

**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:

1. Approve and urge each United States district court to adopt a Uniform Numbering System for their local rules. 2
2. Approve amendments to Rules 4, 26, and 27 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. 5
3. Approve amendments to Rules 11, 32.1 and 40 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. 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 Washington, D.C., on July 18, 1988. All members of the Committee attended the meeting except Judge Amalya L. Kearse and Gael Mahony, Esq., who were unavoidably absent. Also present were the Chairman and Reporter of the Appellate Rules Advisory Committee and the Reporter of the Bankruptcy Rules Advisory Committee. The Chairman and regular Reporter of the Criminal Advisory Committee attended, as did David A. Schlueter, Associate Dean and Professor at Saint Mary's Law School, who has been appointed to serve as temporary Reporter to the Criminal Rules Advisory Committee while Stephen A. Saltzburg is serving at the Department of Justice. Also present were the Reporter to the Committee, Dean Daniel R. Coquillette of Boston College Law School; the Secretary of the Committee, James E. Macklin, Jr., Esq., Deputy Director of the Administrative Office; David N. Adair, Jr., Esq., Assistant General Counsel of the Administrative Office; William B. Eldridge, Director,

Research Division, Federal Judicial Center; and Patricia S. Channon, Esq., Bankruptcy Division, Administrative Office. Also attending the meeting were Stephen N. Subrin of Northeastern Law School, consultant to the Reporter, and Mary P. Squiers, Director of the Local Rules Project.

I. Local Rules Project - Uniform Numbering System for Local Rules

The Judicial Conference has authorized the Committee on Rules of Practice and Procedure to undertake a study of Federal district court local rules. Daniel R. Coquillette, Reporter to the Committee, submitted a proposal to the Committee for a study of these local rules in January 1986. As a result of Dean Coquillette's recommendation, the Local Rules Project (hereinafter "Project") became fully operational at Boston College Law School during the fall of 1986. This is the first exhaustive Federal study of local rules since the 1940 Knox Committee study.

All 94 Federal district courts have submitted their local rules to the Local Rules Project. There are approximately 5,000 local rules, not including many "sub-rules," standing orders, and standard operating procedures. Some district courts have hundreds of rules and sub-rules; others have few. These rules are extraordinarily diverse, and their numbers continue to grow rapidly. The

local rules cover literally the entire spectrum of Federal practice, from attorney admission and attorney discipline through the various stages of trial, including pleading and filing requirements, pretrial discovery procedures, and taxation of costs.

Currently, there is no uniform numbering system for Federal district court local rules. Some of the jurisdictions have local rules that are simply numbered sequentially beginning at "1." E.g., Southern District of Alabama; Northern District of Illinois. Other jurisdictions have local rules that are arranged by topic, designated "100," "200," or "300," followed by a hyphen and the actual rule number. E.g., District of Hawaii; Southern District of California. Still other jurisdictions have local rules that are arranged by topic, designated "1," "2," or "3," followed by a decimal point and the actual rule number. E.g., Central District of California; Middle District of Florida.

The Committee on Rules of Practice and Procedure recommends that a uniform numbering system be adopted to standardize the numbering of all local rules. Such a uniform system would have many advantages. A primary benefit would be to help the bar in locating rules applicable to a particular subject, which is especially important for those attorneys with multi-district practices. It would also assist an attorney needing to

locate a particular rule or to learn whether a local rule on a specific topic exists in the first instance. At present, it is often difficult to find any case law relating to a particular local rule, in part because there is no uniform numbering. The uniform system will also ease the incorporation of local rules into the various indexing services and the Westlaw and LEXIS computer services.

The numbering system for local rules proposed by the Committee on Rules of Practice and Procedure is set out in Appendix A. This proposed system tracks the numbering system of the Federal Rules of Civil Procedure, which is already familiar to the bar. Each local rule number corresponds to the number of the related Federal Rule of Civil Procedure. For example, the designation "LR15.1" refers to the local rule entitled: "Form of a Motion to Amend and Its Supporting Documentation." The designation "LR" indicates it is a local rule; the number "15" indicates that the local rule is related in substance to Rule 15 of the Federal Rules of Civil Procedure; the number ".1" indicates that it is the first local rule concerning Rule 15 of the Federal Rules of Civil Procedure. The same system applies with respect to those Federal Rules of Civil Procedure with a ".1" or a ".2" after the initial rule number, such as Rule 65.1 entitled "Security; Proceedings Against Sureties." Thus, for example, the first local rule concerning Federal Rule 65, "Injunctions," would be designated "LR65.1," while the first local rule concerning

Federal Rule 65.1, "Security; Proceedings Against Sureties," would be designated "LR65.1.1." Local rules which apply solely to criminal procedure or bankruptcy appeals in the district courts would be numbered to correspond with the appropriate Federal Criminal and Bankruptcy Rules.

Recommendation:

That the Judicial Conference approve and urge each United States District Court to adopt the Uniform Numbering System set out in Appendix A for their local rules.

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 proposed minor and technical amendments to Appellate Rules 26 and 27. The proposed amendment to Rule 26 is a technical and conforming amendment regarding exclusion of certain days from time computations. The proposed amendment to Rule 27 would change a word in the caption to conform with the body of the rule. Your Committee approves these proposals and suggests that they are not substantive and do not require circulation for comment.

The Advisory Committee has also submitted a proposed amendment to Appellate Rule 4. This amendment would permit and set the time for cross appeals in criminal cases and is necessitated by the provision for appeals in criminal cases enacted by the Sentencing Reform Act of 1984 (18 U.S.C. § 3742). The Department of Justice has indicated in a

letter to the Advisory Committee dated May 6, 1988, that it has no objection to this amendment. Your Committee has approved this proposal and, because of its urgency and lack of objection by the Department of Justice, suggests that the amendment need not be circulated for public comment.

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

Recommendation:

That the Judicial Conference approve amendments to Rules 4, 26, and 27 of the Federal Rules of Appellate Procedure and transmit them to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

B. Federal Rules of Criminal Procedure

The Advisory Committee on the Federal Rules of Criminal Procedure has submitted to your Committee proposed technical amendments to Criminal Rules 11, 32.1 and 40. All of these proposed amendments simply add appropriate references in these rules to "terms of supervised release," a new type of sentence created by the Sentencing Reform Act of 1984 (18 U.S.C. § 3583). Your Committee has reviewed these proposals and believes they are technical amendments, necessitated by this legislation. Your Committee suggests, therefore, that the proposed amendments need not be circulated for comment.

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

Recommendation:

That the Judicial Conference approve amendments to Rules 11, 32.1 and 40 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 the 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 submitted to your Committee for its review and approval for circulation to the bench and bar for comment. As will be described below, some of these proposals, particularly the rules dealing with time computation, are of some urgency. Your Committee has agreed, therefore, that the public comment period should be shortened from the usual six months and will terminate on December 31, 1988. Barring unforeseen circumstances the proposed amendments, including any changes suggested by the comments, will then be presented to the Judicial Conference for review at its March 1989 meeting.

A. Federal Rules of Appellate Procedure

The Advisory Committee on the Federal Rules of Appellate Procedure has submitted to your Committee a

proposal to repeal current Appellate Rule 6 and replace it with a new Rule 6 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 proposed rule has been reviewed and approved by the Advisory Committee on Bankruptcy Rules. Also proposed are technical amendments to Appellate Rules 1 and 3 to conform those rules with new Rule 6.

The Advisory Committee has also submitted a new Rule 26.1 that would require a party to disclose its corporate affiliates so that a judge may ascertain whether he or she has any interests in any of the party's related entities that would disqualify the judge from hearing the appeal. Your Committee, after approving this proposed rule for publication, agreed to ask the Advisory Committees on Civil and Bankruptcy Rules to consider similar rules for civil and bankruptcy cases.

Your Committee reviewed the above proposed rules and approved their publication for public comment to be completed by December 31, 1988.

B. Federal Rules of Criminal Procedure

The Advisory Committee on the Rules of Criminal Procedure has submitted to your Committee a proposed amendment to Criminal Rule 11 to 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 Advisory Committee also proposed several amendments to Rule 32. 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 conviction, with the written consent of the defendant. The proposed amendments 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 defendant and 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 Advisory Committee has also proposed an amendment to Rule 41(e) that 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 Advisory Committee has proposed, in addition, amendments to Federal Rule of Evidence 609. The amendments would clarify the approach to impeachment of witnesses in civil cases and Government witnesses in criminal cases. One proposed change reflects case law invalidating the

limitation that a conviction of a witness may be elicited only on cross-examination. Another change would resolve an ambiguity as to the relationship of Rules 609 and 403, with respect to impeachment of witnesses other than the criminal defendant.

Your Committee has reviewed the above-proposed rules and approved their publication for public comment to be completed by December 31, 1988.

The Advisory Committee has informed your Committee that it has tabled any consideration of proposing amendments to Evidence Rule 803 or proposing a new Rule 807 to create a special hearsay exception for children's statements. It has also informed your Committee that its members have expressed strong reservations about the constitutionality of proposed legislation that would create such an exception. Your Committee does not recommend that the Judicial Conference inform Congress of this position at this time in light of the Supreme Court's decision in Coy v. Iowa, 56 U.S.L.W. 4931 (U.S. June 29, 1988) (No. 86-6757), which struck down as violative of the confrontation clause of the Sixth Amendment to the United States Constitution a provision that permitted child abuse victims to testify behind screens.

C. Proposed Amendment of Time Computation Rules

The Advisory Committee on Bankruptcy Rules has previously proposed an 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 7 days" instead of the current 11 days. The Advisory Committee suggested that this computation rule created serious difficulties in bankruptcy cases because many transactions depend on finality of confirmation and other orders, and the current rule greatly extends the time period. For example, the filing of a notice of appeal in a bankruptcy case can be extended up to 16 days by operation of the rule.

In the interest of consistency in the various Federal Rules of Practice and Procedure, your Committee tabled approval of such an amendment pending consideration by the other Advisory Committees of similar amendments. None of the Advisory Committees objected to such amendment of their respective rules except the Advisory Committee on Criminal Rules, which proposed that the computation rule apply to time periods of less than 8 days. The other Advisory Committees acceded to the 8-day period.

Accordingly, your Committee has approved for publication proposals to amend Appellate Rule 26(a), Civil Rule 6(a), Criminal Rule 45(a), and Bankruptcy Rule 9006(a) to change the period to 8 days.

D. Official Forms

The Advisory Committee on the Federal Rules of

Civil Procedure has previously proposed the abrogation of Civil Rule 84, which provides for Official Forms for use in civil cases. The Chairman of your Committee appointed a subcommittee to study this issue. The subcommittee's recommendation was that the Forms be retained. Your Committee decided, however, that the incorporation of the Forms into the rules, necessitating that any amendments be promulgated by the Supreme Court, was unwieldy. Your Committee, therefore, has approved, in principle, provisions to permit Official Forms to be prescribed by the Judicial Conference, similar to the provision in Bankruptcy Rule 9009, except that there would be no authority for the Director of the Administrative Office to issue additional Forms as in Rule 9009. The matter has been referred to the appropriate Advisory Committees for study.

IV. Local Rules Project

As previously indicated, the Local Rules Project, under the direction of the Reporter to the Committee, Daniel R. Coquillette, has compiled approximately 5,000 local rules, not including many "sub-rules," standard operating procedures, and standing orders. The coverage and substance of the rules are extremely diverse. They deal with every phase of trial practice and local court administration.

Many of these local rules materially supplement or expand the existing uniform Federal Rules of Civil Procedure and other Federal laws. Other local rules repeat Federal law, often in an

incomplete, altered manner. Still others are inconsistent with Federal law.

Subsequent to an Interim Report to the Committee on Rules of Practice and Procedure, and on that Committee's instruction, the Project organized all of the civil local rules into topics and analyzed them. In addition to devising a proposed uniform numbering system for local rules, which is the subject of a proposed Judicial Conference resolution, the Project has analyzed the civil local rules by asking the following questions:

- 1) Do the local rules repeat existing law?
- 2) Do the local rules conflict with existing law?
- 3) Should the local rules form the basis for Model Local Rules for all jurisdictions to consider adopting?
- 4) Should the local rules remain subject to local variation?
- 5) Should the subjects addressed by the local rules be considered by the Advisory Committee on Civil Rules for inclusion in the Federal Rules of Civil Procedure?

The Project has written four documents which summarize its analysis and which will enable each district court to review and, when appropriate, revise its own local rules:

- 1) **Questionable Local Rules.** This document will discuss by topic those local rules which the Project determined to be either repetitive or inconsistent with existing law.

- 2) **Suggested Local Rules, Including Model Local Rules and Rules that Should Remain Subject to Local Variation.**
This document will discuss rules that should remain purely local in nature, and will suggest model local rules on some topics which all of the district courts should consider adopting.
- 3) **Local Rule Topics Which are Being Referred to the Advisory Committee on Civil Rules.** This document will discuss those rule topics which are being referred to the Advisory Committee on Civil Rules for possible incorporation into the Federal Rules of Civil Procedure.
- 4) **Lists of Local Rules by Jurisdictions.** This is a list for each district court of the local rules, by each court's own numbering system, that were discussed in one or more of the three previously described documents (1, 2, and 3). Each rule is numbered and identified as a repetitive local rule, an inconsistent local rule, a potential Model Local Rule, a rule that should remain subject to local variation, or a rule that merits consideration for incorporation into the Federal Rules of Civil Procedure. There is also a designation next to each of these local rules indicating where in the materials the discussion can be found on the particular rule.

The Committee on Rules of Practice and Procedure intends to circulate the documents from the Local Rules Project for review

by the individual district courts. The concerns of the Project can then be considered by each of the district courts when such court next undertakes a review of its local rules and adopts the uniform numbering system, as recommended by the Judicial Conference.

Respectfully submitted,



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Attachments

Uniform Numbering System

- I. Scope of Rules - One Form of Action.**
- LR1.1 Scope of Rules.
- LR1.2 Availability of the Local Rules.
- LR1.3 Sanctions.
- II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders.**
- LR3.1 Civil Cover Sheet.
- LR3.2 Venue.
- LR3.3 Notification of Complex and Multidistrict Litigation.
- LR4.1 Service of Process.
- LR4.2 Payment of Fees by In Forma Pauperis Litigants.
- LR4.3 Form Affidavits to Establish In Forma Pauperis Status.
- LR4.4 Prepayment of Fees.
- LR4.5 Schedule of Fees.
- LR5.1 General Format of Papers Presented for Filing.
- LR5.2 Proof of Service when Service is Required by Rule 5, Fed.R.Civ.P.
- LR5.3 Copies Required for a Three-Judge Court.
- LR5.4 Copies of Orders.

III. Pleadings and Motions.

- LR7.1 Motion Practice.
- LR7.2 Preparation and Filing of Orders.
- LR7.3 Orders.
- LR7.4 Stipulations.
- LR9.1 Social Security Number in Social Security Cases.
- LR9.2 Request for Three-Judge Court.
- LR9.3 Standard Forms for Habeas Corpus Petitions and Motions.
- LR14.1 Impleader.
- LR15.1 Form of a Motion to Amend and Its Supporting Documentation.
- LR16.1 Pre-Trial Procedures.
- LR16.2 Scheduling Orders Required by Rule 16, Fed.R.Civ.P.

IV. Parties.

- LR17.1 Infants and Incompetent Persons.
- LR17.2 Deportation and Exclusion Proceedings.
- LR22.1 Interpleader.
- LR23.1 Designation of "Class Action" in the Caption.
- LR24.1 Procedure for Notification of Any Claim of Unconstitutionality.

V. Depositions and Discovery.

- LR26.1 Form of Certain Discovery Documents.
- LR29.1 Discovery Stipulations.
- LR30.1 Depositions.
- LR33 Interrogatories.
- LR34.1 Production of Documents and Things.

- LR35.1 Physical and Mental Examination of Persons.
- LR36.1 Requests for Admission.
- LR37.1 Informal Conference to Settle Discovery Disputes.
- LR37.2 Form of Discovery Motions.
- VI. Trials.**
- LR38.1 Notation of "Jury Demand" in the Pleading.
- LR39.1 Opening Statements and Closing Arguments.
- LR39.2 Trial Briefs.
- LR39.3 Use of Exhibits at Trial.
- LR40.1 Assignment of Cases.
- LR40.2 Priorities of Cases.
- LR40.3 Calendar of Cases.
- LR41.1 Dismissal of Actions
- LR42.1 Bifurcation.
- LR43.1 Examination of Witnesses.
- LR45.1 Subpoenas.
- LR47.1 Voir Dire of Jurors.
- LR47.2 Attorney Communication with Jurors.
- LR48.1 Six-Member Juries.
- LR51.1 Instructions to Jury.
- LR52.1 Proposed Findings.
- LR53.1 Masters.
- LR53.2 Arbitration/Alternative Dispute Resolution.
- VII. Judgment.**

- LR54.1 Taxation of Costs.
- LR54.2 Jury Cost Assessment.
- LR54.3 Award of Attorney's Fees.
- LR55.1 Defaults.
- LR56.1 Summary Judgment Procedure.
- LR58.1 Entry of Judgment.
- LR58.2 Satisfaction of Judgment.
- LR62.1 Stays of Proceedings.
- LR62.2 Supersedeas Bonds.
- VIII. Provisional and Final Remedies and Special Proceedings.**
- LR65.1 Injunctions.
- LR65.2 Temporary Restraining Orders.
- LR65.1.1 Security: Proceedings Against Sureties.
- LR66.1 Receiverships.
- LR67.1 Bonds and Other Sureties.
- LR67.2 Deposits.
- LR67.3 Withdrawal of a Deposit Pursuant to Rule 67, Fed.R.Civ.P.
- LR68.1 Settlement Conferences.
- LR68.2 Settlement Procedures.
- LR69.1 Execution.
- LR71A.1 Condemnation Cases.
- LR72.1 Magistrates.
- X. District Courts and Clerks.**
- LR77.1 Hours of the Court.
- LR77.2 Orders and Judgments Grantable by the Clerk.

- LR77.3 Form of Orders.
- LR77.4 Sessions of the Court.
- LR77.5 Naturalization Petitions.
- LR77.6 Court Library.
- LR77.7 Ex Parte Communication with Judges.
- LR79.1 Custody of Files and Exhibits.
- LR79.2 Books and Records of the Clerk.
- LR80.1 Court Reporting Fees.
- XI. General Provisions.**
- LR81.1 Removal Bonds.
- LR81.2 Copies of State Court Proceedings in Removed Actions.
- LR83.1 Local Rulemaking.
- LR83.2 Free Press - Fair Trial Provisions.
- LR83.3 Courtroom and Courthouse Decorum.
- LR83.4 Security in the Courthouse.
- LR83.5 Bar Admission.
- LR83.6 Attorney Discipline.

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

Rule 4. Appeal as of right — When taken

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1 (b) Appeals in criminal cases. — In a criminal case the notice
2 of appeal by a defendant shall be filed in the district court within 10
3 days after the entry of (i) the judgment or order appealed from or
4 (ii) a notice of appeal by the government. A notice of appeal filed
5 after the announcement of a decision, sentence or order but before
6 entry of the judgment or order shall be treated as filed after such
7 entry and on the day thereof. If a timely motion in arrest of
8 judgment or for a new trial on any ground other than newly
9 discovered evidence has been made, an appeal from a judgment of
10 conviction may be taken within 10 days after the entry of an order
11 denying the motion. A motion for a new trial based on the ground of
12 newly discovered evidence will similarly extend the time for appeal
13 from a judgment of conviction if the motion is made before or
14 within 10 days after entry of the judgment. When an appeal by the
15 government is authorized by statute, the notice of appeal by the

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

FEDERAL RULES OF APPELLATE PROCEDURE

16 government shall be filed in the district court within 30 days after
17 the entry of (j) the judgment or order appealed from or (ii) a notice
18 of appeal by any defendant. A judgment or order is entered within
19 the meaning of this subdivision when it is entered in the criminal
20 docket. Upon a showing of excusable neglect the district court may,
21 before or after the time has expired, with or without motion and
22 notice, extend the time for filing a notice of appeal for a period not
23 to exceed 30 days from the expiration of the time otherwise
24 prescribed by this subdivision.

COMMITTEE NOTE

The Sentencing Reform Act of 1984 authorizes the government in specified circumstances to file a notice of appeal for review of an otherwise final sentence. 18 U.S.C. § 3742(b) (Supp. IV 1986). The proposed amendment permits and sets the time for cross-appeals in criminal cases, comparable to the provision in Rule 4(a)(3). Either side may notice an appeal within the time periods previously set forth in the rule but measured not only from the entry of judgment but also from the entry of the other side's notice of appeal. That is, the United States has 30 days from a defendant's filing of a notice of appeal to file a cross-appeal and a defendant has 10 days from the government's filing of a notice of appeal to file a cross-appeal. Without this amendment the government could notice an appeal after the time for a defendant's appeal had expired.

Rule 26. Computation and extension of time

1 (a) Computation of time.— In computing any period of time
2 prescribed or allowed by these rules, by an order of court, or by any
3 applicable statute, the day of the act, event, or default from which
4 the designated period of time begins to run shall not be included.
5 The last day of the period so computed shall be included, unless it is
6 a Saturday, a Sunday, or a legal holiday, in which event the period
7 extends until the end of the next day which is not a Saturday, a

FEDERAL RULES OF APPELLATE PROCEDURE

8 ~~Sunday, or a legal holiday.~~ or, when the act to be done is the filing
9 of a paper in court, a day on which weather or other conditions have
10 made the office of the clerk of the court inaccessible, in which
11 event the period runs until the end of the next day which is not one
12 of the aforementioned days. When the period of the time prescribed
13 or allowed is less than 7 days, intermediate Saturdays, Sundays, and
14 legal holidays shall be excluded in the computation. As used in this
15 rule "legal holiday" includes New Year's Day, Birthday of Martin
16 Luther King, Jr., Washington's Birthday, Memorial Day,
17 Independence Day, Labor Day, Columbus Day, Veterans Day,
18 Thanksgiving Day, Christmas Day, and any other day appointed as a
19 holiday by the President or the Congress of the United States. It
20 shall also include a day appointed as a holiday by the state wherein
21 the district court which rendered the judgment or order which is or
22 may be appealed from is situated, or by the state wherein the
23 principal office of the clerk of the court of appeals in which the
24 appeal is pending is located.

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COMMITTEE NOTE

The proposed amendment brings Rule 26(a) into conformity with the provisions of Rule 6(a) of the Rules of Civil Procedure, Rule 45(a) of the Rules of Criminal Procedure, and Rule 9006(a) of the Rules of Bankruptcy Procedure which allow additional time for filing whenever a clerk's office is inaccessible on the last day for filing due to weather or other conditions.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 27. Motions

1 (a) Content of motions; response † reply. — Unless another
2 form is elsewhere prescribed by these rules, an application for an
3 order or other relief shall be made by filing a motion for such order
4 or relief with proof of service on all other parties. The motion shall
5 contain or be accompanied by any matter required by a specific
6 provision of these rules governing such a motion, shall state with
7 particularity the grounds on which it is based, and shall set forth the
8 order or relief sought. If a motion is supported by briefs, affidavits
9 or other papers, they shall be served and filed with the motion. Any
10 party may file a response in opposition to a motion other than one
11 for a procedural order [for which see subdivision (b)] within 7 days
12 after service of the motion, but motions authorized by Rules 8, 9, 18
13 and 41 may be acted upon after reasonable notice, and the court
14 may shorten or extend the time for responding to any motion.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**PROPOSED AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE FOR THE
UNITED STATES DISTRICT COURTS***

Rule 11. Pleas

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1 (c) ADVICE TO DEFENDANT. Before accepting a plea of
2 guilty or nolo contendere, the court must address the defendant
3 personally in open court and inform the defendant of, and determine
4 that the 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 or supervised release term and,
9 when applicable, that the court may also order the defendant
10 to make restitution to any victim of the offense; and

* * * * *

COMMITTEE NOTE

The Committee believes that a technical change, adding the words "or supervised release," is necessary to recognize that defendants sentenced under the guideline approach will be concerned about supervised release rather than special parole. See 18 U.S.C. 3583, and 3624 (e). The words "special parole" are left in the rule, since the district courts continue to handle pre-guideline cases.

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

FEDERAL RULES OF CRIMINAL PROCEDURE

**Rule 32.1. Revocation or Modification of Probation or
Supervised Release**

1 (a) REVOCATION OF PROBATION OR SUPERVISED RELEASE.

2 (1) Preliminary Hearing. Whenever a probationer person is
3 held in custody on the grounds that the probationer person has
4 violated a condition of probation or supervised release, the
5 probationer person shall be afforded a prompt hearing before
6 any judge, or a United States magistrate who has been given
7 authority pursuant to 28 U.S.C. § 636 to conduct such hearings,
8 in order to determine whether there is probable cause to hold
9 the probationer person for a revocation hearing. The
10 probationer person shall be given

11 (A) notice of the preliminary hearing and its purpose
12 and of the alleged violation of probation;

13 (B) an opportunity to appear at the hearing and present
14 evidence in the probationer's person's own behalf;

15 (C) upon request, the opportunity to question
16 witnesses against the probationer person unless, for good
17 cause, the federal magistrate decides that justice does
18 not require the appearance of the witness; and

19 (D) notice of the probationer's person's right to be
20 represented by counsel.

21 The proceedings shall be recorded stenographically or by an
22 electronic recording device. If probable cause is found to
23 exist, the probationer person shall be held for a revocation

FEDERAL RULES OF CRIMINAL PROCEDURE

24 hearing. The probationer person may be released pursuant to
25 Rule 46(c) pending the revocation hearing. If probable cause is
26 not found to exist, the proceeding shall be dismissed.

27 (2) Revocation Hearing. The revocation hearing, unless
28 waived by the probationer person, shall be held within a
29 reasonable time in the district of probation jurisdiction. The
30 probationer person shall be given

31 (A) written notice of the alleged violation of
32 probation;

33 (B) disclosure of the evidence against the
34 probationer person;

35 (C) an opportunity to appear and to present
36 evidence in the probationer's person's own behalf;

37 (D) the opportunity to question adverse witnesses; and

38 (E) notice of the probationer's person's right to be
39 represented by counsel.

40 (b) MODIFICATION OF PROBATION OR SUPERVISED RELEASE.

41 A hearing and assistance of counsel are required before the terms or
42 conditions of probation or supervised release can be modified, unless
43 the relief to be granted to the probationer person on probation or
44 supervised release upon the probationer's person's request or the
45 court's own motion is favorable to the probationer person, and the
46 attorney for the government, after having been given notice of the
47 proposed relief and a reasonable opportunity to object, has not

FEDERAL RULES OF CRIMINAL PROCEDURE

48 objected. An extension of the term of probation or supervised
49 release is not favorable to the probationer person for the purposes of
50 this rule.

COMMITTEE NOTE

The amendments recognize that convicted defendants may be on supervised release as well as on probation. See 18 U.S.C. §§ 3583, and 3624(e).

Rule 40. Commitment to Another District

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1 (d) ARREST OF PROBATIONER OR SUPERVISED RELEASE.

2 If a person is arrested for a violation of probation or supervised
3 release in a district other than the district having probation
4 jurisdiction, such person shall be taken without unnecessary delay
5 before the nearest available federal magistrate. The federal
6 magistrate shall:

7 (1) Proceed under Rule 32.1 if jurisdiction over the
8 probationer person is transferred to that district; pursuant to
9 18 U.S.C. § 3653;

10 (2) Hold a prompt preliminary hearing if the alleged
11 violation occurred in that district, and either (i) hold the
12 probationer person to answer in the district court of the
13 district having probation jurisdiction or (ii) dismiss the
14 proceedings and so notify that court; or

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15 (3) otherwise order the ~~probationer~~ person held to answer
16 in the district court of the district having **probation**
17 jurisdiction upon production of certified copies of the
18 **probation order** judgment, the warrant, and the application for
19 the warrant, and upon a finding that the person before the
20 magistrate is the person named in the warrant.

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COMMITTEE NOTE

The amendments recognize that convicted defendants may be on supervised release as well as on probation. See 18 U.S.C. §§ 3583, and 3624(e).