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## AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

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The following amendments to the Federal Rules of Criminal Procedure were prescribed by the Supreme Court of the United States on April 22, 1993, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1162. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Criminal Procedure, and the amendments thereto, see 327 U. S. 821, 335 U. S. 917, 949, 346 U. S. 941, 350 U. S. 1017, 383 U. S. 1087, 389 U. S. 1125, 401 U. S. 1025, 406 U. S. 979, 415 U. S. 1056, 416 U. S. 1001, 419 U. S. 1136, 425 U. S. 1157, 441 U. S. 985, 456 U. S. 1021, 461 U. S. 1117, 471 U. S. 1167, 480 U. S. 1041, 485 U. S. 1057, 490 U. S. 1135, 495 U. S. 967, and 500 U. S. 991.

LETTER OF TRANSMITTAL

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SUPREME COURT OF THE UNITED STATES  
WASHINGTON, D. C.

APRIL 22, 1993

*To the Senate and House of Representatives of the United  
States of America in Congress Assembled:*

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress amendments to the Federal Rules of Criminal Procedure and an amendment to Rule 8 of the Rules Governing Section 2255 Proceedings that have been adopted by the Supreme Court pursuant to Section 2072 of Title 28, United States Code. While the Court is satisfied that the required procedures have been observed, this transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Advisory Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

(Signed) WILLIAM H. REHNQUIST  
*Chief Justice of the United States*

SUPREME COURT OF THE UNITED STATES

APRIL 22, 1993

ORDERED:

1. That the Federal Rules of Criminal Procedure for the United States District Courts be, and they hereby are, amended by including therein amendments to Criminal Rules 1, 3, 4, 5, 5.1, 6, 9, 12, 16, 17, 26.2, 32, 32.1, 40, 41, 44, 46, 49, 50, 54, 55, 57, and 58, and new Rule 26.3, and an amendment to Rule 8 of the Rules Governing Section 2255 Proceedings.

[See *infra*, pp. 1165–1186.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 1993, and shall govern all proceedings in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings in criminal cases then pending.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

## AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

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### *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 magistrate judges 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 judge.

### *Rule 4. Arrest warrant or summons upon complaint.*

#### *(c) Form.*

(1) *Warrant.*—The warrant shall be signed by the magistrate judge and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant 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 judge.

#### *(d) Execution or service; and return.*

(4) *Return.*—The officer executing a warrant shall make return thereof to the magistrate judge 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 and canceled by the magistrate judge by whom it was issued. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate judge 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 canceled or summons returned unserved or a duplicate thereof may be delivered by the magistrate judge to the marshal or other authorized person for execution or service.

*Rule 5. Initial appearance before the magistrate judge.*

(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 judge or, in the event that a federal magistrate judge 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 judge, 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 judge, the magistrate judge shall proceed in accordance with the applicable subdivisions of this rule.

(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 judge under 18 U. S. C. § 3401, the magistrate judge shall proceed in accordance with Rule 58.

(c) *Offenses not triable by the United States magistrate judge.*—If the charge against the defendant is not triable by the United States magistrate judge, the defendant shall not be called upon to plead. The magistrate judge shall inform

the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The magistrate judge shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The magistrate judge shall also inform the defendant of the right to a preliminary examination. The magistrate judge shall allow the defendant reasonable time and opportunity to consult counsel and shall detain or conditionally release the defendant 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 judge shall forthwith hold the defendant to answer in the district court. If the defendant does not waive the preliminary examination, the magistrate judge 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 the defendant 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 judge. 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 judge shall forthwith hold the defendant 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 adverse witnesses and may introduce evidence. 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 judge 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 judge shall transmit forthwith to the clerk of the district court all papers in the proceeding. The magistrate judge shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a federal magistrate judge, 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 to that attorney in connection with any further hearing or 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 judge 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 the defendant 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.*

*(e) Recording and disclosure of proceedings.*

*(4) Sealed indictments.*—The federal magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

*(f) Finding and return of indictment.*—An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury to a federal magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in finding an indictment, the foreperson shall so report to a federal magistrate judge in writing forthwith.

*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 prob-



able 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 summons appears initially before a magistrate judge, the magistrate judge 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 judge. 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 judge 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 judge or, in the event that a federal magistrate judge 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 judge 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 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.

. . . . .

*Rule 12. Pleadings and motions before trial; defenses and objections.*

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(i) *Production of statements at suppression hearing*.—Rule 26.2 applies at a hearing on a motion to suppress evidence under subdivision (b)(3) of this rule. For purposes of this subdivision, a law enforcement officer is deemed a government witness.

*Rule 16. Discovery and inspection.*

(a) *Governmental disclosure of evidence.*

(1) *Information subject to disclosure.*

. . . . .

(E) *Expert witnesses*.—At the defendant's request, the government shall disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case in

chief at trial. This summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications.

(2) *Information not subject to disclosure.*—Except as provided in paragraphs (A), (B), (D), and (E) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case. Nor does the rule authorize the discovery or inspection of statements made by government witnesses or prospective government witnesses except as provided in 18 U. S. C. § 3500.

(b) *The defendant's disclosure of evidence.*

(1) *Information subject to disclosure.*

(C) *Expert witnesses.*—If the defendant requests disclosure under subdivision (a)(1)(E) of this rule and the government complies, the defendant, at the government's request, must disclose to the government a written summary of testimony the defendant intends to use under Rules 702, 703 and 705 of the Federal Rules of Evidence as evidence at trial. This summary must describe the opinions of the witnesses, the bases and reasons therefor, and the witnesses' qualifications.

#### *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 States magistrate judge in a proceeding before that magistrate judge, 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 that person may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it was issued if it was issued by a United States magistrate judge.

*Rule 26.2. Production of witness statements.*

(c) *Production of excised statement.*—If the other party claims that the statement contains privileged information or matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that are privileged or that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over the defendant's objection must be preserved by the attorney for the government, and, if the defendant appeals a conviction, must be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) *Recess for examination of statement.*—Upon delivery of the statement to the moving party, the court, upon application of that party, may recess the proceedings so that counsel may examine the statement and prepare to use it in the proceedings.

(g) *Scope of rule.*—This rule applies at a suppression hearing conducted under Rule 12, at trial under this rule, and to the extent specified:

- (1) in Rule 32(f) at sentencing;
- (2) in Rule 32.1(c) at a hearing to revoke or modify probation or supervised release;
- (3) in Rule 46(i) at a detention hearing; and
- (4) in Rule 8 of the Rules Governing Proceedings under 28 U. S. C. § 2255.

*Rule 26.3. Mistrial.*

Before ordering a mistrial, the court shall provide an opportunity for the government and for each defendant to comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternatives.

*Rule 32. Sentence and judgment.*

(e) *Production of statements at sentencing hearing.*

(1) *In general.*—Rule 26.2 (a)–(d), and (f) applies at a sentencing hearing under this rule.

(2) *Sanctions for failure to produce statement.*—If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the moving party, the court may not consider the testimony of a witness whose statement is withheld.

*Rule 32.1. Revocation or modification of probation or supervised release.*

(c) *Production of statements.*

(1) *In general.*—Rule 26.2(a)–(d) and (f) applies at any hearing under this rule.

(2) *Sanctions for failure to produce statement.*—If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the moving party, the

court may not consider the testimony of a witness whose statement is withheld.

*Rule 40. Commitment to another district.*

(a) *Appearance before federal magistrate judge.*—If a person is arrested in a district other than that in which the offense is alleged to have been committed, that person must be taken without unnecessary delay before the nearest available federal magistrate judge. Preliminary proceedings concerning the defendant must be conducted in accordance with Rules 5 and 5.1, except that if no preliminary examination is held because an indictment has been returned or an information filed or because the defendant elects to have the preliminary examination conducted in the district in which the prosecution is pending, the person shall be held to answer upon a finding that such person is the person named in the indictment, information or warrant. If held to answer, the defendant shall be held to answer in the district court in which the prosecution is pending—provided that a warrant is issued in that district if the arrest was made without a warrant—upon production of the warrant or a certified copy thereof. The warrant or certified copy may be produced by facsimile transmission.

(b) *Statement by federal magistrate judge.*—In addition to the statements required by Rule 5, the federal magistrate judge shall inform the defendant of the provisions of Rule 20.

(d) *Arrest of probationer or supervised releasee.*—If a person is arrested for a violation of probation or supervised release in a district other than the district having jurisdiction, such person must be taken without unnecessary delay before the nearest available federal magistrate judge. The federal magistrate judge shall:

- (1) Proceed under Rule 32.1 if jurisdiction over the person is transferred to that district;
- (2) Hold a prompt preliminary hearing if the alleged violation occurred in that district, and either (i) hold the person to answer in the district court of the district hav-

ing jurisdiction or (ii) dismiss the proceedings and so notify that court; or

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

(e) *Arrest for failure to appear*.—If a person is arrested on a warrant in a district other than that in which the warrant was issued, and the warrant was issued because of the failure of the person named therein to appear as required pursuant to a subpoena or the terms of that person's release, the person arrested must be taken without unnecessary delay before the nearest available federal magistrate judge. Upon production of the warrant or a certified copy thereof and upon a finding that the person before the magistrate judge is the person named in the warrant, the federal magistrate judge shall hold the person to answer in the district in which the warrant was issued.

(f) *Release or detention*.—If a person was previously detained or conditionally released, pursuant to chapter 207 of title 18, United States Code, in another district where a warrant, information, or indictment issued, the federal magistrate judge shall take into account the decision previously made and the reasons set forth therefor, if any, but will not be bound by that decision. If the federal magistrate judge amends the release or detention decision or alters the conditions of release, the magistrate judge shall set forth the reasons therefor in writing.

*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 judge, 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 magis-

trate judge 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.

(c) *Issuance and contents.*

(1) *Warrant upon affidavit.*—A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall issue only on an affidavit or affidavits sworn to before the federal magistrate judge or state judge and establishing the grounds for issuing the warrant. If the federal magistrate judge or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, that magistrate judge or state judge shall issue a warrant identifying the property or person to be seized 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 judge or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses the affiant 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 or person 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 judge to whom it shall be returned.



(2) *Warrant upon oral testimony.*

(A) *General rule.*—If the circumstances make it reasonable to dispense, in whole or in part, with a written affidavit, a Federal magistrate judge may issue a warrant based upon sworn testimony communicated by telephone or other appropriate means, including facsimile transmission.

(B) *Application.*—The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the Federal magistrate judge. The Federal magistrate judge shall enter, verbatim, what is so read to such magistrate judge on a document to be known as the original warrant. The Federal magistrate judge may direct that the warrant be modified.

(C) *Issuance.*—If the Federal magistrate judge is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the Federal magistrate judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the Federal magistrate judge's name on the duplicate original warrant. The Federal magistrate judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) *Recording and certification of testimony.*—When a caller informs the Federal magistrate judge that the purpose of the call is to request a warrant, the Federal magistrate judge shall immediately place under oath each person whose testimony forms a basis of the application and each person

applying for that warrant. If a voice recording device is available, the Federal magistrate judge shall record by means of such device all of the call after the caller informs the Federal magistrate judge that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the Federal magistrate judge shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the Federal magistrate judge shall file a signed copy with the court.

(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 judge 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.

(g) *Return of papers to clerk.*—The federal magistrate judge 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.

*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 that defendant at every stage of the proceedings from initial appearance before the federal magistrate judge or the court through appeal, unless the defendant waives such appointment.

*Rule 46. Release from custody.*

(i) *Production of statements.*

(1) *In general.*—Rule 26.2(a)–(d) and (f) applies at a detention hearing held under 18 U. S. C. § 3144, unless the court, for good cause shown, rules otherwise in a particular case.

(2) *Sanctions for failure to produce statement.*—If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the moving party, at the detention hearing the court may not consider the testimony of a witness whose statement is withheld.

*Rule 49. Service and filing of papers.*

(e) *Filing of dangerous offender notice.*—A filing with the court pursuant to 18 U. S. C. § 3575(a) or 21 U. S. C. § 849(a) shall be made by filing the notice with the clerk of the court. The clerk shall transmit the notice to the chief judge or, if the chief judge is the presiding judge in the case, to another judge or United States magistrate judge in the district, except that in a district having a single judge and no United States magistrate judge, the clerk shall transmit the notice to the court only after the time for disclosure specified in the aforementioned statutes and shall seal the notice as permitted by local rule.

*Rule 50. Calendars; plans for prompt disposition.*

(b) *Plans 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 magistrate judges of the district and shall prepare plans for the prompt disposition of criminal cases in accordance with the provisions of Chapter 208 of Title 18, United States Code.

*Rule 54. Application and exception.*

(b) *Proceedings.*

(3) *Peace bonds.*—These rules do not alter the power of judges of the United States or of United States magistrate judges to hold to security of the peace and for good behavior 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 magistrate judges.*—Proceedings involving misdemeanors and other petty offenses are governed by Rule 58.

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

“Federal magistrate judge” means a United States magistrate judge 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 judge” includes a United States magistrate judge 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.

“Oath” includes affirmations.

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

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

“United States magistrate judge” 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 judge shall keep records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made.

*Rule 57. Rules by district courts.*

Each district court by action of a majority of the judges thereof may from time to time, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice not inconsistent with these rules. A local rule so adopted shall take effect upon the date specified by the district court and shall remain in effect unless amended by the district court or abrogated by the judicial council of the circuit in which the district is located. Copies of the rules and amendments so made by any district court shall upon their promulgation be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public. In all cases not provided for by rule, the district judges and magis-

trate judges may regulate their practice in any manner not inconsistent with these rules or those of the district in which they act.

*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 United States magistrate judges.

*(b) Pretrial procedures.*

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

(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 judge;

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

*(3) Consent and arraignment.*

(A) *Trial before a United States magistrate judge.*—If the defendant signs a written consent to be tried before the magistrate judge which specifically waives trial before a judge of the district court, the magistrate judge shall take the defendant's plea. The defendant may plead not guilty, guilty, or with the consent of the magistrate judge, *nolo contendere*.

(B) *Failure to consent.*—If the defendant does not consent to trial before the magistrate judge, 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:

(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 judge 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.

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

(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 judge 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.

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(g) *Appeal.*

. . . . .

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

(A) *Interlocutory appeal.*—A decision or order by a magistrate judge 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 judge.

(B) *Appeal from conviction or sentence.*—An appeal from a judgment of conviction or sentence by a magistrate judge 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 judge.

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PROPOSED AMENDMENT TO THE RULES  
GOVERNING PROCEEDINGS IN THE  
UNITED STATES DISTRICT COURTS  
UNDER SECTION 2255 OF TITLE  
28, UNITED STATES CODE

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*Rule 8. Evidentiary hearing.*

(d) *Production of statements at evidentiary hearing.*

(1) *In general.*—Federal Rule of Criminal Procedure 26.2(a)–(d), and (f) applies at an evidentiary hearing under these rules.

(2) *Sanctions for failure to produce statement.*—If a party elects not to comply with an order under Federal Rule of Criminal Procedure 26.2(a) to deliver a statement to the moving party, at the evidentiary hearing the court may not consider the testimony of the witness whose statement is withheld.