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RULES OF PROCEDURE FOR THE TRIAL OF  
MISDEMEANORS BEFORE UNITED  
STATES MAGISTRATES

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Effective June 1, 1980

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The Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates were prescribed by the Supreme Court of the United States pursuant to 18 U. S. C. § 3402.

These rules, which supersede the rules prescribed by the Court on January 27, 1971 (see 400 U. S. 1037), became effective June 1, 1980, pursuant to the Court's order, *post*, p. 976.

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SUPREME COURT OF THE UNITED STATES

MONDAY, APRIL 14, 1980

ORDER PRESCRIBING RULES OF PROCEDURE FOR  
THE TRIAL OF MISDEMEANORS BEFORE  
UNITED STATES MAGISTRATES

ORDERED that the following Rules to be known as the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates, be and they are hereby prescribed pursuant to § 3402 of Title 18, United States Code. These Rules shall become effective on June 1, 1980, and shall supersede the Rules for the Trial of Minor Offenses before United States Magistrates heretofore promulgated by this Court on January 27, 1971.

## RULES OF PROCEDURE FOR THE TRIAL OF MISDEMEANORS BEFORE UNITED STATES MAGISTRATES

### *Rule 1. Scope.*

(a) *In general.*—These rules govern the procedure and practice for the conduct of proceedings in misdemeanor cases, including petty offenses, before United States magistrates under 18 U. S. C. § 3401, and for appeals in such cases to judges of the district courts.

(b) *Applicability of Federal Rules of Criminal Procedure.*—Except as specifically provided by these rules, the Federal Rules of Criminal Procedure govern all proceedings except those concerning petty offenses for which no sentence of imprisonment will be imposed. Proceedings concerning petty offenses for which no sentence of imprisonment will be imposed are not governed by the Federal Rules of Criminal Procedure, except as specifically provided therein or by these rules. However, to the extent they are not inconsistent with these rules, a magistrate may follow such provisions of the Federal Rules of Criminal Procedure as he deems appropriate.

(c) *Definition.*—The term “petty offenses for which no sentence of imprisonment will be imposed,” as used in these rules, means any petty offenses, regardless of the penalty authorized by law, as to which the magistrate determines that, in the event of conviction, no sentence of imprisonment will actually be imposed in the particular case.

### *Rule 2. Pretrial procedures.*

(a) *Trial document.*—The trial of a misdemeanor may proceed on an indictment, information, or complaint or, if it be a petty offense, on a citation or violation notice. The district court, by order or local rule, may make provision for the reference of such cases to a magistrate.

(b) *Initial appearance.*—At the defendant's initial appearance on a misdemeanor charge, the magistrate shall inform the defendant of the following:

(1) the charge against him, and the maximum possible penalty provided by law;

(2) his right to retain counsel;

(3) unless he is charged with a petty offense for which appointment of counsel is not required, his right to request the assignment of counsel if he is unable to obtain counsel;

(4) that he is not required to make a statement and that any statement made by him may be used against him;

(5) that he has a right to trial, judgment and sentencing before a judge of the district court;

(6) unless the offense charged is a petty offense, that he has a right to trial by jury before either a magistrate or a judge of the district court;

(7) if the prosecution is not on an indictment or information and is for a misdemeanor other than a petty offense, that he has a right to have a preliminary examination unless he consents to be tried before the magistrate; and

(8) if he is in custody, of the general circumstances under which he may secure pretrial release.

(c) *Consent and arraignment.*—If the defendant signs a written consent to be tried before the magistrate which specifically waives trial before a judge of the district court, the magistrate shall take the defendant's plea to the misdemeanor charge. The defendant may plead not guilty, guilty or, with the consent of the magistrate, *nolo contendere*. If the defendant pleads not guilty, the magistrate shall either conduct the trial within 30 days upon written consent of the defendant or fix a later time for the trial, giving due regard to the needs of the parties to consult with counsel and prepare for trial.



*Rule 3. Additional procedures applicable only to petty offenses for which no sentence of imprisonment will be imposed.*

(a) *Failure to consent.*—If the defendant charged with a petty offense for which no sentence of imprisonment will be imposed does not consent to trial before the magistrate, he shall be ordered to appear before a judge of the district court for further proceedings on notice. The file shall be transmitted forthwith to the clerk of the district court.

(b) *Plea of guilty or nolo contendere.*—No plea of guilty or *nolo contendere* to a petty offense for which no sentence of imprisonment will be imposed shall be accepted unless the magistrate is satisfied that the defendant understands the nature of the charge and the maximum possible penalty provided by law.

(c) *Waiver of venue for plea and sentence.*—A defendant charged with a petty offense for which no sentence of imprisonment will be imposed who is arrested, held, or present in a district other than that in which an indictment, information, complaint, citation or violation notice is pending against him may state in writing that he wishes to plead guilty or *nolo contendere*, to waive venue and trial in the district in which the proceeding against him is pending, and to consent to disposition of the case in the district in which he was arrested, is held, or is present. Unless the defendant thereafter pleads not guilty, the prosecution shall be had as if venue were in such district, and notice of same shall be given to the magistrate in the district where the proceeding was originally commenced. The defendant's statement that he wishes to plead guilty or *nolo contendere* shall not be used against him.

(d) *Sentence.*—If the defendant charged with a petty offense for which no sentence of imprisonment will be imposed pleads guilty or *nolo contendere* or is found guilty after trial, the magistrate shall afford him an opportunity to be heard in mitigation. The magistrate shall then immediately proceed to sentence the defendant, except that in the discretion of the magistrate sentencing may be continued to allow an investi-

gation by the probation service or the submission of additional information by either party.

(e) *Notification of right to appeal.*—After imposing sentence in a case which has gone to trial on a plea of not guilty, the magistrate shall advise the defendant of his right to appeal.

*Rule 4. Securing defendant's appearance; payment in lieu of appearance.*

(a) *Forfeiture of collateral.*—When authorized by local rules of the district court, payment of a fixed sum may be accepted in suitable types of misdemeanor cases in lieu of appearance and as authorizing the termination of the proceedings. Such local rules may make provision for increases in such fixed sums not to exceed the maximum fine which could be imposed upon conviction.

(b) *Notice to appear.*—If a defendant fails to pay a fixed sum, request a hearing, or appear in response to a citation or violation notice, the clerk of the district court or a magistrate may issue a notice for the defendant to appear before a magistrate on a date certain. The notice may also afford the defendant an additional opportunity to pay a fixed sum in lieu of appearance, and shall be served upon the defendant by mailing a copy to his last known address.

(c) *Summons or warrant.*—Upon an indictment or a showing by one of the other documents specified in Rule 2 (a) of probable cause to believe that a misdemeanor has been committed and that the defendant has committed it, a magistrate may issue an arrest warrant or, if no warrant is requested by the attorney for the government, a summons. The showing shall be made in writing upon oath or under penalty of perjury, but the affiant need not appear before the magistrate. If the defendant fails to appear before the magistrate in response to a summons, the magistrate may summarily issue a warrant for his immediate arrest and appearance before the magistrate.

*Rule 5. Record.*

Proceedings under these rules shall be taken down by a re-

porter or recorded by suitable sound recording equipment. In the discretion of the magistrate or, in the case of a misdemeanor other than a petty offense, on timely request of either party as provided by local rule, the proceedings shall be taken down by a reporter. With the written consent of the defendant, the keeping of a verbatim record may be waived in petty offense cases.

*Rule 6. New trial.*

The magistrate, on motion of a defendant, may grant a new trial if required in the interest of justice. The 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 two years after final judgment, but if an appeal is pending the 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 7 days after a finding of guilty or within such further time as the magistrate may fix during the 7-day period.

*Rule 7. Appeal.*

(a) *Interlocutory appeal.*—A decision or order by a magistrate which, if made by a judge of the district court, could be appealed by the government or defendant under any provision of law, shall be subject to an appeal to a judge of the district court provided such appeal is taken within 10 days of the entry of the decision or order. An appeal shall be taken by filing with the clerk of the district court a statement specifying the decision or order from which an appeal is taken, and by serving a copy of the statement upon the adverse party, personally or by mail, and by filing a copy with the magistrate.

(b) *Appeal from conviction.*—An appeal from a judgment of conviction by a magistrate to a judge of the district court shall be taken within 10 days after entry of the judgment. An appeal shall be taken by filing with the clerk of the district court a statement specifying the judgment from which an appeal is taken, and by serving a copy of the statement upon



the United States Attorney, personally or by mail, and by filing a copy with the magistrate.

(c) *Record*.—The record shall consist of the original papers and exhibits in the case together with any transcript, tape, or other recording of the proceedings and a certified copy of the docket entries which shall be transmitted promptly by the magistrate to the clerk of the district court. For purposes of the appeal, a copy of the record of such proceedings shall be made available at the expense of the United States to a person who establishes by affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(d) *Stay of execution; release pending appeal*.—The provisions of Rule 38 (a) of the Federal Rules of Criminal Procedure relating to stay of execution shall be applicable to a judgment of conviction entered by a magistrate. The defendant may be released pending appeal by the magistrate or a district judge in accordance with the provisions of law relating to release pending appeal from a judgment of conviction of a district court.

(e) *Scope of appeal*.—The defendant shall not be entitled to a trial *de novo* by a judge of the district court. The scope of appeal shall be the same as on an appeal from a judgment of a district court to a court of appeals.

#### *Rule 8. Local rules.*

Rules adopted by a district court for the conduct of trials before magistrates shall not be inconsistent with these rules. Copies of all rules made by a district court shall, upon their promulgation, be filed with the clerk of the district court and furnished to the Administrative Office of the United States Courts.