

COPY

**DISTRICT COURT OF GUAM
CRIMINAL LOCAL RULES COMMITTEE**

October 30, 2012

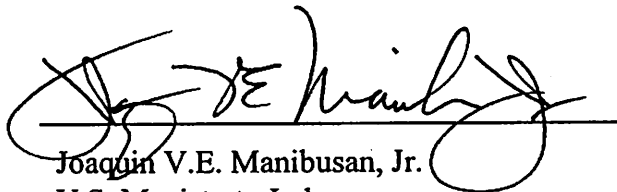
Honorable Frances M. Tydingco-Gatewood
Chief Judge, District Court of Guam
520 West Soledad Avenue
Hagatna, GU 96910

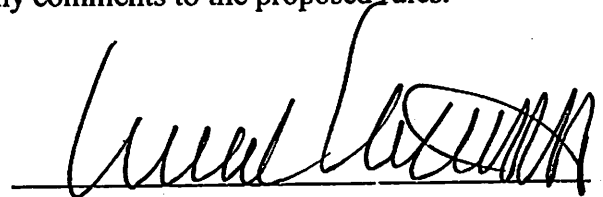
Dear Chief Judge Tydingco-Gatewood:


Greetings and Hafa Adai!

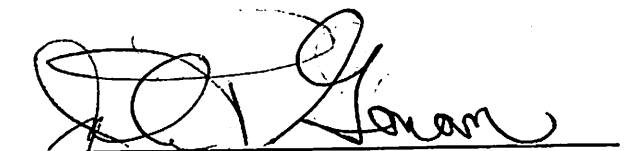
The members of the Committee on Criminal Local Rules for the District Court of Guam are pleased to present the attached proposed Criminal Local Rules for your consideration and adoption. These proposed rules are based on input from the committee members and examples from other jurisdictions. The intent behind the rules is to maintain a framework that will help the members of the bench and bar better understand the court's procedures and perform their responsibilities in a more efficient and effective manner.

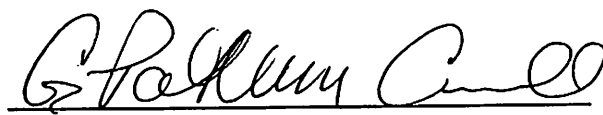
The committee members welcome and appreciate any comments to the proposed rules.
Si Yu'us Ma'ase.

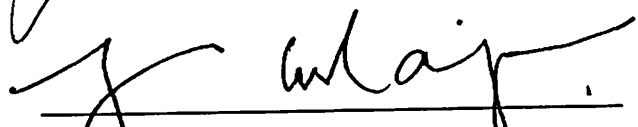

Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge



Howard Trapp

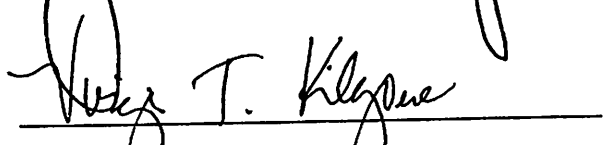

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PROPOSED CRIMINAL LOCAL RULES

CRLR 1 Title and Citation

These are the Criminal Local Rules of Practice, which govern the procedure in all criminal proceedings before the District Court of Guam. They should be cited as "CRLR __."

CRLR 2 Purpose and Construction

These rules are promulgated pursuant to Fed. R. Crim. P. 57. They supplement the Federal Rules of Criminal Procedure and shall be construed so as to be consistent with those rules.

CRLR 5 Initial Appearance

- (a) It shall be the duty of all federal agencies and others who arrest any person as a federal prisoner in this district to give prompt notice without unnecessary delay to the Clerk's Office and the U.S. Pretrial Services Office for this district.
- (b) When an arrested person is not represented by counsel and requests to be represented by a court-appointed attorney as an indigent, the federal arresting agency shall so inform the Office of the Federal Public Defender of Guam without unnecessary delay or, in the event of a conflict of interest, the Clerk's Office, who will thereafter provide the name of the next available counsel on the court's Criminal Justice Act ("CJA") Panel.
- (c) Except where otherwise ordered by a district judge, all initial appearances in criminal proceedings shall be conducted by the magistrate judge.

CRLR 6 The Grand Jury

Grand juries are impaneled and in attendance at such times and places in each year as, in the discretion of the court, the business of the court requires or permits. Any district judge or magistrate judge is authorized to impanel a grand jury, take the returns, and discharge the grand jury upon completion of its service.

CRLR 10 Arraignment

- (a) Except where otherwise ordered by a district judge, arraignments in criminal proceedings shall be conducted by the magistrate judge.
- (b) A trial date, based upon the requirements of the Speedy Trial Act (18 U.S.C. §3161 *et seq.*) shall be set at the time of arraignment. The magistrate judge is authorized to address all requests for change of a trial date; however, any such a request made within two (2) weeks of the trial date shall be addressed only by the assigned judge.

- (c) At arraignment, the court shall issue a scheduling order setting deadlines for the production of discovery, the filing of pretrial motions, responses and replies thereto, the filing of trial documents, such as witness lists and exhibits lists, etc., and pretrial conference dates.
- (d) **Duty of Defendant to Disclose True Name.** At arraignment, the defendant shall be informed that if the name by which he is indicted or charged is not his true name, he must then declare his true legal name. The proceedings shall continue against the defendant under the name in the indictment or information, unless the defendant declares a different true name. If the defendant declares a different true name, the court shall order that the caption of the indictment or information be changed accordingly, and the court's records shall show the true name of the defendant and the alias name under which the defendant was indicted or charged.

CRLR 11 Felony Pleas Before Magistrate Judge

- (a) The magistrate judge is authorized to accept waivers of indictment and take guilty pleas in felony cases with the written consent of the defendant, the defendant's attorney, and the Assistant U.S. Attorney. The magistrate judge shall administer the allocution pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The magistrate judge shall make written findings as to each of the subjects set forth in Fed. R. Crim. P. 11, the voluntariness of the guilty plea, and the sufficiency of the factual basis establishing each of the essential elements of the offense. The magistrate judge is also authorized to order the preparation of a presentence report pursuant to Fed. R. Crim. P. 32 concerning any defendant who pleads guilty to felony charges.
- (b) The magistrate judge shall also make a written recommendation to the district judge as to whether or not the district judge should accept the defendant's plea of guilty. A copy of the magistrate judge's written findings and recommendation shall be served on all parties. Objections to the magistrate judge's findings and recommendation shall be filed within fourteen (14) days after having been served with a copy thereof. Any party desiring to oppose such objections shall have seven (7) days thereafter within which to file and serve a written response. The district judge shall conduct a *de novo* review of the magistrate judge's findings and recommendations if, but only if, one or both parties file objections to the findings and recommendations.
- (c) Sentencing shall take place before the district judge to whom the case has been assigned. The district judge shall schedule the sentencing hearing if he or she accepts the defendant's guilty plea.
- (d) This rule in no way precludes any district judge from reserving the function of conducting the proceedings required by Fed. R. Crim. P. 11 in any or all cases assigned to the district judge.

CRLR 12 Pleadings and Pretrial Motions

- (a) **Motion Deadline.** At the arraignment or as soon afterward as practicable, the court shall set a deadline for the parties to file pretrial motions, including discovery and *in limine* motions, along with deadlines for the filing of responses and replies thereto. These dates shall be strictly adhered to unless an extension of time is granted by the court upon good cause shown.
- (b) **Extensions of Time.** No continuance shall be granted merely on the stipulation of the parties. If a party is unable to comply with the established schedule despite its diligence, that party shall move for a reasonable extension of time, specifically setting forth the basis for the requested extension. Such motion shall be made as soon as practicable but, in any event, not later than the date upon which the act was to have been completed.
- (c) **Motions - Required Pleadings.** Every motion shall be filed and served with a memorandum in support thereof, affidavits, if appropriate, and copies of all documentary evidence that the moving party intends to submit in support of the motion. Additionally, all motions and each response or opposition thereto shall contain a statement whether an evidentiary hearing is requested and an estimate of the time required for the presentation of evidence and/or arguments. The reply brief shall contain a re-estimate of the time or a statement that the original estimate is unchanged.
- (d) **Non-dispositive Motions in Felony Cases.** In felony cases, the magistrate judge shall hear and determine any pretrial motion, including discovery motions, other than case-dispositive motions.
- (e) **Dispositive Motions in Felony Cases.** All dispositive motions, such as a motion to dismiss or quash an indictment or information, or to suppress evidence, shall be heard by the district judge, unless specifically referred to the magistrate judge. In any dispositive motion referred to the magistrate judge, the magistrate judge shall file a written report and recommendation within 30 days after the hearing or after all the briefing is completed, unless additional briefing is ordered or other circumstances warrant a delay of such decision.
- (f) **Any party may appeal from any pretrial non-dispositive matter assigned to a magistrate judge or file an objection to any portion of the magistrate judge's report and recommendation on dispositive pretrial matters.** Such appeal or objection shall be filed within fourteen (14) days after the filing of the magistrate judge's written order or after being served with a copy of the report and recommendation. A memorandum of points and authorities or supporting memorandum must accompany the filing of the appeal or objection, unless the district judge, in his or her discretion, permits a later filing of such memorandum. Any party in interest may file a response to the appeal or objection within seven (7) days after having been served with a copy thereof. Only the assigned district judge may alter these periods for filing an appeal or objection and response thereto. Oral argument will not be scheduled unless ordered by the district judge.

- (g) Each joinder to a motion shall specifically identify the particular motion(s) to which the joinder applies and the basis for the defendant's standing to raise or join in such motion, where necessary.

CRLR 16 Discovery and Inspection

- (a) **Policy.** It is the court's policy to rely on the standard discovery procedure as set forth in this general rule as the means of the exchange of discovery in criminal cases except in extraordinary circumstances. This rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, but at the same time eliminate the practice of routinely filing perfunctory and duplicative discovery motions.
- (b) **Initial disclosures.**
- (1) **Disclosures by the Government.** Seven days after arraignment, the government shall provide to the defendant, or make available for inspection, copying or photocopying all of the following:
- (A) **Fed. R. Crim. P. 16(a) Information.** All discoverable information within the scope of Federal Rule of Criminal Procedure 16(a).
- (B) **Brady Material.** 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 v. Maryland*, 373 U.S. 83 (1963).
- (C) **Giglio Material.** The existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972).
- (D) **Testifying informant's convictions.** A record of prior convictions of any alleged informant who will testify for the government at trial.
- (E) **Defendant's identification.** If a line-up, show-up, photo spread or similar, procedure was used in attempting to identify the defendant, the procedure implemented.
- (F) **Inspection of vehicles, vessels, or aircraft.** If a vehicle, vessel, or aircraft that was allegedly used in the commission of an offense charged is in the custody of a governmental authority, the government shall permit the defendant's counsel and any expert selected by the defense to inspect it.
- (G) **Fed. R. Evid. 404(b).** If the government intends to introduce evidence listed in Federal Rule of Evidence 404(b) in its case in chief at trial, the government shall advise the defendant accordingly.

(H) Electronic Surveillance Information. If the defendant is an “aggrieved person” as defined in 18 U.S.C. § 2510(11), the government shall notify the defendant of such and inform the defendant of the detailed circumstances thereof.

(I) Search warrants and supporting affidavits. The government shall provide the defendant with any search warrants and supporting affidavits that resulted in the seizure of evidence that the government intends to introduce in its case in chief at trial or that was obtained from or belongs to the defendant.

The Government shall file a motion requesting an extension of time or other relief for good cause in the event the Government is unable to provide discovery in accordance with this subparagraph.

(2) Obligations of the Government.

(A) The government shall anticipate the need for and arrange for the transcription of the grand jury testimony of all witnesses who will testify in the government’s case in chief, if subject to Federal Rule of Criminal Procedure 26.2 and 18 U.S.C. § 3500. Jencks Act materials and witnesses’ statements shall be provided as required by Federal Rule of Criminal Procedure 26.2 and 18 U.S.C. § 3500. However, the government, and where applicable, the defendant, are requested to make such materials and statements available to the other party sufficiently in advance as to avoid delays or interruptions at trial. Although the court suggests an early disclosure of Jencks Act materials, this should not be construed as requiring the government or the defendant to disclose materials expressly protected from disclosure under 18 U.S.C. § 3500 or Federal Rules of Criminal Procedure 16 or 26.2.

(B) The government shall advise all government agents and officers involved in the case to preserve all rough notes.

(C) The government shall, in good faith, advise the defendant in writing if it is unable to comply with the time deadlines set forth in subparagraph (b)(1).

(3) Disclosures by the Defendant. If the defendant accepts or requests disclosure of discoverable information pursuant to Federal Rule of Criminal Procedure 16(a), the defendant shall provide the government with all discoverable information within the scope of Federal Rule of Criminal Procedure 16(b) within 14 days after the government complies with discovery pursuant to subparagraph (b)(1).

(c) Continuing duty to disclose. The provisions of Federal Rule of Criminal Procedure 16(c) are applicable. It shall be the duty of counsel for all parties to immediately reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of Rule 16. The court emphasizes that there is a continuing duty upon each attorney to disclose expeditiously.

- (d) Motions for discovery. An attorney shall not file a discovery motion without first communicating with opposing counsel. Absent good cause shown, the court will not consider a discovery motion unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. An attorney may not file a discovery motion for information or material within the scope of Rule 16 unless it is a motion to compel, a motion for protective order, or a motion for an order modifying discovery.

CRLR 23 Trials

- (a) Stipulations. To expedite the trial, the parties shall make a good faith effort to stipulate to facts or points of law for which the truth and existence of or applicability of are not contested.
- (b) Trial Exhibits. The parties shall meet and confer sufficiently in advance of trial and formulate a set of joint exhibits. Those exhibits upon which agreement cannot be reached shall be submitted separately by each respective party.

CRLR 24 Trial Jurors

- (a) Examination. No later than fourteen (14) days prior to trial, each party shall file and serve any suggested questions which he desires the court to propound to the jurors during *voir dire*. The assigned judge has the sole discretion of determining which questions it considers proper and may, in his discretion, permit the attorneys for the parties to examine prospective jurors.
- (b) Peremptory Challenges. Peremptory challenges to which each party may be entitled shall be exercised in the manner directed by the assigned judge. In the absence of instructions to the contrary,
 - (1) if a party passes a peremptory challenge it shall be counted as if exercised.;
 - (2) if the opposing party also passes, the jury shall be deemed selected; and
 - (3) if the opposing party exercises a challenge, the party who previously passed may exercise any unused challenge.
- (c) The magistrate judge is authorized to conduct *voir dire* and select petit juries for the district judge in felony cases with the consent of the parties.

CRLR 30 Jury Instructions

No later than fourteen (14) days prior to trial, each party shall file and serve proposed written jury instructions with source(s) cited together with additional supporting authority. Objections to requested instructions may be made either in writing or orally as time permits. Additional requested instructions and objections may be received by the court, in its discretion, at any time prior to counsels' final arguments to the jury.

CRLR 31 Jury Verdict

No later than fourteen (14) days prior to trial, each party shall file and serve a proposed verdict form(s).

CRLR 32 Sentencing and Judgment

- (a) Disclosure of Report and Objections. Unless a different time is ordered, the presentence report shall be prepared and disclosed according to the deadlines set forth in Fed. R. Crim. P. 32(e) and (g), and written objections thereto shall be prepared and served as set forth in Fed. R. Crim. P. 32(f).
- (b) Effect of Rescheduling of Sentencing on Deadlines. Unless otherwise stated, if the assigned judge grants a motion to change the date for sentencing, the deadlines set in Fed. R. Crim. P. 32(e)-(g) shall automatically adjust and be calculated from the new sentencing date.

CRLR 32.1 Revoking or Modifying Probation or Supervised Release

- (a) The magistrate judge shall conduct all probation or supervised release revocation proceedings as to a defendant originally sentenced by the magistrate judge.
- (b) In revocation proceedings relating to defendants sentenced by a district judge, initial appearances and any preliminary hearings shall be conducted by the magistrate judge, unless otherwise ordered by the assigned district judge; and with the consent of the defendant and to the extent consistent with applicable law, any evidentiary hearing shall be conducted by the magistrate judge, unless otherwise ordered by the assigned district judge. Thereafter, the magistrate judge shall submit to and file with the district court, a report and recommendation, a copy of which shall be promptly provided to all the parties. Said submission shall include a listing of all the alleged violations that were found to be established by a preponderance of the evidence, and all the alleged violations that were not so established; and may include comments and/or recommendations as to disposition. Within fourteen (14) days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations. The district court judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or resubmit the matter to the magistrate judge with instructions.

CRLR 41 Search and Seizure

- (a) Search Warrant Applications. Each new application for a search and/or seizure warrant shall be assigned a magistrate judge ("MJ") case number. The application and the warrant issued thereon shall be sealed and not made publicly available.

- (b) **Unsealing of Search and/or Seizure Warrant Applications.** It is this court's intent that all filings be publically accessible in all regards. This right of access yields only when the Government can demonstrate that sealing is necessary and essential to preserve the integrity of an ongoing investigation or case. Accordingly, upon return of the search and/or seizure warrant, the warrant and any other document contained in the file shall thereafter be unsealed unless the government files a separate written motion in the assigned case requesting that the matter remain sealed. For good cause shown, the court shall grant said motion, and the warrant and all other documents on file shall remain sealed. The government shall promptly file a motion to unseal the warrant and other documents when the justification for sealing said records no longer exists.

CRLR 44 Right to and Appointment of Counsel

- (a) **Retained Counsel.** In all criminal actions, counsel retained to represent a defendant and appearing in a criminal case must promptly file with the clerk a formal written appearance.
- (b) If a defendant requests appointment of counsel by the court, the magistrate judge shall promptly appoint counsel in accordance with the plan of this court adopted pursuant to the Criminal Justice Act of 1964 on file with the Clerk.
- (c) **Duration of Representation.** Whether retained or appointed, an attorney wishing to withdraw must file a motion to withdraw, showing good cause for allowing the attorney to withdraw. Failure of the defendant to pay agreed compensation may not necessarily be deemed good cause. Unless such leave is granted by the court, the attorney shall continue to represent the defendant until the case is dismissed, or the defendant is acquitted, or, if convicted, until the expiration of the time for making post-trial motions and for filing notice and appeal. If counsel has not obtained permission to withdraw by the district court prior to the filing of the notice of appeal, the motion to withdraw must be addressed to the Circuit Court of Appeals.
- (d) **Appointment of Counsel Prior to the Filing of Criminal Charges.** When a person is not represented by counsel and requests to be represented by a court-appointed attorney as an indigent, and the Government is aware that a conflict of interest exists that would prevent the Office of the Federal Public Defender of Guam from representing the individual, the Government shall initiate the opening of a miscellaneous case by filing a petition requesting the court to appoint counsel for said individual. Such miscellaneous cases shall automatically be sealed without the need for the filing of a separate motion or order by the court. For good cause shown, the court shall thereafter appoint the next available counsel on the court's Criminal Justice Act ("CJA") Panel to represent the individual.

CRLR 45 Computing and Extending Time

A request to continue a trial date, whether by motion or stipulation, will not be considered unless it sets forth in detail the reason(s) why a continuance is necessary and the relevant statutory citations regarding excludable periods of delay, if any.

CRLR 46 Release from Custody; Supervising Detention

- (a) The magistrate judge has the authority to fix or modify bail and conduct detention hearings and issue release and detention orders; provided, however, that the magistrate judge shall not modify or approve a modification of any bail previously fixed by order of a district judge other than upon the grand jury return, except upon specific authorization from the district judge.
- (b) The magistrate judge has the authority to: (i) set bail for material witnesses; (ii) exonerate or forfeit bonds, set aside forfeitures, and reinstate bail in proceedings pending before the Magistrate Judge; and (iii) approve personal and corporate surety bonds and bonds requiring personal sureties.
- (c) **Special Release Services.** In addition to the pretrial services furnished under 18 U.S.C. § 3152, *et seq.*, counsel for a defendant may request special release services from the court's pretrial services office. If such a request is made, counsel must provide pretrial services and opposing counsel with a written request no less than 72 hours prior to any court hearing at which the results of that service are to be considered. Examples of special services that require this notice include: (i) request for third-party investigations; (ii) home confinement and electronic monitoring investigations; (iii) residential treatment program investigations; and (iv) any other non-routine investigations deemed necessary by the court. Counsel requesting a special service is also responsible for requesting that any bail review hearing on the service be set on the court's calendar.
- (d) **Third Party Request.** No person will be considered for approval as a third-party custodian unless: (i) proposing counsel certifies that the proposed custodian has been interviewed by the pretrial services office; (ii) the proposed third-party custodian has completed a third-party application form and questionnaire as provided by the pretrial services office; and (iii) the completed application and questionnaire forms have been served on pretrial services and opposing counsel not less than 72 hours prior to the hearing at which the matter is to be addressed.

CRLR 49 Serving and Filing Papers

The serving and filing of papers in all criminal proceedings shall comply with the Administrative Procedures for the Electronic Filing, Signing, Verifying, and Servicing of Civil and Criminal Documents adopted by this court and on file with the Clerk, to the extent that said administrative procedures are not otherwise inconsistent with these rule and the Federal Rules of Criminal Procedure or other federal law.

CRLR 55 Records

Excepting contraband, firearms and other sensitive items, or unless the assigned judge otherwise orders, the procedures set forth in CVLR 79¹ shall govern the custody and disposition of exhibits in criminal proceedings before the court.

CRLR 58 Petty Offenses and Other Misdemeanors

- (a) Subject to the limitation of 18 U.S.C. §3401, magistrate judges are specially designated to try persons accused of, and sentence persons convicted of misdemeanor offenses committed within this district. In addition, magistrate judges may dispose of misdemeanor offenses which are transferred to this district under Fed. R. Crim. P. 20. A magistrate judge may direct the probation office to conduct a presentence investigation of any person convicted of a Class A misdemeanor offense and, pursuant to the deadlines set forth in CRLR 32, to render a report to the magistrate judge prior to the imposition of sentence.
- (b) **Appeal from Convictions in Misdemeanor Cases Before the Magistrate Judge.**
- (1) **Notice of Appeal.** Pursuant to 18 U.S.C. §3402 and Fed. R. Crim. P. 58(g)(2)(B), a defendant who has been convicted by a magistrate judge may appeal to a district judge by filing a notice of appeal within fourteen (14) days after entry of judgment.
- (2) **Record.** A transcript, if desired, must be ordered except that, in the absence of a reporter, the transcript must be ordered as directed by the clerk of court. Within thirty-five (35) days after a transcript has been ordered, the original and one copy shall be filed with the clerk. All other documents and exhibits shall be held by the clerk pending the receipt of the transcript.
- Upon receipt of the transcript, the record on appeal shall be deemed complete. If no transcript is ordered within fourteen (14) days after the notice of appeal is filed, or if the parties advise the clerk that no transcript will be ordered, the record on appeal shall be deemed complete fourteen (14) days after the notice of appeal is filed.
- (3) **Assignment to District Judge.** The clerk at the time of filing of the notice of appeal shall assign the appeal to a district judge and shall notify the parties of the filing of the record and of the time for filing of briefs in accordance with this rule.
- (4) **Briefs.** The appellant shall serve and file a brief within twenty-one (21) days after the record on appeal is complete. The appellee shall serve and file a responsive brief within twenty-one (21) days after service of the brief of the appellant. The appellant may serve and file a reply brief within seven (7) days after service of the appellee's brief. Each brief shall not exceed twenty (20) pages in length unless otherwise ordered by the court. These period may be altered by order of the assigned district judge.

¹ This CVLR number is subject to change, pending finalization by the Civil Rules Committee.

(5) Notice of Hearing. Oral argument may be scheduled at the discretion of the assigned district judge.

CRLR 59 Matters Before a Magistrate Judge

- (a) The Magistrate Judge shall have the inherent power of a judicial officer to implement and enforce his own orders and to regulate proceedings before him, to the extent permitted by law.
- (b) Among other duties set forth in these rules, a magistrate judge is also authorized to:
- (1) set bail for material witnesses;
 - (2) review applications for and issue orders relating to the installation of a pen register, trap and trace, transponder or other surveillance device;
 - (3) conduct extradition proceedings;
 - (4) conduct voir dire and select petit juries for the district judge in felony cases with the consent of the parties;
 - (5) issue subpoenas, writs of *habeas corpus ad testificandum* or *ad prosequendum*, or other orders or warrants necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings;
 - (6) approve personal and corporate surety bonds and bonds requiring personal sureties;
 - (7) exonerate or forfeit bonds, set aside forfeitures, and reinstate bail in proceedings pending before the magistrate judge;
 - (8) conduct *Nebbia* hearings;
 - (9) administer the Central Violations Bureau and recommend amendments to the bail schedule;
 - (10) order examinations to determine mental competency and conduct all further proceedings thereunder related to the issue of competency;
 - (11) rule upon motions to require defendants to participate in a line-up, furnish handwriting samples or furnish voice exemplars;
 - (12) conduct initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency;
 - (13) review and issue orders relating to applications for the sealing of indictments and affidavits for search warrants and complaints and warrants, and other applications for sealing documents related to cases prior to the assignment of the case to a district judge; and
 - (14) perform any additional duty not inconsistent with the Constitution and laws of the United States