
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 26, 2011, 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. 1064. 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, 541 U.S. 1103, 544 U.S. 1181, 547 U.S. 1269, 550 U.S. 1165, 553 U.S. 1155, 556 U.S. 1363, and 559 U.S. 1151.

LETTER OF TRANSMITTAL

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

APRIL 26, 2011

*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) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 26, 2011

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 1, 3, 4, 6, 9, 32, 40, 41, 43, and 49, and new Rule 4.1.

[See *infra*, pp. 1067–1074.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2011, 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 1. Scope; definitions.

(b) *Definitions.*—The following definitions apply to these rules:

(11) “Telephone” means any technology for transmitting live electronic voice communication.

(12) “Victim” means a “crime victim” as defined in 18 U. S. C. § 3771(e).

Rule 3. The complaint.

The complaint is a written statement of the essential facts constituting the offense charged. Except as provided in Rule 4.1, it must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

Rule 4. Arrest warrant or summons on a complaint.

(c) *Execution or service, and return.*

(3) *Manner.*

(A) A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant’s existence and of the offense charged and, at the defendant’s request,

must show the original or a duplicate original warrant to the defendant as soon as possible.

(4) *Return.*

(A) After executing a warrant, the officer must return it to the judge before whom the defendant is brought in accordance with Rule 5. The officer may do so by reliable electronic means. At the request of an attorney for the government, an unexecuted warrant must be brought back to and canceled by a magistrate judge or, if none is reasonably available, by a state or local judicial officer.

(d) *Warrant by telephone or other reliable electronic means.*—In accordance with Rule 4.1, a magistrate judge may issue a warrant or summons based on information communicated by telephone or other reliable electronic means.

Rule 4.1. Complaint, warrant, or summons by telephone or other reliable electronic means.

(a) *In general.*—A magistrate judge may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons.

(b) *Procedures.*—If a magistrate judge decides to proceed under this rule, the following procedures apply:

(1) *Taking testimony under oath.*—The judge must place under oath—and may examine—the applicant and any person on whose testimony the application is based.

(2) *Creating a record of the testimony and exhibits.*

(A) *Testimony limited to attestation.*—If the applicant does no more than attest to the contents of a written affidavit submitted by reliable electronic means, the judge must acknowledge the attestation in writing on the affidavit.

(B) *Additional testimony or exhibits.*—If the judge considers additional testimony or exhibits, the judge must:

(i) have the testimony recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(ii) have any recording or reporter's notes transcribed, have the transcription certified as accurate, and file it;

(iii) sign any other written record, certify its accuracy, and file it; and

(iv) make sure that the exhibits are filed.

(3) *Preparing a proposed duplicate original of a complaint, warrant, or summons.*—The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the judge.

(4) *Preparing an original complaint, warrant, or summons.*—If the applicant reads the contents of the proposed duplicate original, the judge must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the judge may serve as the original.

(5) *Modification.*—The judge may modify the complaint, warrant, or summons. The judge must then:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(6) *Issuance.*—To issue the warrant or summons, the judge must:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant or summons; and

(C) transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(c) *Suppression limited*.—Absent a finding of bad faith, evidence obtained from a warrant issued under this rule is not subject to suppression on the ground that issuing the warrant in this manner was unreasonable under the circumstances.

Rule 6. The grand jury.

(f) *Indictment and return*.—A grand jury may indict only if at least 12 jurors concur. The grand jury—or its foreperson or deputy foreperson—must return the indictment to a magistrate judge in open court. To avoid unnecessary cost or delay, the magistrate judge may take the return by video teleconference from the court where the grand jury sits. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

Rule 9. Arrest warrant or summons on an indictment or information.

(d) *Warrant by telephone or other means*.—In accordance with Rule 4.1, a magistrate judge may issue an arrest warrant or summons based on information communicated by telephone or other reliable electronic means.

Rule 32. Sentencing and judgment.

(d) *Presentence report.*

(2) *Additional information*.—The presentence report must also contain the following:

(A) the defendant's history and characteristics, including:

- (i) any prior criminal record;
- (ii) the defendant's financial condition; and

(iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(B) information that assesses any financial, social, psychological, and medical impact on any victim;

(C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;

(D) when the law provides for restitution, information sufficient for a restitution order;

(E) if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation;

(F) a statement of whether the government seeks forfeiture under Rule 32.2 and any other law; and

(G) any other information that the court requires, including information relevant to the factors under 18 U.S.C. § 3553(a).

.

Rule 40. Arrest for failing to appear in another district or for violating conditions of release set in another district.

.

(d) *Video teleconferencing.*—Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

Rule 41. Search and seizure.

.

(d) *Obtaining a warrant.*

.

(3) *Requesting a warrant by telephonic or other reliable electronic means.*—In accordance with Rule 4.1, a magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(e) *Issuing the warrant.*

.

(2) *Contents of the warrant.*

(C) *Warrant for a tracking device.*—A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

- (i) complete any installation authorized by the warrant within a specified time no longer than 10 days;
- (ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and
- (iii) return the warrant to the judge designated in the warrant.

(f) *Executing and returning the warrant.*

(1) *Warrant to search for and seize a person or property.*

(D) *Return.*—The officer executing the warrant must promptly return it—together with a copy of the inventory—to the magistrate judge designated on the warrant. The officer may do so by reliable electronic means. The judge must, on request, give 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.

(2) *Warrant for a tracking device.*

(A) *Noting the time.*—The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) *Return*.—Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant. The officer may do so by reliable electronic means.

(C) *Service*.—Within 10 days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

Rule 43. Defendant's presence.

(b) *When not required*.—A defendant need not be present under any of the following circumstances:

(1) *Organizational defendant*.—The defendant is an organization represented by counsel who is present.

(2) *Misdemeanor offense*.—The offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur by video conferencing or in the defendant's absence.

Rule 49. Serving and filing papers.

(a) *When required*.—A party must serve on every other party any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.

(e) *Electronic service and filing.*—A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is written or in writing under these rules.