

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

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

* * * * *

FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted proposed amendments to Rules 12.2, 29, 32,* 32.1, 33, 34, 45, and new Rule 59 with a recommendation that they be approved and transmitted to the Judicial Conference. The amendments were circulated to the bench and bar for comment in August 2003. The scheduled public hearing on the proposed rules amendments was canceled because no one asked to testify.

The proposed amendments to Rule 12.2 authorize a court to exclude expert evidence on the issue of the defendant's mental disease, mental defect, or any other mental condition if the evidence is not timely disclosed or if the defendant fails to submit to an examination in accordance with the rule.

The proposed amendments to Rules 29, 33, and 34 permit a court to extend the time for filing the post-trial motion designated in the respective rule, even if the court rules on the extension request after the expiration of the seven days specified in the rule, as long as the motion for an extension is filed within the prescribed seven-day period. Rule 45 would be amended consistent with the proposed amendments to Rules 29, 33, and 34. The amendments remedy the problem caused when a judge fails to act within the specified time period even though the party had filed a timely motion.

*The Judicial Conference withdrew the proposed amendment to Rule 32 after Congress passed the Justice for All Act of 2004. The Act superseded the provisions proposed in the amendment.

The proposed amendments to Rule 32 extend the right of allocution to a victim of a felony offense not involving violence or sexual abuse, permitting the victim to address the court or submit a statement in written form. The amendments provide the court with discretion to limit the number of victims who may address the court in cases involving multiple victims. The advisory committee recognizes that legislation extending the right of allocution to all victims of offenses, including misdemeanor and petty offenses, was passed by the Senate and is pending in the House (H.R. 4342, 108th Cong., 2d Sess.). The advisory committee determined that the best course of action was to proceed in accordance with the rulemaking process. The proposed amendment should be withdrawn prior to the September Judicial Conference session if the pending legislation were to be enacted in the meantime.

The proposed amendment to Rule 32.1 provides the defendant with a right of allocution to speak in mitigation of the penalty to be imposed in a revocation hearing, or a modification hearing in which the terms or conditions of the defendant's probation or supervised release may be modified. The amendment was initially suggested in an opinion by the Eleventh Circuit Court of Appeals, *United States v. Frazier*, 283 F.3d 1242 (11th Cir. 2002).

Proposed new Rule 59 parallels provisions in Civil Rule 72 for handling and appealing a decision by a magistrate judge. The new rule codifies statutory law, case law, and the practices of the courts dealing with the assignment, disposition, and appeal of non-dispositive and dispositive matters handled by a magistrate judge. The new rule was suggested in an opinion by the Ninth Circuit Court of Appeals, *United States v. Abonce-Barrera*, 257 F.3d 959 (9th Cir. 2001). Although the rule distinguishes between "dispositive" and "non-dispositive" matters, it does not attempt to define or otherwise catalog motions that fall within either category.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Criminal Rules 12.2, 29, 32, ** 32.1, 33, 34, 45, and new Rule 59 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Criminal Procedure are in Appendix D with an excerpt from the advisory committee report.

* * * * *

**The Judicial Conference later withdrew the proposed amendment to Rule 32.