

whether to recuse himself or herself from a case. The Committee believes that with the various disclosure practices in the federal courts and with the development of technology, more comprehensive disclosure may be desirable and feasible.

Rule 12.4(b)(1) indicates that the time for filing the disclosure statement is at the point when the defendant enters an initial appearance under Rule 5. Although there may be other instances where an earlier appearance of a party in a civil proceeding would raise concerns about whether the presiding judicial officer should be notified of a possible grounds for recusal, the Committee believed that in criminal cases, the most likely time for that to occur is at the initial appearance and that it was important to set a uniform triggering event for disclosures under this rule.

Finally, Rule 12.4(b)(2) requires the parties to file supplemental statements with the court if there are any changes in the information required in the statement.

### Rule 13. Joint Trial of Separate Cases

The court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information.

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

#### NOTES OF ADVISORY COMMITTEE ON RULES—1944

This rule is substantially a restatement of existing law, 18 U.S.C. [former] 557 (Indictments and presentments; joinder of charges); *Logan v. United States*, 144 U.S. 263, 296; *Showalter v. United States*, 260 F. 719 (C.C.A. 4th)—cert. den., 250 U.S. 672; *Hostetter v. United States*, 16 F.2d 921 (C.C.A. 8th); *Capone v. United States*, 51 F.2d 609, 619-620 (C.C.A. 7th).

#### COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 13 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 14. Relief from Prejudicial Joinder

(a) **RELIEF.** If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

(b) **DEFENDANT'S STATEMENTS.** Before ruling on a defendant's motion to sever, the court may order an attorney for the government to deliver to the court for in camera inspection any defendant's statement that the government intends to use as evidence.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 29, 2002, eff. Dec. 1, 2002.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1944

This rule is a restatement of existing law under which severance and other similar relief is entirely in the discretion of the court, 18 U.S.C. [former] 557 (Indictments and presentments; joinder of charges); *Pointer v. United States*, 151 U.S. 396; *Pierce v. United States*, 160 U.S. 355; *United States v. Ball*, 163 U.S. 662, 673; *Stilson v. United States*, 250 U.S. 583.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

A defendant may be prejudiced by the admission in evidence against a co-defendant of a statement or con-

fession made by that co-defendant. This prejudice cannot be dispelled by cross-examination if the co-defendant does not take the stand. Limiting instructions to the jury may not in fact erase the prejudice. While the question whether to grant a severance is generally left within the discretion of the trial court, recent Fifth Circuit cases have found sufficient prejudice involved to make denial of a motion for severance reversible error. See *Schaffer v. United States*, 221 F.2d 17 (5th Cir. 1955); *Barton v. United States*, 263 F.2d 894 (5th Cir. 1959). It has even been suggested that when the confession of the co-defendant comes as a surprise at the trial, it may be error to deny a motion or a mistrial. See *Belvin v. United States*, 273 F.2d 583 (5th Cir. 1960).

The purpose of the amendment is to provide a procedure whereby the issue of possible prejudice can be resolved on the motion for severance. The judge may direct the disclosure of the confessions or statements of the defendants to him for in camera inspection as an aid to determining whether the possible prejudice justifies ordering separate trials. Cf. note, Joint and Single Trials Under Rules 8 and 14 of the Federal Rules of Criminal Procedure, 74 Yale L.J. 551, 565 (1965).

#### COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 14 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 reference to a defendant's "confession" in the last sentence of the current rule has been deleted. The Committee believed that the reference to the "defendant's statements" in the amended rule would fairly embrace any confessions or admissions by a defendant.

### Rule 15. Depositions

#### (a) WHEN TAKEN.

(1) *In General.* A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) *Detained Material Witness.* A witness who is detained under 18 U.S.C. §3144 may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

#### (b) NOTICE.

(1) *In General.* A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice, the court may, for good cause, change the deposition's date or location.

(2) *To the Custodial Officer.* A party seeking to take the deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

#### (c) DEFENDANT'S PRESENCE.

(1) *Defendant in Custody.* Except as authorized by Rule 15(c)(3), the officer who has custody of the defendant must produce the de-