

(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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. This rule is practically identical with Rule 46 of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. It relates to a matter of trial practice which should be the same in civil and criminal cases in the interest of avoiding confusion. The corresponding civil rule has been construed in *Ulm v. Moore-McCormack Lines, Inc.*, 115 F.2d 492 (C.C.A. 2d), and *Bucy v. Nevada Construction Company*, 125 F.2d 213, 218 (C.C.A. 9th). See, also, Orfield, 22 Texas L.R. 194, 221. As to the method of taking objections to instructions to the jury, see Rule 30.

2. Many States have abolished the use of exceptions in criminal and civil cases. See, e.g., Cal.Pen. Code (Deering, 1941), sec. 1259; Mich.Stat. Ann. (Henderson, 1938), secs. 28.1046, 28.1053; Ohio Gen Code Ann. (Page, 1938), secs. 11560, 13442-7; Oreg.Comp. Laws Ann. (1940), secs. 5-704, 26-1001.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 51 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 Rule includes a new sentence that explicitly states that any rulings regarding evidence are governed by Federal Rule of Evidence 103. The sentence was added because of concerns about the Supersession Clause, 28 U.S.C. §2072(b), of the Rules Enabling Act, and the possibility that an argument might have been made that Congressional approval of this rule would supersede that Rule of Evidence.

REFERENCES IN TEXT

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

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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). This rule is a restatement of existing law, 28 U.S.C. [former] 391 (second sentence): "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of

the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties"; 18 U.S.C. [former] 556; "No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *." A similar provision is found in Rule 61 of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

Note to Subdivision (b). This rule is a restatement of existing law, *Wiborg v. United States*, 163 U.S. 632, 658; *Hemphill v. United States*, 112 F.2d 505 (C.C.A. 9th), reversed 312 U.S. 657. Rule 27 of the Rules of the Supreme Court provides that errors not specified will be disregarded, "save as the court, at its option, may notice a plain error not assigned or specified." Similar provisions are found in the rules of several circuit courts of appeals.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 52 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.

Rule 52(b) has been amended by deleting the words "or defect" after the words "plain error". The change is intended to remove any ambiguity in the rule. As noted by the Supreme Court, the language "plain error or defect" was misleading to the extent that it might be read in the disjunctive. See *United States v. Olano*, 507 U.S. 725, 732 (1993) (incorrect to read Rule 52(b) in the disjunctive); *United States v. Young*, 470 U.S. 1, 15 n. 12 (1985) (use of disjunctive in Rule 52(b) is misleading).

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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

While the matter to which the rule refers has not been a problem in the Federal courts as it has been in some State tribunals, the rule was nevertheless included with a view to giving expression to a standard which should govern the conduct of judicial proceedings, Orfield, 22 Texas L.R. 194, 222-3; Robbins, 21 A.B.A.Jour. 301, 304. See, also, *Report of the Special Committee on Cooperation between Press, Radio and Bar, as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings* (1937), 62 A.B.A.Rep. 851, 862-865; (1932) 18 A.B.A.Jour. 762; (1926) 12 *Id.* 488; (1925) 11 *Id.* 64.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 53 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.

Although the word "radio" has been deleted from the rule, the Committee does not believe that the amendment is a substantive change but rather one that accords with judicial interpretation applying the current rule to other forms of broadcasting and functionally equivalent means. See, e.g., *United States v. Hastings*, 695 F.2d 1278, 1279, n. 5 (11th Cir. 1983) (television proceedings prohibited); *United States v. McVeigh*, 931 F. Supp. 753 (D. Colo. 1996) (release of tape recordings of proceedings prohibited). Given modern technology capabilities,

the Committee believed that a more generalized reference to “broadcasting” is appropriate.

Also, although the revised rule does not explicitly recognize exceptions within the rules themselves, the restyled rule recognizes that other rules might permit, for example, video teleconferencing, which clearly involves “broadcasting” of the proceedings, even if only for limited purposes.

Rule 54. [Transferred]¹

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Certain provisions in current Rule 54 have been moved to revised Rule 1 as part of a general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. Other provisions in Rule 54 have been deleted as being unnecessary.

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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

The Federal Rules of Civil Procedure Rule 79 [28 U.S.C., Appendix], prescribed in detail the books and records to be kept by the clerk in civil cases. Subsequently to the effective date of the civil rules, however, the Act establishing the Administrative Office of the United States Courts became law (Act of August 7, 1939; 53 Stat. 1223; 28 U.S.C. 444-450 [now 332-333, 456, 601-610]). One of the duties of the Director of that Office is to have charge, under the supervision and direction of the Conference of Senior Circuit Judges, of all administrative matters relating to the offices of the clerks and other clerical and administrative personnel of the courts, 28 U.S.C. 446 [now 604, 609]. In view of this circumstance it seemed best not to prescribe the records to be kept by the clerks of the district courts and by the United States commissioners, in criminal proceedings, but to vest the power to do so in the Director of the Administrative Office of the United States Courts with the approval of the Conference of Senior Circuit Judges.

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

To incorporate nomenclature provided for by Revised Title 28 U.S.C., § 331.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Rule 37(a)(2) provides that for the purpose of commencing the running of the time for appeal a judgment or order is entered “when it is entered in the criminal docket.” The sentence added here requires that such a docket be kept and that it show the dates on which judgments or orders are entered therein. Cf. Civil Rule 79(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

The Advisory Committee Note to original Rule 55 observes that, in light of the authority which the Director and Judicial Conference have over the activities of clerks, “it seems best not to prescribe the records to be

kept by clerks.” Because of current experimentation with automated record-keeping, this approach is more appropriate than ever before. The amendment will make it possible for the Director to permit use of more sophisticated record-keeping techniques, including those which may obviate the need for a “criminal docket” book. The reference to the Judicial Conference has been stricken as unnecessary. See 28 U.S.C. § 604.

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.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 55 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.

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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. The first sentence of this rule is substantially the same as Rule 77(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix], except that it is applicable to circuit courts of appeals as well as to district courts.

2. In connection with this rule, see 28 U.S.C. [former] 14 (Monthly adjournments for trial of criminal causes) and sec. 15 [now 141] (Special terms). These sections “indicate a policy of avoiding the hardships consequent upon a closing of the court during vacations,” *Abbott v. Brown*, 241 U.S. 606, 611.

3. The second sentence of the rule is identical with the first sentence of Rule 77(c) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

4. The term “legal holidays” includes Federal holidays as well as holidays prescribed by the laws of the State where the clerk’s office is located.

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

To incorporate nomenclature provided for by Revised Title 28, U.S.C. § 43(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The change is in conformity with the changes made in Rule 45. See the similar changes in Civil Rule 77(c) made effective July 1, 1963.

¹ All of Rule 54 was moved to Rule 1.