

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Entered November 26, 1991

IN THE MATTER OF
GUIDELINES FOR COORDINATION
OF CRIMINAL PROCEDURES

ORDER NO. 91-26

ORDER

Since December, 1983, criminal procedures in the Houston Division involving this Court, the U. S. Attorney, the Pretrial Services Agency and the Federal Law Enforcement Agencies have been coordinated by guidelines issued by the U. S. Magistrate Judges. The existing guidelines have been revised, and "Guidelines for Coordination of Criminal Procedures", in the form attached to this Order, are **ADOPTED** by the Court.

One of the objectives of the guidelines has been to establish procedures to insure that a person, when arrested, is taken without unnecessary delay before the nearest available federal magistrate judge, as provided by Rule 5(a), Federal Rules of Criminal Procedure. The Pretrial Services Agency coordinates the appearance of the defendant before the magistrate judge and obtains and verifies information pertaining to pretrial release for reporting to the Court at the initial hearing.

It is ORDERED that an arresting agency, or a receiving agency if the defendant surrenders, shall give prompt notice to the Pretrial Services Agency, as provided in the Guidelines for Coordination of Criminal Procedures, of the arrest or surrender of the defendant, his location, and his availability for interview and initial appearance in court.

DONE at Houston, Texas, this 25th day of November, 1991.

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JAMES DEANDA, CHIEF JUDGE
UNITED STATES DISTRICT COURT

GUIDELINES FOR COORDINATION OF CRIMINAL PROCEDURES
U. S. MAGISTRATE JUDGES, U. S. ATTORNEY, PRETRIAL
SERVICES AGENCY & FEDERAL AGENCIES
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

I. PROCEDURE

Regular court hearings on criminal matters are docketed before the duty magistrate judge at 10 a.m. and 2 p.m. each day. Special hearings at other times may be scheduled by the duty magistrate judge upon advance request. Each magistrate judge has a calendar criminal duty month, alternating each fourth month. Agencies will present matters to the duty magistrate judge or in his absence to the designated substitute magistrate judge.

A. Documents

1. Since the U. S. Attorney is responsible for prosecuting federal offenses, every criminal proceeding must have his prior authorization. His "approval" herein includes authorization, review, revision and final approval of the complaint, warrant or any other form of pleading to be presented by an agent. The authorizing AUSA will initial the pleading to indicate approval. The judicial branch, including magistrates judges and court staff, is not permitted to draft, prepare, revise or type criminal pleadings. Each agency should maintain a supply of current printed criminal forms.
2. Advance planning must be made to present papers at the U. S. Courthouse (515 Rusk) during normal business hours; processing must be performed there. When an agency presents papers outside the Courthouse, there must be appropriate quantities for execution and distribution. The magistrate judge will retain the documents and deliver them to the Case Manager for docketing and distribution.
3. If possible, advance notice should be given to the duty magistrate judge and Case Manager when matters are anticipated after normal business hours or outside the Courthouse. Estimated time of presentation should be established, with follow-up notifications of any changes.

B. Arrest Without Warrant

1. During regular business hours - refer to C. and E. below.
2. After regular business hours
 - a. Agent prepares complaint for approval by Assistant United States Attorney.
 - b. Following immediately upon completion of the administrative procedures incident to arrest, the arresting agent will turn arrestee over to United States Marshal for custody.
 - c. Agent contacts duty magistrate judge or state magistrate if applicable for presentation of complaint and determination of probable cause during daytime hours.

- d. Magistrate judge will indicate on complaint time and date accepted by him or her, as well as an express statement whether or not probable cause is found.
- e. Arrestee will be brought before the duty magistrate judge for initial appearance at the 10 a.m. setting on the first business day after arrest. Refer to E.(3) below.

C. Complaint

1. Preparation by agency and approval by U. S. Attorney, Criminal Division.
2. Submit all documents to Case Manager of duty magistrate judge for processing:
 - a. Assign docket number and prepare docket sheet.
 - b. Review forms for approval, content and sufficiency of copies.
 - c. If Case Manager of duty magistrate judge not available, processing by another deputy clerk.
3. Case Manager will accompany agent to magistrate judge for verification, execution and sealing.
4. Case manager will retain original complaint and warrant and copies for distribution; other copies returned to agent.

D. Indictment or Information

1. U. S. Attorney prepares order for issuance of bench warrant or summons, with suggested conditions of release; execution by duty magistrate judge.
2. Original order to Criminal Clerk for issuance of warrant or summons; copy to Pretrial Services Agency (PSA), with copy of indictment or information.
3. U. S. Marshal serves summons or executes warrant.
4. Criminal Clerk refers case file to Case Manager of duty magistrate judge.

E. Arrest and Initial Appearance of Defendant

Initial appearance of defendant before the duty magistrate judge should be made at either of the regular hearings scheduled daily at 10 a.m. and 2 p.m.

1. The arresting or receiving agency will give prompt notice to the Pretrial Services Agency (PSA) of the detention and location of the defendant, and will have the defendant available for interview by PSA in sufficient time before next regular hearing before the magistrate judge. The agency is responsible for detention and presentation of defendant until transferred to custody of U. S. Marshal at or prior to the initial appearance.
 - a. PSA will interview defendant and confer with U.S. Attorney and agency to collect and verify information to be considered for pretrial release. where charges originate outside this division, PSA will consult with Pretrial Services Agency in the charging district to

determine setting or recommendation of detention or conditions of release.

- b. If defendant requests counsel and is indigent, PSA will provide financial affidavit for execution by defendant and will notify Federal Public Defender of request for representation.
- c. PSA will notify Case Manager of duty magistrate judge to schedule appearance of defendant. If arrested on warrant, Case Manager must prepare papers for initial appearance; if arrest without warrant, complaint must be executed and filed (see C above), and papers must be prepared.
- d. PSA will advise the duty magistrate judge verbally, by written report, or personally at the initial appearance, of information regarding defendant and PSA's recommendation for conditions of release.
- e. Where defendant surrenders voluntarily or in response to summons, PSA will proceed as outline in Subsections (a)-(d) above.

2. Untimely presentation or notification

- a. Agency and PSA processing are encouraged to be planned so defendant will appear at a scheduled docket.
- b. Without advance notice and agreement, U. S. Marshal (USM) is not available to take custody of defendant from the arresting agent after the last trip of prisoners to jail facility, usually departing from the Courthouse at 4:00 p.m-

3. Late afternoon, weekend and holiday arrests.

- a. For late afternoon arrests, near or after U. S. Marshals deadline, arresting agent should transport defendant to jail facility and return him for the next docket appearance. If defendant is to be released, advise Case Manager, USM and PSA in advance for special appearance before magistrate judge.
- b. A defendant arrested after 4:00 p.m. on the last working day before a weekend or a holiday will be taken by the arresting agent directly to the jail facility. The arresting agency will give prompt notice to the Pretrial Services Agency (PSA) of the arrest and location of the defendant. Similar notice will be given for a defendant who surrenders. PSA will initiate and coordinate internal procedures to schedule the initial appearance of the defendant before the duty magistrate judge.
- c. On warrantless arrests, the agent will prepare the complaint for presentation to magistrate judge in accordance with I.B. above.

F. Search Warrant or Seizure Warrant

- 1. Approval by U. S. Attorney; request and order if affidavit and warrant to be sealed.
- 2. Process and execution - same as C, 2-4 above; original warrant returned to agent.

3. Advance notification if telephonic search warrant is anticipated.
 4. Within the period prescribed therein, the original warrant, whether executed or not, will be delivered by the agent to the Case Manager for completion of return before the magistrate judge.
- G. Electronic Surveillance or Tracking Device Warrant
1. Approval by U. S. Attorney; request and order if affidavit and warrant to be sealed.
 2. Process and execution - same procedures as C, 2-4 above; original warrant returned to agent.
 3. Renewal or extension - same procedures as C, 2-4 above.
 4. Normally no return is required.
- H. Pen Register, Trap and Trace, Telephone Toll Records or Bank Records Orders
1. Approval by U. S. Attorney; request and order if application and order to be sealed.
 2. Process and execution - same procedures as C, 2-4 above; original order returned to agent.
 3. Renewal or extension - same procedures as C, 2-4 above.
 4. Normally no return is required.
- I. OSHA Warrant
1. Preparation by OSHA.
 2. Process and execution - same procedures as C, 2-4 above; original warrant returned to agent.
 3. Normally no return is required.
- J. IRS Warrant or Summons (Will Have Miscellaneous Docket Number)
1. Approval by U. S. Attorney, Civil Division.
 2. Process and execution - same procedures as C, 2-4 above; original warrant or summons returned to agent.
 3. Normally no return is required.
- K. Writ of Habeas Corpus Ad Prosequendum/Testificandum
1. Preparation by U. S. Attorney
 2. Submit application and writ to Case Manager.
 3. Case Manager will present documents to magistrate judge for execution.
 4. Case Manager will retain original application and copy of writ; original and true copy of writ delivered to U. S. Marshal.

II. EMERGENCY, CRITICAL AND NON-ROUTINE REQUIREMENTS

Emergency critical or non-routine matters may develop which require special hearings. Normally these proceedings will be conducted in the same manner as regular docketed hearings and will require full court and support personnel. Advance planning must be made to arrange the presence of personnel.

III. U. S. DISTRICT JUDGES

U. S. District Judges inherently have the powers to perform all the acts outlined above for magistrate judges, as well as exclusive powers, such as authorization of telephonic wire-taps. Inquiries regarding presentations to District Judges should be directed to the Clerk of the District Court.

IV. EFFECTIVE DATE

These guidelines have been modified and adopted by the United States District Court, Southern District of Texas, as the official operational policy for the Houston Division, effective November 21, 1991 (superseding the guidelines as revised June 1, 1988).