In Rule 47(b), the word ''orally'' has been deleted. The Committee believed, first, that the term should not act as a limitation on those who are not able to speak orally and, second, a court may wish to entertain motions through electronic or other reliable means. Deletion of the term also comports with a similar change in Rule 26, regarding the taking of testimony during trial. In place of that word, the Committee substituted the broader phrase ''by other means.''

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 5 days, which excluded intermediate Saturdays, Sundays, and legal holidays, has been expanded to 7 days. See the Committee Note to Rule 45(a).

## 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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

*Note to Subdivision* (a). 1. The first sentence of this rule will change existing law. The common-law rule that the public prosecutor may enter a *nolle prosequi* in his discretion, without any action by the court, prevails in the Federal courts, *Confiscation Cases*, 7 Wall. 454, 457; *United States v. Woody*, 2 F.2d 262 (D.Mont.). This provision will permit the filing of a nolle prosequi only by leave of court. This is similar to the rule now prevailing in many States. A.L.I. Code of Criminal Procedure, Commentaries, pp. 895–897.

2. The rule confers the power to file a dismissal by leave of court on the Attorney General, as well as on the United States attorney, since under existing law the Attorney General exercises ''general superintendence and direction'' over the United States attorneys ''as to the manner of discharging their respective duties,'' 5 U.S.C. 317 [now 28 U.S.C. 509, 547]. Moreover it is the administrative practice for the Attorney General to supervise the filing of a *nolle prosequi* by United States attorneys. Consequently it seemed appropriate that the Attorney General should have such power directly.

3. The rule permits the filing of a dismissal of an indictment, information or complaint. The word ''complaint'' was included in order to resolve a doubt prevailing in some districts as to whether the United States attorney may file a *nolle prosequi* between the time when the defendant is bound over by the United States commissioner and the finding of an indictment. It has been assumed in a few districts that the power does not exist and that the United States attorney must await action of the grand jury, even if he deems it proper to dismiss the prosecution. This situation is an unnecessary hardship to some defendants.

4. The second sentence is a restatement of existing law, *Confiscation Cases*, 7 Wall. 454–457; *United States v. Shoemaker*, 27 Fed. Cases No. 16, 279 (C.C.Ill.). If the trial has commenced, the defendant has a right to insist on a disposition on the merits and may properly object to the entry of a *nolle prosequi*.

*Note to Subdivision* (b). This rule is a restatement of the inherent power of the court to dismiss a case for want of prosecution. *Ex parte Altman*, 34 F.Supp. 106 (S.D.Cal.).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 48 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.

The Committee considered the relationship between Rule 48(b) and the Speedy Trial Act. *See* 18 U.S.C. §§3161, et seq. Rule 48(b), of course, operates independently from the Act. *See, e.g., United States v. Goodson*, 204 F.3d 508 (4th Cir. 2000) (noting purpose of Rule 48(b)); *United States v. Carlone*, 666 F.2d 1112, 1116 (7th Cir. 1981) (suggesting that Rule 48(b) could provide an alternate basis in an extreme case to dismiss an indictment, without reference to Speedy Trial Act); *United States v. Balochi*, 527 F.2d 562, 563–64 (4th Cir. 1976) (per curiam) (Rule 48(b) is broader in compass). In re-promulgating Rule 48(b), the Committee intends no change in the relationship between that rule and the Speedy Trial Act.

## 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.

(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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

*Note to Subdivision* (a). This rule is substantially the same as Rule 5(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix] with such adaptations as are necessary for criminal cases.

*Note to Subdivision* (b). The first sentence of this rule is in substance the same as the first sentence of Rule 5(b) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. The second sentence incorporates by reference the second and third sentences of Rule 5(b) of the Federal Rules of Civil Procedure.

*Note to Subdivision* (c). This rule is an adaptation for criminal proceedings of Rule 77(d) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. No consequence attaches to the failure of the clerk to give the prescribed notice, but in a case in which the losing party in reliance on the clerk's obligation to send a notice failed to file a timely notice of appeal, it was held competent for the trial judge, in the exercise of sound discretion, to vacate the judgment because of clerk's failure to give notice and to enter a new judgment, the term of court not having expired. *Hill v. Hawes*, 320 U.S. 520.

*Note to Subdivision* (d). This rule incorporates by reference Rule 5(d) and (e) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Subdivision (a).—The words ''adverse parties'' in the original rule introduced a question of interpretation. When, for example, is a co-defendant an adverse party? The amendment requires service on each of the parties thus avoiding the problem of interpretation and promoting full exchange of information among the parties. No restriction is intended, however, upon agreements among co-defendants or between the defendants and the government restricting exchange of papers in the interest of eliminating unnecessary expense. Cf. the amendment made effective July 1, 1963, to Civil Rule 5(a).

Subdivision (c).—The words ''affected thereby'' are deleted in order to require notice to all parties. Cf. the similar change made effective July 1, 1963, to Civil Rule 77(d).

The sentence added at the end of the subdivision eliminates the possibility of extension of the time to appeal beyond the provision for a 30 day extension on a showing or ''excusable neglect'' provided in Rule 37(a)(2). Cf. the similar change made in Civil Rule 77(d) effective in 1948. The question has arisen in a number of cases whether failure or delay in giving notice on the part of the clerk results in an extension of the time for appeal. The ''general rule'' has been said to be that in the event of such failure or delay ''the time for taking an appeal runs from the date of later actual notice or receipt of the clerk's notice rather than from the date of entry of the order.'' *Lohman v. United States*, 237 F.2d 645, 646 (6th Cir. 1956). See also *Rosenbloom v. United States*, 355 U.S. 80 (1957) (permitting an extension). In two cases it has been held that no extension results from the failure to give notice of entry of judgments (as opposed to orders) since such notice is not required by Rule 49(d). *Wilkinson v. United States*, 278 F.2d 604 (10th Cir. 1960), cert. den. 363 U.S. 829; *Hyche v. United States*, 278 F.2d 915 (5th Cir. 1960), cert. den. 364 U.S. 881. The excusable neglect extension provision in Rule 37(a)(2) will cover most cases where failure of the clerk to give notice of judgments or orders has misled the defendant. No need appears for an indefinite extension without time limit beyond the 30 day period.

NOTES OF ADVISORY COMMITTEE ON RULES—1968 AMENDMENT

The amendment corrects the reference to Rule 37(a)(2), the pertinent provisions of which are contained in Rule 4(b) of the Federal Rules of Appellate Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

18 U.S.C. §3575(a) and 21 U.S.C. §849(a), dealing respectively with dangerous special offender sentencing and dangerous special drug offender sentencing, provide for the prosecutor to file notice of such status ''with the court'' and for the court to ''order the notice sealed'' under specified circumstances, but also declare that disclosure of this notice shall not be made ''to the presiding judge without the consent of the parties'' before verdict or plea of guilty or nolo contendere. It has been noted that these provisions are ''regrettably unclear as to where, in fact, such notice is to be filed'' and that possibly filing with the chief judge is contemplated. *United States v. Tramunti*, 377 F.Supp. 6 (S.D.N.Y. 1974). But such practice has been a matter of dispute when the chief judge would otherwise have been the presiding judge in the case, *United States v. Gaylor*, No. 80–5016 (4th Cir. 1981), and ''it does not solve the problem in those districts where there is only one federal district judge appointed,'' *United States v. Tramunti*, *supra*.

The first sentence of subdivision (e) clarifies that the filing of such notice with the court is to be accomplished by filing with the clerk of the court, which is generally the procedure for filing with the court; see subdivision (d) of this rule. Except in a district having a single judge and no United States magistrate, the clerk will then, as provided in the second sentence, transmit the notice to the chief judge or to some other judge or a United States magistrate if the chief judge is scheduled to be the presiding judge in the case, so that the determination regarding sealing of the notice may be made without the disclosure prohibited by the aforementioned statutes. But in a district having a single judge and no United States magistrate this prohibition means the clerk may not disclose the notice to the court at all until the time specified by statute. The last sentence of subdivision (e) contemplates that in such instances the clerk will seal the notice if the case falls within the local rule describing when ''a public record may prejudice fair consideration of a pending criminal matter,'' the determination called for by the aforementioned statutes. The local rule might provide, for example, that the notice is to be sealed upon motion by any party.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The Rule is amended to conform to the Judicial Improvements Act of 1990 [P.L. 101–650, Title III, Section 321] which provides that each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge.

NOTES OF ADVISORY COMMITTEE ON RULES—1995 AMENDMENT

Subdivision (e) has been deleted because both of the statutory provisions cited in the rule have been abrogated.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 49 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.

Rule 49(c) has been amended to reflect proposed changes in the Federal Rules of Civil Procedure that permit (but do not require) a court to provide notice of its orders and judgments through electronic means. *See* Federal Rules of Civil Procedure 5(b) and 77(d). As amended, Rule 49(c) now parallels a similar extant provision in Rule 49(b), regarding service of papers.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

*Subdivision (e).* Filing papers by electronic means is added as new subdivision (e), which is drawn from Civil Rule 5(d)(3). It makes it clear that a paper filed electronically in compliance with the Court's local rule is a written paper.

*Changes Made to Proposed Amendment Released for Public Comment.* No changes were made in the rule as published.

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subd. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### 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,[1] 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.

(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.

(Added Apr. 30, 2007, eff. Dec. 1, 2007.)

COMMITTEE NOTES ON RULES—2007

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107–347. Section 205(c)(3) requires the Supreme Court to prescribe rules ''to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.'' The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. But the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* http://www.privacy.uscourts.gov/Policy.htm. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain ''personal data identifiers'' are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement—such as driver's license numbers and alien registration numbers—in a particular case. In such cases, protection may be sought under subdivision (d) or (e). Moreover, the Rule does not affect the protection available under other rules, such as Criminal Rule 16(d) and Civil Rules 16 and 26(c), or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or nonparty making the filing.

Subdivision (e) provides that the court can order in a particular case more extensive redaction than otherwise required by the Rule, where necessary to protect against disclosure to nonparties of sensitive or private information. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.

Subdivision (f) allows a person who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (g) allows the option to file a register of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

[1] So in original. Probably should be only one section symbol.