

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 5. Initial appearance before the magistrate.

(b) *Misdemeanors and other petty offenses.*—If the charge against the defendant is a misdemeanor or other petty offense triable by a United States magistrate under 18 U. S. C. § 3401, the magistrate shall proceed in accordance with Rule 58.

Rule 41. Search and seizure.

(a) *Authority to issue warrant.*—Upon the request of a federal law enforcement officer or an attorney for the government, a search warrant authorized by this rule may be issued (1) by a federal magistrate, or a state court of record within the federal district, for a search of property or for a person within the district and (2) by a federal magistrate for a search of property or for a person either within or outside the district if the property or person is within the district when the warrant is sought but might move outside the district before the warrant is executed.

Rule 54. Application and exception.

(b) *Proceedings.*

(4) *Proceedings before United States magistrates.*—Proceedings involving misdemeanors and other petty offenses are governed by Rule 58.

(c) *Application of terms.*

“Petty offense” is defined in 18 U. S. C. § 19.

Rule 58. Procedure for misdemeanors and other petty offenses.

(a) *Scope.*

(1) *In general.*—This rule governs the procedure and practice for the conduct of proceedings involving misdemeanors and other petty offenses, and for appeals to judges of the district courts in such cases tried by magistrates.

(2) *Applicability of other federal rules of criminal procedure.*—In proceedings concerning petty offenses for which no sentence of imprisonment will be imposed the court may follow such provisions of these rules as it deems appropriate, to the extent not inconsistent with this rule. In all other proceedings the other rules govern except as specifically provided in this rule.

(3) *Definition.*—The term “petty offenses for which no sentence of imprisonment will be imposed” as used in this rule, means any petty offenses as defined in 18 U. S. C. § 19 as to which the court determines, that, in the event of conviction, no sentence of imprisonment will actually be imposed.

(b) *Pretrial procedures.*

(1) *Trial document.*—The trial of a misdemeanor may proceed on an indictment, information, or complaint or, in the case of a petty offense, on a citation or violation notice.

(2) *Initial appearance.*—At the defendant’s initial appearance on a misdemeanor or other petty offense charge, the court shall inform the defendant of:

(A) The charge, and the maximum possible penalties provided by law, including payment of a special assessment under 18 U. S. C. § 3013, and restitution under 18 U. S. C. § 3663;

(B) the right to retain counsel;

(C) unless the charge is a petty offense for which appointment of counsel is not required, the right to request the assignment of counsel if the defendant is unable to obtain counsel;

(D) the right to remain silent and that any statement made by the defendant may be used against the defendant;

(E) the right to trial, judgment, and sentencing before a judge of the district court, unless the defendant consents to trial, judgment, and sentencing before a magistrate;

(F) unless the charge is a petty offense, the right to trial by jury before either a magistrate or a judge of the district court; and

(G) if the defendant is held in custody and charged with a misdemeanor other than a petty offense, the right to a preliminary examination in accordance with 18 U. S. C. §3060, and the general circumstances under which the defendant may secure pretrial release.

(3) *Consent and arraignment.*

(A) *Trial before a magistrate.*—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. The defendant may plead not guilty, guilty, or with the consent of the magistrate, *nolo contendere*.

(B) *Failure to consent.*—If the defendant does not consent to trial before the magistrate, the defendant shall be ordered to appear before a judge of the district court for further proceedings on notice.

(c) *Additional procedures applicable only to petty offenses for which no sentence of imprisonment will be imposed.*—With respect to petty offenses for which no sentence of imprisonment will be imposed, the following additional procedures are applicable:

(1) *Plea of guilty or nolo contendere.*—No plea of guilty or *nolo contendere* shall be accepted unless the court is satisfied

that the defendant understands the nature of the charge and the maximum possible penalties provided by law.

(2) *Waiver of venue for plea and sentence.*—A defendant who is arrested, held, or present in a district other than that in which the indictment, information, complaint, citation or violation notice is pending against that defendant may state in writing a wish to plead guilty or nolo contendere, to waive venue and trial in the district in which the proceeding is pending, and to consent to disposition of the case in the district in which that defendant 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 the same shall be given to the magistrate in the district where the proceeding was originally commenced. The defendant's statement of a desire to plead guilty or nolo contendere is not admissible against the defendant.

(3) *Sentence.*—The court shall afford the defendant an opportunity to be heard in mitigation. The court shall then immediately proceed to sentence the defendant, except that in the discretion of the court, sentencing may be continued to allow an investigation by the probation service or submission of additional information by either party.

(4) *Notification of right to appeal.*—After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of the defendant's right to appeal including any right to appeal the sentence. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere, except that the court shall advise the defendant of any right to appeal the sentence.

(d) *Securing the defendant's appearance; payment in lieu of appearance.*

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

(2) *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 or a magistrate may issue a notice for the defendant to appear before the court 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 the defendant's last known address.

(3) *Summons or warrant.*—Upon an indictment or a showing by one of the other documents specified in (b)(1) of probable cause to believe that an offense has been committed and that the defendant has committed it, the court may issue an arrest warrant or, if no warrant is requested by the attorney for the prosecution, a summons. The showing of probable cause shall be made in writing upon oath or under penalty for perjury, but the affiant need not appear before the court. If the defendant fails to appear before the court in response to a summons, the court may summarily issue a warrant for the defendant's immediate arrest and appearance before the court.

(e) *Record.*—Proceedings under this rule shall be taken down by a reporter or recorded by suitable sound equipment.

(f) *New trial.*—The provisions of Rule 33 shall apply.

(g) *Appeal.*

(1) *Decision, order, judgment or sentence by a district judge.*—An appeal from a decision, order, judgment or conviction or sentence by a judge of the district court shall be taken in accordance with the Federal Rules of Appellate Procedure.

(2) *Decision, order, judgment or sentence by a magistrate.*

(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 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 or sentence.*—An appeal from a judgment of conviction or sentence 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 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 to the clerk of 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 the inability 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) *Scope of appeal.*—The defendant shall not be entitled to a trial de novo by a judge of the district court. The scope of the appeal shall be the same as an appeal from a judgment of a district court to a court of appeals.

(3) *Stay of execution; release pending appeal.*—The provisions of Rule 38 relating to stay of execution shall be applicable to a judgment of conviction or sentence. The defendant may be released pending appeal in accordance with the provisions of law relating to release pending appeal from a judgment of a district court to a court of appeals.