FEDERAL RULES
OF
CRIMINAL PROCEDURE

DECEMBER 16, 2016

Printed for the use
of
THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

联邦刑事诉讼规则

2016年12月16日

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司法委员会
众议院

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No. 9

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OF
CRIMINAL PROCEDURE

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第114届国会
第2届会议

委员会印刷版

!No.9

联邦规则
的
刑事诉讼程序

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的

司法委员会
众议院

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FOREWORD

This document contains the Federal Rules of Criminal Procedure, as amended to December 16, 2016. The rules have been promulgated and amended by the United States Supreme Court pursuant to law, and further amended by Acts of Congress. This document has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments to the rules.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Criminal Procedure, Judicial Conference of the United States, prepared notes explaining the purpose and intent of the amendments to the rules. The Committee Notes may be found in the Appendix to Title 18, United States Code, following the particular rule to which they relate.

Bob Goodlatte

Chairman, Committee on the Judiciary.

DECEMBER 16, 2016.

前言

本文件包含截至2016年12月16日修正的《联邦刑事诉讼规则》。这些规则由美国最高法院依法颁布和修正，并经由国会法案进一步修正。本文件由委员会编制，以满足对包含规则最新修正的官方最新文件的需求。

为方便用户，凡规则经修正的，规则文本之后附有该修正公布日期和该修正生效日期的引用。

美国司法会议实践与程序规则委员会及联邦刑事诉讼规则咨询委员会编写了注释，解释规则修正的目的和意图。委员会注释可见于《美国法典》第18编附录中，附于其相关特定规则之后。

Bob Goodlatte

主席，司法委员会。

2016年12月16日。

AUTHORITY FOR PROMULGATION OF RULES

TITLE 28, UNITED STATES CODE

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648, eff. Dec. 1, 1988; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

规则制定权

《美国法典》第28编

2072. 程序与证据规则；制定权

(a) 最高法院有权为美国地区法院(包括其治安法官面前的程序)和上诉法院的案件制定一般实践与程序规则及证据规则。

(b) 此类规则不得削减、扩大或修改任何实体权利。与此类规则冲突的所有法律在此类规则生效后不再具有效力或作用。

(c) 此类规则可界定地区法院的裁决何时为本编第1291条下上诉目的的终局裁决。(公法100-702第IV编第401(a)条增补，1988年11月19日，102 Stat.4648,1988年12月1日生效；公法101-650第III编第315、321条修正，1990年12月1日，104 Stat.5115、5117。)

2073. 程序和证据规则；规定方法

(a)(1) 司法会议应制定并公布本条下审议拟议规则的程序。

(2) 司法会议可授权任命委员会，通过推荐根据本编第2072条和第2075条制定的规则来协助会议。每个此类委员会应由法官席成员和职业律师界成员，以及初审和上诉法官组成。

(b) 司法会议应授权根据本条(a)款任命一个关于实践、程序和证据规则的常设委员会。该常设委员会应审查如此任命的其他委员会提出的每项建议，并向司法会议推荐实践、程序和证据规则，以及根据本条(a)(2)款任命的委员会所提议的规则变更，以保持一致性并促进司法公正。

(c)(1) 根据本节任命的任何委员会根据本章处理事务的每次会议均应向公众开放，除非该委员会在公开会议上且有过半数成员出席的情况下，认定将当日剩余会议的全部或部分对公众关闭符合公共利益，并说明关闭会议的理由。委员会应保存根据本章处理事务的每次会议记录并向公众提供，但此类记录中与闭门会议有关并向公众提供的任何部分，可包含为避免妨碍闭门会议目的所必需的删减。

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988; amended Pub. L. 103–394, title I, § 104(e), Oct. 22, 1994, 108 Stat. 4110.)

§ 2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988.)

(2) 根据本条任命的委员会为处理本章下事务而举行的任何会议，应事先给予充分通知，使所有利害关系人能够出席。

(d) 在根据本条或第2072条或第2075条提出建议时，提出该建议的机构应提供拟议规则、关于该规则的解释性说明，以及解释该机构行动的书面报告，包括任何少数意见或其他单独意见。

(e) 未遵守本条不影响根据本编第2072条或第2075条制定的规则。

(公法100-702第IV编第401(a)条增补，1988年11月19日，102 Stat.4649,1988年12月1日生效；公法103-394第I编第104(e)条修正，1994年10月22日，108 Stat.4110。)

2074. 程序与证据规则；提交国会；生效日期

(a) 最高法院应在根据第2072条规定的规则生效当年的5月1日之前，向国会转交拟议规则的副本。该规则不得早于其被转交当年的12月1日生效，除非法律另有规定。最高法院可确定该规则对当时待决程序适用的范围，但最高法院不得要求将该规则适用于当时待决的进一步程序，前提是待决该程序的法院认为在该程序中适用该规则不可行或将造成不公正，在此情况下适用原规则。

(b) 任何此类设立、废除或修改证据特权的规则，除非经国会法案批准，否则不具有效力或作用。

(新增，Pub.L.100-702，第四编，401(a),1988年11月19日，102 Stat.4649,1988年12月1日生效。)

HISTORICAL NOTE

The Supreme Court prescribes rules of criminal procedure for the district courts pursuant to section 2072 of Title 28, United States Code, as enacted by Title IV ''Rules Enabling Act'' of Pub. L. 100–702 (approved November 19, 1988, 102 Stat. 4648), effective December 1, 1988. Pursuant to section 2074 of Title 28, the Supreme Court transmits to Congress (not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective) a copy of the proposed rule. The rule takes effect no earlier than December 1 of the year in which the rule is transmitted unless otherwise provided by law.

Prior to enactment of Pub. L. 100–702, the Supreme Court promulgated rules of criminal procedure for the district courts pursuant to two sections of Title 18, United States Code. Section 3771 authorized the Court to prescribe rules for all criminal proceedings prior to and including verdict, or finding of guilty or not guilty by the court, or plea of guilty. Section 3772 empowered the Court to prescribe rules with respect to all proceedings after verdict or finding of guilty by the court, or plea of guilty.

Proceedings Prior to and Including Verdict

By act of June 29, 1940, ch. 445, 54 Stat. 688 (subsequently 18 United States Code, §3771), the Supreme Court was authorized to prescribe general rules of criminal procedure prior to and including verdict, finding of guilty or not guilty by the court, or plea of guilty, in criminal proceedings. The rules, and subsequent amendments, were not to take effect until (1) they had been first reported to Congress by the Attorney General at the beginning of a regular session and (2) after the close of that session.

Under a 1949 amendment to 18 U.S.C., §3771, the Chief Justice of the United States, instead of the Attorney General, reported the rules to Congress. In 1950, section 3771 was further amended so that amendments to the rules could be reported to Congress not later than May 1 each year and become effective 90 days after being reported. Effective December 1, 1988, section 3771 was repealed and supplanted by new sections 2072 and 2074 of Title 28, United States Code, see first paragraph of Historical Note above.

The original rules pursuant to act of June 30, 1940, were adopted by order of the Court on December 26, 1944, transmitted to Congress by the Attorney General on January 3, 1945, and became effective March 21, 1946 (327 U.S. 821; Cong. Rec., vol. 91, pt. 1, p. 17, Exec. Comm. 4; H. Doc. 12, 79th Cong.).

Amendments were adopted by order of the Court dated December 27, 1948, transmitted to Congress by the Attorney General on January 3, 1949, and became effective October 20, 1949 (335 U.S. 917, 949; Cong. Rec., vol. 95, pt. 1, p. 13, Exec. Comm. 16; H. Doc. 30, 81st

历史注释

最高法院依据《美国法典》第28编第2072条(由公法100-702第四章"规则授权法"制定，1988年11月19日批准，102 Stat.4648)，自1988年12月1日起生效，为地区法院制定刑事诉讼规则。依据第28编第2074条，最高法院向国会(不迟于根据第2072条制定的规则生效当年的5月1日)转交拟议规则的副本。除法律另有规定外，该规则最早于转交当年的12月1日生效。

在公法100-702颁布之前，最高法院依据《美国法典》第18编的两个条款为地区法院制定刑事诉讼规则。第3771条授权法院为裁决前及包括裁决在内的所有刑事诉讼程序，或法院作出的有罪或无罪认定，或认罪答辩制定规则。第3772条授权法院就裁决后或法院作出有罪认定后或认罪答辩后的所有程序制定规则。

判决前及包括判决在内的程序

根据1940年6月29日法案(第445章，54 Stat.688，后为《美国法典》第18编第3771条)，最高法院被授权在刑事诉讼中制定裁决前及包括裁决在内的通用刑事诉讼规则，或法院作出的有罪或无罪认定，或认罪答辩。这些规则及后续修正案须在(1)由司法部长在常会开始时首次报告国会之后，且(2)该会期结束后，方可生效。

根据1949年对《美国法典》第18编第3771条的修正，由美国首席大法官而非司法部长向国会报告规则。1950年，第3771条进一步修正，使规则修正案可不迟于每年5月1日报告国会，并在报告后90天生效。自1988年12月1日起，第3771条被废止，由《美国法典》第28编新的第2072条和第2074条取代，见上文历史注释第一段。

依据1940年6月30日法案制定的原始规则，由法院于1944年12月26日以命令通过，于1945年1月3日由司法部长转交国会，并于1946年3月21日生效(327 U.S.821; Cong.Rec., vol.91, pt.1, p.17, Exec.Comm.4; H.Doc.12, 79th Cong.)。

修正案由法院于1948年12月27日以命令通过，于1949年1月3日由司法部长转交国会，并于1949年10月20日生效(335 U.S.917, 949; Cong.Rec., vol.95, pt.1, p.13, Exec.Comm.16; H.Doc.30, 81st

Cong.). The amendments affected Rules 17(e)(2), 41(b)(3), 41(g), 54(a)(1), 54(b), 54(c), 55, 56, and 57(a) and Forms 1–27, inclusive.

Further amendments were adopted by order of the Court dated April 9, 1956, transmitted to Congress by the Chief Justice on the same day, and became effective July 8, 1956 (350 U.S. 1017; Cong. Rec., vol. 102, pt. 5, p. 5973, Exec. Comm. 16; H. Doc. 377, 84th Cong.). The amendments affected Rules 41(a), 46(a)(2), 54(a)(1), and 54(c).

Further amendments were adopted by order of the Court dated February 28, 1966, transmitted to Congress by the Chief Justice on the same day, and became effective July 1, 1966 (383 U.S. 1087; Cong. Rec., vol. 112, pt. 4, p. 4229, Exec. Comm. 2093; H. Doc. 390, 89th Cong.). The amendments affected Rules 4, 5, 6, 7, 11, 14, 16, 17, 18, 20, 21, 23, 24, 25, 28, 29, 30, 32, 33, 34, 35, 37, 38, 40, 44, 45, 46, 49, 54, 55, and 56, and Form 26, added new Rules 17.1 and 26.1, and rescinded Rules 19 and 45(c).

Further amendments were adopted by the Court by order dated December 4, 1967, transmitted to Congress by the Chief Justice on January 15, 1968, and became effective July 1, 1968, together with the new Federal Rules of Appellate Procedure (389 U.S. 1125; Cong. Rec., vol. 114, pt. 1, p. 113, Exec. Comm. 1361; H. Doc. 204, 90th Cong.). The amendments affected Rules 45(b), 49(c), 56, and 57, and abrogated the chapter heading ''VIII. Appeal'', Rules 37, 38(b), (c), and 39, and Forms 26 and 27.

On March 1, 1971, the Court adopted additional amendments which were transmitted to Congress by the Chief Justice on March 1, 1971. These amendments became effective July 1, 1971 (401 U.S. 1025; Cong. Rec., vol. 117, pt. 4, p. 4629, Exec. Comm. 341; H. Doc. 92–57). The amendments affected Rules 45(a) and 56.

Additional amendments were adopted by the Court by order dated April 24, 1972, transmitted to Congress by the Chief Justice, accompanied by his letter of transmittal dated April 24, 1972. These amendments became effective October 1, 1972 (406 U.S. 979; Cong. Rec., vol. 118, pt. 11, p. 14262, Exec. Comm. 1903; H. Doc. 92–285). The amendments affected Rules 1, 3, 4(b), (c), 5, 5.1, 6(b), 7(c), 9(b), (c), (d), 17(a), (g), 31(e), 32(b), 38(a), 40, 41, 44, 46, 50, 54, and 55.

Additional amendments were adopted by the Court by order dated March 18, 1974, transmitted to Congress by the Chief Justice on the same date. These amendments became effective July 1, 1974 (415 U.S. 1056; Cong. Rec., vol. 120, pt. 5, p. 7012, Exec. Comm. 2062; H. Doc. 93–241). The amendments affected Rules 41(a) and 50.

Further amendments were proposed by the Court in its order dated November 20, 1972, transmitted to Congress by the Chief Justice on February 5, 1973 (409 U.S. 1132 and 419 U.S. 1133, 1136; Cong. Rec., vol. 119, pt. 3, p. 3247, Exec. Comm. 359; H. Doc. 93–46). Although these amendments were to have become effective July 1, 1973, Public Law 93–12 (approved March 30, 1973, 87 Stat. 9) provided that the proposed amendments ''shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by Act of Congress.'' Section 3 of Public Law 93–595 (approved January 2, 1975, 88 Stat. 1949) approved the amendments proposed by the Court, to be effective July 1, 1975. The amendments affected Rules 26, 26.1, and 28.

Cong.)。这些修正案影响了规则 17(e)(2)、41(b)(3)、41(g)、54(a)(1)、54(b)、54(c)、55、56 和 57(a) 以及表格 1-27(含首尾)。

进一步的修正案由法院于1956年4月9日以命令通过，于同日由首席大法官转交国会，并于1956年7月8日生效(350 U.S.1017; Cong.Rec., vol.102, pt.5, p.5973, Exec.Comm.16; H.Doc.377, 84th Cong.)。这些修正案影响了规则 41(a)、46(a)(2)、54(a)(1) 和 54(c)。

进一步的修正案由法院于1966年2月28日以命令通过，于同日由首席大法官转交国会，并于1966年7月1日生效(383 U.S.1087; Cong.Rec., vol.112, pt.4, p.4229, Exec.Comm.2093; H.Doc.390, 89th Cong.)。这些修正案影响了规则 4、5、6、7、11、14、16、17、

18, 20, 21, 23, 24, 25, 28, 29, 30, 32, 33, 34, 35, 37, 38, 40, 44, 45, 46, 49, 54、55 和 56 以及表格 26，新增了规则 17.1 和 26.1，并废止了规则 19 和 45(c)。

进一步的修正案由法院于1967年12月4日以命令通过，于1968年1月15日由首席大法官转交国会，并于1968年7月1日生效，同时生效的还有新的《联邦上诉程序规则》(389 U.S.1125; Cong.Rec., vol.114, pt.1, p.113, Exec.Comm.1361; H.Doc.204, 90th Cong.)。这些修正案影响了规则 45(b)、49(c)、56 和 57，并废除了章节标题"VIII.上诉"、规则 37、38(b)、(c) 和 39 以及表格 26 和 27。

1971年3月1日，法院通过了附加修正案，由首席大法官于1971年3月1日转交国会。这些修正案于1971年7月1日生效(401 U.S.1025; Cong.Rec., vol.117, pt.4, p.4629, Exec.Comm.341; H.Doc.92-57)。这些修正案影响了规则 45(a) 和 56。

附加修正案由法院于1972年4月24日以命令通过，由首席大法官转交国会，并附有其1972年4月24日的转交信。这些修正案于1972年10月1日生效(406 U.S.979; Cong.Rec., vol.118, pt.11, p.14262, Exec.Comm.1903; H.Doc.92-285)。这些修正案影响了规则 1、3、4(b)、(c)、5、5.1、6(b)、

7(c)、9(b)、(c)、(d)、17(a)、(g)、31(e)、32(b)、38(a)、40、41、44、46、50、54和55。

附加修正案由法院于1974年3月18日以命令通过，由首席大法官于同日转交国会。这些修正案于1974年7月1日生效(415 U.S.1056; Cong.Rec., vol.120, pt.5, p.7012, Exec.Comm.2062; H.Doc.93-241)。这些修正案影响了规则 41(a) 和 50。

法院在1972年11月20日的命令中提出了进一步修正案，由首席大法官于1973年2月5日转交国会(409 U.S.1132和419 U.S.1133, 1136；《国会记录》第119卷第3部分第3247页，行政通讯359;H.Doc.93-46)。尽管这些修正案原定于1973年7月1日生效，但公法93-12(1973年3月30日批准，87 Stat.9)规定，拟议修正案"不具有任何效力，除非且仅限于国会法案明确批准的范围和修正内容"。公法93-595(1975年1月2日批准，88 Stat.1949)第3条批准了法院提出的修正案，自1975年7月1日生效。这些修正案影响了规则26、26.1和28。

In its order dated April 22, 1974, the Court proposed additional amendments which were transmitted to Congress by the Chief Justice on the same day. The amendments were to have become effective August 1, 1974 (416 U.S. 1001; Cong. Rec., vol. 120, pt. 9, p. 11472, Exec. Comm. 2223; H. Doc. 93–292). The effective date of the proposed amendments was postponed until August 1, 1975, by Public Law 93–361 (approved July 30, 1974, 88 Stat. 397). Public Law 94–64 (approved July 31, 1975, 89 Stat. 370) approved the amendments proposed by the Court and further amended the rules, to be effective December 1, 1975, except Rule 11(e)(6), to be effective August 1, 1975. The amendments affected Rules 4, 9(a), 11, 12, 15, 16, 17(f), 20, 32(a), (c), (e), and 43, and added Rules 12.1, 12.2, and 29.1.

Technical amendments to Rules 9(b), 9(c), 16(a), and 16(b) were made by section 5 of Public Law 94–149 (approved Dec. 12, 1975, 89 Stat. 806).

Additional amendments were proposed by the Court by order dated April 26, 1976, were transmitted to Congress by the Chief Justice on the same day (425 U.S. 1157; Cong. Rec., vol. 122, pt. 9, p. 11117, Exec. Comm. 3084; H. Doc. 94–464), and were to be effective August 1, 1976. Public Law 94–349 (approved July 8, 1976, 90 Stat. 822) delayed the effective date of the amendments to Rules 6(e), 23, 24, and 41(c)(2), and the addition of Rule 40.1 until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier. Also, it approved the amendments to Rules 6(f), 41(a), and 50(b), to be effective August 1, 1976. Public Law 95–78 (approved July 30, 1977, 91 Stat. 319) disapproved the amendment to Rule 24 and the addition of Rule 40.1, approved amendments to Rule 23, and modified and approved amendments to Rules 6(e) and 41(c), to be effective October 1, 1977.

Additional amendments were proposed by the Court by order dated April 30, 1979, were transmitted to Congress by the Chief Justice on the same day (441 U.S. 970, 985; Cong. Rec., vol. 125, pt. 8, p. 9366, Exec. Comm. 1456; H. Doc. 96–112), and were to be effective August 1, 1979. Amendments to Rules 6(e), 7(c)(2), 9(a), 11(e)(2), 18, 32(c)(3)(E), 35, and 41(a), (b), and (c) became effective August 1, 1979. Public Law 96–42 (approved July 31, 1979, 93 Stat. 326) delayed the effective date of the amendments to Rules 11(e)(6), 17(h), 32(f), and 44(c), and the addition of new Rules 26.2 and 32.1, until December 1, 1980, or until and to the extent approved by Act of Congress, whichever is earlier, and modified and approved the amendment to Rule 40 to be effective August 1, 1979. In the absence of further action by Congress, the amendments that were the subject of a delayed effective date pursuant to Public Law 96–42 became effective December 1, 1980.

Additional amendments were adopted by the Court by order dated April 28, 1982, transmitted to Congress by the Chief Justice on the same day (456 U.S. 1021; Cong. Rec., vol. 128, pt. 6, p. 8191, Exec. Comm. 3822; H. Doc. 97–173), and became effective August 1, 1982. The amendments affected Rules 1, 5(b), 9(a), (b)(1), (2), (c)(1), (2), 11(c)(1), (4), (5), 20(b), 40(d)(1), (2), 45(a), 54(a), (b)(4), (c), and abrogated Rule 9(d).

An amendment to Rule 32(c)(2) was made by section 3 of Public Law 97–291 (approved October 12, 1982, 96 Stat. 1249.)

Additional amendments were adopted by the Court by order dated April 28, 1983, transmitted to Congress by the Chief Justice

法院在1974年4月22日的命令中提出了附加修正案，并由首席大法官于同日转交国会。该修正案原定于1974年8月1日生效(416 U.S.1001; Cong.Rec., vol.120, pt.9, p.11472, Exec.Comm.2223; H.Doc.93-292)。拟议修正案的生效日期经Pub- lic Law 93-361(1974年7月30日批准，88 Stat.397)推迟至1975年8月1日。Public Law 94-64(1975年7月31日批准，89 Stat.370)批准了法院提出的修正案，并进一步修正了规则，除规则 11(e)(6)于1975年8月1日生效外，其余于1975年12月1日生效。该修正案涉及规则 4、9(a)、11、12、15、16、17(f)、20、32(a)、(c)、(e)和43，并新增了规则 12.1、12.2和29.1。

对规则 9(b)、9(c)、16(a) 和 16(b) 的技术性修正由公法 94-149 第5条作出(1975年12月12日批准，89 Stat.806)。

附加修正案由法院于1976年4月26日以命令提出，由首席大法官于同日转交国会(425 U.S.1157; Cong.Rec., vol.122, pt.9, p.11117, Exec.Comm.3084; H.Doc.94-464)，原定于1976年8月1日生效。公法 94-349(1976年7月8日批准，90 Stat.822)将规则 6(e)、23、24 和 41(c)(2) 的修正案以及新增规则 40.1 的生效日期推迟至1977年8月1日，或推迟至国会法案批准之日并在批准范围内生效，以较早者为准。此外，该法批准了对规则 6(f)、41(a) 和 50(b) 的修正案，于1976年8月1日生效。公法 95-78(1977年7月30日批准，91 Stat.319) 不批准对规则 24 的修正和新增规则 40.1，批准对规则 23 的修正，并修改和批准对规则 6(e) 和 41(c) 的修正，于1977年10月1日生效。

法院于1979年4月30日的命令中提出了附加修正案，由首席大法官于同日转交国会(441 U.S.970, 985; Cong.Rec., vol.125, pt.8, p.9366, Exec.Comm.1456; H.Doc.96-112)，原定于1979年8月1日生效。对规则 6(e)、7(c)(2)、9(a)、11(e)(2)、18、32(c)(3)(E)、35和41(a)、(b)、(c)的修正案于1979年8月1日生效。Public Law 96-42(1979年7月31日批准，93 Stat.326)将规则 11(e)(6)、17(h)、32(f)和44(c)修正案以及新增规则 26.2和32.1的生效日期推迟至1980年12月1日，或推迟至国会法案批准之日并在批准范围内生效，以较早者为准，并修改和批准了规则 40的修正案，于1979年8月1日生效。在国会未采取进一步行动的情况下，依据Public Law 96-42被推迟生效日期的修正案于1980年12月1日生效。

附加修正案由法院于1982年4月28日以命令通过，由首席大法官于同日转交国会(456 U.S.1021; Cong.Rec., vol.128, pt.6, p.8191, Exec.Comm.3822; H.Doc.97-173)，并于1982年8月1日生效。这些修正案影响了规则 1、5(b)、9(a)、(b)(1)、(2)、(c)(1)、(2)、11(c)(1)、(4)、(5)、20(b)、40(d)(1)、(2)、45(a)、54(a)、(b)(4)、(c)，并废止了规则 9(d)。

对规则 32(c)(2) 的修正由公法 97-291 第3条作出(1982年10月12日批准，96 Stat.1249)。

附加修正案由法院于1983年4月28日以命令通过，由首席大法官

on the same day (461 U.S. 1117; Cong. Rec., vol. 129, pt. 8, p. 10479, Exec. Comm. 1028; H. Doc. 98–55), and became effective August 1, 1983. The amendments affected Rules 6(e), (g), 11(a), (h), 12(i), 12.2(b), (c), (d), (e), 16(a), 23(b), 32(a), (c), (d), 35(b), and 55, and abrogated Rule 58 and the Appendix of Forms.

Section 209 of Public Law 98–473 (approved October 12, 1984, 98 Stat. 1986) amended Rules 5(c), 15(a), 40(f), 46(a), (c), (e)(2), and 54(b)(3), and added Rule 46(h).

Section 215 of Public Law 98–473 (98 Stat. 2014, as amended) amended Rules 6(e)(3)(C), 32(a)(1), (2), (c)(1) to (3), (d), 35, 38, 40(d)(1), and 54(c), effective on the first day of the first calendar month beginning 36 months after October 12, 1984 (November 1, 1987).

Section 404(a) of Public Law 98–473 (98 Stat. 2067) amended Rule 12.2(a). Section 404(b) to (d) of Public Law 98–473 would have amended Rule 12.2(b) to (d), but the amendments by section 404(b) and (d) were repealed by section 11(b) of Public Law 98–596 (approved October 30, 1984, 98 Stat. 3138) and the amendment by section 404(c) of Public Law 98–473 could not be executed because it directed the deletion of language not found in the text of the Rule [that defect being cured by section 11(a) of Public Law 98–596, which amended Rule 12.2(c) and (d)]. The amendments and repeals by section 11 of Public Law 98–596 are effective on and after the date of enactment of Public Law 98–473 (October 12, 1984).

Additional amendments were adopted by the Court by order dated April 29, 1985, transmitted to Congress by the Chief Justice on the same day (471 U.S. 1167; Cong. Rec., vol. 131, pt. 7, p. 9826, Exec. Comm. 1154; H. Doc. 99–64), and became effective August 1, 1985. The amendments affected Rules 6(e)(3), 11(c)(1), 12.1(f), 12.2(e), 35(b), 45(a), 49(e), and 57. The amendment to Rule 35(b) was effective until November 1, 1986, when section 215(b) of Public Law 98–473 (approved October 12, 1984, 98 Stat. 2015) was to go into effect. Section 235(a)(1) of Public Law 98–473, which originally provided for an effective date of November 1, 1986, for the amendments made by section 215(b) of Public Law 98–473, was later amended by section 4 of Public Law 99–217 (approved December 26, 1985, 99 Stat. 1728) to provide for an effective date of November 1, 1987.

Section 1009 of Public Law 99–570 (approved October 27, 1986, 100 Stat. 3207–8) amended Rule 35(b), effective on the date (November 1, 1987) of the taking effect of Rule 35(b) as amended by section 215(b) of Public Law 98–473.

Sections 12(b), 24, 25(a), and 54(a) of Public Law 99–646 (approved November 10, 1986, 100 Stat. 3594, 3597, 3607) affected Rules 12.2(c), 29(d), 32(c)(2)(B), and 32.1(b). The amendments to Rules 29(d) and 32.1(b) became effective 30 days after the date of enactment of Public Law 99–646. The amendment to Rule 32(c)(2)(B) became effective November 1, 1987, when the amendment made by section 215(a)(5) of Public Law 98–473 went into effect.

Additional amendments were adopted by the Court by order dated March 9, 1987, transmitted to Congress by the Chief Justice on the same day (480 U.S. 1041; Cong. Rec., vol. 133, pt. 4, p. 5256, Exec. Comm. 825; H. Doc. 100–47), and became effective August 1, 1987. The amendments affected Rules 4(c)(1), (d)(3), (4), 5(c), 5.1(a), (c), 6(a), (c), (f), 7(b), (c)(1), (3), 10, 11(a)(2), (c)(2) to (5), (d), (e)(2),

于同日转交国会(461 U.S.1117; Cong.Rec., vol.129, pt.8, p.10479, Exec.Comm.1028; H.Doc.98-55)，并于1983年8月1日生效。这些修正案影响了规则 6(e)、(g)、11(a)、(h)、12(i)、12.2(b)、(c)、(d)、(e)、16(a)、23(b)、32(a)、(c)、(d)、35(b) 和 55，并废止了规则 58 和表格附录。

公法 98-473 第209条(1984年10月12日批准，98 Stat.1986)修正了规则 5(c)、15(a)、40(f)、46(a)、(c)、(e)(2) 和 54(b)(3)，并新增了规则 46(h)。

公法 98-473 第215条(98 Stat.2014，经修正)修正了规则 6(e)(3)(C)、32(a)(1)、(2)、(c)(1) 至 (3)、(d)、35、38、40(d)(1) 和 54(c)，自1984年10月12日之后36个月起第一个日历月的第一天(1987年11月1日)生效。

Public Law 98-473(98 Stat.2067)第404(a)条修正了规则 12.2(a)。Public Law 98-473第404(b)至(d)条本应修正规则 12.2(b)至(d)，但第404(b)和(d)条的修正案被Public Law 98-596(1984年10月30日批准，98 Stat.3138)第11(b)条废止，且Public Law 98-473第404(c)条的修正案无法执行，因其指示删除规则文本中不存在的措辞[该缺陷由Public Law 98-596第11(a)条予以纠正，该条修正了规则 12.2(c)和(d)]。Public Law 98-596第11条的修正和废止自Public Law 98-473颁布之日(1984年10月12日)起生效。

法院于1985年4月29日的命令中通过了附加修正案，由首席大法官于同日转交国会(471 U.S.1167; Cong.Rec., vol.131, pt.7, p.9826, Exec.Comm.1154; H.Doc.99-64)，并于1985年8月1日生效。该修正案涉及规则 6(e)(3)、11(c)(1)、12.1(f)、12.2(e)、35(b)、45(a)、49(e)和57。对规则 35(b)的修正案生效至1986年11月1日，即Public Law 98-473(1984年10月12日批准，98 Stat.2015)第215(b)条生效之日。Public Law 98-473第235(a)(1)条原规定Public Law 98-473第215(b)条所作修正案的生效日期为1986年11月1日，后经Public Law 99-217(1985年12月26日批准，99 Stat.1728)第4条修正，规定生效日期为1987年11月1日。

公法 99-570 第1009条(1986年10月27日批准，100 Stat.3207-8)修正了规则 35(b)，自经第

第98-473号公法第215(b)条。

公法 99-646 第12(b)、24、25(a) 和 54(a) 条(1986年11月10日批准，100 Stat.3594, 3597, 3607)影响了规则 12.2(c)、29(d)、32(c)(2)(B) 和 32.1(b)。对规则 29(d) 和 32.1(b) 的修正自公法 99-646 颁布之日起30天后生效。对规则 32(c)(2)(B) 的修正于1987年11月1日生效，即公法 98-473 第215(a)(5)条所作修正生效之时。

附加修正案由法院于1987年3月9日以命令通过，由首席大法官于同日转交国会(480 U.S.1041; Cong.Rec., vol.133, pt.4, p.5256, Exec.Comm.825; H.Doc.100-47)，并于1987年8月1日生效。这些修正案影响了规则 4(c)(1)、(d)(3)、(4)、5(c)、5.1(a)、(c)、6(a)、(c)、(f)、7(b)、(c)(1)、(3)、10、11(a)(2)、(c)(2) 至 (5)、(d)、(e)(2)、

(4), 12(h), 12.1(a), (b) to (d), 12.2(a), (b), (d), 15(a) to (e), 16(a)(1)(A) to (C), (b)(1)(B), (2), (c), 17(a), (d), (g), 17.1, 20, 21(a), (b), 24(a), 25, 26.2(a), (c), (f)(1), 30, 32(a), (c)(3)(A) to (E), 32.1, 33, 38(a)(2), (3), 40(a), (d)(3), (e), (f), 41(c)(1), (e), 42, 43(b), 44(a), (c), 45(e), 46(b), (d), (g), 49(b), and 51.

Additional amendments were adopted by the Court by order dated April 25, 1988, transmitted to Congress by the Chief Justice on the same day (485 U.S. 1057; Cong. Rec., vol. 134, pt. 7, p. 9154, Exec. Comm. 3516; H. Doc. 100–186), and became effective August 1, 1988. The amendments affected Rules 30 and 56.

Sections 6483, 7076, and 7089(c) of Public Law 100–690 (approved November 18, 1988, 102 Stat. 4382, 4406, 4409) amended Rules 11(c)(1) and 54(c), and added Rule 12.3.

Additional amendments were adopted by the Court by order dated April 25, 1989, transmitted to Congress by the Chief Justice on the same day (490 U.S. 1135; Cong. Rec., vol. 135, pt. 6, p. 7542, Exec. Comm. 1059; H. Doc. 101–55), and became effective December 1, 1989. The amendments affected Rules 11(c)(1), 32(a), (c), 32.1(a), (b), 40(d), and 41(e).

Additional amendments were adopted by the Court by order dated May 1, 1990, transmitted to Congress by the Chief Justice on the same day (495 U.S. 967; Cong. Rec., vol. 136, pt. 6, p. 9091, Ex. Comm. 3098; H. Doc. 101–185), and became effective December 1, 1990. The amendments affected Rules 5(b), 41(a), and 54(b)(4), (c), and added new Rule 58.

Additional amendments were adopted by the Court by order dated April 30, 1991, transmitted to Congress by the Chief Justice on the same day (500 U.S. 991; Cong. Rec., vol. 137, pt. 7, p. 9721, Ex. Comm. 1191; H. Doc. 102–78), and became effective December 1, 1991. The amendments affected Rules 16(a), 32(c), 32.1(a), 35(b), (c), 46(h), 54(a), and 58(b), (d).

Additional amendments were adopted by the Court by order dated April 22, 1993, transmitted to Congress by the Chief Justice on the same day (507 U.S. 1161; Cong. Rec., vol. 139, pt. 6, p. 8127, Ex. Comm. 1103; H. Doc. 103–75), and became effective December 1, 1993. The amendments affected Rules 1, 3, 4(c)(1), (d), 5, 5.1, 6(e)(4), (f), 9(a) to (c), 12(i), 16(a)(1)(E), (2), (b)(1)(C), 17(a), (g), 26.2(c), (d), (g), 32(e), 32.1(c), 40(a), (b), (d), (e), (f), 41(a), (c), (d), (g), 44(a), 46(i), 49(e), 50(b), 54(b)(3), (4), (c), 55, 57, and 58(a)(1), (b)(2), (3), (c)(2), (d)(2), (g)(2), and added new Rule 26.3.

Additional amendments were adopted by the Court by order dated April 29, 1994, transmitted to Congress by the Chief Justice on the same day (511 U.S. 1175; Cong. Rec., vol. 140, pt. 7, p. 8903, Ex. Comm. 3084; H. Doc. 103–249), and became effective December 1, 1994. The amendments affected Rules 16(a)(1)(A), 29(b), 32, and 40(d).

Sections 230101(b), (c) and 330003(h) of Public Law 103–322 (approved September 13, 1994, 108 Stat. 2078, 2141) affected Rules 32 and 46(i)(1). The amendments to Rule 32 became effective December 1, 1994. The amendment to Rule 46 became effective September 13, 1994.

Additional amendments were adopted by the Court by order dated April 27, 1995, transmitted to Congress by the Chief Justice on the same day (514 U.S. 1159; Cong. Rec., vol. 141, pt. 8, p. 11745,

(4)、12(h)、12.1(a)、(b)至(d)、12.2(a)、(b)、(d)、15(a)至(e)、16(a)(1)(A)至(C)、(b)(1)(B)、(2)、(c)、17(a)、(d)、(g)、17.1、20、21(a)、(b)、24(a)、25、26.2(a)、(c)、(f)(1)、30、32(a)、(c)(3)(A)至(E)、32.1、33、38(a)(2)、(3)、40(a)、(d)(3)、(e)、(f)、41(c)(1)、(e)、42、43(b)、44(a)、(c)、45(e)、46(b)、(d)、(g)、49(b)和51。

附加修正案由法院于1988年4月25日以命令通过，由首席大法官于同日转交国会(485 U.S.1057; Cong.Rec., vol.134, pt.7, p.9154, Exec.Comm.3516; H.Doc.100-186)，并于1988年8月1日生效。这些修正案影响了规则 30 和 56。

公法 100-690 第6483、7076 和 7089(c) 条(1988年11月18日批准，102 Stat.4382, 4406, 4409)修正了规则 11(c)(1) 和 54(c)，并新增了规则 12.3。

附加修正案由法院于1989年4月25日以命令通过，由首席大法官于同日转交国会(490 U.S.1135; Cong.Rec., vol.135, pt.6, p.7542, Exec.Comm.1059; H.Doc.101-55)，并于1989年12月1日生效。这些修正案影响了规则 11(c)(1)、32(a)、(c)、32.1(a)、(b)、40(d) 和 41(e)。

附加修正案由法院于1990年5月1日以命令通过，由首席大法官于同日转交国会(495 U.S.967; Cong.Rec., vol.136, pt.6, p.9091, Ex.Comm.3098; H.Doc.101-185)，并于1990年12月1日生效。这些修正案影响了规则 5(b)、41(a) 和 54(b)(4)、(c)，并新增了规则 58。

法院于1991年4月30日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(500 U.S.991; Cong.Rec., vol.137, pt.7, p.9721, Ex.Comm.1191; H.Doc.102-78)，并于1991年12月1日生效。该修正案影响了规则 16(a)、32(c)、32.1(a)、35(b)、(c)、46(h)、54(a) 和 58(b)、(d)。

法院于1993年4月22日的命令中通过了附加修正案，由首席大法官于同日转交国会(507 U.S.1161; Cong.Rec., vol.139, pt.6, p.8127, Ex.Comm.1103; H.Doc.103-75)，并于1993年12月1日生效。该修正案涉及规则 1、3、4(c)(1)、(d)、5、5.1、6(e)(4)、(f)、9(a)至(c)、12(i)、16(a)(1)(E)、(2)、(b)(1)(C)、17(a)、(g)、26.2(c)、(d)、(g)、32(e)、32.1(c)、40(a)、(b)、(d)、(e)、(f)、41(a)、(c)、(d)、(g)、44(a)、46(i)、49(e)、50(b)、54(b)(3)、(4)、(c)、55、57和58(a)(1)、(b)(2)、(3)、(c)(2)、(d)(2)、(g)(2)，并新增了规则 26.3。

法院于1994年4月29日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(511 U.S.1175; Cong.Rec., vol.140, pt.7, p.8903, Ex.Comm.3084; H.Doc.103-249)，并于1994年12月1日生效。该修正案影响了规则 16(a)(1)(A)、29(b)、32 和

40(d)。

公法 103-322(1994年9月13日批准，108 Stat.2078, 2141)第 230101(b)、(c) 条和第 330003(h) 条影响了规则 32 和 46(i)(1)。对规则 32 的修正案于1994年12月1日生效。对规则 46 的修正案于1994年9月13日生效。

法院于1995年4月27日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(514 U.S.1159; Cong.Rec., vol.141, pt.8, p.11745,

Ex. Comm. 805; H. Doc. 104–65), and became effective December 1, 1995. The amendments affected Rules 5, 40, 43, 49, and 57.

An additional amendment was adopted by the Court by order dated April 23, 1996, transmitted to Congress by the Chief Justice on the same day (517 U.S. 1285; Cong. Rec., vol. 142, pt. 6, p. 8831, Ex. Comm. 2488; H. Doc. 104–202), and became effective December 1, 1996. The amendment affected Rule 32(d)(2).

Sections 207(a) and 211 of Public Law 104–132 (approved April 24, 1996, 110 Stat. 1236, 1241) amended Rule 32(b), effective, to the extent constitutionally permissible, for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of Public Law 104–132.

Additional amendments were adopted by the Court by order dated April 11, 1997, transmitted to Congress by the Chief Justice on the same day (520 U.S. 1313; Cong. Rec., vol. 143, pt. 4, p. 5550, Ex. Comm. 2796; H. Doc. 105–68), and became effective December 1, 1997. The amendments affected Rules 16 and 58.

Additional amendments were adopted by the Court by order dated April 24, 1998, transmitted to Congress by the Chief Justice on the same day (523 U.S. 1227; H. Doc. 105–267), and became effective December 1, 1998. The amendments affected Rules 5.1, 26.2, 31, 33, 35, and 43.

Additional amendments were adopted by the Court by order dated April 26, 1999, transmitted to Congress by the Chief Justice on the same day (526 U.S. 1189; Cong. Rec., vol. 145, pt. 6, p. 7907, Ex. Comm. 1788; H. Doc. 106–55), and became effective December 1, 1999. The amendments affected Rules 6, 11, 24, and 54.

Additional amendments were adopted by the Court by order dated April 17, 2000, transmitted to Congress by the Chief Justice on the same day (529 U.S. 1179; Cong. Rec., vol. 146, pt. 5, p. 6328, Ex. Comm. 7335; H. Doc. 106–227), and became effective December 1, 2000. The amendments affected Rules 7, 31, 32, and 38, and added new Rule 32.2.

Sections 203(a) and 219 of Public Law 107–56 (approved October 26, 2001, 115 Stat. 278, 291) amended Rules 6(e)(3)(C), (D) and 41(a).

Additional amendments were adopted by the Court by order dated April 29, 2002, transmitted to Congress by the Chief Justice on the same day (535 U.S. 1157; Cong. Rec., vol. 148, pt. 5, p. 6813, Ex. Comm. 6621; H. Doc. 107–203), and became effective December 1, 2002. The amendments affected Rules 1 to 60.

Section 11019(b), (c) of Pub. L. 107–273 (approved November 2, 2002, 116 Stat. 1825, 1826) amended Rule 16(a)(1)(G), (b)(1)(C), effective December 1, 2002.

Sections 4 and 895 of Pub. L. 107–296 (approved November 25, 2002, 116 Stat. 2142, 2256) which directed the amendment of Rule 6(e)(2), (3)(A)(ii), (C)(i), (iii), effective 60 days after the date of enactment of Pub. L. 107–296, could not be executed after the amendments of April 29, 2002, effective December 1, 2002.

Section 610(b) of Pub. L. 108–21 (approved April 30, 2003, 117 Stat. 692) amended Rule 7(c)(1).

An additional amendment was adopted by the Court by order dated April 26, 2004, transmitted to Congress by the Chief Justice on the same day (541 U.S. 1103; Cong. Rec., vol. 150, pt. 6, p. 7968, Ex. Comm. 7865; H. Doc. 108–182), and became effective December 1, 2004. The amendment affected Rule 35.

Ex.Comm.805; H.Doc.104-65)，并于1995年12月1日生效。该修正案影响了规则 5、40、43、49 和 57。

法院于1996年4月23日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(517 U.S.1285; Cong.Rec., vol.142, pt.6, p.8831, Ex.Comm.2488; H.Doc.104-202)，并于1996年12月1日生效。该修正案影响了规则 32(d)(2)。

公法 104-132(1996年4月24日批准，110 Stat.1236, 1241)第 207(a) 条和第 211 条修正了规则 32(b)，在宪法允许的范围内，对被告在公法 104-132 颁布之日或之后被定罪的案件中的量刑程序生效。

法院于1997年4月11日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(520 U.S.1313; Cong.Rec., vol.143, pt.4, p.5550, Ex.Comm.2796; H.Doc.105-68)，并于1997年12月1日生效。该修正案影响了规则 16 和 58。

法院于1998年4月24日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(523 U.S.1227; H.Doc.105-267)，并于1998年12月1日生效。该修正案影响了规则 5.1、26.2、31、33、35 和 43。

法院于1999年4月26日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(526 U.S.1189; Cong.Rec., vol.145, pt.6, p.7907, Ex.Comm.1788; H.Doc.106-55)，并于1999年12月1日生效。该修正案影响了规则 6、11、24 和 54。

法院于2000年4月17日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(529 U.S.1179; Cong.Rec., vol.146, pt.5, p.6328, Ex.Comm.7335; H.Doc.106-227)，并于2000年12月1日生效。该修正案影响了规则 7、31、32 和 38，并新增了规则 32.2。

公法 107-56(2001年10月26日批准，115 Stat.278, 291)第 203(a) 条和第 219 条修正了规则 6(e)(3)(C)、(D) 和 41(a)。

法院于2002年4月29日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(535 U.S.1157; Cong.Rec., vol.148, pt.5, p.6813, Ex.Comm.6621; H.Doc.107-203)，并于2002年12月1日生效。该修正案影响了规则 1 至 60。

公法 107-273(2002年11月2日批准，116 Stat.1825, 1826)第 11019(b)、(c) 条修正了规则 16(a)(1)(G)、(b)(1)(C)，于2002年12月1日生效。

公法 107-296(2002年11月25日批准，116 Stat.2142, 2256)第 4 条和第 895 条指示修正规则 6(e)(2)、(3)(A)(ii)、(C)(i)、(iii)，于公法 107-296 颁布之日起60天后生效，但在2002年4月29日修正案于2002年12月1日生效后无法执行。

公法 108-21(2003年4月30日批准，117 Stat.692)第 610(b) 条修正了规则 7(c)(1)。

法院于2004年4月26日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(541 U.S.1103; Cong.Rec., vol.150, pt.6, p.7968, Ex.Comm.7865; H.Doc.108-182)，并于2004年12月1日生效。该修正案影响了规则 35。

Section 6501(a) of Pub. L. 108–458 (approved December 17, 2004, 118 Stat. 3760) amended Rule 6(e).

Additional amendments were adopted by the Court by order dated April 25, 2005, transmitted to Congress by the Chief Justice on the same day (544 U.S. 1181; Cong. Rec., vol. 151, pt. 7, p. 8784, Ex. Comm. 1905; H. Doc. 109–22), and became effective December 1, 2005. The amendments affected Rules 12.2, 29, 32.1, 33, 34, and 45, and added new Rule 59.

Additional amendments were adopted by the Court by order dated April 12, 2006, transmitted to Congress by the Chief Justice on the same day (547 U.S. 1269; Cong. Rec., vol. 152, pt. 6, p. 7213, Ex. Comm. 7316; H. Doc. 109–104), and became effective December 1, 2006. The amendments affected Rules 5, 6, 32.1, 40, 41, and 58.

Additional amendments were adopted by the Court by order dated April 30, 2007, transmitted to Congress by the Chief Justice on the same day (550 U.S. 1165; Cong. Rec., vol. 153, pt. 8, pp. 10611–10612, Ex. Comm. 1376; H. Doc. 110–26), and became effective December 1, 2007. The amendments affected Rules 11, 32, 35, 45, added a new Rule 49.1, and abrogated the Model Form for Use in 28 U.S.C. §2254 Cases Involving a Rule 9 Issue.

Additional amendments were adopted by the Court by order dated April 23, 2008, transmitted to Congress by the Chief Justice on the same day (553 U.S. 1155; Cong. Rec., vol. 154, pt. 8, p. 11078, Ex. Comm. 6879; H. Doc. 110–118), and became effective December 1, 2008. The amendments affected Rules 1, 12.1, 17, 18, 32, 41, 45, added new Rule 60, and renumbered former Rule 60 as 61.

Additional amendments were adopted by the Court by order dated March 26, 2009, transmitted to Congress by the Chief Justice on March 25, 2009 (556 U.S. 1363; Cong. Rec., vol. 155, pt. 8, p. 10210, Ex. Comm. 1265; H. Doc. 111–30), and became effective December 1, 2009. The amendments affected Rules 5.1, 7, 12.1, 12.3, 29, 32, 32.2, 33, 34, 35, 41, 45, 47, 58, and 59.

Additional amendments were adopted by the Court by order dated April 28, 2010, transmitted to Congress by the Chief Justice on the same day (559 U.S. 1151; Cong. Rec., vol. 156, pt. 6, p. 8139, Ex. Comm. 7472; H. Doc. 111–110), and became effective December 1, 2010. The amendments affected Rules 12.3, 21, and 32.1.

Additional amendments were adopted by the Court by order dated April 26, 2011, transmitted to Congress by the Chief Justice on the same day (563 U.S. 1063; Cong. Rec., vol. 157, pt. 6, p. 7770, Ex. Comm. 1664; H. Doc. 112–31), and became effective December 1, 2011. The amendments affected Rules 1, 3, 4, 6, 9, 32, 40, 41, 43, and 49, and added new Rule 4.1.

Additional amendments were adopted by the Court by order dated April 23, 2012, transmitted to Congress by the Chief Justice on the same day (566 U.S. 1053; Cong. Rec., vol. 158, p. H2316, Daily Issue, Ex. Comm. 5883; H. Doc. 112–104), and became effective December 1, 2012. The amendments affected Rules 5 and 15, and added new Rule 37.

Additional amendments were adopted by the Court by order dated April 16, 2013, transmitted to Congress by the Chief Justice on the same day (569 U.S.——; Cong. Rec., vol. 159, p. H2652, Daily Issue, Ex. Comm. 1491; H. Doc. 113–25), and became effective December 1, 2013. The amendments affected Rules 11 and 16.

公法 108-458(2004年12月17日批准，118 Stat.3760)第 6501(a) 条修正了规则 6(e)。

法院于2005年4月25日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(544 U.S.1181; Cong.Rec., vol.151, pt.7, p.8784, Ex.Comm.1905; H.Doc.109-22)，并于2005年12月1日生效。该修正案影响了规则 12.2、29、32.1、33、34 和 45，并新增了规则 59。

法院于2006年4月12日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(547 U.S.1269; Cong.Rec., vol.152, pt.6, p.7213, Ex.Comm.7316; H.Doc.109-104)，并于2006年12月1日生效。该修正案影响了规则 5、6、32.1、40、41 和 58。

法院于2007年4月30日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(550 U.S.1165; Cong.Rec., vol.153, pt.8, pp.10611-10612, Ex.Comm.1376; H.Doc.110-26)，并于2007年12月1日生效。该修正案影响了规则 11、32、35、45，新增了规则 49.1，并废除了《28 U.S.C.2254 涉及规则 9 问题的案件示范表格》。

法院于2008年4月23日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(553 U.S.1155; Cong.Rec., vol.154, pt.8, p.11078, Ex.Comm.6879; H.Doc.110-118)，并于2008年12月1日生效。该修正案影响了规则 1、12.1、17、18、32、41、45，新增了规则 60，并将原规则 60 重新编号为 61。

法院于2009年3月26日以命令形式通过了附加修正案，首席大法官于2009年3月25日将其转交国会(556 U.S.1363; Cong.Rec., vol.155, pt.8, p.10210, Ex.Comm.1265; H.Doc.111-30)，并于2009年12月1日生效。该修正案影响了规则 5.1、7、12.1、12.3、29、32、32.2、33、34、35、41、45、47、58 和 59。

法院于2010年4月28日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(559 U.S.1151; Cong.Rec., vol.156, pt.6, p.8139, Ex.Comm.7472; H.Doc.111-110)，并于2010年12月1日生效。该修正案影响了规则 12.3、21 和 32.1。

法院于2011年4月26日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(563 U.S.1063; Cong.Rec., vol.157, pt.6, p.7770, Ex.Comm.1664; H.Doc.112-31)，并于2011年12月1日生效。该修正案影响了规则 1、3、4、6、9、32、40、41、43 和 49，并新增了规则 4.1。

法院于2012年4月23日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(566 U.S.1053; Cong.Rec., vol.158, p.H2316, Daily Issue, Ex.Comm.5883; H.Doc.112-104)，并于2012年12月1日生效。该修正案影响了规则 5 和 15，并新增了规则 37。

法院于2013年4月16日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(569 U.S.--; Cong.Rec., vol.159, p.H2652, Daily Issue, Ex.Comm.1491; H.Doc.113-25)，并于2013年12月1日生效。该修正案影响了规则 11 和 16。

Additional amendments were adopted by the Court by order dated April 25, 2014, transmitted to Congress by the Chief Justice on the same day (572 U.S.——; Cong. Rec., vol. 160, p. H7933, Daily Issue, Ex. Comm. 7578; H. Doc. 113–162), and became effective December 1, 2014. The amendments affected Rules 5, 6, 12, 34, and 58.

Additional amendments were adopted by the Court by order dated April 28, 2016, transmitted to Congress by the Chief Justice on the same day (578 U.S.——; Cong. Rec., vol. 162, p. H2147, Daily Issue, Ex. Comm. 5232; H. Doc. 114–127), and became effective December 1, 2016. The amendments affected Rules 4, 41, and 45.

Section 2(c) of Public Law 114–324 (approved December 16, 2016, 130 Stat. 1948) amended Rule 28.

Proceedings After Verdict

By act of February 24, 1933, ch. 119, 47 Stat. 904, as amended (subsequently 18 United States Code, §3772), the Supreme Court was authorized to prescribe general rules of criminal procedure with respect to proceedings after verdict or finding of guilty by the court, or plea of guilty, which became effective on dates fixed by the Court. These rules were not required to be submitted to Congress.

Rules 32 to 39, inclusive, were adopted by order of the Court on February 8, 1946, and became effective on March 21, 1946 (327 U.S. 825). Prior rules promulgated on May 7, 1934 (292 U.S. 659), were not specifically rescinded by that order but were superseded by these later rules.

Amendments to Rules 37(a)(1), 38(a)(3), (c), and 39(b)(2) were adopted by order of the Court dated December 27, 1948, and became effective on January 1, 1949 (335 U.S. 917).

Additional amendment to Rule 37 was adopted by order of the Court dated April 12, 1954, and became effective on July 1, 1954 (346 U.S. 941).

The Court adopted separate Federal Rules of Appellate Procedure by order dated December 4, 1967, transmitted to Congress on January 15, 1968, effective July 1, 1968. As noted above, Rules 37, 38(b), (c), and 39, and Forms 26 and 27, were abrogated effective July 1, 1968, by that same order.

Effective December 1, 1988, section 3772 of Title 18 was repealed and supplanted by section 2072 of Title 28, United States Code, see first paragraph of Historical Note above.

Committee Notes

Committee Notes prepared by the Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Criminal Procedure, Judicial Conference of the United States, explaining the purpose and intent of the amendments are set out in the Appendix to Title 18, United States Code, following the particular rule to which they relate. In addition, the rules and amendments, together with Committee Notes, are set out in the House documents listed above.

法院于2014年4月25日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(572 U.S.--; Cong.Rec., vol.160, p.H7933, Daily Issue, Ex.Comm.7578; H.Doc.113-162)，并于2014年12月1日生效。该修正案影响了规则 5、6、12、34 和 58。

法院于2016年4月28日以命令形式通过了附加修正案，首席大法官于同日将其转交国会(578 U.S.--; Cong.Rec., vol.162, p.H2147, Daily Issue, Ex.Comm.5232; H.Doc.114-127)，并于2016年12月1日生效。该修正案影响了规则 4、41 和 45。

公法 114-324(2016年12月16日批准，130 Stat.1948)第 2(c) 条修正了规则 28。

裁决后的程序

1933年2月24日法案(第119章，47 Stat.904，后经修订为《美国法典》第18编第3772条)授权最高法院制定刑事诉讼一般规则，适用于法院作出有罪裁决或认定有罪后，或被告认罪后的程序，该等规则于法院确定的日期生效。该等规则无须提交国会。

规则32至39(含首尾)由法院于1946年2月8日命令通过，并于1946年3月21日生效(327 U.S.825)。此前于1934年5月7日颁布的规则(292 U.S.659)未被该命令明确废止，但已被这些后来的规则所取代。

对规则37(a)(1)、38(a)(3)、(c)及39(b)(2)的修正案由法院于1948年12月27日命令通过，并于1949年1月1日生效(335 U.S.917)。

对规则37的附加修正案由法院于1954年4月12日命令通过，并于1954年7月1日生效(346 U.S.941)。

法院于1967年12月4日命令通过了单独的《联邦上诉程序规则》，于1968年1月15日转交国会，1968年7月1日生效。如上所述，规则37、38(b)、(c)及39以及表格26和27由同一命令自1968年7月1日起废止。

自1988年12月1日起，《美国法典》第18编第3772条被废止，并由《美国法典》第28编第2072条取代，见上文历史注释第一段。

委员会注释

由美国司法会议实践与程序规则委员会及联邦刑事诉讼规则咨询委员会编写的委员会注释，解释了修正案的目的和意图，载于《美国法典》第18编附录中，附于其所涉具体规则之后。此外，规则及修正案连同委员会注释载于上文所列的众议院文件中。

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FEDERAL RULES OF CRIMINAL PROCEDURE

Effective March 21, 1946, as amended to December 16, 2016

TITLE I. APPLICABILITY

Rule 1. Scope; Definitions

(a) Scope.

(1) ***In General.*** These rules govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States.

(2) ***State or Local Judicial Officer.*** When a rule so states, it applies to a proceeding before a state or local judicial officer.

(3) ***Territorial Courts.*** These rules also govern the procedure in all criminal proceedings in the following courts:

(A) the district court of Guam;

(B) the district court for the Northern Mariana Islands, except as otherwise provided by law; and

(C) the district court of the Virgin Islands, except that the prosecution of offenses in that court must be by indictment or information as otherwise provided by law.

(4) ***Removed Proceedings.*** Although these rules govern all proceedings after removal from a state court, state law governs a dismissal by the prosecution.

(5) ***Excluded Proceedings.*** Proceedings not governed by these rules include:

(A) the extradition and rendition of a fugitive;

(B) a civil property forfeiture for violating a federal statute;

(C) the collection of a fine or penalty;

(D) a proceeding under a statute governing juvenile delinquency to the extent the procedure is inconsistent with the statute, unless Rule 20(d) provides otherwise;

(E) a dispute between seamen under 22 U.S.C. §§256–258; and

(F) a proceeding against a witness in a foreign country under 28 U.S.C. §1784.

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

(1) ''Attorney for the government'' means:

(A) the Attorney General or an authorized assistant;

(B) a United States attorney or an authorized assistant;

(C) when applicable to cases arising under Guam law, the Guam Attorney General or other person whom Guam law authorizes to act in the matter; and

(D) any other attorney authorized by law to conduct proceedings under these rules as a prosecutor.

(2) ''Court'' means a federal judge performing functions authorized by law.

联邦刑事诉讼规则 1946年3月21日生效，经修正至2016年12月16日

第一编适用范围

规则 1. 范围；定义

(a) 范围。

(1) 通则。本规则适用于美国地区法院、美国上诉法院及美国最高法院的所有刑事诉讼程序。

(2) 州或地方司法官员。当规则如此规定时，本规则适用于州或地方司法官员面前的程序。

(3) 属地法院。本规则亦适用于下列法院的所有刑事诉讼程序：

(A) 关岛地区法院；

(B) 北马里亚纳群岛地区法院，但法律另有规定的除外；以及

(C) 维尔京群岛地区法院，但该法院对犯罪的起诉必须以起诉书或检察官起诉书提起，法律另有规定的除外。

(4) 移送程序。尽管本规则适用于从州法院移送后的所有程序，但控方撤诉由州法律管辖。

(5) 排除程序。不受本规则管辖的程序包括：

(A) 逃犯的引渡与移交；

(B) 违反联邦法规的民事财产没收

ute；

(C) 罚款或处罚金的征收；

(D) 依管辖少年犯罪的制定法进行的程序，但以该程序与制定法不一致的程度为限，规则 20(d) 另有规定的除外；

(E) 22 U.S.C.256-258 项下海员之间的争议；和

(F) 根据 28 U.S.C.1784 在外国针对证人进行的程序。

(b) **定义。**下列定义适用于本规则：

(1) “政府律师”指：

(A) 司法部长或经授权的助理；

(B) 美国检察官或经授权的助理检察官；(C) 适用于依关岛法律产生的案件时，关岛总检察长或关岛法律授权就该事项行事的人员；以及

(D) 法律授权依本规则作为检察官进行程序的任何其他律师。

(2) “法院”指依法行使授权职能的联邦法官。

(3) ''Federal judge'' means:
(A) a justice or judge of the United States as these terms are defined in 28 U.S.C. §451;
(B) a magistrate judge; and
(C) a judge confirmed by the United States Senate and empowered by statute in any commonwealth, territory, or possession to perform a function to which a particular rule relates.
(4) ''Judge'' means a federal judge or a state or local judicial officer.
(5) ''Magistrate judge'' means a United States magistrate judge as defined in 28 U.S.C. §§631–639.
(6) ''Oath'' includes an affirmation.
(7) ''Organization'' is defined in 18 U.S.C. §18.
(8) ''Petty offense'' is defined in 18 U.S.C. §19.
(9) ''State'' includes the District of Columbia, and any commonwealth, territory, or possession of the United States.
(10) ''State or local judicial officer'' means:
(A) a state or local officer authorized to act under 18 U.S.C. §3041; and
(B) a judicial officer empowered by statute in the District of Columbia or in any commonwealth, territory, or possession to perform a function to which a particular rule relates.
(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).[1]

(c) Authority of a Justice or Judge of the United States. When these rules authorize a magistrate judge to act, any other federal judge may also act.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 26, 2011, eff. Dec. 1, 2011.)

Rule 2. Interpretation

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

TITLE II. PRELIMINARY PROCEEDINGS

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.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2011, eff. Dec. 1, 2011.)

[1] 18 U.S.C. §3771(e) was redesignated 18 U.S.C. §3771(e)(2) by Pub. L. 114–22, title I, §113(a)(3)(A), May 29, 2015, 129 Stat. 240.

(3) "联邦法官"是指：
(A) 28 U.S.C.451 所定义之美国大法官或法官；
(B) 一名治安法官；以及
(C) 经美国参议院确认并依制定法授权在任何联邦、领地或属地履行特定规则所涉职能的法官。

(4) "法官"指联邦法官或州或地方司法官员。

(5) "治安法官"指 28 U.S.C.631-639 所定义的美国治安法官。

(6) "宣誓"包括确认。
(7) "组织"的定义见 18 U.S.C.19。

(9) "州"包括哥伦比亚特区以及美国的任何联邦、领地或属地。

(10) "州或地方司法官员"指：
(A) 根据18授权行事的州或地方官员
U.S .C.3041；以及
(B) 依制定法授权在哥伦比亚特区或任何联邦、领地或属地履行特定规则所涉职能的司法官员。

(11) "电话"指传输实时电子语音通信的任何技术。

(12) "被害人"指 18 U.S.C.3771(e) 所定义的"犯罪被害人"。[1]

(c) 美国大法官或法官的权限。当本规则授权治安法官采取行动时，任何其他联邦法官亦可采取行动。

(经1972年4月24日修正，1972年10月1日生效；1982年4月28日修正，1982年8月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效；2008年4月23日修正，2008年12月1日生效；2011年4月26日修正，2011年12月1日生效。)

规则 2. 解释

本规则应被解释为对每一刑事诉讼程序作出公正裁决，确保程序简便与管理公平，并消除不合理的费用与迟延。

(2002年4月29日修订，2002年12月1日生效。)

第二编初步程序

规则 3. 起诉状

控告书是对构成所指控犯罪的基本事实的书面陈述。除规则 4.1 另有规定外，控告书必须在治安法官面前经宣誓作出，若无治安法官合理可资利用，则在州或地方司法官员面前经宣誓作出。

(经1972年4月24日修正，1972年10月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效；2011年4月26日修正，2011年12月1日生效。)

[1] 18 U.S.C.113(a)(3)(A), May 29, 2015, 129 Stat.240 重新指定为 18 U.S.C.3771(e)(2)。

Rule 4. Arrest Warrant or Summons on a Complaint

(a) Issuance. If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If an individual defendant fails to appear in response to a summons, a judge may, and upon request of an attorney for the government must, issue a warrant. If an organizational defendant fails to appear in response to a summons, a judge may take any action authorized by United States law.

(b) Form.

(1) *Warrant.* A warrant must:

(A) contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;

(B) describe the offense charged in the complaint;

(C) command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer; and

(D) be signed by a judge.

(2) *Summons.* A summons must be in the same form as a warrant except that it must require the defendant to appear before a magistrate judge at a stated time and place.

(c) Execution or Service, and Return.

(1) *By Whom.* Only a marshal or other authorized officer may execute a warrant. Any person authorized to serve a summons in a federal civil action may serve a summons.

(2) *Location.* A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest. A summons to an organization under Rule 4(c)(3)(D) may also be served at a place not within a judicial district of the United States.

(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.

(B) A summons is served on an individual defendant:

(i) by delivering a copy to the defendant personally; or

(ii) by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location and by mailing a copy to the defendant's last known address.

规则 4. 根据控告签发逮捕令或传票

(a) 签发。如果起诉书或随起诉书提交的一份或多份宣誓书确立合理根据，使人相信某项罪行已被实施且被告实施了该罪行，法官必须向有权执行逮捕令的官员签发逮捕令。应政府律师的请求，法官必须向有权送达传票的人签发传票，而非逮捕令。法官可就同一份起诉书签发多份逮捕令或传票。如果个人被告未响应传票出庭，法官可以签发逮捕令，且应政府律师的请求必须签发逮捕令。如果组织被告未响应传票出庭，法官可以采取美国法律授权的任何行动。

(b) 形式。

(1) **令状。**令状必须：

(A) 载明被告的姓名，或在姓名不明时，载明可据以合理确定地识别被告的姓名或描述；

(B) 描述起诉书中指控的罪行；

(C) 命令逮捕被告，并在无不必要迟延的情况下将其带至治安法官面前，若无治安法官合理可资利用，则带至州或地方司法官员面前；以及

(D) 由法官签署。

(2) 传票。传票的形式必须与逮捕令相同，但必须要求被告于指定时间、地点到治安法官面前出庭。

(c) **执行或送达，以及回复。**

(1) 执行人。只有执法官或其他授权官员可以执行令状。任何有权在联邦民事诉讼中送达传票的人均可送达传票。

(2) 地点。令状可在美国管辖范围内或联邦法规授权逮捕的任何其他地方执行，传票可在上述范围内送达。根据规则 4(c)(3)(D) 向组织送达的传票，也可在美国司法区以外的地方送达。

(3) 方式。

(A) 令状通过逮捕被告执行。逮捕时，持有原始令状或副本原始令状的官员必须向被告出示该令状。如果该官员未持有令状，该官员必须告知被告令状的存在及所指控的罪行，并应当被告的请求，尽快向被告出示原始令状或副本原始令状。

(B) 向个人被告送达传票：

(i) 通过向被告本人送达副本；

或

(ii) 将副本留在被告的住所或惯常居所，交给居住在该地点的适当年龄和具有判断力的人，并将副本邮寄至被告最后已知地址。

(C) A summons is served on an organization in a judicial district of the United States by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. If the agent is one authorized by statute and the statute so requires, a copy must also be mailed to the organization.

(D) A summons is served on an organization not within a judicial district of the United States:

(i) by delivering a copy, in a manner authorized by the foreign jurisdiction's law, to an officer, to a managing or general agent, or to an agent appointed or legally authorized to receive service of process; or

(ii) by any other means that gives notice, including one that is:

(a) stipulated by the parties;

(b) undertaken by a foreign authority in response to a letter rogatory, a letter of request, or a request submitted under an applicable international agreement; or

(c) permitted by an applicable international agreement.

(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.

(B) The person to whom a summons was delivered for service must return it on or before the return day.

(C) At the request of an attorney for the government, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to the marshal or other authorized person for execution or service.

(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.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(1)–(3), July 31, 1975, 89 Stat. 370, eff. Dec. 1, 1975; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016.)

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.

(C) 在美国司法区内向组织送达传票，通过将副本交付给官员、管理代理人或一般代理人，或交付给被任命或合法授权接收诉讼文书送达的其他代理人。如果该代理人是法规授权的代理人且法规如此要求，还必须将副本邮寄至该组织。

向不在美国司法区内的组织送达传票：

(D)

(i) 按照外国管辖法律授权的方式，将副本交付给官员、管理代理人或一般代理人，或交付给被任命或合法授权接收诉讼文书送达的代理人；或

(ii) 通过任何其他能够提供通知的方式，包括以下方式：

(a) 当事人约定；

(b) 由外国当局根据调查委托书、请求书或根据适用的国际协议提交的请求而进行；或

(c) 适用国际协议所允许的。

(4) 返回。

(A) 执行令状后，该官员必须依照规则 5 将令状返还给被告被带至其面前的法官。该官员可通过可靠的电子方式返还。应政府律师的请求，未执行的令状必须带回并由治安法官注销，如果没有合理可用的治安法官，则由州或地方司法官员注销。

(B) 被交付传票以供送达的人必须在返还日或之前返还传票。

(C) 应政府律师的请求，法官可将未执行的令状、未送达的传票或令状或传票的副本交付给执法官或其他授权人员以供执行或送达。

(d) 通过电话或其他可靠电子方式签发令状。依照规则4.1，治安法官可基于通过电话或其他可靠电子方式传达的信息签发令状或传票。

(1966年2月28日修正，1966年7月1日生效；1972年4月24日修正，1972年10月1日生效；1974年4月22日修正，1975年12月1日生效；Pub.L.94-64,3(1)-(3),1975年7月31日，89 Stat.370,1975年12月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效；2011年4月26日修正，2011年12月1日生效；2016年4月28日修正，2016年12月1日生效。)

规则 4.1. 通过电话或其他方式提出的控告、逮捕令或传票

或传票 (a) 一般规定。治安法官在审查控告或决定是否签发令状或传票时，可考虑通过电话或其他可靠电子方式传达的信息。

(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.

(As added Apr. 26, 2011, eff. Dec. 1, 2011.)

(b) 程序。如果治安法官决定依本规则进行，适用以下程序：

(1) 宣誓取证。法官必须让申请人及申请所依据其证言的任何人宣誓--并可对其进行询问。

(2) **制作证言和证据的记录。**

(A) 证言限于确认。如果申请人仅对通过可靠电子方式提交的书面宣誓书的内容进行确认，法官必须在宣誓书上书面确认该确认行为。

(B) 补充证言或证据。如果法官考虑补充证言或证据，法官必须：

(i) 通过电子录音设备、法庭记录员或书面方式逐字记录证言；

(ii) 将任何录音或记录员的笔记转录，使转录件经认证为准确，并归档；

(iii) 签署任何其他书面记录，证明其准确性，并予以归档；以及

(iv) 确保展品已提交归档。

(3) 准备起诉书、令状或传票的拟议副本原件。申请人必须准备起诉书、令状或传票的拟议副本原件，并必须将其内容逐字宣读或以其他方式传送给法官。

(4) 准备起诉书、令状或传票的原件。如果申请人宣读拟议副本原件的内容，法官必须将这些内容录入起诉书、令状或传票的原件。如果申请人通过可靠电子方式传送内容，法官收到的传送件可作为原件。

(5) 修改。法官可修改控告、令状或传票。法官随后必须：

(A) 通过可靠电子方式将修改版本传送给申请人；或

(B) 将修改后的原始件归档，并指示申请人相应修改拟议副本原始件。

(6) 签发。法官签发令状或传票，必须：

(A) 签署正本文件；

(B)在逮捕令或传票上填写签发日期和时间；以及

(C) 通过可靠电子方式将令状或传票传送给申请人，或指示申请人在副本原始件上签署法官姓名并填写日期和时间。

(c) 排除受限。在未认定恶意的情况下，依本规则签发的令状所获得的证据不得以以此种方式签发令状在当时情况下不合理为由予以排除。(2011年4月26日增补，2011年12月1日生效。)

Rule 5. Initial Appearance

(a) In General.

(1) ***Appearance Upon an Arrest.***

(A) A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise.

(B) A person making an arrest outside the United States must take the defendant without unnecessary delay before a magistrate judge, unless a statute provides otherwise.

(2) ***Exceptions.***

(A) An officer making an arrest under a warrant issued upon a complaint charging solely a violation of 18 U.S.C. §1073 need not comply with this rule if:

(i) the person arrested is transferred without unnecessary delay to the custody of appropriate state or local authorities in the district of arrest; and

(ii) an attorney for the government moves promptly, in the district where the warrant was issued, to dismiss the complaint.

(B) If a defendant is arrested for violating probation or supervised release, Rule 32.1 applies.

(C) If a defendant is arrested for failing to appear in another district, Rule 40 applies.

(3) ***Appearance Upon a Summons.*** When a defendant appears in response to a summons under Rule 4, a magistrate judge must proceed under Rule 5(d) or (e), as applicable.

(b) Arrest Without a Warrant. If a defendant is arrested without a warrant, a complaint meeting Rule 4(a)'s requirement of probable cause must be promptly filed in the district where the offense was allegedly committed.

(c) Place of Initial Appearance; Transfer to Another District.

(1) ***Arrest in the District Where the Offense Was Allegedly Committed.*** If the defendant is arrested in the district where the offense was allegedly committed:

(A) the initial appearance must be in that district; and

(B) if a magistrate judge is not reasonably available, the initial appearance may be before a state or local judicial officer.

(2) ***Arrest in a District Other Than Where the Offense Was Allegedly Committed.*** If the defendant was arrested in a district other than where the offense was allegedly committed, the initial appearance must be:

(A) in the district of arrest; or

(B) in an adjacent district if:

(i) the appearance can occur more promptly there; or

(ii) the offense was allegedly committed there and the initial appearance will occur on the day of arrest.

(3) ***Procedures in a District Other Than Where the Offense Was Allegedly Committed.*** If the initial appearance occurs in a district other than where the offense was allegedly committed, the following procedures apply:

(A) the magistrate judge must inform the defendant about the provisions of Rule 20;

规则 5. 初次到庭

(a) **一般规定。**

(1) **逮捕后的出庭。**

(A) 在美国境内实施逮捕的人必须无不必要延迟地将被告带至治安法官面前，或按规则 5(c) 的规定带至州或地方司法官员面前，除非法规另有规定。

(B) 在美国境外实施逮捕的人必须无不必要延迟地将被告带至治安法官面前，除非法规另有规定。

(2) 例外。

依据仅指控违反 18 U.S.C.1073 的控告书所签发的逮捕令执行逮捕的官员，在下列情况下无需遵守本规则：

(A)

(i) 被捕人被无不必要延迟地移交至逮捕所在地区的适当州或地方当局羁押；且

(ii) 政府律师在签发逮捕令的地区迅速提出动议，要求驳回该控告书。

(B) 如果被告因违反缓刑或监督释放而被逮捕，则适用规则 32.1。

(C) 如果被告因未在另一地区出庭而被逮捕，则适用规则 40。

(3) 依传票出庭。当被告依规则4响应传票出庭时，治安法官必须视情况依规则5(d)或(e)进行。

(b) 无令状逮捕。如果被告被无令状逮捕，必须迅速在据称犯罪发生的地区提交符合规则4(a)合理根据要求的起诉书。

(c) **初次到庭的地点；移送至另一地区。**

(1) 在据称犯罪发生的地区逮捕。如果被告在据称犯罪发生的地区被逮捕：

(A) 初次出庭必须在该地区进行；且 (B) 如果治安法官无法合理获得，初次出庭可以在州或地方司法官员面前进行。

(2) 在据称犯罪发生地以外的地区逮捕。如果被告在据称犯罪发生地以外的地区被逮捕，初次到庭必须：

(A) 在逮捕地所在地区；或

在相邻地区进行，如果：(i) 在该地区出庭可以更迅速地进行；或 (ii) 犯罪被指控在该地区发生，且初次出庭将在逮捕当日进行。

(B)

(3) 在据称犯罪发生地以外地区的程序。如果初次到庭在据称犯罪发生地以外的地区进行，适用以下程序：

(A) 治安法官必须告知被告规则 20 的规定；

(B) if the defendant was arrested without a warrant, the district court where the offense was allegedly committed must first issue a warrant before the magistrate judge transfers the defendant to that district;

(C) the magistrate judge must conduct a preliminary hearing if required by Rule 5.1;

(D) the magistrate judge must transfer the defendant to the district where the offense was allegedly committed if:

(i) the government produces the warrant, a certified copy of the warrant, or a reliable electronic form of either; and

(ii) the judge finds that the defendant is the same person named in the indictment, information, or warrant; and

(E) when a defendant is transferred and discharged, the clerk must promptly transmit the papers and any bail to the clerk in the district where the offense was allegedly committed.

(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.

(d) Procedure in a Felony Case.

(1) ***Advice.*** If the defendant is charged with a felony, the judge must inform the defendant of the following:

(A) the complaint against the defendant, and any affidavit filed with it;

(B) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) the circumstances, if any, under which the defendant may secure pretrial release;

(D) any right to a preliminary hearing;

(E) the defendant's right not to make a statement, and that any statement made may be used against the defendant; and

(F) that a defendant who is not a United States citizen may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested—but that even without the defendant's request, a treaty or other international agreement may require consular notification.

(2) ***Consulting with Counsel.*** The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) ***Detention or Release.*** The judge must detain or release the defendant as provided by statute or these rules.

(4) ***Plea.*** A defendant may be asked to plead only under Rule 10.

(e) Procedure in a Misdemeanor Case. If the defendant is charged with a misdemeanor only, the judge must inform the defendant in accordance with Rule 58(b)(2).

(f) Video Teleconferencing. Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

(B) 如果被告在无令状的情况下被逮捕，所指控犯罪发生的地区法院必须首先签发令状，然后治安法官才能将被告移送至该地区；

(C) 如果规则 5.1 要求，治安法官必须进行预审；

(D) 治安法官必须将被告移送至所指控犯罪发生的地区，如果：

(i) 政府出示令状、令状的核证副本或二者的可靠电子形式；且

(ii) 法官认定被告即为起诉书、告发书或令状中所指名的同一人；且

(E) 当被告被移送并释放时，书记官必须迅速将文件及任何保释金转交至所指控犯罪发生地区的书记官。

(4) 被引渡至美国人员的程序。如果被告依照引渡请求被移交美国，初次到庭必须在指控犯罪的地区(或其中一个地区)进行。

(d) **重罪案件程序**

(1) 告知。如果被告被指控犯有重罪，法官必须告知被告以下事项：

(A)针对被告的起诉状，以及随其提交的任何宣誓书；

(B) 被告聘请律师的权利，或在被告无法获得律师时请求指定律师的权利；

(C) 被告可以获得审前释放的情形(如有);

(D) 任何获得预审的权利；

(E) 被告不作陈述的权利，以及所作任何陈述可能被用于对被告不利；且

(F) 非美国公民的被告可以请求政府律师或联邦执法官员通知被告国籍国的领事官员被告已被逮捕--但即使没有被告的请求，条约或其他国际协议也可能要求进行领事通知。

(2) 与律师协商。法官必须给予被告与律师协商的合理机会。

(3) 羁押或释放。法官必须依成文法或本规则的规定羁押或释放被告。

(4) 答辩。被告仅可依据规则被要求答辩

10.

(e) 轻罪案件程序。如果被告仅被指控轻罪，法官必须依照规则58(b)(2)告知被告。

(f) 视频远程会议。如果被告同意，可使用视频远程会议进行本规则下的到庭。

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 28, 1982, eff. Aug. 1, 1982; Pub. L. 98–473, title II, §209(a), Oct. 12, 1984, 98 Stat. 1986; Mar. 9, 1987, eff. Aug. 1, 1987; May 1, 1990, eff. Dec. 1, 1990; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 23, 2012, eff. Dec. 1, 2012; Apr. 25, 2014, eff. Dec. 1, 2014.)

Rule 5.1. Preliminary Hearing

(a) In General. If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless:

(1) the defendant waives the hearing;

(2) the defendant is indicted;

(3) the government files an information under Rule 7(b) charging the defendant with a felony;

(4) the government files an information charging the defendant with a misdemeanor; or

(5) the defendant is charged with a misdemeanor and consents to trial before a magistrate judge.

(b) Selecting a District. A defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where the prosecution is pending.

(c) Scheduling. The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 21 days if not in custody.

(d) Extending the Time. With the defendant's consent and upon a showing of good cause—taking into account the public interest in the prompt disposition of criminal cases—a magistrate judge may extend the time limits in Rule 5.1(c) one or more times. If the defendant does not consent, the magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(e) Hearing and Finding. At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings.

(f) Discharging the Defendant. If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

(g) Recording the Proceedings. The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations.

(1966年2月28日修正，1966年7月1日生效；1972年4月24日修正，1972年10月1日生效；1982年4月28日修正，1982年8月1日生效；Pub.L.98-473，第二编，209(a),1984年10月12日，98 Stat.1986;1987年3月9日修正，1987年8月1日生效；1990年5月1日修正，1990年12月1日生效；1993年4月22日修正，1993年12月1日生效；1995年4月27日修正，1995年12月1日生效；2002年4月29日修正，2002年12月1日生效；2006年4月12日修正，2006年12月1日生效；2012年4月23日修正，2012年12月1日生效；2014年4月25日修正，2014年12月1日生效。)

规则 5.1. 预审听证

(a) 通则。如果被告被指控轻微罪行以外的罪行，治安法官必须进行预审，除非：

(1) 被告放弃听证；

(2) 被告被起诉；

(3) 政府根据规则 7(b) 提交起诉书，指控被告犯有重罪；

(4) 政府提交起诉书，指控被告犯有轻罪；或

(5) 被告被指控犯有轻罪并同意由治安法官审判。

(b) 选择地区。在据称犯罪发生地以外的地区被逮捕的被告可以选择在起诉待决的地区进行预审。

(c) 日程安排。治安法官必须在合理时间内举行预审，但如果被告在押，不得迟于初次到庭后14天；如果不在押，不得迟于21天。

(d) 延长期限。经被告同意并证明有正当理由--考虑到迅速处理刑事案件中的公共利益--治安法官可一次或多次延长规则5.1(c)的期限。如果被告不同意，治安法官只有在证明存在特殊情况且司法需要延迟时方可延长期限。

(e) 听证与认定。在初步听证中，被告可以交叉询问对其不利的证人，并可以提出证据，但不得以证据系非法取得为由对该证据提出异议。如果治安法官认定有合理根据相信某项犯罪已经发生且被告实施了该犯罪，治安法官必须立即要求被告出庭参加后续程序。

(f) 释放被告。如果治安法官认定没有合理根据相信某项犯罪已经发生或被告实施了该犯罪，治安法官必须驳回控告并释放被告。释放并不妨碍政府此后就同一犯罪起诉被告。

(g) 记录程序。初步听证必须由法庭书记员或适当的录音设备予以记录。经任何一方请求，程序的录音可以提供予该方。经任何一方请求并支付适用的司法会议条例所要求的费用后，可以向该方提供录音副本和笔录。

(h) Producing a Statement.

(1) ***In General.*** Rule 26.2(a)–(d) and (f) applies at any hearing under this rule, unless the magistrate judge for good cause rules otherwise in a particular case.

(2) ***Sanctions for Not Producing a Statement.*** If a party disobeys a Rule 26.2 order to deliver a statement to the moving party, the magistrate judge must not consider the testimony of a witness whose statement is withheld.

(As added Apr. 24, 1972, eff. Oct. 1, 1972; amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

TITLE III. THE GRAND JURY, THE INDICTMENT, AND THE INFORMATION

Rule 6. The Grand Jury

(a) Summoning a Grand Jury.

(1) ***In General.*** When the public interest so requires, the court must order that one or more grand juries be summoned. A grand jury must have 16 to 23 members, and the court must order that enough legally qualified persons be summoned to meet this requirement.

(2) ***Alternate Jurors.*** When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

(b) Objection to the Grand Jury or to a Grand Juror.

(1) ***Challenges.*** Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(2) ***Motion to Dismiss an Indictment.*** A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The motion to dismiss is governed by 28 U.S.C. §1867(e). The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(c) Foreperson and Deputy Foreperson. The court will appoint one juror as the foreperson and another as the deputy foreperson. In the foreperson's absence, the deputy foreperson will act as the foreperson. The foreperson may administer oaths and affirmations and will sign all indictments. The foreperson—or another juror designated by the foreperson—will record the number of jurors concurring in every indictment and will file the record with the clerk, but the record may not be made public unless the court so orders.

(h) **出具陈述。**

(1) 一般规定。规则 26.2(a)至(d)及(f)适用于本规则项下的任何听证，除非治安法官基于正当理由在特定案件中另有裁定。

(2) 未提供陈述的制裁性措施。如果一方违反规则 26.2 关于向动议方交付陈述的命令，治安法官不得考虑其陈述被扣留的证人的证言。

(1972年4月24日增补，1972年10月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；1998年4月24日修正，1998年12月1日生效；2002年4月29日修正，2002年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

第三编大陪审团、起诉书及信息

规则 6. 大陪审团

(a) **召集大陪审团。**

(1) 一般规定。当公共利益有此要求时，法院必须命令召集一个或多个大陪审团。大陪审团必须有 16 至 23 名成员，法院必须命令召集足够数量的合格人员以满足这一要求。

(2) 候补陪审员。遴选大陪审团时，法院也可以遴选候补陪审员。候补陪审员必须具备与其他任何陪审员相同的资格，并以相同方式遴选。候补陪审员按照其被遴选的相同顺序替换陪审员。替换陪审员的候补陪审员与其他陪审员受相同的回避申请约束，进行相同的宣誓，并具有相同的权限。

(b) **对大陪审团或大陪审员提出的异议。**

(1) 回避申请。政府或被告均可以大陪审团未依法组成、召集或遴选为由对大陪审团提出回避申请，并可以个别陪审员不具备法律资格为由对该陪审员提出回避申请。

(2) 驳回起诉书的动议。当事人可以基于对大陪审团的异议或基于个别陪审员缺乏法律资格而提出驳回起诉书的动议，除非法院此前已根据规则 6(b)(1) 对同一异议作出裁决。驳回动议受 28 U.S.C.1867(e) 管辖。如果记录显示至少有 12 名合格陪审员同意起诉书，法院不得以某大陪审员不具备法律资格为由驳回起诉书。

(c) 首席陪审员和副首席陪审员。法院将指定一名陪审员为首席陪审员，另一名为副首席陪审员。首席陪审员缺席时，副首席陪审员将代行首席陪审员职责。首席陪审员可以主持宣誓和确认，并将在所有起诉书上签名。首席陪审员--或首席陪审员指定的另一名陪审员--将记录对每份起诉书同意的陪审员人数，并将该记录提交书记官，但除非法院另有命令，该记录不得公开。

(d) Who May Be Present.

(1) ***While the Grand Jury Is in Session.*** The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device.

(2) ***During Deliberations and Voting.*** No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

(e) Recording and Disclosing the Proceedings.

(1) ***Recording the Proceedings.*** Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) ***Secrecy.***

(A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

(i) a grand juror;
(ii) an interpreter;
(iii) a court reporter;
(iv) an operator of a recording device;
(v) a person who transcribes recorded testimony;
(vi) an attorney for the government; or
(vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

(3) ***Exceptions.***

(A) Disclosure of a grand-jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to:

(i) an attorney for the government for use in performing that attorney's duty;

(ii) any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law; or

(iii) a person authorized by 18 U.S.C. § 3322.

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) An attorney for the government may disclose any grand-jury matter to another federal grand jury.

(d) **谁可以出席。**

(1) 大陪审团开会期间。大陪审团开会期间，下列人员可以到场：政府律师、正在接受询问的证人、必要时在场的翻译人员，以及法庭书记员或录音设备操作员。

(2) 评议和表决期间。大陪审团评议或表决期间，除陪审员以及协助有听力障碍或言语障碍陪审员所需的翻译人员外，任何人不得在场。

(e) **记录与披露程序。**

(1) 记录程序。除大陪审团评议或表决期间外，所有程序必须由法庭书记员或适当的录音设备予以记录。但无意未作记录不影响起诉的效力。除法院另有命令外，政府律师保留对录音、书记员笔记以及根据该笔记制作的任何笔录的控制权。

(2) 保密。

(A) 除依照规则 6(e)(2)(B) 外，不得对任何人施加保密义务。

(B)

除非本规则另有规定，下列人员不得披露在大陪审团面前发生的事项：

(i) (i) 大陪审员；(ii) 翻译人员；(iii) 法庭书记员；(iv) 录音设备操作员；(v) 转录录音证言的人员；(vi) 政府律师；或 (vii) 根据规则 6(e)(3)(A)(ii) 或 (iii) 获披露的人员。

(3) 例外。

(A)

大陪审团事项--除大陪审团评议或任何大陪审员的表决外--可以披露给：

(i) 政府律师，用于履行该律师的职责；

(ii) 任何政府人员--包括州、州下属机构、印第安部落或外国政府的人员--只要政府律师认为其对于协助履行该律师执行联邦刑法的职责是必要的；或

(iii) 18 U.S.C.3322 授权的人员。

(B) 根据规则 6(e)(3)(A)(ii) 获披露信息的人员，只能将该信息用于协助政府律师履行该律师执行联邦刑法的职责。政府律师必须立即向召集大陪审团的法院提供所有获披露人员的姓名，并必须证明该律师已告知这些人员本规则规定的保密义务。

(C) 政府律师可以将任何大陪审团事项披露给另一个联邦大陪审团。

(D) An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in 50 U.S.C. §3003), or foreign intelligence information (as defined in Rule 6(e)(3)(D)(iii)) to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties. An attorney for the government may also disclose any grand-jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state, state subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.

(i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued by the Attorney General and the Director of National Intelligence.

(ii) Within a reasonable time after disclosure is made under Rule 6(e)(3)(D), an attorney for the government must file, under seal, a notice with the court in the district where the grand jury convened stating that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

(iii) As used in Rule 6(e)(3)(D), the term ''foreign intelligence information'' means:

(a) information, whether or not it concerns a United States person, that relates to the ability of the United States to protect against—

- actual or potential attack or other grave hostile acts of a foreign power or its agent;
- sabotage or international terrorism by a foreign power or its agent; or
- clandestine intelligence activities by an intelligence service or network of a foreign power or by its agent; or

(b) information, whether or not it concerns a United States person, with respect to a foreign power or foreign territory that relates to—

- the national defense or the security of the United States; or
- the conduct of the foreign affairs of the United States.

政府律师可以为协助接收信息的官员履行其职责，向任何联邦执法、情报、保护、移民、国防或国家安全官员披露涉及外国情报、反情报（定义见《美国法典》第50编第3003条）或外国情报信息（定义见第6(e)(3)(D)(iii)条）的任何大陪审团事项。政府律师还可以为防止或应对此类威胁或活动，向任何适当的联邦、州、州下属机构、印第安部落或外国政府官员披露涉及以下内容的任何大陪审团事项：在美国境内或境外，外国势力或其代理人发动袭击的威胁或其他严重敌对行为的威胁、国内或国际破坏或恐怖主义的威胁，或外国势力或其代理人的情报机构或网络进行的秘密情报收集活动。(i) 任何根据第6(e)(3)(D)条接收信息的官员，只能在履行其公职所必需的范围内使用该信息，并受关于未经授权披露此类信息的任何限制的约束。任何根据第6(e)(3)(D)条接收信息的州、州下属机构、印第安部落或外国政府官员，只能以符合司法部长和国家情报总监发布的任何指南的方式使用该信息。(ii) 在根据第6(e)(3)(D)条进行披露后的合理时间内，政府律师必须在大陪审团召集地的地区法院以密封方式提交通知，说明此类信息已被披露以及披露对象所属的部门、机构或实体。(iii) 第6(e)(3)(D)条中使用的"外国情报信息"一词是指：

(D)

(a) 无论是否涉及美国人，与下列事项有关的信息：美国防范以下事项的能力--

- 外国势力或其代理人的实际或潜在攻击或其他严重敌对行为；
- 外国势力或其代理人实施的破坏活动或国际恐怖主义；或
- 外国势力或其代理人的情报机构或网络进行的秘密情报活动；或

(b) 无论是否涉及美国人，关于外国势力或外国领土的、与下列事项有关的信息--

- 美国的国防或安全；或
- 美国外交事务的执行。

(E) The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter:

(i) preliminarily to or in connection with a judicial proceeding;

(ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;

(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;

(iv) at the request of the government if it shows that the matter may disclose a violation of State, Indian tribal, or foreign criminal law, as long as the disclosure is to an appropriate state, state-subdivision, Indian tribal, or foreign government official for the purpose of enforcing that law; or

(v) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

(F) A petition to disclose a grand-jury matter under Rule 6(e)(3)(E)(i) must be filed in the district where the grand jury convened. Unless the hearing is ex parte—as it may be when the government is the petitioner—the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:

(i) an attorney for the government;

(ii) the parties to the judicial proceeding; and

(iii) any other person whom the court may designate.

(G) If the petition to disclose arises out of a judicial proceeding in another district, the petitioned court must transfer the petition to the other court unless the petitioned court can reasonably determine whether disclosure is proper. If the petitioned court decides to transfer, it must send to the transferee court the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand-jury secrecy. The transferee court must afford those persons identified in Rule 6(e)(3)(F) a reasonable opportunity to appear and be heard.

(4) ***Sealed Indictment.*** The magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. The clerk must then seal the indictment, and no person may disclose the indictment's existence except as necessary to issue or execute a warrant or summons.

(5) ***Closed Hearing.*** Subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent disclosure of a matter occurring before a grand jury.

(6) ***Sealed Records.*** Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.

法院可以授权披露大陪审团事项--在法院指定的时间、以法院指定的方式并受法院指定的任何其他条件约束：

(E)

(i) 初步地或在司法程序之前或与之相关；

(ii) 应被告请求，且被告表明可能存在因大陪审团面前发生的事项而驳回起诉书的理由；

(iii) 应政府请求，且该请求系外国法院或检察官为用于官方刑事调查而提出；

(iv) 应政府请求，且政府表明该事项可能披露违反州、印第安部落或外国刑法的行为，只要披露对象是适当的州、州下属机构、印第安部落或外国政府官员，且目的是执行该法律；或

(v) 应政府请求，如果政府表明该事项可能披露违反《统一军事司法法典》项下军事刑法的行为，且披露对象是为执行该法律而指定的适当军事官员。

(F) 根据规则 6(e)(3)(E)(i) 请求披露大陪审团事项的申请，必须在大陪审团召集地的地区提交。除非听证是单方进行的--当政府是申请人时可以是单方听证--申请人必须向以下人员送达申请，且法院必须给予以下人员合理的出庭和陈述意见的机会：

(i) 政府律师；(ii) 司法程序的各方当事人；以及(iii) 法院可能指定的任何其他人员。

(G) 如果披露申请源于另一地区的司法程序，被申请法院必须将申请移送至该另一法院，除非被申请法院能够合理确定披露是否适当。如果被申请法院决定移送，它必须在可行的情况下向受移送法院发送寻求披露的材料，以及对继续维持大陪审团保密必要性的书面评估。受移送法院必须给予规则 6(e)(3)(F) 中所指人员合理的出庭和陈述意见的机会。

(4) 密封起诉书。接收起诉书退回的治安法官可以指示在被告被羁押或已在候审期间获释之前对起诉书保密。书记官随后必须密封起诉书，除签发或执行逮捕令或传票所必需外，任何人不得披露起诉书的存在。

(5) 不公开听证。在服从藐视法庭程序中公开听证权利的前提下，法院必须在防止披露大陪审团面前发生的事项所必需的范围内不公开任何听证。

(6) 密封记录。与大陪审团程序有关的记录、命令和传票必须密封保存，密封的范围和期限以防止未经授权披露大陪审团面前发生的事项所必需者为限。

(7) *Contempt.* A knowing violation of Rule 6, or of any guidelines jointly issued by the Attorney General and the Director of National Intelligence under Rule 6, may be punished as a contempt of court.

(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.

(g) Discharging the Grand Jury. A grand jury must serve until the court discharges it, but it may serve more than 18 months only if the court, having determined that an extension is in the public interest, extends the grand jury's service. An extension may be granted for no more than 6 months, except as otherwise provided by statute.

(h) Excusing a Juror. At any time, for good cause, the court may excuse a juror either temporarily or permanently, and if permanently, the court may impanel an alternate juror in place of the excused juror.

(i) "Indian Tribe" Defined. ''Indian tribe'' means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. §479a–1.[1]

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 26 and July 8, 1976, eff. Aug. 1, 1976; Pub. L. 95–78, §2(a), July 30, 1977, 91 Stat. 319, eff. Oct. 1, 1977; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 28, 1983, eff. Aug. 1, 1983; Pub. L. 98–473, title II, §215(f), Oct. 12, 1984, 98 Stat. 2016, eff. Nov. 1, 1987; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 1999, eff. Dec. 1, 1999; Pub. L. 107–56, title II, §203(a), Oct. 26, 2001, 115 Stat. 278; Apr. 29, 2002, eff. Dec. 1, 2002; Pub. L. 107–296, title VIII, §895, Nov. 25, 2002, 116 Stat. 2256; Pub. L. 108–458, title VI, §6501(a), Dec. 17, 2004, 118 Stat. 3760; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 25, 2014, eff. Dec. 1, 2014.)

Rule 7. The Indictment and the Information

(a) When Used.

(1) *Felony.* An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

(A) by death; or

(B) by imprisonment for more than one year.

(2) *Misdemeanor.* An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).

(b) Waiving Indictment. An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment.

[1] Now editorially reclassified 25 U.S.C. 5131.

(7) 藐视法庭。明知而违反规则 6，或违反司法部长与国家情报总监依据规则 6 联合发布的任何准则的，可作为藐视法庭予以处罚。

(f) 起诉书和返还。大陪审团只有在至少 12 名陪审员同意的情况下才能起诉。大陪审团--或其首席陪审员或副首席陪审员--必须在公开法庭上将起诉书返还给治安法官。为避免不必要的费用或延误，治安法官可以通过视频电话会议从大陪审团所在地的法院接收返还。如果针对被告的控告书或检察官起诉书尚待处理，且 12 名陪审员未对起诉书达成同意，首席陪审员必须及时以书面形式向治安法官报告缺乏同意的情况。

(g) 解散大陪审团。大陪审团必须任职至法院将其解散，但只有在法院认定延期符合公共利益并延长大陪审团任期的情况下，大陪审团才可以任职超过 18 个月。除制定法另有规定外，延期不得超过 6 个月。

(h) 免除陪审员。在任何时候，法院可以基于正当理由临时或永久免除陪审员；如为永久免除，法院可以选任候补陪审员替代被免除的陪审员。

(i) "印第安部落"的定义。"印第安部落"是指内政部长根据 25 U.S.C.479a-1 在《联邦公报》上公布的名单中所承认的印第安部落。[1]

(经1966年2月28日修正，1966年7月1日生效；1972年4月24日修正，1972年10月1日生效；1976年4月26日和7月8日修正，1976年8月1日生效；Pub.L.95-78, 215(f),1984年10月12日，98 Stat.2016,1987年11月1日生效；1985年4月29日修正，1985年8月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；1999年4月26日修正，1999年12月1日生效；Pub.L.107-56， 第二编， 895,2002年11月25日，116 Stat.2256;Pub.L.108-458， 第六编，6501(a),2004年12月17日，118 Stat.3760;2006年4月12日修正，2006年12月1日生效；2011年4月26日修正，2011年12月1日生效；2014年4月25日修正，2014年12月1日生效。)

规则 7. 大陪审团起诉书与检察官起诉书

(a) **使用时机。**

(1) 重罪。除藐视法庭罪以外的犯罪，如可处以下刑罚，必须以起诉书提起公诉：

(A) 因死亡；或

(B) 处以一年以上监禁。

(2) 轻罪。可处一年或一年以下监禁的犯罪，可依照规则 58(b)(1) 提起公诉。

(b) 放弃起诉书。可判处一年以上监禁的犯罪，如果被告在公开法庭上、在被告知指控的性质和被告的权利之后放弃以起诉书起诉，则可以以起诉信息提起公诉。

1 现经编辑重新分类为 25 U.S.C.5131。

(c) Nature and Contents.

(1) *In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to describe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in section 3282.

(2) *Citation Error.* Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) Surplusage. Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) Amending an Information. Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.

(f) Bill of Particulars. The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002; Pub. L. 108–21, title VI, §610(b), Apr. 30, 2003, 117 Stat. 692; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 8. Joinder of Offenses or Defendants

(a) Joinder of Offenses. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(b) Joinder of Defendants. The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

(c) **性质与内容。**

(1) 一般规定。起诉书或检察官起诉书必须是对构成所指控罪行的基本事实的简明、清晰且明确的书面陈述，并必须由政府律师签名。它无需包含正式的引言或结论。某一罪项可以通过引用另一罪项中的指控而纳入该指控。某一罪项可以指控被告实施犯罪的手段未知，或被告通过一种或多种特定手段实施犯罪。对于每一罪项，起诉书或检察官起诉书必须给出被告被指控违反的成文法、规则、条例或其他法律规定的官方或惯用引证。就《美国法典》第 18 编第 3282 条所提及的被告身份未知的起诉书而言，起诉书将被告描述为姓名未知但具有特定 DNA 图谱(该术语在第 3282 条中定义)的个人即已足够。

(2) 引用错误。除非被告因此被误导并受到损害，引用错误或引用遗漏均不构成驳回起诉书或起诉信息或撤销有罪判决的理由。

(d) 多余内容。经被告动议，法院可以从起诉书或起诉信息中删除多余内容。

(e) 修改起诉信息。除非指控了额外或不同的犯罪，或被告的实质性权利受到损害，法院可以允许在裁决或认定之前的任何时候修改起诉信息。

(f) 详情清单。法院可以指示政府提交详情清单。被告可以在提审之前或提审后 14 天内动议要求详情清单，或在法院许可的较后时间提出。政府可以修改详情清单，但须符合司法所要求的条件。

(经 1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1972 年 4 月 24 日修订，1972 年 10 月 1 日生效；1979 年 4 月 30 日修订，1979 年 8 月 1 日生效；1987 年 3 月 9 日修订，1987 年 8 月 1 日生效；2000 年 4 月 17 日修订，2000 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效；Pub.L.108-21，第六编，610(b),2003 年 4 月 30 日，117 Stat.692;2009 年 3 月 26 日修订，2009 年 12 月 1 日生效。)

规则 8. 罪行或被告的合并

(a) 犯罪合并。如果所指控的犯罪--无论是重罪还是轻罪或两者兼有--具有相同或相似的性质，或基于同一行为或交易，或相互关联或构成共同计划或方案的组成部分，起诉书或起诉信息可以在分别的罪项中对被告指控 2 项或更多犯罪。

(b) 被告合并。如果 2 名或更多被告被指称参与了构成一项或多项犯罪的同一行为或交易，或同一系列行为或交易，起诉书或起诉信息可以对他们提出指控。被告可以在一个或多个罪项中共同或分别受到指控。并非所有被告都必须在每个罪项中受到指控。(2002 年 4 月 29 日修正，2002 年 12 月 1 日生效。)

Rule 9. Arrest Warrant or Summons on an Indictment or Information

(a) Issuance. The court must issue a warrant—or at the government's request, a summons—for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. The court may issue more than one warrant or summons for the same defendant. If a defendant fails to appear in response to a summons, the court may, and upon request of an attorney for the government must, issue a warrant. The court must issue the arrest warrant to an officer authorized to execute it or the summons to a person authorized to serve it.

(b) Form.

(1) *Warrant.* The warrant must conform to Rule 4(b)(1) except that it must be signed by the clerk and must describe the offense charged in the indictment or information.

(2) *Summons.* The summons must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.

(c) Execution or Service; Return; Initial Appearance.

(1) *Execution or Service.*

(A) The warrant must be executed or the summons served as provided in Rule 4(c)(1), (2), and (3).

(B) The officer executing the warrant must proceed in accordance with Rule 5(a)(1).

(2) *Return.* A warrant or summons must be returned in accordance with Rule 4(c)(4).

(3) *Initial Appearance.* When an arrested or summoned defendant first appears before the court, the judge must proceed under Rule 5.

(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.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(4), July 31, 1975, 89 Stat. 370, eff. Dec. 1, 1975; Pub. L. 94–149, §5, Dec. 12, 1975, 89 Stat. 806; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2011, eff. Dec. 1, 2011.)

TITLE IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Arraignment

(a) In General. An arraignment must be conducted in open court and must consist of:

(1) ensuring that the defendant has a copy of the indictment or information;

(2) reading the indictment or information to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment or information.

(b) Waiving Appearance. A defendant need not be present for the arraignment if:

规则 9. 基于大陪审团起诉书或检察官起诉书的逮捕令或传票-动议

(a) 签发。对于起诉书中列名的或检察官起诉书中列名的每一名被告，法院必须签发逮捕令--或应政府请求签发传票--如果随检察官起诉书提交的一份或多份宣誓书确立合理根据，使人相信已发生犯罪且被告实施了该犯罪。法院可以对同一被告签发多份逮捕令或传票。如果被告未响应传票出庭，法院可以签发逮捕令，并且应政府律师请求必须签发逮捕令。法院必须将逮捕令签发给有权执行逮捕令的官员，或将传票签发给有权送达传票的人。

(b) 形式。

(1) 令状。令状必须符合规则 4(b)(1)，但须由书记官签署，并须描述起诉书或起诉信息中所指控的罪行。

(2) 传票。传票的形式必须与令状相同，但须要求被告在指定的时间和地点出庭。

(c) **执行或送达；返还；初次到庭。**

(1) **执行或送达。**

(A) 逮捕令必须按照规则 4(c)(1)、(2) 和 (3) 的规定执行，或传票必须按照上述规定送达。

(B) 执行逮捕令的官员必须依照规则 5(a)(1) 进行。

(2) 返还。令状或传票必须依照规则 4(c)(4) 返还。

(3) 初次到庭。当被逮捕或被传唤的被告首次在法院到庭时，法官必须依照规则 5 进行程序。

(d) 通过电话或其他方式签发令状。依照规则 4.1，治安法官可以基于通过电话或其他可靠电子方式传达的信息签发逮捕令或传票。

(经 1972 年 4 月 24 日修订，1972 年 10 月 1 日生效；1974 年 4 月 22 日修订，1975 年 12 月 1 日生效；Pub.L.94-64, 5,1975 年 12 月 12 日，89 Stat.806;1979 年 4 月 30 日修订，1979 年 8 月 1 日生效；1982 年 4 月 28 日修订，1982 年 8 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效；2011 年 4 月 26 日修订，2011 年 12 月 1 日生效。)

第四编提审与审判准备规则 10. 提审

(a) 一般规定。提审必须在公开法庭进行，并必须包括：

(1) 确保被告获得起诉书或信息的副本；

(2) 向被告宣读起诉书或起诉信息，或向被告说明指控的实质内容；然后

(3) 要求被告对起诉书或检察官起诉书作出答辩。

(b) 放弃出庭。在下列情况下，被告无需出席提审：

(1) the defendant has been charged by indictment or misdemeanor information;

(2) the defendant, in a written waiver signed by both the defendant and defense counsel, has waived appearance and has affirmed that the defendant received a copy of the indictment or information and that the plea is not guilty; and

(3) the court accepts the waiver.

(c) Video Teleconferencing. Video teleconferencing may be used to arraign a defendant if the defendant consents.

(As amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 11. Pleas

(a) Entering a Plea.

(1) *In General.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(1) 被告已通过大陪审团起诉书或轻罪起诉书被指控；

(2) 被告经被告与辩护律师双方签署的书面弃权书，放弃出庭，并确认被告已收到起诉书或大陪审团起诉书的副本，且作无罪答辩；以及

(3) 法院接受该弃权。

(c) 视频电话会议。如果被告同意，可以使用视频电话会议对被告进行提审。

(1987年3月9日修订，1987年8月1日生效；2002年4月29日修订，2002年12月1日生效。)

规则 11. 答辩

(a) **提出答辩。**

(1) 一般规定。被告可以作无罪答辩、有罪答辩，或(经法院同意)不抗辩答辩。

(2) 附条件答辩。经法院和政府同意，被告可以作出附条件的有罪答辩或不抗辩答辩，以书面形式保留由上诉法院审查特定审前动议的不利裁定的权利。在上诉中胜诉的被告随后可以撤回该答辩。

(3) 不抗辩答辩。在接受不抗辩答辩之前，法院必须考虑各方的意见以及有效司法管理中的公共利益。

(4) 未作出答辩。如果被告拒绝作出答辩，或被告组织未出庭，法院必须作出无罪答辩的记录。

(b) **考虑并接受有罪答辩或不抗辩答辩。**

(1) 告知和询问被告。在法院接受有罪答辩或不抗辩答辩之前，被告可以被置于宣誓之下，法院必须在公开法庭上亲自对被告讲话。在此讲话期间，法院必须告知被告以下内容，并确定被告理解以下内容：

(A) 在伪证或虚假陈述的起诉中，政府有权使用被告在宣誓下作出的任何陈述来对抗被告；

(B) 作无罪答辩的权利，或已作无罪答辩的，坚持该答辩的权利；

(C) 获得陪审团审判的权利；

(D) 由律师代理的权利--如有必要，由法院指定律师--在审判时及诉讼的每一个其他阶段；

(E) 在审判时对对方证人进行对质和交叉询问的权利，免受强制自证其罪保护的权利，作证和出示证据的权利，以及强制证人到庭的权利；

(F) 如果法院接受有罪答辩或不抗辩答辩，被告放弃这些审判权利；

(G) 被告所答辩的每一项指控的性质；

(H) 任何可能的最高刑罚，包括监禁、罚金和监督释放期限；

(I) any mandatory minimum penalty;
(J) any applicable forfeiture;
(K) the court's authority to order restitution;
(L) the court's obligation to impose a special assessment;
(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);
(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and
(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) ***Ensuring That a Plea Is Voluntary.*** Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) ***Determining the Factual Basis for a Plea.*** Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) ***In General.*** An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;
(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) ***Disclosing a Plea Agreement.*** The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) ***Judicial Consideration of a Plea Agreement.***

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(I) 任何强制性最低刑罚；
(J) 任何适用的没收；
(K) 法院命令恢复原状的权力；
(L) 法院课以特别分摊金的义务；
(M) 在确定量刑时，法院有义务计算适用的量刑指南范围，并考虑该范围、根据《量刑指南》可能的偏离以及其他根据 18 U.S.C.3553(a) 的量刑因素；
(N) 任何认罪协议中放弃上诉权或对判决进行附带攻击的权利的条款；以及
(O) 如果被定罪，非美国公民的被告可能被驱逐出美国、被拒绝授予公民身份，并在未来被拒绝入境美国。

(2) 确保答辩是自愿的。在接受有罪答辩或不抗辩答辩之前，法院必须在公开法庭上亲自对被告讲话，并确定该答辩是自愿的，并非因武力、威胁或承诺(答辩协议中的承诺除外)而产生。

(3) 确定答辩的事实基础。在对有罪答辩作出判决之前，法院必须确定该答辩存在事实基础。

(c) **认罪协议程序。**

(1) 一般规定。政府律师和被告的律师，或自行诉讼的被告，可以讨论并达成答辩协议。法院不得参与这些讨论。如果被告对指控的罪行或较轻或相关罪行作有罪答辩或不抗辩答辩，答辩协议可以规定政府律师将：

(A) 不提出、或不会动议驳回其他指控；
(B) 建议或同意不反对被告的请求，即特定刑罚或量刑范围是适当的，或《量刑指南》的特定条款、政策声明或量刑因素适用或不适用(此类建议或请求不约束法院)；或
(C) 同意特定刑罚或量刑范围是对案件的适当处理，或《量刑指南》的特定条款、政策声明或量刑因素适用或不适用(一旦法院接受认罪协议，此类建议或请求即约束法院)。

(2) 披露答辩协议。当事方必须在提出答辩时在公开法庭上披露答辩协议，除非法院基于正当理由允许当事方在不公开的情况下披露答辩协议。

(3) **对认罪协议的司法考量。**

(A) 在认罪协议属于规则 11(c)(1)(A) 或 (C) 规定的类型的范围内，法院可以接受该协议、拒绝该协议，或推迟决定直至法院审查了判前报告。

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) ***Accepting a Plea Agreement.*** If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) ***Rejecting a Plea Agreement.*** If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(5)–(10), July 31, 1975, 89 Stat. 371, 372, eff. Aug. 1 and Dec. 1, 1975; Apr. 30, 1979, eff. Aug. 1, 1979, and Dec. 1, 1980; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Pub. L. 100–690, title VII, §7076, Nov. 18, 1988, 102 Stat. 4406; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013.)

(B) 在认罪协议属于规则 11(c)(1)(B) 规定的类型的范围内，法院必须告知被告，如果法院不遵循该建议或请求，被告无权撤回答辩。

(4) 接受答辩协议。如果法院接受答辩协议，它必须告知被告，在答辩协议属于规则 11(c)(1)(A) 或(C) 规定的类型的范围内，商定的处置将包含在判决中。

(5) 拒绝答辩协议。如果法院拒绝包含规则 11(c)(1)(A) 或(C) 规定类型的条款的答辩协议，法院必须在记录中和公开法庭上(或基于正当理由，在不公开的情况下)执行以下操作：

(A)告知各方，法院拒绝该认罪协议；

(B) 亲自告知被告法院无需遵循认罪协议，并给予被告撤回答辩的机会；以及

(C) 亲自告知被告，如果答辩未被撤回，法院可能以比认罪协议所设想对被告更不利的方式处理案件。

(d) 撤回有罪答辩或不抗辩答辩。被告可以撤回有罪答辩或不抗辩答辩：

(1) 在法院接受认罪之前，无论出于何种理由或无理由；或

(2) 在法院接受认罪后，但在判刑前，如果：

(A) 法院根据规则 11(c)(5) 驳回认罪协议；或

(B) 被告能够证明请求撤回的公平正当理由。

(e) 有罪答辩或不抗辩答辩的终局性。在法院量刑后，被告不得撤回有罪答辩或不抗辩答辩，且该答辩只能通过直接上诉或附带攻击予以撤销。

(f) 答辩、答辩讨论及相关陈述的可采性或不可采性。答辩、答辩讨论及任何相关陈述的可采性或不可采性受《联邦证据规则》410 管辖。

(g) 记录程序。被告作出答辩的程序必须由法庭记录员或适当的记录设备记录。如果有有罪答辩或不抗辩答辩，记录必须包括规则 11(b) 和(c) 要求的对被告的询问和建议。

(h) 无害错误。偏离本规则要求的行为如果不影响实质权利，则为无害错误。

(1966年2月28日修正，1966年7月1日生效；1974年4月22日修正，1975年12月1日生效；Pub.L.94-64, 7076,1988年11月18日，102 Stat.4406;1989年4月25日修正，1989年12月1日生效；1999年4月26日修正，1999年12月1日生效；2002年4月29日修正，2002年12月1日生效；2007年4月30日修正，2007年12月1日生效；2013年4月16日修正，2013年12月1日生效。)

Rule 12. Pleadings and Pretrial Motions

(a) Pleadings. The pleadings in a criminal proceeding are the indictment, the information, and the pleas of not guilty, guilty, and nolo contendere.

(b) Pretrial Motions.

(1) *In General.* A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits. Rule 47 applies to a pretrial motion.

(2) *Motions That May Be Made at Any Time.* A motion that the court lacks jurisdiction may be made at any time while the case is pending.

(3) *Motions That Must Be Made Before Trial.* The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:

(A) a defect in instituting the prosecution, including:
(i) improper venue;
(ii) preindictment delay;
(iii) a violation of the constitutional right to a speedy trial;
(iv) selective or vindictive prosecution; and
(v) an error in the grand-jury proceeding or preliminary hearing;

(B) a defect in the indictment or information, including:
(i) joining two or more offenses in the same count (duplicity);
(ii) charging the same offense in more than one count (multiplicity);
(iii) lack of specificity;
(iv) improper joinder; and
(v) failure to state an offense;

(C) suppression of evidence;

(D) severance of charges or defendants under Rule 14; and

(E) discovery under Rule 16.

(4) *Notice of the Government's Intent to Use Evidence.*

(A) *At the Government's Discretion*. At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) *At the Defendant's Request*. At the arraignment or as soon afterward as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

(c) Deadline for a Pretrial Motion; Consequences of Not Making a Timely Motion.

(1) *Setting the Deadline.* The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. If the court does not set one, the deadline is the start of trial.

规则 12. 诉辩文书与审前动议

(a) 诉答文书。刑事诉讼中的诉答文书是起诉书、检察官起诉书以及无罪、有罪和不抗辩答辩。

(b) **审前动议。**

(1) 一般规定。当事方可以通过审前动议提出法院可以在不进行实体审理的情况下裁定的任何抗辩、异议或请求。规则 47 适用于审前动议。

(2) 可随时提出的动议。法院缺乏管辖权的动议可以在案件待决期间的任何时间提出。

(3) 必须在审判前提出的动议。如果动议的依据在当时合理可获得，且该动议可以在不进行实体审理的情况下裁定，则以下抗辩、异议和请求必须通过审前动议提出：

(A) 起诉程序中的瑕疵，包括：
(i) 审判地不当；(ii) 起诉前迟延；
(iii) 侵犯快速审判的宪法权利；
(iv) 选择性起诉或报复性起诉；以及
(v) 大陪审团程序或预审程序中的错误；

(B) 起诉书或大陪审团起诉书中的瑕疵，包括：
(i) 在同一罪名中合并两项或多项罪行(重复起诉);
(ii) 在同一罪名下以多个罪状起诉同一罪行(重复起诉);
(iii) 缺乏特定性；(iv) 不当合并；以及(v)
未能陈述犯罪；

(C) 排除证据；

(D) 根据规则 14 分离 charges 或被告；以及

(E) 规则 16 下的开示。

(4) **政府使用证据意向通知**

(A) 由政府酌情决定。在提审时或其后尽可能快的时间内，政府可以通知被告其意图在审判中使用特定证据，以便被告有机会根据规则 12(b)(3)(C) 在审判前提出异议。

(B) 应被告请求。在提审时或其后尽可能快的时间内，被告可以为了有机会根据规则 12(b)(3)(C) 提出排除证据的动议，请求获得政府意图使用(在其审判主证据中)被告可能有权根据规则 16 发现的任何证据的通知。

(c) 审前动议的截止期限；未及时提出动议的后果。

(1) 设定截止期限。法院可以在提审时或其后尽可能快的时间内，为当事方设定提出审前动议的截止期限，也可以安排动议听证。如果法院未设定，截止期限为审判开始之时。

(2) *Extending or Resetting the Deadline.* At any time before trial, the court may extend or reset the deadline for pretrial motions.

(3) *Consequences of Not Making a Timely Motion Under Rule 12(b)(3).* If a party does not meet the deadline for making a Rule 12(b)(3) motion, the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause.

(d) Ruling on a Motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) [Reserved]

(f) Recording the Proceedings. All proceedings at a motion hearing, including any findings of fact and conclusions of law made orally by the court, must be recorded by a court reporter or a suitable recording device.

(g) Defendant's Continued Custody or Release Status. If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the indictment, or in the information, it may order the defendant to be released or detained under 18 U.S.C. §3142 for a specified time until a new indictment or information is filed. This rule does not affect any federal statutory period of limitations.

(h) Producing Statements at a Suppression Hearing. Rule 26.2 applies at a suppression hearing under Rule 12(b)(3)(C). At a suppression hearing, a law enforcement officer is considered a government witness.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(11), (12), July 31, 1975, 89 Stat. 372, eff. Dec. 1, 1975; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2014, eff. Dec. 1, 2014.)

Rule 12.1. Notice of an Alibi Defense

(a) Government's Request for Notice and Defendant's Response.

(1) *Government's Request.* An attorney for the government may request in writing that the defendant notify an attorney for the government of any intended alibi defense. The request must state the time, date, and place of the alleged offense.

(2) *Defendant's Response.* Within 14 days after the request, or at some other time the court sets, the defendant must serve written notice on an attorney for the government of any intended alibi defense. The defendant's notice must state:

(A) each specific place where the defendant claims to have been at the time of the alleged offense; and

(B) the name, address, and telephone number of each alibi witness on whom the defendant intends to rely.

(b) Disclosing Government Witnesses.

(1) *Disclosure.*

(A) *In General*. If the defendant serves a Rule 12.1(a)(2) notice, an attorney for the government must disclose in writing to the defendant or the defendant's attorney:

(2) 延长或重新设定截止期限。在审判前的任何时间，法院可以延长或重新设定审前动议的截止期限。

(3) 未根据规则 12(b) (3) 及时提出动议的后果。如果当事方未遵守提出规则 12(b)(3) 动议的截止期限，该动议即为不及时。但如果当事方表明正当理由，法院可以考虑该抗辩、异议或请求。

(d) 对动议的裁定。法院必须在审判前裁定每一项审前动议，除非它认定有正当理由推迟裁定。如果推迟裁定将对当事方的上诉权产生不利影响，法院不得推迟对审前动议的裁定。当裁定动议涉及事实问题时，法院必须在记录中陈述其基本认定。

(e) [保留] (f) 记录程序。动议听证中的所有程序，包括法院口头作出的任何事实认定和法律结论，必须由法庭记录员或适当的记录设备记录。

(g) 被告的持续羁押或释放状态。如果法院基于起诉启动、起诉书或检察官起诉书中的缺陷而批准驳回动议，它可以命令被告根据 18 U.S.C.3142 在指定时间内被释放或羁押，直至新的起诉书或检察官起诉书被提交。本规则不影响任何联邦诉讼时效期间。

(h) 在抑制听证会上出示陈述。规则 26.2 适用于规则 12(b)(3)(C) 下的抑制听证会。在抑制听证会上，执法人员被视为政府证人。

（1974年4月22日修订，1975年12月1日生效；1975年7月31日《公法》94-64第3(11)、(12)条，89 Stat. 372，1975年12月1日生效；1983年4月28日修订，1983年8月1日生效；1987年3月9日修订，1987年8月1日生效；1993年4月22日修订，1993年12月1日生效；2002年4月29日修订，2002年12月1日生效；2014年4月25日修订，2014年12月1日生效。）

规则 12.1. 不在犯罪现场辩护的通知

(a)**政府的通知请求与被告的回应。(1) 政府的请求。**政府律师可以书面请求被告将其意图提出的不在场辩护通知政府律师。该请求必须说明所指控犯罪的时间、日期和地点。

(2) 被告的回应。在收到请求后 14 天内，或在法院设定的其他时间，被告必须将其意图提出的任何不在场辩护书面通知送达政府律师。被告的通知必须说明：

(A) 被告声称在所指控犯罪发生时所在的每一具体地点；以及

(B) 被告意图依赖的每一不在犯罪现场证人的姓名、地址和电话号码。

(b) **披露政府证人。**

(1) 披露。

(A) 一般规定。如果被告送达规则 12.1(a)(2) 通知，政府律师必须书面向被告或被告律师披露：

(i) the name of each witness—and the address and telephone number of each witness other than a victim—that the government intends to rely on to establish that the defendant was present at the scene of the alleged offense; and

(ii) each government rebuttal witness to the defendant's alibi defense.

(B) *Victim's Address and Telephone Number*. If the government intends to rely on a victim's testimony to establish that the defendant was present at the scene of the alleged offense and the defendant establishes a need for the victim's address and telephone number, the court may:

(i) order the government to provide the information in writing to the defendant or the defendant's attorney; or

(ii) fashion a reasonable procedure that allows preparation of the defense and also protects the victim's interests.

(2) *Time to Disclose.* Unless the court directs otherwise, an attorney for the government must give its Rule 12.1(b)(1) disclosure within 14 days after the defendant serves notice of an intended alibi defense under Rule 12.1(a)(2), but no later than 14 days before trial.

(c) Continuing Duty to Disclose.

(1) *In General.* Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name of each additional witness—and the address and telephone number of each additional witness other than a victim—if:

(A) the disclosing party learns of the witness before or during trial; and

(B) the witness should have been disclosed under Rule 12.1(a) or (b) if the disclosing party had known of the witness earlier.

(2) *Address and Telephone Number of an Additional Victim Witness.* The address and telephone number of an additional victim witness must not be disclosed except as provided in Rule 12.1 (b)(1)(B).

(d) Exceptions. For good cause, the court may grant an exception to any requirement of Rule 12.1(a)–(c).

(e) Failure to Comply. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not limit the defendant's right to testify.

(f) Inadmissibility of Withdrawn Intention. Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(As added Apr. 22, 1974, eff. Dec. 1, 1975; amended Pub. L. 94–64, § 3(13), July 31, 1975, 89 Stat. 372, eff. Dec. 1, 1975; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

(i) 政府意图依赖以证明被告在所指控犯罪现场在场的每一证人的姓名，以及除被害人以外的每一证人的地址和电话号码；以及

(ii) 针对被告不在场抗辩的每一位政府反驳证人。

被害人的地址和电话号码。如果政府意图依赖被害人的证言来证明被告在所指控犯罪现场，且被告证明需要被害人的地址和电话号码，法院可以：

(B)

(i) 命令政府以书面形式向被告或被告的律师提供该信息；或

(ii) 制定合理程序，既允许准备辩护，又保护被害人的利益。

(2) 披露时间。除非法院另有指示，政府律师必须在被告根据规则 12.1(a)(2) 送达意图不在场辩护通知后 14 天内进行规则 12.1(b)(1) 披露，但不得迟于审判前 14 天。

(c) **持续披露义务。**

(1) 一般规定。政府律师和被告双方必须及时以书面形式向对方披露每名额外证人的姓名--以及除被害人外的每名额外证人的地址和电话号码--如果：

(A) 披露方在审判前或审判期间获悉该证人的情况；且

(B) 证人本应根据规则予以披露 12.1(a)或(b)，如果披露方早些知道该证人。

(2) 额外被害人证人的地址和电话号码。额外被害人证人的地址和电话号码不得披露，除非规则 12.1(b)(1)(B) 另有规定。

(d) 例外。基于正当理由，法院可以批准对规则 12.1(a)-(c) 任何要求的例外。

(e) 未能遵守。如果一方未能遵守本规则，法院可以排除任何未披露证人关于被告不在场的证言。本规则不限制被告作证的权利。

(f) 撤回意图的不可采性。依赖不在场辩护的意图(后来撤回)的证据，或与该意图相关的陈述的证据，在任何民事或刑事诉讼中，不得对发出该意图通知的人具有可采性。

（1974年4月22日新增，1975年12月1日生效；1975年7月31日《公法》94-64第3(13)条修订，89 Stat. 372，1975年12月1日生效；1985年4月29日修订，1985年8月1日生效；1987年3月9日修订，1987年8月1日生效；2002年4月29日修订，2002年12月1日生效；2008年4月23日修订，2008年12月1日生效；2009年3月26日修订，2009年12月1日生效。）

Rule 12.2. Notice of an Insanity Defense; Mental Examination

(a) Notice of an Insanity Defense. A defendant who intends to assert a defense of insanity at the time of the alleged offense must so notify an attorney for the government in writing within the time provided for filing a pretrial motion, or at any later time the court sets, and file a copy of the notice with the clerk. A defendant who fails to do so cannot rely on an insanity defense. The court may, for good cause, allow the defendant to file the notice late, grant additional trial-preparation time, or make other appropriate orders.

(b) Notice of Expert Evidence of a Mental Condition. If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on either (1) the issue of guilt or (2) the issue of punishment in a capital case, the defendant must—within the time provided for filing a pretrial motion or at any later time the court sets—notify an attorney for the government in writing of this intention and file a copy of the notice with the clerk. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

(c) Mental Examination.

(1) ***Authority to Order an Examination; Procedures.***

(A) The court may order the defendant to submit to a competency examination under 18 U.S.C. § 4241.

(B) If the defendant provides notice under Rule 12.2(a), the court must, upon the government's motion, order the defendant to be examined under 18 U.S.C. § 4242. If the defendant provides notice under Rule 12.2(b) the court may, upon the government's motion, order the defendant to be examined under procedures ordered by the court.

(2) ***Disclosing Results and Reports of Capital Sentencing Examination.*** The results and reports of any examination conducted solely under Rule 12.2(c)(1) after notice under Rule 12.2(b)(2) must be sealed and must not be disclosed to any attorney for the government or the defendant unless the defendant is found guilty of one or more capital crimes and the defendant confirms an intent to offer during sentencing proceedings expert evidence on mental condition.

(3) ***Disclosing Results and Reports of the Defendant's Expert Examination.*** After disclosure under Rule 12.2(c)(2) of the results and reports of the government's examination, the defendant must disclose to the government the results and reports of any examination on mental condition conducted by the defendant's expert about which the defendant intends to introduce expert evidence.

(4) ***Inadmissibility of a Defendant's Statements.*** No statement made by a defendant in the course of any examination conducted under this rule (whether conducted with or without the defendant's consent), no testimony by the expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceeding except on an issue regarding mental condition on which the defendant:

规则 12.2. 精神失常抗辩通知；精神检查

(a) 精神失常抗辩的通知。被告意图就所指控犯罪时的精神失常提出抗辩的，必须在提交审前动议的期限内，或在法院另行设定的任何较后时间，以书面形式通知政府律师，并将通知副本提交书记官。未如此行事的被告不得依赖精神失常抗辩。法院可基于正当理由，允许被告逾期提交通知、给予额外的审判准备时间，或作出其他适当命令。

(b) 精神状态专家证据的通知。被告意图提出与被告的精神疾病或缺陷或任何其他精神状态有关的专家证据，且该证据涉及(1)罪责问题或(2)死刑案件中的量刑问题的，被告必须在提交审前动议的期限内，或在法院另行设定的任何较后时间，以书面形式将此意图通知政府律师，并将通知副本提交书记官。法院可基于正当理由，允许被告逾期提交通知、给予各方额外的审判准备时间，或作出其他适当命令。

(c) **精神检查。**

(1) **命令检查的权力；程序。**

(A) 法院可命令被告根据 18 U.S.C.4241 接受受审能力检查。

(B) 如果被告根据规则 12.2(a) 发出通知，法院必须根据政府的动议，命令被告根据 18 U.S.C.4242 接受检查。如果被告根据规则 12.2(b) 发出通知，法院可根据政府的动议，命令被告按照法院指定的程序接受检查。

(2) 披露死刑量刑检查的结果和报告。在根据规则 12.2(b)(2) 发出通知后，仅根据规则 12.2(c)(1) 进行的任何检查的结果和报告必须密封，不得向政府律师或被告披露，除非被告被判犯有一项或多项死刑罪，且被告确认意图在量刑程序中提供关于精神状况的专家证据。

(3) 披露被告专家检查的结果和报告。在根据规则 12.2(c)(2) 披露政府检查的结果和报告后，被告必须向政府披露被告专家进行的任何精神状况检查的结果和报告，且被告意图就该检查引入专家证据。

(4) 被告陈述的不可采性。被告在本规则下进行的任何检查过程中所作的陈述(无论是否经被告同意进行)、专家基于该陈述的证言以及该陈述的其他任何派生证据，在任何刑事诉讼中不得被采纳为对被告不利的证据，除非涉及被告以下列方式提出的精神状况问题：

(A) has introduced evidence of incompetency or evidence requiring notice under Rule 12.2(a) or (b)(1), or

(B) has introduced expert evidence in a capital sentencing proceeding requiring notice under Rule 12.2(b)(2).

(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).

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under Rule 12.2(a) or (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(As added Apr. 22, 1974, eff. Dec. 1, 1975; amended Pub. L. 94–64, §3(14), July 31, 1975, 89 Stat. 373, eff. Dec. 1, 1975; Apr. 28, 1983, eff. Aug. 1, 1983; Pub. L. 98–473, title II, §404, Oct. 12, 1984, 98 Stat. 2067; Pub. L. 98–596, §11(a), (b), Oct. 30, 1984, 98 Stat. 3138, eff. Oct. 12, 1984; Apr. 29, 1985, eff. Aug. 1, 1985; Pub. L. 99–646, §24, Nov. 10, 1986, 100 Stat. 3597; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

Rule 12.3. Notice of a Public-Authority Defense

(a) Notice of the Defense and Disclosure of Witnesses.

(1) ***Notice in General.*** If a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law enforcement agency or federal intelligence agency at the time of the alleged offense, the defendant must so notify an attorney for the government in writing and must file a copy of the notice with the clerk within the time provided for filing a pretrial motion, or at any later time the court sets. The notice filed with the clerk must be under seal if the notice identifies a federal intelligence agency as the source of public authority.

(2) ***Contents of Notice.*** The notice must contain the following information:

(A) the law enforcement agency or federal intelligence agency involved;

(B) the agency member on whose behalf the defendant claims to have acted; and

(C) the time during which the defendant claims to have acted with public authority.

(3) ***Response to the Notice***. An attorney for the government must serve a written response on the defendant or the defendant's attorney within 14 days after receiving the defendant's notice, but no later than 21 days before trial. The response must admit or deny that the defendant exercised the public authority identified in the defendant's notice.

(A) 已提出无受审能力的证据或需要根据规则 12.2(a) 或 (b)(1) 发出通知的证据，或

(B) 已在死刑量刑程序中提出需要根据规则 12.2(b)(2) 发出通知的专家证据。

(d) **未遵守规定。**

(1) 未能发出通知或未能接受检查。如果被告未能，法院可以排除被告关于被告精神疾病、精神缺陷或任何其他影响被告罪行或死刑案件量刑问题的精神状况的任何专家证据。

做到以下

(A) 根据规则 12.2(b) 发出通知；或

(B) 按照规则命令接受审查

12.2 (c)。

(2) 未能披露。法院可以排除被告未能遵守规则 12.2(c)(3) 披露要求的任何专家证据。

(e) 撤回意图的不可采性。根据规则 12.2(a) 或 (b) 发出通知的意图(后来撤回)的证据，在任何民事或刑事诉讼中，不得对发出该意图通知的人具有可采性。

(1974 年 4 月 22 日增订，1975 年 12 月 1 日生效；1975 年 7 月 31 日 Pub.L.94-64, 404, 98 Stat.2067 修正；1984 年 10 月 30 日 Pub.L.98-596, 24, 100 Stat.3597 修正；1987 年 3 月 9 日修正，1987 年 8 月 1 日生效；2002 年 4 月 29 日修正，12 月生效。

规则 12.3. 公共机构抗辩的通知

(a) **证人防御与披露通知。**

(1) 一般通知。被告意图就所指控犯罪时为执法机构或联邦情报机构实际或据信行使公共权力提出抗辩的，必须在提交审前动议的期限内，或在法院另行设定的任何较后时间，以书面形式通知政府律师，并必须将通知副本提交书记官。若提交给书记官的通知指明联邦情报机构为公共权力的来源，则该通知必须密封提交。

(2) 通知的内容。通知必须包含以下信息：

(A) 所涉及的执法机构或联邦情报机构；

(B)被告声称代表其行事的机构成员；以及

(C) 被告声称依公共授权行事的时间。

(3) 对通知的回应。政府律师必须在收到被告通知后 14 天内向被告或被告律师送达书面回应，但不得迟于审判前 21 天。回应必须承认或否认被告行使了被告通知中确定的公共权力。

(4) *Disclosing Witnesses.*

(A) *Government's Request*. An attorney for the government may request in writing that the defendant disclose the name, address, and telephone number of each witness the defendant intends to rely on to establish a public-authority defense. An attorney for the government may serve the request when the government serves its response to the defendant's notice under Rule 12.3(a)(3), or later, but must serve the request no later than 21 days before trial.

(B) *Defendant's Response*. Within 14 days after receiving the government's request, the defendant must serve on an attorney for the government a written statement of the name, address, and telephone number of each witness.

(C) *Government's Reply*. Within 14 days after receiving the defendant's statement, an attorney for the government must serve on the defendant or the defendant's attorney a written statement of the name of each witness—and the address and telephone number of each witness other than a victim—that the government intends to rely on to oppose the defendant's public-authority defense.

(D) *Victim's Address and Telephone Number*. If the government intends to rely on a victim's testimony to oppose the defendant's public-authority defense and the defendant establishes a need for the victim's address and telephone number, the court may:

(i) order the government to provide the information in writing to the defendant or the defendant's attorney; or

(ii) fashion a reasonable procedure that allows for preparing the defense and also protects the victim's interests.

(5) *Additional Time.* The court may, for good cause, allow a party additional time to comply with this rule.

(b) Continuing Duty to Disclose.

(1) *In General.* Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name of any additional witness—and the address, and telephone number of any additional witness other than a victim—if:

(A) the disclosing party learns of the witness before or during trial; and

(B) the witness should have been disclosed under Rule 12.3(a)(4) if the disclosing party had known of the witness earlier.

(2) *Address and Telephone Number of an Additional Victim-Witness.* The address and telephone number of an additional victim-witness must not be disclosed except as provided in Rule 12.3(a)(4)(D).

(c) Failure to Comply. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the public-authority defense. This rule does not limit the defendant's right to testify.

(d) Protective Procedures Unaffected. This rule does not limit the court's authority to issue appropriate protective orders or to order that any filings be under seal.

(4) **披露证人。**

(A) 政府的请求。政府律师可书面请求被告披露被告打算用以证明公共授权辩护的每一名证人的姓名、地址和电话号码。政府律师可在政府根据规则 12.3(a)(3) 送达对被告通知的回应时或之后送达该请求，但必须在审判前 21 天之前送达。

(B) 被告的回应。被告必须在收到政府请求后 14 天内向政府律师送达载明每一名证人姓名、地址和电话号码的书面陈述。

(C) 政府的答复。政府律师必须在收到被告陈述后 14 天内向被告或被告的律师送达书面陈述，载明政府打算用以反驳被告公共授权辩护的每一名证人的姓名--以及除被害人以外的每一名证人的地址和电话号码。

被害人的地址和电话号码。如果政府意图依赖被害人的证言来反对被告的公共权力辩护，且被告证明需要被害人的地址和电话号码，法院可以：

(D)

(i) 命令政府以书面形式向被告或被告的律师提供该信息；或

(ii) 制定合理程序，既允许准备辩护，又保护被害人的利益。

(5) 额外时间。基于正当理由，法院可以允许一方有额外时间遵守本规则。

(b) **持续披露义务。**

(1) 一般规定。政府律师和被告双方必须及时以书面形式向对方披露任何额外证人的姓名--以及除被害人外的任何额外证人的地址和电话号码--如果：

(A) 披露方在审判前或审判期间获悉该证人的情况；且

(B) 证人本应根据规则予以披露 12.3(a)(4) 如果披露方更早知悉该证人。

(2) 额外被害人证人的地址和电话号码。额外被害人证人的地址和电话号码不得披露，除非规则 12.3(a)(4)(D) 另有规定。

(c) 未能遵守。如果一方未能遵守本规则，法院可以排除任何未披露证人关于公共权力辩护的证言。本规则不限制被告作证的权利。

(d) 保护程序不受影响。本规则不限制法院发布适当保护令或命令任何文件密封的权限。

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under Rule 12.3(a), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(As added Pub. L. 100–690, title VI, §6483, Nov. 18, 1988, 102 Stat. 4382; amended Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 12.4. Disclosure Statement

(a) Who Must File.

(1) *Nongovernmental Corporate Party.* Any nongovernmental corporate party to a proceeding in a district court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(2) *Organizational Victim.* If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 12.4(a)(1) to the extent it can be obtained through due diligence.

(b) Time for Filing; Supplemental Filing. A party must:

(1) file the Rule 12.4(a) statement upon the defendant's initial appearance; and

(2) promptly file a supplemental statement upon any change in the information that the statement requires.

(As added Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 13. Joint Trial of Separate Cases

The court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 14. Relief from Prejudicial Joinder

(a) Relief. If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

(b) Defendant's Statements. Before ruling on a defendant's motion to sever, the court may order an attorney for the government to deliver to the court for in camera inspection any defendant's statement that the government intends to use as evidence.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 15. Depositions

(a) When Taken.

(1) *In General.* A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances

(e) 撤回意图的不可采性。根据规则 12.3(a) 发出通知的意图(后来撤回)的证据，在任何民事或刑事诉讼中，不得对发出该意图通知的人具有可采性。

(由 Pub.L.100-690 第六编第 6483 条于 1988 年 11 月 18 日增加，102 Stat.4382;2002 年 4 月 29 日修正，2002 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效；2010 年 4 月 28 日修正，2010 年 12 月 1 日生效。)

规则 12.4. 披露声明

(a) **谁必须申报。**

(1) 非政府公司当事方。地区法院诉讼中的任何非政府公司当事方必须提交声明，指明任何母公司以及拥有其 10% 或以上股份的任何公开上市公司，或声明不存在此类公司。

(2) 组织被害人。如果组织是所指控犯罪活动的被害人，政府必须提交声明指明该被害人。如果组织被害人是公司，声明还必须披露规则 12.4(a)(1) 要求的信息，前提是可通过尽职调查获得。

(b)**提交时间；补充提交。**一方必须：(1) 在被告初次出庭时提交规则 12.4(a) 声明；以及

(2) 在声明所要求的信息发生任何变化时及时提交补充声明。(2002 年 4 月 29 日增加，2002 年 12 月 1 日生效。)

规则 13. 分开审理案件的合并审理

如果所有罪行和所有被告本可以在单一起诉书或起诉信息中合并，法院可以命令将单独案件合并审理，如同在单一起诉书或起诉信息中提起一样。

(2002年4月29日修订，2002年12月1日生效。)

规则 14. 因合并审理造成不公正的救济

(a) 救济。如果起诉书、信息或合并审判中的犯罪或被告合并似乎对被告或政府造成偏见，法院可以命令对各罪状分别审判、分离被告的审判，或提供正义要求的任何其他救济。

(b) 被告的陈述。在裁定被告的分离动议之前，法院可以命令政府律师向法院交付政府意图用作证据的任何被告陈述，以供法院不公开审查。

(1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效。)

规则 15. 庭外取证

(a) **服用时。**

(1) 一般规定。一方当事人可以动议对预期证人进行庭外取证，以保全证言供审判使用。法院可以因特殊情况批准该动议。

and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) ***Detained Material Witness.*** A witness who is detained under 18 U.S.C. §3144 may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

(b) Notice.

(1) ***In General.*** A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice, the court may, for good cause, change the deposition's date or location.

(2) ***To the Custodial Officer.*** A party seeking to take the deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

(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

并为司法利益而准许该动议。如果法院命令进行庭外取证，还可以要求证人在庭外取证时出示任何指定的非特权材料，包括任何书籍、纸张、文件、记录、录音或数据。

(2) 被羁押的重要证人。根据 18 U.S.C.3144 被羁押的证人可以通过提交书面动议并通知各方当事人来请求对其进行庭外取证。法院随后可以命令进行庭外取证，并可以在证人在宣誓后签署庭外取证笔录后释放该证人。

(b) 通知。

(1) 一般规定。寻求进行庭外取证的一方当事人必须就庭外取证的日期和地点向其他各方当事人发出合理的书面通知。通知必须载明每一名作证人的姓名和地址。如果收到通知的一方当事人提出请求，法院可以因正当理由变更庭外取证的日期或地点。

(2) 向羁押官员发出通知。寻求进行庭外取证的一方当事人还必须将预定日期和地点通知羁押被告的官员。

(c) **被告的在场。**

(1) 被羁押的被告。除规则 15(c)(3) 授权的情形外，羁押被告的官员必须在庭外取证时使被告到场，并在询问期间使被告处于证人在场的范围内，除非被告：

(A) 以书面形式放弃出席权；或

(B) 在法院警告扰乱行为将导致被告被排除后，仍坚持足以证明排除正当的扰乱行为。

(2) 未被羁押的被告。除规则 15(c)(3) 授权的情形外，未被羁押的被告有权经请求出席庭外取证，但须遵守法院施加的任何条件。如果政府按照规则 15(d) 的规定提出支付被告的费用，但被告仍未出庭，则被告--在无正当理由的情况下--放弃出庭的权利以及基于该权利对进行和使用庭外取证提出的任何异议。

(3) 在被告不在场的情况下在美国境外进行庭外取证。对于在美国境外的证人，如果法院就案件具体情况认定以下全部事项，则可以在被告不在场的情况下进行庭外取证：

(A) 证人的证言可以为重罪起诉中的重大事实提供实质性证明；

(B) 存在证人无法出庭受审的实质可能性；

(C) 无法使证人在美国境内出席庭外取证；

(D) 被告无法在场，因为：(i) 证人所在国家不允许被告参加庭外取证；

(ii) 对于在押被告，无法确保证人所在地的安全运输和持续羁押；或

(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.

(d) Expenses. If the deposition was requested by the government, the court may—or if the defendant is unable to bear the deposition expenses, the court must—order the government to pay:

(1) any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and

(2) the costs of the deposition transcript.

(e) Manner of Taking. Unless these rules or a court order provides otherwise, a deposition must be taken and filed in the same manner as a deposition in a civil action, except that:

(1) A defendant may not be deposed without that defendant's consent.

(2) The scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.

(3) The government must provide to the defendant or the defendant's attorney, for use at the deposition, any statement of the deponent in the government's possession to which the defendant would be entitled at trial.

(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.

(g) Objections. A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

(h) Depositions by Agreement Permitted. The parties may by agreement take and use a deposition with the court's consent.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(15)–(19), July 31, 1975, 89 Stat. 373, 374, eff. Dec. 1, 1975; Pub. L. 98–473, title II, §209(b), Oct. 12, 1984, 98 Stat. 1986; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2012, eff. Dec. 1, 2012.)

Rule 16. Discovery and Inspection

(a) Government's Disclosure.

(1) *Information Subject to Disclosure.*

(A) *Defendant's Oral Statement*. Upon a defendant's request, the government must disclose to the defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial.

(B) *Defendant's Written or Recorded Statement*. Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

(i) any relevant written or recorded statement by the defendant if:

• the statement is within the government's possession, custody, or control; and

(iii) 对于不在押被告，没有合理条件可以确保其在庭外取证、审判或量刑时到场；以及

(E) 被告能够通过合理方式实质性地参与庭外取证。

(d) 费用。如果庭外取证是应政府请求进行的，法院可以--或者如果被告无力承担庭外取证费用，法院必须--命令政府支付：

(1) 被告及被告律师出席庭外取证的合理差旅和生活费用；以及

(2) 证词笔录的费用。

(e) 取证方式。除非本规则或法院命令另有规定，庭外取证必须按照民事诉讼中庭外取证的相同方式进行并提交，但以下情形除外：

(1) 未经被告同意，不得对被告进行庭外取证。

(2) 庭外取证询问和交叉询问的范围和方式必须与审判时允许的范围和方式相同。

(3) 政府必须向被告或被告的律师提供政府所持有的、被告在审判时有权获得的任何庭外取证陈述人的陈述，以供庭外取证时使用。

(f) 可采性与作为证据使用。授权依据本规则进行庭外取证的命令并不决定其可采性。当事人可以按照联邦证据规则的规定使用庭外取证的全部或部分内容。

(g) 异议。对庭外取证证言或证据提出异议的当事人必须在庭外取证过程中陈述异议的理由。

(h) 允许经协议进行庭外取证。当事人可以经协议并经法院同意进行庭外取证并使用该庭外取证。(1974年4月22日修订，1975年12月1日生效；Pub.L.94-64, 209(b),1984年10月12日，98 Stat.1986;1987年3月9日，1987年8月1日生效；2002年4月29日，2002年12月1日生效；2012年4月23日，2012年12月1日生效。)

规则 16. 证据开示与查阅

(a) **政府的披露。**

(1) **应予披露的信息。**

(A) 被告的口头陈述。经被告请求，如果政府打算在审判中使用该陈述，政府必须向被告披露被告在逮捕前或逮捕后对被告所知为政府代理人的人进行讯问所作的任何相关口头陈述的实质内容。

被告的书面或录音陈述。经被告请求，政府必须向被告披露并提供以下所有材料供查阅、复制或拍照：

(B)

(i) 被告的任何相关书面或记录陈述，如果：

• 该陈述在政府的占有、保管或控制之下；以及

• the attorney for the government knows—or through due diligence could know—that the statement exists;

(ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and

(iii) the defendant's recorded testimony before a grand jury relating to the charged offense.

(C) *Organizational Defendant*. Upon a defendant's request, if the defendant is an organization, the government must disclose to the defendant any statement described in Rule 16(a)(1)(A) and (B) if the government contends that the person making the statement:

(i) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or

(ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee, or agent.

(D) *Defendant's Prior Record*. Upon a defendant's request, the government must furnish the defendant with a copy of the defendant's prior criminal record that is within the government's possession, custody, or control if the attorney for the government knows—or through due diligence could know—that the record exists.

(E) *Documents and Objects*. Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:

(i) the item is material to preparing the defense;

(ii) the government intends to use the item in its case-in-chief at trial; or

(iii) the item was obtained from or belongs to the defendant.

(F) *Reports of Examinations and Tests*. Upon a defendant's request, the government must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

(i) the item is within the government's possession, custody, or control;

(ii) the attorney for the government knows—or through due diligence could know—that the item exists; and

(iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

(G) *Expert Witnesses*. At the defendant's request, the government must give to the defendant a written summary of

• 政府律师知道--或通过尽职调查可以知道--该陈述存在；

(ii) 任何书面记录中包含被告在逮捕前或逮捕后所作任何相关口头陈述实质内容的部分，如果该陈述是被告对被告知道是政府代理人的人进行讯问所作出的；以及

(iii) 被告在大陪审团面前所作的与指控罪行有关的录音证言。

(C)组织被告。经被告请求，如果被告是组织，政府必须向被告披露规则 16(a)(1)(A) 和 (B) 中描述的任何陈述，如果政府主张作出该陈述的人：

(i) 因该人作为被告的董事、高级职员、雇员或代理人的职位，在法律上有能力就该陈述的主题约束被告；或

(ii) 亲自参与了构成该罪行的被指控行为，并因该人作为被告的董事、高级职员、雇员或代理人的职位，在法律上有能力就该行为约束被告。

(D) 被告的前科记录。经被告请求，如果政府律师知道--或通过尽职调查能够知道--该记录存在，政府必须向被告提供政府占有、保管或控制的被告前科记录的副本。

文件与物品。经被告请求，如果该物品为政府占有、保管或控制，且符合下列条件，政府必须允许被告查阅并复制或拍照书籍、文书、文件、数据、照片、有形物品、建筑物或场所，或上述任何物品的副本或部分：

(E)

(i) 该物品对准备辩护具有实质性；(ii) 政府打算在审判的主案中使用该物品；或(iii) 该物品是从被告处获得的或属于被告的。

检查与检验报告。经被告请求，如果符合下列条件，政府必须允许被告查阅并复制或拍照任何身体或精神检查以及任何科学检验或实验的结果或报告：

(F)

(i) 该项目在政府的占有、保管或控制之下；

(ii) 政府律师知道--或通过尽职调查可以知道--该物品存在；以及

(iii) 该物品对准备辩护具有实质性，或政府打算在审判的主案中使用该物品。

(G) 专家证人。经被告请求，政府必须向被告提供一份书面摘要，说明

any testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the government requests discovery under subdivision (b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give to the defendant a written summary of testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial on the issue of the defendant's mental condition. The summary provided under this subparagraph must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(2) ***Information Not Subject to Disclosure.*** Except as permitted by Rule 16(a)(1)(A)–(D), (F), and (G), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in 18 U.S.C. §3500.

(3) ***Grand Jury Transcripts.*** This rule does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as provided in Rules 6, 12(h), 16(a)(1), and 26.2.

(b) Defendant's Disclosure.

(1) ***Information Subject to Disclosure.***

(A) *Documents and Objects*. If a defendant requests disclosure under Rule 16(a)(1)(E) and the government complies, then the defendant must permit the government, upon request, to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:

(i) the item is within the defendant's possession, custody, or control; and

(ii) the defendant intends to use the item in the defendant's case-in-chief at trial.

(B) *Reports of Examinations and Tests*. If a defendant requests disclosure under Rule 16(a)(1)(F) and the government complies, the defendant must permit the government, upon request, to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

(i) the item is within the defendant's possession, custody, or control; and

(ii) the defendant intends to use the item in the defendant's case-in-chief at trial, or intends to call the witness who prepared the report and the report relates to the witness's testimony.

(C) *Expert Witnesses*. The defendant must, at the government's request, give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial, if—

(i) the defendant requests disclosure under subdivision (a)(1)(G) and the government complies; or

政府意图在庭审主询问中依据《联邦证据规则》规则 702、703 或 705 使用的任何证言。如果政府依据第 (b)(1)(C)(ii) 项请求证据开示且被告遵守，则政府必须应被告请求，向被告提供政府意图在庭审中依据《联邦证据规则》规则 702、703 或 705 作为关于被告精神状况问题的证据使用的证言的书面摘要。本项提供的摘要必须描述证人的意见、该等意见的依据和理由以及证人的资格。

(2) 不受披露约束的信息。除规则 16(a)(1)(A)-(D)、(F) 和 (G) 允许的情形外，本规则不授权对政府律师或其他政府代理人就调查或起诉本案所作的报告、备忘录或其他政府内部文件进行证据开示或查阅。本规则亦不授权对预期政府证人的陈述进行证据开示或查阅，但 18 U.S.C.3500 规定的情形除外。

(3) 大陪审团笔录。除规则 6、12(h)、16(a)(1) 和 26.2 另有规定外，本规则不适用于大陪审团记录程序的证据开示或查阅。

(b) **被告披露。**

(1) **应予披露的信息。**

文件与物品。如果被告依据规则 16(a)(1)(E) 请求披露且政府予以遵守，则经政府请求，如果符合下列条件，被告必须允许政府查阅并复制或拍照书籍、文书、文件、数据、照片、有形物品、建筑物或场所，或上述任何物品的副本或部分：

(A)

(i) 该物品在被告的占有、保管或控制之下；且

(ii) 被告打算在审判的被告主案中使用该物品。

检查与检测报告。如果被告依据规则 16(a)(1)(F) 请求披露且政府予以遵守，则被告必须应请求允许政府查阅并复制或拍摄任何身体或精神检查以及任何科学检测或实验的结果或报告，如果：(i) 该材料处于被告的占有、保管或控制之下；且 (ii) 被告打算在审判中于被告的主诉中使用该材料，或打算传唤编写该报告的证人且该报告与该证人的证言相关。

(B)

(C)专家证人。应政府请求，被告必须向政府提供一份书面摘要，说明被告打算依据《联邦证据规则》规则 702、703 或 705 在审判中作为证据使用的任何证言，如果--

(i) 被告根据 (a)(1)(G) 款请求披露且政府遵守；或

(ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications[.]

(2) ***Information Not Subject to Disclosure.*** Except for scientific or medical reports, Rule 16(b)(1) does not authorize discovery or inspection of:

(A) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense; or

(B) a statement made to the defendant, or the defendant's attorney or agent, by:

(i) the defendant;

(ii) a government or defense witness; or

(iii) a prospective government or defense witness.

(c) Continuing Duty to Disclose. A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

(1) the evidence or material is subject to discovery or inspection under this rule; and

(2) the other party previously requested, or the court ordered, its production.

(d) Regulating Discovery.

(1) ***Protective and Modifying Orders.*** At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve the entire text of the party's statement under seal.

(2) ***Failure to Comply.*** If a party fails to comply with this rule, the court may:

(A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms and conditions;

(B) grant a continuance;

(C) prohibit that party from introducing the undisclosed evidence; or

(D) enter any other order that is just under the circumstances.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(20)–(28), July 31, 1975, 89 Stat. 374, 375, eff. Dec. 1, 1975; Pub. L. 94–149, §5, Dec. 12, 1975, 89 Stat. 806; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 29, 2002, eff. Dec. 1, 2002; Pub. L. 107–273, div. C, title I, §11019(b), Nov. 2, 2002, 117 Stat. 1825, eff. Dec. 1, 2002; Apr. 16, 2013, eff. Dec. 1, 2013.)

Rule 17. Subpoena

(a) Content. A subpoena must state the court's name and the title of the proceeding, include the seal of the court, and command

(ii) 被告已根据规则 12.2(b) 发出通知，表示打算就被告的精神状况提供专家证言。

该摘要必须描述证人的意见、这些意见的依据和理由以及证人的资格。

(2) 不受披露约束的信息。除科学或医学报告外，规则 16(b)(1) 不授权对以下内容进行证据开示或查阅：

(A) 被告或被告的律师或代理人在案件调查或辩护期间所作的报告、备忘录或其他文件；或

(B) 向被告，或被告的律师或代理人作出的陈述，由：

(i) 被告；(ii) 政府或辩方证人；或(iii) 潜在的政府或辩方证人。

(c)**持续披露义务。**当事人在审判前或审判期间发现额外证据或材料的，如果符合下列条件，必须及时向对方当事人或法院披露其存在：

(1) 该证据或材料属于本规则项下证据开示或检查的范围；且

(2) 另一方此前已请求，或法院已命令，其出示。

(d) **规范证据开示。**

(1) 保护性命令与修改命令。法院可随时基于正当理由拒绝、限制或推迟证据开示或查阅，或给予其他适当救济。法院可以允许当事人通过法院将单方审查的书面陈述来证明正当理由。如果给予救济，法院必须在密封状态下保存当事人陈述的全部文本。

(2) 未能遵守。如果当事人未能遵守本规则，法院可以：

(A) 命令该方允许证据开示或检查；指定其时间、地点和方式；并规定其他公正的条款和条件；

(B) 准许延期；

(C) 禁止该方引入未披露的证据；或

(D) 在情况下作出任何其他公正的命令。

（经1966年2月28日修正，1966年7月1日生效；1974年4月22日修正，1975年12月1日生效；Pub. L. 94–64，第3(20)–(28)条，1975年7月31日，89 Stat. 374, 375，1975年12月1日生效；Pub. L. 94–149，第5条，1975年12月12日，89 Stat. 806；1983年4月28日修正，1983年8月1日生效；1987年3月9日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；1994年4月29日修正，1994年12月1日生效；1997年4月11日修正，1997年12月1日生效；2002年4月29日修正，2002年12月1日生效；Pub. L. 107–273，div. C，title I，第11019(b)条，2002年11月2日，117 Stat. 1825，2002年12月1日生效；2013年4月16日修正，2013年12月1日生效。）

规则 17. 传票

(a) 内容。传票必须载明法院名称和程序标题，加盖法院印章，并命令

the witness to attend and testify at the time and place the subpoena specifies. The clerk must issue a blank subpoena—signed and sealed—to the party requesting it, and that party must fill in the blanks before the subpoena is served.

(b) Defendant Unable to Pay. Upon a defendant's ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense. If the court orders a subpoena to be issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

(c) Producing Documents and Objects.

(1) ***In General.*** A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) ***Quashing or Modifying the Subpoena.*** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) ***Subpoena for Personal or Confidential Information About a Victim.*** After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) ***In the United States.*** A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) ***In a Foreign Country.*** If the witness is in a foreign country, 28 U.S.C. §1783 governs the subpoena's service.

(f) Issuing a Deposition Subpoena.

(1) ***Issuance.*** A court order to take a deposition authorizes the clerk in the district where the deposition is to be taken to issue a subpoena for any witness named or described in the order.

(2) ***Place.*** After considering the convenience of the witness and the parties, the court may order—and the subpoena may require—the witness to appear anywhere the court designates.

证人于传票指定的时间和地点出席并作证。书记官必须向请求方签发一份空白传票--签名并盖章--且该方必须在传票送达前填写空白项。

(b) 被告无力支付。经被告单方申请，如果被告证明无力支付证人费用且证人的出庭对于充分辩护确有必要，法院必须命令对指定证人签发传票。如果法院命令签发传票，程序费用和证人费用将按照政府传唤证人的相同方式支付。

(c) **出示文件与物品。**

(1) 一般规定。传票可以命令证人提供传票指定的任何书籍、文书、文件、数据或其他物品。法院可以指示证人在审判前或在物品拟作为证据提出前在法庭上提供指定物品。物品到达后，法院可以允许当事人及其律师查阅全部或部分物品。

(2) 撤销或修改传票。经及时提出的动议，如果遵守传票将不合理或具有压迫性，法院可以撤销或修改传票。

(3) 关于被害人个人或保密信息的传票。在起诉状、起诉书或检察官起诉书提交后，要求提供被害人个人或保密信息的传票只能经法院命令向第三方送达。在作出该命令前，除存在例外情形外，法院必须要求通知被害人，以便被害人可以动议撤销或修改传票或以其他方式提出异议。

(d) 送达。联邦法警、副联邦法警或任何年满18岁的非当事人可以送达传票。送达人必须向证人交付传票副本，并必须向证人给付一天的证人出庭费和法定里程津贴。当美国、联邦官员或联邦机构请求签发传票时，送达人无需给付出庭费或里程津贴。

(e) **服务地点。**

(1) 在美国境内。要求证人出席听证或审判的传票可以在美国境内任何地方送达。

(2) 在外国。如果证人在外国，传票的送达适用 28 U.S.C.1783。

(f) **发出宣誓证词传票。**

(1) 签发。法院进行庭外取证的命令授权取证地所在地区的书记官为命令中指定或描述的任何证人签发传票。

(2) 地点。在考虑证人和各方的便利后，法院可命令--且传票可要求--证人出现在法院指定的任何地点。

(g) Contempt. The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. §636(e).

(h) Information Not Subject to a Subpoena. No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(29), July 31, 1975, 89 Stat. 375, eff. Dec. 1, 1975; Apr. 30, 1979, eff. Dec. 1, 1980; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2008, eff. Dec. 1, 2008.)

Rule 17.1. Pretrial Conference

On its own, or on a party's motion, the court may hold one or more pretrial conferences to promote a fair and expeditious trial. When a conference ends, the court must prepare and file a memorandum of any matters agreed to during the conference. The government may not use any statement made during the conference by the defendant or the defendant's attorney unless it is in writing and is signed by the defendant and the defendant's attorney.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

TITLE V. VENUE

Rule 18. Place of Prosecution and Trial

Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2008, eff. Dec. 1, 2008.)

Rule 19. [Reserved]

Rule 20. Transfer for Plea and Sentence

(a) Consent to Transfer. A prosecution may be transferred from the district where the indictment or information is pending, or from which a warrant on a complaint has been issued, to the district where the defendant is arrested, held, or present if:

(1) the defendant states in writing a wish to plead guilty or nolo contendere and to waive trial in the district where the indictment, information, or complaint is pending, consents in writing to the court's disposing of the case in the transferee district, and files the statement in the transferee district; and

(2) the United States attorneys in both districts approve the transfer in writing.

(g) 藐视。法院(治安法官除外)可对无充分理由不遵守该地区联邦法院签发的传票的证人处以藐视。治安法官可依照28 U.S.C.636(e)的规定，对无充分理由不遵守该治安法官签发的传票的证人处以藐视。

(h) 不受传票约束的信息。任何一方不得根据本规则传唤证人或潜在证人的陈述。规则 26.2 管辖该陈述的提供。

（经1948年12月27日修正，1949年10月20日生效；1966年2月28日修正，1966年7月1日生效；1972年4月24日修正，1972年10月1日生效；1974年4月22日修正，1975年12月1日生效；1975年7月31日第94-64号公法第3(29)条，89 Stat. 375，1975年12月1日生效；1979年4月30日修正，1980年12月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效；2008年4月23日修正，2008年12月1日生效。）

规则 17.1. 审前会议

法院可自行或根据一方当事人的动议，举行一次或多次审前会议，以促进公正和迅速的审判。会议结束时，法院必须准备并提交一份备忘录，记录会议期间达成的任何事项。政府不得使用被告或被告律师在会议期间所作的任何陈述，除非该陈述是书面的并由被告和被告律师签署。(1966年2月28日增加，1966年7月1日生效；1987年3月9日修正，1987年8月1日生效；2002年4月29日修正，2002年12月1日生效。)

第五编审判地

规则 18. 起诉与审判的地点

除制定法或本规则另有许可外，政府必须在犯罪发生的地区起诉该罪行。法院必须在考虑被告、任何被害人及证人的便利以及迅速司法行政的情况下，在该地区内确定审判地点。

(经 1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；1979 年 4 月 30 日修正，1979 年 8 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效；2008 年 4 月 23 日修正，2008 年 12 月 1 日生效。)

规则 19. [保留]

规则 20. 为认罪和判刑而移送

(a)**同意移送。**如果符合以下条件，可将起诉书或大陪审团起诉书待决的地区，或已就控告书签发逮捕令的地区，将起诉移送至被告被捕、被羁押或所在的地区：

(1) 被告书面声明希望在起诉书、信息或控告待决的地区认罪或不抗辩并放弃审判，书面同意法院在受移送地区处理该案件，并将该声明提交至受移送地区；且

(2) 两个地区的美国律师书面批准移送。

(b) Clerk's Duties. After receiving the defendant's statement and the required approvals, the clerk where the indictment, information, or complaint is pending must send the file, or a certified copy, to the clerk in the transferee district.

(c) Effect of a Not Guilty Plea. If the defendant pleads not guilty after the case has been transferred under Rule 20(a), the clerk must return the papers to the court where the prosecution began, and that court must restore the proceeding to its docket. The defendant's statement that the defendant wished to plead guilty or nolo contendere is not, in any civil or criminal proceeding, admissible against the defendant.

(d) Juveniles.

(1) ***Consent to Transfer.*** A juvenile, as defined in 18 U.S.C. §5031, may be proceeded against as a juvenile delinquent in the district where the juvenile is arrested, held, or present if:

(A) the alleged offense that occurred in the other district is not punishable by death or life imprisonment;

(B) an attorney has advised the juvenile;

(C) the court has informed the juvenile of the juvenile's rights—including the right to be returned to the district where the offense allegedly occurred—and the consequences of waiving those rights;

(D) the juvenile, after receiving the court's information about rights, consents in writing to be proceeded against in the transferee district, and files the consent in the transferee district;

(E) the United States attorneys for both districts approve the transfer in writing; and

(F) the transferee court approves the transfer.

(2) ***Clerk's Duties.*** After receiving the juvenile's written consent and the required approvals, the clerk where the indictment, information, or complaint is pending or where the alleged offense occurred must send the file, or a certified copy, to the clerk in the transferee district.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(30), July 31, 1975, 89 Stat. 375, eff. Dec. 1, 1975; Apr. 28, 1982, eff. Aug. 1, 1982; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 21. Transfer for Trial

(a) For Prejudice. Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

(b) For Convenience. Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.

(c) Proceedings on Transfer. When the court orders a transfer, the clerk must send to the transferee district the file, or a certified copy, and any bail taken. The prosecution will then continue in the transferee district.

(b) 书记官职责。在收到被告的陈述和所需批准后，起诉书、大陪审团起诉书或控告书待决地的书记官必须将案卷或经认证的副本送交受移送地区的书记官。

(c) 无罪答辩的效力。如果被告在案件根据规则 20(a) 移送后作无罪答辩，书记官必须将文件退回起诉开始的法院，该法院必须将程序恢复至其案件日程。被告表示希望作认罪答辩或不抗辩答辩的陈述，在任何民事或刑事诉讼中，均不得作为对被告不利的证据采纳。

(d) 未成年人。

(1) 同意移送。18 U.S.C.5031 所定义的少年，如果符合以下条件，可在该少年被捕、被羁押或所在的地区作为少年犯被追诉：

(A) 发生在另一地区的被指控罪行不判处死刑或终身监禁；

(B) 一名律师已向该未成年人提供建议；

(C) 法院已告知该少年其权利--包括被送回被指控罪行发生地区的权利--以及放弃这些权利的后果；

(D) 该少年在收到法院关于权利的信息后，书面同意在受移送地区被追诉，并将同意书提交至受移送地区；

(E) 两个地区的美国律师书面批准移送；且

(F) 受让法院批准移送。

(2) 书记官职责。在收到少年的书面同意和所需批准后，起诉书、大陪审团起诉书或控告书待决地或所指控犯罪发生地的书记官必须将案卷或经认证的副本送交受移送地区的书记官。

(经 1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；1974 年 4 月 22 日修正，1975 年 12 月 1 日生效；Pub.L.94-64,3(30), 1975 年 7 月 31 日， 89 Stat.375, 1975 年 12 月 1 日生效；1982 年 4 月 28 日修正，1982 年 8 月 1 日生效；1987 年 3 月 9 日修正，1987 年 8 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效。)

规则 21. 为审判而移送

(a) 因偏见。经被告动议，如果法院确信移送地区对被告存在如此严重的偏见，以致被告无法在该地区获得公正无偏的审判，法院必须将对被告的程序移送至另一地区。

(b) 因便利。经被告动议，法院可为当事人、任何被害人及证人的便利，并为司法利益，将对被告的程序或其中一项或多项罪项移送至另一地区。

(c) 移送程序。当法院命令移送时，书记官必须将案卷或经认证的副本以及所收取的任何保释金送交受移送地区。起诉随后将在受移送地区继续进行。

(d) Time to File a Motion to Transfer. A motion to transfer may be made at or before arraignment or at any other time the court or these rules prescribe.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 22. [Transferred]

TITLE VI. TRIAL

Rule 23. Jury or Nonjury Trial

(a) Jury Trial. If the defendant is entitled to a jury trial, the trial must be by jury unless:

(1) the defendant waives a jury trial in writing;

(2) the government consents; and

(3) the court approves.

(b) Jury Size.

(1) *In General.* A jury consists of 12 persons unless this rule provides otherwise.

(2) *Stipulation for a Smaller Jury.* At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:

(A) the jury may consist of fewer than 12 persons; or

(B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins.

(3) *Court Order for a Jury of 11.* After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.

(c) Nonjury Trial. In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.

(As amended Feb. 28, 1966, eff. July 1, 1966; Pub. L. 95–78, §2(b), July 30, 1977, 91 Stat. 320, eff. Oct. 1, 1977; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 24. Trial Jurors

(a) Examination.

(1) *In General.* The court may examine prospective jurors or may permit the attorneys for the parties to do so.

(2) *Court Examination.* If the court examines the jurors, it must permit the attorneys for the parties to:

(A) ask further questions that the court considers proper; or

(B) submit further questions that the court may ask if it considers them proper.

(b) Peremptory Challenges. Each side is entitled to the number of peremptory challenges to prospective jurors specified below. The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.

(d) 提出移送动议的时间。移送动议可在提审时或提审前提出，或在法院或本规则规定的任何其他时间提出。

(经 1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；1987 年 3 月 9 日修正，1987 年 8 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效；2010 年 4 月 28 日修正，2010 年 12 月 1 日生效。)

规则 22. [已移转]

第六编审判

规则 23. 陪审团审判或非陪审团审判

(a) 陪审团审判。如果被告有权获得陪审团审判，审判必须由陪审团进行，除非：

(1) 被告书面放弃陪审团审判；(2) 政府同意；且(3) 法院批准。

(b) **陪审团规模。**

(1) 一般规定。除本规则另有规定外，陪审团由12人组成。

(2) 较小陪审团的约定。在裁决前的任何时间，当事人经法院批准，可书面约定：

(A) 陪审团可由少于12人组成；或

(B) 如果法院认定审判开始后有正当理由需要免除一名陪审员，不足 12 人的陪审团可作出裁决。

(3) 法院命令由11人组成陪审团。在陪审团退庭评议后，如果法院认定有正当理由免除某陪审员，即使没有当事人的约定，法院也可允许由11人组成的陪审团作出裁决。

(c) 非陪审团审判。在无陪审团审判的案件中，法院必须认定被告有罪或无罪。如果当事人在作出有罪或无罪认定前提出请求，法院必须在公开法庭上或以书面裁定或意见说明其具体的事实认定。

(经 1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；Pub.L.95-78,2(b), 1977 年 7 月 30 日，91 Stat.320, 1977 年 10 月 1 日生效；1983 年 4 月 28 日修正，1983 年 8 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效。)

规则 24. 陪审员

(a) 审查。

(1) 一般规定。法院可询问潜在陪审员，或可允许当事人的律师进行询问。

(2) 法院询问。如果由法院询问陪审员，法院必须允许当事人的律师：

(A) 提出法院认为适当的进一步问题；或

(B) 提交进一步的问题，法院如认为适当可以询问。

(b) 无因回避。每一方有权对潜在陪审员提出下文规定的无因回避次数。法院可允许多名被告获得额外的无因回避，并可允许被告分别或共同行使这些回避。

(1) *Capital Case.* Each side has 20 peremptory challenges when the government seeks the death penalty.

(2) *Other Felony Case.* The government has 6 peremptory challenges and the defendant or defendants jointly have 10 peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year.

(3) *Misdemeanor Case.* Each side has 3 peremptory challenges when the defendant is charged with a crime punishable by fine, imprisonment of one year or less, or both.

(c) Alternate Jurors.

(1) *In General.* The court may impanel up to 6 alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(2) *Procedure.*

(A) Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

(B) Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(3) *Retaining Alternate Jurors.* The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(4) *Peremptory Challenges.* Each side is entitled to the number of additional peremptory challenges to prospective alternate jurors specified below. These additional challenges may be used only to remove alternate jurors.

(A) *One or Two Alternates*. One additional peremptory challenge is permitted when one or two alternates are impaneled.

(B) *Three or Four Alternates*. Two additional peremptory challenges are permitted when three or four alternates are impaneled.

(C) *Five or Six Alternates*. Three additional peremptory challenges are permitted when five or six alternates are impaneled.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 25. Judge's Disability

(a) During Trial. Any judge regularly sitting in or assigned to the court may complete a jury trial if:

(1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and

(2) the judge completing the trial certifies familiarity with the trial record.

(b) After a Verdict or Finding of Guilty.

(1) *In General.* After a verdict or finding of guilty, any judge regularly sitting in or assigned to a court may complete the

(1) 死刑案件。当政府寻求死刑时，每一方有20次无因回避。

(2) 其他重罪案件。当被告被指控犯有可判处一年以上监禁的犯罪时，政府有6次无因回避，被告或各被告共同有10次无因回避。

(3) 轻罪案件。当被告被指控犯有可判处罚金、一年或以下监禁或两者兼有的犯罪时，每一方有3次无因回避。

(c) **候补陪审员。**

(1) 一般规定。法院可选出最多6名候补陪审员，以替代任何无法履行或丧失履行其职责资格的陪审员。

(2) 程序。

(A) 候补陪审员必须具备与其他任何陪审员相同的资格，并以相同的方式被选定和宣誓。

(B) 候补陪审员按照其被选定的相同顺序替换陪审员。替换陪审员的候补陪审员与其他陪审员具有相同的权限。

(3) 保留候补陪审员。法院可在陪审团退庭评议后保留候补陪审员。法院必须确保被保留的候补陪审员在该候补陪审员替代某陪审员或被解除之前，不与任何人讨论案件。如果候补陪审员在评议开始后替代某陪审员，法院必须指示陪审团重新开始评议。

(4) 无因回避。每一方有权对潜在候补陪审员提出下文规定的额外无因回避次数。这些额外回避只能用于剔除候补陪审员。

(A) 一名或两名候补陪审员。当选出一名或两名候补陪审员时，允许一次额外无因回避。

(B) 三名或四名候补陪审员。当选出三名或四名候补陪审员时，允许两次额外无因回避。

(C) 五名或六名候补陪审员。当选出五名或六名候补陪审员时，允许三次额外无因回避。

(经 1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 9 日修订，1987 年 8 月 1 日生效；1999 年 4 月 26 日修订，1999 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 25. 法官失能

(a) 审判期间。如果符合以下条件，定期在该法院任职或被指派至该法院的任何法官均可完成陪审团审判：

(1) 开始审判的法官因死亡、疾病或其他丧失能力而无法继续进行；且

(2) 完成审判的法官证明其熟悉审判记录。

(b) **裁决或认定有罪之后。**

(1) 一般规定。在作出有罪裁决或认定后，定期在法院任职或被指派至法院的任何法官均可完成该

court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

(2) ***Granting a New Trial.*** The successor judge may grant a new trial if satisfied that:

(A) a judge other than the one who presided at the trial cannot perform the post-trial duties; or

(B) a new trial is necessary for some other reason.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 26. Taking Testimony

In every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a statute or by rules adopted under 28 U.S.C. §§2072–2077.

(As amended Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 26.1. Foreign Law Determination

A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source—including testimony—without regard to the Federal Rules of Evidence.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 26.2. Producing a Witness's Statement

(a) Motion to Produce. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.

(b) Producing the Entire Statement. If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) Producing a Redacted Statement. If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) Recess to Examine a Statement. The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony

法院的职责，如果主持审判的法官因缺席、死亡、疾病或其他丧失能力而无法履行这些职责。

(2) 准予重新审判。继任法官如果确信以下情况，可以准予重新审判：

(A) 非主持审判的法官无法履行审判后职责；或

(B) 因其他某种原因而有必要重新审理。

(经 1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 9 日修订，1987 年 8 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 26. 录取证言

在每一次审判中，证人的证言必须在公开法庭上取得，除非 statute 或根据 28 U.S.C.2072-2077 通过的其他规则另有规定。

(经 1972 年 11 月 20 日修订，1975 年 7 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 26.1. 外国法的确定

打算提出外国法问题的当事人必须向法院和所有当事人提供合理的书面通知。外国法问题是法律问题，但在裁决此类问题时，法院可以考虑任何相关的材料或来源--包括证言--而不受联邦证据规则的限制。

(1966 年 2 月 28 日增补，1966 年 7 月 1 日生效；1972 年 11 月 20 日修订，1975 年 7 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 26.2. 提供证人陈述

(a) 出示动议。在被告以外的证人经主询问作证后，法院经未传唤该证人的一方动议，必须命令政府律师或被告及被告律师出示该证人所作、由其持有且与证人证言主题事项相关的任何陈述，供动议方查阅和使用。

(b) 出示完整陈述。如果完整陈述与证人证言的主题事项相关，法院必须命令将该陈述交付动议方。

(c) 提供经删减的陈述。如果传唤证人的一方声称该陈述包含享有特权或不涉及证人证言主题事项的信息，法院必须对该陈述进行不公开审查。在删除任何享有特权或不相关的部分后，法院必须命令向提出动议的一方交付经删减的陈述。如果被告对删除提出异议，法院必须将完整陈述连同标明被删除部分一并密封保存，作为记录的一部分。

(d) 休庭以查阅陈述。法院可以休庭，以便一方有时间查阅陈述并准备使用。

(e) 未能出示或交付陈述的制裁性措施。如果传唤证人的一方不遵守出示或交付陈述的命令，法院必须排除该证人的证言

from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.

(f) "Statement" Defined. As used in this rule, a witness's ''statement'' means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(g) Scope. This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules:

(1) Rule 5.1(h) (preliminary hearing);

(2) Rule 32(i)(2) (sentencing);

(3) Rule 32.1(e) (hearing to revoke or modify probation or supervised release);

(4) Rule 46(j) (detention hearing); and

(5) Rule 8 of the Rules Governing Proceedings under 28 U.S.C. §2255.

(As added Apr. 30, 1979, eff. Dec. 1, 1980; amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 26.3. Mistrial

Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

(As added Apr. 22, 1993, eff. Dec. 1, 1993; amended Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 27. Proving an Official Record

A party may prove an official record, an entry in such a record, or the lack of a record or entry in the same manner as in a civil action.

(As amended Apr. 29, 2002, eff. Dec, 1, 2002.)

Rule 28. Interpreters

The court may select, appoint, and set the reasonable compensation for an interpreter, including an interpreter for the victim. The compensation must be paid from funds provided by law or by the government, as the court may direct.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 2002, eff. Dec. 1, 2002; Pub. L. 114–324, §2(c), Dec. 16, 2016, 130 Stat. 1948.)

Rule 29. Motion for a Judgment of Acquittal

(a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is

从记录中删除。如果政府律师不遵守该命令，法院必须在正义要求时宣布审判无效。

(f) "陈述"的定义。在本规则中，证人的"陈述"指：

(1) 证人作出并签署或以其他方式采纳或认可的书面陈述；

(2) 在任何录音或录音转录中包含的、实质上逐字且同时记录的证人口头陈述的记述；或

(3) 证人在大陪审团面前所作的陈述，无论以何种方式取得或记录，或该陈述的转录。

(g) 适用范围。本规则适用于审判、规则 12 下的排除证据听证，并在下列规则规定的范围内适用：

(1) 规则 5.1(h)(预审听证);(2) 规则 32(i)(2)(量刑);

(3) 规则 32.1(e)(撤销或变更缓刑或监督释放的听证);

(4) 规则 46(j)(羁押听证)；以及

(5) 28编下程序规则第8条

U.S .C.2255。

(1979年4月30日添加，1980年12月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；1998年4月24日修正，1998年12月1日生效；2002年4月29日修正，2002年12月1日生效。)

规则 26.3. 无效审判

在命令审判无效之前，法院必须给予每名被告和政府机会，就命令的适当性发表意见，说明该方同意或反对，并提出替代方案。

(1993年4月22日添加，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效。)

规则 27. 证明官方记录

一方可以如同在民事诉讼中一样证明官方记录、该记录中的条目，或记录或条目的缺失。

(2002年4月29日修订，2002年12月1日生效。)

规则 28. 口译员

法院可以选择、任命翻译人员并确定合理报酬，包括为被害人提供翻译人员。报酬必须由法律规定或政府提供的资金支付，具体由法院指示。

(1966年2月28日修正，1966年7月1日生效；1972年11月20日修正，1975年7月1日生效；2002年4月29日修正，2002年12月1日生效；Pub.L.114-324,2(c), 2016年12月16日， 130 Stat.1948。)

规则 29. 无罪判决动议

(a) 提交陪审团之前。在政府结束举证后或全部举证结束后，法院经被告动议，必须对证据不足以支持定罪的任何罪名作出无罪判决。法院可以自行考虑证据是否

insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(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 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) ***Ruling on the Motion.*** If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) ***No Prior Motion Required.*** A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) Conditional Ruling on a Motion for a New Trial.

(1) ***Motion for a New Trial.*** If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

(2) ***Finality.*** The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

(3) ***Appeal.***

(A) *Grant of a Motion for a New Trial.* If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) *Denial of a Motion for a New Trial.* If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

(As amended Feb. 28, 1966, eff. July 1, 1966; Pub. L. 99–646, §54(a), Nov. 10, 1986, 100 Stat. 3607, eff. Dec. 10, 1986; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 29.1. Closing Argument

Closing arguments proceed in the following order:

(a) the government argues;

不足以支持定罪。如果法院在政府举证结束时驳回无罪判决动议，被告可以提供证据，而无需保留这样做的权利。

(b) 保留裁决。法院可以保留对动议的裁决，继续进行审判(如果动议是在全部举证结束前提出)，将案件提交陪审团，并在陪审团作出裁决之前或之后，或在陪审团作出有罪裁决后、或在未作出裁决即被解散后，对动议作出裁决。如果法院保留裁决，必须根据保留裁决时的证据对动议作出裁决。

(c) **陪审团裁决或解散后。**

(1) 动议的期限。被告可以在有罪裁决后或法院解散陪审团后 14 天内提出无罪判决动议或重新提出该动议，以较晚者为准。

(2) 对动议的裁决。如果陪审团已作出有罪裁决，法院可以撤销该裁决并作出无罪判决。如果陪审团未能作出裁决，法院可以作出无罪判决。

(3) 无需事先动议。被告无需在法院将案件提交陪审团之前提出无罪判决动议，作为在陪审团解散后提出该动议的前提条件。

(d) **关于重新审理动议的附条件裁定。**

(1) 重新审判动议。如果法院在有罪裁决后作出无罪判决，法院还必须附条件地裁定：如果无罪判决后来被撤销或推翻，是否应准予任何重新审判动议。法院必须说明该裁定的理由。

(2) 终局性。法院附条件批准重新审判动议的命令不影响无罪判决的终局性。

(3) 上诉。

(A) 准予重新审判动议。如果法院附条件地准予重新审判动议，而上诉法院后来推翻无罪判决，除非上诉法院另有命令，初审法院必须进行重新审判。

(B) 驳回重新审判动议。如果法院附条件地驳回重新审判动议，被上诉人可以主张该驳回是错误的。如果上诉法院后来推翻无罪判决，初审法院必须按上诉法院的指示进行。

(1966年2月28日修正，1966年7月1日生效；Pub.L.99-646,54(a), 1986年11月10日， 100 Stat.3607, 1986年12月10日生效；1994年4月29日修正，1994年12月1日生效；2002年4月29日修正，2002年12月1日生效；2005年4月25日修正，2005年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 29.1. 结案陈词

最后陈述按以下顺序进行：

(a) 政府主张；

(b) the defense argues; and
(c) the government rebuts.

(As added Apr. 22, 1974, eff. Dec. 1, 1975; amended Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 30. Jury Instructions

(a) In General. Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time that the court reasonably sets. When the request is made, the requesting party must furnish a copy to every other party.

(b) Ruling on a Request. The court must inform the parties before closing arguments how it intends to rule on the requested instructions.

(c) Time for Giving Instructions. The court may instruct the jury before or after the arguments are completed, or at both times.

(d) Objections to Instructions. A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 31. Jury Verdict

(a) Return. The jury must return its verdict to a judge in open court. The verdict must be unanimous.

(b) Partial Verdicts, Mistrial, and Retrial.

(1) *Multiple Defendants.* If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

(2) *Multiple Counts.* If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

(3) *Mistrial and Retrial.* If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

(c) Lesser Offense or Attempt. A defendant may be found guilty of any of the following:

(1) an offense necessarily included in the offense charged;
(2) an attempt to commit the offense charged; or
(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) Jury Poll. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002.)

(b) 辩方主张；以及
(c) 政府予以反驳。

(1974年4月22日添加，1975年12月1日生效；2002年4月29日修正，2002年12月1日生效。)

规则 30. 陪审团指示

(a) 一般规定。任何一方均可书面请求法院按请求中指定的法律指示陪审团。该请求必须在举证结束时或法院合理设定的任何更早时间提出。提出请求时，请求方必须向其他各方提供副本。

(b) 对请求的裁定。法院必须在结案辩论前告知各方其打算如何裁定所请求的指示。

(c) 作出指示的时间。法院可以在辩论结束前或结束后指示陪审团，或在两个时间均作出指示。

(d) 对指示的异议。对指示的任何部分或对未给出所请求的指示提出异议的一方，必须在陪审团退庭评议之前告知法院具体的异议及异议理由。必须给予在陪审团听不到的情况下提出异议的机会，并应请求在陪审团不在场的情况下提出异议。未按照本规则提出异议的，排除上诉审查，但规则 52(b) 允许的除外。

(1966年2月28日修正，1966年7月1日生效；1987年3月9日修正，1987年8月1日生效；1988年4月25日修正，1988年8月1日生效；2002年4月29日修正，2002年12月1日生效。)

规则 31. 陪审团裁决

(a) 返回裁决。陪审团必须在公开法庭向法官返回其裁决。裁决必须一致。

(b) **部分裁决、无效审判与重审。**

(1) 多名被告。如果有多名被告，陪审团可以在评议期间随时对其已达成一致的任何被告返回裁决。

(2) 多项罪名。如果陪审团无法就针对任何被告的所有罪名达成一致，陪审团可以就其已达成一致的罪名返回裁决。

(3) 无效审判与重新审判。如果陪审团无法就一项或多项罪名达成裁决，法院可以宣布对这些罪名无效审判。政府可以就陪审团未能达成一致的任何罪名重新审判任何被告。

(c) 较轻罪行或未遂。被告可被判定犯有以下任何一项：

(1) 必然包含于所指控罪行中的罪行；(2) 实施所指控罪行的未遂；或(3) 实施必然包含于所指控罪行中的罪行的未遂，如果该未遂本身即构成一项罪行。

(d) 陪审团个别询问。在返回裁决后但在陪审团解散前，法院必须经一方请求，或可自行，对陪审员逐一询问。如果询问显示缺乏一致性，法院可以指示陪审团进一步评议，或宣布无效审判并解散陪审团。

(1972年4月24日修正，1972年10月1日生效；1998年4月24日修正，1998年12月1日生效；2000年4月17日修正，2000年12月1日生效；2002年4月29日修正，2002年12月1日生效。)

TITLE VII. POST–CONVICTION PROCEDURES

Rule 32. Sentencing and Judgment

(a) [Reserved.]

(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 permits 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 Advisory 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:

(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;

第七编定罪后程序

规则 32. 量刑与判决

(a) [保留。] (b) 量刑时间。

(1) 一般规定。法院必须无不必要延迟地判处刑罚。

(2) 变更期限。法院可以因正当理由变更本规则规定的任何期限。

(c) **判前调查。**

(1) **要求的调查。**

(A) 一般规定。缓刑官必须进行量刑前调查并在法院判处刑罚之前向法院提交报告，除非：

(i) 18 U.S.C.3593(c) 或其他法规另有规定；或

(ii) 法院认定记录中的信息使其能够根据 18 U.S.C.3553 有意义地行使其量刑权，且法院在记录中解释其认定。

(B) 赔偿。如果法律允许赔偿，缓刑官必须进行调查并提交包含足以使法院命令赔偿的信息的报告。

(2) 会见被告。作为判前调查的一部分会见被告的缓刑官，必须经请求向被告的律师发出通知并提供合理机会参加会见。

(d) **量刑前报告。**

(1) 适用咨询性量刑指南。判前报告必须：

(A) 指明量刑委员会所有适用的指南和政策声明；

(B) 计算被告的犯罪等级和犯罪历史类别；

(C) 说明由此产生的量刑幅度及可用的刑罚种类；

(D) 识别任何与以下相关的因素：

(i) 适当的刑罚种类，或(ii) 在适用量刑范围内的适当刑罚；以及

(E)确定任何偏离适用量刑幅度的依据。

(2) 附加信息。判前报告还必须包含以下内容：

(A) 被告的历史和特征，包括

正在：

(i) 任何先前的犯罪记录；

(ii) 被告的财务状况；以及(iii) 任何影响被告行为且可能有助于量刑或矫正处理的情况；

(B) 评估对任何被害人的任何经济、社会、心理和医疗影响的信息；

(C) 在适当情况下，被告可获得的非监禁项目和资源的性质和范围；

(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).

(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

(D) 当法律规定赔偿时，足以作出赔偿令的信息；

(E) 如果法院根据 18 U.S.C.3552(b) 命令进行研究，任何由此产生的报告和建议；

(F) 关于政府是否根据规则 32.2 和任何其他法律寻求没收的陈述；以及

(G) 法院要求的任何其他信息，包括与 18 U.S.C.3553(a) 项下因素相关的信息。

(3) 排除事项。量刑前报告必须排除以下内容：

(A) 任何诊断，如果披露可能严重扰乱康复计划；

(B) 任何在承诺保密的情况下获得的信息来源；以及

(C) 任何其他信息，若披露可能对被告或他人造成人身或其他损害。

(e) **披露报告和建议。**

(1) 披露时间。除非被告书面同意，缓刑官不得在被告认罪或不抗辩认罪，或被判定有罪之前，向法院提交判前报告或向任何人披露其内容。

(2) 最低通知期限。缓刑官必须在量刑前至少35日将量刑前报告交给被告、被告的律师及政府律师，除非被告放弃该最低期限。

(3) 量刑建议。法院可通过地方规则或个案命令，指示缓刑官不得向法院以外的任何人披露其对量刑的建议。

(f) **对报告提出异议。**

(1) 提出异议的期限。各方必须在收到量刑前报告后14日内以书面形式陈述任何异议，包括对报告中所含或遗漏的重要信息、量刑指南幅度及政策声明的异议。

(2) 送达异议。提出异议的一方必须向对方当事人及缓刑官提供其异议的副本。

(3) 对异议的处理。收到异议后，缓刑官可与各方会面讨论异议。缓刑官随后可进一步调查并酌情修订量刑前报告。

(g) 提交报告。至少在量刑前 7 日，缓刑官必须向法院和各方提交量刑前报告以及一份附录，附录中包含任何未解决的异议、提出这些异议的理由以及缓刑官对这些异议的评论。

(h) 可能偏离量刑指南的通知。在法院以量刑前报告或一方庭前提交材料中均未指明偏离理由的理由偏离适用量刑幅度之前，法院必须给予

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 the crime who is present at sentencing and must permit the victim to be reasonably heard.

(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).

各方合理的通知，说明其正考虑作出此种偏离。该通知必须指明法院正考虑偏离所依据的任何理由。

(i) 量刑。

(1) **一般规定。**在量刑时，法院：

(A) 必须核实被告及被告的律师已阅读并讨论过量刑前报告及报告的任何附录；

(B) 必须向被告和政府的律师提供根据规则 32(d)(3) 从量刑前报告中排除、且法院在量刑时将依赖的任何信息的书面摘要，或在不公开的情况下进行口头概述，并给予他们对此信息发表评论的合理机会；

(C) 必须允许各方律师对缓刑官的认定以及与适当量刑有关的其他事项发表评论；以及

(D) 可基于正当理由，允许一方在宣判前的任何时间提出新的异议。

(2) 引入证据；提供陈述。法院可以允许各方就异议引入证据。如果证人在量刑时作证，则适用规则 26.2(a)-(d) 和 (f)。如果一方未能遵守规则 26.2 关于提供证人陈述的命令，法院不得考虑该证人的证言。

(3) **法院裁定。**在量刑时，法院：

(A) 可将量刑前报告中任何无争议的部分作为事实认定予以接受；

(B) 必须--对量刑前报告中任何有争议的部分或其他有争议的事项--就该争议作出裁定，或认定无需裁定，因为该事项不会影响量刑，或因为法院在量刑时不会考虑该事项；以及

(C) 必须将法院根据本规则所作裁定的副本附于提供给监狱管理局的任何量刑前报告副本之后。

(4) **发言机会。**

由一方。在宣判前，法院必须：(i) 为被告的律师提供代表被告发言的机会；(ii) 亲自询问被告，以便允许被告发言或提交任何减轻刑罚的信息；以及 (iii) 为政府的律师提供与被告律师同等的机会发言。

(A)

(B) 由被害人。在宣判前，法院必须询问任何在量刑时到场的犯罪被害人，并必须允许被害人合理地陈述意见。

(C) 不公开程序。经一方动议并有正当理由，法院可以不公开听取根据规则 32(i)(4) 作出的任何陈述。

(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.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(31)–(34), July 31, 1975, 89 Stat. 376, eff. Dec. 1, 1975; Apr. 30, 1979, eff. Aug. 1, 1979, and Dec. 1, 1980; Pub. L. 97–291, §3, Oct. 12, 1982, 96 Stat. 1249; Apr. 28, 1983, eff. Aug. 1, 1983; Pub. L. 98–473, title II, §215(a), Oct. 12, 1984, 98 Stat. 2014, eff. Nov. 1, 1987; Pub. L. 99–646, §25(a), Nov. 10, 1986, 100 Stat. 3597, eff. Nov. 1, 1987; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Pub. L. 103–322, title XXIII, §230101(b), Sept. 13, 1994, 108 Stat. 2078, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Pub. L. 104–132, title II, §207(a), Apr. 24, 1996, 110 Stat. 1236; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

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.

(j) **被告的上诉权。**

(1) **上诉权告知**

(A) 对定罪提出上诉。如果被告作无罪答辩并被定罪，法院必须在量刑后告知被告对定罪提出上诉的权利。

(B) 对刑罚提出上诉。在量刑后--无论被告作何答辩--法院必须告知被告对刑罚提出上诉的任何权利。

(C) 上诉费用。法院必须告知无力支付上诉费用的被告有权申请以贫民身份(in forma pauperis)提出上诉的许可。

(2) 书记官提交通知。如果被告提出请求，书记官必须立即代表被告准备并提交上诉通知。

(k) 判决。

(1) 一般规定。在定罪判决中，法院必须载明答辩、陪审团裁决或法院的事实认定、裁判以及刑罚。如果被告被认定无罪或以其他方式有权获释，法院必须如此命令。法官必须签署判决，书记官必须将其登记。

(2) 刑事没收。没收程序受规则 32.2 管辖。

（1966年2月28日修订，1966年7月1日生效；1972年4月24日修订，1972年10月1日生效；1974年4月22日修订，1975年12月1日生效；Pub. L. 94–64，第3(31)–(34)条，1975年7月31日，89 Stat. 376，1975年12月1日生效；1979年4月30日修订，1979年8月1日及1980年12月1日生效；Pub. L. 97–291，第3条，1982年10月12日，96 Stat. 1249；1983年4月28日修订，1983年8月1日生效；Pub. L. 98–473，第二编，第215(a)条，1984年10月12日，98 Stat. 2014，1987年11月1日生效；Pub. L. 99–646，第25(a)条，1986年11月10日，100 Stat. 3597，1987年11月1日生效；1987年3月9日修订，1987年8月1日生效；1989年4月25日修订，1989年12月1日生效；1991年4月30日修订，1991年12月1日生效；1993年4月22日修订，1993年12月1日生效；1994年4月29日修订，1994年12月1日生效；Pub. L. 103–322，第二十三编，第230101(b)条，1994年9月13日，108 Stat. 2078，1994年12月1日生效；1996年4月23日修订，1996年12月1日生效；Pub. L. 104–132，第二编，第207(a)条，1996年4月24日，110 Stat. 1236；2000年4月17日修订，2000年12月1日生效；2002年4月29日修订，2002年12月1日生效；2007年4月30日修订，2007年12月1日生效；2008年4月23日修订，2008年12月1日生效；2009年3月26日修订，2009年12月1日生效；2011年4月26日修订，2011年12月1日生效。）

规则 32.1. 撤销或修改缓刑或监督释放

(a) **初次出庭。**

(1) 被羁押人。因违反缓刑或监督释放而被羁押的人，必须无不必要延迟地被带见治安法官。

(A) 如果该人被羁押在所指称的违反行为发生的地区，初次到庭必须在该地区进行。

(B) 如果该人被羁押在所指称的违反行为发生地以外的地区，初次到庭必须在该地区进行，或者如果能在相邻地区更迅速地到庭，则可在该相邻地区进行。

(2) 依传票。当某人因违反缓刑或监督释放而依传票出庭时，治安法官必须依照本规则进行程序。

(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, or produces copies of those certified documents by reliable electronic means; 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)(1) pending further proceedings. The burden of establishing by clear and convincing evidence 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

(3) 建议。法官必须告知该人以下事项：

(A) 所指控的违反缓刑或监督释放的行为；

(B) 该人聘请律师的权利，或在该人无法获得律师时请求指定律师的权利；以及

(C) 该人如被羁押，享有根据规则 32.1(b)(1) 进行初步听证的权利。

(4) 在有管辖权的地区出庭。如果该人在有管辖权举行撤销听证的地区--无论是原始管辖还是经管辖权转移--被逮捕或出庭，法院必须依照规则 32.1(b)-(e) 进行程序。

(5) 在无管辖权的地区出庭。如果该人在无管辖权举行撤销听证的地区被逮捕或出庭，治安法官必须：

如果所指称的违反行为发生在逮捕地区，则根据规则 32.1(b) 进行初步听证，并且：

(A)

(i) 如果法官认定有合理根据相信发生了违法行为，则将此人移送至有管辖权的地区；或

(ii) 如果法官认定没有合理根据相信发生了违法行为，则驳回程序并通知有管辖权的法院；或

如果被指控的违法行为并非发生在逮捕地区，则在以下情况下将此人移送至有管辖权的地区：

(B)

(i) 政府出示判决书、令状和令状申请的核证副本，或通过可靠的电子方式出示这些核证文件的副本；且

(ii) 法官认定该人即为令状中所指名的同一人。

(6) 释放或羁押。治安法官可以根据 18 U.S.C.3143(a)(1) 在进一步程序期间释放或羁押该人。以清晰且令人信服的证据证明该人不会逃跑或对任何其他人或社区构成危险的责任由该人承担。

(b) 撤销。

(1) **初步听证。**

(A) 一般规定。如果某人因违反缓刑或监督释放条件而被羁押，治安法官必须迅速举行听证，以确定是否有合理根据相信发生了违法行为。此人可以放弃听证。

要求。听证必须由法庭书记员或适当的录音设备记录。法官必须给予此人：(i) 关于听证及其目的、被指控的违法行为以及此人有权聘请律师或在此人无法获得律师时请求指定律师的通知；(ii) 出席听证并出示证据的机会；以及

(B)

(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;

(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.

(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.

(As added Apr. 30, 1979, eff. Dec. 1, 1980; amended Pub. L. 99–646, §12(b), Nov. 10, 1986, 100 Stat. 3594, eff. Dec. 10, 1986; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 28, 2010, eff. Dec. 1, 2010.)

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. The notice should not be

(iii) 经请求，询问任何对方证人的机会，除非法官认定司法利益不要求该证人出庭。

(C) 移送。如果法官认定有合理根据，法官必须举行撤销听证。如果法官未认定有合理根据，法官必须驳回程序。

(2) 撤销听证。除非该人放弃，法院必须在有管辖权的地区在合理时间内举行撤销听证。该人有权

做到以下事

(A) 涉嫌违规行为的书面通知；

(B) 披露针对该人的证据；

(C) 出席、出示证据并询问任何对方证人的机会，除非法院认定司法利益不要求该证人出庭；

(D) 关于此人有权聘请律师或在此人无法获得律师时请求指定律师的通知；以及

(E) 作出陈述并提交任何减轻情节信息的机会。

(c) 变更。

(1) 一般规定。在修改缓刑或监督释放的条件之前，法院必须举行听证，在听证中该人有权获得律师协助，并有机会作出陈述和提交任何减轻信息。

(2) 例外。在以下情况下无需举行听证：

(A) 该人放弃听证；或

(B) 所寻求的救济对此人有利，且不延长缓刑或监督释放的期限；以及

(C) 政府律师已收到所寻求救济的通知，已有合理机会提出异议，且未提出异议。

(d) 案件处理。法院对案件的处理受 18 U.S.C.3565(缓刑)以及3583(监督释放)管辖。

(e) 提供陈述。规则 26.2(a)-(d) 和 (f) 适用于本规则下的听证。如果一方未能遵守规则 26.2 关于提供证人陈述的命令，法院不得考虑该证人的证言。

(1979年4月30日增补，1980年12月1日生效；1986年11月10日Pub.L.99-646第12(b)条修正，100 Stat.3594,1986年12月10日生效；1987年3月9日修正，1987年8月1日生效；1989年4月25日修正，1989年12月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效；2005年4月25日修正，2005年12月1日生效；2006年4月12日修正，2006年12月1日生效；2010年4月28日修正，2010年12月1日生效。)

规则 32.2. 刑事没收

(a) 对被告的通知。除非起诉书或大陪审团起诉书包含对被告的通知，说明政府将依照适用法规寻求作为任何刑罚一部分的财产没收，否则法院不得在刑事诉讼中作出没收判决。该通知不应

designated as a count of the indictment or information. The indictment or information need not identify the property subject to forfeiture or specify the amount of any forfeiture money judgment that the government seeks.

(b) Entering a Preliminary Order of Forfeiture.

(1) ***Forfeiture Phase of the Trial.***

(A) *Forfeiture Determinations*. As soon as practical 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.

(B) *Evidence and Hearing*. The court's determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(2) ***Preliminary Order.***

(A) *Contents of a Specific 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, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. 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).

(B) *Timing*. Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).

(C) *General Order*. If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:

(i) lists any identified property;

(ii) describes other property in general terms; and

(iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of the money judgment has been calculated.

(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

被指定为起诉书或起诉信息的一项罪名。起诉书或起诉信息无需指明应予没收的财产或具体说明政府寻求的没收金钱判决的金额。

(b) **作出初步没收令。**

(1) **审判的没收阶段。**

(A) 没收裁定。在就起诉书或起诉状中寻求刑事没收的任何罪项作出裁决或有罪认定后，或在接受有罪答辩或不予争辩的答辩后，法院须在切实可行的情况下尽快确定哪些财产依据适用法规应予没收。如果政府寻求没收特定财产，法院须确定政府是否已确立该财产与犯罪行为之间的必要关联。如果政府寻求作出个人金钱判决，法院须确定将命令被告支付的金钱数额。

(B) 证据与听证。法院的裁定可以基于记录中已有的证据，包括任何书面认罪协议，以及基于各方提交并被法院接受为相关且可靠的任何额外证据或信息。如果没收受到争议，经任何一方请求，法院必须在裁决或有罪认定后进行听证。

(2) **初步命令。**

(A) 特定命令的内容。如果法院认定财产应予没收，必须及时作出初步没收命令，载明任何金钱判决的金额，指令没收特定财产，并在政府已满足法定标准的情况下指令没收任何替代财产。法院作出该命令时不得考虑任何第三方对该财产享有的权益。关于第三方是否享有此种权益的认定，必须推迟至任何第三方依据规则 32.2(c) 在附属程序中提出主张时进行。

(B) 时间。除非这样做不切实际，法院必须在量刑前充分提前作出初步命令，以便当事人在该命令依规则 32.2(b)(4) 对被告成为最终命令之前提出修订或修改建议。

(C) 一般命令。如果在量刑前，法院无法确定应予没收的所有特定财产或计算金钱判决的总额，法院可以作出符合以下内容的没收命令：

(i) 列出任何已确定的财产；(ii) 以一般性措辞描述其他财产；以及(iii) 说明当确定额外特定财产或已计算金钱判决金额时，该命令将依规则 32.2(e)(1) 予以修正。

(3) 扣押财产。初步没收令的登记授权司法部长(或其指定人)扣押应予没收的特定财产；进行

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. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

(4) *Sentence and Judgment.*

(A) *When Final.* At sentencing—or at any time before sentencing if the defendant consents—the preliminary forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c).

(B) *Notice and Inclusion in the Judgment.* The court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The court must also include the forfeiture order, directly or by reference, in the judgment, but the court's failure to do so may be corrected at any time under Rule 36.

(C) *Time to Appeal.* The time for the defendant or the government to file an appeal from the forfeiture order, or from the court's failure to enter an order, begins to run when judgment is entered. If the court later amends or declines to amend a forfeiture order to include additional property under Rule 32.2(e), the defendant or the government may file an appeal regarding that property under Federal Rule of Appellate Procedure 4(b). The time for that appeal runs from the date when the order granting or denying the amendment becomes final.

(5) *Jury Determination.*

(A) *Retaining the Jury.* In any case tried before a jury, if the indictment or information states that the government is seeking forfeiture, the court must determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict.

(B) *Special Verdict Form.* If a party timely requests to have the jury determine forfeiture, the government must submit a proposed Special Verdict Form listing each property subject to forfeiture and asking the jury to determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

(6) *Notice of the Forfeiture Order.*

(A) *Publishing and Sending Notice.* If the court orders the forfeiture of specific property, the government must publish notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

(B) *Content of the Notice.* The notice must describe the forfeited property, state the times under the applicable statute when a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition.

法院认为适当的任何证据开示，以识别、定位或处置该财产；以及启动符合任何管辖第三方权利的法规的程序。法院可在没收命令中列入在待决上诉期间保全财产价值合理必要的条件。

(4) **判决与判刑。**

(A) 何时成为最终命令。在量刑时--或在量刑前任何时间经被告同意--初步没收命令对被告成为最终命令。如果该命令指示被告没收特定财产，则对第三方仍为初步命令，直至附属程序依规则 32.2(c) 结束。

(B) 通知及纳入判决。法院在口头宣布刑罚时必须包括没收，或必须以其他方式确保被告在量刑时知悉没收。法院还必须将没收令直接或通过引用纳入判决，但法院未如此做的，可以在任何时候根据规则 36 予以更正。

(C) 上诉期限。被告或政府就没收命令或就法院未作出命令提出上诉的期限，自判决作出之日起开始计算。如果法院此后依据规则 32.2(e) 修改或拒绝修改没收命令以纳入额外财产，被告或政府可依据《联邦上诉程序规则》4(b) 就该财产提出上诉。该上诉的期限自准予或拒绝修改的命令成为终局之日起计算。

(5) **陪审团认定。**

(A) 保留陪审团。在任何由陪审团审理的案件中，如果起诉书或大陪审团起诉书载明政府寻求没收，法院必须在陪审团开始评议之前确定任何一方是否请求在陪审团作出有罪裁决时保留陪审团以确定特定财产的可没收性。

(B) 特别裁决表。如果一方及时请求由陪审团裁定没收，政府必须提交一份拟议的特别裁决表，列明每项应予没收的财产，并要求陪审团裁定政府是否已确立该财产与被告所犯罪行之间的必要关联。

(6) **没收令通知。**

(A) 公布和发送通知。如果法院命令没收特定财产，政府必须公布该命令的通知，并向任何合理看来是在附属程序中具有质疑没收资格的潜在主张人发送通知。

(B) 通知的内容。通知必须描述被没收的财产，说明根据适用法规必须提交质疑没收的申请的时间，并说明接收该申请的政府律师的姓名和联系信息。

(C) *Means of Publication; Exceptions to Publication Requirement*. Publication must take place as described in Supplemental Rule G(4)(a)(iii) of the Federal Rules of Civil Procedure, and may be by any means described in Supplemental Rule G(4)(a)(iv). Publication is unnecessary if any exception in Supplemental Rule G(4)(a)(i) applies.

(D) *Means of Sending the Notice*. The notice may be sent in accordance with Supplemental Rules G(4)(b)(iii)–(v) of the Federal Rules of Civil Procedure.

(7) *Interlocutory Sale.* At any time before entry of a final forfeiture order, the court, in accordance with Supplemental Rule G(7) of the Federal Rules of Civil Procedure, may order the interlocutory sale of property alleged to be forfeitable.

(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

(C) 公告方式；公告要求的例外。公告必须按照《联邦民事诉讼规则》补充规则G(4)(a)(iii)所述方式进行，并可采用补充规则G(4)(a)(iv)所述的任何方式。如果补充规则G(4)(a)(i)中的任何例外适用，则无需公告。

(D) 发送通知的方式。通知可按照《联邦民事诉讼规则》补充规则G(4)(b)(iii)至(v)发送。

(7)中间出售。在最终没收令作出前的任何时间，法院可按照《联邦民事诉讼规则》补充规则G(7)命令对据称可没收的财产进行中间出售。

(c)**附属程序；作出最终没收令。(1)一般规定。**如果第三方按照法律规定提交了主张对被没收财产享有权益的申请，法院必须进行附属程序，但若没收由金钱判决构成，则无需进行附属程序。

(A) 在附属程序中，法院可基于缺乏诉讼资格、未能陈述请求或任何其他合法理由，经动议驳回申请。就该项动议而言，申请中陈述的事实被假定为真实。

(B) 在处理完根据规则提出的任何动议后
32.2(c)(1)(A) 并在就该申请举行听证之前，如果法院认定证据开示对于解决事实问题必要或可取，法院可允许各方按照《联邦民事诉讼规则》进行证据开示。证据开示结束后，一方可根据《联邦民事诉讼规则》第 56 条提出简易判决动议。

(2) 作出最终命令。附属程序结束时，法院必须通过修改初步命令作出最终没收命令，并在必要时考虑任何第三方的权利。如果没有任何第三方及时提出申请，且法院认定被告(或案件中定罪的任何被告组合)对该财产享有根据适用制定法可没收的权益，则初步命令成为最终没收命令。被告不得以该财产全部或部分属于共同被告或第三方为由反对作出最终命令；第三方也不得以该第三方对该财产享有权益为由反对最终命令。

(3)多份申请。如果同一案件中提交了多份第三方申请，在对所有申请作出裁定之前，驳回或准许其中一份申请的命令不可上诉，除非法院认定没有正当理由延迟。

(4)附属程序不属于量刑。附属程序不属于量刑的一部分。

(d)上诉期间中止。如果被告对定罪或没收令提出上诉，法院可按适当条件中止没收令，以确保财产保持

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).

(As added Apr. 17, 2000, eff. Dec. 1, 2000; amended Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

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 14 days after the verdict or finding of guilty.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 34. Arresting Judgment

(a) In General. Upon the defendant's motion or on its own, the court must arrest judgment if the court does not have jurisdiction of the charged offense.

(b) Time to File. The defendant must move to arrest judgment within 14 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or nolo contendere.

中止不延迟附属程序或对第三方权利或权益的裁定。如果在上诉待决期间法院作出有利于任何第三方的裁定，法院可修改没收令，但在上诉决定成为最终决定之前，不得将任何财产权益转移给第三方，除非被告以书面形式或在记录中同意。

(e) **随后找到的财产；替代财产。**

(1)一般规定。根据政府的动议，法院可随时作出没收令或修改现有没收令，以纳入以下财产：

(A) 根据现有没收令应予没收，但在该命令作出后才被定位和识别的财产；或

(B) 根据适用法律符合没收条件的替代财产。

(2) 程序。如果政府证明该财产根据规则 32.2(e)(1) 应予没收，法院必须：

(A) 作出没收该财产的命令，或修改现有的初步或最终命令以将其纳入；以及

(B) 如果第三方提交申请主张对该财产享有权益，则根据规则 32.2(c) 进行附属程序。

(3)陪审团审判受限。根据规则32.2(e)不享有陪审团审判的权利。

(2000 年 4 月 17 日增补，2000 年 12 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效。)

规则 33. 重新审理

(a)被告的动议。根据被告的动议，如果司法利益有此要求，法院可撤销任何判决并准予重新审判。如果案件未经陪审团审理，法院可采纳补充证言并作出新判决。

(b) **提交时间。**

(1)新发现的证据。基于新发现证据的重新审判动议必须在裁决或认定有罪后3年内提出。如果上诉正在进行中，法院不得准予重新审判动议，直至上诉法院发回案件。

(2)其他理由。基于新发现证据以外的任何理由提出的重新审判动议必须在裁决或认定有罪后14天内提出。

(1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；1987 年 3 月 9 日修正，1987 年 8 月 1 日生效；1998 年 4 月 24 日修正，1998 年 12 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效；2005 年 4 月 25 日修正，2005 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效。)

规则 34. 中止判决

(a)一般规定。根据被告的动议或法院自行决定，如果法院对被指控的罪行没有管辖权，法院必须撤销判决。

(b)提出时间。被告必须在法院接受裁决或认定有罪后，或在认罪或不抗辩答辩后14天内提出撤销判决的动议。

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 25, 2014, eff. Dec. 1, 2014.)

Rule 35. Correcting or Reducing a Sentence

(a) Correcting Clear Error. Within 14 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 the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(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.

(c) "Sentencing" Defined. As used in this rule, ''sentencing'' means the oral announcement of the sentence.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 28, 1983, eff. Aug. 1, 1983; Pub. L. 98–473, title II, § 215(b), Oct. 12, 1984, 98 Stat. 2015, eff. Nov. 1, 1987; Apr. 29, 1985, eff. Aug. 1, 1985; Pub. L. 99–570, title I, § 1009(a), Oct. 27, 1986, 100 Stat. 3207–8, eff. Nov. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2004, eff. Dec. 1, 2004; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

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.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

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:

(1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效；2005 年 4 月 25 日修正，2005 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效；2014 年 4 月 25 日修正，2014 年 12 月 1 日生效。)

规则 35. 更正或减轻刑罚

(a)纠正明显错误。在量刑后14天内，法院可纠正因算术、技术或其他明显错误导致的刑罚。

(b) **因实质性协助而减刑。**

(1)一般规定。根据政府在量刑后一年内提出的动议，如果被告在量刑后为调查或起诉他人提供了实质性协助，法院可减轻刑罚。

(2)后续动议。根据政府在量刑后超过一年提出的动议，如果被告的实质性协助涉及：

(A) 被告在量刑后一年或更长时间才知悉的信息；

(B) 被告在量刑后一年内向政府提供的信息，但该信息在量刑后超过一年才对政府有用；或

(C) 被告在量刑后超过一年才合理预见到其有用性的信息，且该信息在被告合理认识到其有用性后迅速提供给政府。

(3)评估实质性协助。在评估被告是否提供了实质性协助时，法院可考虑被告在量刑前的协助。

(4)低于法定最低刑。根据规则35(b)行事时，法院可将刑罚减轻至低于法定最低刑罚的水平。

(c)“量刑”的定义。在本规则中，“量刑”指口头宣布刑罚。

(1966年2月28日修订，1966年7月1日生效；1979年4月30日修订，1979年8月1日生效；1983年4月28日修订，1983年8月1日生效；Pub.L.98-473，第二编， 1009(a),1986年10月27日，100 Stat.3207-8,1987年11月1日生效；1991年4月30日修订，1991年12月1日生效；1998年4月24日修订，1998年12月1日生效；2002年4月29日修订，2002年12月1日生效；2004年4月26日修订，2004年12月1日生效；2007年4月30日修订，2007年12月1日生效；2009年3月26日修订，2009年12月1日生效。)

在发出其认为适当的任何通知后，法院可以随时更正判决、命令或记录其他部分中的书记官错误，或更正因疏忽或遗漏而产生的记录错误。

规则 37. 关于被禁止的救济申请的指示性裁定因待决上诉

(a)上诉期间的救济。如果因已立案且正在进行的上诉而提出了法院无权准予的及时救济动议，法院可以：

(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.

(As added Apr. 23, 2012, eff. Dec. 1, 2012.)

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).

(1) 推迟审议该动议；
(2) 驳回该动议；或(3) 声明如果上诉法院为此目的发回重审，法院将准予该动议，或声明该动议提出了实质性问题。

(b)通知上诉法院。如果地区法院表示将准予该动议或该动议提出了实质性问题，动议人必须根据《联邦上诉程序规则》12.1迅速通知巡回法院书记官。

(c)发回。如果上诉法院为此目的发回案件，地区法院可对该动议作出决定。(2012年4月23日增补，2012年12月1日生效。)

规则 38. 中止刑罚或残疾

(a)死刑。如果被告对定罪或刑罚提出上诉，法院必须中止死刑的执行。

(b) 监禁。

(1)准予中止。如果被告在上诉期间获释，法院必须中止监禁刑的执行。

(2)拒绝中止；关押地点。如果被告在上诉期间未获释，法院可向司法部长建议将被告关押在审判或上诉地点附近，关押期限为合理必要的期间，以便被告协助准备上诉。

(c)**罚金。**如果被告提出上诉，地区法院或依据《联邦上诉程序规则》8 的上诉法院可以中止罚金或罚金及费用的执行。法院可以按其认为适当的任何条件中止该刑罚，并可以要求被告：

(1) 在上诉期间将全部或部分罚金及费用存入地区法院的保管账户；
(2) 提供支付罚金及费用的保证金；或(3) 接受关于被告资产的调查，并在适当情况下命令被告不得挥霍资产。

(d)缓刑。如果被告提出上诉，法院可中止缓刑刑罚的执行。法院必须设定任何中止的条件。

(e) **赔偿与被害人通知。**

(1)一般规定。如果被告提出上诉，地区法院或上诉法院根据《联邦上诉程序规则》8可中止--按任何认为适当的条件--任何规定根据18 U.S.C.3555发出通知的刑罚。

(2)确保遵守。上诉处理完毕后，法院可发出任何合理必要的命令以确保遵守赔偿令或通知令，包括：

(A) 限制令；
(B) 一项禁令；
(C) 命令被告将全部或部分金钱赔偿存入地区法院保管账户的命令；或
(D) 要求被告提供保证金的命令。

(f) **没收。**没收令的中止适用规则 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.

(As amended Dec. 27, 1948, eff. Jan. 1, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Apr. 24, 1972, eff. Oct. 1, 1972; Pub. L. 98–473, title II, §215(c), Oct. 12, 1984, 98 Stat. 2016, eff. Nov. 1, 1987; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 39. [Reserved]

TITLE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District

(a) In General. A person must be taken without unnecessary delay before a magistrate judge in the district of arrest if the person has been arrested under a warrant issued in another district for:

(i) failing to appear as required by the terms of that person's release under 18 U.S.C. §§3141–3156 or by a subpoena; or

(ii) violating conditions of release set in another district.

(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.

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

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 30, 1979, eff. Aug. 1, 1979; Pub. L. 96–42, §1(2), July 31, 1979, 93 Stat. 326; Apr. 28, 1982, eff. Aug. 1, 1982; Pub. L. 98–473, title II, §§209(c), 215(d), Oct. 12, 1984, 98 Stat. 1986, 2016, eff. Oct. 12, 1984, and Nov. 1, 1987; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

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.

(g) 丧失资格。如果被告的定罪或判刑根据联邦法律产生民事或就业方面的丧失资格，地区法院，或根据《联邦上诉程序规则》第 8 条的上诉法院，可以按其认为适当的任何条件在上诉期间中止该丧失资格。法院可以发出在上诉期间保护该丧失资格所代表的利益合理必要的任何命令，包括限制令或禁令。(经 1948 年 12 月 27 日修正，1949 年 1 月 1 日生效；1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；1967 年 12 月 4 日修正，1968 年 7 月 1 日生效；1972 年 4 月 24 日修正，1972 年 10 月 1 日生效；Pub.L.98-473 第二编第 215(c)条，1984 年 10 月 12 日，98 Stat.2016,1987 年 11 月 1 日生效；1987 年 3 月 9 日修正，1987 年 8 月 1 日生效；2000 年 4 月 17 日修正，2000 年 12 月 1 日生效；2002 年 4 月 29 日修正，2002 年 12 月 1 日生效。)

规则 39. [已保留]

第八编补充和特别程序规则40. 因未在另一地区出庭或违反

在其他地区设定的释放条件

(a) 一般规定。如果某人依据另一地区签发的逮捕令被逮捕，且逮捕令针对以下事项，则必须无不必要延迟地将其带至逮捕地所在地区的治安法官面前：

(i) 未按该人依据 18 U.S.C.3141-3156 的释放条件或传票的要求出庭；或

(ii) 违反另一地区设定的释放条件。

(b) 程序。法官必须视情况依据规则 5(c)(3) 进行。

(c) 释放或羁押令。法官可以修改另一地区先前签发的任何释放或羁押令，但必须以书面形式说明修改理由。

(d) 视频远程会议。如果被告同意，可以使用视频远程会议进行本规则下的出庭。

(1966年2月28日修订，1966年7月1日生效；1972年4月24日修订，1972年10月1日生效；1979年4月30日修订，1979年8月1日生效；Pub.L.96-42,1(2),1979年7月31日，93 Stat.326;1982年4月28日修订，1982年8月1日生效；Pub.L.98-473，第二编，209(c)、215(d),1984年10月12日，98 Stat.1986、2016,1984年10月12日和1987年11月1日生效；1987年3月9日修订，1987年8月1日生效；1989年4月25日修订，1989年12月1日生效；1993年4月22日修订，1993年12月1日生效；1994年4月29日修订，1994年12月1日生效；1995年4月27日修订，1995年12月1日生效；2002年4月29日修订，2002年12月1日生效；2006年4月12日修订，2006年12月1日生效；2011年4月26日修订，2011年12月1日生效。)

规则 41. 搜查与扣押

(a) **范围和定义。**

(1) 范围。本规则不修改任何规范搜查或扣押、或在特殊情况下签发和执行搜查令的制定法。

(2) **定义。**以下定义适用于本规则：

(A) “财产”包括文件、账簿、文书、任何其他有形物品以及信息。

(B) “白天”指当地时间上午6:00至晚上10:00之间的时段。

(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.

(D) ''Domestic terrorism'' and ''international terrorism'' have the meanings set out in 18 U.S.C. §2331.

(E) ''Tracking device'' has the meaning set out in 18 U.S.C. §3117(b).

(b) Venue for a Warrant Application. 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;

(3) a magistrate judge—in an investigation of domestic terrorism or international terrorism—with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district;

(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both; and

(5) a magistrate judge having authority in any district where activities related to the crime may have occurred, or in the District of Columbia, may issue a warrant for property that is located outside the jurisdiction of any state or district, but within any of the following:

(A) a United States territory, possession, or commonwealth;

(B) the premises—no matter who owns them—of a United States diplomatic or consular mission in a foreign state, including any appurtenant building, part of a building, or land used for the mission's purposes; or

(C) a residence and any appurtenant land owned or leased by the United States and used by United States personnel assigned to a United States diplomatic or consular mission in a foreign state.

(6) a magistrate judge with authority in any district where activities related to a crime may have occurred has authority to issue a warrant to use remote access to search electronic storage media and to seize or copy electronically stored information located within or outside that district if:

(A) the district where the media or information is located has been concealed through technological means; or

(B) in an investigation of a violation of 18 U.S.C. §1030(a)(5), the media are protected computers that have been damaged without authorization and are located in five or more districts.

(C) “联邦执法官员”指从事刑事法律执行、且属于司法部长授权可申请搜查令的任何类别官员的政府探员(政府律师除外)。

(D) “国内恐怖主义”和“国际恐怖主义”具有18 U.S.C.2331所规定的含义。

(E) “追踪设备”具有18 U.S.C.3117(b)。

(b) 搜查令申请的审判地。应联邦执法官员或政府律师的请求：

(1)在该地区法院辖区内有权限的治安法官--或者，如果没有合理可用的治安法官，该地区法院辖区内有记录在案的州法院法官--有权签发搜查令，以搜查和扣押位于该地区法院辖区内的某人或财产；

(2)在该地区法院辖区内有权限的治安法官有权对地区法院辖区外的某人或财产签发搜查令，如果该人或财产在搜查令签发时位于该地区法院辖区内，但在搜查令执行前可能移动或将被移出该地区法院辖区；

(3)在对国内恐怖主义或国际恐怖主义的调查中，在与该恐怖主义相关的活动可能发生的任何地区法院辖区内有权限的治安法官，有权对该地区法院辖区内或辖区外的某人或财产签发搜查令；

(4)在该地区法院辖区内有权限的治安法官有权签发搜查令，以在该地区法院辖区内安装追踪设备；该搜查令可授权使用该设备追踪位于该地区法院辖区内、辖区外或两者兼有的某人或财产的活动；以及

(5)在与犯罪相关的活动可能发生的任何地区法院辖区内、或在哥伦比亚特区有权限的治安法官，可对位于任何州或地区法院辖区管辖范围之外、但位于以下任何地点之内的财产签发搜查令：

(A) 美国领土、属地或联邦；

(B) 美国在外国外交或领事使团的场所--无论其所有权归属--包括任何附属建筑物、建筑物的一部分或用于该使团目的的土地；或

(C) 由美国拥有或租赁、并由派驻外国美国外交或领事使团的美国人员使用的住宅及任何附属土地。

(6)在与犯罪相关的活动可能发生的任何地区法院辖区内有权限的治安法官，有权签发搜查令，以使用远程访问搜查电子存储介质并扣押或复制位于该地区法院辖区内或辖区外的电子存储信息，如果：

(A) 该介质或信息所在地区法院辖区已通过技术手段被隐藏；或

(B) 在对违反18 U.S.C.1030(a)(5)的调查中，该介质是未经授权被损坏且位于五个或更多地区法院辖区的受保护计算机。

(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) *In General.* After receiving an affidavit or other information, a magistrate judge—or if authorized by Rule 41(b), 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 or to install and use a tracking device.

(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 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.

(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.*

(A) *Warrant to Search for and Seize a Person or Property*. Except for a tracking-device 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:

(i) execute the warrant within a specified time no longer than 14 days;

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

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

(B) *Warrant Seeking Electronically Stored Information*. A warrant under Rule 41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of

(c) 可被搜查或扣押的人员或财产。搜查令可以针对以下任何一项签发：

(1) 犯罪证据；

(2) 违禁品、犯罪所得或其他非法占有的物品；

(3)设计用于、意图用于或已用于实施犯罪的财产；或

(4) 被逮捕的人或被非法拘禁的人。

(d) **取得搜查令。**

(1) 一般规定。在收到宣誓书或其他信息后，治安法官--或者，如果规则 41(b) 授权，记录在案州法院的法官--如果有合理根据搜查和扣押人员或财产，或安装和使用追踪设备，则必须签发搜查令。

(2) **在法官面前申请令状。**

(A) 基于宣誓书的搜查令。当联邦执法官员或政府律师提交宣誓书以支持搜查令时，法官可以要求宣誓人亲自出庭，并可以在宣誓后询问宣誓人以及宣誓人提供的任何证人。

(B) 基于宣誓证言的搜查令。如果根据情况合理，法官可以全部或部分免除书面宣誓书，并以宣誓证言为基础签发搜查令。

(C) 记录证言。为支持搜查令而采集的证言必须由法庭记录员或适当的记录设备记录，法官必须将笔录或记录连同任何宣誓书一并提交书记官存档。

(3) 通过电话或其他可靠电子方式申请搜查令。依照规则 4.1，治安法官可以基于通过电话或其他可靠电子方式传达的信息签发搜查令。

(e) **签发搜查令。**

(1) 一般规定。治安法官或记录在案州法院的法官必须将搜查令签发给获授权执行该令的官员。

(2) **令状的内容。**

搜查和扣押人员或财产的搜查令。除追踪设备搜查令外，搜查令必须指明要搜查的人员或财产，指明要扣押的任何人员或财产，并指定必须向其交回搜查令的治安法官。搜查令必须命令该官员：

(A)

(i) 在不超过14天的指定时间内执行该搜查令；

(ii) 在白天执行搜查令，除非法官因正当理由明确授权在其他时间执行；以及

(iii) 将令状返还给令状中指定的治安法官。

(B) 寻求电子存储信息的搜查令。规则 41(e)(2)(A) 下的搜查令可以授权扣押电子存储介质，或扣押或复制

electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(e)(2)(A) and (f)(1)(A) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(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.*

(A) *Noting the Time*. The officer executing the warrant must enter on it the exact date and time it was executed.

(B) *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. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied.

(C) *Receipt*. The officer executing the warrant must 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 leave a copy of the warrant and receipt at the place where the officer took the property. For a warrant to use remote access to search electronic storage media and seize or copy electronically stored information, the officer must make reasonable efforts to serve a copy of the warrant and receipt on the person whose property was searched or who possessed the information that was seized or copied. Service may be accomplished by any means, including electronic means, reasonably calculated to reach that person.

电子存储信息。除非另有规定，搜查令授权随后依照搜查令审查该介质或信息。规则41(e)(2)(A)和(f)(1)(A)中执行搜查令的时间指扣押或现场复制该介质或信息，而非任何随后的异地复制或审查。

(C)追踪设备搜查令。追踪设备搜查令必须指明要追踪的人员或财产，指定必须向其交回搜查令的治安法官，并规定可以使用该设备的合理期限。该期限自搜查令签发之日起不得超过 45 天。法院可以基于正当理由，批准一次或多次延长，每次延长的合理期限不得超过 45 天。搜查令必须命令该官员：

(i) 在不超过10天的指定时间内完成搜查令授权的任何安装；

(ii) 在白天进行搜查令授权的任何安装，除非法官因正当理由明确授权在其他时间安装；以及

(iii) 将令状交还令状中指定的法官。

(f) **执行和返还令状。**

(1) **搜查并扣押人员或财产的令状。**

(A) 注明时间。执行搜查令的官员必须在其上记入执行的确切日期和时间。

(B) 清单。执行令状时在场的官员必须编制并核实所扣押任何财产的清单。该官员必须在另一名官员以及财产被取走的人或从其场所取走财产的人在场的情况下进行。如果其中任何一人不在场，该官员必须至少在一名其他可信赖的人在场的情况下编制并核实清单。在涉及扣押电子存储介质或扣押或复制电子存储信息的案件中，清单可仅限于描述被扣押或复制的物理存储介质。该官员可保留被扣押或复制的电子存储信息的一份副本。

(C) 收据。执行令状的官员必须向财产被取走的人或从其场所取走财产的人提供令状副本和所取走财产的收据，或者在该官员取走财产的地点留下令状副本和收据。对于使用远程访问搜索电子存储介质并扣押或复制电子存储信息的令状，该官员必须作出合理努力，向财产被搜查的人或拥有被扣押或复制信息的人送达令状副本和收据。送达可通过任何方式完成，包括电子方式，只要合理计算能够到达该人。

(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).

(3) *Delayed Notice.* Upon the government's request, a magistrate judge—or if authorized by Rule 41(b), a judge of a state court of record—may delay any notice required by this rule if the delay is authorized by statute.

(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.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956, eff. July 8, 1956; Apr. 24, 1972, eff. Oct. 1, 1972; Mar. 18, 1974, eff. July 1, 1974; Apr. 26 and July 8, 1976, eff. Aug. 1, 1976; Pub. L. 95–78, §2(e), July 30, 1977, 91 Stat. 320, eff. Oct. 1, 1977; Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1989, eff. Dec. 1, 1989; May 1, 1990, eff. Dec. 1, 1990; Apr. 22, 1993, eff. Dec. 1, 1993; Pub. L. 107–56, title II, §219, Oct. 26, 2001, 115 Stat. 291; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 23, 2008, eff. Dec. 1, 2008;

(D) 返还。执行搜查令的官员必须及时将其连同清单副本一并返还给搜查令上指定的治安法官。该官员可以通过可靠的电子方式返还。法官必须根据请求，向财产被扣押的人或从其场所扣押财产的人以及搜查令申请人提供清单副本。

(2) **追踪设备令状。**

(A) 注明时间。执行追踪设备搜查令的官员必须在其上记入设备安装的确切日期和时间以及使用期间。

(B) 返还。在追踪设备使用结束后10日内，执行搜查令的官员必须将其返还给搜查令中指定的法官。该官员可以通过可靠的电子方式返还。

(C) 送达。在使用跟踪装置结束后的 10 天内，执行跟踪装置令状的官员必须向被跟踪的人或财产被跟踪的人送达令状副本。送达可通过以下方式完成：将副本交付给被跟踪的人或财产被跟踪的人；或将副本留在该人的住所或通常居住地，交给居住在该地点且年龄和判断力合适的个人，并将副本邮寄至该人最后已知地址。应政府请求，法官可按规则 41(f)(3) 的规定延迟通知。

(3) 延迟通知。应政府请求，治安法官--或者，如果规则 41(b) 授权，记录在案州法院的法官--如果延迟经法规授权，可以延迟本规则要求的任何通知。

(g) 返还财产动议。因财产被非法搜查和扣押或因财产被剥夺而受损害的人可以动议返还该财产。该动议必须在财产被扣押所在的地区提出。法院必须就裁决该动议所需的任何事实问题接受证据。如果法院准予该动议，必须将财产返还给动议人，但可以施加合理条件以保护对该财产的访问及其在后续程序中的使用。

(h) 排除证据动议。被告可以按照规则 12 的规定，在审判将进行的法院提出排除证据的动议。

(i) 将文件转交书记官。搜查令交回至的治安法官必须将交回书、清单和所有其他相关文件的副本附于搜查令，并必须将其交付财产被扣押地区的书记官。

(经 1948 年 12 月 27 日修订，1949 年 10 月 20 日生效；1956 年 4 月 9 日修订，1956 年 7 月 8 日生效；1972 年 4 月 24 日修订，1972 年 10 月 1 日生效；1974 年 3 月 18 日修订，1974 年 7 月 1 日生效；1976 年 4 月 26 日和 7 月 8 日修订，1976 年 8 月 1 日生效；Pub.L.95-78, 219,2001 年 10 月 26 日，115 Stat.291;2002 年 4 月 29 日修订，2002 年 12 月 1 日生效；2006 年 4 月 12 日修订，2006 年 12 月 1 日生效；2008 年 4 月 23 日修订，2008 年 12 月 1 日生效；)

Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016.)

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.

(As amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

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

2009年3月26日，2009年12月1日生效；2011年4月26日，2011年12月1日生效；2016年4月28日，2016年12月1日生效。）

规则 42. 刑事藐视法庭

(a) 通知后的处置。任何实施刑事藐视法庭行为的人，可以在通知起诉后因该藐视法庭行为受到处罚。

(1) 通知。法院必须在公开法庭上、在说明理由的命令中或在逮捕令中向该人发出通知。该通知必须：

(A) 说明审判的时间和地点；

(B)给予被告合理的时间准备辩护；以及

(C) 陈述构成被指控的刑事藐视法庭行为的基本事实，并如此描述该行为。

(2) 任命检察官。法院必须请求由政府律师起诉该藐视法庭行为，除非司法利益要求任命另一名律师。如果政府拒绝该请求，法院必须任命另一名律师起诉该藐视法庭行为。

(3) 审判和处置。因刑事藐视法庭行为被起诉的人，在联邦法律如此规定的任何案件中，有权获得陪审团审判，并必须按照规则 46 的规定被释放或羁押。如果刑事藐视法庭行为涉及对法官的不尊重或批评，该法官丧失主持藐视法庭审判或听证的资格，除非被告同意。一旦认定有罪或作出有罪裁决，法院必须判处刑罚。

(b) 简易处置。尽管本规则有任何其他规定，法院(治安法官除外)可以简易处罚在其面前实施刑事藐视法庭行为的人，如果法官看到或听到该藐视法庭行为并如此证明；治安法官可以按照 28 U.S.C.636(e) 的规定简易处罚某人。藐视法庭令必须叙述事实，由法官签署，并提交给书记官。

(1987年3月9日修订，1987年8月1日生效；2002年4月29日修订，2002年12月1日生效。)

第九编一般规定

规则 43. 被告的在场

(a) 何时要求。除非本规则、规则 5 或规则 10 另有规定，被告必须出席：

(1) 初次出庭、初次传讯和答辩；

(2) 审判的每个阶段，包括陪审团的组成和裁决的作出；以及

(3) 量刑。

(b) 何时不要求。在以下任何情况下，被告无需出席：

(1) 组织被告。被告是由出席的律师代表的组织。

(2) 轻罪。该罪行可处以罚金或不超过一年的监禁，或两者并罚，并且

with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur by video teleconferencing or 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.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(35), July 31, 1975, 89 Stat. 376, eff. Dec. 1, 1975; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2011, eff. Dec. 1, 2011.)

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.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 30, 1979, eff. Dec. 1, 1980; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002.)

经被告书面同意，法院允许通过视频会议或在被告缺席的情况下进行传讯、答辩、审判和量刑。

(3) 关于法律问题的会议或听证。该程序仅涉及关于法律问题的会议或听证。

(4) 判决更正。该程序涉及根据规则 35 或 18 U.S.C.3582(c) 更正或减轻刑罚。

(c) **放弃持续存在。**

(1) 一般规定。最初出席审判，或已认罪或作不抗辩答辩的被告，在以下情况下放弃出席权：

(A) 当被告在审判开始后自愿缺席时，无论法院是否告知被告在审判期间有留在法庭的义务；

(B) 在非死刑案件中，当被告在量刑期间自愿缺席时；或

(C) 当法院警告被告将因扰乱行为将其逐出法庭，但被告坚持实施足以证明将其逐出法庭为正当的行为时。

(2) 放弃的效力。如果被告放弃出庭的权利，审判可以在被告缺席的情况下进行至结束，包括作出裁决和量刑。

(经1974年4月22日修订，1975年12月1日生效；Pub.L.94-64,3(35),1975年7月31日，89 Stat.376,1975年12月1日生效；1987年3月9日，1987年8月1日生效；1995年4月27日，1995年12月1日生效；1998年4月24日，1998年12月1日生效；2002年4月29日，2002年12月1日生效；2011年4月26日，2011年12月1日生效。)

规则 44. 获得律师辩护的权利与律师的指定

(a) 获得指定律师的权利。无法获得律师的被告有权在从初次到庭到上诉的每个诉讼阶段获得指定律师为其代理，除非被告放弃此项权利。

(b) 指定程序。联邦法律和地方法院规则管辖实现获得律师权利的程序。

(c) **关于共同代理的调查。**

(1)**共同代理。**共同代理发生于以下情形：(A) 两名或多名被告已依据规则 8(b) 被共同起诉，或已依据规则 13 被合并审判；且

(B) 各被告由同一律师代理，或由在同一律师事务所执业的律师代理。

(2) 法院在共同代理案件中的职责。法院必须及时询问共同代理是否适当，并必须亲自告知每位被告获得有效律师协助的权利，包括分别代理。除非有正当理由相信不太可能产生利益冲突，法院必须采取适当措施保护每位被告获得律师的权利。

(1966年2月28日修正，1966年7月1日生效；1972年4月24日修正，1972年10月1日生效；1979年4月30日修正，1980年12月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效。)

Rule 45. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 45(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 45(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The ''next day'' is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* ''Legal holiday'' means:

(A) the day 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, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

规则 45. 期间的计算与延长

(a) 期间的计算。以下规则适用于计算本规则、任何地方规则或法院命令中规定的任何期间，或任何未规定期间计算方法的法规中规定的任何期间。

(1) 以日或更长时间单位规定的期间。当期间以日或更长时间单位规定时：

(A) 不计入触发该期间的事件发生之日；(B) 计算每一天，包括中间的星期六、星期日和法定节假日；以及

(C) 计入期间的最后一日，但若最后一日为星期六、星期日或法定节假日，则该期间持续计算至下一个非星期六、星期日或法定节假日之日的结束。

(2) 以小时规定的期限。当期限以小时规定时：

(A) 自触发该期间的事件发生时立即开始计算；

(B) 计算每一小时，包括中间的星期六、星期日和法定节假日期间的小时；以及

(C) 若该期间将在星期六、星期日或法定节假日结束，则该期间持续计算至下一个非星期六、星期日或法定节假日之日的同一时刻。

(3) 书记官办公室无法进入。除法院另有命令外，如果书记官办公室无法进入：

(A) 在规则 45(a)(1) 规定的提交最后一日，则提交时间延长至第一个可进入且非星期六、星期日或法定假日的日期；或

(B) 在规则 45(a)(2) 规定的提交最后一小时内，则提交时间延长至第一个可进入且非星期六、星期日或法定假日的同一时刻。

(4) "最后一日"的定义。除法规、地方规则或法院命令另有规定外，最后一日结束于：

(A) 对于电子提交，以法院所在时区的午夜为准；以及

(B)在书记官办公室预定关闭时，通过其他方式提交。

(5) "次日"的定义。"次日"的确定方式是：当期间以某一事件之后计算时，继续向前数；当期间以某一事件之前计算时，向后倒数。

(6) **"法定假日"的定义。**"法定假日"指：

(A) 法律为庆祝元旦、马丁·路德·金诞辰、华盛顿诞辰、阵亡将士纪念日、独立日、劳动节、哥伦布日、退伍军人节、感恩节或圣诞节而留出的日期；

(B)总统或国会宣布为节假日的任何日期；以及

(C) 对于在某一事件之后计算的期间，地区法院所在州宣布为节假日的任何其他日期。

(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.

(c) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a specified time after being served and service is made under Federal Rule of Civil Procedure 5(b)(2)(C) (mailing), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under subdivision (a).

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

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:

(b) **延长期限。**

(1) 一般规定。当某一行为必须在或可以在特定期间内完成时，法院可自行延长期限，或基于正当理由，根据当事人在下列时间提出的动议延长期限：

(A) 在原规定或先前延长的期限届满之前；或

(B) 在期限届满之后，如果当事人因可原谅的疏忽而未采取行动。

(2) 例外。除该规则另有规定外，法院不得延长采取规则 35 项下任何行为的期限。

(c) 特定送达方式后的附加时间。每当当事人必须在或可以在被送达后的特定时间内行事，且送达系依据《联邦民事诉讼规则》5(b)(2)(C)(邮寄)、(D)(留交书记官)或(F)(经同意的其他方式)作出时，在依(a)款本应届满的期间之后增加3日。

（经1966年2月28日修订，1966年7月1日生效；1967年12月4日修订，1968年7月1日生效；1971年3月1日修订，1971年7月1日生效；1982年4月28日修订，1982年8月1日生效；1985年4月29日修订，1985年8月1日生效；1987年3月9日修订，1987年8月1日生效；2002年4月29日修订，2002年12月1日生效；2005年4月25日修订，2005年12月1日生效；2007年4月30日修订，2007年12月1日生效；2008年4月23日修订，2008年12月1日生效；2009年3月26日修订，2009年12月1日生效；2016年4月28日修订，2016年12月1日生效。）

规则 46. 释放；监督拘留

(a) 审判前。18 U.S.C.3142 和 3144 的规定管辖审前释放。

(b) 审判期间。审判前获释的人在审判期间按相同条件继续处于释放状态。但法院可以命令不同的条件，或在为确保该人于审判期间到场或确保该人的行为不会妨碍审判有序、迅速进行所必要时，终止释放。

(c) 待量刑或上诉期间。18 U.S.C.3143 的规定管辖待量刑或上诉期间的释放。证明被告不会逃跑或不会对任何其他人或社区构成危险的责任由被告承担。

(d) 待违反缓刑或监督释放听证期间。规则 32.1(a)(6) 管辖待违反缓刑或监督释放听证期间的释放。

(e) 保证人。除非任何保证人看来合格，法院不得批准保证书。每一保证人，除依法批准的公司保证人外，必须通过宣誓书证明其资产充足。法院可以要求宣誓书描述以下内容：

(1) 担保人拟用作担保的财产；

(2) 该财产上的任何产权负担；(3) 保证人已发行的任何其他未解除保证金和保释承诺的数量和金额；以及

(4) 保证人的任何其他责任。

(f) **保释金没收。**

(1) 宣告。如果违反保证金的条件，法院必须宣告保释金没收。

(2) 撤销。法院可以在其施加的任何条件下全部或部分撤销保释金没收，如果：

(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.

(As amended Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Pub. L. 98–473, title II, §209(d), Oct. 12, 1984, 98 Stat. 1987; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 30,

(A) 保证人后来将以保证人出庭保证金获释的人交回羁押；或

(B) 看来正义并不要求没收保释金--

程序。

(3) 执行。

(A) 缺席判决和执行。如果法院不撤销保释金没收，则必须根据政府的动议作出缺席判决。

(B) 管辖权和送达。通过签订保证书，每一保证人服从地区法院的管辖权，并不可撤销地指定地区书记官为其代理人，以接收影响其责任的任何文件的送达。

(C) 强制执行动议。法院可以根据政府的动议，无需独立诉讼而强制执行保证人的责任。政府必须将任何动议及法院规定的通知送达地区书记官。如如此送达，书记官必须迅速将副本邮寄至保证人最后已知地址。

(4) 减免。在根据规则 46(f)(3) 作出判决后，法院可以按照规则 46(f)(2) 规定的相同条件全部或部分减免该判决。

(g) 免责。当保证书条件已满足或法院已撤销或免除没收时，法院必须免除保证人的责任并释放任何保释金。法院必须免除存入保证书金额现金或及时将被告交付羁押的保证人的责任。

(h) **羁押候审监督**

(1) 一般规定。为消除不必要的羁押，法院必须监督本地区内任何待审被告和任何作为重要证人被羁押的人的羁押情况。

(2) 报告。政府律师必须每两周向法院报告一次，列出在等待起诉书、提审或审判期间被羁押超过 10 天的每位重要证人。对于报告中列出的每位重要证人，政府律师必须说明为何该证人不应在根据规则 15(a) 进行或不进行庭外取证的情况下被释放。

(i) 财产没收。如果以财产价值金额的罚金作为对被指控犯罪的适当刑罚，法院可以根据 18 U.S.C.3142(c)(1)(B)(xi) 财产，以处置被指控的犯罪。

(j) **出具陈述。**

(1) 一般规定。规则 26.2(a) -(d) 和(f) 适用于 18 U.S.C.3142 下的羁押听证，除非法院基于正当理由另有裁定。

(2) 未出示陈述的制裁性措施。如果当事人不遵守规则 26.2 关于出示证人陈述的命令，法院不得在羁押听证中考虑该证人的证言。

(1956年4月9日修正，1956年7月8日生效；1966年2月28日修正，1966年7月1日生效；1972年4月24日修正，1972年10月1日生效；Pub.L.98-473，第二编，209(d),1984年10月12日，98 Stat.1987;1987年3月9日修正，1987年8月1日生效；4月30日，

1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Pub. L. 103–322, title XXXIII, §330003(h), Sept. 13, 1994, 108 Stat. 2141; Apr. 29, 2002, eff. Dec. 1, 2002.)

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 7 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.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

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.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

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.

1991年，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；Pub.L.103-322，第三十三编，330003(h),1994年9月13日，108 Stat.2141;2002年4月29日修正，2002年12月1日生效。）

规则 47. 动议及支持性宣誓书

(a) 一般规定。向法院申请命令的当事人必须通过动议提出。

(b) 动议的形式和内容。动议--除在审判或听证期间提出外--必须以书面形式提出，除非法院允许当事人以其他方式提出动议。动议必须说明其依据的理由以及寻求的救济或命令。动议可以由宣誓书支持。

(c) 动议的时间。当事人必须在听证日期前至少 7 日送达书面动议--法院可以单方听证的动议除外--以及任何听证通知，除非规则或法院命令规定了不同期间。基于正当理由，法院可以根据单方申请规定不同期间。

(d) 支持动议的宣誓书。提出动议的当事人必须随动议送达任何支持性宣誓书。回应方必须在听证前至少一日送达任何反对宣誓书，除非法院允许较晚送达。

(2002年4月29日修正，2002年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

规则 48. 撤诉

(a) 由政府提出。政府经法院许可，可以撤销起诉书、起诉信息或控告。政府不得在审判期间未经被告同意而撤销起诉。

(b) 由法院提出。如果出现不必要的迟延，法院可以撤销起诉书、起诉信息或控告，在：(1) 向大陪审团提出指控；(2) 对被告提交起诉信息；或(3) 将被告交付审判。(2002年4月29日修正，2002年12月1日生效。）

规则 49. 送达和提交文件

(a) 何时要求。当事人必须向其他每一方送达任何书面动议(拟单方听证的动议除外)、书面通知、上诉记录指定或类似文件。

(b) 如何作出。送达必须按民事诉讼规定的方式作出。当本规则或法院命令要求或允许向由律师代表的当事人送达时，送达必须向律师而非当事人作出，除非法院另有命令。

(c) 法院命令的通知。当法院对任何提审后动议作出命令时，书记官必须按民事诉讼规定的方式提供通知。除《联邦上诉程序规则》4(b) 另有规定外，书记官未发出通知不影响上诉时间，也不免除--或授权法院免除--当事人未在允许时间内上诉的责任。

(d) 提交。当事人必须向法院提交当事人被要求送达的任何文件的副本。文件必须按民事诉讼规定的方式提交。

(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.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2011, eff. Dec. 1, 2011.)

Rule 49.1. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only;

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials;

(4) the last four digits of the financial-account number; and

(5) the city and state of the home address.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 49.1(d);

(6) a pro se filing in an action brought under 28 U.S.C. §§2241, 2254, or 2255;

(7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;

(8) an arrest or search warrant; and

(9) a charging document and an affidavit filed in support of any charging document.

(c) Immigration Cases. A filing in an action brought under 28 U.S.C. §2241 that relates to the petitioner's immigration rights is governed by Federal Rule of Civil Procedure 5.2.

(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) 电子送达和提交。法院可以通过地方规则允许以电子方式提交、签署或核实文件，但须符合美国司法会议确立的任何技术标准。地方规则只有在允许合理例外的情况下才可以要求电子提交。依照地方规则以电子方式提交的文件在本规则下即为书面或书面的。

(1966年2月28日修正，1966年7月1日生效；1967年12月4日修正，1968年7月1日生效；1985年4月29日修正，1985年8月1日生效；1987年3月9日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；1995年4月27日修正，1995年12月1日生效；2002年4月29日修正，2002年12月1日生效；2011年4月26日修正，2011年12月1日生效。)

规则 49.1. 向法院提交文件中的隐私保护

(a) 经遮盖处理的提交文件。除非法院另有命令，在向法院提交的电子或纸质文件中，若包含个人的社会安全号码、纳税人识别号码或出生日期、已知为未成年人的个人姓名、金融账户号码或个人的家庭住址，提交该文件的当事人或非当事人仅可包含：

(1) 社会安全号码和纳税人识别号码的最后四位数字；

(2) 个人出生年份；(3) 未成年人的姓名首字母；

(4) 金融账号的最后四位数字；以及

(5) 家庭住址所在的城市和州。

(b) 遮盖要求的豁免。遮盖要求不适用于以下情形：

(1) 在没收程序中指明据称应予没收的财产的金融账户号码或不动产地址；

(2) 行政或机构程序的记录；

(3) 州法院程序的官方记录；(4) 法院或法庭的记录，如果该记录在最初提交时不受删减要求的约束；

(5) 受规则 49.1(d) 约束的提交文件；(6) 依据 28 U.S.C.2241、2254 或 2255 提起的诉讼中的自行提交文件；

(7) 与刑事事项或调查相关、且在刑事指控提交之前准备或未作为任何已立案刑事案件的一部分提交的法院文件；

(8) 逮捕令或搜查令；以及

(9) 指控文件以及为支持任何指控文件而提交的宣誓书。

(c) **移民案件。**依据28
与请愿人移民权利相关的 28 U.S.C.2241 受《联邦民事诉讼规则》5.2 管辖。

(d) 密封提交的文件。法院可命令文件不经遮盖即密封提交。法院此后可解除该文件的密封，或命令提交该文件的人向公开记录提交经遮盖处理的版本。

(e) 保护令。基于正当理由，法院可在案件中通过命令：

(1) 要求对额外信息进行删减；或

(2)限制或禁止非当事人对已提交法院的文件进行远程电子访问。

(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers. A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

(As added Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 50. Prompt Disposition

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

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Mar. 18, 1974, eff. July 1, 1974; Apr. 26 and July 8, 1976, eff. Aug. 1, 1976; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002.)

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.

(As amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

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.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

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.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

(f) 附加提交未涂黑密封文件的选择。提交涂黑文件的人也可以密封提交未涂黑的副本。法院必须将未涂黑的副本作为记录的一部分予以保留。

(g) 提交参考清单的选择。包含涂黑信息的文件可以与参考清单一并提交，该清单标明每一项涂黑信息，并指定一个与所列每一项唯一对应的适当标识符。该清单必须密封提交，并可以依法修正。案件中任何对所列标识符的引用均应解释为指代相应的信息项。

(h) 标识符保护的放弃。某人通过在不涂黑且不密封的情况下提交其自身信息，即放弃规则49.1(a) 对该人自身信息的保护。(2007年4月30日增补，2007年12月1日生效。)

规则 50. 迅速处置

在切实可行的范围内，必须优先安排刑事诉讼的日程。

(1972 年 4 月 24 日修订，1972 年 10 月 1 日生效；1974 年 3 月 18 日修订，1974 年 7 月 1 日生效；1976 年 4 月 26 日和 7 月 8 日修订，1976 年 8 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 51. 保留主张的错误

(a) 无需异议。对法院裁定或命令无需提出异议。

(b) 保留错误主张。当事人可在法院作出或寻求裁断或命令时，向法院告知其希望法院采取的行动，或其对法院行动的异议及异议理由，从而保留错误主张。如果当事人没有对裁断或命令提出异议的机会，未提出异议不会在之后对该当事人产生不利影响。关于证据采纳或排除的裁断或命令，适用《联邦证据规则》103。

(1987年3月9日修订，1987年8月1日生效；2002年4月29日修订，2002年12月1日生效。)

规则 52. 无害错误与明显错误

(a) 无害错误。任何不影响实质权利的错误、瑕疵、不规范或偏差，均必须不予理会。

(b) 明显错误。影响实质权利的明显错误，即使未被提请法院注意，也可以予以考虑。

(2002年4月29日修订，2002年12月1日生效。)

规则 53. 禁止在法庭内拍照和广播

除制定法或本规则另有规定外，法院不得允许在司法程序进行期间在法庭内拍照，或从法庭转播司法程序。

(2002年4月29日修订，2002年12月1日生效。)

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

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002.)

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.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 25, 1988, eff. Aug. 1, 1988; Apr. 29, 2002, eff. Dec. 1, 2002.)

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.

[1] All of Rule 54 was moved to Rule 1.

规则 54. [已转移] 1

规则 55. 记录

地区法院书记官必须按照美国法院行政办公室主任规定的格式保存刑事诉讼记录。书记官必须在记录中登记每一项法院命令或判决以及登记日期。

(1948 年 12 月 27 日修订，1949 年 10 月 20 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1972 年 4 月 24 日修订，1972 年 10 月 1 日生效；1983 年 4 月 28 日修订，1983 年 8 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 56. 法院开放时间

(a) 一般规定。地区法院被视为始终开放，以便进行任何提交、签发和退回传票、提出动议或作出命令。

(b) 办公时间。书记官办公室--由书记官或副手值守--必须在除星期六、星期日和法定假日以外的所有日子的工作时间内开放。

(c) 特殊时间。法院可以通过地方规则或命令规定，其书记官办公室在星期六或除法律为庆祝元旦、马丁·路德·金诞辰、华盛顿诞辰、阵亡将士纪念日、独立日、劳动节、哥伦布日、退伍军人节、感恩节和圣诞节而设定的假日以外的法定假日，于指定时间开放。

(1948 年 12 月 27 日修订，1949 年 10 月 20 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1967 年 12 月 4 日修订，1968 年 7 月 1 日生效；1971 年 3 月 1 日修订，1971 年 7 月 1 日生效；1988 年 4 月 25 日修订，1988 年 8 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 57. 地区法院规则

(a) **一般规定。**

(1) 通过地方规则。各地区法院经其地区法官多数表决，可以在给予适当的公告和评论机会后，制定和修改规范其程序的规则。地方规则必须与根据 28 U.S.C.2072 通过的联邦法规和规则相一致--但不得重复--并且必须符合美国司法会议规定的任何统一编号系统。

(2) 限制执行。规定形式要求的地方规则，不得以因当事人无意中未遵守该要求而导致其丧失权利的方式执行。

(b) 无控制性法律时的程序。法官可以以符合联邦法律、本规则和该地区地方规则的任何方式规范程序。对于不遵守联邦法律、联邦规则或地方地区规则中未规定的任何要求，不得施加制裁性措施或其他不利后果，除非被指控的违反者在违反之前已获得该要求的实际通知。

1 规则54的全部内容已移至规则1。

(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.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Dec. 4, 1967, eff. July 1, 1968; Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 29, 2002, eff. Dec. 1, 2002.)

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;

(c) 生效日期和通知。根据本规则通过的地方规则自地区法院指定的日期起生效，并持续有效，除非经地区法院修改或经该地区所在巡回区的司法委员会废止。地方规则及其修正案在颁布时，必须向司法委员会和美国法院行政办公室提供副本，并必须向公众提供。

(1948 年 12 月 27 日修订，1949 年 10 月 20 日生效；1967 年 12 月 4 日修订，1968 年 7 月 1 日生效；1985 年 4 月 29 日修订，1985 年 8 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；1995 年 4 月 27 日修订，1995 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效。)

规则 58. 轻微罪行及其他轻罪

(a) 范围。

(1) 一般规定。本规则适用于轻微罪行和其他轻罪案件，以及在由治安法官审理的案件中向地区法官提出的上诉，除非本规则另有规定。

(2) 不判处监禁的轻微罪行案件。在涉及轻微罪行且不会判处监禁刑罚的案件中，法院可以遵循本规则中与本规则不抵触且法院认为适当的任何规定。

(3) 定义。本规则中使用的"不会判处监禁刑罚的轻微罪行"一词，是指法院认定在定罪的情况下不会判处监禁刑罚的轻微罪行。

(b) **审前程序。**

(1) 指控文件。轻罪的审判可以依据起诉书、检察官起诉书或控告书进行。轻微罪行的审判还可以依据传票或违规通知进行。

(2) 初次到庭。在被告因轻微罪行或其他轻罪指控初次到庭时，治安法官必须告知被告以下事项：

(A) 指控，以及最低和最高刑罚，包括监禁、罚金、18 U.S.C.3556 规定的赔偿；

(B) 保留律师的权利；

(C) 如果被告无力聘请律师，有权请求指定律师--除非该指控是无需指定律师的轻微罪行；

(D) 被告不作陈述的权利，以及所作的任何陈述可能被用来对其不利；

(E) 由地区法官进行审判、判决和量刑的权利--除非：

(i) 该指控是轻微罪行；或(ii) 被告同意由治安法官进行审判、判决和量刑；

(F) the right to a jury trial before either a magistrate judge or a district judge—unless the charge is a petty offense;

(G) any right to a preliminary hearing under Rule 5.1, and the general circumstances, if any, under which the defendant may secure pretrial release; and

(H) that a defendant who is not a United States citizen may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested—but that even without the defendant's request, a treaty or other international agreement may require consular notification.

(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.

(F) 由治安法官或地区法官进行陪审团审判的权利--除非该指控是轻微罪行；

(G) 依据规则 5.1 进行预审的任何权利，以及被告可能获得审前释放的一般情形(如有)；以及

(H) 非美国公民的被告可以请求政府律师或联邦执法官员将被告已被逮捕一事通知被告国籍国的领事官员--但即使被告未提出请求，条约或其他国际协议也可能要求进行领事通知。

(3) 提审。

(A) 在治安法官面前的答辩。治安法官可以在轻微罪行案件中接受被告的答辩。在其他所有轻罪案件中，治安法官只有在被告以书面形式或在记录上同意由治安法官审理并明确放弃由地区法官审理的情况下，才可以接受答辩。被告可以作无罪、有罪或(经治安法官同意)不抗辩的答辩。

(B) 未予同意。除轻微罪行案件外，治安法官必须命令不同意由治安法官审理的被告到地区法官面前进行进一步程序。

(c) 某些轻微罪行案件的附加程序。以下程序也适用于不会判处监禁刑罚的轻微罪行案件：

(1) 有罪或不抗辩答辩。除非法院确信被告理解指控的性质和可能判处的最高刑罚，否则不得接受有罪或不抗辩答辩。

(2) **放弃审判地。**

(A) 放弃审判地的条件。如果被告在起诉书、检察官起诉书、控告书、传票或违规通知待决的地区以外的地区被逮捕、被羁押或在场，被告可以书面声明希望作有罪或不抗辩答辩；放弃在程序待决地区的审判地；并同意法院在被告被逮捕、被羁押或所在的地区处理该案件。

(B) 放弃审判地的效力。除非被告随后作无罪答辩，否则起诉将在被告被逮捕、被羁押或所在的地区进行。地区书记官必须通知原地区的书记官被告放弃审判地。被告希望作有罪或不抗辩答辩的声明不得作为对其不利的证据采纳。

(3) 量刑。法院必须给予被告就减轻情节陈述意见的机会，然后立即进行量刑。但法院可以推迟量刑，以便缓刑部门进行调查或允许任何一方提交补充信息。

(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 14 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 14 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

(4) 上诉权通知。在对无罪答辩审理的案件量刑后，法院必须告知被告对定罪的上诉权以及对刑罚的任何上诉权。如果被告系基于有罪或不抗辩答辩被定罪，法院必须告知被告对刑罚的任何上诉权。

(d) **支付固定金额以替代出庭。**

(1) 一般规定。如果法院有关于没收保证金的当地规则，法院可以接受固定金额付款以替代被告出庭并终结案件，但该固定金额不得超过法律允许的最高罚款。

(2) 出庭通知。如果被告未支付固定金额、未请求听证或未响应传票或违规通知而出庭，地区书记官或治安法官可以签发通知，要求被告在确定日期到法院出庭。该通知可以给予被告额外机会支付固定金额以替代出庭。地区书记官必须通过将副本邮寄至被告最后已知地址的方式向被告送达该通知。

(3) 传票或逮捕令。根据起诉书，或根据规则58(b)(1)中规定的其他指控文件之一证明存在合理根据相信已发生犯罪且被告实施了该犯罪，法院可签发逮捕令，或者，如果政府律师未请求签发逮捕令，则可签发传票。合理根据的证明必须在宣誓下或在不实陈述受伪证罪处罚的条件下作出，但宣誓陈述人无需出庭。如果被告收到传票后未到庭，法院可即决签发逮捕被告的逮捕令。

(e) 记录程序。法院必须使用法庭记录员或适当的记录设备记录本规则下的任何程序。

(f) 重新审判。规则 33 适用于重新审判的动议。**(g) 上诉。**

(1) 对地区法官命令或判决的上诉。《联邦上诉程序规则》适用于对地区法官命令或定罪判决或量刑判决的上诉。

(2) **对治安法官命令或判决的上诉**

(A) 中间上诉。任何一方均可在治安法官命令登记后 14 日内向地区法官提出上诉，前提是地区法官的类似命令本可被上诉。提出上诉的一方必须向书记官提交通知，指明被上诉的命令，并必须向对方当事人送达副本。

(B) 对定罪或量刑的上诉。被告可以在治安法官的定罪判决或量刑判决登记后 14 天内向地区法官提出上诉。要提出上诉，被告必须向书记官提交指明被上诉判决的通知，并必须向政府律师送达副本。

(C) 记录。记录由案件中的原始文件和证据；程序的任何笔录、磁带或其他录音；以及案卷条目的核证副本组成。为上诉目的，

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.

(As added May 1, 1990, eff. Dec. 1, 1990; amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 12, 2006, eff. Dec. 1, 2006; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 25, 2014, eff. Dec. 1, 2014.)

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 14 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 14 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.

必须向通过宣誓书证明无力支付或提供记录担保的被告提供程序记录副本。美国法院行政办公室主任必须支付这些副本的费用。

(D) 上诉范围。被告无权要求由地区法官进行重新审判。上诉范围与对地区法官作出的判决向上诉法院提起上诉的范围相同。

(3) 执行中止与上诉期间的释放。规则 38 适用于定罪判决或刑罚的中止执行。法院可根据有关从地区法院向上诉法院上诉期间释放的法律，在上诉期间释放被告。

（1990年5月1日增补，1990年12月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；1997年4月11日修正，1997年12月1日生效；2002年4月29日修正，2002年12月1日生效；2006年4月12日修正，2006年12月1日生效；2009年3月26日修正，2009年12月1日生效；2014年4月25日修正，2014年12月1日生效。）

规则 59. 治安法官面前的事项

(a) 非处分性事项。地区法官可将任何不处分指控或抗辩的事项交由治安法官裁定。治安法官必须迅速进行所需程序，并在适当时在记录中作出口头或书面命令，说明裁定。当事人可在收到书面命令副本送达后或口头命令在记录中作出后14日内，或在法院设定的其他时间，送达并提交对该命令的异议。地区法官必须考虑及时提出的异议，并修改或撤销命令中违反法律或明显错误的任何部分。未依照本规则提出异议的，视为放弃当事人复审的权利。

(b) **处分性事项。**

(1) 交由治安法官提出建议。地区法官可将被告关于驳回或撤销起诉书或大陪审团起诉书的动议、关于排除证据的动议，或任何可能处分指控或抗辩的事项，交由治安法官提出建议。治安法官必须迅速进行所需程序。任何证据程序以及治安法官认为必要的任何其他程序都必须制作记录。治安法官必须在记录中作出处理该事项的建议，包括任何拟议的事实认定。书记官必须立即向所有当事人送达副本。

(2) 对认定和建议的异议。在收到建议处理意见副本送达后14日内，或在法院设定的其他时间，当事人可送达并提交对拟议认定和建议的具体书面异议。除非地区法官另有指示，提出异议的当事人必须迅速安排转录记录，或当事人同意或治安法官认为足够的记录部分。未依照本规则提出异议的，视为放弃当事人复审的权利。

(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.

(As added Apr. 25, 2005, eff. Dec. 1, 2005; amended Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 60. Victim's Rights

(a) In General.

(1) *Notice of a Proceeding.* The government must use its best efforts to give the victim reasonable, accurate, and timely notice of any public court proceeding involving the crime.

(2) *Attending the Proceeding.* The court must not exclude a victim from a public court proceeding involving the crime, unless the court determines by clear and convincing evidence that the victim's testimony would be materially altered if the victim heard other testimony at that proceeding. In determining whether to exclude a victim, the court must make every effort to permit the fullest attendance possible by the victim and must consider reasonable alternatives to exclusion. The reasons for any exclusion must be clearly stated on the record.

(3) *Right to Be Heard on Release, a Plea, or Sentencing.* The court must permit a victim to be reasonably heard at any public proceeding in the district court concerning release, plea, or sentencing involving the crime.

(b) Enforcement and Limitations.

(1) *Time for Deciding a Motion.* The court must promptly decide any motion asserting a victim's rights described in these rules.

(2) *Who May Assert the Rights.* A victim's rights described in these rules may be asserted by the victim, the victim's lawful representative, the attorney for the government, or any other person as authorized by 18 U.S.C. §3771(d) and (e).[1]

(3) *Multiple Victims.* If the court finds that the number of victims makes it impracticable to accord all of them their rights described in these rules, the court must fashion a reasonable procedure that gives effect to these rights without unduly complicating or prolonging the proceedings.

(4) *Where Rights May Be Asserted.* A victim's rights described in these rules must be asserted in the district where a defendant is being prosecuted for the crime.

(5) *Limitations on Relief.* A victim may move to reopen a plea or sentence only if:

(A) the victim asked to be heard before or during the proceeding at issue, and the request was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days after the denial, and the writ is granted; and

(C) in the case of plea, the accused has not pleaded to the highest offense charged.

[1] 18 U.S.C. §3771(e) was redesignated 18 U.S.C. §3771(e)(2) by Pub. L. 114–22, title I, §113(a)(3)(A), May 29, 2015, 129 Stat. 240.

(3) 对建议的重新审查。地区法官必须对治安法官建议的任何异议进行重新审查。地区法官可以接受、拒绝或修改该建议，接收进一步证据，或将事项连同指示发回治安法官。(2005年4月25日增补，2005年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 60. 被害人权利

(a) **一般规定。**

(1) 程序通知。政府必须尽最大努力就涉及该犯罪的任何公开法庭程序向被害人提供合理、准确和及时的通知。

(2) 出席诉讼程序。法院不得将被害人排除在涉及该犯罪的公开法院诉讼程序之外，除非法院根据清晰且令人信服的证据认定，如果被害人在该程序中听取了其他证言，其证言将发生实质性改变。在决定是否排除被害人时，法院必须尽一切努力允许被害人尽可能充分地出席，并必须考虑排除之外的合理替代方案。任何排除的理由必须明确记录在案。

(3) 就释放、认罪或量刑获得陈述意见的权利。法院必须允许被害人在地区法院涉及该犯罪的任何关于释放、认罪或量刑的公开程序中合理地陈述意见。

(b) **执行与限制。**

(1) 裁决动议的时间。法院必须迅速裁决任何主张本规则所述被害人权利的动议。

(2) 何人可主张权利。本规则所述被害人权利可由被害人、被害人的合法代表、政府律师或18 U.S.C.3771(d)和(e)授权的任何其他人主张。[1]

(3) 多名被害人。如果法院认定被害人人数众多致使无法切实给予所有被害人本规则所述的权利，法院必须制定合理的程序，在不适当复杂化或延长程序的情况下使这些权利得以实现。

(4) 主张权利的地点。本规则所述被害人权利必须在被告因该犯罪受到起诉的地区主张。

(5) 救济限制。被害人仅可在以下情况下动议重新开启认罪或量刑：

(A) 被害人在相关程序进行之前或进行期间请求陈述意见，而该请求被驳回；

(B) 被害人在该驳回后10日内向上诉法院申请职务执行令状，且该令状获准；以及

(C) 在认罪程序的情形下，被告尚未对所指控的最高罪行作出认罪答辩。

1 18 U.S.C.113(a)(3)(A), May 29, 2015, 129 Stat.240 重新指定为 18 U.S.C.3771(e)(2)。

(6) ***No New Trial.*** A failure to afford a victim any right described in these rules is not grounds for a new trial.

(As added Apr. 23, 2008, eff. Dec. 1, 2008.)

Rule 61. Title

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

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2008, eff. Dec. 1. 2008.)

○

(6) 不得重新审判。未能给予被害人本规则所述的任何权利，不构成重新审判的理由。(2008年4月23日增补，2008年12月1日生效。)

规则 61. 标题

本规则可称为并可援引为《联邦刑事诉讼规则》。

(2002年4月29日修正，2002年12月1日生效；2008年4月23日修正，2008年12月1日生效。)

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