

SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE-ROOM 2904
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE

JUDICIAL COUNCIL
APPROVED

MAY 24 2017

C/E

ROBERT A. KATZMANN
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

MEMORANDUM
May 23, 2017

To: Second Circuit Judicial Council

From: Karen Greve Milton, Circuit Executive

kgm

Re: Proposed Revisions to Local Criminal Rules - District of Connecticut

The Board of Judges for the District Court for the District of Connecticut has approved a proposal to revise seven Local Criminal Rules and the District's Standing Order on Discovery codified in the Criminal Appendix to the Local Rules. I am submitting all eight matters to the Second Circuit Judicial Council for consideration and final approval.

The proposals are reflected in the attached proposed revised Local Rules. Also attached is a redlined version of each Rule that illustrates the specific changes.

1. Local Criminal Rule 1 – Scope of Rules
2. Local Criminal Rule 16 – Discovery
3. Local Criminal Rule 32(e) and (i) – Disclosure of Presentence Reports
4. Local Criminal Rule 43 – Attendance of Defendants
5. Local Criminal Rule 55 – Records
6. Local Criminal Rule 57– Rules by District Courts
7. Local Criminal Rule 58– Appeals
8. Criminal Appendix – Standing Order on Discovery

Kindly return your ballot, by fax (212) 857-8680, or by email, by Friday, May 30, 2017. Thank you.

Ballot

Name: _____

_____ Yes, I approve the proposed revisions to Local Criminal Rules for the District of CT

_____ No, I do not approve the proposed revisions to Local Criminal Rules for the District of CT

_____ I request additional information and/or further discussion.

LOCAL RULES OF CRIMINAL PROCEDURE

RULE 1

SCOPE OF RULES

(Amended May ____, 2017)

(a) Title and Citation

These Rules shall be known as the Local Criminal Rules of the United States District Court for the District of Connecticut. They may be cited as “D. Conn. L. Cr. R. ____-” and referred to as “L.Cr. R. ____,” or “Local Rule ____,” or L.R. ____” where the meaning is clear.

(b) Effective Date

These rules, as amended from time to time, shall govern the conduct of apply in all criminal proceedings in the United States District Court for the District of Connecticut ~~commenced on or after May 1, 1985.~~

(c) Applicability of Local Civil Rules

The following Local Civil Rules shall apply in criminal proceedings: 1(c) (Definitions), 5(a) E-filing, 5(c)(Proof of Service), 7(a)1 and 2 (Motion Practice), 7(b) (Motions for Extension of Time), 7(c) (Motions for Reconsideration), 7(d) (Reply ~~Briefs~~Memoranda), 7(e) (Withdrawal of Appearances), 10~~(a)~~ (Preparation of Pleadings), 11 (Motions for Attorneys’ Fees and/or Sanctions~~Against Counsel~~), 40(c) (Assignment to Judge upon Remand by Appellate Court), 47(a) (Examination of Jurors), 54 (Taxation of Costs), 80 (~~Reporter’s Fees~~Stenographer), Rules 83.1 (Admission of Attorneys), 83.2 (Discipline of Attorneys), 83.5 (Secrecy of Jury Deliberations), 83.6 (Removal of Papers and Exhibits), 83.9 (Law Student Internship Rules), 83.11 (Recordings and Photographs), 83.12 (Auxiliary Orders) and 83.13 (Prohibition on Counsel as Witness). (Effective December 1, 2004)

(d) Types of Proceedings

All criminal proceedings requiring judicial action which do not commence with an indictment or information shall be denominated special proceedings. Such proceedings shall include, but not be limited to, the determination of all matters relating to proceedings before the grand jury, motions pursuant to Rule 41, Fed.R.Crim.P., made before indictment; and proceedings pursuant to the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510–20.

RULE 16

DISCOVERY

(Amended May, _____, 2017)

(a) Timing of Discovery

At arraignment the Court shall set a schedule for the filing of motions and responses ~~for discovery requests made pursuant to Rules 12.1, 12.2, and 16, Fed.R.Crim.P.~~ All pretrial proceedings shall be governed by such schedule and by any standing orders on pretrial procedure as the Judges of the District may from time to time adopt. Said standing orders shall be published as an appendix to these Local Rules of Criminal Procedure.

RULE 32

DISCLOSURE OF PRESENTENCE REPORTS

~~(Amended December 7, 2011)~~

~~(Amended July 24, 2015)~~

(Amended May _____, 2017)

(a) Initial Disclosure of Presentence Reports

Unless otherwise ordered by the Court, the Probation Officer shall, not more than 6 weeks after the verdict or finding of guilt, disclose the presentence investigation report, including the worksheets utilized to calculate sentencing guideline ranges, to the defendant and to counsel for the defendant and the government. Within 14 days thereafter, counsel shall communicate in writing to the Probation Officer and to opposing counsel any objections they may have as to any of the following items contained in or omitted from the report:

- (i) factual inaccuracies;
- (ii) other material information;
- (iii) guideline calculations and sentencing ranges;
- (iv) sentencing classifications;
- (v) sentencing options; and
- (vi) bases for departure.

(b) Revisions to Report

After receiving counsel's objections, the Probation Officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. Any counsel or the Probation Officer may request a meeting to discuss unresolved factual and legal issues.

(c) Submission of Revised Presentence Report

No later than ten (10) days after the deadline for counsel's objections, the Probation Officer shall submit the revised presentence report to the sentencing judge and disclose the revised presentence report to the defendant and counsel for the defendant and the government. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the Probation Officer's comments thereon, and shall have attached thereto any written objections submitted to the Probation Officer pursuant to Local Rule 32(b). The Probation Officer shall certify that the contents of the report, including any revisions to the report, have been disclosed to the defendant and to counsel for the defendant and the government, that the content of the addendum and the Probation Officer's

comments on unresolved issues have been communicated to counsel, and that the addendum fairly states any remaining objections.

(d) Objections to Revised Presentence Report

Except with regard to any objection made under subdivision (a) that has not been resolved, the final presentence report may be accepted as accurate. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence.

(e) Scheduling Order

In accordance with Fed. R. Crim. P. 32(b)(2), the Court shall issue a scheduling order that sets the following deadlines for the sentencing process, with all dates calculated from the date of guilty plea or guilty verdict:

Initial disclosure of the presentence report:	Day 42
Objections to the presentence report:	Day 56
Disclosure of revised presentence report:	Day 66
Defendant's Simultaneous sentencing memoranda:	Day 70 ⁷³
<u>Government's sentencing memorandum</u>	<u>Day 77</u>
Any reply Responsive sentencing memoranda (optional):	Day 80 ⁷⁸
Sentencing:	Day 84

The Court may postpone issuance of a sentencing scheduling order under this Rule for good cause. In cases in which the parties have agreed that an extended schedule is necessary, and the Court has agreed to postpone issuance of a sentencing scheduling order accordingly, the deadlines set forth above shall be calculated from the date the Court orders the preparation of the presentence report.

(f) Modification of Time Limits

The times and sequence for the filing of sentencing memoranda set forth in this Rule may be modified by the judge to whom the case is assigned. The times set forth in this Rule may otherwise be modified by the Court for good cause shown, except that the 6 week period set forth in subsection (a) may be enlarged only with the consent of the defendant. If a party proposes that sentencing be continued beyond 84 days for any reason, that proposal shall be accompanied by a proposed scheduling order establishing dates for initial disclosure of the presentence report, objections by counsel, disclosure of the revised report, sentencing memoranda and responsive sentencing memoranda. In any case in which the Court does not issue an order for preparation of a presentence report at the time of the guilty verdict or guilty plea, the Court may establish a report date at which time counsel must report back to the Court as to the status of the case. At the report date, the Court can consider whether to set a

sentencing date and enter a scheduling order pursuant to Local Rule 32(e) or set another report date.

(g) Non-disclosable Information

Any information that the Probation Officer believes, consistent with Fed.R.Crim.P. 32(b)(5), should not be disclosed to the defendant (such as diagnostic opinions, sources of information obtained upon a promise of confidentiality, or other information the disclosure of which might result in harm, physical or otherwise, to the defendant or other persons) shall be submitted on a separate page from the body of the report and marked "confidential." The sentencing Judge in lieu of making the confidential page available, exclusive of the sentencing recommendation, shall summarize in writing the factual information contained therein if it is to be relied on in determining the sentence. The summary may be provided to the parties *in camera*. The Judge must give the defendant and defendant's counsel a reasonable opportunity to comment on the information. Nothing in this Rule requires disclosure of portions of the presentence report that are not disclosable under Fed.R.Crim.P. 32.

(h) Date of Disclosure

The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered, (2) one day after the report's availability for inspection is orally communicated, or (3) three days after notice of its availability is mailed.

(i) Limitations on Disclosure by the Government and the Defense

Disclosure of the presentence report is made to the government and to the defense, subject to the following limitations:

1. The attorney for the government shall not disclose the contents of the presentence report to any person other than to the case agent, experts or consultants hired by the government and to the Financial Litigation Unit of the United States Attorney's Office when a fine, assessment or order of restitution is imposed.
2. The attorney for the defendant shall not disclose the contents of the presentence report to any person other than the defendant or experts or consultants hired by the defense. The defendant shall not disclose the contents of the presentence report to any person other than his or her attorney and spouse.
3. The defendant or his or her attorney may take notes regarding the contents of the presentence report; however, such notes are subject to the same prohibition against disclosure as applies to the report itself.
4. The defendant and the attorney for the defendant and the government may retain their copies of the presentence report, subject to the same limitations on disclosure set forth in this rule.
5. Nothing in this rule shall limit the authority of any detention facility or prison to impose restrictions on the receipt or handling of any presentence report within the facility.

The presentence report shall remain a confidential Court document, disclosure of which is controlled by the Court. A violation of any of the above conditions shall be treated as a contempt of Court and may be punished by any appropriate sanction, including action by the Grievance Committee pursuant to Rule 1 of these Local Rules of Criminal Procedure and Rule 83.2 of the Local Rules of Civil Procedure.

...

RULE 43

ATTENDANCE OF DEFENDANTS

(Amended May ____, 2017)

~~(a) Presence Required~~

A defendant in a criminal prosecution admitted to bail shall attend before the Court at all times required by the Federal Rules of Criminal Procedure, and at any time required by the Court.

RULE 55

RECORDS

(Amended May ____, 2017)

(a) Docket Numbers

Upon the filing of an information or indictment a case will be assigned a criminal docket number followed by the initials of the Judge to whom the case has been assigned.

(b) ~~Miscellaneous~~ Special Proceeding Docket Numbers

All matters involving special proceedings shall be assigned a ~~miscellaneous civil~~ docket number followed by the initials of the Judge to whom the case has been assigned.

(c) Subsequent Proceedings

If a proceeding is brought before the special proceedings Judge pursuant to this Rule 55 and the matter results in the filing of an information or an indictment, the case shall be assigned in the manner provided in Rule 50 of these Local Rules. In all other cases, the Judge to whom a special proceedings matter has been assigned shall normally preside over that matter until it has been concluded.

RULE 57

RULES BY DISTRICT COURTS

~~(Amended January 25, 2013)~~

~~(Amended March 25, 2015)~~

(Amended May ____, 2017)

(a) Appearances

Attorneys representing defendants named in an information or indictment shall file a notice of appearance ~~with the Clerk and serve a copy on the United States Attorney and all other counsel of record~~. Such appearance shall contain the attorney's name, address, zip code, federal bar number, telephone number, fax number and e-mail address, if available.

(b) Sealed Proceedings and Documents

1. (a) The power to close a courtroom or to exclude the public from proceedings to which a First Amendment right to access attaches shall be used sparingly and only for clear and compelling reasons (e.g., the defendant's right to a fair trial; privacy interests of the defendant, a victim, or others; the integrity of significant government activities entitled to confidentiality, such as ongoing undercover investigations; and danger to persons or property). Before excluding the public from such proceedings, the Court must make particularized findings on the record demonstrating the need for the exclusion, and any court closure order shall be narrowly tailored to serve the purpose of the closure. Those findings may be made *in camera* and under seal, provided that the requirements of paragraph 3, below, have been met with respect to the findings themselves.

(b) Except when justified by extraordinary circumstances, no order closing a courtroom or excluding the public from proceedings to which a First Amendment right to access attaches shall be entered except upon advance notice to the public. Any motion seeking such relief, whether made by a party or by the Court *sua sponte*, must be docketed immediately in the public docket files of the Court; provided, however, that in extraordinary situations where even the contemporaneous notation in the docket that courtroom closure has been sought or has occurred would create a substantial risk of harm to an individual, the defendant's right to a fair trial, the integrity of ongoing criminal investigations, or the secrecy of grand jury proceedings, the Court may order the docketing of closure proceedings be delayed for a reasonable time, but must place its particularized findings supporting that delay on the record, under seal if appropriate. When docketed under seal pursuant to an order of the Court, the docket entry for any motion seeking court closure shall reflect the fact that the motion was made, the fact that any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact and extent of courtroom closure. Any such motion shall be made as far in advance of the pertinent proceeding as possible in order to permit the public to intervene for the purpose of challenging the court closure.

2. A criminal complaint may be filed under seal and an indictment may be returned under seal when a judicial officer finds that the safety of persons or a legitimate law enforcement objective would be furthered by sealing or when one or more of the named defendants is found by a judicial officer to pose a substantial risk of evading capture. In that event, during the time that the charging document remains sealed, the existence of the case shall be reflected on public dockets by use of the notation: "Sealed Case." Unless otherwise ordered by the Court based upon particularized findings sufficient to support further sealing, upon the initial appearance of the first defendant arrested in the case, the entire case shall be unsealed and the full caption shall be entered on the docket sheet. Those findings may be made *in camera* and under seal, provided that the requirements of paragraph 3, below, have been met with respect to the findings themselves.

3. Every document used by parties moving for or opposing an adjudication by the Court, other than trial or hearing exhibits, shall be filed with the Court. No judicial document shall be filed under seal, except upon entry of an order of the Court either acting *sua sponte* or specifically granting a request to seal that document. Any such order sealing a judicial document shall include particularized findings demonstrating that sealing is supported by clear and compelling reasons and is narrowly tailored to serve those reasons. A statute mandating or permitting the non-disclosure of a class of documents (e.g., personnel files, health care records, or records of administrative proceedings) provides sufficient authority to support an order sealing such documents. A judge may seal a Court order, including an order to seal documents and the related findings, when sealing a Court order meets the standard for sealing a judicial document. In extraordinary situations where even the contemporaneous notation in the docket that sealing has been sought or has occurred would create a substantial risk of harm to an individual, the defendant's right to a fair trial, the integrity of ongoing criminal investigations, or the secrecy of grand jury proceedings, the Court may order the docketing of a motion to seal and sealed documents be delayed for a reasonable time, but must place its particularized findings supporting that delay on the record, under seal if appropriate. No document shall be sealed merely by stipulation of the parties. Any document filed under seal in the absence of a Court order to seal it is subject to unsealing without prior notice to the parties.

4. Counsel seeking an order to file a document under seal may choose among the following procedures:

(a) Counsel may e-file (1) a motion to seal, which may be e-filed as a public motion or a sealed motion, (2) a redacted version of each document sought to be sealed, which shall be e-filed as a public document, (3) unredacted copies of each document sought to be sealed, which shall be e-filed as sealed documents, and (4) any memorandum or other documents supporting the assertion that grounds exist for sealing the documents sought to be sealed, which may be e-filed as public or sealed documents. Upon submission by the party of a motion to seal, the contents of any sealed motion or sealed document shall be treated as sealed unless the motion to seal is denied or until otherwise directed by the Court.

(b) Counsel may e-file a motion to seal, which may be e-filed as a public motion or a sealed motion, along with a memorandum and supporting documents, without the documents sought to

be sealed. If the Court grants the motion to seal in whole or in part, counsel shall e-file as public documents redacted copies of any documents required by the Court's sealing order, and shall e-file as either sealed motions or sealed documents, unredacted copies of any motions or documents ordered sealed but not previously e-filed.

(c) Counsel may seek permission of the presiding Judge to submit the documents sought to be sealed for *in camera* consideration. If the Judge agrees to review documents *in camera*, counsel shall submit to Chambers and shall serve on all counsel of record copies of the documents sought to be sealed and shall e-file a motion to seal, a memorandum and supporting documents. If counsel want the motion to seal, memorandum or supporting documents to be considered as documents to be sealed, counsel shall e-file those submissions as sealed motions and/or sealed documents and their contents shall be treated as sealed unless the motion to seal is denied or until otherwise directed by the Court. If the Court grants the motion to seal in whole or in part, counsel shall e-file any redacted copies of the documents required by the Court's sealing order and shall e-file the unredacted documents as sealed documents.

5. A motion to seal shall be e-filed as either a "Motion to Seal" or a "Sealed Motion to Seal" along with a description of the items sought to be sealed (e.g., "Motion to Seal Sentencing Memorandum"). The documents sought to be sealed shall be entered on the docket using the same title of the pleading or description of the documents used in the motion to seal. Pursuant to a Court order supported by a particularized showing of good cause, a filing or document may be entered on the docket simply as "Sealed Document" or "Sealed Motion." Any documents ordered sealed by the Court shall be sealed by the Clerk on the docket, and; the Clerk shall docket any sealing order issued by the Court. The Court may condition any sealing order on the filing of documents less fully redacted than those submitted by the party seeking sealing. If the Court denies the motion to seal in whole or in part, any unredacted document, motion, memorandum or supporting document not ordered sealed will be unsealed by the Clerk.

6. Any party may oppose a motion to seal or may move to unseal a case or document subject to a sealing order. Any non-party who either seeks to oppose a motion to seal or seeks to unseal a case or document subject to a sealing order, may move for leave to intervene in a criminal case for the limited purpose of pursuing that relief. Motions for leave to intervene for purposes of opposing sealing, objections to motions to seal, and motions to unseal shall be decided expeditiously by the Court.

7. Except as required otherwise by federal statute or the Federal Rules of Criminal Procedure (e.g., grand jury matters), and except as otherwise provided in Local Criminal Rule 57(b), all documents ordered sealed by the Court shall be e-filed as sealed motions or sealed documents. Custody of all sealed documents shall remain with the filing party, unless specifically ordered otherwise by the presiding judicial officer, subject to the following exceptions:

(a) Cooperation Agreements and related filings. When a defendant's plea agreement has been filed and the Court has ordered that the associated cooperation agreement shall be sealed, the executed cooperation agreement and transcript of the canvass of a defendant regarding a cooperation agreement shall be maintained by the judicial officer who will sentence

the defendant. Docketing of the minute entry of the cooperation colloquy may be delayed in extraordinary situations that would justify the delayed docketing of a sealed document.

(b) Wiretap applications. All wiretap applications, supporting documents or affidavits, all orders addressing wiretap applications, and the fruits of all wiretap authorizations shall be maintained by the United States Attorney's Office or its designee.

(c) Pen registers/trap and trace. Orders authorizing pen registers or trap and trace of telephone calls, along with related applications and supporting documents, shall be delivered to ~~one of the criminal docket clerks in~~ the Office of the Clerk upon approval by a judicial officer. ~~If no criminal docket clerk is available, the papers shall be delivered to an office supervisor.~~ The papers submitted will be filed and stamped and a ~~miscellaneous~~ sealed case will be opened, with the docket entry reflecting "Pen Register filed" or "Trap and Trace filed." At the request of the United States Attorney's Office, pen register/trap and trace orders, along with related applications and supporting documents, may be held by the judicial officer for a reasonable period of time (i.e., until the related criminal case has been charged and publicly disclosed) prior to presentation to the Clerk's Office for filing.

(d) Search Warrants. ~~Orders authorizing search warrants~~ Copies of search warrants, along with ~~all related the search warrant~~ applications and supporting ~~documents~~ affidavits or other papers, shall be ~~delivered to~~ maintained by the judicial officer authorizing the warrant until the warrant has been executed and returned, at which time the warrant papers shall be filed with the Office of the Clerk upon approval by a judicial officer. At the request of the United States Attorney's Office, search warrants, along with search warrant applications and supporting affidavits or other documents may be held by the judicial officer for a reasonable period of time (i.e., until the related criminal case has been charged and publicly disclosed) prior to presentation to the Clerk's Office for filing. Unless otherwise directed by the Court for sufficient cause, search warrant returns shall be docketed as unsealed filings.

(e) Ex Parte Applications. Ex parte applications and requests, together with any supporting material, shall be electronically filed by ~~(e.g., the government~~ applicant and shall reflect the general nature of the ex parte application or request. ~~for a ruling whether~~ In the event that materials must be disclosed as Giglio material, or a defendant's for which the applicant seeks ex parte request review are not appropriate for a subpoena) may be submitted filing (i.e. due to a judicial officer without volume or format), the ex parte submission should include a Notice of Manual Filing that generally describes the material and the need for filing the material manually, being filed or docketed by the applicant. ~~The party submitting an ex parte application shall file a Notice of Ex Parte submission reflecting the fact and the general nature of the ex parte application or request. Unless and until otherwise ordered by the Court, all papers submitted in support of an ex parte application or request shall be maintained by the judicial officer or by the Clerk, as directed by the judicial officer, in a manner to protect the ex parte character of the submission and to preserve the record for appeal.~~

(f) *In Camera* Proceedings. A proceeding of the type to which a First Amendment right of access attaches may be held *in camera*, subject to the provisions of subsection (b)1(b) of this

rule. A proceeding of the type to which a First Amendment right of access does not attach may be held *in camera* without complying with the provisions of subsection (b)1(b) of this rule.

(g) Presentence Investigation Reports. Presentence investigation reports prepared by the U.S. Probation Office to assist the Court with sentencing shall be e-filed by the Probation Office and restricted to counsel of record for the government and defendant and may be disclosed only as permitted by law.

8. Any document submitted to the Clerk under seal shall be filed in the case as a sealed motion or sealed document pursuant to L. Cr. R 57(b). Once uploaded to the electronic docket, the sealed paper filing shall be destroyed. ~~kept and maintained by the Clerk in a separate, locked filing cabinet or other secure location. All sealed materials shall be maintained by docket number and the docket number shall be the same as that of the underlying criminal case or miscellaneous civil or criminal matter.~~ The Clerk shall not keep any sealed documents in a publicly available file nor make them available to any unauthorized person through any computerized docket or database. ~~After a sealed document has been uploaded to the electronic docket, the original and any copies in the possession of the Clerk's Office or a judicial officer may be returned to the filing party.~~

9. Any case or document ordered sealed by the Court shall remain sealed pending further order of this Court, or any Court sitting in review. ~~Upon final determination of the action, as defined in Rule 83.6(c) of the Local Rules of Civil Procedure, counsel shall have ninety (90) days to file a motion pursuant to Rule 83.6(a) for the withdrawal and return of sealed documents. Any sealed document thereafter remaining shall be destroyed by the Clerk pursuant to Rule 83.6(e) prior to the delivery of other parts of the file to the Federal Records Center. The return or destruction of hard copies of sealed documents shall not serve to unseal electronic copies of documents sealed by Court order.~~

PUBLIC STATEMENTS BY COUNSEL

(c) Opening Statements

The presiding judge shall determine in his or her discretion whether or not to allow opening statements.

(e)(d) Statements Permitted During Investigation

A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

1. Information contained in a public record.
2. That the investigation is in progress.
3. The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

4. A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
5. A warning to the public of any dangers.

~~(d)~~(e) Statements Prohibited After Commencement of Proceedings

A lawyer associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

1. The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
2. The possibility of a plea of guilty to the offense charged or to a lesser offense.
3. The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.
4. The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
5. The identity, testimony, or credibility of a prospective witness.
6. Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

~~(e)~~(f) Statements Permitted After Commencement of Proceedings

Rule 57(c) does not preclude a lawyer during such period from announcing:

1. The name, age, residence, occupation, and family status of the accused.
2. If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.
3. A request for assistance in obtaining evidence.
4. The identity of the victim of the crime, if otherwise permitted by law.
5. The fact, time and place of arrest, resistance, pursuit, and use of weapons.
6. The identity of investigating and arresting officers or agencies and the length of the investigation.
7. At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.
8. The nature, substance, or text of the charge.
9. Quotations from or references to public records of the Court in the case.
10. The scheduling or result of any step in the judicial proceedings.
11. That the accused denies the charges made against him.

~~(f)~~(g) Statements Prohibited During Jury Selection and Trial

During the selection of a jury or the trial of a criminal matter, a lawyer associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters

that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the Court in the case.

(g)(h) Statements Prohibited Prior to Sentencing

After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

RULE 58

APPEALS

(Amended May ____, 2017)

(a) Notice of Appeal

When an appeal is taken by a defendant in a criminal case, the Clerk shall cause a file-stamped copy of the notice of appeal to be served upon ~~the United States Attorney, the defendant and~~ all counsel of record in the case. The Clerk shall transmit forthwith a copy of the notice of appeal and of the docket entries to the Clerk of the Court of Appeals.

(b) Bond on Appeal

The bond of any defendant admitted to bail pending appeal to the Court of Appeals shall be conditioned upon the defendant-appellant's compliance with the Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Second Circuit concerning the times for filing the record on appeal and briefs. Applications for an extension of time for filing the record on appeal in a criminal case shall be made to the Court of Appeals in accordance with the "Plan to Expedite the Processing of Criminal Appeals" adopted by the United States Court of Appeals for the Second Circuit.

(c) Transcripts on Appeal

When an appeal is taken, counsel shall take the necessary steps forthwith to order that portion of the court reporter's transcript which is required for appeal purposes. The court reporter shall notify the Chief Judge of the United States Court of Appeals for the Second Circuit of the date on which such transcript has been completed. When the transcript is completed, a copy thereof shall be filed immediately by the appellant court reporter with the Clerk of the District Court for perfecting the record on appeal.

CRIMINAL APPENDIX

STANDING ORDER ON DISCOVERY

(Amended May ____, 2017)

In all criminal cases, it is Ordered:

(A) Initial Disclosure by the Government.

(1) **Information subject to disclosure.** Within ~~fourteen (14) days from the date of~~ after arraignment, ~~government and defense counsel shall meet, at which time~~ the attorney for the government shall furnish to defense counsel copies, or allow defense counsel to inspect or listen to and record items which are impractical to copy, of the following items ~~in~~ within the government's possession, custody, or control ~~of the government~~, the existence of which is known or by the exercise of due diligence ~~may become~~ could be known to the attorney for the government ~~or to the agents responsible for the investigation of the case:~~

~~(1) —~~ Written or recorded statements made by the defendant.

~~(2)(a) The~~ the substance of any relevant oral statement, ~~or made by the~~ portion of any written record containing it, made by the defendant, before or after ~~his~~ arrest in response to interrogation by a ~~then known person the defendant knew was a~~ government agent ~~which, if~~ the government intends to ~~offer in evidence~~ use the statement at trial-;

~~(3)(b) Recorded~~ any relevant written or recorded statement by the defendant:

~~(c) the~~ the defendant's recorded testimony before a grand jury ~~testimony of the~~ defendant relating to the charged offense-; ~~charged.~~

~~(4)(d) for an organizational defendant, any statement by a person who is covered by~~ Rule 16(a)(1)(C):

~~(e) The~~ the defendant's prior criminal record-;

~~(5)(f) Books~~ books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions ~~thereof~~ of any of these items, which are ~~within the possession, custody or control of the government, and which are~~ material to ~~the preparation of~~ preparing the defense or ~~are intended for use by~~ which the government ~~as evidence~~ intends to use in its case- in-in-chief at ~~the~~ trial, or were obtained from or belong to the defendant-;

~~(6)(g) Results~~ results or reports of any physical or mental examinations and of any scientific tests or experiments ~~made, if the item is material to preparing the defense or the~~ government intends to use the item ~~in connection with this case.~~ The government shall also ~~disclose to the defendant~~ its case-in-chief;

~~(h)~~ –a written summary of any testimony that the government intends to use under Rules 702, 703 or 705 of the Federal Rules of Evidence during its ~~case-case-in-in~~ chief at trial. This summary must describe the witness's opinions, the bases and reasons ~~therefor, for those~~ opinions and the witness's qualifications;

~~(7)(i)~~ All all warrants, applications, with supporting affidavits, testimony under oath, returns, and inventories for the arrest of the defendant and for the search and/or seizure of the defendant's person, property, things, or items with respect to which the defendant has standing to move to suppress;

~~(8)(j)~~ All all ~~authorizations,~~ applications, orders, ~~and returns obtained pursuant to Chapter 119 of Title 18 of the United States Code with respect to which the defendant has standing to move to suppress, and if requested by the defendant and at reasonable cost to the defendant, all inventories, logs, transcripts line sheets,~~ and recordings obtained pursuant to Chapter 119 of Title 18 of the United States Code with respect to which the defendant has standing to move to suppress;

~~(9)~~—~~Unless otherwise ordered by the presiding Judge pursuant to paragraph F of this Standing Order, a list of the names and addresses of all witnesses whom the government intends to call in the presentation of its case-in-chief, together with any record of prior felony convictions and of prior misdemeanor convictions which reflect on the credibility of any such witness.~~

~~(10)(k)~~ All all information that may be favorable to the defendant on the issues of guilt or punishment and that falls within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny;

~~(l)~~ all information concerning the existence and substance of any payments, promises of immunity, leniency, or preferential treatment, made to prospective government witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972), ~~and~~ *Napue v. Illinois*, 360 U.S. 264 (1959) and their progeny;

~~(11)~~—All information known to the government which may be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963).

~~(12)(m)~~ All all information concerning the defendant's identification in any lineup, showup, photospread or similar identification proceedings;

~~(13)(n)~~ All all information ~~relating related~~ to other crimes, wrongs or acts of the defendant that will be offered as evidence by the government at trial pursuant to Federal Rule of Evidence 404(b).

(2) Information Not Subject to Disclosure. Except as otherwise provided by law, this Standing Order does not require the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this

Standing Order require the discovery or inspection of statements made by prospective government witnesses, except as provided in 18 U.S.C. § 3500.

(3) Grand Jury Transcripts. This Standing Order does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as to grand jury testimony by the defendant.

(B) Disclosure by the Defendant.

(1) Information Subject to Disclosure. Within ~~fourteen~~ (14) days after the ~~meeting~~ attorney for the government provides the discovery required by ~~Section Paragraph A is held~~, defense counsel shall:

~~(1)(a) Inform~~ inform the attorney for the government in writing whether the nature of the defense is ~~entrapment,~~ (i) alibi, (ii) insanity, mental disease or defect or any other mental condition of the defendant bearing on either (A) the issue of guilt or (B) the issue of punishment in a capital case, or (iii) ~~duress or coercion,~~ or acting under public authority at the time of the offense;

~~(2)(b) Permit~~ furnish copies or allow the government to inspect or listen to and record items that are impractical to copy, of the following items that are within the defendant's possession, custody or control: ~~of the defendant, the existence of which is known or by the exercise of due diligence may become known to the defendant:~~

~~(a)(i)~~ books, papers, documents, data, photographs, ~~or tangible objects, that buildings or places, or copies of portions of any of those items~~ if the defendant intends to use the item ~~introduce as evidence~~ in his case-in-chief at trial;

~~(b)(ii)~~ results or reports of any physical or mental examinations and of any scientific tests or experiments, ~~made in connection with this case that if~~ the defendant intends to use the item in the defendant's case-in-chief at trial, or intends to call the witness who prepared the report and the report relates to the witness's testimony; and

~~(iii)~~ a written summary of any testimony that the defendant intends to offer as evidence at trial or which were prepared by a defense witness who will testify concerning the contents thereof. ~~The defendant shall also disclose to the government a written summary of testimony the defendant intends to use as evidence at trial under Rules 702, 703 or 705 of the Federal Rules of Evidence~~ as evidence at trial, if (i) the defendant requests disclosure under Rule 16(a)(1)(G) and the government complies, or (ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition. This summary must describe the witness's opinions, the bases and reasons ~~therefor~~ for those opinions, and the witness's qualifications.

~~(C) Other Discovery Motions.~~ Within twenty (20) days of arraignment, all motions concerning materials or information not covered by this Standing Order must be filed, with supporting papers and a memorandum of law. The party opposing such motion shall file its response within ten (10) days of the filing of the motion. ~~The Court shall refuse to consider any~~

~~such motions unless the supporting papers contain a certification that counsel have met and that, after good faith efforts to resolve their differences on discovery, they were unable to reach an accord. Unless otherwise directed by the Court, compliance with discovery ordered by the Court shall be made within ten (10) days of the entry of the Court's order.~~

(2) Information Not Subject to Disclosure. Except for scientific or medical reports, this Standing Order does not require discovery or inspection of:

(a) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense; or

(b) a statement made to the defendant, or the defendant's attorney or agent, by:

(i) the defendant;

(ii) a government or defense witness; or

(iii) a prospective government or defense witness.

~~(D)~~**(C) Continuing Duty to Disclose.** It shall be the continuing duty of counsel for both sides to reveal immediately to opposing counsel all newly-discovered ~~information or other~~ material within the scope of this Standing Order.

~~(E) Exhibits. Not less than ten (10) days prior to trial, the parties shall meet, inspect and premark, either for identification or as full exhibits, all exhibits which they reasonably anticipate will be offered into evidence at trial.~~

(D) Discovery Motions. Any motions related to discovery shall contain a certification that counsel have conferred and that, after good faith efforts to resolve their differences on discovery, they were unable to reach an accord.

~~(F)~~**(E) Compliance.** ~~At the time of arraignment or upon motion promptly filed thereafter with supporting moving papers, the~~ The Court may, upon a showing of sufficient good cause, order the discovery provided under this Standing Order be denied, restricted or deferred, or make such other order as ~~is~~ appropriate.

~~(G) Disclosure of Statements of Witnesses. After a witness other than the defendant has testified on direct examination at a suppression hearing, a sentencing hearing, a hearing to revoke or modify probation or supervised release, or a detention hearing, the party calling said witness shall produce, for examination and use by the other party, any of the statements in its possession and that relates to the subject matter of the witness' testimony. Any party intending to call a witness at any such proceeding shall ensure that all statements of the witness are available for disclosure at the hearing.~~

(F) Use of Discovery Material. Unless otherwise authorized by the Court or the party producing discovery, and except for materials that were obtained from or belong to the party receiving discovery, a party shall not use any material that it receives as discovery from the opposing party, except for the purposes of the criminal proceeding itself. For purposes of this

rule, the criminal proceeding includes proceedings in the district court, on appeal, or in a collateral attack of any judgment arising from that criminal proceeding.

(G) Protected Discovery Material.

(1) Designation of Protected Discovery Material. The attorney for the government may designate in writing that certain discovery material is "Protected Discovery Material" by bates-stamp, letter, index or other clear manner. Protected Discovery Material means only grand jury testimony and written or recorded statements of witnesses (other than by the defendant as set forth in paragraph (A)(1)(a)-(d) above), material filed under seal in any court, reports drafted by law enforcement officers or agencies, material provided to the United States by foreign law enforcement officers or agencies and/or material regarding such provision, and material that has been classified. At any time, the Court may, for good cause, issue an order regarding the designation, use, or scope of Protected Discovery Material.

(2) Custody of Protected Discovery Material. Unless otherwise authorized by the Court or the party producing discovery, and except for materials that were obtained from or belong to the party receiving discovery, counsel shall not provide copies of any Protected Discovery Material to any persons, except that defense counsel may provide copies to persons employed by defense counsel in connection with the investigation or defense of the case, and the government may provide copies to law enforcement agents or persons employed by government counsel in connection with the investigation and prosecution of the case.

(3) Public Disclosure of Protected Discovery Material. When a party believes it is necessary to file any Protected Discovery Material, absent consent of the opposing party, that party must comply with Local Criminal Rule 57(b) by moving to file the material under seal.