A Federal Criminal Case Timeline

The following timeline is a very broad overview of the progress of a federal felony case. Many variables can change the speed or course of the case, including settlement negotiations and changes in law. This timeline, however, will hold true in the majority of federal felony cases in the Eastern District of Virginia.

Initial appearance:

Felony defendants are usually brought to federal court in the custody of federal agents. Usually, the charges against the defendant are in a criminal complaint. The criminal complaint is accompanied by an affidavit that summarizes the evidence against the defendant.

At the defendant's first appearance, a defendant appears before a federal magistrate judge. This magistrate judge will preside over the first two or three appearances, but the case will ultimately be referred to a federal district court judge (more on district judges below).

The prosecutor appearing for the government is called an "Assistant United States Attorney," or "AUSA." There are no District Attorney's or "DAs" in federal court. The public defender is often called the Assistant Federal Public Defender, or an "AFPD."

When a defendant first appears before a magistrate judge, he or she is informed of certain constitutional rights, such as the right to remain silent. The defendant is then asked if her or she can afford counsel.

If a defendant cannot afford to hire counsel, he or she is instructed to fill out a financial affidavit. This affidavit is then submitted to the magistrate judge, and, if the defendant qualifies, a public defender or CJA panel counsel is appointed. The affidavit is submitted under the penalty of perjury, and must be complete.

The magistrate judge informs the defendant of the charges and the statutory maximum sentence. The "statutory maximum" is the most jail time that a defendant can receive -- it is rarely the actual sentence that is given.

The magistrate judge then turns to the issue of release, or bail.

Bail:

If the government wants the defendant detained, the prosecutor will move for detention at the initial appearance. Bail in federal court is controlled by the Bail Reform Act, 18 USC § 3141 et seq.

There are some cases where the government gets an automatic three (court) days to prepare for a bail hearing. These are called "presumption" cases, for offenses such as drug dealing, child sex offenses including child pornography, and bank robbery. See 18 USC § 3142 (f)(1), (2). The government may also try to prove that the defendant is a flight risk, or a danger to the community – in those cases, the government also gets three days to prepare for the bail hearing. The defense can also ask for up to five days to prepare for the bail hearing.

Defendants seeking bail are then referred to a United States Pretrial Services Officer for a pretrial services interview. The Pretrial Services Officer who interviews the defendant prepares a short life background and criminal history for the court.

A magistrate judge must decide whether or not there are any conditions of bond to reasonably assure the defendant is not a flight risk and is not a danger to the community. Most bonds in federal court do not require the posting of money or property. They are called "unsecured" bonds. If the defendant is released at the bail hearing, it is often with conditions. Typical conditions include reporting to United States Pretrial Services, drug testing, and district-wide travel restrictions .

Arraignment:

Within 10 days of the initial appearance for in-custody defendants, and within 20 days of initial appearance for out-of-custody defendants, a defendant is entitled to a preliminary hearing or arraignment. See Fed. R. Crim. Pro. 5.1. There are federal grand juries sitting at all times in the Eastern District of Virginia, so a defendant may be arraigned on an indictment at the arraignment hearing, instead of having a preliminary hearing.

An indictment is a formal charging document that contains the federal charges faced by the defendant. It is reviewed by a grand jury, and if there is sufficient evidence to force the defendant to face the charges the grand jury signs off on the indictment (or "returns the indictment.") There can be additional indictments brought in one criminal case – later indictments are called "superseding indictments."

The arraignment is held before the district court judge who will preside over the case. A district court judge, or "Article III" judge, is appointed by the President, confirmed by the Senate, and serves for life. The district court judge will preside over the rest of the case, for the later trial or plea hearing, and for sentencing if necessary.

Pretrial Motions:

There is an enormous variety of pretrial motions in a federal case. These can include motions to dismiss charges or suppress evidence, constitutional challenges, motions for a bill of particulars, motions to strike and motions in limine, and severance motions. See generally Fed. R. Crim. Pro. 12.

The most typical pretrial motion is a suppression motion. In these types of motions, the defense moves to suppress evidence, or to prevent the government from using it at trial. These motions can include suppression of evidence, like a gun or drugs seized in a search, or statements, like a defendant's confession.

The defendant's motion outlines the facts and law in support of the claim for relief. The prosecutor usually has about ten days to respond to that motion, and the defense has a right to a final written reply. Sometime

thereafter, the magistrate hears argument on the motion and takes witness testimony if needed. This is called an evidentiary hearing to resolve any disputed facts.

Plea:

In the majority of federal cases, the defendant pleads guilty and does not go to trial. A defendant can plead guilty "straight up," or without a plea agreement, or can strike a deal with the prosecutor and have a written contract (a plea agreement) drafted with the terms of the plea.

A defendant has a right to be informed of every plea offer made by the government. The defense attorney will also explain the terms of the plea agreement, will discuss a defendant's sentencing exposure at trial or through the proposed plea, and will review the good and bad evidence that awaits a defendant at trial. Ultimately, however, it is the defendant's decision alone on whether to take a plea offer from the prosecutor.

Trial:

A proportion of federal cases go to trial. The typical federal trial involving appointed counsel lasts two to three days to a week. At the trial, the defendant has the right to testify – or to not testify, and if he or she does not testify, that cannot be held against the defendant by the jury. The defendant also has the right to "confront" (i.e., cross-examine) government witnesses, and can use the subpoena power of the court to secure evidence or witnesses for trial.

The defendant need not prove him or herself innocent; the government bears the burden of proving the defendant guilty beyond a reasonable doubt as to every element of a charge. Only if a jury of twelve citizens is unanimous as to every element of a charged offense will a defendant be found guilty of that charge. A "not guilty" verdict will end the case.

Sentencing:

If a defendant is convicted by either pleading guilty to a charge, or by being found guilty after a trial, sentencing will take place about seventy-

five days later if the defendant is in custody, or about ninety days later if the defendant is out of custody. See Fed. R. Crim. Pro. 32. A defendant convicted of some offenses will likely be remanded into custody after trial, but continued bond is allowed for less serious convictions.

Sometime after the conviction, the defendant will be interviewed by a Probation Officer, and defense counsel may be present. The Probation Officer will then take information from that interview, from forms submitted by the defendant, and from material provided by the government, and will prepare a draft pre-sentence report.

The draft pre-sentence report (or PSR) is provided to defense counsel and the government before sentencing. The parties must make factual or legal objections to the report within ten days of receipt. The court does not receive a copy of this draft report – the goal is to resolve as many factual or legal errors as possible before a PSR is provided to the judge.

Before sentencing, the final PSR is provided to the judge. This final PSR describes the defendant's background, describes the offense, and calculates the Federal Sentencing Guidelines. It lists any unresolved objections.

Also before sentencing, the parties must submit sentencing memoranda to the court arguing for their proposed sentences.

At the sentencing hearing, the district court judge must resolve any remaining objections to the PSR, make factual findings, and must consider the factors of the key sentencing statute, 18 USC § 3553(a). Among the factors that the court must consider are the Federal Sentencing Guidelines. In addition to a custodial sentence, the court will also decide how much restitution is owed, and whether a criminal fine is appropriate.

Before imposing the sentence, the court must permit the defendant to speak (or "allocute.") See Fed. R. Crim. Pro. 32(i)(4). The defendant's counsel will have good advice on what to say at this point in the sentencing hearing. A federal sentence can range from probation to months or years in federal prison. If a sentence of imprisonment is imposed, the district judge will also impose a term of supervised release

whereby a defendant must abide by the law while under post-release supervision or risk additional punishment (see below).

Appeals and Petitions for Writs of Certiorari:

If the defendant did not waive the right to appeal in a plea agreement, the defense may appeal both the conviction and the sentence imposed. The public defender will continue to represent the defendant, for free, during the appeal. There is a very short period during which the defense must state its intention to appeal ("notice" of appeal), so the subject should be discussed immediately after sentencing. See Fed. R. App. Pro. 4(b).

If the defendant does not win the appeal in the United States Court of Appeals for the Fourth Circuit, he or she can file a petition for writ of certiorari with the Supreme Court of the United States. Ordinarily, the public defender would continue to represent the defendant during the petition for certiorari and, if the writ is granted, during the briefing and oral argument in the Supreme Court.

Supervised Release and Violations:

Almost every federal offense carries with it a term of supervised release. Supervised release is like "probation:" a defendant must report to the Probation Office, submit to drug testing and abide by the law and standard conditions of supervised release.

There are, unfortunately, many ways to violate supervise release – not submitting monthly reports, having a dirty drug test, or being arrested for new criminal conduct.

When a Probation Officer files supervised release charges, they are contained in a charging document called a "Petition." If the defendant cannot afford an attorney, the public defender will be appointed for these revocation proceedings.

The defendant has much more limited rights in revocation proceedings than when facing substantive federal charges. For example, at a revocation hearing there is no jury. The government need only prove the charges by

a preponderance, instead of beyond a reasonable doubt. Also, hearsay is admissible, so a Probation Officer can simply repeat the allegations of other witnesses in the hearing.