UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

TIME LIMITS AND PROCEDURES FOR ACHIEVING
PROMPT DISPOSITION OF CRIMINAL CASES

Section II from District Plan For Disposition of Criminal Cases In Accordance With The Speedy Trial Act of 1974 (Title 18:USC: 3161 et seq).

EFFECTIVE NOV. 1, 1987

IN THE UNITED STATES DISTRICT COURT

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TIME LIMITS AND PROCEDURES FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES

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Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the Judges of the United States District Court for the District of Delaware have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

1. Applicability.

(a) Offenses. The time limits set forth herein are applicable to all criminal offenses in this Court, including cases triable by United States Magistrates, except for petty offenses as defined in 18 U.S.C. § 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.

(b) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

2. Priorities In Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable, as required by Rule 50(a) of the Federal Rules of Criminal Procedures. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in section 7 should be given preference over other criminal cases.

3. Time Within Which An Indictment Or Information Must Be Filed.

(a) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this District, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service.

(b) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this District, and no grand jury in the District has been in session during the 30-day period prescribed in subsection (a), such period shall be extended an additional 30 days.

(c) Management of Time Periods. If a person has not been arrested or served with a summons as a Federal charge, an arrest will be deemed to have been made at such time as the person (I) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(d) Related Procedures.

(1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(2) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

4. Time Within Which Arraignment Must Be Held.

(a) Time Limits. A defendant shall be arraigned within 10 days of the last to occur of the following dates:

(1) The date on which an indictment or information is filed in this District;

(2) The date on which a sealed indictment or information is unsealed; or

(3) The date of the defendant's first appearance before a judicial officer of this District.

(b) Measurement of Time Periods. For the purpose of this section:

(1) A defendant who signs a written consent to be tried before a magistrate shall, if no indictment or information charging the offense has been filed, be deemed indicted on the date of such consent.

(2) An arraignment shall be considered to take place at the time a plea is taken or entered by the Court on the defendant's behalf.

(3) In the event of a transfer to this District under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this District when the papers in the proceeding or certified copies thereof are received by the Clerk.

(c) Related Procedures.

(1) At the time of the defendant's earliest appearance before a judicial officer of this District, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(2) At arraignment, the Court shall advise the defendant and his/her counsel of the provisions of Section 5(a), (c) and (d) (2) hereof. The failure to give such advice shall not, however, relieve the defendant and his/her counsel of the obligations imposed by such provisions.

5. Time Within Which Motions Must Be Filed.

(a) Time Limits. Unless otherwise ordered by the Court at the time of arraignment, the following motions shall be filed on or before the tenth day following arraignment:

(1) Motions under F.R.Cr.P. 7(f) for a bill of particulars.

(2) Motions under F.R.Cr.P. 12(b) raising defenses or objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the Court or to charge an offense.

(3) Motions under F.R.Cr.P. 14 for relief from prejudicial joinder.

(4) Motions under F.R.Cr.P. 15 for permission to take a deposition.

(5) Motions under F.R.Cr.P. 16(a) and (b) for discovery.

(6) Motions under F.R.Cr.P. 21 for transfer from the District for trial.

(7) Motion to suppress evidence.

(8) Motions under F.R.Cr.P. 12(d)12) for notice of the government's intention to use evidence, such motions to be accompanied by a motion to suppress under subparagraph (7) hereof.

(9) Demands under F.R.Cr.P. 12.1/a) for notice of the defendant's intention to offer a defense of alibi.

(10) Demands for disclosure of the interception of any wire or oral communications, and demands for disclosure of the contents of the intercepted communication or evidence derived therefrom, including demands under 18 U.S.C. § 2518 (8) (d), 2518 (10) (a).

(b) Sanction. Failure by a party to raise defenses or objections or to make requests within the time limit provided in 5 paragraph (a) hereof shall constitute waiver thereof, but the Court may grant relief from the waiver if it determines that:

(1) Opportunity to make the motion or request did not theretofore exist,

(2) Neither the defendant nor his/her counsel was aware of the grounds for such motion within the time permitted for its filing under subsection (a), or

(3) Under all the circumstances, justice otherwise requires.

(c) Notice of Defense Based Upon Mental Condition. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, or if a defendant intends to introduce expert testimony relating to a mental disease, defect or other condition bearing on the issue of whether s/he had the mental state required for the offense charged, s/he shall so notify the attorney for the government in writing and file a copy of such notice with the clerk on or before the tenth day following arraignment, unless ordered by the Court at the time of arraignment. If there is a failure to comply with the requirements of this paragraph, such defense of insanity may not be raised and such expert testimony may be excluded, but the Court may for cause shown allow late filing of the notice, or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(d) Related Procedures.

(1) Motions requiring affidavit support shall be accompanied at the time of their filing with such support. Where an evidentiary hearing is to be requested, the motion shall include such a request.

(2) Counsel seeking discovery under F.R.Cr.P. 7(f) or 16(a) or (b) shall prepare a written motion and shall confer, before filing, with opposing counsel in a good faith effort to secure the discovery sought.

If fully satisfied with any voluntary response, the attorney seeking discovery shall perfect the record by filing the motion along with a certificate stating that there has been voluntary compliance, specifying any items produced for inspection, and stating that nothing remains for judicial determination. Such a filing will not result in any excludable time under Section 10 hereof. If counsel seeking discovery is not fully satisfied after consultation with opposing counsel, the former shall file the motion along with a certificate which states that s/he has conferred as

required by this rule, which specifies any items produced for inspection, and which states the matters that remain for judicial resolution. The Clerk shall not accept for filing any motion seeking discovery under these rules which is not accompanied by a certificate which complies with the provisions of this Section.

(3) Two copies of all motions, supporting affidavits and the certificate required by Section 5(d)(2) hereof shall be filed with the Clerk.

(4) Motions determined by the Court not to require an evidentiary hearing shall be scheduled for oral argument within 10 days of filing. Oral argument shall be held within ninety days of the filing of the motion, unless the Court determines a continuance beyond ninety days is in the interest of justice under 18 U.S.C. § 3161(h)(8). Written briefs shall not be required unless the Court so orders at the time argument is scheduled. The dates for submitting briefs shall be set by the Court to permit oral argument within ninety days of filing of the motion. If briefing is not required, counsel shall be prepared at argument to refer the Court to any relevant authority.

(5) Motions determined by the Court to require an evidentiary hearing shall be scheduled for hearing and argument within ninety days of filing unless the Court determines a continuance beyond ninety days is in the interest of justice under 18 U.S.C. § 3161(h)(8). Written briefs shall not be required unless the Court so orders at the time the hearing and argument are scheduled or when the hearing and argument are completed. The dates for submitting briefs shall be set by the Court to permit the hearing and argument to proceed within ninety days of filing of the motion.

(6) All post-hearing submissions shall be filed no later than thirty days after the proceeding's conclusion, unless the Court determines a continuance beyond thirty days is in the interest of justice under 18 U.S.C. § 3161(h)(8).

6. Time Within Which Trial Must Commence.

(a) Time Limits. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(1) The date on which an indictment or information is filed in this District;

(2) The date on which a sealed indictment or information is unsealed; or

(3) The date of the defendant's first appearance before a judicial officer of this District.

(b) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the Court may extend the period if unavailability of ;witnesses or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days.

(c) Withdrawal of Plea. If a defendant enter a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final.

(d) Superseding Charges-General Rule. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(1) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge.

(2) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information.

(3) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the following date:

(I) if the defendant is arrested or served with a summons on the subsequent charge before an indictment or information is filed in connection with such charge, then the date of such arrest or service;

(II) if the preceding paragraph is inapplicable, then the last of the following dates:

(a) The date on which the subsequent indictment or information is filed in this District;

(b) The date on which the subsequent indictment or information, if sealed, is unsealed; or

(c) The date of the defendant's first appearance before a judicial officer of this District in connection with the subsequent indictment or information.

(4) The time within which an indictment or information must be obtained on the subsequent charge, or within which an arraignment must be held on such charge, shall be determined without regard to the existence of the original indictment or information.

(e) Superseding Charges-Procedure. Whenever a complaint, indictment or information is filed against a defendant charged in a pending indictment or information or in an indictment or information previously dismissed on motion of the United States Attorney, the United States Attorney shall give written notice to the Court of that circumstance and of his/her position with respect to the computation of time limits. Such cases shall be treated as presumptively subject to the time limits specified in paragraph (d) hereof, and trial on the new charges shall commence within such time limits, unless the Court finds such paragraph inapplicable on the ground that the new charge is not for the same offense as that charged in the original indictment or information, or an offense required to be joined therewith, or the Court finds that the new charge deprives a defendant of a previously existing, meaningful defense.

(f) Measurement Of Time Periods. For the purpose of this Section:

(1) If a defendant signs a written consent to be tried before a magistrate and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(2) In the event of a transfer to this District under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or

certified copies thereof are received by the Clerk.

(3) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(4) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(g) Related Procedures.

(1) The Court shall have sole responsibility for setting cases for trial after consultation with counsel. Within twenty days of arraignment, each case will be set out for trial on a day certain or listed for trial on a weekly or other short-term calendar. At the same time, the Court will ordinarily set a date for the pretrial conference.

(2) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will not be ground for continuance or delayed setting except where the Court receives notice of the conflict and a motion to reschedule the trial within five days of the order setting trial. The Court may consider a motion to reschedule at a later time if it is in the interest of justice under 18 U.S.C. § 3161(h)(8). The United States Attorney will be familiar with the scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be able to announce ready for trial.

(3) All pretrial hearings shall he scheduled in accordance with Section 5.

(4) Any potential for resolution of a case pursuant to a plea agreement will be pursued and exhausted by the parties prior to the date set by the Court for the pretrial conference.

7. Defendants in Custody and High-Risk Defendants.[1]

(a) Time Limits. Regardless of any longer time periods that may be permitted under Section 3 and 6, the following time limits will be applicable to defendants in custody awaiting trial high-risk defendants as herein defined:

(1) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody.

(2) The trial of a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk shall commence within 90 days of designation as high risk.

(b) Definition of "High-Risk Defendant." A high-risk defendant is one reasonably designated by the United States Attorney as posing danger to him/herself or any other person or to the community.

(c) Measurement of Time Periods. For the purposes of this section:

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[1] If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that the trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356-57 n. 24 (1978).

(1) A defendant is deemed to be in detention awaiting trial when s/he is arrested on a Federal charge or otherwise held for the purpose of responding to a Federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(2) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the

defendant subsequently rejects disposition under Rule 20 or the Court to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(3) A trial shall be deemed to commence as provided in Sections 6(f)(3) and 6(f)(4).

(d) Related Procedures.

(1) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the Court at the time of arraignment or within five days, whichever is earlier, of the date of the beginning of such custody.

~ If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356-57 n.24 (1978.)

(2) The United States Attorney shall advise the Court at arraignment or any proceeding at which the Court will review defendant's custodial status if the defendant is considered by the United States Attorney to be high-risk.

(3) If the Court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the Court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his/her counsel but shall not be made known to other persons without the permission of the Court.

8. Time Within Which Defendant Should Be Sentenced. Please refer to amendment of 12/06/94

~~**(a) Time Limit.** A defendant shall ordinarily be sentenced within 30 days of the date of his conviction or plea of guilty or nolo contendere if s/he is in custody and within 45 days of that date if s/he is not in custody.~~

~~**(b) Related Procedures.**~~

~~(1) If the defendant and his/her counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.~~

~~(2) Priority in the preparation of presentence reports shall be given to those cases in which the defendant is in custody.~~

~~(3) Not less than twenty-five (25) calendar days prior to the date set for sentencing, the probation officer shall disclose the presentence investigation report to the defendant, defendant's counsel, and the Government. Within ten (10) calendar days thereafter, counsel for the defendant and the Government shall communicate in writing to the probation officer and to each other any objections they may have as to any material information, sentencing classifications, sentencing guidelines ranges, and/or policy statements~~

~~contained in or omitted from the report.~~

~~(4) After receiving the objections of counsel, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require defendant, defendant's counsel, the Government and/or the case agent to meet with the officer to discuss unresolved factual and legal issues.~~

~~(5) No later than five (5) calendar days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the Court. The report shall be accompanied by an addendum setting forth any objections made by defendant's counsel or the Government that remain unresolved, together with the officer's comments thereon. Further, the probation officer shall certify to the Court that the contents of the report, including any revisions and addenda, have been disclosed to the defendant, defendant's counsel and the Government.~~

~~(6) Except for any unresolved objections as stated in the addendum to the presentence report, the report of the presentence investigation will be accepted by the Court as accurate. However, upon a showing of good cause, the Court may allow new objections to the report to be presented at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, defendant's counsel or the Government.~~

~~(7) Nothing in this rule permits the disclosure of any portions of the presentence report, except as authorized in Rule 32(3) of the Federal Rules of Criminal Procedure. The presentence report shall be deemed to have been disclosed (a) when a copy of the report is hand delivered, (b) one (1) day after the report's availability for inspection is orally communicated, or (c) three (3) days after a copy of the report or notice of its availability is mailed.~~

~~(8) No person shall, except as provided in this rule, otherwise disclose, copy, reproduce, deface, delete from or add to the presentence report. Any copies of the presentence report made available to the defendant and the defendant's counsel and the attorney for the Government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the Court, in its discretion otherwise directs.~~

~~(9) The provisions of Federal Rule of Criminal Procedure 32 shall apply to any matter not covered herein.~~

9. Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to Section 6(d), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of guilty plea, a new 30-day minimum period will not begin to run. The Court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances.

10. Exclusion of Time From Computations.

(a) Applicability. In computing any time limit under Sections 3, 4, 5, 6, 7, or 8, the periods of delay set forth in this Plan, and any delay granted under 18 U.S.C. § 3161(h) (8), shall be excluded.

(b) Records of Excludable Time. The Clerk of the Court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the United States Attorney.

(c) Stipulations.

(1) The attorney for the government and the attorney for the defendant may at any time enter into

stipulations with respect to the accuracy of the docket entries recording excludable time.

(2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket of any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C. § 3161(h) (7), whether time has run with respect to the defendant entering into the stipulation.

(3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the Court.

(d) Pre-Indictment Procedures.

(1) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in Section 3, s/he may file a written motion with the Court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. § 3161(h) (8), s/he shall file a written motion with the Court requesting such a continuance.

(2) The motion of the United States Attorney shall state (I) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h) (8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(3) The Court may grant a continuance under 18 U.S.C. § 3161(h) (8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, one or both parties shall inform the Court within five nays of such time as they may learn that the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(e) Pre-Trial Exclusions.

(1) Delay resulting from proceedings and any examinations to determine the mental competency or physical capacity of the defendant, not to exceed nine months, shall be excluded. The Court may exclude additional time if it is in the interest of justice under 18 U.S.C. § 3161(h) (8).

(2) Delay resulting from any proceeding, including any examination of defendant, pursuant to 28 U.S.C. § 2902(a), not to exceed sixty-five days, shall be excluded. The Court may exclude additional time if it is in the interest of justice under 18 U.S.C. § 3161(h) (8).

(3) Delay resulting from deferral of prosecution pursuant to 28 U.S.C. § 2901(a), not to exceed thirty-six months, shall be excluded. The Court may exclude additional time if it is in the interest of justice under 18 U.S.C. § 3161(h) (8).

(4) Delay resulting from trial with respect to other charges against the defendant shall be excluded. Upon completion of that trial, the United States Attorney shall immediately inform the Court and all subsequent time shall be chargeable unless another exclusion is pending. The Court shall schedule all necessary proceedings within ten days of the United States Attorney's notice.

(5) Delay resulting from any interlocutory appeal, not to exceed ninety days after the matter is under advisement by the Circuit Court of Appeals, shall be excluded. A matter is deemed under advisement when the Court has received everything it expects from the parties before reaching a decision.

(6) Delay resulting from any pretrial motion shall be excluded according to the provisions of Section 5.

(7) Delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant under the Federal Rules of Criminal Procedure, not to exceed forty days, shall be excluded. The Court may exclude additional time if it is in the interest of justice under 18 U.S.C. § 3161(h) (8).
(8) Delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, not to exceed ten days from the date of an order of removal or an order directing such transportation, shall be excluded.

(9) Delay resulting from consideration by the Court of a proposed plea agreement to be entered into by the defendant and the United States Attorney, not to exceed ten days, shall be excluded; except, delay resulting from a plea agreement requiring the Court to agree that a specific sentence is the appropriate disposition of the case, under Federal Rule of Criminal Procedure 11(e) (1) (C), not to exceed sixty days, shall be excluded. The Court may extend the time for consideration of the plea agreement if it is in the interest of justice under 18 U.S.C. § 3161(h) (8).

(10) Delay reasonably attributable to any period during which any proceeding concerning the defendant is actually under advisement by the Court, not to exceed thirty days, shall be excluded. The Court may exclude additional time if it is in the interest of justice under 18 U.S.C. § 3161(h) (8). A matter is deemed under advisement when the Court has received everything it expects from the parties before reaching a decision.

(f) Post-Indictment Procedures.

(1) Counsel may, at any time, examine the Clerk's records of excludable time for completeness and accuracy. Counsel shall bring to the Court's immediate attention any claim that the clerk's record is in any way incorrect.

(2) In the event that the Court continues a trial beyond the time limit set forth in Section 6 and 7, the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h). In the absence of a need for a continuance, the Court will not ordinarily rule on the excludability of any period of time.

(3) If it is determined that a continuance is justified, the Court shall set forth its findings in the record, either orally or in writing.

If the continuance is granted under 18 U.S.C. § 3161(h) (8), the Court shall also set forth its reason for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, one or both parties shall inform the Court within five days of such time as they may learn that the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

11. Juvenile Proceedings.

(a) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

(b) Time of Disposal Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

12. Sanctions.

(a) Dismissal or Release from Custody. If in the case of any defendant the time limits set forth in Title I of the Speedy Trial Act are not satisfied, such defendant may be entitled to dismissal of the charges against him or to release from pretrial custody. Nothing in this plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. § 3161 and § 3164.[2] However, the Court retains the power to dismiss a case for unnecessary delay pursuant to Rule 481b) of the Federal Rules of Criminal Procedure.

(b) High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his/her release conditions automatically reviewed. A high-risk defendant who is found by the Court to have intentionally delayed the trial of his/her case shall be subject to an order of the Court modifying his nonfinancial conditions of release under Chapter 207 of Title 18, U.S.C., to ensure that s/he shall appear at trial as required.

(c) Discipline of Attorneys. In a case in which counsel (1) knowingly allows the case to be set for trial without disclosing the fact that a witness necessary to the case would be unavailable for trial; (2) solely for the purpose of delay, file a motion which s/he knows is frivolous; (3) for the purpose of obtaining a continuance, makes a statement which s/he knows to be false and which is material to the granting of the continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161, the Court may punish such counsel as provided in 18 U.S.C. § 3161(b) and (c).

(d) Alleged Juvenile Delinquent. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 shall be entitled to dismissal of his/her case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his/her counsel, or that the delay was in the interest of justice in the particular case. Delays attributable solely to court calendar congestion shall not be considered in the interest of justice for purposes of this subsection.

13. Persons Serving Terms of Imprisonment.

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any

[2]Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C., Appendix.

penal institution, s/he shall within twenty days of filing the indictment or information seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed within those twenty days, in accordance with the provisions of 18 U.S.C. § 3161(j).

14. Effective Date. The revised Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases shall take effect on November 1, 1987 and shall be applicable to defendants whose cases are commenced by arrest or summons on or after that date, and to indictments and information filed on or after that date.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

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Limits and Procedures for)
Achieving Prompt Disposition)
of Criminal Cases)

O R D E R

WHEREAS, Rule 32 of the Federal Rules of Criminal Procedure is amended effective December 1, 1994;

Now, therefore, this 6th day of December, 1994,

IT IS ORDERED that Local Rule 8 of the Time Limits and Procedures For Achieving Prompt Disposition of Criminal Cases, adopted by this court on December 3, 1987, is amended to read as follows:

8. *Sentencing*

(a) Date of Sentencing. Unless the court directs that the sentence be imposed on an earlier date, sentencing will occur not less than eighty (80) calendar days following a defendant's plea of guilty or nolo contendere, or upon being found guilty.

(b) Presentence Investigation and Reports.

(1) A presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction, if a

defendant and defense counsel consent thereto in writing.

(2) Not less than thirty-five (35) calendar days prior to the date set for sentencing, the probation officer shall disclose the presentence investigation report to the defendant, defendant's counsel, and the attorney for the government. The presentence report shall be deemed to have been disclosed to a party (a) when a copy of the report is hand-delivered to the party's counsel or (b) three days after a copy of the report is mailed to the party's counsel. Unless otherwise directed by the court, the probation officer's recommendation for sentence will not be disclosed to the parties or made part of the public record.

(3) Within fourteen (14) calendar days after receiving the presentence report, counsel for the parties shall communicate in writing to the probation officer, and to each other, any objections as allowed under Fed.R.Crim.P. 32(b)(6)(B). Likewise, counsel shall notify the probation officer in writing within the aforesaid time limits if they have no objections to the presentence report. In

the absence of good cause, any objection not submitted within the time limits herein shall be waived.

(4) After receiving the objections of counsel, the probation officer may conduct any further investigation and make any revisions to the presentence report as consistent with and authorized by Fed.R.Crim.P. 32(b)(6)(B).

(5) No later than seven (7) calendar days before the sentencing hearing, the probation officer shall submit the presentence report to the court. The report shall contain an addendum setting forth any objections made by defendant's counsel or the government that remain unresolved, together with the officer's comments thereon. At the same time, the probation officer shall furnish the revisions of the presentence report and the addendum, excluding any recommendation for sentence, to the defendant, the defendants' counsel, and the attorney for the government.

(6) Except for the unresolved objections, as reported in the addendum, the

presentence report may be accepted by the court as its findings of fact.

(7) Nothing in this rule permits disclosure of any portions of the presentence report except as authorized by Rule 32 of the Federal Rules of Criminal Procedure. The provisions of Fed.R.Crim.P. 32 shall apply to any matter not covered herein.

Chief Judge

Judge

Judge

Judge