

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE**

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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**AMENDMENTS TO THE
FEDERAL RULES OF CRIMINAL PROCEDURE**

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules voted by mail ballot to act on recent legislation that required immediate attention. The advisory committee submitted proposed amendments to Rules 6 and 41 with a recommendation that they be approved and transmitted to the Judicial Conference. The amendments conform the rules to recent anti-terrorism legislation and were not circulated to the bench and bar in accordance with established procedures.

In September 2001, the Judicial Conference of the United States approved the restyled revision of all the Federal Rules of Criminal Procedure (JCUS-SEP/OCT 01, p. 70), which is now before the Supreme Court for its consideration. The comprehensive revision simplifies and clarifies the language of the rules. If approved by the Supreme Court by May 1, 2002, the amendments will take effect on December 1, 2002, unless Congress takes action otherwise.

Several weeks after the Judicial Conference submitted the comprehensive criminal rules' revision to the Supreme Court, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT) amended two existing criminal rules. (Pub. L. No. 107-56.)

- Section 203 of the Act amends Rule 6 to permit sharing with specific law enforcement entities of grand-jury information involving terrorism. Under the Act, the government

must notify the court of any disclosures and the identity of the department or agency to which the disclosure was made.

- Section 219 amends Rule 41 to permit a magistrate judge to issue a search warrant for property outside the district in cases involving terrorism.

Under the Rules Enabling Act, 28 U.S.C. § 2072(b), the comprehensive rules revision now pending in the Supreme Court could create supersession problems when the amendments take effect on December 1, 2002, because they have a later effective date. To avoid potential confusion and possible supersession, the amendments made by the Act must be included in the package of rules pending in the Supreme Court.

But the amendments made by the Act are based on the two existing rules. They cannot be incorporated without change into the comprehensive rules' revision, which has been renumbered, reformatted, and modified to include standard conventions and definitions. Accordingly, the advisory committee has proposed modest, technical adjustments to the Act's amendments to conform them to the comprehensive revision. The proposed new amendments make no substantive changes to the statutory provisions and would be integrated into the comprehensive revision pending Supreme Court approval before transmission to Congress.

The Committee concurred with the advisory committee's recommendations. The proposed amendments to the Federal Rules of Criminal Procedure are in Appendix A together with an excerpt from the advisory committee report.

Recommendation: That the Judicial Conference approve the proposed amendments to Criminal Rules 6 and 41 and transmit these changes to the Supreme Court for its consideration with a recommendation that they be adopted by the Court (and integrated with the changes approved by the Judicial Conference in October 2001) and transmitted to Congress in accordance with the law.

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