EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94–64, effective Dec. 1, 1975, see section 2 of Pub. L. 94–64, set out as a note under rule 4 of these rules.

SUPERSEDURE

Provision of subd. (d) of this rule that witness shall be tendered the fee for 1 day's attendance and mileage allowed by law as superseded by section 1825 of Title 28, Judiciary and Judicial Procedure, see such section and Reviser's Note thereunder.

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.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1966

This new rule establishes a basis for pretrial conferences with counsel for the parties in criminal cases within the discretion of the court. Pretrial conferences are now being utilized to some extent even in the absence of a rule. See, generally, Brewster, Criminal Pre-Trials—Useful Techniques, 29 F.R.D. 442 (1962); Estes, Pre-Trial Conferences in Criminal Cases, 23 F.R.D. 560 (1959); Kaufman, Pre-Trial in Criminal Cases, 23 F.R.D. 551 (1959); Kaufman, Pre-Trial in Criminal Cases, 42 J.Am.Jud.Soc. 150 (1959); Kaufman, The Appalachian Trial: Further Observations on Pre-Trial in Criminal Cases, 44 J.Am.Jud.Soc. 53 (1960); West, Criminal Pre-Trials—Useful Techniques, 29 F.R.D. 436 (1962); Handbook of Recommended Procedures for the Trial of Protracted Cases, 25 F.R.D. 399–403, 468–470 (1960). Cf. Mo.Sup.Ct. Rule 25.09; Rules Governing the N.J. Courts, §3:5–3.

The rule is cast in broad language so as to accommodate all types of pretrial conferences. As the third sentence suggests, in some cases it may be desirable or necessary to have the defendant present. See Committee on Pretrial Procedure of the Judicial Conference of the United States, Recommended Procedures in Criminal Pretrials, 37 F.R.D. 95 (1965).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES—2002 AMENDMENT

The language of Rule 17.1 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

Current Rule 17.1 prohibits the court from holding a pretrial conference where the defendant is not represented by counsel. It is unclear whether this would bar such a conference when the defendant invokes the constitutional right to self-representation. *See Faretta v. California*, 422 U.S. 806 (1975). The amended version makes clear that a pretrial conference may be held in these circumstances. Moreover, the Committee believed that pretrial conferences might be particularly useful in those cases where the defendant is proceeding pro se.

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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. The Constitution of the United States, Article III. Section 2, Paragraph 3, provides:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law * * *

28 U.S.C. former §114 (now §§1393, 1441) provides:

All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district.

The word ''prosecutions,'' as used in this statute, does not include the finding and return of an indictment. The prevailing practice of impaneling a grand jury for the entire district at a session in some division and of distributing the indictments among the divisions in which the offenses were committed is deemed proper and legal, *Salinger v. Loisel*, 265 U.S. 224, 237. The court stated that this practice is ''attended with real advantages.'' The rule is a restatement of existing law and is intended to sanction the continuance of this practice. For this reason, the rule requires that only the trial be held in the division in which the offense was committed and permits other proceedings to be had elsewhere in the same district.

2. Within the framework of the foregoing constitutional provisions and the provisions of the general statute, 28 U.S.C. 114 [now 1393, 1441], *supra*, numerous statutes have been enacted to regulate the venue of criminal proceedings, particularly in respect to continuing offenses and offenses consisting of several transactions occurring in different districts. *Armour Packing Co. v. United States*, 209 U.S. 56, 73–77; *United States v. Johnson*, 323 U.S. 273. These special venue provisions are not affected by the rule. Among these statutes are the following:

U.S.C., Title 8:

Section 138 [see 1326, 1328, 1329] (Importation of aliens for immoral purposes; attempt to reenter after deportation; penalty)

U.S.C., Title 15:

Section 78aa (Regulation of Securities Exchanges; jurisdiction of offenses and suits)

Section 79y (Control of Public Utility Holding Companies; jurisdiction of offenses and suits)

Section 80a–43 (Investment Companies; jurisdiction of offenses and suits)
Section 80b–14 (Investment Advisers; jurisdiction of offenses and suits)
Section 298 (Falsely Stamped Gold or Silver, etc., violations of law; penalty; jurisdiction of prosecutions)
Section 715i (Interstate Transportation of Petroleum Products; restraining violations; civil and criminal proceedings; jurisdiction of District Courts; review)
Section 717u (Natural Gas Act; jurisdiction of offenses; enforcement of liabilities and duties)

U.S.C., Title 18:

Section 39 [now 5, 3241] (Enforcement of neutrality; United States defined; jurisdiction of offenses; prior offenses; partial invalidity of provisions)
Section 336 [now 1302] (Lottery, or gift enterprise circulars not mailable; place of trial)
Section 338a [now 876, 3239] (Mailing threatening communications)
Section 338b [now 877, 3239] (Same; mailing in foreign country for delivery in the United States)
Section 345 [now 1717] (Using or attempting to use mails for transmission of matter declared nonmailable by title; jurisdiction of offense)
Section 396e [now 1762] (Transportation or importation of convict-made goods with intent to use in violation of local law; jurisdiction of violations)
Section 401 [now 2421] (White slave traffic; jurisdiction of prosecutions)
Section 408 [now 10, 2311 to 2313] (Motor vehicles; transportation, etc., of stolen vehicles)
Section 408d [now 875, 3239] (Threatening communications in interstate commerce)
Section 408e [now 1073] (Moving in interstate or foreign commerce to avoid prosecution for felony or giving testimony)
Section 409 [now 659, 660, 2117] (Larceny, etc., of goods in interstate or foreign commerce; penalty)
Section 412 [now 660] (Embezzlement, etc., by officers of carrier; jurisdiction; double jeopardy)
Section 418 [now 3237] (National Stolen Property Act; jurisdiction)
Section 419d [now 3237] (Transportation of stolen cattle in interstate or foreign commerce; jurisdiction of offense)
Section 420d [now 1951] (Interference with trade and commerce by violence, threats, etc., jurisdiction of offenses)
Section 494 [now 1654] (Arming vessel to cruise against citizen; trials)
Section 553 [now 3236] (Place of committal of murder or manslaughter determined)

U.S.C., Title 21:

Section 17 (Introduction into, or sale in, State or Territory or District of Columbia of dairy or food products falsely labeled or branded; penalty; jurisdiction of prosecutions)
Section 118 (Prevention of introduction and spread of contagion; duty of district attorneys)

U.S.C., Title 28:

Section 101 [now 18 U.S.C. 3235] (Capital cases)
Section 102 [now 18 U.S.C. 3238] (Offenses on the high seas)
Section 103 [now 18 U.S.C. 3237] (Offenses begun in one district and completed in another)
Section 121 [now 18 U.S.C. 3240] (Creation of new district or division)

U.S.C., Title 47:

Section 33 (Submarine Cables; jurisdiction and venue of actions and offenses)
Section 505 (Special Provisions Relating to Radio; venue of trials)

U.S.C., Title 49:

Section 41 [now 11902, 11903, 11915, 11916] (Legislation Supplementary to Interstate Commerce Act; liability of corporation carriers and agents; offenses and penalties—(1) Liability of corporation common carriers; offenses; penalties; Jurisdiction)
Section 623 [repealed] (Civil Aeronautics Act; venue and prosecution of offenses)

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The amendment eliminates the requirement that the prosecution shall be in a division in which the offense was committed and vests discretion in the court to fix the place of trial at any place within the district with due regard to the convenience of the defendant and his witnesses.

The Sixth Amendment provides that the defendant shall have the right to a trial ''by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. * * *'' There is no constitutional right to trial within a division. See *United States v. Anderson*, 328 U.S. 699, 704, 705 (1946); *Barrett v. United States*, 169 U.S. 218 (1898); *Lafoon v. United States*, 250 F.2d 958 (5th Cir. 1958); *Carrillo v. Squier*, 137 F.2d 648 (9th Cir. 1943); *McNealey v. Johnston*, 100 F.2d 280, 282 (9th Cir. 1938). Cf. *Platt v. Minnesota Mining and Manufacturing Co.*, 376 U.S. 240 (1964).

The former requirement for venue within the division operated in an irrational fashion. Divisions have been created in only half of the districts, and the differentiation between those districts with and those without divisions often bears no relationship to comparative size or population. In many districts a single judge is required to sit in several divisions and only brief and infrequent terms may be held in particular divisions. As a consequence under the original rule there was often undue delay in the disposition of criminal cases—delay which was particularly serious with respect to defendants who had been unable to secure release on bail pending the holding of the next term of court.

If the court is satisfied that there exists in the place fixed for trial prejudice against the defendant so great as to render the trial unfair, the court may, of course, fix another place of trial within the district (if there be such) where such prejudice does not exist. Cf. Rule 21 dealing with transfers between districts.

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

This amendment is intended to eliminate an inconsistency between rule 18, which in its present form has been interpreted not to allow trial in a division other than that in which the offense was committed except as dictated by the convenience of the defendant and witnesses, *Dupoint v. United States*, 388 F.2d 39 (5th Cir. 1968), and the Speedy Trial Act of 1974. This Act provides:

> In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district so as to assure a speedy trial.

18 U.S.C. §3161(a). This provision is intended to ''permit the trial of a case at any place within the judicial district. This language was included in anticipation of problems which might occur in districts with statutory divisions, where it could be difficult to set trial outside the division.'' H.R.Rep. No. 93–1508, 93d Cong., 2d Sess. 29 (1974).

The change does not offend the venue or vicinage provisions of the Constitution. Article III, §2, clause 3 places venue (the geographical location of the trial) ''in the State where the said Crimes shall have been committed,'' while the Sixth Amendment defines the vicinage (the geographical location of the jurors) as ''the State and district wherein the crime shall have been

committed, which district shall have been previously ascertained by law.'' The latter provision makes ''no reference to a division within a judicial district.'' *United States v. James*, 528 F.2d 999 (5th Cir. 1976). ''It follows a fortiori that when a district is not separated into divisions, * * * trial at any place within the district is allowable under the Sixth Amendment * * *.'' *United States v. Fernandez*, 480 F.2d 726 (2d Cir. 1973). See also *Zicarelli v. Gray*, 543 F.2d 466 (3d Cir. 1976) and cases cited therein.

Nor is the change inconsistent with the Declaration of Policy in the Jury Selection and Service Act of 1968, which reads:

> It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.

28 U.S.C. §1861. This language does not mean that the Act requires ''the trial court to convene not only in the district but also in the division wherein the offense occurred,'' as:

> There is no hint in the statutory history that the Jury Selection Act was intended to do more than provide improved judicial machinery so that grand and petit jurors would be selected at random by the use of objective qualification criteria to ensure a representative cross section of the district or division in which the grand or petit jury sits. *United States v. Cates*, 485 F.2d 26 (1st Cir. 1974).

The amendment to rule 18 does not eliminate either of the existing considerations which bear upon fixing the place of trial within a district, but simply adds yet another consideration in the interest of ensuring compliance with the requirements of the Speedy Trial Act of 1974. The amendment does not authorize the fixing of the place of trial for yet other reasons. Cf. *United States v. Fernandez*, 480 F.2d 726 (2d Cir. 1973) (court in the exercise of its supervisory power held improper the fixing of the place of trial ''for no apparent reason other than the convenience of the judge'').

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 18 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule requires the court to consider the convenience of victims—as well as the defendant and witnesses—in setting the place for trial within the district. The Committee recognizes that the court has substantial discretion to balance any competing interests.

Changes Made to Proposed Amendment Released for Public Comment. There were no changes in the text of the rule. The Committee Note was amended to delete a statutory reference that commentators found misleading, and to draw attention to the court's discretion to balance the competing interests, which may be more important as the court must consider a new set of interests.

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.

(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; Apr. 28, 1982, eff. Aug. 1, 1982; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

This rule introduces a new procedure in the interest of defendants who intend to plead guilty and are arrested in a district other than that in which the prosecution has been instituted. This rule would accord to a defendant in such a situation an opportunity to secure a disposition of the case in the district where the arrest takes place, thereby relieving him of whatever hardship may be involved in a removal to the place where the prosecution is pending. In order to prevent possible interference with the administration of justice, however, the consent of the United States attorneys involved is required.