

kept by clerks.” Because of current experimentation with automated record-keeping, this approach is more appropriate than ever before. The amendment will make it possible for the Director to permit use of more sophisticated record-keeping techniques, including those which may obviate the need for a “criminal docket” book. The reference to the Judicial Conference has been stricken as unnecessary. See 28 U.S.C. § 604.

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.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 55 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 56. When Court Is Open

(a) **IN GENERAL.** A district court is considered always open for any filing, and for issuing and returning process, making a motion, or entering an order.

(b) **OFFICE HOURS.** The clerk’s office—with the clerk or a deputy in attendance—must be open during business hours on all days except Saturdays, Sundays, and legal holidays.

(c) **SPECIAL HOURS.** A court may provide by local rule or order that its clerk’s office will be open for specified hours on Saturdays or legal holidays other than those set aside by statute for observing New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 25, 1988, eff. Aug. 1, 1988; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. The first sentence of this rule is substantially the same as Rule 77(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix], except that it is applicable to circuit courts of appeals as well as to district courts.

2. In connection with this rule, see 28 U.S.C. [former] 14 (Monthly adjournments for trial of criminal causes) and sec. 15 [now 141] (Special terms). These sections “indicate a policy of avoiding the hardships consequent upon a closing of the court during vacations,” *Abbott v. Brown*, 241 U.S. 606, 611.

3. The second sentence of the rule is identical with the first sentence of Rule 77(c) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

4. The term “legal holidays” includes Federal holidays as well as holidays prescribed by the laws of the State where the clerk’s office is located.

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

To incorporate nomenclature provided for by Revised Title 28, U.S.C. § 43(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1966
AMENDMENT

The change is in conformity with the changes made in Rule 45. See the similar changes in Civil Rule 77(c) made effective July 1, 1963.

NOTES OF ADVISORY COMMITTEE ON RULES—1968
AMENDMENT

The provisions relating to courts of appeals are included in Rule 47 of the Federal Rules of Appellate Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES—1971
AMENDMENT

The amendment adds Columbus Day to the list of legal holidays. See the Note accompanying the amendment of Rule 45(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1988
AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 56 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 57. District Court Rules

(a) **IN GENERAL.**

(1) *Adopting Local Rules.* Each district court acting by a majority of its district judges may, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice. A local rule must be consistent with—but not duplicative of—federal statutes and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) *Limiting Enforcement.* A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of an unintentional failure to comply with the requirement.

(b) **PROCEDURE WHEN THERE IS NO CONTROLLING LAW.** A judge may regulate practice in any manner consistent with federal law, these rules, and the local rules of the district. No sanction or other disadvantage may be imposed for non-compliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator was furnished with actual notice of the requirement before the non-compliance.

(c) **EFFECTIVE DATE AND NOTICE.** A local rule adopted under this rule takes effect on the date specified by the district court and remains in effect unless amended by the district court or abrogated by the judicial council of the circuit in which the district is located. Copies of local rules and their amendments, when promulgated, must be furnished to the judicial council and the Administrative Office of the United States Courts and must be made available to the public.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Dec. 4, 1967, eff. July 1, 1968; Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; 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 28 U.S.C. 731 [now 2071] (Rules of practice in district courts). A similar provision is found in Rule 83 of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

Note to Subdivision (b). 1. One of the purposes of this rule is to abrogate any existing requirement of conformity to State procedure on any point whatsoever. The Federal Rules of Civil Procedure [28 U.S.C., Appendix] have been held to repeal the Conformity Act, *Sibbach v. Wilson*, 312 U.S. 1, 10.

2. While the rules are intended to constitute a comprehensive procedural code for criminal cases in the Federal courts, nevertheless it seemed best not to endeavor to prescribe a uniform practice as to some matters of detail, but to leave the individual courts free to regulate them, either by local rules or by usage. Among such matters are the mode of impaneling a jury, the manner and order of impaneling challenges to jurors, the manner of selecting the foreman of a trial jury, the matter of sealed verdicts, the order of counsel's arguments to the jury, and other similar details.

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

To incorporate nomenclature provided for by Revised Title 28, U.S.C., § 43(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1968
AMENDMENT

The provisions relating to the court of appeals are included in Rule 47 of the Federal Rules of Appellate Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES—1985
AMENDMENT

Rule 57 has been reformulated to correspond to Fed.R.Civ.P. 83, including the proposed amendments thereto. The purpose of the reformulation is to emphasize that the procedures for adoption of local rules by a district court are the same under both the civil and the criminal rules. In particular, the major purpose of the reformulation is to enhance the local rulemaking process by requiring appropriate public notice of proposed rules and an opportunity to comment on them. See Committee Note to Fed.R.Civ.P. 83.

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 (a). This rule is amended to reflect the requirement that local rules be consistent not only with the national rules but also with Acts of Congress. The amendment also states that local rules should not repeat national rules and Acts of Congress.

The amendment also requires that the numbering of local rules conform with any numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform numbering system would make it easier for an increasingly national bar to locate a local rule that applies to a particular procedural issue.

Paragraph (2) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. The proscription of paragraph (2) is narrowly drawn—covering only nonwillful violations and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney stubbornly or repeatedly violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form—for example, a local rule requiring that the defendant waive a jury trial within a specified time.

Subdivision (b). This rule provides flexibility to the court in regulating practice when there is no controlling law. Specifically, it permits the court to regulate practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. § 2072, and with the district's local rules. This rule recognizes that courts rely on multiple directives to control practice. Some courts regulate practice through the published Federal Rules and the local rules of the court. Some courts also have used internal operating procedures, standing orders, and other internal directives. Although such directives continue to be authorized, they can lead to problems. Counsel or litigants may be unaware of the various directives. In addition, the sheer volume of directives may impose an unreasonable barrier. For example, it may be difficult to obtain copies of the directives. Finally, counsel or litigants may be unfairly sanctioned for failing to comply with a directive. For these reasons, the amendment disapproves imposing any sanction or other disadvantage on a person for noncompliance with such an internal directive, unless the alleged violator has been furnished in a particular case with actual notice of the requirement.

There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular judge unless the party or attorney has actual notice of those requirements. Furnishing litigants with a copy outlining the judge's practices—or attaching instructions to a notice setting a case for conference or trial—would suffice to give actual notice, as would an order in a case specifically adopting by reference a judge's standing order and indicating how copies can be obtained.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 57 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 58. Petty Offenses and Other Misdemeanors

(a) SCOPE.

(1) *In General.* These rules apply in petty offense and other misdemeanor cases and on appeal to a district judge in a case tried by a magistrate judge, unless this rule provides otherwise.

(2) *Petty Offense Case Without Imprisonment.* In a case involving a petty offense for which no sentence of imprisonment will be imposed, the court may follow any provision of these rules that is not inconsistent with this rule and that the court considers appropriate.

(3) *Definition.* As used in this rule, the term “petty offense for which no sentence of imprisonment will be imposed” means a petty offense for which the court determines that, in the event of conviction, no sentence of imprisonment will be imposed.

(b) PRETRIAL PROCEDURE.

(1) *Charging Document.* The trial of a misdemeanor may proceed on an indictment, information, or complaint. The trial of a petty offense may also proceed on a citation or violation notice.

(2) *Initial Appearance.* At the defendant's initial appearance on a petty offense or other misdemeanor charge, the magistrate judge must inform the defendant of the following:

(A) the charge, and the minimum and maximum penalties, including imprisonment, fines, any special assessment under 18 U.S.C. § 3013, and restitution under 18 U.S.C. § 3556;