

**SUMMARY OF THE  
REPORT OF THE JUDICIAL CONFERENCE COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE**

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference take the following action:

	Page
1. Approve amended Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure. ....	2
2. Delegate authority to review local appellate court rules to the Committee on Rules of Practice and Procedure, retaining the authority to modify and abrogate such rules. ....	3
3. Approve new Rules 6 and 26.1 and amendments to Rules 1, 3, and 28(g) of the Federal Rules of Appellate Procedure and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. ....	4
4. Approve amendments to Rules 11, 32, and 41 of the Federal Rules of Criminal Procedure and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. ....	5

5. Approve amendment to Rule 9006(a) of the Federal Rules of Bankruptcy Procedure and transmit it to the Supreme Court for its consideration with a recommendation that it be approved by the Court and transmitted to Congress pursuant to law. .... 6

The remainder of the report is for information and the record.

**REPORT OF THE JUDICIAL CONFERENCE  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS  
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Your Committee on Rules of Practice and Procedure met in San Francisco, California, on January 19 and 20, 1989. All members of the Committee attended the meeting except Judge George C. Pratt and Wayne LaFave, who were unavoidably absent. Also present were the Chairman and Reporter of the Civil Rules Advisory Committee and the Chairman and Reporter of the Criminal Rules Advisory Committee. The Chairman of the Bankruptcy Rules Advisory Committee attended briefly. Also present were the Reporter to the Committee, Dean Daniel R. Coquillette of Boston College Law School; William B. Eldridge, Director, Research Division, Federal Judicial Center; David N. Adair, Jr., Assistant General Counsel of the Administrative Office; and Mary P. Squiers, Director of the Local Rules Project.

Your Committee opened with a moment of silence in honor of its past Chairman, United States District Judge Edward Gignoux, who died November 4, 1988. The Chairman directed that the Reporter prepare a tribute to Judge Gignoux that will be transmitted to his family on behalf of your Committee.

I. Implementation of the Rules Enabling Act of 1988

Title IV of the Judicial Improvements and Access to Justice Act of 1988 (Pub. L. No. 100-702), the Rules Enabling Act, made a number of changes in the

authorizing legislation for the implementation of rules of practice and procedure. The Act, inter alia, amends 28 U.S.C. § 2073 to require that each meeting of the Judicial Conference Committees on Rules of Practice and Procedure be open to the public and that it "be preceded by sufficient notice to enable all interested persons to attend." This statutory change requires amendments to the "Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure." The amendments to section 2073 also create certain technical requirements, such as the submission of a written report by an advisory committee to the Standing Committee explaining any advisory committee action, which should be incorporated into the procedures.

Your Committee also concluded that, in the spirit of public openness created by the legislation, proposed revisions to the rules of practice and procedure, as well as notices of meetings of committees, be published in the Federal Register. Such publication would be in addition to the current methods of distribution.

Section 2073(a)(1) of title 28, United States Code, requires that the Judicial Conference prescribe and publish the procedures for consideration of proposed rules. Accordingly, your Committee recommends that these procedures, as amended, be approved by the Judicial Conference.

**Recommendation:**

That the Judicial Conference approve the amended Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure set out in Appendix A.

The Act also amends 28 U.S.C. § 331 to require the Judicial Conference to review local appellate court rules for consistency with Federal law. It provides that the Judicial Conference may modify or abrogate any such inconsistent local

appellate rule. In order to assist the Judicial Conference in this statutorily mandated function, your Committee recommends that the Conference delegate to your Committee the authority to make recommendations to the Conference regarding modification or abrogation of local appellate court rules. Your Committee intends that the Appellate Rules Advisory Committee will make an initial review of local appellate court rulemaking and report to your Committee on its findings and recommendations. The Advisory Committee report would be reviewed and, if your Committee approves a recommendation that a local appellate court rule be modified or abrogated, it would forward that recommendation to the Judicial Conference for appropriate action consistent with law.

**Recommendation:**

That the Judicial Conference delegate its authority under 28 U.S.C. § 331 to review local appellate court rules for consistency with Federal law to the Committee on Rules of Practice and Procedure, retaining the authority to modify or abrogate any local appellate court rule.

II. Amendments to the Rules of Practice and Procedure

A. Federal Rules of Appellate Procedure

The Advisory Committee on the Federal Rules of Appellate Procedure has submitted to your Committee new Appellate Rules 6 and 26.1; technical and conforming amendments to Rules 1, 3, and 28(g); and an amendment to Rule 26. The proposed new Rule 6 is designed to reflect changes made to title 28 of the United States Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984 (28 U.S.C. § 158). The new rule provides for new Appellate Form 5 for notice of appeal in bankruptcy cases. The amendments to Appellate Rules 1 and 3 are designed to conform those rules with new Rule 6.

New Rule 26.1 would require a party to disclose its corporate affiliates so that a judge may ascertain whether he or she has any interest in any of the parties' related entities that would disqualify the judge from hearing the appeal. The amendment to Rule 28(g) would conform that rule to new Rule 26.1.

The proposed amendment to Rule 26 which would have changed the time periods from which intervening weekends and holidays are excluded was withdrawn.

The above-referenced new rules and amendments have been submitted for public comment and appropriate minor changes made in response thereto. Your Committee approves these proposed rules and amendments.

The above-proposed rules and amendments to the Federal Rules of Appellate Procedure are set out in Appendix B and are accompanied by Advisory Committee Notes and a report explaining their purpose and intent.

**Recommendation:**

That the Judicial Conference approve new Rules 6 and 26.1 and amendments to Rules 1, 3, and 28(g) of the Federal Rules of Appellate Procedure and transmit them to the Supreme Court for its consideration with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

**B. Federal Rules of Criminal Procedure**

The Advisory Committee on the Rules of Criminal Procedure has submitted to your Committee proposed amendments to Criminal Rules 11, 32, and 41(e). The amendments to Rule 11 would provide that the court inform the defendant that it is required to consider any applicable sentencing guidelines but that it may depart from those guidelines in some circumstances. The proposed amendment to Rule 32(a) would permit the court to delay sentencing without a joint motion of the defendant and the Government, as is required by the current

rule. The proposed amendment to Rule 32(c)(1) would clarify that a presentence report may be disclosed not only to the court, but also to the defendant and the defendant's counsel prior to guilty plea, with the written consent of the defendant. The proposed amendment to Rule 32(c)(3)(A) would incorporate the 10-day disclosure requirement for presentence reports established in 18 U.S.C. § 3552(d), and would require that the defendant and the defendant's counsel receive a copy of the presentence report prior to sentencing. The current requirement of Rule 32(c)(3)(E) that the presentence report be returned to the court would be deleted. The proposed amendment to Rule 41(e) would permit a property owner to obtain a return of lawfully-seized property, but permit the Government to protect its legitimate law enforcement interest in such property.

The proposed amendments have been circulated for public comment and minor changes made in response thereto. Your Committee has approved these proposals.

The above proposed amendments to the Federal Rules of Criminal Procedure are set out in Appendix C and are accompanied by Advisory Committee Notes and a report explaining their purpose and intent.

**Recommendation:**

That the Judicial Conference approve amendments to Rules 11, 32, and 41 of the Federal Rules of Criminal Procedure and transmit them to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

C. Federal Rules of Bankruptcy Procedure

The Advisory Committee on the Rules of Bankruptcy Procedure has submitted to your Committee a proposed amendment to Bankruptcy Rule 9006(a) to provide that intermediate weekends and holidays be excluded from time

computations only when the time period is "less than 8 days" instead of the current 11 days. The proposed amendment has been circulated for public comment, and your Committee has approved it.

The proposed amendment to the Federal Rules of Bankruptcy Procedure is set out in Appendix D and is accompanied by an Advisory Committee Note and a report explaining its purpose and intent.

**Recommendation:**

That the Judicial Conference approve an amendment to Rule 9006(a) of the Federal Rules of Bankruptcy Procedure and transmit it to the Supreme Court for its consideration with a recommendation that it be approved by the Court and transmitted to Congress pursuant to law.

III. Publication of Proposed Amendments to the Rules of Practice and Procedure

The following proposed amendments to the Rules of Practice and Procedure were approved by your Committee for circulation to the bench and bar for comment.

A. Local Rules Project - Federal Rules of Civil Procedure

The study of Federal district court local rules, authorized by the Judicial Conference, has resulted in the preparation of a uniform numbering system, which was approved by the Judicial Conference at its last meeting. Your Committee intends to distribute the numbering system to the various United States district courts, accompanied by a set of model local rules for consideration by the various courts in conjunction with the renumbering of their local rules. In addition, the Local Rules Project has developed a treatise that identifies various local rules as being worthy of reconsideration by the various districts as inconsistent with or repetitive of the laws of the United States, including the Federal Rules of Practice and Procedure. The project has also identified a

number of local rules dealing with topics that are too technical to be part of the national rules but that should be nationally consistent. These topics include such matters as preparation of a civil cover sheet, size of paper, size of margins, and proof of service. Although local courts may prefer local variation in these matters, certain minimum standards should exist upon which counsel may rely.

Accordingly, your Committee has approved for public comment new Rule 84 of the Rules of Civil Procedure, which would permit the Judicial Conference to promulgate a Practice Manual, consisting of Administrative Rules and Forms. The new rule would replace current Rule 84, which provides for adoption of an Appendix of Forms. The current forms authorized under that rule would be incorporated into the Practice Manual and no longer exist as a separate appendix. In the event of a local rule to the contrary, compliance with the Practice Manual would be sufficient and the practitioner could rely on it.

It is also proposed that the rule be amended to simplify the procedure by which forms, and now administrative rules, are promulgated, by providing that such forms and rules need only be approved by the Judicial Conference and not submitted to Congress.

The Reporter to the Committee has prepared a draft Practice Manual which has been approved by your Committee for circulation with the proposed new Rule 84. The proposed Rule is attached as Appendix E.

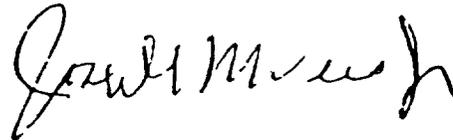
B. Federal Rules of Criminal Procedure

The Advisory Committee on the Federal Rules of Criminal Procedure has submitted to your Committee a proposal to amend Rule 41(a) and to add a new Rule 58 to the Federal Rules of Criminal Procedure. Rule 41(a) would provide a mechanism whereby a warrant may be issued in a district for a person or property



that is moving into or through a district or might move outside the district while the warrant is sought or executed. It further clarifies the authority of Federal magistrates to issue search warrants for property that is relevant to certain criminal investigations being conducted in a district and, although located outside the United States, that is in a place where the United States may lawfully conduct a search. New Rule 58 would replace the "Rules of Procedure for the Trial of Misdemeanors before United States Magistrates" with a single rule of criminal procedure. The rule does not make substantial changes to the current procedures for the trial of misdemeanors, but provides a more succinct and easily locatable statement of such procedures.

Respectfully submitted,



Joseph F. Weis, Jr., Chairman  
George C. Pratt  
Pierce Lively  
Charles E. Wiggins  
Sarah Evans Barker  
Robert E. Keeton  
Sam C. Pointer, Jr.  
Edwin J. Peterson  
W. Reece Bader  
Wayne R. LaFave  
Gael Mahony  
Charles Alan Wright

Attachments

Appendix

A

**PROCEDURES FOR THE CONDUCT OF BUSINESS BY THE  
JUDICIAL CONFERENCE COMMITTEES ON  
RULES OF PRACTICE AND PROCEDURE**

Scope

These procedures govern the operations of the Judicial Conference Committee on Rules of Practice, ~~and~~ Procedure, and Evidence (Standing Committee) and the various Judicial Conference Advisory Committees on Rules of Practice and Procedure in drafting and recommending new rules of practice, ~~and~~ procedure, and evidence and amendments to existing rules.

**Part I - Advisory Committees**

1. Functions

Each Advisory Committee shall carry on "a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use" in its particular field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary. ~~Each Advisory Committee shall submit to the Standing Committee its recommendations for rules changes.~~

2. Suggestions and Recommendations

Suggestions and recommendations with respect to the rules should be sent to the Secretary to the Standing Committee, Administrative Office of the United States Courts, Washington, D.C. 20544, who shall, to the extent feasible, acknowledge in writing every written suggestion or recommendation so received and shall refer all suggestions and recommendations to the appropriate Advisory Committee. To the extent feasible, ~~T~~the Secretary, in consultation with the Chairman of the Advisory Committee, shall advise the person making a recommendation or suggestion of the action taken thereon by the Advisory Committee.

### 3. Drafting Rules Changes

- a. An Advisory Committee shall meet at such times and places as the Chairman may authorize. All Advisory Committee meetings shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public and states the reason for closing the meeting. Each meeting shall be preceded by notice of the time and place of the meeting, including publication in the Federal Register, sufficient to permit interested persons to attend.
- b. The reporter assigned to each Advisory Committee shall, under the direction of the Committee or its Chairman, prepare initial draft rules changes, "Committee Notes" explaining their purpose and intent, copies or summaries of all written recommendations and suggestions received by the Advisory Committee, and shall forward them to the Advisory Committee.
- c. The Advisory Committee shall then meet to consider the draft proposed new rules and rules amendments, together with the Committee Notes, make revisions therein, and submit them for approval of publication to the Standing Committee, or its Chairman, for approval of publication with a written report explaining the committee's action, including any minority or other separate views.

### 4. Publication and Public Hearings

- a. When publication is approved by the Standing Committee, the Secretary shall arrange for the printing and circulation of the proposed rules changes to the bench and bar, and to the public generally, for comment to be made to the Advisory Committee. Distribution shall be as wide as practicable and shall include the Chief Justice of the highest court in each State and all individuals or organizations that request copies of proposed rules changes. The Secretary shall also send copies to appropriate legal publishing firms with a request that the proposed rules changes be

included in their publications. Publication shall be as wide as practicable. Notice of the proposed rule shall be published in the Federal Register and copies provided to appropriate legal publishing firms with a request that they be timely included in their publications. The Secretary shall also provide copies to the chief justice of the highest court of each state and, insofar as is practicable, to all individuals and organizations that request them.

- b. In the light of the time required to permit full consideration of proposed rule changes by bar associations, circuit judicial conferences and other interested groups, a period of at least six months shall normally be allowed for public comment. In order to provide full notice and opportunity for comment on proposed rule changes, a period of at least six months from the time of publication of notice in the Federal Register shall be permitted, unless a shorter period is approved under the provisions of subparagraph d of this paragraph.
- c. An Advisory Committee shall normally conduct public hearings on all proposed rules changes after adequate notice and at such times and places as shall be determined by the Chairman. The proceedings shall be recorded and a transcript shall be prepared for the Committee's use. The transcript shall be available to the public at the Administrative Office of the United States Courts unless elimination of such hearings is approved under the provisions of subparagraph d of this paragraph. The hearings shall be held at such times and places as determined by the chairman of the Advisory Committee and shall be preceded by adequate notice, including publication in the Federal Register. Proceedings shall be recorded and a transcript prepared. Subject to the provisions of paragraph six, such transcript shall be available for public inspection.
- d. Exceptions to the time for comment, public hearings, and publication requirements of these procedures may be granted by the Standing Committee, or its Chairman. Exceptions to the time period for public comment and the public hearing requirement may be granted by the Standing Committee or its chairman

when the Standing Committee or its chairman determines that the administration of justice requires that a proposed rule change should be expedited and that appropriate public notice and comment may be achieved by a shortened comment period, without public hearings, or both.

## 5. Subsequent Procedures

- a. At the conclusion of the comment period the reporter shall prepare a summary of the written comments received and the testimony presented at public hearings. The Advisory Committee shall review the proposed rules changes in the light of the comments and testimony. If the Advisory Committee makes any substantial change, an additional period for public notice and comment may be provided.
- ~~b.~~ ~~The Secretary to the Standing Committee, in consultation with the Chairman of the Advisory Committee, shall advise every person who has commented on a proposed rules change of the Advisory Committee action thereon.~~
- eb. The Advisory Committee shall submit proposed rules changes and Committee Notes, as finally agreed upon, to the Standing Committee. Each submission shall be accompanied by a separate report of the comments received and shall explain any changes made subsequent to the original publication. The submission shall also include minority views of Advisory Committee members who wish to have separate views recorded.

## 6. Records

- a. The Chairman of the Advisory Committee shall arrange for the preparation of minutes of all Advisory Committee meetings.
- b. The records of an Advisory Committee shall consist of the written suggestions received from the public; the written comments received on drafts of proposed rules, responses thereto, transcripts of public hearings,

and summaries prepared by the reporter; all correspondence relating to proposed rules changes; minutes of Advisory Committee meetings; approved drafts of rules changes; and reports to the Standing Committee. The records shall be maintained at the Administrative Office of the United States Courts for a minimum of five years and shall be available for public inspection during reasonable office hours. Thereafter the records may be transferred to a Government Records Center in accordance with applicable Government retention and disposition schedules.

- c. Any portion of minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting as provided in subparagraph 3a.
- ed Copies of records shall be furnished to any person upon payment of a reasonable fee for the cost of reproduction.

## **Part II - Standing Committee**

### **7. Functions**

The Standing Committee shall coordinate the work of the several Advisory Committees, make suggestions of proposals to be studied by them, consider proposals recommended by the Advisory Committees, and transmit such proposals with its recommendation to the Judicial Conference, or recommit them to the appropriate Advisory Committee for further study and consideration.

### **8. Procedures**

- a. The Standing Committee shall meet at such times and places as the Chairman may authorize. All Committee meetings shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public and states the reason for closing the meeting. Each meeting shall be preceded

by notice of the time and place of the meeting, including publication in the Federal Register, sufficient to permit interested persons to attend.

- b. When an Advisory Committee's final recommendations for rules changes have been submitted, the Chairman and Reporter of the Advisory Committee shall attend the Standing Committee meeting to present the proposed rules changes and Committee Notes.
- c. The Standing Committee may accept, reject, or modify a proposal. If a modification effects a substantial change, the proposal will be returned to the Advisory Committee with appropriate instructions.
- d. The Standing Committee shall transmit to the Judicial Conference the proposed rules changes and Committee Notes approved by it, together with the Advisory Committee report. The Standing Committee's report to the Judicial Conference shall include its recommendations and explain any changes it has made.

#### 9. Records

- a. The Secretary shall prepare minutes of all Standing Committee meetings.
- b. The records of the Standing Committee shall consist of the minutes of Standing and Advisory Committee meetings, reports to the Judicial Conference, and correspondence concerning rules changes including correspondence with Advisory Committee Chairmen. The records shall be maintained at the Administrative Office of the United States Courts for a minimum of five years and shall be available for public inspection during reasonable office hours. Thereafter the records may be transferred to a Government Records Center in accordance with applicable Government retention and disposition schedules.
- c. Copies of records shall be furnished to any person upon payment of a reasonable fee for the cost of reproduction.

Appendix

B

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF APPELLATE PROCEDURE\***

**Rule 1. Scope of rules**

1           (a) Scope of rules.—These rules govern procedure in appeals  
2 to United States courts of appeals from the United States district  
3 courts and the United States Tax Court; in appeals from bankruptcy  
4 appellate panels; in proceedings in the courts of appeals for review  
5 or enforcement of orders of administrative agencies, boards,  
6 commissions and officers of the United States; and in applications  
7 for writs or other relief which a court of appeals or a judge thereof  
8 is competent to give. When these rules provide for the making of a  
9 motion or application in the district court, the procedure for making  
10 such motion or application shall be in accordance with the practice  
11 of the district court.

\* \* \* \* \*

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

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\*New matter is underlined; matter to be omitted is lined through.

FEDERAL RULES OF APPELLATE PROCEDURE

**Rule 3. Appeal as of right—How taken**

1 (a) Filing the notice of appeal.—An appeal permitted by law  
2 as of right from a district court to a court of appeals shall be taken  
3 by filing a notice of appeal with the clerk of the district court  
4 within the time allowed by Rule 4. Failure of an appellant to take  
5 any step other than the timely filing of a notice of appeal does not  
6 affect the validity of the appeal, but is ground only for such action  
7 as the court of appeals deems appropriate, which may include  
8 dismissal of the appeal. Appeals by permission under 28 U.S.C. §  
9 1292(b) and appeals by ~~allowance~~ in bankruptcy shall be taken in the  
10 manner prescribed by Rule 5 and Rule 6 respectively.

\* \* \* \* \*

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 6. Appeals by allowance in bankruptcy proceedings**

1 ~~(a) Petition for allowance.—Allowance of an under section 24~~  
2 ~~of the Bankruptcy Act<sup>1</sup> (11 U.S.C. § 47) from orders, decrees, or~~  
3 ~~judgments of a district court involving less than \$500, or from an~~  
4 ~~order making or refusing to make allowances of compensation or~~  
5 ~~reimbursement under sections 250 or 498 thereof (11 U.S.C. § 650,~~  
6 ~~§ 898) shall be sought by filing a petition for allowance with the~~  
7 ~~clerk of the court of appeals within the time provided by Rule 4(a)~~

FEDERAL RULES OF APPELLATE PROCEDURE

8 for filing a notice of appeal, with proof of service on all parties to  
9 the action in the district court. A notice of appeal need not be  
10 filed.

11 (b) Content of petition; answer.—The petition shall contain a  
12 statement of the facts necessary to an understanding of the  
13 questions to be presented by the appeal; a statement of those  
14 questions and of the relief sought; a statement of the reasons why in  
15 the opinion of the petitioner the appeal should be allowed; and a  
16 copy of the order, decree or judgment complained of and of any  
17 opinion or memorandum relating thereto. Within 7 days after  
18 service of the petition an adverse party may file an answer in  
19 opposition. The petition and answer shall be submitted without oral  
20 argument unless otherwise ordered.

21 (c) Form of papers; number of copies.—All papers may be  
22 typewritten. Three copies shall be filed with the original, but the  
23 court may require that additional copies be furnished.

24 (d) Allowance of the appeal; fees; cost bond; filing of  
25 record.—Within 10 days after the entry of an order granting  
26 permission to appeal the appellant shall (1) pay to the clerk of the  
27 district court the fees established by statute and the docket fee  
28 prescribed by the Judicial Conference of the United States and (2)  
29 file a bond for costs if required pursuant to Rule 7. The clerk of the  
30 district court shall notify the clerk of the court of appeals of the  
31 payment of the fees. Upon receipt of such notice the clerk of the

FEDERAL RULES OF APPELLATE PROCEDURE

32 ~~court of appeals shall enter the appeal upon the docket. The record~~  
33 ~~shall be transmitted and filed in accordance with Rules 11 and~~  
34 ~~12(b). A notice of appeal need not be filed.~~

**Rule 6. Appeals in bankruptcy cases from final judgments and orders of district courts or of bankruptcy appellate panels**

1 (a) Appeal from a judgment, order or decree of a district  
2 court exercising original jurisdiction in a bankruptcy case.

3 An appeal to a court of appeals from a final judgment, order  
4 or decree of a district court exercising jurisdiction pursuant to 28  
5 U.S.C. § 1334 shall be taken in identical fashion as appeals from  
6 other judgments, orders or decrees of district courts in civil actions.

7 (b) Appeal from a judgment, order or decree of a district  
8 court or bankruptcy appellate panel exercising appellate jurisdiction  
9 in a bankruptcy case.

10 (1) Applicability of other rules. All provisions of these  
11 rules are applicable to an appeal to a court of appeals  
12 pursuant to 28 U.S.C. § 158(d) from a final judgment, order or  
13 decree of a district court or bankruptcy appellate panel  
14 exercising appellate jurisdiction pursuant to 28 U.S.C.  
15 § 158(a) or (b), except that:

16 (i) Rules 3.1, 4(a)(4), 4(b), 5.1, 9, 10, 11, 12(b), 13-  
17 20, 22-23, and 24(b) are not applicable;

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18                    (ii) the reference in Rule 3(c) to "Form 1 in the  
19                    Appendix of Forms" shall be read as a reference to  
20                    Form 5; and

21                    (iii) when the appeal is from a bankruptcy  
22                    appellate panel, the term "district court" as used in any  
23                    applicable rule, means "appellate panel".

24                    (2) Additional rules. In addition to the rules made  
25                    applicable by subsection (b) (1) of this rule, the following  
26                    rules shall apply to an appeal to a court of appeals pursuant  
27                    to 28 U.S.C. § 158(d) from a final judgment, order or decree  
28                    of a district court or of a bankruptcy appellate panel  
29                    exercising appellate jurisdiction pursuant to 28 U.S.C.  
30                    § 158(a) or (b):

31                    (i) Effect of motion for rehearing on time for  
32                    appeal. If a timely motion for rehearing under  
33                    Bankruptcy Rule 8015 is filed in the district court or the  
34                    bankruptcy appellate panel, the time for appeal to the  
35                    court of appeals for all parties shall run from the entry  
36                    of the order denying the rehearing or the entry of the  
37                    subsequent judgment.

38                    (ii) The Record on Appeal. Within 10 days after  
39                    filing the notice of appeal, the appellant shall file with  
40                    the clerk possessed of the record assembled pursuant to  
41                    Bankruptcy Rule 8006, and serve on the appellee, a  
42                    statement of the issues to be presented on appeal and a

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43 designation of the record to be certified and  
44 transmitted to the clerk of the court of appeals. If the  
45 appellee deems other parts of the record necessary, the  
46 appellee shall, within 10 days after service of the  
47 appellant's designation, file with the clerk and serve on  
48 the appellant a designation of additional parts to be  
49 included. The record, redesignated as provided above,  
50 plus the proceedings in the district court or bankruptcy  
51 appellate panel and a certified copy of the docket  
52 entries prepared by the clerk pursuant to Rule 3(d) shall  
53 constitute the record on appeal.

54 (iii) Transmission of the record. When the record  
55 is complete for purpose of the appeal, the clerk of the  
56 district court or the appellate panel, shall transmit it  
57 forthwith to the clerk of the court of appeals. The  
58 clerk of the district court or of the appellate panel shall  
59 number the documents comprising the record and shall  
60 transmit with the record a list of documents  
61 correspondingly numbered and identified with  
62 reasonable definiteness. Documents of unusual bulk or  
63 weight, physical exhibits other than documents, and  
64 such other parts of the record as the court of appeals  
65 may designate by local rule, shall not be transmitted by  
66 the clerk unless the clerk is directed to do so by a party  
67 or by the clerk of the court of appeals. A party must

FEDERAL RULES OF APPELLATE PROCEDURE

68 make advance arrangements with the clerk for the  
69 transportation and receipt of exhibits of unusual bulk or  
70 weight. All parties shall take any other action  
71 necessary to enable the clerk to assemble and transmit  
72 the record. The court of appeals may provide by rule or  
73 order that a certified copy of the docket entries shall be  
74 transmitted in lieu of the redesignated record, subject  
75 to the right of any party to request at any time during  
76 the pendency of the appeal that the redesignated record  
77 be transmitted.

78 (iv) Filing of the record. Upon receipt of the  
79 record, the clerk of the court of appeals shall file it and  
80 shall immediately give notice to all parties of the date  
81 on which it was filed. Upon receipt of a certified copy  
82 of the docket entries transmitted in lieu of the  
83 redesignated record pursuant to rule or order, the clerk  
84 of the court of appeals shall file it and shall  
85 immediately give notice to all parties of the date on  
86 which it was filed.

COMMITTEE NOTE

A new Rule 6 is proposed. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, the Supreme Court decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S.

50 (1982), and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, have made the existing Rule 6 obsolete.

Subdivision (a). Subdivision (a) provides that when a district court exercises original jurisdiction in a bankruptcy matter, rather than referring it to a bankruptcy judge for a final determination, the appeal should be taken in identical fashion as appeals from district court decisions in other civil actions. A district court exercises original jurisdiction and this subdivision applies when the district court enters a final order or judgment upon consideration of a bankruptcy judge's proposed findings of fact and conclusions of law in a non-core proceeding pursuant to 28 U.S.C. § 157(c)(1) or when a district court withdraws a proceeding pursuant to 28 U.S.C. § 157(d). This subdivision is included to avoid uncertainty arising from the question of whether a bankruptcy case is a civil case. The rules refer at various points to the procedure "in a civil case", see, e.g. Rule 4(a)(1). Subdivision (a) makes it clear that such rules apply to an appeal from a district court bankruptcy decision.

Subdivision (b). Subdivision (b) governs appeals that follow intermediate review of a bankruptcy judge's decision by a district court or a bankruptcy appellate panel.

Subdivision (b)(1). Subdivision (b)(1) provides for the general applicability of the Federal Rules of Appellate Procedure, with specified exceptions, to appeals covered by subdivision (b) and makes necessary word adjustments.

Subdivision (b)(2). Paragraph (i) provides that the time for filing a notice of appeal shall begin to run anew from the entry of an order denying a rehearing or from the entry of a subsequent judgment. The Committee deliberately omitted from the rule any provision governing the validity of a notice of appeal filed prior to the entry of an order denying a rehearing; the Committee intended to leave undisturbed the current state of the law on that issue. Paragraph (ii) calls for a redesignation of the appellate record assembled in the bankruptcy court pursuant to Rule 8006 of the Rules of Bankruptcy Procedure. After an intermediate appeal, a party may well narrow the focus of its efforts on the second appeal and a redesignation of the record may eliminate unnecessary material. The proceedings during the first appeal are included to cover the possibility that independent error in the intermediate appeal, for example failure to follow appropriate procedures, may be assigned in the court of appeals. Paragraph (iii) provides for the transmission of the record and tracks the appropriate subsections of Rule 11. Paragraph (iv) provides for the filing of the record and notices to the parties. Paragraph (ii) and Paragraph (iv) both refer to "a certified copy of the docket entries". The "docket entries" referred to are the docket entries in the district court or the bankruptcy appellate panel, not the entire docket in the bankruptcy court.

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**Rule 26.1 Corporate Disclosure Statement**

1           Any non-governmental corporate body party to a civil or  
2           bankruptcy case or agency review proceeding and any non-  
3           governmental corporate defendant in a criminal case shall file a  
4           statement identifying all parent companies, subsidiaries (except  
5           wholly-owned subsidiaries), and affiliates that have issued shares to  
6           the public. The statement shall be filed with a party's principal  
7           brief or upon filing a motion, response, petition or answer in the  
8           court of appeals, whichever first occurs, unless a local rule requires  
9           earlier filing. The statement shall be included in front of the table  
10          of contents in a party's principal brief even if the statement was  
11          previously filed.

COMMITTEE NOTE

The purpose of this rule is to assist judges in making a determination of whether they have any interests in any of a party's related corporate entities that would disqualify the judges from hearing the appeal. The committee believes that this rule represents minimum disclosure requirements. If a Court of Appeals wishes to require additional information, a court is free to do so by local rule. However, the committee requests the courts to consider the desirability of uniformity and the burden that varying circuit rules creates on attorneys who practice in many circuits.

**Rule 28. Briefs**

\* \* \* \* \*

1           (g) Length of briefs.—Except by permission of the court, or as  
2           specified by local rule of the court of appeals, principal briefs shall  
3           not exceed 50 pages, and reply briefs shall not exceed 25 pages,

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4 exclusive of pages containing the corporate disclosure statement,  
5 table of contents, tables of citations and any addendum containing  
6 statutes, rules, regulations, etc.

\* \* \* \* \*

COMMITTEE NOTE

The amendment provides that the corporate disclosure statement required by new rule 26.1 shall be treated similarly to tables of contents and tables of citations and shall not be counted for purposes of the number of pages allowed in a brief.



Appendix

C-1

**PROPOSED AMENDMENTS  
TO THE  
FEDERAL RULES OF CRIMINAL PROCEDURE\***

**Rule 11. Pleas**

\* \* \* \* \*

1 (c) ADVICE TO DEFENDANT. Before accepting a plea of guilty or  
2 nolo contendere, the court must address the defendant personally in  
3 open court and inform the defendant of, and determine that the  
4 defendant understands, the following:

5 (1) the nature of the charge to which the plea is offered,  
6 the mandatory minimum penalty provided by law, if any, and  
7 the maximum possible penalty provided by law, including the  
8 effect of any special parole term, the fact that the court is  
9 required to consider any applicable sentencing guidelines but  
10 may depart from those guidelines under some circumstances,  
11 and, when applicable, that the court may also order the  
12 defendant to make restitution to any victim of the offense; and

\* \* \* \* \*

---

\*New matter is underlined; matter to be omitted is lined through.

# FEDERAL RULES OF CRIMINAL PROCEDURE

## COMMITTEE NOTE

The amendment mandates that the district court inform a defendant that the court is required to consider any applicable guidelines but may depart from them under some circumstances. This requirement assures that the existence of guidelines will be known to a defendant before a plea of guilty or nolo contendere is accepted. Since it will be impracticable, if not impossible, to know which guidelines will be relevant prior to the formulation of a presentence report and resolution of disputed facts, the amendment does not require the court to specify which guidelines will be important or which grounds for departure might prove to be significant. The advice that the court is required to give cannot guarantee that a defendant who pleads guilty will not later claim a lack of understanding as to the importance of guidelines at the time of the plea. No advice is likely to serve as a complete protection against post-plea claims of ignorance or confusion. By giving the advice, the court places the defendant and defense counsel on notice of the importance that guidelines may play in sentencing and of the possibility of a departure from those guidelines. A defendant represented by competent counsel will be in a position to enter an intelligent plea.

The amended rule does not limit the district court's discretion to engage in a more extended colloquy with the defendant in order to impart additional information about sentencing guidelines or to inquire into the defendant's knowledge concerning guidelines. The amended rule sets forth only the minimum advice that must be provided to the defendant by the court.

### **Rule 32. Sentence and Judgment**

1       (a) SENTENCE.

2               (1) Imposition of Sentence. Sentence shall be imposed  
3               without unnecessary delay, but the court may, ~~upon a motion~~  
4               that is jointly filed by the defendant and by the attorney for  
5               the Government and that asserts when there is a factor  
6               important to the sentencing determination that is not then  
7               capable of being resolved ~~at that time~~, postpone the imposition  
8               of sentence for a reasonable time until the factor is capable  
9               of being resolved. Prior to the sentencing hearing, the court  
10              shall provide the counsel for the defendant and the attorney

FEDERAL RULES OF CRIMINAL PROCEDURE

11 for the Government with notice of the probation officer's  
12 determination, pursuant to the provisions of subdivision  
13 (c)(2)(B), of the sentencing classifications and sentencing  
14 guideline range believed to be applicable to the case. At the  
15 sentencing hearing, the court shall afford the counsel for the  
16 defendant and the attorney for the Government an opportunity  
17 to comment upon the probation officer's determination and on  
18 other matters relating to the appropriate sentence. Before  
19 imposing sentence, the court shall also—

20 (A) determine that the defendant and ~~his~~ defendant's  
21 counsel have had the opportunity to read and discuss the  
22 presentence investigation report made available pursuant to  
23 subdivision (c)(3)(A) or summary thereof made available  
24 pursuant to subdivision (c)(3)(B);

25 (B) afford counsel for the defendant an opportunity to  
26 speak on behalf on the defendant; and

27 (C) address the defendant personally and ~~ask him~~  
28 determine if ~~he~~ the defendant wishes to make a statement  
29 ~~in his own behalf~~ and to present any information in  
30 mitigation of the sentence.

31 The attorney for the Government shall have an equivalent  
32 opportunity to speak to the court. Upon a motion that is  
33 jointly filed by the defendant and by the attorney for the  
34 Government, the court may hear in camera such a statement

FEDERAL RULES OF CRIMINAL PROCEDURE

35 by the defendant, counsel for the defendant, or the attorney  
36 for the Government.

37 (2) Notification of Right to Appeal. After imposing  
38 sentence in a case which has gone to trial on a plea of not  
39 guilty, the court shall advise the defendant of the defendant's  
40 right to appeal, including any right to appeal the sentence, and  
41 of the right of a person who is unable to pay the cost of an  
42 appeal to apply for leave to appeal in forma pauperis. There  
43 shall be no duty on the court to advise the defendant of any  
44 right of appeal after sentence is imposed following a plea of  
45 guilty or nolo contendere, except that the court shall advise  
46 the defendant of any right to appeal ~~his~~ the sentence. If the  
47 defendant so requests, the clerk of the court shall prepare and  
48 file forthwith a notice of appeal on behalf of the defendant.

\* \* \* \* \*

49 (c) PRESENTENCE INVESTIGATION.

50 (1) When Made. A probation officer shall make a  
51 presentence investigation and report to the court before the  
52 imposition of sentence unless the court finds that there is in  
53 the record information sufficient to enable the meaningful  
54 exercise of sentencing authority pursuant to 18 U.S.C. 3553,  
55 and the court explains this finding on the record.

56 Except with the written consent of the defendant, the  
57 report shall not be submitted to the court or its contents  
58 disclosed to anyone unless the defendant has pleaded guilty or

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59 nolo contendere or has been found guilty, ~~except that a judge~~  
60 ~~may, with the written consent of the defendant, inspect a~~  
61 ~~presentence report at any time.~~

62 (2) Report. The report of the presentence investigation  
63 shall contain—

64 (A) information about the history and characteristics  
65 of the defendant, including ~~his~~ prior criminal record, if any,  
66 ~~his~~ financial condition, and any circumstances affecting ~~his~~  
67 the defendant's behavior that may be helpful in imposing  
68 sentence or in the correctional treatment of the defendant.

\* \* \* \* \*

69 (3) Disclosure.

70 (A) At a reasonable time least 10 days before  
71 imposing sentence, unless this minimum period is waived  
72 by the defendant, the court shall ~~permit~~ provide the  
73 defendant and the defendant's counsel ~~to read~~ with a copy  
74 of the report of the presentence investigation, including the  
75 information required by subdivision (c)(2) but not  
76 including any final recommendation as to sentence, ~~but~~  
77 and not to the extent that in the opinion of the court the  
78 report contains diagnostic opinions, which if disclosed,  
79 might seriously disrupt a program of rehabilitation; or  
80 sources of information obtained upon a promise of  
81 confidentiality; or any other information which, if disclosed,  
82 might result in harm, physical or otherwise, to the

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83 defendant or other persons. The court shall afford the  
84 defendant and the defendant's counsel an opportunity to  
85 comment on the report and, in the discretion of the court,  
86 to introduce testimony or other information relating to any  
87 alleged factual inaccuracy contained in it.

\* \* \* \* \*

88 ~~(E)~~ Any copies of the presentence investigation report  
89 made available to the defendant and the defendant's counsel  
90 and the attorney for the government shall be returned to the  
91 probation officer immediately following the imposition of  
92 sentence or the granting of probation, unless the court, in  
93 its discretion otherwise directs.

94 (E) ~~(F)~~ The reports of studies and recommendations  
95 contained therein made by the Director of the Bureau of  
96 Prisons pursuant to 18 U.S.C. § 3552(b) shall be considered a  
97 presentence investigation within the meaning of subdivision  
98 (c)(3) of this rule.

\* \* \* \* \*

COMMITTEE NOTE

The amendment to subdivision (a)(1) is intended to clarify that the court is expected to proceed without unnecessary delay, and that it may be necessary to delay sentencing when an applicable sentencing factor cannot be resolved at the time set for sentencing. Often, the factor will relate to a defendant's agreement to cooperate with the government. But, other factors may be capable of resolution if the court delays sentencing while additional information is generated. As currently written, the rule might imply that a delay requested by one party or suggested by the Court sua sponte might be unreasonable. The amendment rids the rule of any such

## FEDERAL RULES OF CRIMINAL PROCEDURE

implication and provides the sentencing court with desirable discretion to assure that relevant factors are considered and accurately resolved. In exercising this discretion, the court retains under the amendment the authority to refuse to delay sentencing when a delay is inappropriate under the circumstances.

In amending subdivision (c)(1), the Committee conformed the rule to the current practice in some courts: i.e., to permit the defendant and the prosecutor to see a presentence report prior to a plea of guilty if the court, with the written consent of the defendant, receives the report at that time. The amendment permits, but does not require, disclosure of the report with the written consent of the defendant.

The amendment to change the "reasonable time" language in subdivision (c)(3)(A) to at least 10 days prior to sentencing, unless the defendant waives the minimum period, conforms the rule to 18 U.S.C. 3552(d). Nothing in the statute or the rule prohibits a court from requiring disclosure at an earlier time before sentencing. The inclusion of a specific waiver provision is intended to conform the rule to the statute and is not intended to suggest that waiver of other rights is precluded when no specific waiver provision is set forth in a rule or portion thereof.

The language requiring the court to provide the defendant and defense counsel with a copy of the presentence report complements the abrogation of subdivision (E), which had required the defense to return the probation report. Because a defendant or the government may seek to appeal a sentence, an option that is permitted under some circumstances, there will be cases in which the defendant has a need for the presentence report during the preparation of, or the response to, an appeal. This is one reason why the Committee decided that the defendant should not be required to return the nonconfidential portions of the presentence report that have been disclosed. Another reason is that district courts may find it desirable to adopt portions of the presentence report when making findings of fact under the guidelines. They would be inhibited unnecessarily from relying on careful, accurate presentence reports if such reports could not be retained by defendants. A third reason why defendant should be able to retain the reports disclosed to them is that the Supreme Court's decision in United States Department of Justice v. Julian, 48 U.S. \_\_\_ (1988), 108 S.Ct. 1606 (1988), suggests that defendants will routinely be able to secure their reports through Freedom of Information Act suits. No public interest is served by continuing to require the return of reports, and unnecessary FOIA litigation should be avoided as a result of the amendment to Rule 32.

The amended rule does not direct whether the defendant or the defendant's lawyer should retain the presentence report. In exceptional cases where retention of a report in a local detention facility might pose a danger to persons housed there, the district judge may direct that the defendant not personally retain a copy of the report until the defendant has been transferred to the facility where the sentence will be served.

## FEDERAL RULES OF CRIMINAL PROCEDURE

Because the parties need not return the presentence report to the probation officer, the Solicitor General should be able to review the report in deciding whether to permit the United States to appeal a sentence under the Sentencing Reform Act of 1984, 18. U.S.C. § 3551 et seq.

Although the Committee was concerned about the potential unfairness of having confidential or diagnostic material included in presentence reports but not disclosed to a defendant who might be adversely affected by such material, it decided not to recommend at this time a change in the rule which would require complete disclosure. Some diagnostic material might be particularly useful when a court imposes probation, and might well be harmful to the defendant if disclosed. Moreover, some of this material might assist correctional officials in prescribing treatment programs for an incarcerated defendant. Information provided by confidential sources and information posing a possible threat of harm to third parties was particularly troubling to the Committee, since this information is often extremely negative and thus potentially harmful to a defendant. The Committee concluded, however, that it was preferable to permit the probation officer to include this information in a report so that the sentencing court may determine whether it should be disclosed to the defendant. If the court determines that it should not be disclosed, it will have to decide whether to summarize the contents of the information or to hold that no finding as to the undisclosed information will be made because such information will not be taken into account in sentencing. Substantial due process problems may arise if a court attempts to summarize information in a presentence report, the defendant challenges the information, and the court attempts to make a finding as to the accuracy of the information without disclosing to the defendant the source of the information or the details placed before the court. In deciding not to require disclosure of everything in a presentence report, the Committee made no judgment that findings could validly be made based upon nondisclosed information.

Finally, portions of the rule were gender-neutralized.

### **Rule 41. Search and Seizure**

\* \* \* \* \*

- 1 (e) MOTION FOR RETURN OF PROPERTY. A person aggrieved by
- 2 an unlawful search and seizure or by the deprivation of property may
- 3 move the district court for the district in which the property was
- 4 seized for the return of the property on the ground that such person
- 5 is entitled to lawful possession of the property ~~which was illegally~~

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6 seized. The ~~judge~~ court shall receive evidence on any issue of fact  
7 necessary to the decision of the motion. If the motion is granted,  
8 the property shall be ~~restored~~ returned to the movant, although  
9 reasonable conditions may be imposed to protect access and use of  
10 the property in subsequent proceedings and it shall not be admissible  
11 in evidence at any hearing or trial. If a motion for return of  
12 property is made or comes on for hearing in the district of trial  
13 after an indictment or information is filed, it shall be treated also as  
14 a motion to suppress under Rule 12.

\* \* \* \* \*

COMMITTEE NOTE

The amendment to Rule 41(e) conforms the rule to the practice in most districts and eliminates language that is somewhat confusing. The Supreme Court has upheld warrants for the search and seizure of property in the possession of persons who are not suspected of criminal activity. See, e.g., Zurcher v. Stanford Daily, 436 U. S. 547 (1978). Before the amendment, Rule 41(e) permitted such persons to seek return of their property if they were aggrieved by an unlawful search and seizure. But, the rule failed to address the harm that may result from the interference with the lawful use of property by persons who are not suspected of wrongdoing. Courts have recognized that once the government no longer has a need to use evidence, it should be returned. See, e.g., United States v. Wilson, 540 F.2d 1100 (D.C. Cir. 1976). Prior to the amendment, Rule 41(e) did not explicitly recognize a right of a property owner to obtain return of lawfully seized property even though the government might be able to protect its legitimate law enforcement interests in the property despite its return—e.g., by copying documents or by conditioning the return on government access to the property at a future time. As amended, Rule 41(e) provides that an aggrieved person may seek return of property that has been unlawfully seized, and a person whose property has been lawfully seized may seek return of property when aggrieved by the government's continued possession of it.

No standard is set forth in the rule to govern the determination of whether property should be returned to a person aggrieved either by an unlawful seizure or by deprivation of the property. The fourth amendment protects people from unreasonable seizures as well as unreasonable searches, United States v. Place, 462 U. S. 696, 701 (1983), and

## FEDERAL RULES OF CRIMINAL PROCEDURE

reasonableness under all of the circumstances must be the test when a person seeks to obtain the return of property. If the United States has a need for the property in an investigation or prosecution, its retention of the property generally is reasonable. But, if the United States' legitimate interests can be satisfied even if the property is returned, continued retention of the property would become unreasonable.

The amendment deletes language dating from 1944 stating that evidence shall not be admissible at a hearing or at a trial if the court grants the motion to return property under Rule 41(e). This language has not kept pace with the development of exclusionary rule doctrine and is currently only confusing. The Supreme Court has now held that evidence seized in violation of the fourth amendment, but in good faith pursuant to a warrant, may be used even against a person aggrieved by the constitutional violation. United States v. Leon, 468 U.S. 897 (1984). The Court has also held that illegally seized evidence may be admissible against persons who are not personally aggrieved by an illegal search or seizure. Rakas v. Illinois, 439 U. S. 128 (1978). Property that is inadmissible for one purpose (e.g., as part of the government's case-in-chief) may be admissible for another purpose (e.g., impeachment, United States v. Havens, 446 U. S. 620 (1980)). Federal courts have relied upon these decisions and permitted the government to retain and to use evidence as permitted by the fourth amendment.

Rule 41(e) is not intended to deny the United States the use of evidence permitted by the fourth amendment and federal statutes, even if the evidence might have been unlawfully seized. See, e.g., United States v. Calandra, 414 U. S. 338, 349 n.6 (1978) ("Rule 41(e) does not constitute a statutory expansion of the exclusionary rule."); United States v. Roberts, 852 F.2d 671 (2nd Cir. 1988) (exceptions to exclusionary rule applicable to Rule 41(e)). Thus, the exclusionary provision is deleted, and the scope of the exclusionary rule is reserved for judicial decisions.

In opting for a reasonableness approach and in deleting the exclusionary language, the Committee rejects the analysis of Sovereign News Co. v. United States, 690 F.2d 569 (6th Cir. 1982), cert. denied, 464 U. S. 814 (1983), which held that the United States must return photocopies of lawfully seized business records unless it could demonstrate that the records were "necessary for a specific investigation." As long as the government has a law enforcement purpose in copying records, there is no reason why it should be saddled with a heavy burden of justifying the copying. Although some cases have held that the government must return copies of records where the originals were illegally seized—See, e.g., United States v. Wallace & Tiernan Co., 336 U. S. 793, 801 (1948); Goodman v. United States, 369 F.2d 166 (9th Cir. 1966)—these holdings are questionable in situations in which the government is permitted under Supreme Court decisions to use illegally seized evidence, and their reasoning does not apply to legally seized evidence.

## FEDERAL RULES OF CRIMINAL PROCEDURE

As amended, Rule 41(e) avoids an all or nothing approach whereby the government must either return records and make no copies or keep originals notwithstanding the hardship to their owner. The amended rule recognizes that reasonable accommodations might protect both the law enforcement interests of the United States and the property rights of property owners and holders. In many instances documents and records that are relevant to ongoing or contemplated investigations and prosecutions may be returned to their owner as long as the government preserves a copy for future use. In some circumstances, however, equitable considerations might justify an order requiring the government to return or destroy all copies of records that it has seized. See, e.g., Paton v. LaPrade, 524 F.2d 862, 867-69 (3rd Cir. 1975). The amended rule contemplates judicial action that will respect both possessory and law enforcement interests.

The word "judge" is changed to "court" in the second sentence of subdivision (e) to clarify that a magistrate may receive evidence in the course of making a finding or a proposed finding for consideration by the district judge.

Appendix

D

**PROPOSED AMENDMENT TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE\***

**Rule 9006. Time**

1           (a) COMPUTATION. In computing any period of time  
2 prescribed or allowed by these rules, by the local rules, by order of  
3 court, or by any applicable statute, the day of the act, event, or  
4 default from which the designated period of time begins to run shall  
5 not be included. The last day of the period so computed shall be  
6 included, unless it is a Saturday, a Sunday, or a legal holiday, or,  
7 when the act to be done is the filing of a paper in court, a day on  
8 which weather or other conditions have made the clerk's office  
9 inaccessible, in which event the period runs until the end of the next  
10 day which is not one of the aforementioned days. When the period  
11 of time prescribed or allowed is less than ~~11~~ 8 days, intermediate  
12 Saturdays, Sundays, and legal holidays shall be excluded in the  
13 computation. As used in this rule and in Rule 5001(c), "legal  
14 holiday" includes New Year's Day, Birthday of Martin Luther King,  
15 Jr., Washington's Birthday, Memorial Day, Independence Day, Labor  
16 Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas

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\*New matter is underlined; matter to be omitted is lined through.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

17 Day, and any other day appointed as a holiday by the President or  
18 the Congress of the United States, or by the state in which the  
19 bankruptcy court is held.

\* \* \* \* \*

COMMITTEE NOTE

Prior to 1987, subdivision (a) provided that intermediate weekends and legal holidays would not be counted in the computation of a time period if the prescribed or allowed time was less than 7 days. This rule was amended in 1987 to conform to Fed. R. Civ. P. 6(a) which provides for the exclusion of intermediate weekends and legal holidays if the time prescribed or allowed is less than 11 days. An undesirable result of the 1987 amendment was that 10-day time periods prescribed in the interest of prompt administration of bankruptcy cases were extended to at least 14 calendar days.

As a result of the present amendment, 10-day time periods prescribed or allowed will no longer be extended to at least 14 calendar days because of intermediate weekends and legal holidays.

Appendix

F

**Amendment to Rule 84 of the  
Federal Rules of Civil Procedure**

At present, Rule 84 of the Federal Rules of Civil Procedure reads as follows:

**Rule 84. Forms.**

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

The draft of amended Rule 84 reads as follows:

**Rule 84. Practice Manual.**

The Practice Manual consists of administrative rules and forms and is set forth as an Appendix to these rules. The forms and rules contained in the Practice Manual are sufficient under these rules and any local district court rules and are intended to indicate the simplicity and brevity of statement that these rules contemplate. The Practice Manual may be amended from time to time by the Judicial Conference of the United States on recommendation of the Committee on Rules of Practice and Procedure arrived at after notice and comment.

There are several reasons for amending Rule 84 to delete the discussion of the Appendix of Forms that currently exists and to include, in its stead, a discussion of a "Practice Manual." First, in order to incorporate a Practice Manual into the Federal Rules of Civil Procedure, these Federal Rules must acknowledge the existence of such a Manual. Second, it is intended that the Practice Manual form an Appendix to the Federal Rules of Civil Procedure. Rule 84, which already refers to an Appendix of Forms, seems an appropriate Rule to include a discussion of a similar addendum to the rules. Lastly, moving the forms currently in the Appendix of Forms to the Practice Manual may expedite any future amendment of these forms. The Appendix of Forms is subject to the lengthy process of submission to Congress. The amended Rule 84 states that the Judicial Conference is given the authority to develop and modify

such a Manual, thus providing a less time-consuming process. It may be more efficient to revise the forms if they can bypass that procedure and be subject only to approval by the Judicial Conference.