

LOCAL UNIFORM CRIMINAL RULES

of the

UNITED STATES DISTRICT COURTS

for the

NORTHERN DISTRICT OF MISSISSIPPI

and the

SOUTHERN DISTRICT OF MISSISSIPPI

EFFECTIVE
December 1, 2019

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Rule 1. SCOPE.

The rules of procedure in criminal proceedings in this court are those prescribed by the laws of the United States and the Federal Rules of Criminal Procedure, along with these Uniform Local Criminal Rules, and where applicable, by *The Uniform Local Civil Rules of the United States District Courts for the Northern District and the Southern District of Mississippi*. These rules shall be construed as consistent with acts of Congress and rules of practice and procedure prescribed by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

Rule 10.1. DEADLINES IN CRIMINAL CASES.

At the arraignment, the United States Magistrate Judge shall enter a scheduling and discover order setting forth dates for the following:

- (A) trial setting;
- (B) discovery;
- (C) filing of non-dispositive motions;
- (D) notice to the government and to the court of intent to enter a guilty plea;
- (E) filing of dispositive motions;
- (F) filing of motions in limine; and
- (G) submission of proposed jury instructions and exhibit lists to the court and opposing counsel. Supplemental or “specialty” instructions may be submitted to the court by the parties at the close of the evidence.

Upon the request of any party, the United States Magistrate Judge may also enter an order setting dates for the parties to provide a summary of expert opinions pursuant to Fed. R. Crim. P. 16(a)(1)(G) and 16(b)(1)(C).

Rule 17. SUBPOENAS.

A party seeking a subpoena for books, papers, documents, data or other objects under Fed. R. Crim. P. 17(c) returnable in advance of trial must seek prior approval from the magistrate judge assigned to the case. For good cause, an application for approval may be made ex parte. The court will address issues of notice, place of production, and whether the material must be disclosed to opposing parties upon consideration of the application.

Rule 32. DISCLOSURE OF INITIAL SENTENCE RECOMMENDATION.

As authorized by Federal Rule of Criminal Procedure 32(e)(3), the probation officer's recommendation on the initial sentence shall not be disclosed unless so ordered by the sentencing judge.

Rule 44.1. ATTORNEYS: ADMISSION AND CONDUCT.

Admission and conduct of attorneys in criminal cases shall be governed by Rule 83.1 of *The Uniform Local Civil Rules of the Northern and Southern Districts of Mississippi*, which is adopted and incorporated by reference herein. However, the judge in any criminal proceeding may waive the requirement of local counsel or any limitation on the number of pro hac vice admissions.

Rule 47. MOTIONS AND SUPPORTING AFFIDAVITS.

- (A) **Applicability.** This Rule governs a written communication with the court that is intended to be an application for relief or other action by the court. Such communications shall be presented by a motion in the form prescribed by this Rule. The provisions of this Rule apply to all written motions filed in criminal actions. Counsel are directed to the provisions of Fed. R. Crim. P. 12(b). When a deadline falls on a Saturday, Sunday or legal holiday, the deadline shall be the next business day.

Except as specified below, all motions must be accompanied by a "Certificate of Conference." The certificate should be placed at the end of the motion following the certificate of service. The certificate must state that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention. Failure to file an accompanying certificate of conference may be deemed sufficient grounds for denying the motion. Certificates of conference are not required for any motion involving pro se litigants (prisoner or non-prisoner) or for the following motions:

- (1) motions to dismiss;
- (2) motions in limine;
- (3) motions for judgment of acquittal;
- (4) motions to suppress;
- (5) motions for new trial;
- (6) any motion captioned as "joint", "agreed" or "unopposed";

- (7) any motion permitted to be filed ex parte;
- (8) motions for change of venue;
- (9) applications for subpoenas under Fed. R. Crim. P. 17(b) or (c)(1);
- (10) motions for a bill of particulars;
- (11) motions relating to the selection of jurors.

(B) Motions. The original motion, response, rebuttal, supporting memorandum of authorities, and any supporting exhibits shall be filed with the clerk of court where the action is docketed. All motions, both dispositive and non-dispositive, shall be filed within the time limits ordered by the magistrate judge. All affidavits and other supporting documents and exhibits, excluding any memorandum of authorities, shall be filed with the original motion. All supporting exhibits shall be identified in the docket by both an exhibit letter or number and a meaningful description. Supporting exhibits should not be identified in the docket solely by exhibit letter or number. Further, all supporting exhibits cited in a pleading, which are not already of record, shall be filed under the same docket entry as the motion, response or rebuttal to which they relate. If such filing is not practicable, supporting exhibits may be filed as separately docketed attachments properly linked to the motion, response or rebuttal to which they relate.

Any memorandum of authorities shall be filed as a separate docket entry from the motion or response to which it relates and shall not be made an exhibit to a motion or response, except in the case of a motion for leave to submit the referenced brief or memorandum of authorities.

Movant's counsel shall submit to the appropriate judge's chambers, via email, any proposed order for a motion that may be heard ex parte, or is to be granted by consent.

(C) Responses.

- (1) Within eleven calendar days after a motion is filed, the opposing party shall either respond to the motion or notify the court of its intent not to respond. No response to a motion for post-conviction relief, including but not limited to a motion filed pursuant to 28 U.S.C. § 2255, is required unless directed by the court. For any motion other than a dispositive motion or a motion for post-conviction relief, the court may grant the motion as unopposed if a party fails to respond or provide notice of its intent not to respond within the time allotted.

- (2) The response to a motion, all opposing affidavits, and other supporting documents shall be filed with the clerk of court at the division where the action is docketed, and any response to a motion shall be filed in the same manner as provided for the filing of motions in paragraph (B) of this Rule.
- (D) **Rebuttals.** Any counsel who desires to file a rebuttal may do so within five calendar days after the service of the response.
- (E) **Memoranda of Authorities.** As a general rule, a supporting memorandum of authorities is not required for any motion, response or rebuttal in which there is a sufficient explanation of the relief requested and basis therefor within the body of the motion. A supporting memorandum of authorities is discouraged with regard to non-dispositive motions, applications, or motions that may be heard ex parte, and motions involving necessitous or urgent matters. However, a memorandum of authorities may be filed in support of any motion, response or rebuttal. Counsel shall file any memorandum of authorities at the same time that a motion, response or rebuttal is filed. No memorandum of authorities shall exceed 35 pages without prior leave of court.
- (F) **Notice and Hearings.**
- (1) All motions shall be decided by the court without evidentiary hearing or oral argument unless otherwise ordered by the court on its own motion or, in the court's discretion, upon written request of counsel in an easily discernible manner on the face of the motion or responsive pleading regarding the need for a hearing or oral argument.
- (2) The scheduling of an evidentiary hearing or oral argument, when allowed, shall be set at such time and place as directed by the judge. The court may, in its discretion, hear oral argument by video or telephone conference.
- (G) **Service.** Movant and respondent shall serve copies of all pleadings and any supporting memorandum of authorities upon opposing counsel, except in applications under Fed. R. Crim. P. 17(b) or (c)(1) by defendants for the issuance of subpoenas for non-government witnesses or documents.
- (H) **Untimely Motions.** Any motion filed beyond the motion deadline imposed by the magistrate judge in a scheduling order may be denied because the motion is filed untimely. Parties are encouraged to file all motions prior to the deadline.

Rule 49.1. SEALING OF COURT RECORDS.

The process for sealing court records shall be governed by Rule 79 of *The Uniform Local Civil Rules of the Northern and Southern Districts of Mississippi* EXCEPT for the following specific documents:

- (A) **Charging Instruments and Warrants.** The government may seek to seal charging instruments and warrants as directed by the court.
- (B) **Plea Agreements.**
 - (1) All plea agreements shall be submitted with original signatures in paper format to the court and shall be sanitized by the drafter of any references to cooperation. After a plea has been accepted in open court, plea agreements shall be scanned and electronically filed as public, unsealed documents.
 - (2) All plea agreements shall be accompanied by a sealed document titled "Plea Supplement." The Plea Supplement will also contain the government's sentencing recommendation. The Plea Supplement will be electronically filed under seal. All cases will be docketed identically with reference to a sealed Plea Supplement, regardless of whether or not a cooperation agreement exists.
 - (3) The district judge may order the entire plea agreement to be sealed for a specified period of time if the court finds that exceptional circumstances exist warranting the sealing of the agreement.
- (C) **Motions for Sentence Reductions based on Cooperation with the Government.**
 - (1) Government motions filed pursuant to Fed. R. Crim. P. 35 or Section 5K1.1 of the United States Sentencing Guidelines or 18 U.S.C. § 3553(e) shall be filed under seal without prior leave of court.
 - (2) The government must provide notice to counsel for the defendant that such motion has been filed and provide defense counsel with a copy of the motion. Defense counsel may not copy or distribute the motion nor may they reveal the contents of the motion to anyone other than their client without prior leave of court.
 - (3) Said motions will remain under seal indefinitely unless and until a court enters an order directing that they be unsealed.

Rule 58. ASSIGNMENT OF MISDEMEANOR CASES.

All proceedings including trial and imposition of sentence in petty offense and other misdemeanor cases will be heard and conducted by the United States Magistrate Judges, subject to the limitations of 18 U.S.C. § 3401.

Rule 60. TITLE.

These rules apply to the conduct of all criminal proceedings in this court and may be cited as “*The Uniform Local Criminal Rules of the United States District Courts for the Northern District and the Southern District of Mississippi*,” the “Uniform Local Criminal Rules,” or, where reference is to a specific rule, either “Uniform Local Criminal Rule [number]” or “U.L.Cr.R. [number].”