
AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

The following amendments to the Federal Rules of Criminal Procedure were prescribed by the Supreme Court of the United States on April 25, 2005, 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. 1182. 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 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, 500 U.S. 991, 507 U.S. 1161, 511 U.S. 1175, 514 U.S. 1159, 517 U.S. 1285, 520 U.S. 1313, 523 U.S. 1227, 526 U.S. 1189, 529 U.S. 1179, 535 U.S. 1157, and 541 U.S. 1103.

LETTER OF TRANSMITTAL

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

APRIL 25, 2005

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

I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the 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 25, 2005

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 12.2, 29, 32.1, 33, 34, 45, and new Rule 59. [See *infra*, pp. 1185–1188.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2005, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and 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

Rule 12.2. Notice of an insanity defense; mental examination.

.

(d) *Failure to comply.*

(1) *Failure to give notice or to submit to examination.*—The court may exclude any expert evidence from the defendant on the issue of the defendant’s mental disease, mental defect, or any other mental condition bearing on the defendant’s guilt or the issue of punishment in a capital case if the defendant fails to:

- (A) give notice under Rule 12.2(b); or
- (B) submit to an examination when ordered under Rule 12.2(c).

(2) *Failure to disclose.*—The court may exclude any expert evidence for which the defendant has failed to comply with the disclosure requirement of Rule 12.2(c)(3).

.

Rule 29. Motion for a judgment of acquittal.

.

(c) *After jury verdict or discharge.*

(1) *Time for a motion.*—A defendant may move for a judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury, whichever is later.

.

Rule 32.1. Revoking or modifying probation or supervised release.

.

(b) *Revocation.*

.

1185

(2) *Revocation hearing.*—Unless waived by the person, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction. The person is entitled to:

- (A) written notice of the alleged violation;
- (B) disclosure of the evidence against the person;
- (C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear;
- (D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and
- (E) an opportunity to make a statement and present any information in mitigation.

(c) *Modification.*

(1) *In general.*—Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

Rule 33. New trial.

(b) *Time to file.*

(2) *Other grounds.*—Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 7 days after the verdict or finding of guilty.

Rule 34. Arresting judgment.

(b) *Time to file.*—The defendant must move to arrest judgment within 7 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or nolo contendere.

Rule 45. Computing and extending time.

(b) *Extending time.*

(1) *In general.*—When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) *Exception.*—The court may not extend the time to take any action under Rule 35, except as stated in that rule.

Rule 59. Matters before a magistrate judge.

(a) *Nondispositive matters.*—A district judge may refer to a magistrate judge for determination any matter that does not dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings and, when appropriate, enter on the record an oral or written order stating the determination. A party may serve and file objections to the order within 10 days after being served with a copy of a written order or after the oral order is stated on the record, or at some other time the court sets. The district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous. Failure to object in accordance with this rule waives a party's right to review.

(b) *Dispositive matters.*

(1) *Referral to magistrate judge.*—A district judge may refer to a magistrate judge for recommendation a defendant's motion to dismiss or quash an indictment or information, a motion to suppress evidence, or any matter that may dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings. A record must be made of any evidentiary proceeding and of any other proceeding if the magistrate judge considers it necessary. The magistrate judge must enter on the record a recommendation for disposing of the matter, including any proposed

findings of fact. The clerk must immediately serve copies on all parties.

(2) *Objections to findings and recommendations.*—Within 10 days after being served with a copy of the recommended disposition, or at some other time the court sets, a party may serve and file specific written objections to the proposed findings and recommendations. Unless the district judge directs otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient. Failure to object in accordance with this rule waives a party's right to review.

(3) *De novo review of recommendations.*—The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.