

Cheryl R. Zwart
United States Magistrate Judge

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Criminal Case Management Practices

Scheduling:

Scheduling contact: Jeri Bierbower is the primary contact for scheduling criminal hearings before Judge Zwart. When Jeri is not available, the parties may contact Judge Zwart's chambers for assistance with criminal scheduling.

Initial appearance/arraignment: When scheduling an initial appearance or arraignment, the government must state whether an interpreter is needed and it must provide a list of all persons who may present a conflict when appointing counsel for the defendant.

Detention/release hearings: If at all possible, detention/release hearings will be held at the time of the initial appearance/arraignment.

Preliminary/detention hearings: If a defendant requests additional time before attending a preliminary hearing and a detention hearing, these hearings will, if reasonably possible, be held simultaneously.

Plea to an information: To permit sufficient time on the court's schedule, counsel shall provide advance notice to the court if a defendant will be pleading to an information and the information has not yet been filed of record.

Warrant applications:

When possible, the government should schedule a time to present a warrant application and provide a copy of that application to Judge Zwart at least one hour prior to that hearing.

Warrant applications may be electronically presented to Judge Zwart for her review and signature whenever such means could further the interests of convenience, expediency, efficiency, and public safety.

Financial affidavits offered in support of a request for appointed counsel should, if possible, be scanned and emailed to zwart@ned.uscourts.gov, or faxed to (402) 437-1675.

Motions for release:

Any motion for release of a currently detained defendant must explain how the circumstances or release options have changed since the court entered its detention order. Defendant's motion for release will be summarily denied if the defendant fails to identify a material change of circumstances since the detention order was entered.

When requesting release to a third party custodian, Defendants must propose the best possible option at the outset. The court will generally not order pretrial services to investigate more than one proposed third party custodian.

Discovery disputes: Before filing a discovery motion, counsel shall thoroughly discuss the discovery dispute in good faith and attempt to resolve it without court intervention. A discovery motion will be denied if the parties have not met and conferred before it is filed.

Continuances: The parties shall make every effort to meet all deadlines set by the court's rules and the case scheduling order. If deadline changes are necessary:

Unopposed motions to continue may be requested by telephone, by email (with all counsel on the call/email or with their permission to call), or by filed motion.

Filed and email motions to continue shall state whether any party objects to the continuance, why the continuance is needed, the length of continuance requested, whether the requested continuance will impact the trial setting (if any), and whether the defendant agrees the additional time requested in the motion should be excluded under the Speedy Trial Act.

Motions challenging the sufficiency of a warrant: When challenging a warrant as:

- 1) lacking an adequate showing of probable cause, or
- 2) including materially false information, or
- 3) omitting information material to the determination of probable cause,

the moving party shall file, along with the motion and supporting brief, a copy of the relevant warrant application, warrant, and warrant return. If a defendant is claiming the warrant application included false information or concealed material information, the defendant shall also file a statement of the corrected and/or omitted facts. A hearing will not be held on motions to suppress evidence obtained through the execution of a search warrant unless, based on the defendant's written submissions in support of the motion, the court finds a hearing is necessary.

Evidentiary hearings: Copies of all exhibits to be offered at an evidentiary hearing (e.g. a hearing on a motion to suppress, a motion to dismiss, etc.) shall be delivered to chambers at least one working day before the hearing. Any encryption codes for opening and reviewing information on a CD or DVD shall be emailed to chambers when the evidence is delivered. The court must be able to open and play any audio or video recordings submitted using VLC or Windows Media Player.

Plea hearings: Absent extenuating circumstances, Judge Zwart will not continue a change of plea hearing more than 60 days beyond when it was initially set.