

## A GUIDE

### For CRIMINAL PRACTICE Before

**THE HONORABLE WILLIAM M. SKRETNY**  
**United States District Judge**  
**Western District of New York**

#### **I. INTRODUCTION**

The following guidelines are intended to aid the Bar in criminal practice before Judge Skretny. These guidelines are not intended to govern criminal practice before other judges in the Western District of New York. Additionally, these guidelines are not intended to supersede the Federal Rules of Criminal Procedure ("Federal Rules") or the Rules of Criminal Procedure of the United States District Court for the Western District of New York (effective May 1, 2003) ("Local Rules"), all of which remain in full force and effect.

Counsel should consult the Local Rules of Criminal Procedure, which specifically address criminal practice and procedure in the Western District of New York and this district's Plan for Achieving Prompt Disposition of Criminal Cases.

#### **II. MOTIONS**

In addition to scheduling and discovery matters, Judge Skretny will refer various motions to a Magistrate Judge. The Magistrate Judge will be directed to conduct hearings, take testimony, hear arguments and submit proposed findings of fact and recommendations to Judge Skretny pursuant to 28 U.S.C. §636(b)(1)(B). Upon referral of the matter, a Magistrate Judge will notify the parties concerning scheduling.

##### Motion Practice Before Judge Skretny

Motion papers filed with Judge Skretny must comply with Local Rules 49.1.

##### 1. Motion Days

Motion days for Judge Skretny are Monday through Friday. **Counsel must contact Judge Skretny's Courtroom Deputy to schedule a return date and/or oral argument date before filing and serving papers.**

2. Motion Papers

The time requirements for filing and serving motion papers are outlined below.

A moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fifteen (15) business days prior to the return date of the motion.

The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least eight (8) business days prior to the return date.

Reply papers shall be filed and served at least three (3) business days before the return date.

Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least ten (10) business days prior to the return date of the motion.

Answering affidavits and memoranda shall be served and filed at least three (3) business days prior to the return date.

Sur-reply papers shall not be permitted unless a party is directed otherwise by the Court.

Counsel should adhere to these requirements unless Judge Skretny issues a superseding scheduling order.

Failure to file timely opposing or reply papers may result in an adverse ruling, denial of a request to file such papers or the imposition of sanctions against offending counsel.

3. Memorandum of Law

On all dispositive motions, parties must submit a memorandum of law in support of their respective motion or response. Failure to submit a memorandum of law to Judge Skretny will delay the disposition of the motion. Judge Skretny may, on other occasions, require that memoranda of law be submitted with respect to a particular matter before the Court. The parties are not to supplement memoranda of law by unsolicited letters to the Court. All supplemental papers shall be filed with the Clerk of the Court and served, or they will not be considered by Judge Skretny.

4. Memoranda/Page Limitations

Memoranda supporting or opposing a motion are limited to twenty five (25) pages in length. Reply memoranda are limited to ten (10) pages in length. Leave of Judge Skretny must be obtained to depart from these limitations. The Court may refuse to consider memoranda that fail to comply with these limitations. All memoranda must contain parallel citations.

5. Cross-Motions

Cross-motions must be filed and served simultaneously with papers in opposition to the original motion. Responses must be filed and served simultaneously with the reply to the original motion. If a reply to the original motion was not contemplated, Judge Skretny will issue a scheduling order.

6. Proposed Orders

Counsel may be required to submit a proposed order for consideration by Judge Skretny with motion papers.

7. Motion Scheduling

To the extent possible, Judge Skretny will hear motions on the return dates originally scheduled. However, if it becomes necessary for Judge Skretny to adjourn the motion to another date, the Courtroom Deputy will notify each party of any such change as far in advance of the original return date as possible.

8. Adjournments

All adjournments, extensions of time and postponement of sentencing must be requested by written motion and require a showing of good cause. Parties seeking an adjournment, extension or postponement should first contact the opposing parties to obtain their consent. If all parties consent, the party seeking the adjournment or extension shall file with the Clerk of the Court and serve its motion with an affidavit indicating that all parties have consented and setting forth the reason the adjournment, extension or postponement is being sought. A return date, if necessary, will be set by the Court upon receipt of the motion.

If the moving party cannot obtain the consent of the opposing parties, the moving party shall contact the Courtroom Deputy for a return date, and include the return date in its motion.

Nunc pro tunc requests for adjournment or extensions will be considered by the Court only in extraordinary circumstances.

Letters or telephone calls requesting adjournments or extensions will not be considered by the Court.

**EXCEPT IN EMERGENCY SITUATIONS, DO NOT CONTACT THE JUDGE'S LAW CLERKS TO REQUEST AN ADJOURNMENT.**

9. Personal Appearances

On all motions returnable before Judge Skretny, counsel in support of and opposing the motion must appear before Judge Skretny on the motion return date, or other date Judge Skretny has set for the motion to be heard.

10. Oral Argument

Counsel desiring oral argument should so request in their motion papers. Such request must contain a statement estimating the amount of time counsel requires for argument. It is Judge Skretny's practice, except when the nature of the motion dictates otherwise, to allot no more than fifteen minutes per party for oral argument. Judge Skretny may notify the parties that oral argument will not be heard on any motion and that the motion is deemed submitted.

Oral argument will begin promptly at 9:00 a.m. or as otherwise scheduled. When oral argument has been requested, counsel for each party must appear to argue the motion or must notify the Courtroom Deputy that, by mutual consent of the parties, request for oral argument has been withdrawn. The motion will then be submitted.

**III. ROLE OF THE MAGISTRATE JUDGE**

It is Judge Skretny's policy in criminal cases to utilize the services of a United States Magistrate Judge to the fullest extent allowable under 28 U.S.C. §636, the Federal Rules and the Local Rules.

A. Arraignments

Arraignments will be held before a Magistrate Judge pursuant to Local Rule 12.1(a). Arraignments will be held before Judge Skretny only if a Magistrate Judge is unavailable.

B. Discovery

Counsel for the government and the defendant shall attempt to effect voluntary discovery in compliance with Federal Rule 16. In addition, motions for discovery under Federal Rule 16 and all other pretrial motions should be filed within the time prescribed in the scheduling order issued by the Magistrate Judge. All motions, other than dispositive motions and motions to suppress evidence, should be made returnable before the designated Magistrate Judge, who will hear and decide them.

C. Status Conferences

After arraignment and discovery proceedings before a Magistrate Judge have concluded, that Magistrate Judge shall issue an order directing counsel to meet with Judge Skretny to discuss remaining pretrial matters, including the bringing of any further pretrial motions pursuant to Federal Rule 12(b). To the extent practicable, such meeting with Judge Skretny will take place the first business day after the initial pretrial proceedings before the Magistrate Judge have concluded.

D. 12(b) Motions/Hearings

Counsel shall make motions pursuant to Federal Rule 12(b) in writing. Judge Skretny, in the exercise of his discretion, may refer such motions back to a Magistrate Judge for disposition, or, when required by 28 U.S.C. §636(b)(1)(A) & (B), for that Magistrate Judge's proposed findings of fact and recommendations for disposition of the motion(s).

E. Consent to Try Misdemeanor Cases Before A Magistrate Judge

Counsel are reminded that, pursuant to 18 U.S.C. §3401(b), persons accused of misdemeanors may consent to a jury or non-jury trial before a United States Magistrate Judge. Defense counsel are encouraged to recommend this option to their clients to facilitate the speedy disposition of such cases.

Counsel should consult Federal Rule 58 “Petty Offenses and Other Misdemeanors” for the procedures to be followed for trials and other dispositions before United States Magistrate Judges.

**IV. SCHEDULING CONFERENCE**

After all discovery and motion proceedings and after all hearings have concluded, counsel shall meet with Judge Skretny for a scheduling conference. To the extent practicable, such conference will take place the first business day following the conclusion of pretrial proceedings or the rendering of decisions in connection therewith. The attorney who is responsible for trying the case for each party must appear at the conference (not a substitute).

At the conference, Judge Skretny will set a trial date, a pretrial conference date and discuss all other related matters, including the status of plea possibilities. Counsel for the government shall be responsible for keeping the Judge current regarding the government's obligations under the Speedy Trial Act, 18 U.S.C. §3161 et seq. Criminal trials have a scheduling priority and the trial date set at this conference may not be adjourned, except for cause excludable under the Speedy Trial Act, 18 U.S.C. §3161(h).

To the extent possible, all trials will begin on a Tuesday, with jury selection to begin at 9:30 a.m., or at a time consistent with the jury utilization needs of the Judges and Magistrate Judges on that day.

## **V. PRETRIAL CONFERENCES**

Whenever practicable, before trial is scheduled to commence Judge Skretny will conduct a pretrial conference. Prior to the pretrial conference, counsel will receive Judge Skretny's final pretrial letter directing counsel's preparation for the final pretrial conference

Counsel must be prepared to discuss the following matters at the conference:

A. Status of Plea Negotiations

B. Voir Dire Procedures.

Judge Skretny will explain to counsel his procedures for jury selection. Counsel will be given the opportunity to submit any particular questions counsel wishes the Judge to pose to potential jurors. Counsel may be permitted to pose limited questions to potential jurors.

C. Exhibits.

Counsel should make arrangements to meet with the deputy clerk to premark exhibits as required by Local Rule 26(a). To the extent possible, the parties should attempt to stipulate exhibits into evidence.

D. Witnesses.

If appropriate, the parties shall exchange prospective witness lists, accompanied by a short statement of the expected testimony of each witness.

E. Evidence.

Counsel should alert Judge Skretny as to any unusual or complex evidentiary issues which may arise at trial.

F. Jury Charge and Verdict Forms.

Counsel for the government shall provide to the Court and to opposing counsel any proposed jury charges. Counsel for the defendant(s) shall file a response to the government's proposed jury charges. To the extent possible, a copy of the proposed charges should be provided to the Court on a 3½" floppy disk in a word processing format, preferably WordPerfect. Counsel are reminded that these charges are proposals and Judge Skretny will inform counsel of the final jury charge prior to closing arguments and will provide counsel with a complete written charge at that time.

Both parties shall provide to the Court and each other their proposed verdict form, if any.

G. Briefs and Legal Memoranda.

Counsel will be given an opportunity to submit a trial brief or legal memorandum.

Additionally, counsel for the government shall be responsible for the following matters at the pretrial conference:

H. Uncharged Misconduct

The government shall provide to defense counsel any evidence of uncharged misconduct which the government intends to introduce at trial pursuant to Federal Rule of Evidence 404(b). If necessary, the Court will set a final cut-off date for such production;

I. Brady and Jencks Act Materials

The government shall inform the Court of the time at which it intends to disclose to the defendant any material required to be disclosed under Brady v. Maryland and 18 U.S.C. §3500, if such disclosure has not yet occurred.

J. Motions In Limine

All motions in limine must be filed and served prior to the date of the final pretrial conference. The decision whether to file a motion in limine is committed to the discretion of counsel; however, such a motion should be made if resolution of the issue would require more than a de minimis amount of time during trial.

## **VI. FINAL PRETRIAL CONFERENCE**

One day before trial is scheduled to commence, counsel shall meet with Judge Skretny for a final pretrial conference to discuss any matters enumerated in IV, above, which remain unresolved, and to discuss any other matters which would simplify or expedite the trial or which counsel deem important.

## **VII. JURY TRIAL AND JURY SELECTION DATES**

To the extent possible, Judge Skretny will schedule jury trials to begin on Tuesdays, with jury selection to begin at 9:30 a.m., or at a time consistent with the jury utilization needs of the Judges and Magistrate Judges on that day.

## **VIII. SENTENCING**

Pursuant to section 4 of Procedure to Assist Practitioners before United States District Court Judges Richard J. Arcara and William M. Skretny in Proceedings under the Sentencing Reform Act of 1984 in the Western District of New York, Statements of the Parties With Regard to Sentencing Factors, including Statements with no objections, must be filed with the Clerk of the Court with a copy to Judge Skretny's chambers prior to twenty-four (24) days of sentencing. Failure to comply with this requirement will result in the Court's assumption that the parties have no objections to the Presentence Report.

All letters and other submissions to the Court for consideration in sentencing shall be organized under one cover and submitted by counsel as one exhibit prior to seven (7) days of sentencing; otherwise the Court, in its discretion, may not consider such letters and submissions.

**JUDGE SKRETNY'S STAFF**

United States Courthouse  
68 Court Street  
Buffalo, New York 14202

<u>Room</u>		<u>Telephone</u>
Part IV 5th Floor	Courtroom	
507	Judge Skretny	332-7820
507	Court Secretary Jennifer C. Dzielski	332-7820
507	Law Clerks	332-7820
507	Courtroom Deputy Mary E. Labuzzetta	332-7824
507	Facsimile	332-7825
126	U.S. Court Reporter Michelle McLaughlin	332-3560
304	Court Clerk's Office Open Monday through Friday 9:00 a.m. to 5:00 p.m. for filing documents.	332-1700