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

to where, in fact, such notice is to be filed'' and that possibly filing with the chief judge is contemplated. *United States v. Tramunti*, 377 F.Supp. 6 (S.D.N.Y. 1974). But such practice has been a matter of dispute when the chief judge would otherwise have been the presiding judge in the case, *United States v. Gaylor*, No. 80–5016 (4th Cir. 1981), and ''it does not solve the problem in those districts where there is only one federal district judge appointed,'' *United States v. Tramunti, supra*.

The first sentence of subdivision (e) clarifies that the filing of such notice with the court is to be accomplished by filing with the clerk of the court, which is generally the procedure for filing with the court; see subdivision (d) of this rule. Except in a district having a single judge and no United States magistrate, the clerk will then, as provided in the second sentence, transmit the notice to the chief judge or to some other judge or a United States magistrate if the chief judge is scheduled to be the presiding judge in the case, so that the determination regarding sealing of the notice may be made without the disclosure prohibited by the aforementioned statutes. But in a district having a single judge and no United States magistrate this prohibition means the clerk may not disclose the notice to the court at all until the time specified by statute. The last sentence of subdivision (e) contemplates that in such instances the clerk will seal the notice if the case falls within the local rule describing when ''a public record may prejudice fair consideration of a pending criminal matter,'' the determination called for by the aforementioned statutes. The local rule might provide, for example, that the notice is to be sealed upon motion by any party.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

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.

NOTES OF ADVISORY COMMITTEE ON RULES—1995 AMENDMENT

Subdivision (e) has been deleted because both of the statutory provisions cited in the rule have been abrogated.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 49 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.

Rule 49(c) has been amended to reflect proposed changes in the Federal Rules of Civil Procedure that permit (but do not require) a court to provide notice of its orders and judgments through electronic means. *See* Federal Rules of Civil Procedure 5(b) and 77(d). As amended, Rule 49(c) now parallels a similar extant provision in Rule 49(b), regarding service of papers.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

Subdivision (e). Filing papers by electronic means is added as new subdivision (e), which is drawn from Civil Rule 5(d)(3). It makes it clear that a paper filed electronically in compliance with the Court's local rule is a written paper.

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

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subd. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 49.1. Privacy Protection For Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials;

(4) the last four digits of the financial-account number; and

(5) the city and state of the home address.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 49.1(d);

(6) a pro se filing in an action brought under 28 U.S.C. §§2241,[1] 2254, or 2255;

(7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;

(8) an arrest or search warrant; and

(9) a charging document and an affidavit filed in support of any charging document.

(c) IMMIGRATION CASES. A filing in an action brought under 28 U.S.C. §2241 that relates to the petitioner's immigration rights is governed by Federal Rule of Civil Procedure 5.2.

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely

[1] So in original. Probably should be only one section symbol.