will advise the attorneys by cover letter or form that (a) the report is not to be copied, (b) the report is not a public record, and (c) that the content may not be disclosed to unauthorized individuals. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the expectations provided therein.

Pretrial service officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

LRCrim 57.2

FREE PRESS - FAIR TRIAL DIRECTIVES

These guidelines are proposed as a means of balancing the public's right to be informed with the accused's right to a fair trial before an impartial jury. While it is the right of a free press to report what occurs in a public proceeding, it is also the responsibility of the bench to take appropriate measures to insure that the deliberations of the jury are based upon what is presented to it in Court. 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, there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(a) **Prior to Arrest.** With respect to a Grand Jury (consistent with the provisions of Rule 6, Federal Rules of Criminal Procedure) or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial 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 necessarily to inform the public that the investigation is under way, 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.

(b) **From Time of Arrest.** 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 extrajudicial 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 crime), or the character or reputation of the accused, except that the lawyer or law firm may in their discretion 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 his or her apprehension or to warn the public or any dangers he or she 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; or

(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 any 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 the 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 made against him or her.

(c) **During the Trial.** During the 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 reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote or refer without comment to public records of the Court in the case.

(d) **Other Information.** Nothing in this Local 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 him or her.

(e) **Disclosure by Others.** All Court personnel, including, among others, Marshals, Deputy Marshals, Court Clerks, Bailiffs, Court Reporters, and employees or subcontractors retained by a Court-appointed official reporter, are prohibited from disclosing to any person without authorization by the Court, information relating to a pending Grand Jury or criminal case that is not part of the public records of the Court. The divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(f) **Duty of Court in Special Cases.** In a widely publicized or sensational criminal case, 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. Such a special order might be addressed to some or all of the following subjects:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors, and court officials) which might divulge prejudicial matters not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any matter during their deliberations.

(4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors

or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses during the trial.

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(A) an order that no member of the public or news media representative be at any time permitted within the bar railing;

(B) the allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the news reporters.

The Court may also consider making more extensive use of techniques to insure an impartial jury, to include use of change of venue, sequestration of jurors, sequestration of witnesses, individual voir dire of prospective jurors, cautionary instructions to the jury, the sealing of pretrial motion papers and pleadings, and the holding of sidebar conferences between the Judge and the attorneys during trial in order to rule upon legal and evidentiary issues without being overheard by the jury.

(g) **Closure of Pretrial Proceedings.** Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on 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.

(h) **No Direct Restraints on Media.** No rule of Court or judicial order should be promulgated by a United States District Court which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case.

LRCrim 57.3

ATTORNEY OF RECORD; CRIMINAL CASES

No attorney, unless specially appointed by the Court, shall be considered by the Court as the attorney of record for a defendant in a criminal case until after that attorney shall have filed with the Clerk a written appearance, giving the name and address of both the attorney and the client. A copy of the written appearance shall be served upon the United States Attorney.

LRCrim 57.4

**HABEAS CORPUS, OTHER POST CONVICTION PETITIONS, AND PRISONER
AND CERTAIN OTHER CIVIL RIGHTS COMPLAINTS**

With regard to habeas corpus, other post conviction petitions, and prisoner and certain other civil rights complaints, see Rule 72.1(b), Local Rules of Civil Procedure.

LRCrim 57.5
WRITS OF HABEAS CORPUS
AND MOTIONS PURSUANT TO 28 U.S.C. § 2255

With regard to filing requirements, *in forma pauperis* certification, and assignment of judicial officer, see Rules 3.5 and 5.1, Local Rules of Civil Procedure.

LRCrim 57.6

UNITED STATES MAGISTRATE JUDGES

(a) **Duties Prescribed.** All Magistrate Judges in the District of Arizona shall perform the duties prescribed by 28 U.S.C. § 636 (a)(1) and (2). Unless circumstances dictate otherwise, a part-time Magistrate Judge shall, after compliance with Rule 5(b) of the Federal Rules of Criminal Procedure, set any required preliminary examination under Rule 5(c) of the Federal Rules of Criminal Procedure before a full-time Magistrate Judge located at the place where the case is to be tried.

(b) **Duty Stations.** The Magistrate Judges maintaining official stations at Grand Canyon National Park, Phoenix, Yuma, Flagstaff, Page, Holbrook/Window Rock, and Tucson, are each specifically designated pursuant to 18 U.S.C. § 3401 to try persons accused of, adjudge, and sentence persons convicted of misdemeanors and any person so accused shall immediately be referred for trial or other proceedings before such Magistrate Judge. Any Magistrate Judge may accept a forfeiture of collateral or may enter judgment in a misdemeanor case based on a plea of guilty or *nolo contendere*. A Magistrate Judge trying a defendant charged with a misdemeanor shall do so in the manner prescribed by Rule 58 of the Federal Rules of Criminal Procedure.

(c) **Consent of Defendant.** Upon the transfer, under Rule 20 of the Federal Rules of Criminal Procedure, of any information or indictment charging misdemeanor, the case shall be referred immediately to a Magistrate Judge who may take a plea and impose sentence in accordance with the rules for the trial of misdemeanors, if the defendant consents in writing to this procedure.

(d) **Other Duties.** Subject to the Constitution and laws of the United States, the full-time Magistrate Judges in the District of Arizona shall perform the following duties:

(1) Assist the District Judges in the conduct of pretrial discovery proceedings in civil or criminal actions. A Magistrate Judge may hear and determine a procedural or discovery motion or other pretrial matter in a civil or criminal case other than the motions which are specified in 28 U.S.C. § 636 (b)(1)(A). As to such specified motions so assigned, a Magistrate Judge shall, upon designation by a District Judge, submit to that District Judge a report containing proposed findings of fact and recommendations for disposition by the District Judge. In any motion in which the parties are seeking the sanctions provided for in Rule 37(b)(2)(A), (B), or (C), Federal Rules of Civil Procedure, if the Magistrate Judge is inclined to grant such requests the

Magistrate Judge shall be limited to filing a report and recommendation with the District Court; if the Magistrate Judge is inclined to deny any such request, he or she may enter an order thereon. A full-time Magistrate Judge may, when designated by a District Judge, conduct any necessary hearings, including evidentiary hearings, or other proceedings arising in the exercise of the authority conferred by 28 U.S.C. § 636 and by these Local Rules.

(2) Conduct voir dire examinations and select juries in civil and criminal cases by agreement of the parties.

(3) Conduct all detention hearings and hearings to amend, modify or revoke conditions of release under the Bail Reform Act 1984, other than hearings in felony cases after a finding of guilt and prior to imposition of sentence, or after a finding of guilt and sentence of imprisonment. Notwithstanding this provision, all full-time Magistrate Judges in this district are specifically authorized to conduct detention hearings on alleged probation and supervised release violations and in all instances of alleged violation of pre-sentence release conditions, unless the assigned District Judge directs otherwise.

(4) Review and submit recommendations to the Court on all petitions for revocation of probation and conduct necessary proceedings leading to the potential revocation of probation.

(5) Conduct arraignments, accept not guilty pleas, and set time for filing of motions and responses thereto in criminal cases.

(6) Receive the return of indictments by the Grand Jury and issue bench warrants when necessary for defendants named in the indictments.

(7) Dismiss indictments on motion of the United States Attorney and with the consent of the defendants.

(8) Enter orders for examination to determine mental competency; hold hearings and conduct examinations to determine mental competency; and enter orders determining mental competency.

(9) Conduct preliminary proceedings incident to transfer of cases pursuant to Rule 20, Federal Rules of Criminal Procedure.

(10) Issue subpoenas and writs of habeas corpus ad prosequendum and writs of habeas corpus ad testificandum or other orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings.

(11) Enter orders forfeiting bail where a defendant breaches his or her bail conditions by failing to appear in proceedings scheduled before the Magistrate Judge.

(12) Receive notice of the Government's intention to destroy all but samples of controlled substance seizures and any hazardous chemical substance, to enter appropriate order, and to hear and determine objections thereto unless exigent circumstances reasonably require such consideration by the Magistrate Judge on an *ex parte* basis.

(13) Issue orders upon appropriate application for disclosure of Grand Jury information pursuant to Rule 6(e)(3)(C)(i), (ii), and (iv) of the Federal Rules of Criminal Procedure.

(14) Make determinations and enter appropriate orders pursuant to 28 U.S.C. § 1915 with respect to any suit, action, or proceedings in which a request is made to proceed *in forma pauperis* consistent with federal law.

(15) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184.

(16) Direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case.

(17) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(18) Make determinations and enter appropriate orders in cases assigned to them pursuant to the Speedy Trial Act (18 U.S.C. § 3161-74), unless otherwise indicated by the Act.

(19) Conduct pretrial conferences, settlement conferences, and related pretrial proceedings in civil and criminal cases.

(20) Accept waivers of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure.

(21) Accept petit jury verdicts in civil and criminal cases in the absence of a District Judge and with consent of the parties.

(22) Perform the functions specified in 18 U.S.C. § 4107, § 4108, § 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein.

(23) Issue orders authorizing the installation and use of a pen register or a trap and trace device pursuant to 18 U.S.C. §§ 3122-23, and related orders directing the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device as well as orders and search warrants pursuant to 18 U.S.C. § 2701 through 2710 for subscriber or customer information and for contents of electronic communications, as provided by law. This provision may apply to part-time and full-time Magistrate Judges in the District.

(24) Issue orders and search warrants authorizing

civil administrative and other examinations, inspections, searches, and seizures as permitted by law. This provision shall apply to part-time and full-time Magistrate Judges in the District.

(25) Conduct felony guilty plea proceedings pursuant to Rule 11, Federal Rules of Criminal Procedure upon referral of such proceedings by a District Judge with the consent of the parties, or upon the filing of an information prior to assignment of a District Judge after waiver of indictment in open court before a Magistrate Judge in compliance with Rule 7(b), Federal Rules of Criminal Procedure, with the consent of the parties. The Magistrate Judge shall make findings with respect to the voluntariness of the plea and the defendant's understanding of other matters as required by Rule 11(b), Federal Rules of Criminal Procedure, the presence of a factual basis for the plea, and shall make a recommendation whether the guilty plea should be accepted by the District Judge.

(26) Perform such additional duties as are not inconsistent with the Constitution and laws of the United States as may be assigned by the Court pursuant to 28 U.S.C. § 636(b).

(e) **Waiver of Appearance.** A person who is charged with a suitable misdemeanor, as defined in Pub. L. 98-473, Title II, Sec. 218 (a)(1), may, in lieu of appearance, post collateral in the amount indicated by the offense, waive appearance before a Magistrate Judge specifically designated herein to try misdemeanors, and consent to forfeiture of collateral to the United States.

(f) **Amount of Collateral Set.** A Schedule of Collateral for all violations signed by this Court shall be maintained in the office of the Clerk of the Court in Phoenix and Tucson, and the office of each Magistrate Judge. The Schedule shall be available for examination by the public upon request. Schedules may be amended from time to time by order of the Court. The Magistrate Judge may increase the amount of collateral by the time specified in the violation notice or in a notice to appear or fails to appear before the Magistrate Judge when required. The collateral, after being increased, shall not exceed the maximum fine which could be imposed upon conviction and for the initial failure to post collateral or to appear shall in no event exceed twenty-five dollars (\$25) more than the scheduled amount.

(g) **Violation of Release.** Nothing contained in paragraph (e), of this Local Rule, shall prohibit a law enforcement officer from arresting any person for the commission of any offense, including those for which collateral may be posted and forfeited, and, upon such arrest, taking the person

immediately before a specifically designated Magistrate Judge, or requiring the person charged to make a mandatory appearance before a specifically designated Magistrate Judge. In the event a Magistrate Judge is not readily available, an arrested person may post bail in the amount set for the offense in the Schedule of Collateral or if no amount is set then five hundred dollars (\$500.00), unless the person is taken without unnecessary delay before a state or local judicial officer authorized by the 18 U.S.C. 3041, who may then set bail and/or other conditions of release.

LRCrim 57.7

COURT CALENDAR MANAGEMENT

With regard to court calendar management, see Rule 1.1, Local Rules of Civil Procedure.

LR crim 57.8

DOCKETING

With regard to docketing, see Rule 3.2, Local Rules of Civil Procedure.

LRCrim 57.9

CONDUCT IN COURTROOM AND ENVIRONS

With regard to conduct in the courtroom and its environs,
see Rule 43.1, Local Rules of Civil Procedure.

LRCrim 57.10

LOCATIONS

With regard to locations of courts, see Rule 77.1, Local Rules of Civil Procedure.

LR crim 57.11

CUSTODY AND DISPOSITION OF EXHIBITS AND SEALED DOCUMENTS

With regard to custody and disposition of exhibits and sealed documents, see Rule 79.1, Local Rules of Civil Procedure.

LRCrim 57.12

ATTORNEYS

With regard to attorneys, admission to the bar of this Court, practice, association of local counsel, disbarment or suspension, sanctions for noncompliance with rules or failure to appear, see Rule 83.1, Local Rules of Civil Procedure.

LR crim 57.13

DISBARMENT

With regard to disbarment, see Rule 83.2, Local Rules of Civil Procedure.

LR crim 57.14

**APPEARANCE BY ATTORNEY OR PARTY; NAME AND ADDRESS CHANGE;
CONTROL OF CAUSE**

With regard to an appearance by an attorney or a party, name and address changes, and control of cause, see Rule 83.3, Local Rules of Civil Procedure.

LRCrim 57.15

STUDENT PRACTICE RULE

With regard to student practice, see Rule 83.4, Local Rules of Civil Procedure.

LRCrim 57.16

PROHIBITION OF BIAS

With regard to prohibition of bias, see Rule 83.5, Local Rules of Civil Procedure.

LRCrim 57.17

SUSPENSION OF RULES

With regard to suspension of these Local Rules, see Rule 83.6, Local Rules of Civil Procedure.

LRCrim 57.18

AMENDMENT OF THE RULES OF PRACTICE

With regard to amendment of the Rules of Practice of the United States District Court for the District of Arizona, see Rule 83.9, Local Rules of Civil Procedure.

**F.R.Crim.P.58. Petty Offenses and Other Misdemeanors
LRCrim 58.1**

**ASSIGNMENT OF CRIMINAL MATTERS TO MAGISTRATE JUDGES
(MISDEMEANORS)**

(a) **Criminal Cases.** All misdemeanor cases filed by indictment or information shall be assigned to a full-time Magistrate Judge who shall proceed in accordance with 18 U.S.C. § 3401 and the Rule of Procedure for the Trial of Misdemeanors Before United States Magistrate Judges. Misdemeanor cases filed by indictment or information shall be assigned to a full-time Magistrate Judge by automated random selection, with the exception of cases brought before the full-time Magistrate Judges sitting in Flagstaff and in Yuma, which shall be directly assigned. All other misdemeanors, except petty offense cases processed by the Central Violations Bureau, shall be assigned to any Magistrate Judge designated by those rules to try misdemeanors. Any Magistrate Judge may act in the absence or unavailability of the assigned Magistrate Judge. In the case of a Class A misdemeanor, if the defendant does not waive trial, judgment, and sentencing before a District Judge of the District Court and does not consent to those proceedings before the Magistrate Judge, the case shall be promptly referred to the Clerk of Court for assignment to a District Judge and the defendant shall be directed to appear before the assigned District Judge.

LRCrim 58.2

REVIEW AND APPEAL JUDGMENTS OF MAGISTRATE JUDGES

(a) Appeal from Judgments in Misdemeanor Cases (18 U.S.C. § 3402).

(1) A defendant may appeal a judgment of conviction by a Magistrate Judge in a misdemeanor case by filing a notice of appeal with the Clerk of the Court within ten (10) days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.

(2) The record on appeal to a District Judge shall consist of the original papers and exhibits filed with the Court and the transcript or tape recording of proceedings before the Magistrate Judge, if any.

(3) The appellant shall, within thirty (30) days of the filing of the notice of appeal, file a typewritten memorandum with the Clerk of the Court. The memorandum shall include the following: (A) A statement of the issues presented for review and a statement of the case including a statement of the nature of the case; (B) the course of proceedings; and (C) its disposition. There shall follow a statement of the facts relevant to the issues presented for review. The memorandum shall also include any argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities and statutes relied on. The argument shall be followed by a short conclusion stating the precise relief sought. The appellant shall serve a copy of the memorandum on the appellee.

(4) The appellee shall file an answering memorandum within twenty (20) days of the filing and service of the appellant's memorandum. The memorandum shall follow a format similar to the appellant's memorandum, except that a statement of the issues presented for review, a statement of the case, and a conclusion shall be optional.

(5) The appellant may file a reply memorandum within ten (10) days of the date of service of the appellee's memorandum.

(6) Upon the filing of the memorandum, the case will be deemed submitted for decision. Counsel may request oral argument, in writing, at the time their memoranda are filed, and the Court, in its discretion, may allow oral argument.

(7) The Court may extend the time limits set in this Local Rule upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary

transcript. If an appellant fails to file a memorandum within the time provided by this Local Rule, or an extension thereof, the Court may dismiss the appeal.

F.R.Crim.P. 59. (Deleted)
(NO LOCAL RULE)

F.R.Crim.P. 60. Title
(NO LOCAL RULE)