

AMENDMENTS TO RULES OF CRIMINAL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the courts of the United States, as defined in Rule 54 (c); and, whenever specifically provided in one of the rules, to preliminary, supplementary, and special proceedings before United States magistrates and at proceedings before state and local judicial officers.

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 magistrate.

Rule 4. Warrant or summons upon complaint

(b) Form

(1) *Warrant.*—The warrant shall be signed by the 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 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 magistrate at a stated time and place.

(c) Execution or service; and return

(1) *By whom.*—The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) *Territorial limits.*—The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

(3) *Manner.*—The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant, as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

(4) *Return.*—The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to the marshal or other authorized person for execution or service.

Rule 5. Initial appearance before the magistrate

(a) *In general.*—An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by 18 U. S. C. § 3041. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4 (a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before the magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of this rule.

(b) *Minor offenses.*—If the charge against the defendant is a minor offense triable by a United States magistrate under 18 U. S. C. § 3401, the United States magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(c) *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. The 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 general circumstances under which he may secure pretrial release. He shall 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 magistrate shall also inform the defendant of his right to a preliminary exam-

ination. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by statute or in these rules.

A defendant is entitled to a preliminary examination, unless waived, when charged with any offense, other than a petty offense, which is to be tried by a judge of the district court. If the defendant waives preliminary examination, the magistrate shall forthwith hold him to answer in the district court. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if he is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in district court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a federal magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the United States only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

Rule 5.1. Preliminary examination

(a) *Probable cause finding.*—If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the federal magistrate shall forthwith hold him to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses

against him and may introduce evidence in his own behalf. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

(b) *Discharge of defendant.*—If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the federal magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

(c) *Records.*—After concluding the proceeding the federal magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding. The magistrate shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a federal magistrate, the attorney for a defendant in a criminal case may be given the opportunity to have the recording of the hearing on preliminary examination made available for his information in connection with any further hearing or in connection with his preparation for trial. The court may, by local rule, appoint the place for and define the conditions under which such opportunity may be afforded counsel.

(2) On application of a defendant addressed to the court or any judge thereof, an order may issue that the federal magistrate make available a copy of the transcript, or of a portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay or to give security therefor, in which case the expense shall be paid by the Director of the Administrative Office of the United States Courts from available appropriated funds. Counsel for the government may move also that

a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

Rule 6. The grand jury

(b) *Objections to grand jury and to grand jurors*

(1) *Challenges.*—The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) *Motion to dismiss.*—A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U. S. C. § 1867 (e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

Rule 7. The indictment and the information

(c) *Nature and contents*

(1) *In general.*—The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal

conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) *Criminal forfeiture*.—When an offense charged may result in a criminal forfeiture, the indictment or the information shall allege the extent of the interest or property subject to forfeiture.

(3) *Harmless error*.—Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

Rule 9. Warrant or summons upon indictment or information

(b) *Form*

(1) *Warrant*.—The form of the warrant shall be as provided in Rule 4 (b)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court or, if the information or indictment charges a minor offense, before a United States magistrate. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) *Summons*.—The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court or, if the information or indictment charges a minor offense, before a United States magistrate at a stated time and place.

(c) *Execution or service; and return*

(1) *Execution or service.*—The warrant shall be executed or the summons served as provided in Rule 4 (c) (1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or before a United States magistrate.

(2) *Return.*—The officer executing a warrant shall make return thereof to the court or United States magistrate. At the request of the attorney for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the government made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the marshal or other authorized person for execution or service.

(d) *Remand to United States magistrate for trial of minor offense.*—If the information or indictment charges a minor offense and the return is to a judge of the district court, the case may be remanded to a United States magistrate for further proceedings in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

Rule 17. Subpoena

(a) *For attendance of witnesses; form; issuance.*—A subpoena shall be issued by the clerk under the seal of

the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a United State magistrate in a proceeding before him, but it need not be under the seal of the court.

(g) *Contempt*.—Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a United States magistrate.

Rule 31. Verdict

(e) *Criminal forfeiture*.—If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

Rule 32. Sentence and judgment

(b) *Judgment*

(1) *In general*.—A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) *Criminal forfeiture*.—When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

Rule 38. Stay of execution, and relief pending review

(a) *Stay of execution*

(1) *Death*.—A sentence of death shall be stayed if an appeal is taken.

(2) *Imprisonment*.—A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9 (b) of the Federal Rules of Appellate Procedure. If not stayed, 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 court of appeals.

(3) *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.

(4) *Probation*.—An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

Rule 40. Commitment to another district; removal

(a) *Arrest in nearby district*.—If a person is arrested on a warrant issued upon a complaint in a district other than the district of the arrest but in the same state, or on a warrant issued upon a complaint in another state but at a place less than 100 miles from the place of arrest, or without a warrant for an offense committed in another district in the same state or in another state

but at a place less than 100 miles from the place of the arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate; preliminary proceedings shall be conducted in accordance with Rules 5 and 5.1; and if held to answer, he shall be held to answer to the district court for the district in which the prosecution is pending, or if the arrest was without a warrant, for the district in which the offense was committed. If such an arrest is made on a warrant issued on an indictment or information, the person arrested shall be taken before the district court in which the prosecution is pending or, for the purpose of admission to bail, before a federal magistrate in the district of the arrest in accordance with provisions of Rule 9 (c)(1).

(b) *Arrest in distant district*

(1) *Appearance before federal magistrate.*—If a person is arrested upon a warrant issued in another state at a place 100 miles or more from the place of arrest, or without a warrant for an offense committed in another state at a place 100 miles or more from the place of arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate in the district in which the arrest was made.

(2) *Statement by federal magistrate.*—The federal magistrate shall inform the defendant of the rights specified in Rule 5 (c), of his right to have a hearing or to waive a hearing by signing a waiver before the federal magistrate, of the provisions of Rule 20, and shall authorize his release under the terms provided for by these rules and by 18 U. S. C. § 3146 and § 3148.

(3) *Hearing; warrant of removal or discharge.*—The defendant shall not be called upon to plead. If the defendant waives hearing, a judge of the United States shall issue a warrant of removal to the district where the prosecution is pending. If the defendant does not waive hearing, the federal magistrate shall hear the evidence. At the hearing the defendant may cross-examine witnesses against him and may introduce evi-

dence in his own behalf. If a United States magistrate hears the evidence he shall report his findings and recommendations to a judge of the United States. If it appears from the United States magistrate's report or from the evidence adduced before the judge of the United States that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. There is "sufficient grounds" for ordering removal under the following circumstances:

(A) If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment.

(B) If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged.

(C) If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is guilty of the offense charged; but he may not be removed as herein provided unless a warrant issued in the district in which the offense is alleged to have been committed is presented.

(4) *Bail*.—If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending under the terms provided for by these rules and by 18 U. S. C. § 3146 and § 3148. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

(5) *Authority of United States magistrate*.—When authorized by a rule of the district court, adopted in accordance with 28 U. S. C. § 636 (b), a United States

magistrate may issue a warrant of removal under subdivision (b)(3) of this rule.

Rule 41. Search and seizure

(a) *Authority to issue warrant.*—A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state within the district wherein the property sought is located, upon request of a federal law enforcement officer or an attorney for the government.

(b) *Property which may be seized with a warrant.*—A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) *Issuance and contents.*—A warrant shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of

the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(d) *Execution and return with inventory.*—The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The federal magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) *Motion for return of property.*—A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after

an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) *Motion to suppress.*—A motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12.

(g) *Return of papers to clerk.*—The federal magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

(h) *Scope and definition.*—This rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term “property” is used in this rule to include documents, books, papers and any other tangible objects. The term “daytime” is used in this rule to mean the hours from 6:00 a. m. to 10:00 p. m. according to local time. The phrase “federal law enforcement officer” is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54 (c), who is engaged in the enforcement of the criminal laws and is within any category of officers authorized by the Attorney General to request the issuance of a search warrant.

Rule 44. Right to and assignment of counsel

(a) *Right to assigned counsel.*—Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the federal magistrate or the court through appeal, unless he waives such appointment.

(b) *Assignment procedure.*—The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by local rules of court established pursuant thereto.

Rule 46. Release from custody

(a) *Release prior to trial.*—Eligibility for release prior to trial shall be in accordance with 18 U. S. C. § 3146, § 3148, or § 3149.

(b) *Release during trial.*—A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) *Pending sentence and notice of appeal.*—Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with 18 U. S. C. § 3148. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) *Justification of sureties.*—Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) *Forfeiture*

(1) *Declaration.*—If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail.

(2) *Setting aside.*—The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.*—When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering

into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) *Remission*.—After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) *Exoneration*.—When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) *Supervision of detention pending trial*.—The court shall exercise supervision over the detention of defendants and witnesses within the district pending trial for the purpose of eliminating all unnecessary detention. The attorney for the government shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending indictment, arraignment or trial for a period in excess of ten days. As to each witness so listed the attorney for the government shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15 (a). As to each defendant so listed the attorney for the government shall make a statement of the reasons why the defendant is still held in custody.

Rule 50. Calendars; plan for prompt disposition

(b) *Plan for achieving prompt disposition of criminal cases*.—To minimize undue delay and to further the prompt disposition of criminal cases, each district court

shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare a plan for the prompt disposition of criminal cases which shall include rules relating to time limits within which procedures prior to trial, the trial itself, and sentencing must take place, means of reporting the status of cases, and such other matters as are necessary or proper to minimize delay and facilitate the prompt disposition of such cases. The district plan shall include special provision for the prompt disposition of any case in which it appears to the court that there is reason to believe that the pre-trial liberty of a particular defendant who is in custody or released pursuant to Rule 46, poses a danger to himself, to any other person, or to the community. The district plan shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of the district court may designate. If approved the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States. The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Each district court shall submit its plan to the reviewing panel not later than 90 days from the effective date of this rule.

Rule 54. Application and exception

(a) *Courts.*—These rules apply to all criminal proceedings in the United States District Courts; in the District Court of Guam; in the District Court of the Virgin Islands; and (except as otherwise provided in the Canal Zone Code) in the United States District Court for the

District of the Canal Zone; in the United States Courts of Appeals; and in the Supreme Court of the United States; except that all offenses shall continue to be prosecuted in the District Court of Guam and in the District Court of the Virgin Islands by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.

(b) *Proceedings*

(1) *Removed proceedings.*—These rules apply to criminal prosecutions removed to the United States district courts from state courts and govern all procedure after removal, except that dismissal by the attorney for the prosecution shall be governed by state law.

(2) *Offenses outside a district or State.*—These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by 18 U. S. C. § 3238.

(3) *Peace bonds.*—These rules do not alter the power of judges of the United States or of United States magistrates to hold to security of the peace and for good behavior under 18 U. S. C. § 3043, and under Revised Statutes, § 4069, 50 U. S. C. § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

(4) *Proceedings before United States magistrates.*—Proceedings involving minor offenses before United States magistrates, as defined in subdivision (c) of this rule, are governed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(5) *Other proceedings.*—These rules are not applicable to extradition and rendition of fugitives; civil forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties. Except as provided in Rule 20 (d) they do not apply to proceedings under 18 U. S. C., Chapter 403—Juvenile Delinquency—so far as they are inconsistent with

that chapter. They do not apply to summary trials for offenses against the navigation laws under Revised Statutes §§ 4300-4305, 33 U. S. C. §§ 391-396, or to proceedings involving disputes between seamen under Revised Statutes, §§ 4079-4081, as amended, 22 U. S. C. §§ 256-258, or to proceedings for fishery offenses under the Act of June 28, 1937, c. 392, 50 Stat. 325-327, 16 U. S. C. §§ 772-772i, or to proceedings against a witness in a foreign country under 28 U. S. C. § 1784.

(c) *Application of terms.*—As used in these rules the following terms have the designated meanings.

“Act of Congress” includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

“Attorney for the government” means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, an authorized assistant of a United States Attorney and when applicable to cases arising under the laws of Guam means the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

“Civil action” refers to a civil action in a district court.

The words “demurrer,” “motion to quash,” “plea in abatement,” “plea in bar” and “special plea in bar,” or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12.

“District court” includes all district courts named in subdivision (a) of this rule.

“Federal magistrate” means a United States magistrate as defined in 28 U. S. C. §§ 631-639, a judge of the United States or another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates.

“Judge of the United States” includes a judge of a district court, court of appeals, or the Supreme Court.

"Law" includes statutes and judicial decisions.

"Magistrate" includes a United States magistrate as defined in 28 U. S. C. §§ 631-639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U. S. C. § 3041 to perform the functions prescribed in Rules 3, 4, and 5.

"Minor offense" is defined in 18 U. S. C. § 3401.

"Oath" includes affirmations.

"Petty offense" is defined in 18 U. S. C. § 1 (3).

"State" includes District of Columbia, Puerto Rico, territory and insular possession.

"United States magistrate" means the officer authorized by 28 U. S. C. §§ 631-639.

Rule 55. Records

The clerk of the district court and each United States magistrate shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, may prescribe. Among the records required to be kept by the clerk shall be a book known as the "criminal docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

