

Rule	
42.	Criminal Contempt. TITLE IX. GENERAL PROVISIONS
43.	Defendant's Presence.
44.	Right to and Appointment of Counsel.
45.	Computing and Extending Time.
46.	Release from Custody; Supervising Detention.
47.	Motions and Supporting Affidavits.
48.	Dismissal.
49.	Serving and Filing Papers.
49.1.	Privacy Protection For Filings Made with the Court.
50.	Prompt Disposition.
51.	Preserving Claimed Error.
52.	Harmless and Plain Error.
53.	Courtroom Photographing and Broadcasting Prohibited.
54.	(Transferred).
55.	Records.
56.	When Court Is Open.
57.	District Court Rules.
58.	Petty Offenses and Other Misdemeanors.
59.	Matters Before a Magistrate Judge.
60.	Victim's Rights.
61.	Title.

TITLE I. APPLICABILITY

Rule 1. Scope; Definitions

(a) SCOPE.

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

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

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

(A) the district court of Guam;

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

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

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

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

(A) the extradition and rendition of a fugitive;

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

(C) the collection of a fine or penalty;

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

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

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

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

(1) “Attorney for the government” means:

(A) the Attorney General or an authorized assistant;

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

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

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

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

(3) “Federal judge” means:

(A) a justice or judge of the United States as these terms are defined in 28 U.S.C. § 451;

(B) a magistrate judge; and

(C) a judge confirmed by the United States Senate and empowered by statute in any commonwealth, territory, or possession to perform a function to which a particular rule relates.

(4) “Judge” means a federal judge or a state or local judicial officer.

(5) “Magistrate judge” means a United States magistrate judge as defined in 28 U.S.C. §§ 631–639.

(6) “Oath” includes an affirmation.

(7) “Organization” is defined in 18 U.S.C. § 18.

(8) “Petty offense” is defined in 18 U.S.C. § 19.

(9) “State” includes the District of Columbia, and any commonwealth, territory, or possession of the United States.

(10) “State or local judicial officer” means:

(A) a state or local officer authorized to act under 18 U.S.C. § 3041; and

(B) a judicial officer empowered by statute in the District of Columbia or in any commonwealth, territory, or possession to perform a function to which a particular rule relates.

(11) “Telephone” means any technology for transmitting live electronic voice communication.

(12) “Victim” means a “crime victim” as defined in 18 U.S.C. § 3771(e).

(c) AUTHORITY OF A JUSTICE OR JUDGE OF THE UNITED STATES. When these rules authorize a magistrate judge to act, any other federal judge may also act.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. These rules are prescribed under the authority of two acts of Congress, namely: the Act of June 29, 1940, c. 445, 18 U.S.C. 687 (Proceedings in criminal cases prior to and including verdict; power of Supreme Court to prescribe rules), and the Act of November 21, 1941, c. 492, 18 U.S.C. 689 (Proceedings to punish for criminal contempt of court; application to sections 687 and 688).

2. The courts of the United States covered by the rules are enumerated in Rule 54(a). In addition to Federal courts in the continental United States they include district courts in Alaska, Hawaii, Puerto Rico and the Virgin Islands. In the Canal Zone only the rules governing proceedings after verdict, finding or plea of guilty are applicable.

3. While the rules apply to proceedings before commissioners when acting as committing magistrates,

they do not govern when a commissioner acts as a trial magistrate for the trial of petty offenses committed on Federal reservations. That procedure is governed by rules adopted by order promulgated by the Supreme Court on January 6, 1941 (311 U.S. 733), pursuant to the Act of October 9, 1940, c. 785, secs. 1-5. See 18 U.S.C. 576-576d [now 3401, 3402] (relating to trial of petty offenses on Federal reservations by United States commissioners).

NOTES OF ADVISORY COMMITTEE ON RULES—1972
AMENDMENT

The rule is amended to make clear that the rules are applicable to courts of the United States and, where the rule so provides, to proceedings before United States magistrates and state or local judicial officers.

Primarily these rules are intended to govern proceedings in criminal cases triable in the United States District Court. Special rules have been promulgated, pursuant to the authority set forth in 28 U.S.C. §636(c), for the trial of "minor offenses" before United States magistrates. (See Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates (January 27, 1971).)

However, there is inevitably some overlap between the two sets of rules. The Rules of Criminal Procedure for the United States District Courts deal with preliminary, supplementary, and special proceedings which will often be conducted before United States magistrates. This is true, for example, with regard to rule 3—The Complaint; rule 4—Arrest Warrant or Summons Upon Complaint; rule 5—Initial Appearance Before the Magistrate; and rule 5.1—Preliminary Examination. It is also true, for example, of supplementary and special proceedings such as rule 40—Commitment to Another District, Removal; rule 41—Search and Seizure; and rule 46—Release from Custody. Other of these rules, where applicable, also apply to proceedings before United States magistrates. See Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, rule 1—Scope:

These rules govern the procedure and practice for the trial of minor offenses (including petty offenses) before United States magistrates under Title 18, U.S.C. §3401, and for appeals in such cases to judges of the district courts. To the extent that pretrial and trial procedure and practice are not specifically covered by these rules, the Federal Rules of Criminal Procedure apply as to minor offenses other than petty offenses. All other proceedings in criminal matters, other than petty offenses, before United States magistrates are governed by the Federal Rules of Criminal Procedure.

State and local judicial officers are governed by these rules, but only when the rule specifically so provides. This is the case of rule 3—The Complaint; rule 4—Arrest Warrant or Summons Upon Complaint; and rule 5—Initial Appearance Before the Magistrate. These rules confer authority upon the "magistrate," a term which is defined in new rule 54 as follows:

"Magistrate" includes a United States magistrate as defined in 28 U.S.C. §§631-639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U.S.C. §3041 to perform the functions prescribed in rules 3, 4, and 5.

Rule 41 provides that a search warrant may be issued by "a judge of a state court of record" and thus confers that authority upon appropriate state judicial officers.

The scope of rules 1 and 54 is discussed in C. Wright, Federal Practice and Procedure: Criminal §§21, 871-874 (1969, Supp. 1971), and 8 and 8A J. Moore, Federal Practice chapters 1 and 54 (2d ed. Cipes 1970, Supp. 1971).

NOTES OF ADVISORY COMMITTEE ON RULES—1982
AMENDMENT

The amendment corrects an erroneous cross reference, from Rule 54(c) to Rule 54(a), and replaces the

word "defined" with the more appropriate word "provided."

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

Rule 1 is entirely revised and expanded to incorporate Rule 54, which deals with the application of the rules. Consistent with the title of the existing rule, the Committee believed that a statement of the scope of the rules should be placed at the beginning to show readers which proceedings are governed by these rules. The Committee also revised the rule to incorporate the definitions found in Rule 54(c) as a new Rule 1(b).

Rule 1(a) contains language from Rule 54(b). But language in current Rule 54(b)(2)-(4) has been deleted for several reasons: First, Rule 54(b)(2) refers to a venue statute that governs an offense committed on the high seas or somewhere outside the jurisdiction of a particular district; it is unnecessary and has been deleted because once venue has been established, the Rules of Criminal Procedure automatically apply. Second, Rule 54(b)(3) currently deals with peace bonds; that provision is inconsistent with the governing statute and has therefore been deleted. Finally, Rule 54(b)(4) references proceedings conducted before United States Magistrate Judges, a topic now covered in Rule 58.

Rule 1(a)(5) consists of material currently located in Rule 54(b)(5), with the exception of the references to the navigation laws and to fishery offenses. Those provisions were considered obsolete. But if those proceedings were to arise, they would be governed by the Rules of Criminal Procedure.

Rule 1(b) is composed of material currently located in Rule 54(c), with several exceptions. First, the reference to an "Act of Congress" has been deleted from the re-styled rules; instead the rules use the self-explanatory term "federal statute." Second, the language concerning demurrers, pleas in abatement, etc., has been deleted as being anachronistic. Third, the definitions of "civil action" and "district court" have been deleted. Fourth, the term "attorney for the government" has been expanded to include reference to those attorneys who may serve as special or independent counsel under applicable federal statutes. The term "attorney for the government" contemplates an attorney of record in the case.

Fifth, the Committee added a definition for the term "court" in Rule 1(b)(2). Although that term originally was almost always synonymous with the term "district judge," the term might be misleading or unduly narrow because it may not cover the many functions performed by magistrate judges. See generally 28 U.S.C. §§132, 636. Additionally, the term does not cover circuit judges who may be authorized to hold a district court. See 28 U.S.C. §291. The proposed definition continues the traditional view that "court" means district judge, but also reflects the current understanding that magistrate judges act as the "court" in many proceedings. Finally, the Committee intends that the term "court" be used principally to describe a judicial officer, except where a rule uses the term in a spatial sense, such as describing proceedings in "open court."

Sixth, the term "Judge of the United States" has been replaced with the term "Federal judge." That term includes Article III judges and magistrate judges and, as noted in Rule 1(b)(3)(C), federal judges other than Article III judges who may be authorized by statute to perform a particular act specified in the Rules of Criminal Procedure. The term does not include local judges in the District of Columbia. Seventh, the definition of "Law" has been deleted as being superfluous

and possibly misleading because it suggests that administrative regulations are excluded.

Eighth, the current rules include three definitions of “magistrate judge.” The term used in amended Rule 1(b)(5) is limited to United States magistrate judges. In the current rules the term magistrate judge includes not only United States magistrate judges, but also district court judges, court of appeals judges, Supreme Court justices, and where authorized, state and local officers. The Committee believed that the rules should reflect current practice, i.e., the wider and almost exclusive use of United States magistrate judges, especially in preliminary matters. The definition, however, is not intended to restrict the use of other federal judicial officers to perform those functions. Thus, Rule 1(c) has been added to make it clear that where the rules authorize a magistrate judge to act, any other federal judge or justice may act.

Finally, the term “organization” has been added to the list of definitions.

The remainder of the rule has been amended as part of the general restyling of the rules to make them more easily understood. In addition to changes made to improve the clarity, the Committee has changed language to make style and terminology consistent throughout the Criminal Rules. These changes are intended to be stylistic only.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (b)(11). This amendment incorporates the definition of the term “crime victim” found in the Crime Victims’ Rights Act, codified at 18 U.S.C. §3771(e). It provides that “the term ‘crime victim’ means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.”

Upon occasion, disputes may arise over the question whether a particular person is a victim. Although the rule makes no special provision for such cases, the courts have the authority to do any necessary fact finding and make any necessary legal rulings.

Changes Made to Proposed Amendment Released for Public Comment. The Committee revised the text of Rule 1(b)(11) in response to public comments by transferring portions of the subdivision relating to who may assert the rights of a victim to Rule 60(b)(2). The Committee Note was revised to reflect that change and to indicate that the Court has the power to decide any dispute as to who is a victim.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

Subdivisions (b)(11) and (12). The added definition clarifies that the term “telephone” includes technologies enabling live voice conversations that have developed since the traditional “land line” telephone. Calls placed by cell phone or from a computer over the internet, for example, would be included. The definition is limited to live communication in order to ensure contemporaneous communication and excludes voice recordings. Live voice communication should include services for the hearing impaired, or other contemporaneous translation, where necessary.

Changes Made to Proposed Amendment Released for Public Comment. The text was rephrased by the Committee to describe the telephone as a “technology for transmitting electronic voice communication” rather than a “form” of communication.

Rule 2. Interpretation

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

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Compare Federal Rules of Civil Procedure [28 U.S.C., Appendix], Rule 1 (Scope of Rules), last sentence:

“They [the Federal Rules of Civil Procedure] shall be construed to secure the just, speedy, and inexpensive determination of every action.”

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 2 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. No substantive change is intended.

In particular, Rule 2 has been amended to clarify the purpose of the Rules of Criminal Procedure. The words “are intended” have been changed to read “are to be interpreted.” The Committee believed that that was the original intent of the drafters and more accurately reflects the purpose of the rules.

TITLE II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. Except as provided in Rule 4.1, it must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

The rule generally states existing law and practice, 18 U.S.C. 591 [now 3041] (Arrest and removal for trial); *United States v. Simon* (E.D.Pa.), 248 F. 980; *United States v. Maresca* (S.D.N.Y.), 266 F. 713, 719–721. It eliminates, however, the requirement of conformity to State law as to the form and sufficiency of the complaint. See, also, rule 57(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1972 AMENDMENT

The amendment deletes the reference to “commissioner or other officer empowered to commit persons charged with offenses against the United States” and substitute therefor “magistrate.”

The change is editorial in nature to conform the language of the rule to the recently enacted Federal Magistrates Act. The term “magistrate” is defined in rule 54.

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 3 is 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 and no substantive change is intended, except as described below.

The amendment makes one change in practice. Currently, Rule 3 requires the complaint to be sworn before a “magistrate judge,” which under current Rule 54 could include a state or local judicial officer. Revised Rule 1 no longer includes state and local officers in the definition of magistrate judges for the purposes of these rules. Instead, the definition includes only United States magistrate judges. Rule 3 requires that the complaint be made before a United States magistrate judge