

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, AT DAYTON

STANDING ORDER GOVERNING CRIMINAL CASES

Effective as of August 19, 2024

**Notice to Counsel: New Expectations for Proposed Upward Sentencing
Departures or Variances as of August 19, 2024**

Hon. Michael J. Newman
United States District Judge
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I. GENERAL PROVISIONS

The [Local Criminal Rules of the United States District Court for the Southern District of Ohio](#), including the *Introductory Statement on Civility*, which applies in criminal cases, shall be strictly adhered to by all parties and counsel appearing before the undersigned and will be strictly enforced by the Court.

This Standing Order replaces Dayton General Order No. 12-01 for all criminal cases assigned to the undersigned. On or after the effective date of this Standing Order, all counsel of record are charged with knowledge of the procedures and requirements contained herein. The Court reserves the right to impose sanctions for violations of the Local Rules or Civility Statement.

II. TRIAL DATE

Each criminal case will be set for trial on the Monday prior to the expiration of the Speedy Trial Act deadline, 18 U.S.C. § 3161, at 9:30 A.M. The final pretrial conference will be scheduled on a date and time approximately two weeks before trial. All trial counsel and the defendant must appear in person at the final pretrial conference. However, the Court retains the ability to schedule a final pretrial conference by telephonic or virtual means when warranted.

The Court appreciates the scheduling challenges confronting attorneys, especially when they represent many clients and have trials and other matters pending in both federal and state courts. As experienced attorneys well know, the Speedy Trial Act imposes a 70-day deadline, with limited exceptions, by which trial of federal criminal defendants must commence. 18 U.S.C. §§ 3161(c)-(h). In order to comply with the demands of the Speedy Trial Act, the fact that a defendant's attorney has or may have a trial scheduled to begin in

state court will not constitute a sufficient basis for requesting a continuance of a trial date set by this Court, absent extraordinary circumstances. If a defendant's trial counsel is unavailable for trial in this Court on the date it is scheduled to commence, he or she must ensure that substitute trial counsel will be present and fully prepared to represent the defendant on the first day of trial and thereafter, if necessary.

III. INITIAL SCHEDULING ORDER

In lieu of holding a preliminary pretrial telephone conference, the Court will issue an initial scheduling order after the arraignment, assigning: (1) a discovery deadline pursuant to Fed. R. Crim. P. 16.1; (2) a pretrial motion deadline; (3) a status report deadline (approximately 2 weeks before the trial date); (4) a trial date; and (5) the Speedy Trial Act deadline.¹ The parties should file a proposed scheduling order listing these five dates, which the Court remains free to adopt. As mentioned further below, the Court is amenable to moving these deadlines upon the parties' motion, rather than conducting a telephone conference to discuss a continuance. The initial scheduling order shall also include a joint motion, as an appendix, for the Court to permit the defendant to change his or her plea, should defendant elect to plead guilty. Pursuant to Fed. R. Crim. P. 11, the Court shall not participate in plea negotiations and takes no position on whether a defendant changes his or her plea. *See* Fed. R. Crim. P. 11(c)(1).

IV. DISCOVERY AND INSPECTION

Defense counsel are directed to contact the Assistant United States Attorney in charge of the prosecution of a case to arrange a meeting for the purpose of resolving all discovery

¹ Under Fed. R. Crim. P. 16.1, the parties shall meet and confer no later than 14 days after the arraignment. The Court's scheduling order will correspond with that deadline.

requests provided for under the Federal Rules of Criminal Procedure, including Rule 16. Pursuant to the discovery deadline as imposed in the scheduling order, the government shall make the required disclosure of discoverable evidence under the terms and conditions of Rule 16.

The discovery meeting shall be held as promptly as possible. If, at any time during the course of these proceedings, any party fails to comply with Rule 16, such failure shall be brought to the Court's attention by a motion to compel discovery. Motions to compel shall be filed no later than seven days from the date of a party's denial of the initial discovery request.

V. MAGISTRATE JUDGE PRACTICE

All criminal cases assigned to the undersigned, upon filing, are hereby referred by this Standing Order to the assigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A), (B), and (C) and § 636(b)(3). The Magistrate Judge is authorized to perform any preliminary functions up and until the filing of the information or indictment. The Court reserves the right to delegate disposition of pretrial matters to the Magistrate Judge subject to any limitations imposed by the Constitution or laws of the United States.

VI. MOTIONS

All motions of any kind, by the defendant or by the government, shall be filed no later than the deadline set forth in the Court's initial scheduling order. All responses in opposition - - other than those filed in response to a motion to suppress evidence² -- shall be filed no

² Motions to suppress will be governed by separate Court Order. Generally, the Court will establish the following suppression motion briefing schedule: (1) the defendant shall file a post-hearing brief 21 days from receipt of the hearing transcript; (2) the government shall file an opposition memorandum 21 days

later than 21 days after the filing of said motions. Reply memoranda shall be filed no later than 14 days after the filing of opposition memoranda. Upon the filing of any motion, the movant shall state whether, and for what reasons, an evidentiary hearing is required. If the Court agrees, an evidentiary hearing will be scheduled.

The Court anticipates that counsel will file motions in compliance with S.D. Ohio Civ. R. 7.2 and 7.3. *See* S.D. Ohio Crim. R. 1.2 (Local Civil Rules shall apply to criminal actions with exceptions established in Rule 1.3). Counsel for the movant shall state whether opposing counsel consents to, or will oppose, the pending motion. If opposing counsel does not respond to the request, the motion shall state that such an attempt occurred.

a. Motions in *limine*

Motions *in limine* shall be filed before the date of the Final Pretrial Conference. Usually, the Court will assign a motion *in limine* deadline in a scheduling order setting the Trial and Final Pretrial Conference Dates. The Court will consider exceptions to this deadline for impeachment evidence under Fed. R. Evid. 609.

b. Motions for continuance

Any motion for a change of the trial date shall be in writing and should be made at least seven days prior to the scheduled trial date. Motions for continuances shall set forth those Speedy Trial Act factors listed in 18 U.S.C. § 3161(h)(7)(B) that the movant contends support the motion. The Court prefers all requests for continuances be made by motion, rather than scheduling phone conferences. The Court remains amenable to continuances made by written motion, provided that the parties adhere to the mandates of the Sixth Amendment and the Speedy Trial Act.

after the filing of the defendant's brief; and (3) the defendant shall file a reply brief -- if any -- 10 days following the filing of the defendant's opposition memorandum.

VII. ARTIFICIAL INTELLIGENCE (“AI”) PROVISION

No attorney for a party, or a *pro se* party, may use Artificial Intelligence (“AI”) in the preparation of any filing submitted to the Court. Parties and their counsel who violate this AI ban may face sanctions including, *inter alia*, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit. The Court does not intend this AI ban to apply to information gathered from legal search engines, such as Westlaw or LexisNexis, or Internet search engines, such as Google or Bing. All parties and their counsel have a duty to immediately inform the Court if they discover the use of AI in any document filed in their case.

VIII. PLEA NEGOTIATIONS AND PLEA AGREEMENTS

Plea agreement discussions between the government and defense counsel pursuant to Rule 11 of the Federal Rules of Criminal Procedure shall commence as soon as practicable. If a plea agreement is reached, counsel shall notify the Court by filing a joint motion to change plea, asking the Court to permit the defendant to change his or her plea. A sample joint motion is attached to this Standing Order as Appendix B. A change of plea hearing with the duty United States Magistrate Judge will be scheduled soon thereafter.

The Court will consider plea agreements reached under Fed. R. Crim. P. 11(c)(1)(C). For Rule 11(c)(1)(C) pleas, the Court prefers a specific sentence instead of a sentencing range.

IX. EXHIBITS

a. Exhibit lists

Unless otherwise ordered, counsel shall submit to the Court’s chambers three typed copies of a list of proposed exhibits no later than seven days before the trial date. Exhibit lists shall be three-hole punched.

The exhibit list shall include the proposed exhibit number or letter and a substantial description of each exhibit. Joint exhibit shall be identified with the designation JX followed by its sequential number, e.g., JX1, JX2. The government shall identify its exhibits with the designation G (for government) followed by its sequential number, e.g., GX1, GX2. Defendant shall identify his or her exhibits with the designation of “D” (for Defendant) and its alphabetically sequential letter, e.g., DXA, DXB. In cases involving multiple defendants, questions regarding how to properly mark exhibits will be discussed during the final pretrial conference.

b. Trial exhibits

Each party intending to offer exhibits will mark the exhibits before trial begins. Seven days before trial begins, counsel shall provide the original and two copies of the exhibits to the Court and one copy to opposing counsel. The exhibits provided to the Court should be three-hole-punched and placed in binders. A copy of the exhibit list should precede the exhibits in the binders prepared for the Court.³

At trial, counsel may not approach a witness to tender an exhibit. Rather, the Courtroom Deputy will place each exhibit before each witness. In formulating a question to a witness, counsel shall specify the exhibit number or designation involved to ensure a clear record.

Exhibits introduced for the first time during trial, *i.e.*, exhibits used for impeachment, must be distributed to opposing counsel and the Court in the same quantity and format as exhibits produced before trial.

³ Counsel, by motion, may request a different method of handling exhibits.

Counsel is responsible for any exhibits expected to be used during trial. At the end of each trial session, counsel shall return all original exhibits to the Courtroom Deputy.

X. STIPULATIONS

Three copies of any and all stipulations shall be submitted to the Court at least seven days before the scheduled trial date.

XI. WITNESSES AT TRIAL

a. Witness lists

The government shall submit to the Court's chambers two copies of its witness list within three business days before the scheduled trial date. The defendant may, and is strongly encouraged to, submit his or her two copies of his or her witness list three business days before the scheduled trial date. One copy shall be in physical format and the other copy shall be emailed in a Microsoft Word document to [Newman Chambers@ohsd.uscourts.gov](mailto:Newman_Chambers@ohsd.uscourts.gov).

b. Sequestration of witnesses

If the parties opt to sequester witnesses, then said witnesses shall not be allowed to view in the courtroom gallery during trial, pursuant to Fed. R. Evid. 615. This is subject to the exceptions listed in Fed. R. Evid. 615(a)–(d).

c. Remote witnesses

The Court prefers live, in-person testimony from witnesses, so it will not allow parties to opt to have witnesses testify via videoconferencing software absent extraordinary circumstances.

XII. STATEMENT OF THE CASE

An Agreed Joint Statement of the Case shall be submitted to Court approximately seven days before trial. The Statement of the Case shall be read to potential jurors by the Court prior to *voir dire*.

XIII. VOIR DIRE EXAMINATION

Prospective jurors will be seated in numerical order in the courtroom. The entire panel of prospective jurors -- persons seated in the jury box and persons seated in the courtroom benches -- will be examined in one continuous examination.

Each prospective juror will be assigned a “juror number” by the Clerk’s Office. Counsel will receive a list of the jurors’ names and numbers prior to jury selection. When interrogating a juror, counsel shall refer to the juror by number only.

The Court will conduct a preliminary *voir dire* examination tailored to the issues in the case.⁴ Defense counsel and the government will then be permitted to ask additional questions. During *voir dire*, counsel shall address their questions to the entire panel. Counsel may not question an individual juror unless the answer of a specific juror justifies further inquiry.

XIV. CHALLENGES

The juror challenge process will occur after questioning and in the Court’s chambers. The entire panel, not just prospective jurors seated in the jury box, shall be accepted, challenged for cause, or peremptorily challenged in a continuous sequence with reseating prospective jurors.

⁴ For a list of preliminary *voir dire* questions, see *infra* Appendix A.

XV. PREEMPTORY CHALLENGES

Peremptory challenges in single-defendant cases will be exercised as follows:

- a. United States exercises its first challenge
- b. Defendant exercises his or her first challenge
- c. United States exercises its second challenge
- d. Defendant exercises his or her second and third challenges
- e. United States exercises its third challenge
- f. Defendant exercises his or her fourth and fifth challenges
- g. United States exercises its fourth challenge
- h. Defendant exercises his or her sixth and seventh challenges
- i. United States exercises its fifth challenge
- j. Defendant exercises his or her eighth and ninth challenges
- k. United States exercises its sixth challenge
- l. Defendant exercises his or her tenth challenge

Any party that “passes” (*i.e.*, forgoes to exercise a challenge in the order prescribed) has thereby “used” their challenge but does not waive any remaining challenges.

After twelve jurors have been fully qualified, and counsel state that they are satisfied with the jury, peremptory challenges as to the alternate juror(s) will then be exercised in the same manner.

XVI. JURY INSTRUCTIONS

At least seven days before the scheduled trial date, counsel shall file proposed, substantive jury instructions that state the governing law with appropriate case citations. The Court

encourages counsel to use the United States Sixth Circuit Pattern Jury Instructions where practical.

XVII. PRESENTENCE INVESTIGATION REPORT

The Court will order the Probation Department to conduct and complete a presentence investigation report, *i.e.*, PSI/PSR, consistent with S.D. Ohio Crim. R. 32.1 following a defendant's conviction or entry of a guilty plea. Parties shall submit their objections to PSI/PSR to the Probation Department within twenty-one (21) days of receipt. Untimely objections will be denied absent a showing of good cause for untimely filing.

A party must offer more than a bare objection to the initial presentence investigation report. The Court will hold an evidentiary hearing on the objections upon a showing of a genuine dispute with the facts set forth in the PSI/PSR and will hold oral argument on legal objections prior to sentencing. Factual objections must be substantiated by evidence, such as an affidavit, capable of calling into question the correctness or reliability of the facts alleged in the PSI/PSR by the Probation Department. Legal objections must identify specific alleged errors with the Probation Department's application of the U.S. Sentencing Guidelines to the facts stated in the PSI/PSR.

Preferably, all information and materials relating to requests for upward departures and upward variances (and, likewise, for downward departures, and downward variances) should be presented, whenever possible, to the Probation Department during the Pre-Sentence Investigation Report (PSR) drafting process so those matters can be made part of the PSR. If, for some reason, that is not feasible or possible, such matters shall be presented to the Court in a Court filing (under seal, if necessary) no later than **TEN DAYS PRIOR** to the sentencing hearing. If such materials are not presented to the Court in a timely

manner, the Court reserves the right to not consider them. The Court remains willing, in most cases, to meet with counsel for both sides prior to the sentencing hearing.

XVIII. SENTENCING

Unless ordered otherwise, parties shall submit sentencing memoranda no later than **SEVEN DAYS PRIOR** to the sentencing hearing. Objections to the PSI/PSR raised for the first time in sentencing memoranda, or at the sentencing hearing, shall not be considered absent good cause.

XIX. PAGE LIMITATIONS AND FORMATTING

While the Court prefers that memoranda not exceed the 20-page limitation set forth in S.D. Ohio Civ. R. 7.2(a)(3), leave of court is not required to file a memorandum exceeding that page limitation. However, parties filing memoranda longer than 20 pages in length shall comply with all other requirements of S.D. Ohio Civ. R. 7.2(a)(3).

All documents, briefs, and memoranda shall comport with the following specifications: (1) one-inch margins on all sides; (2) main body of the text in 12-point, Times New Roman font; (3) footnote text in at least 10-point font in the same typeface as the main body of the text; and (4) citations in the main body of the text, not in footnotes.

XX. CONCLUSION

Unless a motion to continue has been filed or some other events under 18 U.S.C. § 3161(h)(1) through (8) has occurred that would exclude time from the Speedy Trial Act deadline, the parties are required to fully comply with the requirements and deadlines contained in this Order.

IT IS SO ORDERED.

December 14, 2023

s/Michael J. Newman
Hon. Michael J. Newman
United States District Judge

XXI. APPENDICES

The following forms are available for the parties to use throughout the course of litigation:

1. Appendix A: Sample Voir Dire Questions
2. Appendix B: Sample Joint Motion to Permit Defendant to Change Plea

Appendix A

***VOIR DIRE* QUESTIONS BY THE COURT**

The Court will first conduct a preliminary examination, typically using the questions listed below. After the Court has finished its examination of the jury panel, counsel may elect to supplement the Court's examination with questions that do not repeat, in substance, any question the Court already has put to the panel.

1. I am now going to read the names of the parties and the witnesses that you may be hearing from in this case. Please listen to the list carefully as I will be asking you whether you know any of these people.

First, as I just mentioned, the government is represented by _____. Seated at the counsel table with _____ is _____.

At the next table is the Defendant in this case _____. He [or she] is represented by _____ of _____.

The United States may call the following persons as witnesses:

The Defendant may call the following persons as witnesses:

Is any panel member related by blood or marriage to any of the individuals that I have just named?

Are you personally acquainted with these persons, or do you have any knowledge of them, directly or indirectly, through your social, business, or professional lives?

2. Has any panel member ever heard of or been involved with any of the following entities or persons: [List any businesses or non-witness entities that will be important in this case]? Are any of these names familiar to any panel member?

3. **OUTLINE THE OFFENSE PER INDICTMENT OR INFORMATION**

Does any panel member have prior knowledge or information about the crime(s)the defendant(s) is/are charged with, which I have just explained to you? This includes knowledge gained from personal contacts or from the media.

Follow-up Questions for Any Affirmative Responses:

- i. From what source did you hear about this case (newspaper, TV, radio, conversation with others)?
- ii. How many times did you hear or read about it?
- iii. Do you remember specifically what you heard or read?
- iv. Did what you heard or read cause you to have any feeling concerning the merits of the parties' claims?
- v. Did what you heard or read cause you to have a favorable or an unfavorable impression concerning the parties?
- vi. Do you today have any impression or even a tentative opinion about the probable

outcome of this case?

4. Does any panel member have any personal interest of any kind in this case, or in the defendant(s)?
5. If any panel member has served as a juror in the federal or state court -- either in a civil or criminal case -- and regardless of the outcome of such case(s), would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?
6. Does any panel member have any feeling -- thought -- inclination -- premonition -- prejudice -- religious belief or persuasion -- or bias -- which might influence or interfere with your full and impartial consideration and which might influence you either in favor of or against either the defendant(s) or the government?
7. Is there any reason in your mind why you cannot hear and consider the evidence and render a fair and impartial verdict?
8. Can you take the law as the Court instructs, without any reservation whatsoever, and apply the Court's instructions on the law to the facts in this case? If you cannot do this, please hold up your hand.
9. Do you recognize and accept the proposition that jurors are the sole judge of the facts and the Court is the sole judge of the law? If you cannot do this, please hold up your hand.
10. If you are selected as a juror in this case can you extend the presumption of innocence to this defendant(s); that is, can you presume the defendant(s) is/are innocent of the charge(s) unless and until guilt is established by proof which convinces you beyond a reasonable doubt? If you cannot do this, please hold up your hand.
11. Are you -- or is any member of your immediate family -- a member of a law enforcement agency, i.e., municipal police, county sheriff, state highway patrol, or any federal law enforcement agency, either at the present time or in the past?
12. Does any panel member feel bias -- or prejudice -- because the defendant(s) has (have) been charged by indictment (information) with a criminal offense(s) against the United States?
13. Has any panel member formed or expressed any opinion as to the guilt or innocence of the defendant(s)?
14. Does any panel member have:
 - a. Any transportation problem? For example, does anyone have difficulty getting to or from the courthouse?
 - b. Any medical or disability problems, such as difficulty hearing, walking, or seeing? Does any other medical problem exist which could affect your service on the jury?
15. The Court and counsel estimate this trial will last ___ days. Does any panel member have any immediate family or personal reason or situation that prevents you from serving as a juror during this period and giving your undivided attention to this case?
16. Finally, can any of you think of any matter that you should call to the Court's attention that may have some bearing on your qualifications as a juror, or that -- even to the slightest degree -- may prevent your rendering a fair and impartial verdict based solely upon the evidence and my instructions as to the law?

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:

vs.

[DEFENDANT],

District Judge Michael J. Newman

Defendant.

JOINT MOTION FOR DEFENDANT TO CHANGE PLEA

The parties hereby jointly move this Court to permit the Defendant to change his or her plea in the above-captioned case.

/s/ [Government Attorney Name]
[Attorney Name] ([Bar Number])
Assistant United States Attorney
200 West Second Street
Dayton, OH 45402
Telephone: [insert phone number]
Email: [insert email address]
Attorney for Plaintiff

/s/ [Defendant Attorney Name]
[Attorney Name] ([Bar Number])
[Insert Firm Name]
[Insert Address]
[Insert City, State Zip Code]
Telephone: [insert phone number]
Email: [insert email address]
Attorney for Defendant