

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

In re Amendments To Local Rule
88.10 and Magistrate Rule 4(a)(2).

Administrative Order 94-66

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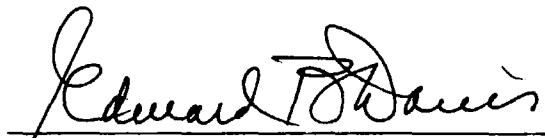
THIS COURT, in accordance with Administrative Order 94-57, hereby

ORDERS that Local Rule 88.10 and Local Magistrate Rule 4(a)(2) are amended and/or adopted in the form attached.

IT IS FURTHER ORDERED that the foregoing Local Rule amendments shall take effect on December 1, 1994, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

IT IS FURTHER ORDERED that the Clerk of the Court is hereby directed, for the next thirty (30) days: (1) to publish a copy of this Order (without the attachments) twice a week in the Daily Business Review; and (2) to provide one copy of this Order (without the attachments) to any person who files any papers in any action in this Court.

DONE AND ORDERED in Chambers at the United States District Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida this 28th day of November, 1994.


for _____
NORMAN C. ROETTGER
CHIEF UNITED STATES DISTRICT JUDGE

cc: Honorable Gerald B. Tjoflat, Chief Judge, Eleventh Circuit
All Southern District Judges and Magistrate Judges
Norman E. Zoller, Circuit Executive
Carlos Juenke, Court Administrator
Keenan G. Casady, Special Assistant
T.G. Cheleotis, Special Assistant
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MAGISTRATE RULES

(a)(2.) Government Appeal of Bond.

At the conclusion of a bond hearing pursuant to 18 U.S.C. §3142 in which a Magistrate Judge has set a bond which will result in release of a defendant if the conditions of the bond are met, an announcement in open court by the prosecutor that the government intends to appeal the bond to a District Judge shall result in an immediate stay of the bond set by the Magistrate Judge. Such stay shall continue until 5:00 p.m. that day, or in the event bond is set in open Court after 5:00 p.m., until 9:30 a.m. the morning of the following business day, unless the prosecutor shall file a written notice of appeal with the Clerk, upon which the stay shall become permanent unless and until it is lifted by a District Judge. The notice of appeal may be summary in form and need not be typed, but it shall be followed on or before the close of the business day next following the day the bond was set by the filing of a detailed factual statement, in proper form, setting forth the grounds of the appeal.

Whenever a stay is had pursuant to this rule, the Clerk/Court Administrator is directed to:

- (1) obtain the tape recording or cassette immediately after a bond hearing where an intention to appeal is announced by the United States Attorney's Office; and
- (2) deliver the cassettes or tapes promptly to the appropriate court reporter so that an expedited transcript can be delivered to the District Judge within forty-eight (48) hours of the bond hearing; the United States Attorney's Office is to pay the court reporter's charges.

RULE 88.10 CRIMINAL DISCOVERY

A. The government shall permit the defendant to inspect and copy the following items or copies thereof, or supply copies thereof, which are within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the government:

1. Written or recorded statements made by the defendant.
2. The substance of any oral statement made by the defendant before or after his arrest in response to interrogation by a then known-to-be government agent which the government intends to offer in evidence at trial.
3. Recorded grand jury testimony of the defendant relating to the offenses charged.
4. The defendant's arrest and conviction record.
5. Books, papers, documents, photographs, tangible objects, buildings or places which the government intends to use as evidence at trial to prove its case in chief, or which were obtained from or belonging to the defendant.
6. Results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with this case.

B. The defendant shall permit the government to inspect and copy the following items, or copies thereof, or supply copies thereof, which are within the 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:

1. Books, papers, documents, photographs or tangible objects which the defendant intends to introduce as evidence in chief at trial.
2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case which the defendant intends to introduce as evidence in chief at trial, or which were prepared by a defense witness who will testify concerning the contents thereof.
3. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, or intends to introduce expert testimony relating to a mental disease, defect or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the government.

C. The government shall reveal to the defendant and permit inspection and copying of all information and material known to the government which may be favorable

to the defendant on the issues of guilt or punishment within the scope of *Brady vs. Maryland*, 373 U.S. 83 (1963), and *United States vs. Agurs*, 427 U.S. 97 (1976).

D. The government shall disclose to the defendant the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of *Giglio vs. United States*, 405 U.S. 150 (1972), and *Napue vs. Illinois*, 360 U.S. 264 (1959).

E. The government shall supply the defendant with a record of prior convictions of any alleged informant who will testify for the government at trial.

F. The government shall state whether defendant was identified in any lineup, showup, photospread or similar identification proceeding, and produce any pictures utilized or resulting therefrom.

G. The government shall advise its agents and officers involved in this case to preserve all rough notes.

H. The government shall advise the defendant of its intention to introduce during case in chief proof of evidence, pursuant to Rule 404(b), Federal Rules of Evidence.

I. The government shall state whether the defendant was an aggrieved person, as defined in Title 18, United States Code, Section 2510(11), of any electronic surveillance, and if so, shall set forth in detail the circumstances thereof.

J. The government shall have transcribed the grand jury testimony of all witnesses who will testify for the government at the trial of this cause, preparatory to a timely motion for discovery.

K. The government shall, upon request, deliver to any chemist selected by the defense, who is presently registered with the Attorney General in compliance with Title 211, United States Code, Sections 822 and 823, and 21, C.F.R., Section 101.22(8), a sufficient representative sample of any alleged contraband which is the subject of this indictment, to allow independent chemical analysis of such sample.

L. The government shall permit the defendant, his counsel and any experts selected by the defense to inspect any automobile, vessel, or aircraft allegedly utilized in the commission of any offenses charged. Government counsel shall, if necessary, assist defense counsel in arranging such inspection at a reasonable time and place, by advising the government authority having custody of the thing to be inspected that such inspection has been ordered by the court.

M. The government shall provide the defense, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.

N. The government shall, upon request of the defendant, disclose to the defendant a written summary of testimony the government reasonably expects to offer at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence. This summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications. If the defendant seeks and obtains discovery under this paragraph, the defendant shall, upon request by the government, disclose to the government a written summary of testimony the defendant reasonably expects to offer at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence, describing the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications.

O. The parties shall make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite the trial.

P. The parties shall collaborate in preparation of a written statement to be signed by counsel for each side, generally describing all discovery material exchanged, and setting forth all stipulations entered into at the conference. No stipulations made by defense counsel at the conference shall be used against the defendant unless the stipulations are reduced to writing and signed by the defendant and his counsel. This statement, including any stipulations signed by the defendant and his counsel, shall be filed with the Court within five (5) days following the conference.

Q. Schedule of Discovery

1. Discovery which is to be made in connection with a pre-trial hearing other than a bail or pre-trial detention hearing shall be made not later than 48 hours prior to the hearing. Discovery which is to be made in connection with a bail or pretrial detention hearing shall be made not later than the commencement of the hearing.

2. Discovery which is to be made in connection with trial shall be made not later than fourteen (14) days from the date of this Order.

3. Discovery which is to be made in connection with post-trial hearings (including, by way of example only, sentencing hearings) shall be made not later than seven (7) days prior to the hearing. This discovery rule shall not affect the provisions of S.D.Fla.L.R. 88.8 regarding pre-sentence investigation reports.

It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this Rule.