

AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 1. Scope.

These rules govern the procedure in all criminal proceedings in the courts of the United States, as provided in Rule 54(a); 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 5. Initial Appearance Before the Magistrate.

(b) *Misdemeanors.*—If the charge against the defendant is a misdemeanor 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 Misdemeanors Before United States Magistrates.

Rule 9. Warrant or Summons Upon Indictment or Information.

(a) *Issuance.*—Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a), or in an indictment. Upon the request of the attorney for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue. When a defendant arrested with a warrant or given a sum-

mons appears initially before a magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of Rule 5.

(b) *Form.*

(1) *Warrant.*—The form of the warrant shall be as provided in Rule 4(c)(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 nearest available 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 a 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(d)(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 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.

(2) *Return.*—The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought. 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 pend-

ing, 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 Offenses.*] [Abrogated.]

Rule 11. Pleas.

(c) *Advice to defendant.*—Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole term; and

(4) that if his plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which he has pleaded, that his answers may later be used against him in a prosecution for perjury or false statement.

Rule 20. Transfer from the district for plea and sentence.

(b) *Indictment or information not pending.*—A defendant arrested, held, or present, in a district other than the district in which a complaint 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 warrant was issued, and to consent to disposition of the case in the district in which he was arrested, held, or present, subject to the ap-

proval of the United States attorney for each district. Upon filing the written waiver of venue in the district in which the defendant is present, the prosecution may proceed as if venue were in such district.

Rule 40. Commitment to another district.

(d) *Arrest of Probationer.*—If a person is arrested for a violation of his probation in a district other than the district having probation jurisdiction, he shall be taken without unnecessary delay before the nearest available federal magistrate. The federal magistrate shall:

(1) Proceed under Rule 32.1 if jurisdiction over the probationer is transferred to that district pursuant to 18 U. S. C. § 3653;

(2) Hold a prompt preliminary hearing if the alleged violation occurred in that district, and either (i) hold the probationer to answer in the district court of the district having probation jurisdiction or (ii) dismiss the proceedings and so notify that court; or

(3) Otherwise order the probationer held to answer in the district court of the district having probation jurisdiction upon production of certified copies of the probation order, the warrant, and the application for the warrant, and upon a finding that the person before him is the person named in the warrant.

Rule 45. Time.

(a) *Computation.*—In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforemen-

tioned days. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

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 for the Northern Mariana Islands, except as otherwise provided in articles IV and V of the covenant provided by the Act of March 24, 1976 (90 Stat. 263); 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.*

(4) *Proceedings before United States Magistrates.*—Proceedings involving misdemeanors before United States magistrates are governed by the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates.

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

"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, when applicable to cases arising under the laws of Guam the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein, and when applicable to cases arising under the laws of the Northern Mariana Islands the Attorney General of the Northern Mariana Islands or any other person or persons as may be authorized by the laws of the Northern Marianas to act therein.

["Minor offense" is defined in 18 U. S. C. § 3401.]
[Deleted April 28, 1982, eff. August 1, 1982.]