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## FEDERAL RULES OF PROCEDURE FOR UNITED STATES MAGISTRATES

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Effective May 19, 1969

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The Federal Rules of Procedure for United States Magistrates were prescribed by the Supreme Court of the United States pursuant to 18 U. S. C. § 3402. (References herein to Title 18 of the United States Code (except for § 1) are to Supplement IV of the 1964 edition.)

These rules became effective as of the date of the Court's order, *post*, p. 990.

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SUPREME COURT OF THE UNITED STATES

MONDAY, MAY 19, 1969

ORDERED that the following rules, to be known as the Federal Rules of Procedure for United States Magistrates, be and they hereby are prescribed pursuant to Section 3402 of Title 18, United States Code. These rules shall take effect as of the date of this order.

MR. JUSTICE BLACK casts no vote as to these rules.

## FEDERAL RULES OF PROCEDURE FOR UNITED STATES MAGISTRATES.

### *Rule 1. Scope.*

These rules apply to proceedings before United States magistrates and in the district courts under 18 U. S. C. §§ 3401, 3402, relating to trial of minor offenses by magistrates, and appeal from conviction in such cases.

### *Rule 2. Applicability of district court rules.*

Procedures not provided for herein shall be governed by the Rules of Criminal Procedure for the United States District Courts to the extent they may be applicable.

### *Rule 3. The complaint.*

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a United States magistrate.

### *Rule 4. Warrant or summons upon complaint.*

(a) *Issuance.*—If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it or a summons for the appearance of the defendant shall issue in lieu thereof. The finding of probable cause may be based upon reliable hearsay. Before ruling on a request for a warrant the United States magistrate may require the complainant to appear personally and may examine under oath the complainant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recorded by suitable recording equipment. To carry out the policy against unnecessary detention of defendants prior to trial, the magistrate

may issue a summons instead of a warrant and shall issue a summons instead of a warrant whenever requested to do so by the attorney for the government. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) *Form.*

(1) *Warrant.*—The warrant shall be signed by the United States magistrate and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available United States magistrate.

(2) *Summons.*—The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a United States magistrate at a stated time and place.

(c) *Execution or service; and return.*—The warrant shall be executed, the summons served, and return made as provided for in rule 4 (c) of the Rules of Criminal Procedure for the United States District Courts.

*Rule 5. Initial appearance before the United States magistrate.*

(a) *Filing of complaint.*—If a person arrested without a warrant is brought before a United States magistrate, a complaint shall be filed forthwith. When a person, arrested with or without a warrant or given a summons, appears initially before the United States magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of this rule.

(b) *Statement by the United States magistrate.*—The United States magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to

obtain counsel, and of the circumstances under which he might secure pretrial release under 18 U. S. C. § 3146. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The United States magistrate shall allow the defendant reasonable time and opportunity to consult counsel.

(c) *Minor offenses.*—If the charge against the defendant is a minor offense triable by the United States magistrate under 18 U. S. C. § 3401, the United States magistrate shall carefully explain to the defendant that he has a right to trial in the district court, and shall not proceed to call upon the defendant to plead or try the case unless the defendant, after such explanation, signs a written consent to be tried before the United States magistrate that specifically waives both a trial before the district court and any right to trial by jury that he may have. Proceedings shall be taken down by a court reporter or recorded by suitable sound recording equipment.

(d) *Offenses not triable by the United States magistrate.*—If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead and the United States magistrate shall proceed as follows:

(1) *Right to preliminary examination.*—The United States magistrate shall inform the defendant of his right to a preliminary examination. A defendant is entitled to a preliminary examination, unless waived, when charged with any offense which is to be tried in the district court including either a minor offense or a petty offense. If the defendant waives preliminary examination, the United States magistrate may forthwith hold him to answer in the district court. If the defendant does not waive examination, the United States magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in

any event not later than the periods prescribed in 18 U. S. C. § 3060.

(2) *Pretrial release.*—To achieve the policy against unnecessary detention of defendants prior to trial, the United States magistrate shall, at the earliest opportunity, authorize the release of the defendant where appropriate under the terms provided by these rules and by 18 U. S. C. § 3146.

*Rule 6. Arraignment.*

If the defendant consents in writing to be tried by the United States magistrate, the magistrate shall take the defendant's plea to the charge set forth in the complaint. If the defendant indicates a desire to plead guilty or nolo contendere, the magistrate shall proceed in accordance with the requirements of rule 11 of the Rules of Criminal Procedure for the United States District Courts. If the defendant pleads not guilty, the magistrate shall either conduct a trial immediately or fix a time for the trial.

*Rule 7. Trial.*

(a) *Date of trial.*—The date of trial shall be fixed at such a time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.

(b) *Procedure.*—The trial shall be conducted as are trials of criminal cases in the district court by a district judge in a criminal case where a jury is waived.

(c) *Record.*—Proceedings under this rule shall be taken down by a court reporter or recorded by suitable sound recording equipment, except that, in the case of a person charged with a petty offense as defined in 18 U. S. C. § 1, the defendant may waive the requirement that a verbatim record be kept.

*Rule 8. Forfeiture of collateral in lieu of appearance.*

When authorized by a local rule of the district court, a magistrate may accept a forfeiture of collateral security, in lieu of appearance, as a proper disposition of a case involving a petty offense as defined in 18 U. S. C. § 1.

CONSENT TO PROCEEDING IN DEFENDANT'S ABSENCE  
AND AUTHORIZATION FOR REPRESENTATIVE  
TO APPEAR

I, the undersigned, agree to have my case brought before the United States Magistrate for the Northern District of California, on the — day of \_\_\_\_\_, 19\_\_\_\_\_, at 2:00 o'clock PM of said day or thereafter, to answer a charge of violating Sec. 13, Title 18, US Code and Section(s) \_\_\_\_\_ of the California Vehicle Code at the Presidio of San Francisco, California and hereby consent to have my case tried before said United States Magistrate on said charge and appoint as my representative \_\_\_\_\_, to appear for me at said time and to do all things necessary to conclude the proceedings in my absence. I understand that I am entitled to be represented by counsel and to elect to be tried before the United States District Court in these proceedings, and that in signing this consent, I waive such rights.

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*Signature of defendant.*

[ ] If you wish to have these proceedings handled in your absence, it will be necessary for you to sign this form and enclose check or money order, made payable to the United States Magistrate in the amount of \$\_\_\_\_\_. This amount will then be forfeited as a fine and the matter terminated.

[ ] This office is in receipt of your check/money order in the amount of \$\_\_\_\_\_. The matter, however, cannot be terminated without your signing this form.

This form must be returned to the address indicated below:

Office of the Post Provost Marshal  
Presidio of San Francisco, California  
Attn. US Courts Liaison NCO

*Rule 9. Docket.*

The United States magistrate's proceedings shall be entered in his docket which shall show: (1) the defendant's written consent to be tried before the United States magistrate; (2) the date of the complaint and upon whose oath it was made; (3) the date of the issue and service of the warrant; (4) the defendant's plea or pleas; (5) the names of the witnesses for the United States

and for the defendant and a condensed summary of the testimony of each and of any documentary evidence received (whenever there is no record kept in accordance with rule 7 (c)); (6) the judgment and sentence of the United States magistrate.

*Rule 10. Probation.*

(a) A magistrate who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate prior to the imposition of sentence.

(b) The probation laws shall be applicable to persons tried by a magistrate under this section, and such officer shall have power to grant probation and to revoke or reinstate the probation of any person granted probation by him.

*Rule 11. Appeal.*

(a) *Notice of appeal.*—An appeal shall be taken within ten days after entry of judgment of conviction. An appeal shall be taken by filing with the United States magistrate a notice in duplicate stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken.

(b) *Record.*—The United States magistrate shall forward to the clerk of the district court the duplicate notice of appeal together with a transcript, tape, or other recording of the proceedings; his docket entries and copies of the complaint, the warrant, the defendant's written consent to be tried before the United States magistrate, and any order concerning bail pending appeal,

certified under his hand and seal. These shall constitute the record on appeal.

(c) *Transcript*.—Within ten days after the filing of the notice of appeal, the appellant shall order from the United States magistrate a transcript of such part of the proceedings not already on file as he deems necessary for inclusion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the appellee a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within ten days after the service of the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. If the appellant shall refuse to order such parts, the appellee shall either order the parts or apply to the district court for an order requiring the appellant to do so. At the time of ordering, a party must make satisfactory arrangements for payment of the cost of the transcript unless an affidavit is made that he is unable to pay or give security therefor, in which case it shall be at the expense of the United States as provided for in 18 U. S. C. § 3401 (e).

(d) *Stay of execution*.

(1) *Imprisonment*.—A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If the defendant is not admitted to bail, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where his appeal is

to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the district court.

(2) *Fine*.—A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the court of appeals upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(3) *Probation*.—An order placing the defendant on probation shall be stayed if an appeal is taken.

(e) *Bail*.—Admission to bail shall be as provided for in 18 U. S. C. § 3148.

(f) *Scope of appeal*.—The defendant shall not be entitled to a trial *de novo* in the district court. The scope of appeal shall be the same as an appeal from a judgment of a district court to a United States court of appeals.

*Rule 12. New trial.*

The United States magistrate, on motion of a defendant, may grant a new trial to him if required in the interest of justice. The United States magistrate may vacate the judgment if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within six months after final judgment, but if an appeal is pending the United States magistrate may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven days after a finding of guilty or within such further time as the court may fix during the seven-day period.

*Rule 13. Correction or reduction of sentence.*

The United States magistrate may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The United States magistrate may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the United States magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The United States magistrate may also reduce a sentence upon revocation of probation as provided by law.