

AMENDMENT BY PUBLIC LAW

1994—Subd. (i)(1). Pub. L. 103-322 substituted “3142” for “3144”.

1984—Subd. (a). Pub. L. 98-473, §209(d)(1), substituted “§§3142 and 3144” for “§3146, §3148, or §3149”.

Subd. (c). Pub. L. 98-473, §209(d)(2), substituted “3143” for “3148”.

Subd. (e)(2). Pub. L. 98-473, §209(d)(3), substituted “be set aside in whole or in part upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture” for “set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture”.

Subd. (h). Pub. L. 98-473, §209(d)(4), added subd. (h).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by Order of April 9, 1956, became effective 90 days thereafter.

Rule 47. Motions and Supporting Affidavits

(a) IN GENERAL. A party applying to the court for an order must do so by motion.

(b) FORM AND CONTENT OF A MOTION. A motion—except when made during a trial or hearing—must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by affidavit.

(c) TIMING OF A MOTION. A party must serve a written motion—other than one that the court may hear ex parte—and any hearing notice at least 7 days before the hearing date, unless a rule or court order sets a different period. For good cause, the court may set a different period upon ex parte application.

(d) AFFIDAVIT SUPPORTING A MOTION. The moving party must serve any supporting affidavit with the motion. A responding party must serve any opposing affidavit at least one day before the hearing, unless the court permits later service.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. This rule is substantially the same as the corresponding civil rule (first sentence of Rule 7(b)(1), Federal Rules of Civil Procedure) [28 U.S.C., Appendix], except that it authorizes the court to permit motions to be made orally and does not require that the grounds upon which a motion is made shall be stated “with particularity,” as is the case with the civil rule.

2. This rule is intended to state general requirements for all motions. For particular provisions applying to specific motions, see Rules 6(b)(2), 12, 14, 15, 16, 17(b) and (c), 21, 22, 29 and Rule 41(e). See also Rule 49.

3. The last sentence providing that a motion may be supported by affidavit is not intended to permit “speaking motions” (e.g. motion to dismiss an indictment for insufficiency supported by affidavits), but to authorize the use of affidavits when affidavits are appropriate to establish a fact (e.g. authority to take a deposition or former jeopardy).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 47 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.

In Rule 47(b), the word “orally” has been deleted. The Committee believed, first, that the term should not act as a limitation on those who are not able to speak orally and, second, a court may wish to entertain motions through electronic or other reliable means. Deletion of the term also comports with a similar change in Rule 26, regarding the taking of testimony during trial. In place of that word, the Committee substituted the broader phrase “by other means.”

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 5 days, which excluded intermediate Saturdays, Sundays, and legal holidays, has been expanded to 7 days. See the Committee Note to Rule 45(a).

Rule 48. Dismissal

(a) BY THE GOVERNMENT. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant’s consent.

(b) BY THE COURT. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

- (1) presenting a charge to a grand jury;
- (2) filing an information against a defendant;

or

- (3) bringing a defendant to trial.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). 1. The first sentence of this rule will change existing law. The common-law rule that the public prosecutor may enter a *nolle prosequi* in his discretion, without any action by the court, prevails in the Federal courts, *Confiscation Cases*, 7 Wall. 454, 457; *United States v. Woody*, 2 F.2d 262 (D.Mont.). This provision will permit the filing of a *nolle prosequi* only by leave of court. This is similar to the rule now prevailing in many States. A.L.I. Code of Criminal Procedure, Commentaries, pp. 895-897.

2. The rule confers the power to file a dismissal by leave of court on the Attorney General, as well as on the United States attorney, since under existing law the Attorney General exercises “general superintendence and direction” over the United States attorneys “as to the manner of discharging their respective duties,” 5 U.S.C. 317 [now 28 U.S.C. 509, 547]. Moreover it is the administrative practice for the Attorney General to supervise the filing of a *nolle prosequi* by United States attorneys. Consequently it seemed appropriate that the Attorney General should have such power directly.

3. The rule permits the filing of a dismissal of an indictment, information or complaint. The word “complaint” was included in order to resolve a doubt prevailing in some districts as to whether the United States attorney may file a *nolle prosequi* between the time when the defendant is bound over by the United States commissioner and the finding of an indictment. It has been assumed in a few districts that the power does not exist and that the United States attorney must await action of the grand jury, even if he deems it proper to dismiss the prosecution. This situation is an unnecessary hardship to some defendants.

4. The second sentence is a restatement of existing law, *Confiscation Cases*, 7 Wall. 454-457; *United States v. Shoemaker*, 27 Fed. Cases No. 16, 279 (C.C.Ill.). If the trial has commenced, the defendant has a right to insist on a disposition on the merits and may properly object to the entry of a *nolle prosequi*.

Note to Subdivision (b). This rule is a restatement of the inherent power of the court to dismiss a case for want of prosecution. *Ex parte Altman*, 34 F.Supp. 106 (S.D.Cal.).