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.).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 48 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 Committee considered the relationship between Rule 48(b) and the Speedy Trial Act. *See* 18 U.S.C. §§3161, et seq. Rule 48(b), of course, operates independently from the Act. *See, e.g., United States v. Goodson*, 204 F.3d 508 (4th Cir. 2000) (noting purpose of Rule 48(b)); *United States v. Carlone*, 666 F.2d 1112, 1116 (7th Cir. 1981) (suggesting that Rule 48(b) could provide an alternate basis in an extreme case to dismiss an indictment, without reference to Speedy Trial Act); *United States v. Balochi*, 527 F.2d 562, 563–64 (4th Cir. 1976) (per curiam) (Rule 48(b) is broader in compass). In re-promulgating Rule 48(b), the Committee intends no change in the relationship between that rule and the Speedy Trial Act.

Rule 49. Serving and Filing Papers

(a) WHEN REQUIRED. A party must serve on every other party any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.

(b) HOW MADE. Service must be made in the manner provided for a civil action. When these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, unless the court orders otherwise.

(c) NOTICE OF A COURT ORDER. When the court issues an order on any post-arraignment motion, the clerk must provide notice in a manner provided for in a civil action. Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve—or authorize the court to relieve—a party's failure to appeal within the allowed time.

(d) FILING. A party must file with the court a copy of any paper the party is required to serve. A paper must be filed in a manner provided for in a civil action.

(e) ELECTRONIC SERVICE AND FILING. A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is written or in writing under these rules.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; 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). This rule is substantially the same as Rule 5(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix] with such adaptations as are necessary for criminal cases.

Note to Subdivision (b). The first sentence of this rule is in substance the same as the first sentence of Rule 5(b) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. The second sentence incorporates by reference the second and third sentences of Rule 5(b) of the Federal Rules of Civil Procedure.

Note to Subdivision (c). This rule is an adaptation for criminal proceedings of Rule 77(d) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. No consequence attaches to the failure of the clerk to give the prescribed notice, but in a case in which the losing party in reliance on the clerk's obligation to send a notice failed to file a timely notice of appeal, it was held competent for the trial judge, in the exercise of sound discretion, to vacate the judgment because of clerk's failure to give notice and to enter a new judgment, the term of court not having expired. *Hill v. Hawes*, 320 U.S. 520.

Note to Subdivision (d). This rule incorporates by reference Rule 5(d) and (e) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Subdivision (a).—The words ''adverse parties'' in the original rule introduced a question of interpretation. When, for example, is a co-defendant an adverse party? The amendment requires service on each of the parties thus avoiding the problem of interpretation and promoting full exchange of information among the parties. No restriction is intended, however, upon agreements among co-defendants or between the defendants and the government restricting exchange of papers in the interest of eliminating unnecessary expense. Cf. the amendment made effective July 1, 1963, to Civil Rule 5(a).

Subdivision (c).—The words ''affected thereby'' are deleted in order to require notice to all parties. Cf. the similar change made effective July 1, 1963, to Civil Rule 77(d).

The sentence added at the end of the subdivision eliminates the possibility of extension of the time to appeal beyond the provision for a 30 day extension on a showing or ''excusable neglect'' provided in Rule 37(a)(2). Cf. the similar change made in Civil Rule 77(d) effective in 1948. The question has arisen in a number of cases whether failure or delay in giving notice on the part of the clerk results in an extension of the time for appeal. The ''general rule'' has been said to be that in the event of such failure or delay ''the time for taking an appeal runs from the date of later actual notice or receipt of the clerk's notice rather than from the date of entry of the order.'' *Lohman v. United States*, 237 F.2d 645, 646 (6th Cir. 1956). See also *Rosenbloom v. United States*, 355 U.S. 80 (1957) (permitting an extension). In two cases it has been held that no extension results from the failure to give notice of entry of judgments (as opposed to orders) since such notice is not required by Rule 49(d). *Wilkinson v. United States*, 278 F.2d 604 (10th Cir. 1960), cert. den. 363 U.S. 829; *Hyche v. United States*, 278 F.2d 915 (5th Cir. 1960), cert. den. 364 U.S. 881. The excusable neglect extension provision in Rule 37(a)(2) will cover most cases where failure of the clerk to give notice of judgments or orders has misled the defendant. No need appears for an indefinite extension without time limit beyond the 30 day period.

NOTES OF ADVISORY COMMITTEE ON RULES—1968 AMENDMENT

The amendment corrects the reference to Rule 37(a)(2), the pertinent provisions of which are contained in Rule 4(b) of the Federal Rules of Appellate Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

18 U.S.C. §3575(a) and 21 U.S.C. §849(a), dealing respectively with dangerous special offender sentencing and dangerous special drug offender sentencing, provide for the prosecutor to file notice of such status ''with the court'' and for the court to ''order the notice sealed'' under specified circumstances, but also declare that disclosure of this notice shall not be made ''to the presiding judge without the consent of the parties'' before verdict or plea of guilty or nolo contendere. It has been noted that these provisions are ''regrettably unclear as