

TITLE VII. POST-CONVICTION PROCEDURES

Rule 32. Sentencing and Judgment

(a) Definitions. The following definitions apply under this rule:

(1) “Crime of violence or sexual abuse” means:

(A) a crime that involves the use, attempted use, or threatened use of physical force against another’s person or property; or

(B) a crime under 18 U.S.C. §§ 2241-2248 or §§ 2251-2257.

(2) “Victim” means an individual against whom the defendant committed an offense for which the court will impose sentence.

(b) Time of Sentencing.

(1) *In General.* The court must impose sentence without unnecessary delay.

(2) *Changing Time Limits.* The court may, for good cause, change any time limits prescribed in this rule.

(c) Presentence Investigation.

(1) *Required Investigation.*

(A) *In General.* The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless:

- (i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or
- (ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.

(B) *Restitution.* If the law requires restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.

(2) *Interviewing the Defendant.* The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(d) Presentence Report.

(1) *Applying the Sentencing Guidelines.* The presentence report must:

(A) identify all applicable guidelines and policy statements of the Sentencing Commission;

- (B) calculate the defendant's offense level and criminal history category;
- (C) state the resulting sentencing range and kinds of sentences available;
- (D) identify any factor relevant to:
 - (i) the appropriate kind of sentence, or
 - (ii) the appropriate sentence within the applicable sentencing range; and
- (E) identify any basis for departing from the applicable sentencing range.

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

- (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) verified information, stated in a nonargumentative style, that assesses the financial, social, psychological, and medical impact on any individual against whom the offense has been committed;
- (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; and
- (F) any other information that the court requires.

(3) *Exclusions.* The presentence report must exclude the following:

- (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;
- (B) any sources of information obtained upon a promise of confidentiality; and
- (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(e) Disclosing the Report and Recommendation.

- (1) *Time to Disclose.*** Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty.
- (2) *Minimum Required Notice.*** The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period.
- (3) *Sentence Recommendation.*** By local rule or by order in a case, the court may direct the probation officer not to disclose to anyone other

than the court the officer's recommendation on the sentence.

(f) Objecting to the Report.

- (1) *Time to Object.*** Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report.
- (2) *Serving Objections.*** An objecting party must provide a copy of its objections to the opposing party and to the probation officer.
- (3) *Action on Objections.*** After receiving objections, the probation officer may meet with the parties to discuss the objections. The

probation officer may then investigate further and revise the presentence report as appropriate.

(g) Submitting the Report. At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them.

(h) Notice of Possible Departure from Sentencing Guidelines. Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must

specify any ground on which the court is contemplating a departure.

(i) Sentencing.

(1) *In General.* At sentencing, the court:

- (A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report;
- (B) must give to the defendant and an attorney for the government a written summary of — or summarize in camera — any information excluded from the presentence report under Rule 32(d)(3) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information;

(C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and

(D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(2) *Introducing Evidence; Producing a Statement.* The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)-(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(3) *Court Determinations.* At sentencing, the court:

- (A) may accept any undisputed portion of the presentence report as a finding of fact;
- (B) must — for any disputed portion of the presentence report or other controverted matter — rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and
- (C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

(4) *Opportunity to Speak.*

(A) *By a Party.* Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) *By a Victim.* Before imposing sentence, the court must address any victim of a crime of violence or sexual abuse who is present at

sentencing and must permit the victim to speak or submit any information about the sentence. Whether or not the victim is present, a victim's right to address the court may be exercised by the following persons if present:

- (i) a parent or legal guardian, if the victim is younger than 18 years or is incompetent; or
- (ii) one or more family members or relatives the court designates, if the victim is deceased or incapacitated.

(C) *In Camera Proceedings.* Upon a party's motion and for good cause, the court may hear in camera any statement made under Rule 32(i)(4).

(j) Defendant's Right to Appeal.**(1) *Advice of a Right to Appeal.***

(A) *Appealing a Conviction.* If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) *Appealing a Sentence.* After sentencing — regardless of the defendant's plea — the court must advise the defendant of any right to appeal the sentence.

(C) *Appeal Costs.* The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis.

(2) ***Clerk's Filing of Notice.*** If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.

(k) Judgment.

(1) ***In General.*** In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The judge must sign the judgment, and the clerk must enter it.

(2) ***Criminal Forfeiture.*** Forfeiture procedures are governed by Rule 32.2.

Rule 32.1. Revoking or Modifying Probation or Supervised Release

(a) Initial Appearance.

(1) *Person In Custody.* A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a magistrate judge.

(A) If the person is held in custody in the district where an alleged violation occurred, the initial appearance must be in that district.

(B) If the person is held in custody in a district other than where an alleged violation occurred, the initial appearance must be in that district, or in an adjacent district if the appearance can occur more promptly there.

- (2) ***Upon a Summons.*** When a person appears in response to a summons for violating probation or supervised release, a magistrate judge must proceed under this rule.
- (3) ***Advice.*** The judge must inform the person of the following:
- (A) the alleged violation of probation or supervised release;
 - (B) the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and
 - (C) the person's right, if held in custody, to a preliminary hearing under Rule 32.1(b)(1).
- (4) ***Appearance in the District With Jurisdiction.*** If the person is arrested or appears in the district that has jurisdiction to

conduct a revocation hearing — either originally or by transfer of jurisdiction — the court must proceed under Rule 32.1(b)–(e).

(5) *Appearance in a District Lacking*

Jurisdiction. If the person is arrested or appears in a district that does not have jurisdiction to conduct a revocation hearing, the magistrate judge must:

- (A) if the alleged violation occurred in the district of arrest, conduct a preliminary hearing under Rule 32.1(b) and either:
 - (i) transfer the person to the district that has jurisdiction, if the judge finds probable cause to believe that a violation occurred; or

- (ii) dismiss the proceedings and so notify the court that has jurisdiction, if the judge finds no probable cause to believe that a violation occurred; or
 - (B) if the alleged violation did not occur in the district of arrest, transfer the person to the district that has jurisdiction if:
 - (i) the government produces certified copies of the judgment, warrant, and warrant application; and
 - (ii) the judge finds that the person is the same person named in the warrant.
- (6) *Release or Detention.*** The magistrate judge may release or detain the person under 18 U.S.C. § 3143(a) pending further proceedings. The burden of establishing that the person will

not flee or pose a danger to any other person or to the community rests with the person.

(b) Revocation.

(1) *Preliminary Hearing.*

(A) *In General.* If a person is in custody for violating a condition of probation or supervised release, a magistrate judge must promptly conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.

(B) *Requirements.* The hearing must be recorded by a court reporter or by a suitable recording device. The judge must give the person:

- (i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;
 - (ii) an opportunity to appear at the hearing and present evidence; and
 - (iii) upon request, an opportunity to question any adverse witness, unless the judge determines that the interest of justice does not require the witness to appear.
- (C) *Referral.* If the judge finds probable cause, the judge must conduct a revocation hearing. If the judge does not find probable

cause, the judge must dismiss the proceeding.

(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; and
- (D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel.

(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.
- (2) *Exceptions.*** A hearing is not required if:
- (A) the person waives the hearing; or
 - (B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and
 - (C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

- (d) Disposition of the Case.** The court's disposition of the case is governed by 18 U.S.C. § 3563 and § 3565 (probation) and § 3583 (supervised release).
- (e) Producing a Statement.** Rule 26.2(a)–(d) and (f) applies at a hearing under this rule. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

Rule 32.2. Criminal Forfeiture

- (a) Notice to the Defendant.** A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.

(b) Entering a Preliminary Order of Forfeiture.

- (1) *In General.*** As soon as practicable after a verdict or finding of guilty, or after a plea of guilty or nolo contendere is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay. The court's determination may be based on evidence

already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.

- (2) ***Preliminary Order.*** If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).
- (3) ***Seizing Property.*** The entry of a preliminary order of forfeiture authorizes the Attorney

General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. At sentencing — or at any time before sentencing if the defendant consents — the order of forfeiture becomes final as to the defendant and must be made a part of the sentence and be included in the judgment. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

- (4) ***Jury Determination.*** Upon a party's request in a case in which a jury returns a verdict of

guilty, the jury must determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

(c) Ancillary Proceeding; Entering a Final Order of Forfeiture.

(1) *In General.* If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding, but no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment.

(A) In the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of

the motion, the facts set forth in the petition are assumed to be true.

- (B) After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Federal Rule of Civil Procedure 56.

- (2) ***Entering a Final Order.*** When the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party

rights. If no third party files a timely petition, the preliminary order becomes the final order of forfeiture if the court finds that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. The defendant may not object to the entry of the final order on the ground that the property belongs, in whole or in part, to a codefendant or third party; nor may a third party object to the final order on the ground that the third party had an interest in the property.

- (3) *Multiple Petitions.*** If multiple third-party petitions are filed in the same case, an order dismissing or granting one petition is not appealable until rulings are made on all the

petitions, unless the court determines that there is no just reason for delay.

(4) *Ancillary Proceeding Not Part of Sentencing.* An ancillary proceeding is not part of sentencing.

(d) Stay Pending Appeal. If a defendant appeals from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but must not transfer any property interest to a third party until the

decision on appeal becomes final, unless the defendant consents in writing or on the record.

(e) Subsequently Located Property; Substitute Property.

(1) *In General.* On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:

(A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or

(B) is substitute property that qualifies for forfeiture under an applicable statute.

(2) *Procedure.* If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court must:

- (A) enter an order forfeiting that property, or amend an existing preliminary or final order to include it; and
 - (B) if a third party files a petition claiming an interest in the property, conduct an ancillary proceeding under Rule 32.2(c).
- (3) ***Jury Trial Limited.*** There is no right to a jury trial under Rule 32.2(e).

Rule 33. New Trial

- (a) **Defendant's Motion.** Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) ***Newly Discovered Evidence.*** Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(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, or within such further time as the court sets during the 7-day period.

Rule 34. Arresting Judgment

(a) **In General.** Upon the defendant's motion or on its own, the court must arrest judgment if:

- (1) the indictment or information does not charge an offense; or
- (2) the court does not have jurisdiction of the charged offense.

(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, or within such further time as the court sets during the 7-day period.

Rule 35. Correcting or Reducing a Sentence

(a) Correcting Clear Error. Within 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) Reducing a Sentence for Substantial Assistance.

(1) *In General.* Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

(2) *Later Motion.* Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

- (A) information not known to the defendant until one year or more after sentencing;
- (B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or
- (C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) *Evaluating Substantial Assistance.* In evaluating whether the defendant has provided

substantial assistance, the court may consider the defendant's presentence assistance.

- (4) ***Below Statutory Minimum.*** When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

Rule 36. Clerical Error

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

Rule 37. [Reserved]

Rule 38. Staying a Sentence or a Disability

- (a) **Death Sentence.** The court must stay a death sentence if the defendant appeals the conviction or sentence.

(b) Imprisonment.

(1) *Stay Granted.* If the defendant is released pending appeal, the court must stay a sentence of imprisonment.

(2) *Stay Denied; Place of Confinement.* If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal.

(c) *Fine.* If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on

any terms considered appropriate and may require the defendant to:

- (1) deposit all or part of the fine and costs into the district court's registry pending appeal;
- (2) post a bond to pay the fine and costs; or
- (3) submit to an examination concerning the defendant's assets and, if appropriate, order the defendant to refrain from dissipating assets.

(d) Probation. If the defendant appeals, the court may stay a sentence of probation. The court must set the terms of any stay.

(e) Restitution and Notice to Victims.

- (1) *In General.* If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay — on any terms considered appropriate — any

sentence providing for restitution under 18 U.S.C. § 3556 or notice under 18 U.S.C. § 3555.

(2) *Ensuring Compliance.* The court may issue any order reasonably necessary to ensure compliance with a restitution order or a notice order after disposition of an appeal, including:

- (A) a restraining order;
- (B) an injunction;
- (C) an order requiring the defendant to deposit all or part of any monetary restitution into the district court's registry; or
- (D) an order requiring the defendant to post a bond.

(f) *Forfeiture.* A stay of a forfeiture order is governed by Rule 32.2(d).

(g) Disability. If the defendant's conviction or sentence creates a civil or employment disability under federal law, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay the disability pending appeal on any terms considered appropriate. The court may issue any order reasonably necessary to protect the interest represented by the disability pending appeal, including a restraining order or an injunction.

Rule 39. [Reserved]

TITLE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Arrest for Failing to Appear in Another District

(a) In General. If a person is arrested under a warrant issued in another district for failing to appear — as required by the terms of that person's release under

18 U.S.C. §§ 3141-3156 or by a subpoena — the person must be taken without unnecessary delay before a magistrate judge in the district of the arrest.

(b) Proceedings. The judge must proceed under Rule 5(c)(3) as applicable.

(c) Release or Detention Order. The judge may modify any previous release or detention order issued in another district, but must state in writing the reasons for doing so.

Rule 41. Search and Seizure

(a) Scope and Definitions.

(1) Scope. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) **Definitions.** The following definitions apply under this rule:

- (A) “Property” includes documents, books, papers, any other tangible objects, and information.
- (B) “Daytime” means the hours between 6:00 a.m. and 10:00 p.m. according to local time.
- (C) “Federal law enforcement officer” means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(b) Authority to Issue a Warrant. At the request of a federal law enforcement officer or an attorney for the government:

- (1)** a magistrate judge with authority in the district — or if none is reasonably available, a judge of a state court of record in the district — has authority to issue a warrant to search for and seize a person or property located within the district;
- (2)** a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed; and

(3) a magistrate judge — in an investigation of domestic terrorism or international terrorism (as defined in 18 U.S.C. § 2331) — having authority in any district in which activities related to the terrorism may have occurred, may issue a warrant for a person or property within or outside that district.

(c) **Persons or Property Subject to Search or Seizure.** A warrant may be issued for any of the following:

- (1) evidence of a crime;
- (2) contraband, fruits of crime, or other items illegally possessed;
- (3) property designed for use, intended for use, or used in committing a crime; or

- (4) a person to be arrested or a person who is unlawfully restrained.

(d) Obtaining a Warrant.

- (1) ***Probable Cause.*** After receiving an affidavit or other information, a magistrate judge or a judge of a state court of record must issue the warrant if there is probable cause to search for and seize a person or property under Rule 41(c).

(2) ***Requesting a Warrant in the Presence of a Judge.***

- (A) ***Warrant on an Affidavit.*** When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may

examine under oath the affiant and any witness the affiant produces.

(B) *Warrant on Sworn Testimony.* The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(C) *Recording Testimony.* Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(3) *Requesting a Warrant by Telephonic or Other Means.*

(A) *In General.* A magistrate judge may issue a warrant based on information communicated by telephone or other appropriate means, including facsimile transmission.

(B) *Recording Testimony.* Upon learning that an applicant is requesting a warrant, a magistrate judge must:

- (i) place under oath the applicant and any person on whose testimony the application is based; and
- (ii) make a verbatim record of the conversation with a suitable recording

device, if available, or by a court reporter, or in writing.

(C) *Certifying Testimony.* The magistrate judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the magistrate judge and filed with the clerk.

(D) *Suppression Limited.* Absent a finding of bad faith, evidence obtained from a warrant issued under Rule 41(d)(3)(A) is not subject to suppression on the ground that issuing the warrant in that manner was unreasonable under the circumstances.

(e) Issuing the Warrant.

(1) *In General.* The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) *Contents of the Warrant.* The warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

(A) execute the warrant within a specified time no longer than 10 days;

(B) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and

(C) return the warrant to the magistrate judge designated in the warrant.

(3) *Warrant by Telephonic or Other Means.* If a magistrate judge decides to proceed under Rule 41(d)(3)(A), the following additional procedures apply:

(A) *Preparing a Proposed Duplicate Original Warrant.* The applicant must prepare a “proposed duplicate original warrant” and must read or otherwise transmit the contents of that document verbatim to the magistrate judge.

(B) *Preparing an Original Warrant.* The magistrate judge must enter the contents of the proposed duplicate original warrant into an original warrant.

(C) *Modifications.* The magistrate judge may direct the applicant to modify the proposed duplicate original warrant. In that case, the judge must also modify the original warrant.

(D) *Signing the Original Warrant and the Duplicate Original Warrant.* Upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact time it is issued, and direct the applicant to sign the judge's name on the duplicate original warrant.

(f) Executing and Returning the Warrant.

(1) *Noting the Time.* The officer executing the warrant must enter on its face the exact date and time it is executed.

(2) *Inventory.* An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

(3) *Receipt.* The officer executing the warrant must:

(A) give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or

(B) leave a copy of the warrant and receipt at the place where the officer took the property.

(4) **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 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.

(g) **Motion to Return Property.** A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary

to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) Motion to Suppress. A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

(i) Forwarding Papers to the Clerk. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

Rule 42. Criminal Contempt

(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

- (A) state the time and place of the trial;
- (B) allow the defendant a reasonable time to prepare a defense; and
- (C) state the essential facts constituting the charged criminal contempt and describe it as such.

(2) Appointing a Prosecutor. The court must request that the contempt be prosecuted by an attorney for the government, unless the interest

of justice requires the appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.

(3) *Trial and Disposition.* A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so provides and must be released or detained as Rule 46 provides. If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents. Upon a finding or verdict of guilty, the court must impose the punishment.

(b) *Summary Disposition.* Notwithstanding any other provision of these rules, the court (other than a

magistrate judge) may summarily punish a person who commits criminal contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies; a magistrate judge may summarily punish a person as provided in 28 U.S.C. § 636(e). The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.

TITLE IX. GENERAL PROVISIONS

Rule 43. Defendant's Presence

(a) When Required. Unless this rule, Rule 5, or Rule 10

provides otherwise, the defendant must be present at:

- (1)** the initial appearance, the initial arraignment, and the plea;
- (2)** every trial stage, including jury impanelment and the return of the verdict; and
- (3)** sentencing.

(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 in the defendant's absence.

(3) *Conference or Hearing on a Legal Question.* The proceeding involves only a conference or hearing on a question of law.

(4) ***Sentence Correction.*** The proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c).

(c) **Waiving Continued Presence.**

(1) ***In General.*** A defendant who was initially present at trial, or who had pleaded guilty or nolo contendere, waives the right to be present under the following circumstances:

- (A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;
- (B) in a noncapital case, when the defendant is voluntarily absent during sentencing; or
- (C) when the court warns the defendant that it will remove the defendant from the

courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

- (2) ***Waiver's Effect.*** If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

Rule 44. Right to and Appointment of Counsel

- (a) **Right to Appointed Counsel.** A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.
- (b) **Appointment Procedure.** Federal law and local court rules govern the procedure for implementing the right to counsel.

(c) Inquiry Into Joint Representation.

(1) *Joint Representation.* Joint representation

occurs when:

(A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

(B) the defendants are represented by the same counsel, or counsel who are associated in law practice.

(2) *Court's Responsibilities in Cases of Joint*

Representation. The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no

conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

Rule 45. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:

- (1) *Day of the Event Excluded.*** Exclude the day of the act, event, or default that begins the period.
- (2) *Exclusion from Brief Periods.*** Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.
- (3) *Last Day.*** Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or day on which weather or other conditions make

the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible.

(4) ***“Legal Holiday” Defined.*** As used in this rule,

“legal holiday” means:

(A) the day set aside by statute for observing:

- (i) New Year's Day;
- (ii) Martin Luther King, Jr.'s Birthday;
- (iii) Washington's Birthday;
- (iv) Memorial Day;
- (v) Independence Day;
- (vi) Labor Day;
- (vii) Columbus Day;
- (viii) Veterans' Day;

- (ix) Thanksgiving Day;
- (x) Christmas Day; and
- (B) any other day declared a holiday by the President, the Congress, or the state where the district court is held.

(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) *Exceptions.* The court may not extend the time to take any action under Rules 29, 33, 34, and 35, except as stated in those rules.

(c) *Additional Time After Service.* When these rules permit or require a party to act within a specified period after a notice or a paper has been served on that party, 3 days are added to the period if service occurs in the manner provided under Federal Rule of Civil Procedure 5(b)(2)(B), (C), or (D).

Rule 46. Release from Custody; Supervising Detention

(a) *Before Trial.* The provisions of 18 U.S.C. §§ 3142 and 3144 govern pretrial release.

(b) *During Trial.* A person released before trial continues on release during trial under the same terms and conditions. But the court may order different terms and conditions or terminate the

release if necessary to ensure that the person will be present during trial or that the person's conduct will not obstruct the orderly and expeditious progress of the trial.

- (c) Pending Sentencing or Appeal.** The provisions of 18 U.S.C. § 3143 govern release pending sentencing or appeal. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.
- (d) Pending Hearing on a Violation of Probation or Supervised Release.** Rule 32.1(a)(6) governs release pending a hearing on a violation of probation or supervised release.
- (e) Surety.** The court must not approve a bond unless any surety appears to be qualified. Every surety, except a legally approved corporate surety, must

demonstrate by affidavit that its assets are adequate.

The court may require the affidavit to describe the following:

- (1) the property that the surety proposes to use as security;
- (2) any encumbrance on that property;
- (3) the number and amount of any other undischarged bonds and bail undertakings the surety has issued; and
- (4) any other liability of the surety.

(f) Bail Forfeiture.

(1) ***Declaration.*** The court must declare the bail forfeited if a condition of the bond is breached.

(2) ***Setting Aside.*** The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if:

- (A) the surety later surrenders into custody the person released on the surety's appearance bond; or
- (B) it appears that justice does not require bail forfeiture.

(3) *Enforcement.*

- (A) *Default Judgment and Execution.* If it does not set aside a bail forfeiture, the court must, upon the government's motion, enter a default judgment.
- (B) *Jurisdiction and Service.* By entering into a bond, each surety submits to the district court's jurisdiction and irrevocably appoints the district clerk as its agent to receive service of any filings affecting its liability.

(C) *Motion to Enforce.* The court may, upon the government's motion, enforce the surety's liability without an independent action. The government must serve any motion, and notice as the court prescribes, on the district clerk. If so served, the clerk must promptly mail a copy to the surety at its last known address.

(4) *Remission.* After entering a judgment under Rule 46(f)(3), the court may remit in whole or in part the judgment under the same conditions specified in Rule 46(f)(2).

(g) **Exoneration.** The court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture. The court must exonerate a surety

who deposits cash in the amount of the bond or timely surrenders the defendant into custody.

(h) Supervising Detention Pending Trial.

(1) *In General.* To eliminate unnecessary detention, the court must supervise the detention within the district of any defendants awaiting trial and of any persons held as material witnesses.

(2) *Reports.* An attorney for the government must report biweekly to the court, listing each material witness held in custody for more than 10 days pending indictment, arraignment, or trial. For each material witness listed in the report, an attorney for the government must state why the witness should not be released

with or without a deposition being taken under Rule 15(a).

(i) Forfeiture of Property. The court may dispose of a charged offense by ordering the forfeiture of 18 U.S.C. § 3142(c)(1)(B)(xi) property under 18 U.S.C. § 3146(d), if a fine in the amount of the property's value would be an appropriate sentence for the charged offense.

(j) Producing a Statement.

(1) *In General.* Rule 26.2(a)-(d) and (f) applies at a detention hearing under 18 U.S.C. § 3142, unless the court for good cause rules otherwise.

(2) *Sanctions for Not Producing a Statement.* If a party disobeys a Rule 26.2 order to produce a witness's statement, the court must not consider

that witness's testimony at the detention hearing.

Rule 47. Motions and Supporting Affidavits

(a) In General. A party applying to the court for an order must do so by motion.

(b) Form and Content of a Motion. A motion — except when made during a trial or hearing — must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by affidavit.

(c) Timing of a Motion. A party must serve a written motion — other than one that the court may hear ex parte — and any hearing notice at least 5 days before the hearing date, unless a rule or court order sets a

different period. For good cause, the court may set a different period upon ex parte application.

- (d) Affidavit Supporting a Motion.** The moving party must serve any supporting affidavit with the motion. A responding party must serve any opposing affidavit at least one day before the hearing, unless the court permits later service.

Rule 48. Dismissal

- (a) By the Government.** The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.
- (b) By the Court.** The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

- (1) presenting a charge to a grand jury;
- (2) filing an information against a defendant; or
- (3) bringing a defendant to trial.

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.
- (b) How Made.** Service must be made in the manner provided for a civil action. When these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, unless the court orders otherwise.
- (c) Notice of a Court Order.** When the court issues an order on any post-arraignment motion, the clerk

must provide notice in a manner provided for in a civil action. Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve — or authorize the court to relieve — a party's failure to appeal within the allowed time.

- (d) Filing.** A party must file with the court a copy of any paper the party is required to serve. A paper must be filed in a manner provided for in a civil action.

Rule 50. Prompt Disposition

Scheduling preference must be given to criminal proceedings as far as practicable.

Rule 51. Preserving Claimed Error

- (a) Exceptions Unnecessary.** Exceptions to rulings or orders of the court are unnecessary.

(b) Preserving a Claim of Error. A party may preserve a claim of error by informing the court — when the court ruling or order is made or sought — of the action the party wishes the court to take, or the party’s objection to the court’s action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

Rule 52. Harmless and Plain Error

(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

Rule 53. Courtroom Photographing and Broadcasting Prohibited

Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.

Rule 54. [Transferred]¹

Rule 55. Records

The clerk of the district court must keep records of criminal proceedings in the form prescribed by the Director of the Administrative Office of the United States

¹ All of Rule 54 was moved to Rule 1.

Courts. The clerk must enter in the records every court order or judgment and the date of entry.

Rule 56. When Court Is Open

(a) In General. A district court is considered always open for any filing, and for issuing and returning process, making a motion, or entering an order.

(b) Office Hours. The clerk's office — with the clerk or a deputy in attendance — must be open during business hours on all days except Saturdays, Sundays, and legal holidays.

(c) Special Hours. A court may provide by local rule or order that its clerk's office will be open for specified hours on Saturdays or legal holidays other than those set aside by statute for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor

Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

Rule 57. District Court Rules

(a) In General.

(1) ***Adopting Local Rules.*** Each district court acting by a majority of its district judges may, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice. A local rule must be consistent with — but not duplicative of — federal statutes and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) ***Limiting Enforcement.*** A local rule imposing a requirement of form must not be enforced in a

manner that causes a party to lose rights because of an unintentional failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law.

A judge may regulate practice in any manner consistent with federal law, these rules, and the local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator was furnished with actual notice of the requirement before the noncompliance.

(c) Effective Date and Notice. A local rule adopted under this rule takes effect on the date specified by the district court and remains 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 local rules and their amendments, when promulgated, must be furnished to the judicial council and the Administrative Office of the United States Courts and must be made available to the public.

Rule 58. Petty Offenses and Other Misdemeanors

(a) Scope.

(1) *In General.* These rules apply in petty offense and other misdemeanor cases and on appeal to a district judge in a case tried by a magistrate judge, unless this rule provides otherwise.

(2) *Petty Offense Case Without Imprisonment.*

In a case involving a petty offense for which no sentence of imprisonment will be imposed, the court may follow any provision of these rules

that is not inconsistent with this rule and that the court considers appropriate.

- (3) ***Definition.*** As used in this rule, the term “petty offense for which no sentence of imprisonment will be imposed” means a petty offense for which the court determines that, in the event of conviction, no sentence of imprisonment will be imposed.

(b) Pretrial Procedure.

- (1) ***Charging Document.*** The trial of a misdemeanor may proceed on an indictment, information, or complaint. The trial of a petty offense may also proceed on a citation or violation notice.

- (2) ***Initial Appearance.*** At the defendant’s initial appearance on a petty offense or other

misdemeanor charge, the magistrate judge must inform the defendant of the following:

- (A) the charge, and the minimum and maximum penalties, including imprisonment, fines, any special assessment under 18 U.S.C. § 3013, and restitution under 18 U.S.C. § 3556;
- (B) the right to retain counsel;
- (C) the right to request the appointment of counsel if the defendant is unable to retain counsel — unless the charge is a petty offense for which the appointment of counsel is not required;
- (D) the defendant's right not to make a statement, and that any statement made may be used against the defendant;

- (E) the right to trial, judgment, and sentencing before a district judge — unless:
 - (i) the charge is a petty offense; or
 - (ii) the defendant consents to trial, judgment, and sentencing before a magistrate judge;
- (F) the right to a jury trial before either a magistrate judge or a district judge — unless the charge is a petty offense; and
- (G) if the defendant is held in custody and charged with a misdemeanor other than a petty offense, the right to a preliminary hearing under Rule 5.1, and the general circumstances, if any, under which the defendant may secure pretrial release.

(3) Arraignment.

(A) *Plea Before a Magistrate Judge.* A magistrate judge may take the defendant's plea in a petty offense case. In every other misdemeanor case, a magistrate judge may take the plea only if the defendant consents either in writing or on the record to be tried before a magistrate judge and specifically waives trial before a district judge. The defendant may plead not guilty, guilty, or (with the consent of the magistrate judge) nolo contendere.

(B) *Failure to Consent.* Except in a petty offense case, the magistrate judge must order a defendant who does not consent to trial before a magistrate judge to appear

before a district judge for further proceedings.

(c) Additional Procedures in Certain Petty Offense

Cases. The following procedures also apply in a case involving a petty offense for which no sentence of imprisonment will be imposed:

(1) *Guilty or Nolo Contendere Plea.* The court must not accept a guilty or nolo contendere plea unless satisfied that the defendant understands the nature of the charge and the maximum possible penalty.

(2) *Waiving Venue.*

(A) *Conditions of Waiving Venue.* If a defendant is arrested, held, or present in a district different from the one where the indictment, information, complaint, citation, or violation

notice is pending, the defendant may state in writing a desire to plead guilty or nolo contendere; to waive venue and trial in the district where the proceeding is pending; and to consent to the court's disposing of the case in the district where the defendant was arrested, is held, or is present.

(B) *Effect of Waiving Venue.* Unless the defendant later pleads not guilty, the prosecution will proceed in the district where the defendant was arrested, is held, or is present. The district clerk must notify the clerk in the original district of the defendant's waiver of venue. The defendant's statement of a desire to plead

guilty or nolo contendere is not admissible against the defendant.

- (3) ***Sentencing.*** The court must give the defendant an opportunity to be heard in mitigation and then proceed immediately to sentencing. The court may, however, postpone sentencing to allow the probation service to investigate or to permit either party to submit additional information.
- (4) ***Notice of a Right to Appeal.*** After imposing sentence in a case tried on a not-guilty plea, the court must advise the defendant of a right to appeal the conviction and of any right to appeal the sentence. If the defendant was convicted on a plea of guilty or nolo contendere, the court

must advise the defendant of any right to appeal the sentence.

(d) Paying a Fixed Sum in Lieu of Appearance.

- (1) *In General.*** If the court has a local rule governing forfeiture of collateral, the court may accept a fixed-sum payment in lieu of the defendant's appearance and end the case, but the fixed sum may not exceed the maximum fine allowed by law.
- (2) *Notice to Appear.*** If the defendant fails to pay a fixed sum, request a hearing, or appear in response to a citation or violation notice, the district clerk or a magistrate judge may issue a notice for the defendant to appear before the court on a date certain. The notice may give the defendant an additional opportunity to pay a

fixed sum in lieu of appearance. The district clerk must serve the notice on the defendant by mailing a copy to the defendant's last known address.

- (3) ***Summons or Warrant.*** Upon an indictment, or upon a showing by one of the other charging documents specified in Rule 58(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 an attorney for the government, a summons. The showing of probable cause must be made under oath or under penalty of 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 arrest.

(e) Recording the Proceedings. The court must record any proceedings under this rule by using a court reporter or a suitable recording device.

(f) New Trial. Rule 33 applies to a motion for a new trial.

(g) Appeal.

(1) *From a District Judge's Order or Judgment.*

The Federal Rules of Appellate Procedure govern an appeal from a district judge's order or a judgment of conviction or sentence.

(2) *From a Magistrate Judge's Order or Judgment.*

(A) *Interlocutory Appeal.* Either party may appeal an order of a magistrate judge to a district judge within 10 days of its entry if a district judge's order could similarly be appealed. The party appealing must file a notice with the clerk specifying the order being appealed and must serve a copy on the adverse party.

(B) *Appeal from a Conviction or Sentence.* A defendant may appeal a magistrate judge's judgment of conviction or sentence to a district judge within 10 days of its entry. To appeal, the defendant must file a notice with the clerk specifying the judgment being

appealed and must serve a copy on an attorney for the government.

(C) *Record.* The record consists of the original papers and exhibits in the case; any transcript, tape, or other recording of the proceedings; and a certified copy of the docket entries. For purposes of the appeal, a copy of the record of the proceedings must be made available to a defendant who establishes by affidavit an inability to pay or give security for the record. The Director of the Administrative Office of the United States Courts must pay for those copies.

(D) *Scope of Appeal.* The defendant is not entitled to a trial de novo by a district judge. The scope of the appeal is the same as in an

appeal to the court of appeals from a judgment entered by a district judge.

(3) *Stay of Execution and Release Pending*

Appeal. Rule 38 applies to a stay of a judgment of conviction or sentence. The court may release the defendant pending appeal under the law relating to release pending appeal from a district court to a court of appeals.

Rule 59. [Deleted]

Rule 60. Title

These rules may be known and cited as the Federal Rules of Criminal Procedure.