UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

IN RE: Revised Criminal Procedural Order

GENERAL ORDER NO. 377
(Supersedes and Replaces General Order 352)

A uniform Procedural Order for all criminal matters was adopted by the Court effective April 1, 1996. (General Order 242). The Procedural Order was revised on June 1, 2017 (General Order 319), and again on December 1, 2019 (General Order 352). The Court has reviewed and HEREBY AMENDS the Procedural Order, as attached hereto, to comply with the Due Process Protections Act.

The Court finds the rules and cases cited in the Procedural Order, as amended, remain the applicable law and that good cause exists for entry of the Procedural Order by a Magistrate Judge at the time of arraignment of each defendant in criminal matters. The Court further finds that the Procedural Order, as revised and attached hereto, may be entered by incorporation by reference to this General Order and included in electronic docket text and minutes of the arraignment, along with the discovery elections made by the parties, notice of the trial date and trial readiness conference date, and any additions or modifications to the Procedural Order as deemed appropriate by the Court.

IT IS THEREFORE ORDERED that the attached Procedural Order be entered in all criminal matters and that incorporation by reference in docket text will comply with this order. Further, the Clerk of the Court is directed to: 1) serve by electronic mail, a copy of this order and the attached Procedural Order to all current Criminal Justice Act panel attorneys, the Federal Defenders' offices, and the U.S. Attorney for the District of Idaho; 2) maintain a copy of the Procedural Order available for review by counsel in all courtrooms within the District of Idaho where arraignments are conducted; and 3) publish this order and the Procedural Order on the Court's webpage.

IT ALSO IS HEREBY ORDERED that the Clerk of the Court may make ministerial changes to the attached Procedural Order without revision of this General Order.

This General Order will become effective immediately, and will supersede and replace General Order 352.

DATED: November 20, 2020

David C. Nye
Chief United States District Judge

Ronald E. Bush
Chief United States Magistrate Judge

B. Lynn Winmill
United States District Judge

Candy Wagahoff Dale
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PROCEDURAL ORDER

In order to provide for the just determination of every criminal proceeding, the Board of Judges for the District Court for the District of Idaho has adopted a uniform Procedural Order to be used in criminal proceedings. United States Magistrate Judges are authorized to enter the Procedural Order at the time of the arraignment of a defendant pursuant to 28 U.S.C. § 636 (b)(1)(A).

The Procedural Order shall be construed to secure simplicity in procedure, fairness in the administration of justice, and elimination of unjustifiable expense and delay under the provisions of Federal Rule of Criminal Procedure ("Fed. R. Crim. P.") and govern the submission of pleadings

The Procedural Order does not create any rights and/or obligations, nor is it intended to create any such rights, that are contrary to established case law, federal statutory law, the Federal Rules of Evidence ("Fed. R. Evid.") or the Federal Rules of Criminal Procedure.

THEREFORE, IT IS HEREBY ORDERED:

I.

DISCOVERY

1. No later than fourteen (14) days after the arraignment, the attorney for the government and the defendant's attorney must confer and try to agree on a timetable and procedures for pretrial disclosure under Rule 16. Fed. R. Crim. P. 16.1(a). After the discovery conference, one or both parties may ask the court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial. Fed. R. Crim. P. 16.1(b).

2. When so requested by the defendant, the United States must within fourteen (14) days from the date of the arraignment on the indictment, disclose to the defendant and make available for inspection, copying, or photographing all discovery required by Fed. R. Crim. P. 16 which is currently within the possession, custody, or control of the United States. As to material not currently in the possession of the United States, but through the exercise of due diligence may become known to the attorney for the United States, such material must be produced as soon as practicable after its discovery, but at a minimum in time for the defendant to make effective use of it at trial.

3. Notice of evidence of other crimes, wrongs, or acts sought to be admitted under Fed. R. Evid. 404 (b), must be provided by the United States within twenty-eight (28) days after arraignment or forty-five (45) days prior to trial, whichever is later. Relief from this deadline may be granted by the Court in accordance with Rule 404(b).

4. If the defendant has requested disclosure under Fed. R. Crim. P. 16, upon compliance with such request by the United States, the defendant must within twenty-eight (28) days from the date of the arraignment, or forty-five (45) days prior to the trial date, whichever date is later, disclose to the United States or make available for inspection, copying, or photographing the discovery set forth in Fed. R. Crim. P. 16, which is currently in the possession, custody or control of the defendant. As to material not currently within the possession or custody of the defendant, but through the exercise of due diligence may become known to the defendant, as soon as practicable after discovery and at a minimum in time for the United States to make effective use of it at trial.

5. Unless objected to by the United States at the time of the arraignment, all documentation submitted to the court in support of or in connection with any search warrant issued in connection with this case, and with regard to any such search warrant material filed under seal, such order of seal is hereby withdrawn as to the defendant and such materials must be deemed unsealed as to the defendant. The United States must make available for inspection and copying by defense counsel any and all such search warrant material including but not limited to: applications for search warrants (whether granted or denied), all affidavits, declarations and materials in support of such search warrants, all search warrants and all search warrant returns.

6. The United States must disclose to the defendant any known information that is favorable to the defendant concerning innocence or guilt, or punishment, pursuant to Brady v. Maryland, 373 U.S. 83 (1983) and its progeny. Such information must be disclosed as soon as practicable and at a minimum in time for the defendant to make effective use of the information at trial. This obligation applies to information known to be favorable at the outset of the case and to additional information that is identified as favorable to the defendant as the case proceeds. The consequences of failing to disclose such information may include but not be limited to sanctions, exclusion of evidence, adverse jury instruction, contempt proceedings and dismissal of charges.

If the United States has information favorable to the defendant in its possession but elects not to produce it until later in the proceedings, the Court may consider this as a factor in determining whether the defendant can make effective use of the information at trial.

7. The United States must disclose the criminal record of any and all prior convictions of any witness it intends to call in its case in chief that may be admissible under Fed. R. Evid. 609 in time for the defendant to make effective use of the information at trial.

8. The United States must disclose whether a defendant was identified in any lineup, show up, photo spread or similar identification proceeding and make available any pictures utilized or resulting therefrom and the names of all identifying witnesses in time for the defendant to make effective use of the information at trial.

9. The United States must disclose copies of all latent finger or palm prints or handwriting exemplars obtained during the investigation of the case in time for the defendant to make effective use of the information at trial.

10. The United States is hereby authorized, pursuant to Fed. R. Crim. P. 6(e), to disclose grand jury materials to the defense counsel, defense counsel support staff, and other employees or agents, expert witnesses, a witness who testified before the grand jury and whose grand jury transcript is being used for trial preparation, and the defendant. This limited disclosure allows only counsel for the United States, the defendant, defendant's counsel, those specified above assisting with the defense, and other individuals authorized pursuant to a Fed. R. Crim. P. 6(e)(3) Order, to have access to grand jury materials. Any disclosure to individuals or organizations other than those specifically identified is prohibited without a court order allowing such disclosure.

Defense counsel, as officers of the court, will act as custodians of any grand jury information disclosed under this Procedural Order and the obligation to preserve and protect the confidentiality of this information will continue even after conclusion of the criminal case. In the event the defense counsel does not desire to act as a custodian of this information and continuously maintain the confidentiality of the grand jury information, defense counsel will return the grand jury material to the United States following the conclusion of the case.

11. The United States investigators must be instructed by the United States to preserve all rough notes of interviews in those circumstances where legal authority imposes such an obligation. If the defendant would be entitled to examine the rough notes of a United States investigator under existing law, the Court encourages the United States to provide the notes to the defendant in a timely manner so defense counsel may have a sufficient opportunity to review the notes and at a minimum have time to make effective use of the material at trial, without the trial being unreasonably delayed. In the event the United States is uncertain as to whether certain rough notes must be turned over, the material will be promptly submitted to the Court for an in camera inspection.

12. Defense investigators must be instructed to preserve all rough notes of interviews in those circumstances where legal authority imposes such an obligation. If the United States would be entitled to examine the rough notes of a defense investigator under existing law, the Court encourages defense counsel to provide the notes to the United States in a timely manner so the United States may have sufficient opportunity to review the notes and at a minimum have time to make effective use of the material at trial, without the trial being unreasonably delayed. In the event defense counsel is uncertain as to whether certain rough notes must be turned over, the material will be promptly submitted to the court for an in camera inspection.

13. Except for notice of an alibi defense, the defendant must provide notice of certain defenses as required under the Fed. R. Crim. P. to the United States thirty (30) days prior to the trial date.

II.

MOTIONS AND PRETRIAL SUBMISSIONS:

1. All pre-trial motions including those pursuant to Fed. R. Crim. P. 12, but excepting motions in limine, must be filed on or before the twenty-eighth (28) day after the arraignment or forty-five (45) days preceding the trial date, whichever is later.

2. All motions in limine must be filed on or before thirty (30) days preceding the trial date.

3. When timely filed Fed. R. Crim. P. 12 motions or motions in limine cause the trial date to be moved, no deadline is extended for additional motions to be filed without leave of the Court.

4. All responsive memoranda to pretrial and post-trial motions must be filed on or before the fourteenth (14th) day following the filing of any motion. Any reply memoranda to motions must be filed on or before the seventh (7th) day following the filing of the response memoranda.

5. Except for Fed. R. Crim. P 12(b)(3)(A)-(C) motions, a proposed order must be submitted to the judge's proposed orders email box when a motion is filed.

6. Supporting memoranda on all motions must not exceed twenty (20) pages by the filing party. Response memoranda must not exceed twenty (20) pages. Reply memoranda, if any, must not exceed ten (10) pages. Leave of the Court is required prior to filing any overlength briefs.

7. The moving party must inquire of the non-moving party whether the non-moving party has an objection to the motion. If the non-moving party has no opposition to the motion or application, such should be noted in the motion. If not noted in the motion and the non-moving party has no opposition to the motion or application, the non-moving party will promptly file a notice of non-objection. In the event, the non-moving party fails to timely file a responsive memoranda or a notice of non-objection to a motion, such failure may be deemed by the Court to constitute consent to the granting or sustaining of such motion or application. Dist. Idaho Local Crim R. 1.1(f) and Dist. Idaho Local Civ. R. 7.1(e)(1).

8. Trial briefs or statements, proposed voir dire, proposed jury instructions, and proposed verdict forms must be filed on or before the seventh (7th) day preceding the trial date. The parties may list by number and title the unmodified opening and closing Ninth Circuit Model Jury Instructions they are proposing. As to modified or non-Ninth Circuit Model Instructions, the party must file the complete proposed instruction with authority and citations.

9. A "clean" set of all proposed jury instructions without cites or numbers as well as the proposed verdict forms must also be provided by the party proposing the same to the presiding judge on or before the seventh (7th) day preceding trial by emailing the clean instructions and verdict form to the judge's proposed order email box in Word or Wordperfect format.

10. Within fourteen (14) days of receiving written notice of expert testimony, the opposing party must notify the Court if any scientific methodology or other specialized knowledge is going to be objected to or challenged. The Court will make a determination if a hearing is necessary regarding the admissibility of the expert witness testimony.

11. In the exceptional case, a party or parties may seek modification of the time periods for motions and page limitations set forth herein.

12. After receiving notice under Fed. R. Evid. 902(11) and (12), a party has fourteen (14) days to make a specific objection to the authenticity of any record for which a certification exits under Fed. R. Evid. 902(11) and (12). Otherwise, the Court will deem the requirement of authenticity for the record at trial waived, unless failure to comply is excused by the Court.

13. Recognizing that the Court cannot require that the parties exchange witness lists prior to trial, the Court would strongly encourage voluntary disclosure by counsel as follows:

A. That on or before the seventh (7th) day preceding the trial date the United States may provide to the defendant a witness list and shall

provide an exhibit list and description of exhibits together with a copy of exhibits which exhibit list shall indicate all exhibits that have been stipulated for admission by the parties.

B. That within five (5) days from the date the United States complies with the foregoing paragraph the defendant may provide to the United States a witness list and shall provide an exhibit list and description of exhibits together with a copy of the exhibits which exhibit list shall indicate all exhibits that have been stipulated for admission by the parties.

14. Prior to preparation of exhibit lists to be exchanged, counsel shall contact the courtroom deputy clerk to determine the method for listing and numbering trial exhibits. Courtroom deputy contact information can be located at www.id.uscourts.gov. The Court will be provided a copy of the exhibit lists no later than five (5) days prior to the date of trial and witness lists the day of trial.

III.

PLEA NEGOTIATIONS AND PRETRIAL CONFERENCE

1. In order to manage the Court's calendar and conduct a fair and expeditious trial in those cases that will not be resolved by entry of a plea of guilty to the charge(s) by the defendant, a District Judge may order that a trial readiness conference be held approximately fourteen (14) days before the scheduled trial date. If such a conference is ordered, the defendant will not attend the trial readiness conference unless otherwise ordered by the Court. No admissions or stipulations of fact made at the pretrial conference will be used against the defendant unless reduced to writing and signed by the defendant and defense counsel.

2. The parties will make every reasonable effort to complete all plea negotiations before the scheduled trial readiness conference. In particular, the United States is encouraged to provide in plea negotiations a requirement that any offer of a negotiated plea made by the United States to the defendant must be accepted by the defendant prior to the trial readiness conference, but in no event less than fourteen (14) days prior to the scheduled commencement of trial. The Court recognizes that in some limited and unusual cases the parties may not complete plea negotiations prior to the scheduled conference, but this would clearly be the exception and both counsel shall promptly notify the Court if they are a experiencing difficulties in plea negotiations and provide, if requested, sworn affidavits from counsel why they are not in compliance with this Order.

IV.

SENTENCING

In the event a criminal case results in a guilty plea or finding of guilt, a sentencing hearing will be set a minimum of seventy-seven (77) days later.

Because every Presentence Investigation Report (PSR) contains sensitive and private information, the Court finds sealing of objections to the PSR, as well as motions under United States Sentencing Commission, Guidelines Manual, §5K1.1 and Fed. R. Crim. P. 35(b) serves a compelling interest.

1. Objections to the PSR by either party must be filed under seal using the appropriate CM/ECF entry. All objections must be filed on or before the fourteenth (14th) day following the filing of the initial PSR by the Probation Officer. Letters for the Court's consideration should be submitted to the Probation Officer along with any Objections. In the exceptional case where letters are not provided to the Probation Officer before the filing of the final PSR, counsel must file the letters with the Court and such letters must be filed no later than seven (7) days prior to the date of sentencing.

2. A motion by the United States pursuant to U.S.S.G. §5K1.1 must be filed under seal no later than fourteen (14) days prior to the date of sentencing.

3. Any motion for departure and/or variance filed by either party which contains information that is subject to sealing under applicable law may be filed under seal. The filing party must provide the basis for filing the motion under seal either in the motion itself or in a separate motion to seal. All motions for departure and/or variance must be filed no later than seven (7) days prior to the date of sentencing.

4. Sentencing memoranda shall be filed no later than seven (7) days prior to the date of sentencing. The memoranda shall not exceed twenty (20) pages in length. If the memoranda contains information that is subject to sealing under applicable law may, then the filing party must file the sentencing memoranda under seal. The filing party must provide the basis for filing the memoranda under seal either in the memoranda itself or in a separate motion to seal.

5. If a non-filing party believes a pleading should be sealed, a motion must be filed with the Court.

6. Counsel must advise the courtroom deputy at least fourteen (14) days prior to the date of sentencing if a sentencing hearing is expected to last longer than one hour.

IT IS SO ORDERED.