
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 23, 2012, 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. 1054. 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, 559 U.S. 1151, and 563 U.S. 1063.

LETTER OF TRANSMITTAL

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

APRIL 23, 2012

*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. The Supreme Court recommitted proposed amendments to Rules 5(d) and 58 of the Federal Rules of Criminal Procedure to the Advisory Committee for further consideration.

Sincerely,

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

SUPREME COURT OF THE UNITED STATES

APRIL 23, 2012

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 5 and 15, and new Rule 37.

[See *infra*, pp. 1057–1059.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2012, 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 5. Initial appearance.

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(c) *Place of initial appearance; transfer to another district.*

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(4) *Procedure for persons extradited to the United States.*—If the defendant is surrendered to the United States in accordance with a request for the defendant's extradition, the initial appearance must be in the district (or one of the districts) where the offense is charged.

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Rule 15. Depositions.

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(c) *Defendant's presence.*

(1) *Defendant in custody.*—Except as authorized by Rule 15(c)(3), the officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

- (A) waives in writing the right to be present; or
- (B) persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.

(2) *Defendant not in custody.*—Except as authorized by Rule 15(c)(3), a defendant who is not in custody has the right upon request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in Rule 15(d) but the defendant still fails to appear, the defendant—absent good cause—waives both the right to appear

and any objection to the taking and use of the deposition based on that right.

(3) *Taking depositions outside the United States without the defendant's presence.*—The deposition of a witness who is outside the United States may be taken without the defendant's presence if the court makes case-specific findings of all the following:

(A) the witness's testimony could provide substantial proof of a material fact in a felony prosecution;

(B) there is a substantial likelihood that the witness's attendance at trial cannot be obtained;

(C) the witness's presence for a deposition in the United States cannot be obtained;

(D) the defendant cannot be present because:

(i) the country where the witness is located will not permit the defendant to attend the deposition;

(ii) for an in-custody defendant, secure transportation and continuing custody cannot be assured at the witness's location; or

(iii) for an out-of-custody defendant, no reasonable conditions will assure an appearance at the deposition or at trial or sentencing; and

(E) the defendant can meaningfully participate in the deposition through reasonable means.

(f) *Admissibility and use as evidence.*—An order authorizing a deposition to be taken under this rule does not determine its admissibility. A party may use all or part of a deposition as provided by the Federal Rules of Evidence.

Rule 37. Indicative ruling on a motion for relief that is barred by a pending appeal.

(a) *Relief pending appeal.*—If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to the court of appeals.*—The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) *Remand.*—The district court may decide the motion if the court of appeals remands for that purpose.

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