

## COMMENCING CRIMINAL ACTIONS SELECTED RULES

### FEDERAL RULES OF CRIMINAL PROCEDURE

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#### 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.

#### 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<sup>[1]</sup>, it must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

#### Rule 4. Arrest Warrant or Summons on a Complaint

(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 a

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<sup>1</sup> Fed. R. Cr. P. 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means).

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.

(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.

(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.

(C) A summons is served on an organization 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. A copy must also be mailed to the organization's last known address within the district or to its principal place of business elsewhere in the United States.

(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.

## **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.

(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) An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in 50 U.S.C. § 401(a), 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.
- (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.
- (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.

## **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.

(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.

### **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.

### **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:

- (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 Conferencing.* Video conferencing may be used to arraign a defendant if the defendant consents.

### **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;
    - (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); and
    - (N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.
  - (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.
    - (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 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.

### **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.

### **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 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.

(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.

## **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.

## **Rule 41. Search and Seizure**

### **(a) Scope and Definitions.**

- (1) *Scope*. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.
- (2) *Definitions*. The following definitions apply under this rule:
  - (A) “Property” includes documents, books, papers, any other tangible objects, and information.
  - (B) “Daytime” means the hours between 6:00 a.m. and 10:00 p.m. according to local time.
  - (C) “Federal law enforcement officer” means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.
  - (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) Authority to Issue a Warrant.** At the request of a federal law enforcement officer or an attorney for the government:

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