

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

or before a state or local officer. The revised rule does, however, make a change to reflect prevailing practice and the outcome desired by the Committee—that the procedure take place before a *federal* judicial officer if one is reasonably available. As noted in Rule 1(c), where the rules, such as Rule 3, authorize a magistrate judge to act, any other federal judge may act.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

Under the amended rule, the complaint and supporting material may be submitted by telephone or reliable electronic means; however, the rule requires that the judicial officer administer the oath or affirmation in person or by telephone. The Committee concluded that the benefits of making it easier to obtain judicial oversight of the arrest decision and the increasing reliability and accessibility to electronic communication warranted amendment of the rule. The amendment makes clear that the submission of a complaint to a judicial officer need not be done in person and may instead be made by telephone or other reliable electronic means. The successful experiences with electronic applications under Rule 41, which permits electronic applications for search warrants, support a comparable process for arrests. The provisions in Rule 41 have been transferred to new Rule 4.1, which governs applications by telephone or other electronic means under Rules 3, 4, 9, and 41.

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

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 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) *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.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94-64, §3(1)-(3), July 31, 1975, 89 Stat. 370; Mar. 9, 1987, eff. Aug. 1, 1987; 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

Note to Subdivision (a). 1. The rule states the existing law relating to warrants issued by commissioner or other magistrate. United States Constitution, Amendment IV; 18 U.S.C. 591 [now 3041] (Arrest and removal for trial).