

NOTES OF ADVISORY COMMITTEE ON RULES—1979
AMENDMENT

The amendment to rule 7(c)(2) is intended to clarify its meaning. Subdivision (c)(2) was added in 1972, and, as noted in the Advisory Committee Note thereto, was “intended to provide procedural implementation of the recently enacted criminal forfeiture provision of the Organized Crime Control Act of 1970, Title IX, §1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, §408(a)(2).” These provisions reestablished a limited common law criminal forfeiture, necessitating the addition of subdivision (c)(2) and corresponding changes in rules 31 and 32, for at common law the defendant in a criminal forfeiture proceeding was entitled to notice, trial, and a special jury finding on the factual issues surrounding the declaration of forfeiture which followed his criminal conviction.

Although there is some doubt as to what forfeitures should be characterized as “punitive” rather than “remedial,” see Note, 62 Cornell L.Rev. 768 (1977), subdivision (c)(2) is intended to apply to those forfeitures which are criminal in the sense that they result from a special verdict under rule 31(e) and a judgment under rule 32(b)(2), and not to those resulting from a separate in rem proceeding. Because some confusion in this regard has resulted from the present wording of subdivision (c)(2), *United States v. Hall*, 521 F.2d 406 (9th Cir. 1975), a clarifying amendment is in order.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

The rule is amended to reflect new Rule 32.2, which now governs criminal forfeiture procedures.

GAP Report—Rule 7. The Committee initially made no changes to the published draft of the Rule 7 amendment. However, because of changes to Rule 32.2(a), discussed *infra*, the proposed language has been changed to reflect that the indictment must provide notice of an intent to seek forfeiture.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 7 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.

The Committee has deleted the references to “hard labor” in the rule. This punishment is not found in current federal statutes.

The Committee added an exception for criminal contempt to the requirement in Rule 7(a)(1) that a prosecution for felony must be initiated by indictment. This is consistent with case law. *e.g.*, *United States v. Eichhorst*, 544 F.2d 1383 (7th Cir. 1976), which has sustained the use of the special procedures for instituting criminal contempt proceedings found in Rule 42. While indictment is not a required method of bringing felony criminal contempt charges, however, it is a permissible one. See *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980). No change in practice is intended.

The title of Rule 7(c)(3) has been amended. The Committee believed that potential confusion could arise with the use of the term “harmless error.” Rule 52, which deals with the issues of harmless error and plain error, is sufficient to address the topic. Potentially, the topic of harmless error could arise with regard to any of the other rules and there is insufficient need to highlight the term in Rule 7. Rule 7(c)(3), on the other hand, focuses specifically on the effect of an error in the citation of authority in the indictment. That material remains but without any reference to harmless error.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

Subdivision (c). The provision regarding forfeiture is obsolete. In 2000 the same language was repeated in subdivision (a) of Rule 32.2, which was intended to consolidate the rules dealing with forfeiture.

AMENDMENT BY PUBLIC LAW

2003—Subd. (c)(1). Pub. L. 108–21 inserted at end “For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to describe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in that section 3282.”

Rule 8. Joinder of Offenses or Defendants

(a) **JOINDER OF OFFENSES.** The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(b) **JOINDER OF DEFENDANTS.** The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). This rule is substantially a restatement of existing law, 18 U.S.C. [former] 557 (Indictments and presentments; joinder of charges).

Note to Subdivision (b). The first sentence of the rule is substantially a restatement of existing law, 9 Edmunds, *Cyclopedia of Federal Procedure* (2d Ed.) 4116. The second sentence formulates a practice now approved in some circuits. *Caringella v. United States*, 78 F.2d 563, 567 (C.C.A. 7th).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 8 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 9. Arrest Warrant or Summons on an Indictment or Information

(a) **ISSUANCE.** The court must issue a warrant—or at the government’s request, a summons—for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. The court may issue more than one warrant or summons for the same defendant. If a defendant fails to appear in response to a summons, the court may, and upon request of an attorney for the government must, issue a warrant. The court must issue the arrest warrant to an officer authorized to execute it or the summons to a person authorized to serve it.

(b) **FORM.**

(1) *Warrant.* The warrant must conform to Rule 4(b)(1) except that it must be signed by the clerk and must describe the offense charged in the indictment or information.